DRN-3042933

The complaint

Mr T complains that Rowanmoor Personal Pensions Limited ("Rowanmoor") failed in its regulatory duties to carry out due diligence when accepting his application for a Self-Invested Personal Pension ("SIPP"). He says that Rowanmoor failed to verify the integrity of the firm that introduced his application (CIB Life and Pensions Limited ("CIB")) and should now compensate him for the loss he has suffered as a result of the investment in The Resort Group ("TRG") he made via the SIPP.

Background

I issued a provisional decision in February 2021 setting out the full background to Mr T's complaint and my findings on why I considered it should be upheld. My provisional decision is attached and forms part of this decision.

In summary, my provisional findings were that:

- Rowanmoor agreed it was a necessary requirement for consumers to be fully advised before it accepted business;
- Rowanmoor had some reasons to be concerned about CIB – as CIB had been introducing execution only business and the advice it had given on some cases had already been flagged by Rowanmoor as needing review;
- The business CIB was introducing had anomalous features – large volumes of high-risk business for overseas property developments;
- Unregulated parties were involved in promoting/marketing TRG;
- Despite knowing this, Rowanmoor didn't make appropriate checks of CIB's business model and unreasonably relied on a verbal assurance that advice was being given about the suitability of investing in TRG;
- Had Rowanmoor made reasonable checks, it would have realised that the introductions from CIB involved a significant risk of consumer detriment as customers were not being advised about TRG;
- Rowanmoor should have ceased to accept introductions from CIB before it accepted Mr T's introduction;
- In the circumstances, it was fair to ask Rowanmoor to compensate Mr T for the loss he has suffered.

The claims management company ("CMC") representing Mr T responded confirming that he agreed with the provisional decision. It re-iterated that Mr T believes Rowanmoor failed to carry out adequate due diligence on the TRG investment, there was no re-sale market for the investment, and it would continue to incur annual charges if Mr T was left with the asset. Responses were received from both Rowanmoor and the firm of solicitors representing it.

Rowanmoor's response

Rowanmoor made a number of representations, but in summary said:

- Mr T was a proactive investor and TRG was a 'bricks and mortar' investment asset, with a different, but not especially higher, risk profile than equity shareholdings and bonds;

- The liquidity of the TRG investment is suppressed due to the covid-19 pandemic and has fundamentally not failed. It is a tradeable investment with potential for future income;

- The SIPP is a member-directed scheme in which Rowanmoor, as operator, has a functional role of administering investments. However, Mr T has the legal right to invest as he likes as per the contractual relationship between them. The Court of Appeal confirmed – in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474 ("*Adams v Options*") - that the contractual relationship is materially determinative of the respective obligations of each party;

- It had sought to confirm that Mr T had received advice, both by seeking and obtaining direct acknowledgement from him, and also seeking and obtaining assurance from CIB that they were providing clients with appropriate advice on the suitability of SIPP investments. And it was entitled to rely upon the assurances from Mr T and CIB.

- It's implausible that Mr T didn't understand the risks of his SIPP investment in TRG, having 'self-selected' the investment. And whilst he may be disappointed with the performance of his investment, it's a revisionist complaint.

- The Financial Services Compensation Scheme ("FSCS") found failures with CIB's advice process. However, that failure is not properly or consequentially expressed in the provisional decision – nor has any responsibility been assigned to Mr T for his current situation. Rowanmoor shouldn't be held solely responsible for the loss as it's not the responsibility of a SIPP operator to underwrite risk.

- Rowanmoor was not allowed or engaged to give advice. It had no permissions, capacity or capability to do so, and its professional indemnity insurance excluded advice. It is therefore unreasonable for it to be expected to have reviewed investment suitability reports and draw any judgment as to their content – that is the responsibility of the regulated advisor.

Rowanmoor's representative's response

The solicitors representing Rowanmoor made additional detailed submissions for me to consider, but in summary said:

- The Adams v Options case has recently been considered by the Court of Appeal and it "effectively endorsed" the part of the first instance judgment upon which Rowanmoor relies.

- The issues central to this complaint are analogous in all relevant respects to those considered by the courts in Adams v Options, and the Principles should be applied consistently with COBS. Whilst they are different parts of the regulatory framework, there is no material distinction between the meaning and effect – as COBS 2.1.1R is broadly analogous to Principles 2, 3 and 6.

- In the provisional decision, no distinction was made between the application of COBS 2.1.1R and Principles 2, 3 and 6. Reliance was placed upon the Principles to the exclusion of analogous obligations under COBS, seemingly to elide the reasoning in Adams v Options relating to the weight to be placed upon the contractual relationship between the parties.

- The Principles cannot be interpreted in isolation – the contractual documents create the relevant context in which the Principles inform the due diligence obligations. Mr T signed terms of business accepting to be bound by the rules of the Scheme and provided an indemnity that he understood the inherent risks. There is no relevant, material, factual basis on which to distinguish Mr T's complaint from Adams v Options, or to justify different outcomes.

- Rowanmoor's SIPP application form recommended that Mr T seek independent financial advice. He signed the transfer-in form acknowledging he'd received regulated advice about the TRG investment. He also signed a letter confirming he understood the inherent risks and confirming he wouldn't pursue Rowanmoor for losses. Despite this, Rowanmoor was found wholly liable for all of Mr T's losses.

- Nowhere in the provisional decision is effect given to Mr T's own accountability and responsibility. He had signed a reservation form for the TRG investment indicating that he intended to fund the investment by way of a SIPP, some six months before his application to Rowanmoor. His decision to invest in TRG was therefore one he had deliberately taken well before Rowanmoor's involvement and it's implausible that he took the decision without appreciation of the risks involved.

- The consequence of the reliance on the Principles to distinguish Adams v Options is to impose a wider and more onerous duty of due diligence on Rowanmoor than that imposed by the contractual arrangements but also than that which would have existed had Mr T not instructed a regulated financial adviser.

- Rowanmoor carried out appropriate and sufficient due diligence on CIB and was compliant with the FCA's 2013 Guidance. It checked CIB's regulatory status and met with CIB to discuss its business model and the need to provide advice to clients. Rowanmoor was not under an obligation to undertake more or later due diligence.

- Subsequent concerns Rowanmoor had about whether CIB was providing advice were raised and addressed with CIB and appropriate assurances – upon which Rowanmoor was reasonably entitled to rely – provided.

- The provisional decision fails to adequately explain the basis for the findings as to each of the several "wider enquiries" regarding CIB's business model that Rowanmoor should apparently have carried out.

- In the provisional decision it was concluded that the large volume of high-risk investments introduced by CIB was anomalous and should have concerned Rowanmoor. However, there is no explanation as to why 455 applications introduced by CIB over two years should have appeared anomalous to Rowanmoor at the time – nor is there any assessment of any wider context in which those applications arose – for example, whether they were part of a larger body of applications that CIB rejected.

- With ten advisers, the 455 applications equate to less than four client applications per

adviser per month over two years. It's not clear how the ombudsman arrived at the conclusion this was a high volume of business that should have appeared anomalous to Rowanmoor.

- Under the operating structure of the UK restricted advice market, it is common for only a narrow selection of advisers and administrators to be associated with capacity-limited investment opportunities such as TRG.

- It was not unusual that CIB would process a high number of advised introductions over a relatively short space of time. The success of commercial property developments is determined, in part, by there being a short period between its funding and development and operational phases. The volume of introductions to Rowanmoor from CIB was consistent with the then prevailing practice in the UK restricted advice market and did not – and should not have – given rise to the concerns identified in the provisional decision.

- The finding that Rowanmoor failed to check with Mr T that he had been fully advised was made in error. Rowanmoor was under no such obligation in context of its contractual relationship with Mr T. In any event, Mr T had expressly acknowledged that he had taken advice on his pension transfer when making his application.

- The provisional decision concluded that failing to check advice had been given to Mr T was a breach of Rowanmoor's own policy. But its policy was to accept predominantly advised business, which is different from a policy of requesting copies of that advice. Rowanmoor has never had a policy which required it to 'check' by evidence that advice had been given. Rather it sought assurances both from clients and from advisers, that they were providing clients with advice on the suitability of SIPP investments – and it was reasonably entitled to rely on such assurances.

- The 2009 Thematic Review Report does not support the finding that requesting copies of suitability letters was good industry practice at the time – no such good industry practice existed. In the 2009 Report, the FSA concluded that requesting copies of suitability letters was only one of a number of measures that SIPP operators could consider, taken from observations and suggestions. This is not indicative of a widespread practice of requesting suitability reports in the SIPP industry nor is it prescriptive guidance on such a practice.

- Whilst Rowanmoor didn't request copies of suitability reports, it did take a number of significant alternative steps to ensure the quality of business introduced to it and to guard against consumer detriment.

- The TRG investment is a substantial and operational resort used by major holiday companies. As a 'bricks and mortar' development, it is not so especially high-risk that advice to enter it should have alerted Rowanmoor to the risk of consumer detriment.

- The risk profile of the TRG investment is a highly relevant consideration in an assessment of the level of due diligence that Rowanmoor should have undertaken in relation to the SIPP investment applications of Mr T and similar clients. The nature and risk of the TRG investment was not such as to require or otherwise indicate that Rowanmoor should have requested suitability letters from clients seeking to invest in it. Rowanmoor responded appropriately to the risk profile by asking customers to obtain appropriate financial advice, offering frank warnings and involving local lawyers to obtain valid title to the investment asset.

- The nature and risk-profile of the TRG investment is central to an assessment of Rowanmoor's conduct as regards Mr T's investment. So, it invites me to consider and decide upon Rowanmoor's due diligence on the TRG investment.

- Although Rowanmoor was provided with some suitability letters by CIB, they were provided in the context of a discrete issue about clients' awareness of fees payable for fractional investments, rather than in the context of any question about the extent and quality of advice provided by CIB on the SIPP transfer and investment. So it doesn't follow that the provision of some suitability letters to Rowanmoor should have alerted it to the nature and extent of the advice being provided by CIB.

- It's neither fair nor reasonable for Rowanmoor to bear full liability for Mr T's losses, to the exclusion of any liability on the part of CIB in particular, but also Mr T. The provisional decision makes no allowance for the roles of Mr T or CIB in causing the losses.

- There is no valuable remedy for Rowanmoor to pursue against other parties, in view of the dissolution of CIB. So, if there is a finding of fault and liability made against Rowanmoor, any award of compensation in favour of Mr T must in effect be shared between Rownamoor, CIB and Mr T – and CIB and Mr T should bear the far greater share of that liability.

As no agreement could be reached, I've considered everything again taking account of the further comments from all the parties in order to make a decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My provisional findings are attached, and form part of this decision, so I won't repeat all of them again here. I'd like to assure both parties that I've looked at all of their submissions. As explained in my provisional decision, I have however concentrated on the key arguments and evidence that are material to my determination of the complaint.

In considering what is fair and reasonable in all the circumstances of this complaint, I have taken into account relevant law and regulations; regulators rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Relevant considerations

The Principles

In my view, the FCA's Principles for Businesses are of particular relevance to my decision. The Principles for Businesses, which are set out in the FCA's handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (PRIN 1.1.2G). And, I consider that the Principles relevant to this complaint include Principle 2, 3 and 6 which say:

> *"Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*

Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 6 – Clients' interests – A firm must pay due regard to the interests of its clients and treat them fairly."

I have carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ("BBA") Ouseley J said at paragraph 162:

> *"The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirement they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."*

And at paragraph 77 of BBA Ouseley J said:

> *"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."*

In (*R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ("BBSAL"), Berkeley Burke brought a judicial review claim challenging the decision of an ombudsman who had upheld a consumer's complaint against it. The ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and had not treated its client fairly.

Jacobs J, having set out some paragraphs of the BBA judgment including paragraph 162 set out above, said (at paragraph 104 of BBSAL):

> *"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles- based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."*

The BBSAL judgment also considers section 228 of Financial Services & Markets Act 2000 ("FSMA") and the approach an ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the ombudsman in that complaint, which I have described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

As outlined above, Ouseley J in the BBA case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what is fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in BBSAL. I am therefore satisfied that the FCA's Principles are a relevant consideration that I must take into account when deciding this complaint.

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I have taken account of both these judgments when making this decision. Rowanmoor has made a number of submissions in relation to the judgments in *Adams v Options* and their application to the Principles for Businesses, which I will address separately below.

The regulatory publications

The FCA (and its predecessor, the FSA) has issued a number of publications which remind SIPP operators of their obligations and set out how they might achieve the outcomes envisaged by the Principles.

- The 2009 and 2012 thematic review reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 "Dear CEO" letter.

The 2009 Thematic Review Report

The 2009 report included the following statement:

> *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their clients. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients. It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.*
>
> *We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the member to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate the SIPPs that are unsuitable or detrimental to clients.*
>
> *Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor*

advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their clients' interests in this respect, with reference to Principle 3 of the Principles for Business ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*

- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*

- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*

- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*

- *Identifying instances of clients waiving their cancellation rights, and the reasons for this."*

- *Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable).*
- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently.*

- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc).*

The later publications

In the October 2013 finalised SIPP operator guidance, the FCA states:

"This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.

All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat clients fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a "client" for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes."

The October 2013 finalised SIPP operator guidance also set out the following:

"Relationships between firms that advise and introduce prospective members and SIPP operators

Examples of good practice we observed during our work with SIPP operators include the following:

- *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un- authorised business warnings.*

- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*

- *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*

- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*

- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers.

Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*

- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*

- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non-regulated introducers.*

In relation to due diligence the October 2013 finalised SIPP operator guidance said:

> ***"Due diligence***
>
> *Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:*
>
> - *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*
> - *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*
> - *having checks which may include, but are not limited to:*
>   - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*
>   - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*
> - *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*
> - *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*
> - *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax- relievable investments and non-standard investments that have not been approved by the firm".*

The July 2014 *"Dear CEO"* letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The *"Dear CEO"* letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *Correctly establishing and understanding the nature of an investment.*
- *Ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation.*
- *Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable).*
- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently.*
- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc).*

Although I've referred to selected parts of the publications, to illustrate their relevance, I have considered them in their entirety.

I acknowledge that the 2009 and 2012 reports and the *"Dear CEO"* letter are not formal *"guidance"* (whereas the 2013 finalised guidance is). However, the fact that the reports and *"Dear CEO"* letter did not constitute formal guidance does not mean their importance should be underestimated. They provide a *reminder* that the Principles for Businesses apply and are an indication for the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators expectations of what SIPP operators should be doing also goes some way to indicate what I consider amounts to good industry practice at the time, and I am therefore satisfied it is appropriate, to take them into account.

Like the ombudsman in the Berkeley Burke case, I don't think the fact that the publications, (other than the 2009 Thematic Review Report), post-date the events that are the subject of this complaint mean that the examples of good industry practice they provide were not good practice at the time of the events. The later publications were published after the events subject to this complaint, but the Principles that underpin them existed throughout, as did the obligation to act in accordance with those Principles.

It is also clear from the text of the 2009 and 2012 reports, (and the *"Dear CEO"* letter published in 2014), that the regulator expected SIPP operators to have incorporated the recommended good industry practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' *understanding* of how the standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

It is also important to bear in mind that the reports, Dear CEO letter and guidance gave non- exhaustive examples of good industry practice. They did not say the suggestions given were the limit of what a SIPP operator should do. As the annex to the *"Dear CEO"* letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

Another relevant consideration in this complaint is the regulator's alert about advisers giving advice to consumers on SIPPs without consideration of the underlying investment to be held in the SIPP. The regulator issued an alert in 2013 ("Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP") setting out that this type of restricted advice did not meet regulatory requirements. It said:

> *"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes)…*
>
> *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."*

The alert post-dates the events in this complaint – but, again, it didn't set new standards. It set out the regulator's concerns about industry practices at the time. I'll explain the impact of this on Mr T's complaint in my findings.

