Complaint

Mr H has complained, via a representative, that Park Hall Financial Services ('Park Hall') mis-sold a Self-Invested Personal Pension ('SIPP') plan, causing him a financial loss.

Background

Mr H was introduced to Park Hall in late 2009, following the promotion of a property investment through a company called Harlequin. Park Hall provided Mr H with a SIPP with a company I'll refer to as 'R', via a direct offer pack. It says it told Mr H no advice was being given in relation to arranging the SIPP and any subsequent investment.

In February 2010 Mr H transferred benefits from several pension plans into the SIPP, totalling £85,447.96. On 11 February 2010 Mr H invested £30,000 in a property with Harlequin. The total purchase price was £100,000 – the remaining balance was due to be paid in line with specified completion milestones set out in the contract with Harlequin.

Mr H withdrew a tax-free cash sum of £20,919.63 on 9 March 2010. The value of the SIPP, after charges, on 19 March 2010 was £61,392.57. By March 2015 the value of the Harlequin property investment was reduced to nil.

Mr H's representative complained to Park Hall about the advice to transfer Mr H's existing pensions to a SIPP and the advice to invest in Harlequin. It said this wasn't suitable for Mr H. Park Hall said no advice was provided in respect of the SIPP or the underlying investments. It said this was made clear to Mr H in its communications with him. Park Hall explained the service provided was a direct offer which included sufficient information and warnings for Mr H to make an informed decision. It said Mr H refused to take advice on the matter.

One of our adjudicators investigated the complaint and upheld it. He didn't think the evidence suggested Mr H had refused to take advice. And whilst Mr H did use a direct offer SIPP pack, the adjudicator thought Mr H most likely believed he was receiving advice and would've relied upon it. The adjudicator thought warnings about the loss of Guaranteed Annuity Rates (GARs) were generic and didn't put into context the value they potentially added to his pensions or the serious consequences of what he could potentially lose.

Overall, the adjudicator didn't think Park Hall had acted in the best interest of Mr H as they knew he was losing valuable pension benefits and that he intended to invest in a high risk property development. The adjudicator recommended Park Hall put things right by putting him back into the position, as far as possible, if he hadn't been advised to transfer his existing pensions into the SIPP. He also recommended that Park Hall pay Mr H £200 compensation for the distress and inconvenience caused.

Park Hall disagreed with the adjudicator's view. They said it was clear it hadn't provided Mr H with any advice whatsoever.

Park Hall also said it thought Mr H had made his complaint too late. It said Harlequin was in trouble from 2010 and there were a lot of articles in the public domain explaining this. Park Hall also said that during 2012 and 2013 Harlequin was reaching out to investors to reassure them. It added that Mr H ought to have known about the problems because the building hadn't been completed on time. Park Hall also said Mr H took advice from a new adviser, J, in 2013, and it thought the performance of the investment with Harlequin was most likely discussed.

Because of this, the complaint was passed to me to decide whether or not Mr H made his complaint in time. I issued a decision on 28 July 2020 determining that Mr H had made his complaint in time. I asked Park Hall to provide me with any further comments or evidence it wanted me to consider before I made a decision on the merits of Mr H's complaint.

Park Hall maintained the complaint hadn't been made in time, saying Mr H ought to have been aware of a problem with his investment when the property wasn't completed in time. It said Mr H must have had communications from Harlequin or the property marketing agents before 2013. And it thought Mr H's new adviser J would've most likely advised him on the investment in 2013.

Park Hall added that Mr H would've known he wasn't being provided with any advice. It said it had been offered to him but he refused it. It said In Adams v Options Sipp UK LLP (formerly Carey Pensions UK LLP) v FCA [2020] EWHC 1229 (Ch), the court held that COBS 2.1.1 could not be construed as imposing an obligation to advise which would not only be (on the facts of that case) unlawful but which the parties had specifically agreed in their contract not to impose on the consumer. It said this should apply here because Mr H's contract with Park Hall was such that he agreed that he wasn't being given advice on the suitability of the pension transfer or investment. Park Hall also said Mr H removed Park Hall as his advisors in 2013 so the new adviser should be responsible for any loss thereafter. It added that Mr H failed to limit his loss by not acting on the clause in his contract with Harlequin to obtain a refund.