It's important to keep in mind the judge in *Adams v Options* did not consider the regulatory publications in the context of considering what is fair and reasonable in all the circumstances bearing in mind various matters including the Principles (as part of the regulator's rules) or good industry practice.

Overall, in determining this complaint, I need to consider whether Rowanmoor complied with its regulatory obligations as set out by the Principles to act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regards to the interests of its customers (in this case Mr T), to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Rowanmoor could have done to comply with its regulatory obligations and duties.

Adams v Options and the Principles

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474.

In response to my provisional decision, Rowanmoor and its representative made a number of comments about the judgments in *Adams v Options* and my findings in relation to the Principles. In summary they said:

- The SIPP is a member-directed scheme in which Rowanmoor, as operator, has a

functional role of administering investments. However, Mr T has the legal right to invest as he likes as per the contractual relationship between them. The Court of Appeal confirmed – in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474 ("*Adams v Options*") - that the contractual relationship is materially determinative of the respective obligations of each party.

- The issues central to this complaint are analogous in all relevant respects to those considered by the courts in *Adams v Options*, and the Principles should be applied consistently with COBS. Whilst they are different parts of the regulatory framework, there is no material distinction between the meaning and effect – as COBS 2.1.1R is broadly analogous to Principles 2, 3 and 6.

- In the provisional decision, no distinction was made between the application of COBS 2.1.1R and Principles 2, 3 and 6. Reliance was placed upon the Principles to the exclusion of analogous obligations under COBS, seemingly to elide the reasoning in *Adams v Options* relating to the weight to be placed upon the contractual relationship between the parties.

- The Principles cannot be interpreted in isolation – the contractual documents create the relevant context in which the Principles inform the due diligence obligations. Mr T signed terms of business accepting to be bound by the rules of the Scheme and provided an indemnity that he understood the inherent risks. There is no relevant, material, factual basis on which to distinguish Mr T's complaint from *Adams v Options*, or to justify different outcomes.

- The consequence of the reliance on the Principles to distinguish *Adams v Options* is to impose a wider and more onerous duty of due diligence on Rowanmoor than that imposed by the contractual arrangements but also than that which would have existed had Mr T not instructed a regulated financial adviser.

I note that the Principles for Businesses did not form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight did not consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. I remain of the view that neither of these judgments say anything about the Principles – or how they apply to an ombudsman's consideration of a complaint.

To be clear, I do not say this means *Adams v Options* is not a relevant consideration *at all.* As noted above, I have taken account of both judgments where relevant when making this decision on Mr T's case.

I acknowledge that COBS 2.1.1R (*A firm must act honestly, fairly and professionally in accordance with the best interests of its client)* overlaps with certain of the Principles, and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of FSMA ("the COBS claim"). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

The Court of Appeal rejected Mr Adams' appeal against HHJ Dight's dismissal of the COBS claim on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal did not so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

Rowanmoor's representative says that I should align my decision in Mr T's complaint with the application of COBS 2.1.1R in *Adams v Options*.

I note that, in *Adams v Options*, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at para 148:

> *"In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction."*

However, the facts in Mr T's case are very different from those in Mr Adams' case. There are also significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and from the issues in Mr T's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened after the contract was entered into. In Mr T's complaint, I am considering whether Rowanmoor ought to have identified that the introductions from CIB involved a significant risk of consumer detriment and, if so, whether it ought to have ceased accepting introductions from CIB prior to entering into a contract with Mr T.

I also want to again emphasise here that I do not say that Rowanmoor was under any obligation to advise Mr T on the SIPP and/or the underlying investment. Refusing to accept an application because it was introduced by a firm that Rowanmoor ought reasonably to have known was not advising customers on the underlying investment, is not the same thing as advising Mr T on the merits of investing and/or transferring to the SIPP.

I appreciate Rowanmoor says it didn't have the permissions, authorisations or capability to give advice. But those permissions or authorisations were not needed as Rowanmoor wasn't required to give advice. But it did have distinct obligations to act with due skill, care and diligence, organise and control its affairs responsibly and to treat Mr T fairly – and in order to meet these obligations, Rowanmoor had a responsibility to carry out appropriate checks on CIB to ensure the quality of the business it was introducing. Rowanmoor should have refused business if it could not satisfy itself as to the quality of the business that CIB was introducing.

Rowanmoor says the application of COBS 2.1.1R in *Adams v Options* serves as guide to the application of Principles 2, 3 and 6. Whilst both the Principles and COBS provide similar considerations and objectives, they are each independent parts of the regulatory framework. COBS 2.1.1R sets out 'the client's best interests rule', but Principle 2 (skill, care and diligence) and Principle 3 (management and control) set out different obligations. One of the main reasons why HHJ Dight found that the judgment of Jacobs J in BBSAL was not of direct relevance to the case before him was because "*the specific regulatory provisions which the learned judge in Berkeley Burke was asked to consider are not those which have formed the basis of the claimant's case before me*." So, I remain of the view that it's not possible to say conduct that does not amount to a breach of COBS *automatically* means the Principles have been satisfied or that the conduct amounts to good industry practice at the relevant time.

Rowanmoor has emphasised the relevance of COBS 2.1.1R and says it should form the basis for my decision. Whilst I've taken account of COBS 2.1.1R in this complaint – it needs to be considered alongside the remainder of the relevant considerations, and within

the factual context of Mr T's case. However, I think it is important to again emphasise what I have said above and throughout my investigation, that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

And, in doing that, I'm required to take into account relevant considerations which include: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This is a clear and relevant point of difference between Mr T's complaint and the judgments in *Adams v Options*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I disagree with Rowanmoor's understanding of its obligations. The Principles, COBS 2.1.1R and the whole regulatory framework provide an ongoing set of responsibilities with which a business must comply. I have therefore not relied on the Principles – and excluded COBS – in order to "*elide the clear and logical reasoning in Adams v Options as to the significant weight to be placed upon the contractual relationship between the parties.*"

Finding that there was a lack of due diligence into CIB and its business model

Rowanmoor says it did carry out due diligence on CIB and its business model and that I have erred in concluding they were inadequate. I accept that it did undertake some checks. However, the questions I need to consider in this complaint are, firstly, whether Rowanmoor ought to have, in compliance with its regulatory obligations, identified that customers introduced by CIB were not receiving regulated advice about TRG and that there was a significant risk of consumer detriment, and if so, secondly, whether Rowanmoor should therefore not have accepted Mr T's application from CIB.

I understand that Rowanmoor considers that it did sufficient due diligence and satisfied its obligations under FSA guidance. In particular Rowanmoor says that, at the outset of its relationship with CIB, it checked CIB's regulatory status and met with CIB to discuss its business model. It says that, as it was dealing with another regulated business, it had no obligation to do more or later due diligence.

As detailed in my provisional decision, Rowanmoor had concerns as early as July 2009 – two years prior to Mr T's application - that CIB was introducing significant volumes of execution only business and so wasn't operating under the business model that Rowanmoor had believed to be in place.

Following Rowanmoor's board meeting in July 2009, the meeting minutes record that the board had *"concerns that CIB appear to be transacting significant volumes of Execution Only business, not being a stance that* [Rowanmoor] *felt comfortable with in relation to the products on offer…"*. It was recorded that, in order to investigate the concerns, one of the directors of Rowanmoor would meet with representatives of CIB and report their findings to the next board meeting scheduled for 3 August 2009.

The minutes of the next Rowanmoor board meeting in August 2009 record that one of its directors had spoken with CIB over the phone. The relevant part of the minutes record that:

> *"[A Rowanmoor director] confirmed that he had had a telephone discussion with* [CIB] *the outcome of which was that CIB confirmed that many cases had had an IFA and that going forward, full advice would be given and details of the IFA provided. CIB then asked if Rowanmoor would accept Execution Only business if a client had declined advice. The Board noted that it would not accept Execution Only business on cases where the purchase of an overseas property was involved that required*

pension transfers unless the individual could be proved to the satisfaction of the Board to be a sophisticated investor. [A Rowanmoor director] was asked to advise CIB of the decision.

[A Rowanmoor director] noted that CIB had also asked the position if they offered advice to a client at additional cost but that the client had then declined to take advice, would Rowanmoor take the business as Execution Only. The Board noted that it would not be prepared to accept business as Execution Only on this basis as it did not consider this was treating customers fairly. [A Rowanmoor director] to advise CIB accordingly."

In response to my provisional decision, Rowanmoor says that it was reasonable for it to have relied on the assurances given by CIB. But, given that CIB had already departed from what had previously been explained to Rowanmoor as its business model, I disagree. I have also taken into account the nature of CIB's assurances and, as explained in my provisional decision, I don't think that they were particularly reassuring.

Given the serious nature of Rowanmoor's concerns and the high risk of consumer detriment, as detailed in my provisional decision, I think that CIB's "assurance" ought to have called into question the motivations of CIB and led Rowanmoor to document the requirement for full advice and require explicit assurance from Rowanmoor in writing.

Rowanmoor has confirmed that it's provided all relevant documents to this Service, but it has not provided any record of the telephone call between Rowanmoor's director and CIB – other than reference to it in the abovementioned board meeting minutes.

Rowanmoor now seeks to rely on that telephone call to evidence that it did take steps to seek assurance that CIB was fully advising customers. In my view, if Rowanmoor intended for that assurance to satisfy its regulatory obligations, in particular Principle 2, (to conduct its business with due skill, care and diligence), and Principle 3, (to take reasonable care to organise and control its affairs responsibly and effectively), Rowanmoor ought to have had processes in place to ensure that it was able to evidence the due diligence it had carried out on CIB.

I've also given careful thought as to whether it was reasonable for Rowanmoor to rely on a verbal assurance from CIB more generally. The board meeting minutes say that CIB had said that full advice would be given going forward, but in that same call, CIB asked about circumstances where Rowanmoor might accept execution-only business. I consider this undermines the credibility of the assurance given by CIB, and ought to have flagged to Rowanmoor the likelihood that some of the customers introduced by CIB were not receiving regulated advice about TRG - and that there was therefore a significant risk of consumer detriment.

The 2009 FSA report makes it clear that a SIPP operator should have in place systems and controls which adequately safeguarded their clients' interests. So, it was good practice to ensure CIB was providing advice on the underlying investment and to do so in a way which adequately safeguarded their clients' interests. And I do not think simply asking CIB if it was advising customers was sufficient to meet this standard of good practice in all the circumstances of this complaint, for the reasons detailed in my provisional decision.

In my provisional decision I set out some examples of wider enquiries that I believe Rowanmoor should have made in respect of CIB's business model. These included checking with CIB how it came into contact with potential customers, what its arrangements with TRG were, whether anyone else was providing information to customers and what marketing information was being provided to customers.

Rowanmoor has questioned the basis for my findings that it ought to have made these enquiries. The rules and regulatory framework set out the overarching obligations for all financial businesses – and I've already set out above what I consider to be the relevant considerations in this case. But I must also consider what those obligations mean in practice in the specific context of the facts of this complaint.

Given the valid concerns that Rowanmoor had about whether full advice was being given to customers by CIB, I consider it fair and reasonable in the circumstances of this complaint to expect Rowanmoor to have carried out those wider enquiries in order to meet its regulatory obligations.

Finding that large volumes of high-risk investments introduced by CIB was anomalous

I've considered the type and volume of introductions made to Rowanmoor by CIB. In my provisional decision I went into some detail as to why I concluded that 455 introductions of this type of business in two years from a small IFA firm was anomalous and should have caused concern. I won't repeat that in full again – but am still persuaded by it.

Rowanmoor has questioned how I could conclude that it was a high volume of introductions without further context of whether the 455 were part of a larger body of applications of which some were rejected by CIB. It also explained that the nature of the UK advice market means that it is common for a narrow selection of advisers (in this case CIB) to be involved with a capacity-limited investment opportunity (such as TRG).

I understand the points put forward by Rowanmoor, and recognise that CIB may have rejected some applications, but that does not detract from the number of introductions CIB did make to Rowanmoor. The TRG investment was high-risk and esoteric, so was only suitable for a small proportion of investors.

Rowanmoor did keep management information about the business it was accepting. Given the volume of applications, and the geographic spread of customers, I think it ought reasonably to have had reservations about the ability of CIB to fully advise all clients – and the possibility of consumer detriment.

Finding that Rowanmoor failed to check Mr T had been fully advised and its failure to request a suitability report

As I made clear in my provisional decision, I do not expect Rowanmoor to have assessed the suitability of such a course of action for Mr T – and I accept it could not do that. But, in order to meet the obligations, set by the Principles (and COBS 2.1.1R), I think it ought to have recognised this was an unusual proposition, which carried a significant risk of consumer detriment. And, as set out in my provisional decision, I think that Rowanmoor *did* know that the kind of business that CIB was introducing was risky. So, it ought to have taken particular care in its due diligence – it had to do so to treat Mr T fairly and act in his best interests.

In my provisional decision I referred to suitability letters that had been provided to Rowanmoor showing that restricted advice had been given – and set out why that should have caused alarm. Rowanmoor has since explained those suitability letters were not provided to evidence investment advice, but in the context of a discrete issue to do with fees. I can't be certain when those letters were provided to Rowanmoor in relation to the fee issues, but irrespective of whether Rowanmoor was reviewing them in relation to fees, or otherwise, it would have become clear that some consumers were not being fully advised.

As I set out in my provisional decision, even if Rowanmoor wasn't in possession of those letters prior to accepting Mr T's business, I think it would have been fair and reasonable in the circumstances involved in these introductions for Rowanmoor to have requested and reviewed some letters. I also remain of the view that, if Rowanmoor had also checked the position with at least some customers introduced by CIB – as I think it should have done in accordance with good industry practice – then this too would have revealed the significant failings in the advice process.

Reliance on 'good industry practice' in respect of suitability letters

The FSA's 2009 Report states that requesting copies of suitability letters is an example of "good industry practice". But Rowanmoor has said the 2009 Report was not prescriptive guidance and that it wasn't required to request suitability letters as it was only one example of the type of steps it could consider. Rowanmoor has also expressed the view that no such good industry practice existed at that time, and explained it took a number of significant other steps to ensure the quality of business introduced and to guard against customer detriment.

Given that the 2009 Report was published setting out the findings of a thematic review to assess how SIPP operators were complying with FSA's principles and rules, I consider it highly relevant. Although the guidance was not prescriptive, the 2009 Report did state that requesting copies of suitability letters is 'an example' of good industry practice.

Whilst I recognise that requesting suitability letters is only one example of the steps that Rowanmoor could have taken to comply with its obligations, I cannot reasonably agree that "no such good industry practice existed at that time". As I explained in my provisional decision, Rowanmoor itself appears to have considered it good practice at one point – as it asked for copies of advice in the standard wording of its investment application form.

As Rowanmoor was concerned that consumers weren't being fully advised by CIB, I think in the circumstances, it would have been good practice to request copies of some suitability letters from CIB. The letters would have provided clear evidence as to whether CIB was fully advising customers in line with the agreed process for the introduction of business – giving a more certain reassurance than the high-level verbal assurance given by CIB.