I issued a provisional decision on the matter on 23 October 2020 upholding Mr H's complaint. Park Hall responded and made the following points:

- The complaint was not made in time and it was unreasonable for our service not to contact the promoters of the Harlequin investment, A, or Harlequin. It was certain these companies had contacted Mr H directly about the problems the investment was facing before 2013 – it provided us with documents addressed to 'investors'.
- Mr H was most likely withholding documents from our service which would've given him awareness of his cause for complaint earlier than he said he did.
- It was unreasonable for us to require Park Hall to prove that Mr H saw articles in the media about Harlequin's problems.
- Mr H insisted on investing in Harlequin. He was being advised by A and if Park Hall hadn't facilitated the transaction another firm would have.
- Mr H needed access to his tax-free cash urgently, as evidenced by an email which referred to a call from Ms M, who Park Hall says worked for C, another company associated with the investment.
- The Direct Offer pack made it clear that advice wasn't being provided to Mr H, which also included multiple risk warnings relating to the type of investment he was making.

Mr H accepted the provisional decision. He maintained that he had no specific need to take his tax-free cash at the time.

As both parties have provided their responses, I'm now providing my final decision on the matter.

My findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm upholding the complaint for the same reasons as set out in my provisional decision.

Jurisdiction

Park Hall maintains that Mr H made his complaint too late under the regulator's rules. I issued a decision on 28 July 2020 explaining why I was satisfied Mr H had made his complaint in time. The majority of the points Park Hall has made in response to my provisional decision have already been addressed in detail in my decision of 28 July 2020. But for completeness I will address the new comments Park Hall has made and the new evidence provided.

We've asked Mr H to provide everything he has in relation to the investment. But he didn't have any evidence or information from any of the parties involved that would lead me to conclude he ought reasonably to have had awareness of his cause for complaint before 19 September 2013 (three years before he complained on 19 September 2016).

I've reviewed the documents Park Hall has provided, which it says shows Mr H would've been sent information from Harlequin directly, but I'm not persuaded that's the case. The documents are generically addressed to "investors and agents", rather than being addressed to individuals. So, I think it's more likely that these documents were sent to advisers or the holders of the investment (such as the SIPP provider) to pass on. And as I've explained in my previous decisions, there is no evidence to suggest Mr H received such documentation from his advisers or the SIPP provider R.

Park Hall says we should have contacted Harlequin and A to ask for any evidence it has in relation to Mr H's investment. But both companies have been in liquidation for over two years and so I don't think it is likely that any requests made at this stage would be fruitful. Park Hall also says that we should request J's full file for Mr H. But we asked J to provide any evidence it had in respect of the advice Mr H sought in 2013 and I'm satisfied that it has provided everything that is relevant to our investigation. I am satisfied that all reasonable enquiries have been made of the parties involved here.

I have taken Park Hall's comments on board as to the difficulty it faces in proving that Mr H saw an article in the press about Harlequin from March 2013. But I haven't sought to prove beyond doubt that Mr H did in fact see this story. Instead, I've considered the prominence of the story in the press at the time to determine whether Mr H would've most likely seen it. I remain of the view that it is unlikely Mr H saw this article. It wasn't a significant story at the time, by which I mean it wasn't "front page" news. The article was published in the property section, rather than with the general news headlines. So, I think Mr H would've needed to be actively seeking out news about Harlequin in order to come across it. And based on what I've seen, I'm not persuaded Mr H was actively seeking out information about his investment at this time.