I've considered the steps which Rowanmoor did take to ensure customers were being fully advised, and to minimise the risk of detriment. It's says it "met with CIB to discuss CIB's business and its responsibilities, including its sale process, distribution strategy and the need for CIB to provide advice to clients". But given the concerns Rowanmoor had at an early stage, that consumers introduced by CIB weren't receiving regulated advice on TRG, and Rowanmoor's awareness of the involvement of unregulated parties in promoting the high-risk TRG investment, I remain of the view that Rowanmoor ought to have identified a risk of consumer detriment here.

Mr T was taking advice on his pension from a business that Rowanmoor knew had introduced customers who hadn't received advice on the underlying investment. He was transferring from a defined-benefit occupational pension scheme, which may have offered important guaranteed benefits, into a SIPP, and then investing that money in an investment based overseas. The chances of the investment being suitable for a significant portion of a retail investor's pension was very small – and Mr T was investing the entirety of his pension provision. Rowanmoor knew from the initial SIPP application that funds were being transferred from a final salary scheme, and so it ought reasonably to have been aware of the risk of consumer detriment.

So, given the relevant factors, Rowanmoor ought to have viewed the application from Mr T as carrying a significant risk of consumer detriment. And it should have been aware that the role of the adviser was likely to be a very important one in the circumstances – emphasising the need for adequate due diligence to be carried out on CIB to independently ensure it had been giving advice on the whole transaction.

Taking all of this into account, I remain of the view that Rowanmoor didn't do enough to meet its regulatory obligations or comply with good industry practice.

TRG investment

The TRG investment is a tangible development which does exist. Rowanmoor describes it as a 'bricks and mortar' investment and says that it is not so especially high risk that advice to enter into it should have alerted Rowanmoor to the risk of consumer detriment. It says the risk profile of the investment is a highly relevant consideration when assessing the level of due diligence Rowanmoor was required to do.

I acknowledge that the investment Mr T made in TRG is a genuine investment and the development does exist. However, that does not mean it was not high risk, and I believe that Rowanmoor's description of it as a 'bricks and mortar investment' with a risk profile not especially higher than that of equity shareholdings and bonds, downplays the risks associated with it.

Whilst TRG is a property development and has been built, there are a number of factors which affect how the investment is categorised. For example, it was overseas and didn't offer the protection of UK regulation or law, it was off-plan and subject to the possibility of currency fluctuations. Most of the investments in TRG were deposit based, with further funds required on completion of the property development. So, the risks are heightened not only because the properties might not be built, but also because many customers will need to find additional cash at some point when the properties are built.

I am satisfied that Rowanmoor was aware of the high risk associated with the kind of business that CIB was introducing and that heightened caution needed to be exercised when dealing with these kinds of applications, even if there was a regulated advice firm involved. This is evident from the minutes of the relevant Rowanmoor board meetings that I referenced in my provisional decision.

I'm aware that Rowanmoor has asked me to consider the due diligence it carried out on TRG as part of my review of this complaint. It may be that Rowanmoor carried out appropriate checks on the investment itself, and if it did, it would have known about the features of TRG that posed a risk. However, given what I've said about Rowanmoor's due diligence on CIB and my conclusion that it failed to comply with its regulatory obligations and good industry practice at the relevant time, I don't think it is necessary for me to also consider Rowanmoor's due diligence on TRG. I'm satisfied that Rowanmoor was not treating Mr T fairly or reasonably when it accepted his introduction from CIB.

Summary

Mr T was transferring his pension from a defined-benefit occupational scheme to a SIPP in order to make a high-risk esoteric investment.

Rowanmoor ought to have identified there was a possibility that CIB was not providing advice on the TRG investment to customers it was introducing – and so Mr T was at risk of consumer detriment. In order to meet its regulatory obligations, Rowanmoor reasonably

ought to have undertaken further due diligence in relation to the introductions that CIB was making.

If Rowanmoor had taken these steps, it would have established CIB was not providing full advice to its customers and there was a risk of consumer detriment. So, it was not in accordance with its regulatory obligations nor good industry practice for Rowanmoor to proceed to accept business from CIB.

Is it fair to ask Rownamoor to pay Mr T compensation in the circumstances?

I set out in some detail in my provisional decision why I consider it fair and reasonable to direct Rowanmoor to compensate Mr T for his full losses.

Rowanmoor considers it unfair that I am holding it wholly responsible for the losses. It says Mr T must be held liable for his own investment decisions and CIB was the regulated party at fault. To ask Rowanmoor to bear the full loss to the exclusion of those parties is unfair.

As I've made clear, Rowanmoor needed to carry out appropriate due diligence on CIB and reach the right conclusions. It failed to do this. Just asking Mr T to sign declarations was not an effective way of meeting its obligations, or escaping liability where it failed to meet its obligations. In particular, I think Rowanmoor could take no meaningful comfort from the declaration stating that Mr T had taken advice in relation to the TRG investment given what it knew or ought to have known about CIB's business model. Likewise, when Mr T signed to say that he was aware of the "inherent risks", I do not consider it to have been fair or reasonable for Rowanmoor to conclude that he did so with a full understanding of what this meant - even if he had received a suitability letter from CIB – given what Rowanmoor knew, or ought to have known about CIB's business model. In fact, I have no reason to doubt Mr T when he says he wasn't told about any risks by anyone at all.

Rowanmoor says that it's implausible that Mr T didn't understand the risks of his SIPP investment in TRG, having 'self-selected' the investment well before Rowanmoor's involvement. However, I do not agree – I accept that Mr T signed an indemnity, which sought to confirm that he was aware the investment was high risk but, as I said in my provisional decision, I consider that he did so without a full understanding of what high risk meant, as he had already been 'sold' on the idea of the TRG investment, and was assured by what he had been told.

I accept that another regulated party was involved here - CIB. Rowanmoor says that it's CIB who is really responsible for Mr T's losses. But, our Service can't look at a complaint against CIB as it was dissolved and no longer exists as a regulated business. To be clear, I'm not making a finding that Rowanmoor should have assessed the suitability of the investment or the SIPP for Mr T. I accept that Rowanmoor had no obligation to give advice to Mr T, or otherwise ensure the suitability of a pension product or investment for him. I'm looking at Rowanmoor's separate role and responsibilities – and for the reasons I've explained, I think it failed in meeting those responsibilities.

Rowanmoor also says that Mr T would likely have proceeded with the transfer of his pension regardless of the actions it took, and CIB could have made an introduction elsewhere. Rowanmoor also says if it had not accepted business at the outset, CIB would have started making introductions to a different provider long before Mr T's application was made, and there is no evidence that other SIPP operators would have refused this business.

I don't find this a compelling argument. As I've explained, CIB's business model was based on submitting large volumes of business through Rowanmoor. If Rowanmoor had refused to accept introductions from CIB, I think it's likely that CIB would have entered a similar

arrangement involving large volumes of business with another SIPP operator. Had it done so I think it's fair to assume that another SIPP provider wouldn't have processed the transaction if it had carried out sufficient due diligence on CIB in accordance with its own regulatory responsibilities and good industry practice.

Furthermore, there's no evidence that Mr T was so keen on the TRG investment that he would have submitted the application to Rowanmoor via a regulated advice firm other than CIB. If he had approached another advice firm, it's likely that he would have been told in no uncertain terms that he should leave his pension arrangement as it was, and I think he would have listened to that advice. Mr T has confirmed that, if Rowanmoor had not accepted the transfer and he was made aware of the risks, then he would have left his pension where it was.

In any event, those scenarios are hypothetical. I think it's fairer to deal with what I consider to be the cold facts involved in this case – Mr T's application from CIB shouldn't have been accepted by Rowanmoor. Accepting the application has caused a loss to Mr T which I think it's fair and reasonable in the circumstances of this case to ask Rowanmoor to compensate him for.

I'm satisfied that Mr T would not have continued with the SIPP and investment in TRG, had it not been for Rowanmoor's failings, and would have remained in his existing pension scheme. And, whilst I accept that CIB is responsible for initiating the course of action that has led to his loss, I consider that Rowanmoor failed to comply with its own regulatory obligations and did not put a stop to that course of action when it had the opportunity and obligation to do so.

Rowanmoor didn't have to carry out an assessment of Mr T's needs and circumstances in order to meet its regulatory requirements, but it did have to treat Mr T fairly under the Principles.

I am satisfied that in the circumstances, for all the reasons given, that it is fair and reasonable to conclude that Rowanmoor should compensate Mr T for the loss he has suffered.

In making these findings, I have taken into account the potential contribution made by other parties to the losses suffered by Mr T – including CIB. In my view, in considering what fair compensation looks like in this case, it is reasonable to make an award against Rowanmoor that requires it to compensate Mr T for the full measure of his loss. CIB was reliant on Rowanmoor to facilitate access to Mr T's pension. So, but for Rowanmoor's failings, Mr T's pension transfer would not have occurred in the first place.

As such, I am not asking Rowanmoor to account for loss that *goes beyond* the consequences of its failings. I am satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for *that same loss* is a distinct matter, which I am not able to determine. However, that fact should not impact on Mr T's right to fair compensation from Rowanmoor for the full amount of his loss.

Mr T has already received some compensation from the FSCS for failings by CIB. But under the terms of the reassignment between Mr T and the FSCS, Mr T is contractually bound to repay the FSCS from any compensation he receives from Rowanmoor. Rowanmoor says that Mr T made a commercial decision to accept the terms of reassignment from the FSCS and any award of compensation shouldn't be predicated upon that.

However, it was necessary for Mr T to accept the terms of the reassignment set by the FSCS in order for him to pursue the balance of his losses. So, I don't think that was an unreasonable thing for him to do and, as he will be required to repay the compensation received from the FSCS from any compensation he receives from Rowanmoor, I don't think it would be fair and reasonable for me to not take the reassignment into account. I have set out my thinking on this below.

Putting things right

My aim is to return Mr T to the position he would now be in but for what I consider to be Rowanmoor's failure to carry out adequate due diligence checks before accepting Mr T's SIPP application from CIB.

In light of the above, Rowanmoor should calculate fair compensation by comparing the current position to the position Mr T would be in if he had not transferred from his existing pension. In summary, Rowanmoor should:

- Calculate the loss Mr T has suffered as a result of making the transfer.
- Take ownership of the TRG investment if possible.
- Pay compensation for the loss into Mr T's pension. If that is not possible pay compensation for the loss to Mr T direct. In either case the payment should take into account necessary adjustments set out below.
- Pay £500 for the trouble and upset caused.

I'll explain how Rowanmoor should carry out the calculation set out at 1-3 above in further detail below:

1. Calculate the loss Mr T has suffered as a result of making the transfer ("the loss calculation")

Rowanmoor should calculate redress for Mr T's NILGOSC pension in line with The FCA's pension review guidance in October 2017 (updated March 2021) https://www.fca.org.uk/publication/finalised-guidance/fg17-9.pdf using the most recent financial assumptions published.

2. Take ownership of the TRG investment

In order for the SIPP to be closed and further SIPP fees to be prevented, the investment needs to be removed from the SIPP. To do this, Rowanmoor should calculate an amount it is willing to accept as a commercial value for TRG and pay that sum into the SIPP and take ownership of the relevant investments. This amount should be taken into account for the loss calculation.

If Rowanmoor is unwilling or unable to purchase the investment the value of it should be assumed to be nil for the purposes of the loss calculation.

Provided Mr T is compensated in full. Rowanmoor may ask Mr T to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the investment. That undertaking should allow for the effect of any tax and charges on the amount Mr T may receive from the investment and any eventual sums he would be able to access from any costs in drawing up the undertaking.

If Rowanmoor does not take ownership of the of the TRG investment, and it continues to be held in Mr T's SIPP there will be ongoing fees in relation to the administration of that SIPP. Mr T would not be responsible for those fees if Rowanmoor had not accepted the transfer of his personal pension in to the SIPP. So, I think it is fair and reasonable for Rowanmoor to waive any SIPP fees until such time as Mr T can dispose of the TRG investment and close the SIPP.

3. Pay compensation to Mr T for loss he has suffered calculated in (1).

Since the loss Mr T has suffered is within his pension it is right that I try to restore the value of his pension provision if that is possible. So, if possible, the compensation for the loss should be paid into his SIPP. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance. Payment into the pension should allow for the effect of charges and any available tax relief. This may mean the compensation should be increased to cover the charges and reduced to notionally allow for the income tax relief Mr T could claim. The notional allowance should be calculated using Mr T's marginal rate of tax.

On the other hand, Mr T may not be able to pay the compensation into the SIPP. If so compensation for the loss should be paid to Mr T direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income. Therefore, the compensation for the loss paid to Mr T should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr T's marginal rate of tax in retirement. For example, if Mr T is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr T would have been able to take a tax-free lump sum, the notional allowance should be applied to 75% of the total amount.

I appreciate that Mr T has been paid some compensation by the FSCS. But, as explained in my provisional decision, I don't think I can ignore the terms of the reassignment agreement he had to sign as part of his claim to the FSCS. To do so would mean that Mr T would not be compensated for Rowanmoor's failings – which, as I've said above, has caused his entire loss irrespective of the separate roles and obligations of other parties.

So, I will make no allowance for what has been paid by the FSCS and award Mr T compensation for the full loss he has suffered. Mr T is contractually bound by the terms of his reassignment from the FSCS to pay back any monies it awarded to him. Mr T has confirmed that he understands that he is contractually bound to repay those monies to the FSCS and that he will do so. I am satisfied that Mr T will act in accordance with his contractual obligations assumed in good faith – and so I am satisfied that no real risk of 'double recovery' arises.

I understand that CIB is dissolved, but if Rowanmoor believes other parties to be wholly or partly responsible for the loss, it is free to pursue those other parties. So, compensation payable to Mr T should be contingent on the assignment by him to Rowanmoor of any rights of action he may have against other parties in relation to his transfer to the SIPP and the investments.

4. Pay £500 for the trouble and upset caused.

Mr T has been caused some distress and inconvenience by the loss of his pension benefits. This is money Mr T cannot afford to lose and its loss has caused him to lose all

confidence in pension providers. I consider that a payment of £500 is appropriate to compensate for that upset.

interest

The compensation must be paid as set out above within 28 days of the date Rowanmoor receives notification of his acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% simple per year from the date of my final decision to the date of settlement if the compensation is not paid within 28 days.

My final decision

For the reasons given, my final decision is that I uphold Mr T's complaint against Rowanmoor Personal Pensions Limited.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £150,000, plus any interest and or costs that I think are appropriate. If I think that fair compensation is more than £150,000, I may recommend that the business pays the balance.

The full extent of Mr T's losses has not yet been calculated (as set out above), but it is possible his loss may exceed the £150,000 award limit.

***Decision and award*:** I uphold the complaint. I think that fair compensation should be calculated as set out above. My decision is that Rowanmoor should pay Mr T the amount produced by that calculation – up to a maximum of £150,000. It should also pay any interest accrued if the compensation is not paid within 28 days of acceptance of a final decision by Mr T.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I recommend that Rowanmoor pays Mr T the balance.

This recommendation is not part of my determination or award. Rowanmoor doesn't have to do what I recommend. It's unlikely that Mr T can accept my decision and go to court for the balance. Mr T may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 December 2021.

Ross Hammond
Ombudsman

COPY PROVISIONAL DECISION

complaint

Mr T complains that Rowanmoor Personal Pensions Limited ("Rowanmoor") failed in its regulatory duties to carry out due diligence when accepting his application for a Self-Invested Personal Pension ("SIPP"). He says that Rowanmoor failed to verify the integrity of the firm that introduced his application (CIB Life and Pensions Limited ("CIB")) and should now compensate him for the loss he has suffered as a result of the investment in The Resort Group ("TRG") he made via the SIPP.

background

The parties

Rowanmoor Personal Pensions Limited

Rowanmoor is a regulated pension provider and administrator. It's authorised to arrange deals in investments, arrange safeguarding and administration of assets, deal in investments as principal, establish, operate or wind up a pension scheme and to make arrangements with a view to transactions in investments.

CIB (Life & Pensions) Limited

At the time of the events in this complaint, CIB were authorised by the regulator - the Financial Services Authority ("FSA"), which later became the Financial Conduct Authority ("FCA") - to advise on regulated products and services including giving investment advice and arranging deals in investments such as pensions.
In May 2015, CIB went into liquidation, and has since been dissolved.

Real SIPP LLP

RealSIPP were an appointed representative of CIB from April 2010 to June 2015. Rowanmoor was told by CIB in May 2010 that CIB had "developed" RealSIPP to be:

> "*… a packager and administrator of SIPPs for all networked developments and is set-up as an appointed representative of CIB (Life & Pensions) Ltd. However, RealSIPP will not be issuing suitability letters a recommendations as this is done directly by CIB (Life & Pensions) Ltd.*"

The Resort Group

The Resort Group was founded in 2007. TRG owns a series of luxury resorts in Cape Verde. TRG sold luxury hotel rooms to UK consumers, either as whole entities or as fractional shares ownership in a company. TRG was not regulated by the financial services regulator.

This case involves an investment into TRG's Dunas Beach Resort.

What happened?

Mr T held benefits in a final salary occupational pension scheme which had a cash value of around £96,000. He says that in 2011 a friend told him that he had invested in TRG and suggested it would be a good investment for Mr T too. So, Mr T went to a presentation about TRG at a hotel at which he met two individuals who "sold him" on the idea of the investment.

Mr T says he knew he was investing in hotel rooms, which he thought were in Dubai, and that he would receive a lump sum return when he wished to retire and a regular rental income every month. He was assured that the investment income would cover all fees and he would not need to pay anything else from his personal money. He was shown a brochure and told that TRG was a 'very up and coming' investment, and that they had many clients.

The individuals he met at the hotel were, Mr T believed, connected to TRG – not CIB. Mr T says he had no dealings with CIB at all. One of the individuals helped him complete all the paperwork in subsequent meetings. He says he didn't have an opportunity to carefully read the documents he signed and can't remember receiving a suitability report.

On 6 July 2011, Mr T signed Rowanmoor's SIPP application form. The advising IFA was noted as an individual at "*CIB (Life & Pensions)/RealSIPP LLP*" with a RealSIPP email address.

On 6 August 2011, Mr T signed Rowanmoor's *"property information schedule"* setting out that he wanted to invest in a property at TRG's Dunas Beach resort by making a 65% deposit.

Mr T's Rowanmoor account was opened on 22 August 2011.

On 5 September 2011, Rowanmoor wrote to Mr T about his intention to invest in TRG and recommended that he get appropriate legal/professional advice before acquiring the property. He was also asked to make the following declaration:

> *"I have read your letter. I understand there are risks inherent in the proposed transaction and that Rowanmoor Pensions will not be liable on the basis stated above. However I do not wish to appoint legal advisers in this matter."*

Mr T signed and returned this letter.

These three documents – the SIPP application form, the property information schedule and the September letter appear to be at Mr T signed at the time of the application to Rowanmoor.

On 10 October 2011, approximately £96,000 was transferred from Mr T's occupational pension scheme with Northern Ireland Local Government Officers' Superannuation Committee ("NILGOSC") into his Rowanmoor SIPP. Approximately £90,000 was then invested in TRG.

The investment in TRG hasn't performed well at all. Mr T hasn't received the annual returns he expected from his investment and it looks like he's unable to sell it either as there is no market for it. This is, in part, because there are a number of fees that get deducted from any revenue generated by the investment, leaving no income – and there have been problems with the title for TRG properties.

In 2017, Mr T made a claim to the Financial Services Compensation Scheme ("FSCS") about the actions of CIB which had by then gone into default. The FSCS accepted Mr T's claim and calculated his loss at £90,073.28. The FSCS paid Mr T £50,000 in total, in line with its maximum award limit at the time.

Following this, Mr T complained to Rowanmoor via a claims management company ("CMC"). The CMC said that Rowanmoor should compensate Mr T for his losses because:

- Rowanmoor failed to meet its obligations to Mr T, a retail client, and permitted a transfer to an unsuitable pension which then facilitated the purchase of an unsuitable, high risk, illiquid investment.

- Mr T had a low risk profile with little or no investment experience.

- Rowanmoor should have had concerns about the applications it received from CIB because it involved high volumes of business being introduced by the same firm for the same investment.

Rowanmoor rejected Mr T's complaint. It said it provided an execution only service and wasn't responsible for giving advice to Mr T about the SIPP or investment in TRG.

Rowanmoor said it had fulfilled its regulatory duties by warning Mr T to seek financial advice from a regulated advisor before proceeding and that the investment had risks.

Rowanmoor also said that it had carried out due diligence on TRG.

Mr T then referred his complaint to our service.

Our investigation

Our investigator looked into the complaint and gathered some further information. The pertinent matters can be summarised as follows:

- Rowanmoor first accepted business from CIB in June 2009 and continued to do so until October 2013.

- Rowanmoor checked the regulator's database to make sure CIB and the individual adviser at CIB named on application forms were appropriately regulated to give pensions advice.

- There was no introducer agreement in place between Rowanmoor and CIB.

- Rowanmoor didn't request any suitability reports from CIB – it says it wasn't company practice to do so.

- In total, Rowanmoor accepted 1,387 introductions from CIB. This accounted for 26.90% of all business received by Rowanmoor during 2009-2013.

- Mr T's introduction to Rowanmoor was number 456 out of 1,387 from CIB.

- 341 schemes introduced by CIB involved one or more occupational transfers. Of the 1,387 clients introduced, this is 24.59%.

After completing her investigation, our investigator thought Mr T's complaint should be upheld. In summary, the investigator's findings were as follows:

- Rowanmoor isn't responsible for giving advice to Mr T. However, it did have a responsibility to carry out sufficient due diligence on CIB before accepting business from it and the investment in TRG prior to accepting it into the SIPP. The investigator set out that this responsibility stemmed from the regulator's Principles for Businesses and the regulator's publications relating to SIPPs.

- Rowanmoor did carry out some limited due diligence on CIB and kept records of the type and volume of introductions it was receiving. But this information should have alerted Rowanmoor to the fact that CIB was referring a large number of retail clients to open a SIPP in order to invest into one esoteric investment – TRG.

- So, by the time of Mr T's application, Rowanmoor should have carried out further checks on CIB, including of its business model and asked to see suitability reports.

- Had it done so, it would have discovered CIB was not providing clients with advice (as she had felt had happened in the case of Mr T). It should also have concluded that most, if not all, business introduced by CIB would produce obviously unsuitable SIPPs and that there was a high risk of consumer detriment.

- The investigator concluded that all this meant that Rowanmoor should have stopped accepting business from CIB, long before Mr T's referral and so should compensate Mr T for his losses.

- The investigator didn't consider whether the due diligence that Rowanmoor conducted on TRG was sufficient as she felt that Rowanmoor should have rejected Mr T's application via CIB in the first place.

Rowanmoor's response

Rowanmoor didn't agree with the investigator's conclusions. In summary, it said:

- Rowanmoor provided an execution-only service as a SIPP operator. The scope of its duties, including the duty to conduct due diligence prior to Mr T's investment, were not as wide as those the investigator premised her conclusions on.

- The investigator had, contrary to the High Court decision in Adams v Options SIPP (formerly Carey pensions) [2020] EWHC 1229 (Ch), disregarded the nature and terms of the contractual relationship between Mr T and Rowanmoor which defined the duties to which Rowanmoor was subject, including the recommendations and warnings that Rowanmoor had given to him. The investigator had imposed on Rowanmoor inappropriately wide obligations, including an obligation to assess the quality of the business that it administers and to detriment to Mr T arising from the investment choices made by him.

- Of the Adams v Options judgement, Rowanmoor said:

    - The Conduct of Business Sourcebook Rules ("COBS") comprised some rules which apply to execution-only SIPP providers and some which do not apply to execution-only SIPP providers. In the judge's view, the division of obligations imposed by COBS 2.1.1R to act honestly, fairly and professionally in accordance with the best interests of the claimant reflects the position that the provider of the SIPP is operating on an execution-only basis where the client chooses the underlying investment themselves without advice from the SIPP provider.

    - The judge agreed that in ascertaining the scope of the obligations imposed by COBS 2.1.1R on the SIPP operator, the starting point is the contract between the parties.

- The judge found the 2009 thematic review report and the regulator's subsequent publications to be of limited relevance when interpreting COBS 2.1.1R.

- The Adams case was pursued by reference to COBS 2.1.1R – whereas the investigator's view in Mr T's complaint against Rowanmoor relied upon different, but analogous, regulatory provisions – the essential principle that emerges from the judgement is that the terms of the contract between a SIPP operator and the client are highly relevant in determining the SIPP operator's duties.

- Mr T signed the standard Rowanmoor SIPP application form. The application form made clear that Rowanmoor recommended that Mr T should seek financial advice from a suitably qualified professional, and that he should seek independent financial advice before making any transfers or assignments from other pension schemes. CIB was stated to be Mr T's financial adviser.

- Mr T accepted the Terms and Conditions of the SIPP and expressly acknowledged and agreed that he was solely responsible for all decisions relating to the purchase, retention and sale of the investments forming his personal arrangement under the SIPP and that he would not hold Rowanmoor liable for any claim in respect of the decisions made by him or his appointed adviser.

- Mr T signed the standard Rowanmoor SIPP 'Property Information Schedule" and in doing so acknowledged that he had taken advice from a regulated financial adviser with regard to the transfer of his pension and had considered the impact on any protection he might have.

- Rowanmoor wrote to Mr T in September 2011. Rowanmoor's letter clearly explained the limited, execution-only scope of its role in his SIPP investment, namely that it was able to inform him of the eligibility of the TRG investment under prevailing pensions legislation but it could not endorse or recommend the services of any particular property development company, and it could not advise on the suitability of, and risks attached to, the proposed investment. Nor could it advise on the complexities of the legal process of acquiring property in Cape Verde or in relation to the contractual documentation or the seller's title for the acquisition. Rowanmoor strongly recommended that, before acquiring the property, Mr T take appropriate legal and other professional advice, but requested, if he declined to do so, that he confirm as much in writing to Rowanmoor. Mr T signed Rowanmoor's letter to acknowledge that he understood that there were risks inherent in the proposed transaction and that Rowanmoor would not be liable on the basis s T also confirmed that he did not wish to appoint legal advisers.

- The SIPP Trust Deed contains express exclusions of liability and indemnities which are engaged to prevent the imposition upon Rowanmoor of the liability which Mr T seeks now to ascribe to it.

- So, taking account of the Adams v Options decision and the above contractual documents, the investigator failed to respect the true nature of the relationship between Rowanmoor and Mr T. The contractual documents delineated Rowanmoor's role as a limited one as an execution only SIPP operator.

- It was wrong for the investigator to have concluded that the nature and volume of the business Rowanmoor received from CIB was a relevant consideration given

the limited scope of its contractual and regulatory duties and/or should have given it cause for concern, such that it should and would have led Rowanmoor to decline to accept business from CIB prior to Mr T's application.

- In any event (and insofar as is relevant), the investigator had failed to take proper account of the systems and controls that Rowanmoor had in place at the material times in relation to introducer due diligence, and which were adequate and compliant with the prevailing (and posterior) regulatory regime and Rowanmoor's limited obligations with regard to introducer and investment due diligence.

- Rowanmoor maintained extensive management information for the purpose of, amongst other things, identifying potential trends across volumes of business. If there were particular issues arising from the management information, then this was raised at Rowanmoor group board level, to whom the information was available. Rowanmoor also had comprehensive procedures for considering potential investments and, in the vast majority of cases, worked with regulated financial advisers, like CIB.

- Even if the contractual relationship between Rowanmoor and Mr T is disregarded, as a matter of regulation, and in accordance with prevailing SIPP operator industry practice, Rowanmoor had limited and specific due diligence obligations with regard to the business it accepted from CIB.

- Rowanmoor complied with its limited regulatory obligations in respect of CIB by checking on the regulator's register that CIB was regulated.

- Rowanmoor did not, and never has, required copies of suitability letters from financial advisers as it cannot second guess the suitability of regulated advice given. Nothing published by the FSA at the time of Mr T's application – in particular the 2009 Report – imposed, expressly or impliedly, an obligation on a SIPP operator to advise on the suitability, or to double-check the suitability, of advice given by regulated financial advisers. Rowanmoor had a legitimate expectation that financial advisers such as CIB were doing their job properly, and it could not be part of Rowanmoor's role to verify the appropriateness of their advice. So, the investigator was wrong to conclude that Rowanmoor had treated Mr T unfairly but not requesting copies of CIB suitability letters.

- The investigator was also wrong to say that Rowanmoor had not met with CIB or asked questions of its business model. A member of Rowanmoor's compliance team had met with CIB in 2009 and CIB assured Rowanmoor that full advice would be given to clients. So, at the time of Mr T's investment in TRG, CIB had confirmed to Rowanmoor, and Rowanmoor thus understood, that it was providing advice on suitability to clients in respect of the TRG investment. It was entitled to rely on that understanding and there was nothing to suggest that CIB was not fulfilling this assurance.

- There was no basis for the investigator to have concluded that Mr T had not received a suitability letter from CIB.

- Rowanmoor had also carried out sufficient due diligence on the TRG investment. Rowanmoor controlled the quality of its SIPP business through its assessment of potential investments. Rowanmoor employed specialist teams to perform this role. The teams assessed each proposed investment in terms of its structure; obtaining good legal title; the regulatory and jurisdictional identity of those running

/ involved in the investment; money laundering concerns; technical and tax issues such as whether there could be a contingent liability and the member's connection with the proposed investment; and administration, such as the fees to be incurred by the member. The results of the specialist teams' due diligence were then put, initially, to an Investment Approval Committee (IAC) for a decision about whether or not to accept such investments and, if so, in what circumstances.

- An ombudsman had looked at a similar case involving TRG (but not CIB) and issued a provisional decision which set out that TRG's Dunas Beach Resort had been built and was operating successfully and was neither a scam nor fraudulent. The ombudsman had said that Rowanmoor failed to take Cape Verdean legal advice on whether the investment could be held in a co-trustee arrangement. But, this was a peripheral point and should not detract from his broader conclusion that Rowanmoor's due diligence on the TRG investment was in all respects compliant with its limited regulatory obligations.

- Even if Rowanmoor's regulatory obligations extended to identifying the risk of consumer detriment, by means of an assessment of the nature and volume of the business being referred to it, Rowanmoor's position is that there was nothing in the management information that it collected on CIB and TRG to cause concern to Rowanmoor. In circumstances where CIB was a regulated financial adviser which had confirmed to Rowanmoor that it was providing advice on suitability to clients in respect of the TRG investment, and as TRG was a demonstrably legitimate investment (albeit one that might be regarded as nonstandard), there was nothing about the nature nor volume of that SIPP business that should have alerted Rowanmoor to the potential for consumer detriment, having regard to Rowanmoor's limited obligations as a SIPP operator.