I remain of the view, for the reasons already given in both of my decisions to date, that the earliest Mr H could've known to question the sale of the SIPP and the investment was following the reduction of the investment with Harlequin to nil in March 2015. And as Mr H complained within three years of this date, I think he made his complaint to Park Hall within the relevant time limits.

Merits

I'm not persuaded to change my findings as set out in my provisional decision of 23 October 2020. An extract of my provisional decision is attached below and forms part of my final decision. However, for completeness I will address the main points raised by Park Hall in response.

Park Hall asserts that Mr H refused to take financial advice and that it would've been clear to him throughout his dealings with Park Hall that no advice was being given on the pension switches or the investment in Harlequin. Park Hall says that by signing the 'Client Undertaking & Consent' form, he was agreeing to the terms of the direct offer, that he understood he wasn't taking advice and acknowledged the risks of proceeding.

I've considered this carefully, but I still think overall Mr H would've believed he was being advised by Park Hall in relation to the pension switches. Mr H was sent Park Hall's direct offer pack and other forms, including the Client Undertaking & Consent form, a Client Agreement and Authority letters, by the promoter, A, in September 2009. This was Mr H's first introduction to Park Hall and so there couldn't have been any discussion with Park Hall at this stage as to whether he wanted to take advice or not. It seems the promoter, A, directed Mr H to sign the forms he'd been sent and return them to it, going as far to mark where Mr H needed to sign with an 'X'. Mr H duly returned the forms in October 2009.

The direct offer pack, which isn't personal to Mr H, appears to assume that no advice will be taken, but at the same time says advice can be provided. The Client Undertaking & Consent form refers to the direct offer pack but provides no opportunity for Mr H to confirm his understanding of whether any advice is being provided to him. The Client agreement sets out the advised service Park Hall can provide, but gave Mr H no opportunity to choose to take an advised service. The Authority letters Mr H was asked to sign in order to obtain information about his existing pensions explicated stated:

"I have appointed Park Hall Financial Services to provide me with financial advice, and I authorise and instruct Park Hall Financial Services to make any enquiries that may be necessary in providing this advice."

When read together, and having had no input or discussion with Park Hall about the basis on which it would be transacting this business, I don't think Mr H would've understood that he wasn't going to be receiving any advice in respect of his pensions. On the contrary, the only statement he signed that explicitly referred to advice was the Authority letter. This clearly stated that Mr H had appointed Park Hall to provide him with financial advice. So, I think Mr H would've believed he was receiving advice about his pensions from this point. I think this belief is carried through in the SIPP application form, which was signed on 22 December 2009. The form gave Mr H an option to say that he wasn't taking financial advice, but instead of ticking this box, he gave Park Hall's details as the financial adviser providing him with advice. So, overall, I think Mr H would've believed Park Hall was advising him on his pension switch to the SIPP.

I appreciate that Park Hall sent Mr H a letter dated 4 January 2010 setting out the details of the transactions to take place. The letter did state that the SIPP had been arranged without advice being offered or provided. But Mr H had already agreed to proceed with the SIPP by this point and this warning wasn't particularly prominent in the letter, so it's possible he missed this. In any event, I think the document Mr H signed right at the start of the process

led him to believe advice was being offered. So whatever documents came later – no matter how clear – can only be seen in that light. And I think Park Hall ought to have known the documents issued to Mr H at the outset were contradictory and didn't expressly clarify the basis on which the business was being transacted. So, I think it needed to do more to make it clear to Mr H, before any decisions were made, that it had an understanding Mr H didn't want to take any advice. Without doing so, I think Mr H held a legitimate belief that advice was being given to him in respect of his pension switch.

Ultimately, Mr H was an inexperienced investor and I don't think he would've refused to take advice in these circumstances. There isn't any evidence to support Park Hall's assertion that Mr H 'refused' to take advice. I don't think the fact that Mr H declined to take legal advice shows he would've declined to take financial advice. And as I've said, I think Mr H held a reasonable belief that he was in fact receiving advice. So, I think it's fair to treat Mr H as having been given advice, which is why I have considered the suitability of the SIPP and the proposed investment for him under the regulator's rules.