- The true cause of Mr T's loss was likely to be the advice given to him by CIB and the poor performance of the TRG investment. The FSCS had already found fault with CIB's advice hence it had paid Mr T some compensation. And Mr T would likely have proceeded with the transfer of his pension regardless of the actions Rowanmoor took. Had Rowanmoor refused the transfer or stopped accepting business from CIB long before Mr T's application, by the time of Mr T's application, CIB would have arranged to make its introductions to a different SIPP provider. There is no evidence that other SIPP operators would have refused this business.

- The investigator had made no allowance to the compensation to be paid to Mr T for the amount he had already received from the FSCS. The investigator said this was because Mr T had agreed with the FSCS that if his complaint against Rowanmoor is successful he will repay to the FSCS the money he'd already received.

- This wasn't justified as Rowanmoor shouldn't be liable by reason of the agreement that Mr T had with the FSCS. And this would effectively absolve CIB for everything that had happened.

- Rowanmoor also provided a chronology and copies of key correspondence relating to CIB – mainly consisting of notes of internal board meetings. I'll refer to these in my findings below.

Further information provided by Rowanmoor

The case was then passed to me for consideration. After reviewing the evidence and submissions, I asked for further information from both parties. The responses and further information have been summarised below.

Rowanmoor said that:

- As well as TRG, CIB also introduced applications to Rowanmoor for customers wishing to invest in another overseas hotel development – Harlequin – and a limited number of applications involved other investments. But the vast majority of the applications were for investments in TRG.

- In May 2009, Rowanmoor did have some concerns that CIB had not given advice to clients about Harlequin and was introducing "execution only" customers to Rowanmoor for Family Pension Trusts (a Family Pension Trust is a pension wrapper that is similar to a SIPP but which allows more than one person to be a member of that scheme). Having identified concerns about CIB's practices, Rowanmoor investigated this and raised the matter with CIB in a meeting. There are no records of this meeting, but the discussions that took place (most likely at the end of July 2009) resulted in Rowanmoor being satisfied that CIB would provide "full advice" to clients thereafter.

- In 2013, Rowanmoor contacted CIB for its written confirmation that CIB was providing advice to clients on both the SIPP structure and underlying investments – as per the advice requirements set in the FSA's alert in 2013 - "Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP". CIB assured Rowanmoor that its process *"is (and was) already beyond the FSA announcement*".

- Rowanmoor's understanding is that CIB and TRG had a commercial relationship by which a substantial proportion of individuals wishing to invest in TRG would be referred to CIB for the purpose of the provision of financial advice.

- Rowanmoor confirmed that it understood that RealSIPP's role in respect of CIB and TRG was a "… packager and administrator of SIPPs for all networked developments and products…"

- All Rowanmoor SIPP applications had a declaration that clients would send Rowanmoor a copy of their suitability letters. However, in practice, not all copies of suitability letters were sent by clients and none were requested by Rowanmoor. Rowanmoor said that CIB did send some copies of suitability letters, and it has provided me with an example of one such letter from 2011.

- Around 60% of the CIB SIPP applications to Rowanmoor for investment in TRG involved a purchase by means of a deposit. Rowanmoor proceeded on the basis that it was assured by TRG that loans would be made available to clients to fund the balance of the purchase. Rowanmoor believes this was discussed with CIB but doesn't have records of these discussions.

- Mr T's application for the TRG investment was on the basis of a "full ownership structure" with a 65% deposit. But in 2014, this was changed to a 50% promissory structure for a different apartment at the Dunas Beach resort. His investment was valued at £111,050 in 2018.

- Rowanmoor did review some marketing material used by TRG and CIB – but can't confirm the totality of what was reviewed. It doesn't think it reviewed a particular document sent to us by Mr T's CMC relating to the SIPP investment process produced by RealSIPP in 2011.

- Rowanmoor ceased to accept introductions from CIB in 2013. Rowanmoor isn't able to identify precisely why instructions from CIB ceased at that point, although, in or around March 2013, the FSA asked CIB to review certain pension transfers and CIB asked Rowanmoor to cease transfers then in progress. The FSA thereafter restricted some of CIB's activity pending its investigation.

Mr T said that:

- He was not aware of CIB and the role it played in his pension transfer. He said throughout the process he had no dealings with the firm. Mr T did not recognise the name RealSIPP either.

- Mr T was not aware of any risks that were associated with the TRG investment and this was never discussed by anyone. The brochures he was shown were all very positive and gave no indication of any possible risk. Mr T has said that if he had any idea that he might not be able to access his pension at retirement he would never have gone ahead.

- Mr T thought he was paying for a percentage of a property and other investors would have a percentage of the property, but he was unaware of the amount or the percentage. His Rowanmoor SIPP account ran out of funds some time ago a d he has had to pay money into the SIPP. If he had known that he would have to pay into the pension at any stage, he would never have gone ahead with the transfer and investment as he was not in a position to be able to afford more pension payments.

- Mr T doesn't recall reading the application documents he signed for the SIPP and investment. The paperwork was brought to him by the adviser who usually marked where he needed to sign.

- Mr T says that if Rowanmoor had refused to accept his application for the SIPP and investment in TRG, he would have just kept his pension where it was and not transferred it.

- Mr T wasn't offered any incentive or payment to transfer his pension or invest in TRG, and he had been planning to retire at the age of 60 and says he wouldn't have wanted to risk his pension provisions.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair an reasonable in the circumstances of this complaint.

I'd like to assure both parties that I've looked at all of their submissions with care. In this decision I concentrate on the key arguments and evidence that are material to my determination of the complaint.

In considering what is fair and reasonable in all the circumstances of this complaint, I have taken into account relevant law and regulations; regulators rules, guidance and

standards; codes of practice; and where appropriate, what I consider to be good industry practice at the relevant time.

What are the relevant considerations?

The Principles

In my view, the FCA's Principles for Businesses are of particular relevance to my decision. The Principles for Businesses, which are set out in the FCA's handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (PRIN 1.1.2G). And, I consider that the Principles relevant to this complaint include Principle 2, 3 and 6 which say:

> *"Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*
>
> *Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*
>
> *Principle 6 – Clients' interests – A firm must pay due regard to the interests of its clients and treat them fairly."*

I have carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ("BBA") Ouseley J said at paragraph 162:

> *"The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirement they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."*

And at paragraph 77 of BBA Ouseley J said:

> *"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."*

In (*R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ("BBSAL"), Berkeley Burke brought a judicial review claim challenging the decision of an ombudsman who had upheld a consumer's complaint against it. The ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and had not treated its client fairly.

Jacobs J, having set out some paragraphs of the BBA judgment including paragraph 162 set out above, said (at paragraph 104 of BBSAL):

> *"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles- based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."*

The BBSAL judgment also considers section 228 of Financial Services & Markets Act 2000 ("FSMA") and the approach an ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the ombudsman in that complaint, which I have described above, and included the Principles and good industry practice and the relevant time as relevant considerations that were required to be taken into account.

I've considered whether *Adams v Options* means that the Principles should not be taken in account in deciding this case. And, I find that it doesn't. In *Adams v Options*, the judge did not consider the application of the Principles and they did not form part of the pleadings submitted by Mr Adams. So, *Adams v Options* says nothing about the application of the FCA's Principles to the ombudsman's consideration of a complaint.

As outlined above, Ouseley J in the BBA case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what is fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in BBSAL. I am therefore satisfied that the FCA's Principles are a relevant consideration that I must take into account when deciding this complaint.

I know that Rowanmoor says that the application of COBS in *Adams v Options* serves as guide to the application of Principle 6. But it's not possible to say that conduct that does not amount to a breach of COBS *automatically* means that the Principles have been satisfied or that the conduct amounts to good industry practice at the relevant time.

The regulatory publications

The FCA (and its predecessor, the FSA) has issued a number of publications which remind SIPP operators of their obligations and set out how they might achieve the outcomes envisaged by the Principles.

- The 2009 and 2012 thematic review reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 "Dear CEO" letter.

The 2009 Thematic Review Report

The 2009 report included the following statement:

> *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to*

ensure the fair treatment of their clients. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients. It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.

We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the member to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate the SIPPs that are unsuitable or detrimental to clients.

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their clients' interests in this respect, with reference to Principle 3 of the Principles for Business ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*

- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*

- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*

- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*

- *Identifying instances of clients waiving their cancellation rights, and the reasons for this."*

- *Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable).*

- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently.*

- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc).*

The later publications

In the October 2013 finalised SIPP operator guidance, the FCA states:

"This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.

All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat clients fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a "client" for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes."

The October 2013 finalised SIPP operator guidance also set out the following:

"Relationships between firms that advise and introduce prospective members and SIPP operators

Examples of good practice we observed during our work with SIPP operators include the following:

- *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un- authorised business warnings.*

- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*

- *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments*

they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.

- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*

- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers.

Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*

- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*

- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non-regulated introducers.*

In relation to due diligence the October 2013 finalised SIPP operator guidance said:

"Due diligence

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*

- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*

- *having checks which may include, but are not limited to:*

    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*

    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*

- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*

- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*

- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax- relievable investments and non-standard investments that have not been approved by the firm"*

The July 2014 *"Dear CEO"* letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The *"Dear CEO"* letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *Correctly establishing and understanding the nature of an investment.*

- *Ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation.*

- *Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable).*

- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently.*

- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc).*

Although I've referred to selected parts of the publications, to illustrate their relevance, I have considered them in their entirety.

I acknowledge that the 2009 and 2012 reports and the *"Dear CEO"* letter are not formal *"guidance"* (whereas the 2013 finalised guidance is). However, the fact that the reports and *"Dear CEO"* letter did not constitute formal guidance does not mean their importance should be underestimated. They provide a *reminder* that the Principles for Businesses apply and are an indication for the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators expectations of what SIPP operators should be doing also goes some way to indicate what I consider amounts to good industry practice at the time, and I am therefore satisfied it is appropriate, to take them into account.

Like the ombudsman in the Berkeley Burke case, I don't think the fact that the publications, (other than the 2009 Thematic Review Report), post-date the events that are the subject of this complaint mean that the examples of good industry practice they provide were not good practice at the time of the events. The later publications were published after the events subject to this complaint, but the Principles that underpin them existed throughout, as did the obligation to act in accordance with those Principles.

It is also clear from the text of the 2009 and 2012 reports, (and the *"Dear CEO"* letter published in 2014), that the regulator expected SIPP operators to have incorporated the recommended good industry practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' *understanding* of how the standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

It is also important to bear in mind that the reports, Dear CEO letter and guidance gave non- exhaustive examples of good industry practice. They did not say the suggestions given were the limit of what a SIPP operator should do. As the annex to the *"Dear CEO"* letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

Another relevant consideration in this complaint is the regulator's alert about advisers giving advice to consumers on SIPPs without consideration of the underlying investment to be held in the SIPP. The regulator issued an alert in 2013 ("Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP") setting out that this type of restricted advice did not meet regulatory requirements. It said:

> *"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes)…*
>
> *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."*

The alert post-dates the events in this complaint – but, again, it didn't set new standards. It set out the regulator's concerns about industry practices at the time. I'll explain the impact of this on Mr T's complaint in my findings.

It's important to keep in mind the judge in *Adams v Options* did not consider the regulatory publications in the context of considering what is fair and reasonable in all the circumstances bearing in mind various matters including the Principles (as part of the regulator's rules) or good industry practice.

Overall, in determining this complaint, I need to consider whether Rowanmoor complied with its regulatory obligations as set out by the Principles to act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regards to the interests of its customers (in this case Mr T), to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Rowanmoor could have done to comply with its regulatory obligations and duties.

Rowanmoor's contractual obligations

Rowanmoor says that, consistent with the decision in *Adams v Options*, the nature of its obligations must be looked at through the prism of the contractual documents between Mr T and Rowanmoor. I don't think the considerations in the *Adams v Options* case are analogous to the circumstances in this complaint, in which I'm considering the Principles. But, notwithstanding that, I *have* taken into account the contractual documents that Rowanmoor refers to and I agree they are relevant in clarifying some aspects of the relationship between Rowanmoor and Mr T. I accept that Rowanmoor made it clear to Mr T that it was not giving, nor able to give, advice to him and that it played an execution-only role in his SIPP investments.

The indemnity Mr T signed sought to confirm that he was aware the investment was high risk, had been given advice, and would not hold Rowanmoor responsible for any liability resulting from the investment.

The FSA's 2009 report said that SIPP operators should, as an example of good practice, be:

> *"Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for investment decisions and gathering and analysing data regarding the aggregate volume of such business."*

With this in mind, I think Rowanmoor ought to have been cautious about accepting Mr T's application even though he had signed an indemnity. I think there was an imbalance of knowledge and Rowanmoor should have taken very little comfort from the indemnity. It had already shown concern that CIB was not giving full regulated advice to consumers.

But unlike the situation in the case of *Adams v Options* where the SIPP provider relied upon the indemnity that was signed by the consumer, the circumstances here are different. Rowanmoor has confirmed its process was to only accept applications on the basis that regulated advice had been provided on the underlying investment. This was specifically agreed as a requirement by Rowanmoor's board and is recorded as such in its board minutes and internal email communications from 2009.

In its submissions to this Service, Rowanmoor confirmed:

> *"Of particular note, a member of Rowanmoor's risk and compliance team met with a representative of CIB in June 2009 to discuss CIB's business and its responsibilities (including the need for CIB to provide advice to clients)… Rowanmoor accepted introductions of investments in TRG on the express understanding that CIB was providing advice to the clients concerned"*.

So, although it says that acceptance of Mr T's SIPP was on an "execution-only" basis, its own policy was that acceptance of business was conditional upon him having received advice.

In this case the contractual documents assume that Mr T (and most likely all investors in TRG that had been introduced by CIB) had received financial advice. Rowanmoor's failure to check that financial advice had in fact been received by Mr T is a due diligence issue and breach of its own policy.

In the *Adams v Carey* case, the judge found that Mr Adams would have proceeded with the transaction regardless. HHJ Dight said (at para. 32):

> *"The Claimant knew that it was a high risk and speculative investment but nevertheless decided to proceed with it, because of the cash incentive…"*

But in this case Mr T has confirmed that he was not given any incentive or 'welcome bonus'. He had already been 'sold' on the idea of the TRG investment and so I think he signed the indemnity without a full understanding of what high risk meant, assured by what he was told. This is why Rowanmoor should have been wary of dealing with CIB – as it had already introduced business without providing full advice – contrary to what Rowanmoor had stipulated.

My view is supported by the fact that many other consumers were not fully advised by CIB and accepted risks they say they did not understand. Rowanmoor did not check with Mr T whether he had in fact been fully advised.

The Principles exist to ensure regulated firms treat their clients fairly.

The contractual documents don't absolve, nor do they attempt to absolve, Rowanmoor of its regulatory obligations to treat customers fairly when deciding whether to accept or reject business.

Rowanmoor had to act in a way that was consistent with the regulatory obligations I've set out in this decision. In my view, asking Mr T to sign an indemnity absolving Rowanmoor of all responsibility, and relying on such an indemnity, when it ought to have known Mr T's dealings with CIB were putting him at significant risk was not the fair and reasonable thing to do.

What did Rowanmoor's obligations mean in practice?