I have explained in detail in my provisional decision why I don't think Mr H should've been advised to switch his pension benefits to a SIPP, so I don't intend to repeat this. But Park Hall says that the investment in Harlequin wasn't necessarily unsuitable for Mr H as a risk-profiling exercise carried out in 2013 shows he was comfortable with taking higher risks to achieve higher returns. However, I don't think a risk profiling exercise carried out in 2013 is relevant to the sale of the investment in Harlequin in 2009/2010. It also assumes that it was reasonable for the adviser in 2013 to accept Mr H's own assessment of his risk appetite. I remain of the view that the Harlequin investment was too high risk for Mr H, who had very few assets and a limited capacity for loss at the time of the investment.

Park Hall also says that Mr H was insistent on investing and even if Park Hall had provided advice and recommended against the transaction, he would've gone ahead with it. It added that it had an email which referred to a call from Ms M dated 17 February 2010, saying Mr H needed access to his tax-free cash urgently.

I haven't seen any evidence from Mr H directly that would lead me to conclude he would've invested in Harlequin regardless of any advice he was given. I think Mr H was probably influenced by the promoters of the investment to some extent. But even if the promoters were telling him it was a good idea to invest in Harlequin, if a professional adviser had said it wasn't a suitable investment for him because it was too high risk and he could lose his pension, I think he would've followed that advice.

I asked Mr H about the email which referenced the call from Ms M. Mr H maintained that he didn't have a specific need for the money at the time and he spent it gradually. Mr H's representative suggested that the urgency referred to in the email was most likely due to the change in pension rules where the minimum retirement age increased from 50 to 55. They noted the change in the rules came into effect in April 2010 and so Mr H wouldn't have been allowed to take his tax-free cash after that date.

Whilst this is speculation on Mr H's representative's part, I think it's a plausible explanation for the urgency referred to as Ms M mentions that Mr H had turned 50 in September 2009. And given the email was sent in February 2010, the rules were due to change imminently and Mr H could've lost his right to access the cash. Overall, I'm not persuaded that this email shows Mr H needed urgent access to his tax-free cash for a specific reason.

Although I'm not persuaded that Mr H needed these funds, even if I could say that he did want access to them then, I don't think this alone would've made it a suitable recommendation for Mr H to switch his existing benefits to a SIPP. As I've said in my provisional decision, Mr H's existing arrangements contained valuable benefits that he would be giving up if he switched them to a SIPP. He would've also incurred penalties and fees. There wasn't any justification for recommending a SIPP to Mr H. He had modest pension funds and wasn't an experienced investor. The SIPP would also cost him more. So, even if Mr H had said he wanted to access his tax-free cash, I would've still expected Park Hall to advise him against transferring his existing pensions to the SIPP and investing in Harlequin, which was clearly unsuitable for him. And I'm satisfied Mr H would've followed that advice for the reasons already given.

Fair compensation

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

For the reasons given above, I think Mr H would've remained invested in his existing pension plans.

What should Park Hall do?

To compensate Mr H fairly, Park Hall should pay Mr H compensation of (D + E) plus F, where:

- A = The notional transfer values of the original plans at the date of calculation, assuming that Mr H remained with his previous pension providers, invested in the same funds prior to their transfers;

  Any withdrawal, income or other payment out of the investment should be deducted from the *notional value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

- B = Adjust the values in A to allow for the fact the GARs were lost. The adjusted values are the values in A multiplied by the ratio of the applicable GAR rates divided by the current annuity rate arranged on the same basis;

- C = The actual transfer value of the SIPP at the same date of calculation; Park Hall should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the total payable to Mr H and the balance be paid as I have set out.

  If Park Hall is unwilling or unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. Park Hall may wish to require that Mr H provides an undertaking to pay Park Hall any amount he may receive from the investment in the future.