In this case, the business Rowanmoor was conducting was its operation of SIPPs. I am satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject particular investments and/or referrals of business. The regulatory publications provided some examples of good industry practice observed by the FSA and FCA during their work with SIPP operators including being satisfied that a particular introducer/investment is appropriate to deal with/accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.

Rowanmoor also says that checking the FSA's register to ensure that CIB was regulated – as it did in respect of the SIPP applications of Mr T and other investors referred to it by CIB – was sufficient for it to comply with its limited regulatory obligations to conduct "introducer due diligence". I don't agree. People and organisations should feel reassured that, when dealing with regulated advice firms, those firms are operating in line with the regulatory rules. But it doesn't follow that that faith can be blind and nothing further needs to be checked – especially if there are warning signs that things are not as they should be with the advice firm. As set out above, to comply with the Principles, Rowanmoor needed to conduct its business with due, skill, care and diligence; organise and control its affairs responsibly and effectively; and pay due regard to the interests of its clients (including Mr

T) and treat them fairly. Its obligations and duties in this respect were not prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

Despite its submissions, I'm satisfied that Rowanmoor itself understood this at the time too as it did more than just check that CIB was regulated to give advice. As I'll set out below, Rowanmoor spoke with CIB to discuss its business model, kept management information about the type and volume of introductions it was making and obtained reassurances about the nature of the advice CIB was giving to clients.

Most revealingly in this regard, Rowanmoor recently provided us with an internal memorandum from January 2010. The memorandum was sent from the Group Compliance and Risk Manager to a Director who was Secretary to the Board and says:

> *"Further to our recent conversation, and previous discussions regarding the FSA SIPP Operators Thematic Review, published in September 2009, I have revisited the paper in the interests of reassuring the Rowanmoor Personal Pensions Board that we meet the requirements of the regulator, and would observe the following from the Project Findings and Firms' Requirements (Section 2):*
>
> *We are particularly disappointed that some SIPP operators are behind where we would expect all regulated firms to be in the embedding of Treating Customers Fairly (TCF), demonstrated by way of management information.*
>
> *At Rowanmoor Pensions we [sic] aware from our discussions with the regulator that they are satisfied with our approach to TCF, and it's evidencing through the use of our Management Information pack. One particular area that has had a tangible impact is the monitoring of the human resource in administration, MI being instrumental in ensuring we monitor and apply consistent service levels in the interests of fair treatment.*
>
> *We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers (IFAs).*
>
> *The TCF MI report allows senior management to monitor the spread of SIPP business on a monthly basis. Our diligence, and commitment to ensuring the quality of business, has resulted in the Compliance Manager interviewing our most active introducer to discuss the nature, quality and volume of business. CIB Life and Pensions Limited of Rochester, Kent, were visited, and were pleased to discuss their patronage of Rowanmoor Personal Pensions, understanding as they did our obligations under "Responsibilities of Providers and Distributor for the Fair Treatment of Customers" PS07/11 (attached)." (my emphasis)*

So, long before the time of Mr T's application in July 2011, Rowanmoor understood and accepted its obligations meant that it had a responsibility to carry out appropriate checks on CIB to ensure the quality of the business it was introducing.

I think it's also clear Rowanmoor understood and accepted its obligations meant that it had a responsibility to carry out appropriate due diligence on the TRG investment before accepting it into Mr T's SIPP. The minutes of board meetings it has provided and the checks it says it conducted of TRG reflect this. So, I am satisfied that, to meet its regulatory obligations, when conducting its business, Rowanmoor was also required to consider whether to accept or reject a particular investment (TRG), with the Principles in mind.

What due diligence did Rowanmoor carry out on CIB?

Rowanmoor appear to have carried out the following checks before it accepted business from CIB:

- It checked the FSA register to ensure that CIB was regulated to give financial advice at the time of each introduction.

- A member of its compliance team spoke with CIB in July 2009 over the telephone to make enquiries about whether the clients it was introducing were being advised. There is a reference to an interview in the memorandum I've quoted from above, but I think this is actually the same telephone conversation rather than a separate event (I've been provided with no evidence to suggest otherwise).

- It maintained management information about the number of introductions being made by CIB and discussions were had at various times during board meetings about management of risks associated with the overseas property development investments that were being introduced.

Rowanmoor says these limited checks were appropriate given that CIB was a regulated advice firm. But, given the circumstances involved here, I don't think the above alone was reasonable or sufficient to meet Rowanmoor's regulatory obligations. Crucially, Rowanmoor didn't take appropriate steps or draw reasonable conclusions after having reviewed the information available to it.

In summary, my view is that:

- Rowanmoor agreed it was a necessary requirement for consumers to be fully advised before it accepted business;

- Rowanmoor had some reasons to be concerned about CIB – it had been introducing execution only business and the advice it had given on some cases had been flagged as needing review;

- The business it was introducing had anomalous features – large volumes of high-risk business for overseas property developments;

- Unregulated parties were involved in promoting/marketing TRG;

- Despite knowing this, Rowanmoor didn't make appropriate checks of CIB's business model and unreasonably relied on a verbal assurance that advice was being given about the suitability of investing in TRG;

- Had Rowanmoor made reasonable checks, it would have realised that the introductions from CIB involved a significant risk of consumer detriment as customers were not being advised about TRG.

- So, Rowanmoor should have ceased to accept introductions from CIB before it accepted Mr T's introduction.

I'll explain this in more detail below – firstly by setting out the circumstances involved in the introductions from CIB.

Rowanmoor had some early reasons for concern about CIB

As early as April 2009, Rowanmoor identified the need for comprehensive details about CIB's business model, despite CIB's regulated status, given the large volume of business it was introducing. Rowanmoor wrote to CIB at that time, stating that:

> *"As this is the first time that we have had an Introducer outside* [another advice firm] *with such a large percentage of business, we are likely to be questioned on the point by the FSA. This is standard practice.*
>
> *In order that* [we] *are able to define clearly to the Regulator our position with CIB, it would be useful for one of us to meet* [CIB] *to explore the nature of the relationship and the business being transacted."*

A meeting then took place in June 2009. The notes of this meeting say that:

> *"[A director of CIB] was happy to describe the nature of operations, most business being generated via agents for overseas property developments. The ability of SIPPs to invest in off plan international property has led to CIB exploiting a niche in the market, and using a transfer service to create sufficient funds for such investment, and with diversification into other areas should there be sufficient funds, or a mismatch in risk profile. [A director of CIB] sees there being a sustainability in the model in the longer term, and Rowanmoor as the provider of choice due to our flexibility of bespoke service."*

But by July 2009, Rowanmoor appears to have had some significant concerns about CIB. The Rowanmoor board meeting notes from July 2009 record that:

> *"It was agreed that in order to investigate the concerns that CIB appear to be transacting significant volumes of Execution Only business, not being a stance that the [Rowanmoor] felt comfortable with in relation to the products on offer, [a Rowanmoor director] would meet with representatives of CIB at earliest course and report to the next [Rowanmoor] meeting scheduled for 3 August 2009 his findings. With this additional information the Board felt it would be able to make a reasoned decision as to the approach to be taken going forward*."

So, from the outset of its relationship with Rowanmoor, CIB had been introducing a *large percentage* of Rowanmoor's business and was *transacting significant volumes of execution only business* in relation to an investment that was not usually subject to this process.

Rowanmoor has told us that the investment in question was Harlequin.

I think this ought to have been a red flag for Rowanmoor in its dealings with CIB – and seems to have been treated as such by Rowanmoor at the time. It is highly unusual for regulated advice firms to be involved in execution only (i.e. non advised) transactions involving high risk unregulated overseas property developments and pensions. That's because the risks involved in such transactions are unlikely to be fully understood by most people, without obtaining regulated advice. I think it's fair to say that most advice firms decline to be involved in such transactions and certainly don't transact this kind of business in significant volumes.

So, Rowanmoor was right to treat this as a serious matter and look to meet with CIB. Rowanmoor has no direct record of that meeting – which is surprising given that the meeting appears to have been critical in Rowanmoor's assessment of CIB. But I can see

that the next Rowanmoor board meeting in August 2009 records that one of its directors had spoken over the phone with CIB. The relevant part of the minutes says that:

> *"[A Rowanmoor director] confirmed that he had had a telephone discussion with* [CIB] *the outcome of which was that CIB confirmed that many cases had had an IFA and that going forward, full advice would be given and details of the IFA provided. CIB then asked if Rowanmoor would accept Execution Only business if a client had declined advice. The Board noted that it would not accept Execution Only business on cases where the purchase of an overseas property was involved that required pension transfers unless the individual could be proved to the satisfaction of the Board to be a sophisticated investor. [A Rowanmoor director] was asked to advise CIB of the decision.*
>
> *[A Rowanmoor director] noted that CIB had also asked the position if they offered advice to a client at additional cost but that the client had then declined to take advice, would Rowanmoor take the business as Execution Only. The Board noted that it would not be prepared to accept business as Execution Only on this basis as it did not consider this was treating customers fairly. [A Rowanmoor director] to advise CIB accordingly."*

I have taken the reference to "IFA" above to mean an adviser at CIB.

Rowanmoor says this is evidence that having identified concerns about CIB's practices, Rowanmoor investigated and reasonably satisfied itself that CIB would provide advice to clients and was entitled to rely on the assurances provided to it by CIB.

I agree that, in principle, Rowanmoor was entitled to place some reliance on what it was being told by CIB and a discussion with CIB was a reasonable starting point. But I don't think what CIB told Rowanmoor was particularly reassuring. The limited evidence presented in this note seems to me to suggest that CIB agreed to give "*full advice*" to clients not because it was the right thing to do for the clients, but instead because it was what Rowanmoor would accept. I think this is reflected in the fact that CIB said that "*going forward*" full advice would be given and CIB's questions to Rowanmoor about this all appear to be focussed on the circumstances in which Rowanmoor might continue to accept execution only business. I think that ought to have called into question the motivations of CIB and led Rowanmoor to demonstrate good practice by documenting the requirement for full advice and requiring explicit assurance from Rowanmoor in writing.

The same minutes from August 2009 also demonstrate that Rowanmoor had other concerns about CIB. It seems that Rowanmoor and Marcus James, a firm that was involved in promoting Harlequin, was concerned about the appropriateness of the advice being given by CIB in respect of that investment. The minutes say:

> *"[A Rowanmoor director] noted that he had met with Marcus James the firm that had put much business through CIB and explained the concerns. The chairman of Marcus James … also had concerns around funding and the company had already made a decision to only allow those who had 66% of the funding available to proceed (with possible exceptions if appropriate contributions were to be made). As a result of the discussion with [A Rowanmoor director] it was agreed that Pacific, an IFA working with Marcus James would review all cases in which CIB had been involved, carrying out individual meetings with the aim of establishing the appropriateness of the arrangement."*

I understand Pacific to be another regulated firm. No evidence has been provided about whether the review by Pacific took place and/or whether Rowanmoor was told about what

happened in the review. So, another concern had been identified. But when we asked Rowanmoor to provide evidence of meetings and correspondence in which the nature and extent of the advice from CIB was discussed, no evidence was provided to show it had done anything about this or that is was followed up.

In another part of the same minutes, it was noted that:

> *"two cases had recently been received from CIB where CIB had amended the application form to reflect they were not advisers. [A Rowanmoor director] noted that consideration needed to be given as to whether to accept the business. [A Rowanmoor director] noted that CIB had been advised that they were not to alter Rowanmoor's application form but that this had been disregarded. It was agreed that [a Rowanmoor director] would review the cases with [another Rowanmoor director] to establish if they were reasonable to accept. [A Rowanmoor director] was asked to stress to CIB that Rowanmoor would not accept amended application forms."*

In another meeting from December 2009, it was noted that CIB hadn't given a client full information about Rowanmoor's fees and Rowanmoor had subsequently had to reach an ad hoc fee arrangement with that client. The notes say that this would be raised by Rowanmoor with CIB - but despite requesting details of all communications, no evidence about that discussion (and whether it took place) has been provided.

So, I think that, from very early on, Rowanmoor was on notice that CIB, although regulated, was not a firm that was doing things in a conventional way. It had been introducing execution only business for high risk investments in significant volumes and appeared to be keen to still do this. There were also concerns about the appropriateness of the advice it was giving, such that another firm was asked to review its work. And CIB had altered some application forms despite being warned not to do this. So, CIB was not a firm that was following Rowanmoor's clear instructions either.

The board meeting from April 2010 records that:

> *"Following the discussions at the Board of Rowanmoor Personal Pensions Limited and the work undertaken by key staff in reviewing the position of CIB/Harlequin an Insight/Resort Group, the Board confirmed that it was comfortable with the outcome. It was agreed that the matter would be removed as an agenda item."*

In the course of our investigation, Rowanmoor has been asked to provide evidence of any communications it had relating to any meetings/discussions it had with CIB about its business model. No evidence has been produced of any meetings/discussions that took place after July 2009. So, it looks like the telephone conversation in July 2009 was enough for Rowanmoor to be "*comfortable*" with what CIB was doing about the above issues.

CIB was introducing applications for a high-risk investment

I will discuss the issue of investment due diligence later in the decision. But, I think it's appropriate here to point out that the nature of the investments that CIB was introducing was anomalous.

The vast bulk of the introductions were for investment in TRG with a limited number in Harlequin and a small number in other investments. Both Harlequin and TRG were high risk, unregulated overseas property developments. I think it's fair to say that such investments can generally only be suitable for a small proportion of the population –

generally sophisticated and/or high net worth investors. The risks are multiplied where further funding is necessary from investors to complete the purchases – as was the case with the vast majority of the TRG investments.

I think Rowanmoor should have approached these introductions with caution. I think Rowanmoor was aware of this at the time too as the board meeting minutes it has provided show that Rowanmoor was concerned about accepting these kinds of investments.

The July 2009 minutes record:

> *"That there was an additional Board Meeting of Rowanmoor Personal Pensions Limited which was due to be held on the afternoon of 21 July 2009 with the intention of reviewing overseas property purchases. [The Chairman of the board] noted generally that the Board did not want the SIPP to be used solely for the purpose of overseas property purchases"*

And later that:

> *"[The Chairman of the board] noted the arrangement with both Harlequin and Resort Group and the concerns that had started to arise in relation to the purchase of overseas property.*
>
> *The meeting considered four key points:*
>
> - *The fact that such property was acceptable to HMRC as part of a pension arrangement.*
> - *Whether sufficient funds had been received into the pension wrapper to enable purchase of all stages of the arrangement by the client*
> - *Albeit that RPP is the product provider, whether the company was comfortable with the approach of CIB, the introducing IFA to the majority of Harlequin properties.*
> - *Ensuring that the internal processes of Rowanmoor are appropriately followed."*

Most of the investments in TRG were deposit based, with further funds required on completion of the property development. So, the risks are heightened not only because the properties might not be built, but also because customers will need to find additional cash at some point when the properties are built.

So, I think Rowanmoor knew that the kind of business that CIB was introducing was risky and that heightened caution needed to be exercised when dealing with these kinds of applications, even if there was a regulated advice firm involved.

Concerns about how TRG and Rowanmoor were being promoted

Another issue that Rowanmoor was aware of was the involvement of unregulated parties in promoting the high risk TRG investment. Rowanmoor has provided emails showing that it asked TRG to ensure that such parties removed references to Rowanmoor in promotional material to ensure that it was clear that Rowanmoor was not promoting or endorsing TRG.