- D = B – C, representing the loss to the date of calculation;

- E = Interest on D from the date of calculation to the date of payment at 8% simple. If the calculation results in a loss, Park Hall should pay the sum to Mr H's previous pension plans.

If the plan provider will not accept redress payments, the sum should be paid direct to Mr H as a lump sum less a deduction of 15%. This deduction is intended to account for the fact that 25% of the loss would have been tax free, while the remaining 75% would have been taxed at Mr H's marginal rate in payment.

- F = The SIPP only exists because of the Harlequin investment. In order for the SIPP to be closed and further SIPP fees prevented, this investment needs to be removed. But if Park Hall can't buy it Mr H is faced with future SIPP fees. I think it is fair to assume five years of future SIPP fees. So, if Park Hall can't buy the investment, it should pay an amount equal to five years of SIPP fees based on the current tariff. This is in addition to the compensation calculated using a nil value for the investment.

In addition, Park Hall should pay Mr H compensation of £200 for the distress and inconvenience caused by the unsuitable advice. I think this sum is fair as Mr H was undoubtedly concerned about the reduced sum available to him at retirement.

My final decision

I uphold the complaint. Park Hall Financial Services should settle the complaint as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 January 2021.

Hannah Wise
Ombudsman

Extract from Provisional Decision – My findings

"…Park Hall's position is that it didn't provide Mr H with any advice about the transfer of his pensions to a SIPP or any advice to invest a lump sum in Harlequin. So, I've first considered whether Mr H ought to have known he wasn't receiving any financial advice.

Based on the evidence I've seen, it appears Mr H first came into contact with Park Hall in September/October 2009, having been introduced by a property marketing agent, 'A'. Park Hall sent Mr H a direct offer pack. In the 'introduction' section, it said:

'It is important to remember that this type of pension plan is a sophisticated arrangement and thus should only be used by individuals who are fully aware of its benefits and restrictions. Park Hall Financial Services are not making any recommendations as to the suitability of this arrangement, and no advice has been, or will be, provided in connection with this. Park Hall Financial Services will not provide advice or recommendations on the suitability of property investment.'

'If you have any doubts as to whether this pension plan is suited to your needs, or Its affordability, risks or charges, you should seek expert advice. Park Hall Financial Services Is able to provide an advice service, however this will Incur additional fees.'

I appreciate that the above section says Park Hall would not be providing advice. However, it explains that Mr H can take advice from Park Hall if he wished. Given this was the first contact with Park Hall, I don't think any decision to take advice or not had yet been made.

Mr H was asked to return a 'Client Undertaking & Consent' form and sign a 'Client Agreement'. The Client Agreement explained the types of services Park Hall could provide, including an advised service. Mr H signed both of the forms on 2 October 2009, but neither form afforded him the opportunity to decide whether or not he wished to take advice. In the Client Agreement declaration, Mr H was asked to decide how he wished for Park Hall to be remunerated – he selected, *'payment by a combination of commission and fee'*. But it isn't clear what Mr H had decided in respect of taking an advice or not.

Park Hall says Mr H was insistent that he didn't wish to take any advice, but it hasn't provided any evidence to support this. In fact, the evidence I've seen suggests Mr H believed he was taking advice, at least in respect of the transfer of his pensions to the SIPP.

On receipt of the above forms, Park Hall asked Mr H to complete an 'Information Authority' form. Park Hall needed Mr H to complete this so it could contact his pension providers to facilitate the transfers. The form, which Mr H signed and dated 16 October 2009, said:

'I have appointed Park Hall Financial Services to provide me with financial advice, and I authorise and instruct Park Hall Financial Services to make any enquiries that may be necessary in providing this advice.

I authorise any life assurance or other financial institution with whom I have a relationship to transfer the administration of my policy to Park Hall Financial Services and to provide any information that Park Hall may request. Please also pay any future renewal commission to Park Hall Financial Services.'