Whilst that was a sensible step for Rowanmoor to take to ensure its role was not conflated to advising or recommending TRG, I think that Rowanmoor clearly knew that unregulated parties were either giving advice about TRG or that there was a risk of this. An internal Rowanmoor email from November 2009 sets out that:

> *"We are concerned about the promotion of pension scheme investments being undertaken by businesses which do not operate under the control of the Financial Services Authority. Whilst these types of investment are acceptable (subject to the conditions above), references to Rowanmoor Pensions being made appear to:*
>
> *1. be intended to illustrate Rowanmoor Pensions endorsement of specific investments;*
>
> *2. constitute financial advice.*
>
> *We are not satisfied with the controls in place to monitor the promotion of these types of investment and therefore require all reference to Rowanmoor Pensions to be removed from existing promotions. Generic references to the acceptability of such investments in SIPP or Family Pension Trust are acceptable but should be accompanied by a statement to the effect that independent professional financial advice should be taken before undertaking any pension scheme investment."*

The reaction of the senior member of staff to this email is, I think, telling.

> *"Lost on this one...*
>
> *We are looking for wordings their agents can use on their websites and these are littered with references to Rowanmoor - they are meant to be generic.*
> *It is also fairly aggressive. <u>If I send this to Resort it will probably sever all links with one of our few sources of regular business</u>."* [my emphasis]

Other emails show that there were internal concerns (again in November 2009) that RealSIPP (CIB's appointed representative) was misrepresenting Rowanmoor's role by links on its website suggesting that Rowanmoor and RealSIPP were connected:

> *"The link itself is very blatant and looks as if we have an Appointed Rep relationship. This needs to be taken down in my view. Suggest realsipp try a more subtle approach if they want to reference SIPPView.*
>
> *In any event very naughty not asking us."*

The senior member of staff responds:

> *"leave this with me as it will be better if I deal with it"*

There is no evidence of *how* the senior member of staff dealt with the issue or whether it was raised with CIB at all.

The high volumes of business that CIB was introducing

I think the volumes of business being introduced by CIB was also anomalous. It's clear that Rowanmoor kept a good level of management information about the number and nature of introductions that CIB had made. I think this is an example of good practice identified in the 2009 report which said:

> *"Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified."*

But I don't think simply keeping records without scrutinising that information is reasonable. As highlighted in the 2009 report, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

By the time of Mr T's application, CIB had introduced 455 applications in just two years. I think that Rowanmoor should have looked at this and been concerned that such a high volume of introductions, relating almost exclusively to non-mainstream unregulated investments was unusual – particularly from a small IFA business. And it should have considered how such a small business was able to meet regulatory standards and ensure the investments were suitable for such a high volume of customers. Mr T for example, was living in Northern Ireland. Rowanmoor should have been querying how CIB, a firm based in Kent with no more than 10 advisers at any time during the relevant period, was managing to give suitable advice to clients across the country.

This concern ought to have been even greater where a final salary scheme was involved, as in Mr T's case. COBS 19.1.6G states:

> *"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interest".*

Whilst I acknowledge this aims to define the expectation of a regulated financial adviser when determining suitability of a pension transfer, it emphasises the regulator's concern about the potential detriment such a transaction could expose a consumer to. Given the nature of its business and regulatory status I'd expect Rowanmoor to have been familiar with the guidance contained in COBS – even if it didn't apply directly to it.

So, I think Rowanmoor ought to have been aware that the chances of the introduction of such a large volume of applications, including Mr T's business, resulting in a suitable SIPP were very small.

Overall, I think the introductions from CIB involved anomalous features and Rowanmoor knew or ought to have identified and acted on this. It certainly knew that CIB had introduced execution only business in significant volumes and there was a concern about the advice it was giving. It also knew there were unregulated parties involved in promoting the investment and RealSIPP was misrepresenting its relationship with Rowanmoor.
So, I need to consider whether the steps Rowanmoor took in reaction to these circumstances were compliant with its regulatory obligations and good industry practice at the relevant time.

What should Rowanmoor have done in the circumstances?

I think, knowing all of the above, Rowanmoor - as part of its due diligence on CIB - ought to have found out more about how CIB was operating well before Mr T's application. I think that given the concerns Rowanmoor had about introductions from CIB from the outset, it would have been fair and reasonable to expect, in-line with its regulatory obligations, for it to have made some very specific enquiries and obtained information about CIB's business model.

As set out above, the October 2013 finalised SIPP operator guidance gave an example of good practice as:

> *"Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with."*

I think Rowanmoor, acting in accordance with its regulatory obligations, should have checked with CIB about how it came into contact with potential customers, what its arrangements with TRG were, what exactly RealSIPP was doing as the "*administrator for the packages*", how and why retail customers were interested in making these investments, whether anyone else was providing information to customers, how it was able to meet with or speak with all customers, and what marketing material was being provided to customers. I think it also would have been good practice to have a written agreement with CIB governing the relationship, and clarifying respective responsibilities.

The 2009 Thematic Review says that an example of good practice suggested to firms was to have in place "*Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business."* Given the importance of the requirement for consumers to have been given advice, it would have been good practice for Rowanmoor to include that obligation within the Terms of Business agreed with CIB.

I know that Rowanmoor did speak with CIB in July 2009. I think that was good practice and a reasonable starting point. However, given the absence of a contemporaneous note, I can't be sure of the breadth or detail of that discussion. So, I don't know what was said by CIB about its business model. Nevertheless, I accept that it's possible that CIB gave some assurances to Rowanmoor.

But I've seen no evidence that Rowanmoor made the type of wider enquiries I've set out above. And, in any event, I don't think it was fair and reasonable for Rowanmoor to rely on the verbal reassurance by CIB. Given what I've said about the circumstances of these introductions, I think Rowanmoor should have treated any verbal assurance from CIB with a degree of caution and satisfied itself by reference to independent evidence that CIB was not introducing SIPPs with a significant risk of consumer detriment. At the very least, especially in light of the above concerns that Rowanmoor did have, it should have checked that any verbal assurances by CIB that customers would receive regulated advice about TRG were actually acted on by CIB. If such checks revealed that the verbal assurances were not true, it should have ended the relationship or challenged CIB further.

I also can't ignore that there appears to have been a strategic relationship between CIB, TRG and Rowanmoor. The evidence that Rowanmoor has provided shows that it was in regular contact with TRG and CIB about the submission of large volumes of business, that Rowanmoor was the SIPP operator of choice in CIB/TRG's business plan (there is reference to Rowanmoor having an "*exclusive" relationship*" with TRG) and TRG was "*very committed to supporting Rowanmoor*".

So, it was never envisaged that this would be business submitted to Rowanmoor by CIB in a normal organic way as might happen with other small advice firms. From the outset, Rowanmoor knew that CIB would be sending it through high-risk TRG business on a large scale. So, I think there was a heightened need for Rowanmoor to be satisfied that there wasn't a significant risk of consumer detriment – not just rely on one-off or even occasional verbal assurances.

Instead, my view is that concerns and risks associated with the business CIB was introducing were either raised or known about by Rowanmoor - but no more than lip service was paid by Rowanmoor to investigate those matters in order to avoid (to quote the Rowanmoor email above) "*severing all links to one of Rowanmoor's few regular sources of business".*

So, what practical things should it have done? I've already mentioned that I think putting in place documented Terms of Business would have been a good step. Another obvious way that Rowanmoor could have satisfied itself about the nature of the advice that CIB giving was to request copies of at least some suitability letters.

Rowanmoor says that it didn't request copies of suitability letters from financial advisers as it can't second guess the suitability of regulated advice and wasn't qualified to do so. But I'm not saying that Rowanmoor should have assessed the suitability of the advice or that it had to ensure that the SIPP and investment were suitable for Mr T. I agree that this wasn't its role. However, I think sight of the suitability reports could have provided Rowanmoor with some insight into CIB's business model and assurance that advice was being given by CIB about both the SIPP and the investment in TRG.

I'm strengthened in my view by the fact that the 2009 report specifically said that an example of good practice was:

> *"Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely."*

I can also see from the investment application form that, as standard wording, Rowanmoor *did* ask for customers, including Mr T, to provide copies of the advice about the investment. The form asked customers to confirm that:

> *"I have taken written advice on the suitability of the investment, a copy of which is provided."*

Rowanmoor says that this was because the form had been adapted from an older application process for a different product. That may well be the case. But I think this still shows that Rowanmoor considered it good practice to ask for copies of the advice that customers had received. And I think it *was* good practice – particularly in circumstances such as this.

Importantly, regardless of whether or not it should have requested, or did request, copies of suitability letters, Rowanmoor has confirmed that it *did* in fact receive copies of suitability letters from CIB. It has said that it was provided with copies of suitability reports from CIB in respect of at least some clients (and provided an example of one such letter) but was unable to confirm that advice reports were provided in respect of all or the majority of clients. So, having received copies of some suitability letters, I think Rowanmoor undoubtedly needed to take account of what the letters exhibited, given that it ought to have been aware – and seemingly was aware – of the risk of consumer detriment here. I'll discuss this further below.

I also think it would have been reasonable, before Mr T's application, to have at least contacted some customers directly. The 2009 report said that:

> *"We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that*

> *SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs.* ***Such instances could then be addressed in an appropriate way, for example by contacting the member to confirm the position, or by contacting the firm giving advice and asking for clarification****. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate the SIPPs that are unsuitable or detrimental to clients."* (my emphasis)

Given the concerns that Rowanmoor had about CIB introducing execution only business and the volumes of business being introduced (i.e. after analysing the management information available to it), I think it would have been reasonable (and good practice) for Rowanmoor to speak to some customers and enquire about the nature of the advice that they had been given and to ensure that the customer understood the risks. There's no evidence that it did this.

So, overall, whilst Rowanmoor did take some limited steps to conduct due diligence on CIB, I don't think it did everything it needed to do to meet its regulatory obligations in the circumstances or comply with good industry practice at the relevant time.

What would Rowanmoor have discovered if it had carried out appropriate due diligence?

I think if Rowanmoor had carried out the due diligence I've set out above, it would have discovered that most if not all customers introduced by CIB had not received regulated advice about TRG from CIB or anyone else. It would have identified its own requirements for accepting business were not being met, and should have known there was a significant risk of consumer detriment as consumers were transferring/switching their existing pension schemes to invest entirely in TRG without the benefit of regulated advice.

Rowanmoor knew that RealSIPP had a role as "*Administrator and Packager*" of the Rowanmoor SIPP. But I don't think it was clear what this role involved. If Rowanmoor had asked for details about this, it would have realised that RealSIPP, on behalf of CIB and TRG, effectively marketed the Rowanmoor SIPP to customers as a means to make the TRG investment. Knowing this, Rowanmoor should have looked at *how* the SIPP was being marketed.

As set out above, Mr T's CMC has provided us with the marketing material used by RealSIPP. It's a 20-page document headed with the TRG logo and titled "Self Invested Personal Pension Package". Mr T himself has no recollection of the involvement of RealSIPP or indeed CIB at all. But I have no reason to doubt that the document we've been provided wasn't used generally by RealSIPP and CIB.

The following are some extracts from the document:

> *"You have been provided this pack because you expressed an interest in purchasing a Resort Group Property under a special pension structure, generally referred to as a Self Invested Personal Pension Plan. In conjunction with ourselves, The Resort Group and our Pension Administrators have created an exclusive package to allow such investments to be made.*
>
> *….*

[On SIPPS] It is important to remember that this type of pension plan is a bespoke arrangement and thus should only be used by persons and individuals who are fully aware of its benefits and restrictions. Real SIPP LLP does not provide financial advice. Our Partner, C.I.B (Life & Pensions) are able to advice you on the suitability and use of this pension scheme to meet your requirements. You should however be aware that your chosen property investment is not regulated under the Financial Services and Markets Act (2000) and thus you will not be protected by any legislation surrounding "normal" investments. Neither Real SIPP LLP or C.I.B (Life & Pensions) are able to make any recommendations as to the personal suitability of your chosen property investment for your own financial circumstances.

This booklet gives you important information about the exclusive property and pension arrangements and is designed to answer any questions you may have. If after reading this booklet, and the associated information, you wish to proceed and use this SIPP to facilitate your property investment, please contact us for an application pack. This will contain all the necessary forms to establish your scheme, set up any payments and commence the process of purchasing your property.

If you have any doubts about whether this pension plan is suited to your needs or is affordable or about the investment risks you should seek investment advice. However, you should be aware that you might have to pay for this advice. Our partner, C.I.B (Life & Pensions) is able to provide such advice as part of our overall process."

The document then goes on to explain what a SIPP is, some benefits and some of the risks associated with them. And then:

"If you have existing pension arrangements and you wish to consider transferring these into the SIPP we arrange for our partner, CIB (Life & Pensions) Ltd, to provide you with advice on the suitability of such a transfer to a SIPP for the purposes of enabling your property investment. This initial advice will be provided free of charge as part of their normal process. If you require additional advice, our partners CIB (Life & Pensions) Ltd are more than happy to provide this under their normal terms and conditions. Alternatively you can seek advice from another suitably qualified company, but you should be aware that you may have to pay for this advice. A suitably qualified adviser can be found can be found by searching your postcode on www.unbiased.co.uk.

…

RealSIPP LLP asks that you consider whether the plan is appropriate for you, given your level of knowledge and experience of investments and your understanding of the risks involved. In particular you should study carefully the Property and Purchase Information provided to you by The Resort Group, and the Key Features Document provided by Rowanmoor Pensions. This includes full details of the investment risks relevant to the plan and, where applicable, your rights to cancel.

RealSIPP LLP does not give advice to The Resort Group clients with regards to the property package and the investment options within it. Our partner, C.I.B (Life & Pensions) Ltd restricts its advice to the suitability of a SIPP product to meet your needs from the information you supply to them on your Client Information form. If you have any further doubts as to whether this pension plan is suited to your needs or is affordable, or about the investment risks you should seek

expert advice. However, you should be aware that you might have to pay for this advice."

In another section of the document, talking about the nature of the SIPP contract with Rowanmoor that would be used for the investment, it says:

> "*You should note that you have 30 days in which to cancel this contract if you change your mind. However, due to the timescales required by the developer, you consider waiving this right as Rowanmoor Pensions cannot begin to register and process your scheme until the period is complete."*

Rowanmoor says it's unlikely that it saw this document at the time, but, as I've said above, I think this is exactly the kind of document that I think Rowanmoor should have asked CIB to provide as part of its due diligence to understand what role RealSIPP was playing and what marketing information CIB and RealSIPP were providing to customers. I have no reason to doubt that CIB would have provided this document had it been asked to do so. Alternatively, if Rowanmoor had made reasonable enquiries about RealSIPP, I think those enquiries would have exposed similar details about the business model, even if they didn't reveal the detriment itself. So, Rowanmoor ought to have identified the following risks of consumer deriment:

- It looks like customers had already been "sold" on the idea of the TRG investment, before the involvement of any regulated parties - just as Mr T has told us he had been.

- RealSIPP was providing documents to customers purportedly not containing any advice. But it expected customers to decide for themselves whether to proceed with the investment in TRG via a SIPP based on the information contained in the document.

- CIB would be involved in the application process, but any advice would be restricted to the suitability of the SIPP. CIB would not give advice about the personal suitability of the TRG investment to customers.

- CIB was not speaking with or meeting customers but basing its restricted advice about the SIPP purely on a "Client Information form".