Furthermore, Mr H recorded Park Hall as the advisory business which provided him with financial advice in his SIPP application form. If Mr H had understood he wasn't taking any advice or was insistent that he didn't need any financial advice, I think he would've ticked the box which said*, 'I am not appointing an Independent Financial Adviser'*.

Lastly, in the property investment schedule sent to the SIPP provider, Mr H signed the declaration which included:

'I have taken written advice on the suitability of the investment.'

So, on balance, I think Mr H believed that he was being given financial advice from Park Hall about the transfer of his pensions to a SIPP. For this reason, I think it's fair to treat Mr H as having received advice from Park Hall about this.

I don't think there is any merit in Park Hall's argument that Mr H had entered a contract with it to not take any financial advice. Park Hall hasn't provided any evidence that such a contract was agreed. I don't think the references to Park Hall not providing Mr H with financial advice in its letters is enough to say that Mr H had expressly agreed not to take advice from it. And as I've set out above, I'm satisfied Mr H thought Park Hall was advising him on his pension switches. So, I don't think the findings of the court in Adams v Options Sipp UK LLP (formerly Carey Pensions UK LLP) v FCA [2020] EWHC 1229 (Ch) are relevant to my consideration of this case.

I think if Park Hall had actually engaged with Mr H about his advice requirements, he would've been happy to take such advice and pay any associated fee for it. I say this because Mr H had no experience in such investments and the documents I've referred to above show he believed advice was being given which he was acting on.

Was the advice suitable?

Advising on a SIPP is a regulated activity. The rules required Park Hall to know their client and give suitable advice. The regulator (formerly the Financial Services Authority – FSA) has issued a number of alerts about advising on transfers with a view to investing pension monies in unregulated products through a SIPP. The alerts demonstrate the regulator took the view that, in order to provide suitable advice, consideration had to be given to how a consumer's funds would be invested. An alert from 2013 specifically mentioned unregulated investments such as overseas property developments. The regulator made its position clear in the 2013 alert, where it said:

"Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.

The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes. It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating."

This wasn't a change in regulation or position by the regulator. It simply restated the principles that already applied and were in place in 2010 when the SIPP was sold to Mr H. So, Park Hall had a duty to advise on the suitability of Mr H's intended investment. And if Park Hall didn't consider this investment to be suitable for Mr H, it should've said so.

Park Hall accepted the introduction from an unregulated firm. I haven't seen any evidence that they obtained any detailed information about Mr H's personal or financial circumstances or his attitude to risk. It only sought information about Mr H's existing pension plans. Mr H's six existing personal pensions were invested in a mixture of With-Profit and collective investment funds. Three of Mr H's pensions also had the benefit of GARs, which would be lost if he transferred to the SIPP.

I think Park Hall knew Mr H would be giving up valuable benefits and would incur penalties and fees by transferring his pensions to a SIPP. Park Hall's letter of 4 January 2010 highlighted the GARs and said:

'I must also make you aware that under the 3 Co-Operative pension policies, you have valuable guarantees which take the form of guaranteed annuity rates. These guaranteed rates may offer a higher level of income at retirement than that available on the open market. On transfer, these guaranteed annuity rates will be lost.'

But I don't think this warning is sufficient to have given Mr H a clear understanding of the benefits he held in his existing pensions and what the potential detriment to his retirement income could've been. And as Park Hall didn't provide any advice about the suitability of the Harlequin investment, Mr H couldn't compare the benefits he was losing to those he might gain if he went ahead with the proposed investment.

I also think Park Hall knew he was an inexperienced investor. Although Mr H had six pension plans, the sums held within the majority of them were modest. There is no also evidence to show that Mr H had actively selected or managed pension investments previously.

So, overall, I don't think the advice to switch his personal pensions to the SIPP was suitable for him.

Park Hall didn't provide any advice in respect of the Harlequin investment. But given that I think Mr H believed he was receiving advice about the SIPP transfer, that wasn't in accordance with the rules. Park Hall was fully aware Mr H would be investing in a Harlequin property as the SIPP had only been opened to facilitate this. So, I think Park Hall knew Mr H would be investing at a much higher risk than his previous investments and may have had insufficient money left in his pension to complete the property purchase.

Park Hall didn't carry out a fact-find or attitude to risk assessment, but based on what I've seen I don't think the Harlequin investment was suitable for Mr H. There were many risks associated with the investment Mr H intended to make; it was unregulated and overseas, so there would be currency exchange risks. The investment was also illiquid – so Mr H could've only accessed his funds if a buyer could be found for his property. I think this was a high risk investment and given Mr H had very little investment experience and a limited capacity for loss, I don't think he should've been advised to switch his existing pension benefits for the purpose of investing in Harlequin.

To summarise, I think Park Hall would've known the pension switches and underlying investment weren't suitable for Mr H's circumstances. I don't think it was sufficiently clear to Mr H that he wasn't being advised about the pension switches, nor was he fully informed of the risks, and by facilitating the transactions I don't think Park Hall was acting in his best interests.

Would Mr H have proceeded with the transfers in any event?

Had Park Hall explained fully the implications of Mr H's pension switches I don't think he would've proceeded to move them. Mr H did withdraw funds from the SIPP in March 2010. He was asked why but said that he'd been told it was a good idea - it wasn't for a specific transaction. Mr H also provided evidence showing that it was several years before any of the money was used. So, I don't think accessing tax free cash was important enough to him in late 2009 and early 2010 to have moved his pensions.

I note Park Hall believe the onus was on Mr H to seek a refund of his initial Harlequin investment following its delay. However, this is with the benefit of hindsight. As I've said above, overruns in construction are common and I wouldn't expect every investor to automatically seek a refund due to a delay. In any event, I haven't seen any evidence to persuade me that if Mr H had asked for a refund, he would've received it. So, I don't think this makes a difference.

Liability of new adviser

Mr H became a client of a new adviser 'J' in 2013. Park Hall says it was incumbent on J to review Mr H's Harlequin investment. Park Hall says specifically, J should've advised Mr H to seek a refund

under the Harlequin contract terms. So, it doesn't believe Park Hall should be liable for any of Mr H's loss.

The adjudicator asked Mr H whether the Harlequin investment was discussed with the adviser in 2013. Mr H couldn't recall much, but he remembered that he had some further funds to invest and he wanted to take advice on what to do with them. He said he didn't think the investment with Harlequin was discussed at all.

The adjudicator asked J to provide any relevant information relating to the advice in 2013 and any other instances where Mr H's investment with Harlequin might have been discussed. J provided a fact find and attitude to risk questionnaire dated 22 April 2013 and a recommendation letter dated 13 June 2013. It didn't hold any other relevant information. The recommendation letter stated:

"You have an existing Self Invested Personal Pension (SIPP) with R, which you have used to invest in an overseas property. After the investment had been made, you were left with £29,100 in cash within your SIPP…

You cannot move your SIPP to another provider due to the fact you are invested in commercial property and this type of investment along with investing surplus cash within the SIPP is not something other providers are currently interested in…

…You did not want to move your SIPP away from R as no other provider is currently taking responsibility for the type of commercial property investment you are in, and you are not able to move your cash as a partial transfer from the pension. The SIPP provides the various tax exemptions afforded to pensions whilst the Unit Trust / OEIC provides the underlying investment."

In light of the above I'm satisfied that J didn't carry out a review of Mr H's Harlequin investment. However, even if J had reviewed the investment, I don't think it's likely that J would've been able to limit Mr H's loss. By the time of the advice, the investment was already in trouble. So, as I've said above, I think it's very unlikely Mr H could've obtained a refund under the contract. There also wasn't any market for the investment – it was illiquid. For this reason, I don't think J could've advised Mr H to take any action to limit his loss and so I don't think it's appropriate to limit Park Hall's liability here."