- Customers were being potentially dissuaded from seeking independent advice with warnings that this might cost them more.

- Customers were being encouraged to waive their cancellation rights.

Each of these matters in isolation are very serious, but cumulatively demonstrate CIB had a complete disregard for customers best interests and was not meeting many of its regulatory obligations otherwise.

I have no doubt that Rowanmoor may say that it did *not know* that this was how CIB operated and that it's unreasonable for me to draw conclusions about what it should have done based on a document it believes it did not see at the time. Leaving aside the fact that I think it *ought* to have seen this document or discovered similar details about the business model, it seems clear that Rowanmoor *did* see some of the suitability letters produced by CIB. It has sent us one such letter as an example of what it was provided.

Pausing for a moment here, I know that Mr T says he wasn't provided with a suitability letter from CIB or anyone else. That may well be the case and again might evidence the poor practices of CIB in providing advice. But it is possible that one was provided to Mr T and has been misplaced or lost. Certainly, in other cases I've seen, CIB did produce suitability letters for customers. Whether Mr T was provided with a letter isn't material to my findings here. What I consider to be important is what Rowanmoor knew or ought to have known about CIB generally by the time of his application including in sample suitability letters it was sent – not what was set out in the specific advice to Mr T.

And looking at the example suitability letter it has provided, I think some of the alarming features of the RealSIPP document are evident from the advice letter.

The letter, dated July 2011 (around the same time as Mr T's application), says:

> *"You wish to purchase an offshore/offplan investment property within a registered pension scheme environment"*

So, this should have caused Rowanmoor to be concerned that there was a possibility that unregulated parties were involved in selling the idea of the TRG investment to customers prior to the involvement of CIB.

More obviously, the letter went on to recommend the Rowanmoor SIPP for this *offshore/offplan investment property* – but without any assessment of the investment itself. Indeed, nowhere in the letter is the investment (I assume it was TRG) even named. The letter said that:

> *"Whenever possible, we would wish to carry out a complete financial review, but at your explicit request, our advice is restricted to the consideration of establishing a Self Invested Personal Pension to allow you to invest in the offshore development of your choice. Should you wish us to consider any other areas, we would be very happy to provide further advice, in accordance with the costs and charges laid out in the client agreement."*

I have seen a number of other CIB suitability letters and all are identical in restricting the advice to the SIPP only without any assessment of the underlying investment in TRG. This mirrors what is set out as the general business model in the RealSIPP document I've mentioned above. So, I think it is probable that most, if not all, of the suitability letters that CIB provided to customers said the same thing, including the other letters sent to Rowanmoor by CIB. I invite Rowanmoor to tell me if that is wrong.

Several of the suitability letters I've seen show that CIB advised consumers that:

> *"We do not to believe that the use of a SIPP package matches your attitude to investment risk as confirmed in the fact find, nor will it best meet your agreed objectives and you are not in a position to give up your occupational benefits…"*

This doesn't change my view about CIB's approach to giving advice. The customers which CIB advised in this way still went on to open SIPPs with Rowanmoor and make investments in TRG. So, I'm not sure that the suitability letters reflect what the customers were really told. In any event, it's clear to me that the real issue here is the lack of regulated advice about the TRG investment and that consumers were highly unlikely to be making properly informed decisions. I think Rowanmoor should have realised this too whether or not some of the letters they received from CIB advised customers that the SIPP package wasn't suitable.

As I've highlighted earlier in this decision, the regulator issued an alert in 2013 setting out that this type of "restricted advice" did not meet regulatory requirements. It said the provision of suitable advice generally requires consideration of the suitability of the overall proposition, that is, the wrapper (here the SIPP) *and* the expected underlying investments in unregulated schemes (TRG). To be clear, this was not a new expectation and I would expect this to be something that everyone involved in the pensions industry would already have been aware of. Indeed, I'm satisfied that Rowanmoor was aware of this at the time and knew this to be a serious matter as it wrote to CIB in January 2013 after the regulator's alert saying that:

> *"We have historically pointed out to intermediaries that if they advise on the establishment of the SIPP, they must also advice* [sic] *on the underlying investment strategy. The FSA Alert not only confirmed this, but also places upon Rowanmoor Personal Pensions Limited, as SIPP operator, an obligation to "whistle blow" should we see examples where we believe such advice has not been given."*

I'm aware that the Rowanmoor board meeting notes from August 2009 show that CIB had reassured Rowanmoor's compliance director in a telephone conversation that CIB would be giving "full advice" going forward. I've referred to this above. I'm also aware that in response to Rowanmoor's letter in 2013, CIB provided written assurance to Rowanmoor that its "*process is (and was) already beyond the FSA announcement*".

But, as I've explained above, I don't think it was reasonable for Rowanmoor to rely on verbal assurances given by CIB in 2009. I think at best, the verbal assurances were a starting point – but only alongside other checks. And if it did rely on the verbal assurances, it should have been alarmed when it later saw suitability letters that clearly contradicted what it was told. Put simply, Rowanmoor should have known that CIB wasn't being truthful about this very serious matter.

So, although it wasn't the party that was giving advice here, as a regulated party, I think Rowanmoor ought to have been very concerned that there was evidence that CIB's business model involved the introduction of very large numbers of customers who were clearly receiving advice about the SIPP but not TRG. This was raised as a concern by Rowanmoor's board in 2009 and accepting business where full advice had not been given went against its own agreed policy.

To reiterate, it seems that Rowanmoor was sent at least some suitability letters by CIB and I think all will have demonstrated that CIB was restricting its advice to the SIPP and not TRG. But even if Rowanmoor wasn't sent suitability letters by CIB, I think it would have been fair and reasonable in the circumstances involved in these introductions for Rowanmoor to have requested and reviewed some letters.

If Rowanmoor had also checked the position with at least some customers introduced by CIB (as I think it should have done in accordance with good industry practice), I think that this too would have revealed the significant failures in the advice process. For example, if Mr T had been contacted by Rowanmoor, I think it's very likely that he would have confirmed that he had not been advised by CIB about TRG. In fact, he would probably have told Rowanmoor that he had no idea who CIB was at all. Given the evidenced practices of CIB, I think it's likely that other customers would have said the same if Rowanmoor had contacted them before it accepted Mr T's application.

Having discovered this, what should Rowanmoor have concluded?

Despite CIB being a regulated firm, Rowanmoor should have concluded that customers introduced by CIB were likely being "sold" on the idea of the TRG investment by

unregulated parties and, most importantly, not receiving advice about the TRG investment from CIB. The applications were being introduced by CIB in high volumes and it was likely that most of these applications would result in unsuitable SIPPs. As such, Rowanmoor should have concluded that it was not in accordance with its regulatory obligations, nor its own process requirements to accept introductions from CIB. I think it's reasonable to say that Rowanmoor should have arrived at this conclusion long before it accepted Mr T's application – some two years after it first accepted applications from CIB - and where concerns had been raised about the business practices of CIB).

The fact that Rowanmoor was not authorised to give advice didn't preclude it from meeting its regulatory obligations by thinking carefully about the quality of the business it was accepting. Declining to accept business doesn't amount to providing advice – and Rowanmoor could have declined to accept Mr T's application for a SIPP without providing investment advice.

As such, Rowanmoor didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr T fairly by accepting his application from CIB. To my mind, Rowanmoor didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr T to be put at significant risk of detriment as a result. I therefore conclude that it is fair and reasonable in the circumstances to say that Rowanmoor should not have accepted Mr T's application from CIB.

What about Rowanmoor's due diligence on the TRG investment?

Rowanmoor had a duty to conduct due diligence and give thought to whether an investment itself is acceptable for inclusion into a SIPP. That is consistent with the Principles for Businesses and the regulator's publications as set out above in the background section of my decision. It is also consistent with HMRC Rules that govern what investments can be held in a SIPP.

I accept that the TRG investment doesn't appear to be fraudulent or a scam. The development has in fact been built and is used by large holiday tour companies. But this doesn't mean that Rowanmoor did all the checks it needed to do. In fact, it appears to accept that independent local Cape Verdean legal advice wasn't obtained about the trust structure for holding individual properties in SIPPs.

However, given what I've said about Rownmoor's due diligence on CIB and my conclusion that it failed to comply with its regulatory obligations and good industry practice at the relevant time, I don't think it is necessary for me to also consider Rowanmoor's due diligence on TRG at this stage. I'm satisfied that Rowanmoor was not treating Mr T fairly or reasonably when it accepted his introduction from CIB, so I have not gone on to consider the due diligence it may have carried out on the TRG investment and whether this was sufficient to meet its regulatory obligations. As such, I don't make any findings about this.

Is it fair for Rowanmoor to compensate Mr T as a result of its failings?

I acknowledge that the Rowanmoor SIPP application form recommended that Mr T take independent financial advice and that he signed the 'transfer in application form' acknowledging that he had taken advice from a regulated financial adviser about this investment. He also signed a letter saying that he knew there were inherent risks involved in these transactions and would not pursue Rowanmoor for losses.

But, I don't think that it's fair and reasonable that Rowanmoor should have no responsibility for Mr T's losses simply because he signed the documents he did. As I've highlighted earlier, Rowanmoor's regulatory obligations meant that it needed to consider whether it was

acting fairly in accepting Mr T's introduction from CIB. This is different from providing investment advice. Rowanmoor needed to consider whether, in all the circumstances accepting the introduction from CIB was consistent with that duty.

As I've made clear, Rowanmoor needed to carry out appropriate due diligence on CIB and reach the right conclusions. It failed to do this. Just asking Mr T to sign declarations was not an effective way of meeting its obligations, or escaping liability where it failed to meet its obligations. In particular, I think Rowanmoor could take no meaningful comfort from the declaration stating that Mr T had taken advice in relation to the TRG investment given what it knew or ought to have known about CIB's business model. Likewise, when Mr T signed to say that he was aware of the "inherent risks", I do not consider it to have been fair or reasonable for Rowanmoor to conclude that he did so with a full understanding of what this meant - even if he had received a suitability letter from CIB – given what Rowanmoor knew, or ought to have known about CIB's business model. In fact, I have no reason to doubt Mr T when he says he wasn't told about any risks by anyone at all.

I accept that another regulated party was involved here - CIB. Rowanmoor says that it's CIB who is really responsible for Mr T's losses. But, our Service can't look at a complaint against CIB as it was dissolved and no longer exists as a regulated business. To be clear, I'm not making a finding that Rowanmoor should have assessed the suitability of the investment or the SIPP for Mr T. I accept that Rowanmoor had no obligation to give advice to Mr T, or otherwise ensure the suitability of a pension product or investment for him. I'm looking at Rowanmoor's separate role and responsibilities – and for the reasons I've explained, I think it failed in meeting those responsibilities.

Rowanmoor also says that Mr T would likely have proceeded with the transfer of his pension regardless of the actions it took, and CIB could have made an introduction elsewhere. Rowanmoor also says if it had not accepted business at the outset, CIB would have started making introductions to a different provider long before Mr T's application was made, and there is no evidence that other SIPP operators would have refused this business.

I don't find this a compelling argument. As I've explained, CIB's business model was based on submitting large volumes of business through Rowanmoor. If Rowanmoor had refused to accept introductions from CIB, I think it's likely that CIB would have entered a similar arrangement involving large volumes of business with another SIPP operator. Had it done so I think it's fair to assume that another SIPP provider wouldn't have processed the transaction if it had carried out sufficient due diligence on CIB in accordance with its own regulatory responsibilities and good industry practice.

Furthermore, there's no evidence that Mr T was so keen on the TRG investment that he would have submitted the application to Rowanmoor via a regulated advice firm other than CIB. If he had approached another advice firm, it's likely that he would have been told in no uncertain terms that he should leave his pension arrangement as it was, and I think he would have listened to that advice. Mr T has confirmed that if Rowanmoor had not accepted the transfer and he was made aware of the risks, then he would have left his pension where it was.

In any event, those scenarios are hypothetical. I think it's fairer to deal with what I consider to be the cold facts involved in this case – Mr T's application from CIB shouldn't have been accepted by Rowanmoor. Accepting the application has caused a loss to Mr T which I think it's fair and reasonable in the circumstances of this case to ask Rowanmoor to compensate him for.

I'm satisfied that Mr T would not have continued with the SIPP and investment in TRG, had it not been for Rowanmoor's failings, and would have remained in his existing pension

scheme. And, whilst I accept that CIB is responsible for initiating the course of action that has led to his loss, I consider that Rowanmoor failed to comply with its own regulatory obligations and did not put a stop to that course of action when it had the opportunity and obligation to do so.

Rowanmoor didn't have to carry out an assessment of Mr T's needs and circumstances in order to meet its regulatory requirements, but it did have to treat Mr T fairly under the Principles.

I am satisfied that in the circumstances, for all the reasons given, that it is fair and reasonable to conclude that Rowanmoor should compensate Mr T for the loss he has suffered.

In making these findings, I have taken into account the potential contribution made by other parties to the losses suffered by Mr T – including CIB. In my view, in considering what fair compensation looks like in this case, it is reasonable to make an award against Rowanmoor that requires it to compensate Mr T for the full measure of his loss. CIB was reliant on Rowanmoor to facilitate access to Mr T's pension. So, but for Rowanmoor's failings, Mr T's pension transfer would not have occurred in the first place.

As such, I am not asking Rowanmoor to account for loss that *goes beyond* the consequences of its failings. I am satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for *that same loss* is a distinct matter, which I am not able to determine. However, that fact should not impact on Mr T's right to fair compensation from Rowanmoor for the full amount of his loss.

In conclusion

Taking all of the above into consideration – individually and cumulatively – I think in the circumstances of this case, it is fair and reasonable for me to conclude that Rowanmoor should not have accepted Mr T's application from CIB. For the reasons I have set out, I also think it is fair to ask Rowanmoor to compensate Mr T for the loss he has suffered.

I say this having given careful consideration to the *Adams v Options* judgment but also bearing in mind that my role is to reach a decision that is fair and reasonable in the circumstances of the case having taken account of all relevant considerations.

Putting things right

My aim is to return Mr T to the position he would now be in but for what I consider to be Rowanmoor's failure to carry out adequate due diligence checks before accepting Mr T's SIPP application from CIB.

In light of the above, Rowanmoor should calculate fair compensation by comparing the current position to the position Mr T would be in if he had not transferred from his existing pension. In summary, Rowanmoor should:

- Calculate the loss Mr T has suffered as a result of making the transfer.
- Take ownership of the TRG investment if possible.
- Pay compensation for the loss into Mr T's pension. If that is not possible pay compensation for the loss to Mr T direct. In either case the payment should take into account necessary adjustments set out below.

- Pay £500 for the trouble and upset caused.

I'll explain how Rowanmoor should carry out the calculation set out at 1-3 above in further detail below:

1. Calculate the loss Mr T has suffered as a result of making the transfer ("the loss calculation")

Rowanmoor should calculate redress for Mr T's NILGOSC pension in line with The FCA's pension review guidance in October 2017 (https://www.fca.org.uk/publication/finalised- guidance/fg17-9.pdf) using the most recent financial assumptions published.

2. Take ownership of the TRG investment

In order for the SIPP to be closed and further SIPP fees to be prevented, the investment needs to be removed from the SIPP. To do this, Rowanmoor should calculate an amount it is willing to accept as a commercial value for TRG and pay that sum into the SIPP and take ownership of the relevant investments. This amount should be taken into account for the loss calculation.

If Rowanmoor is unwilling or unable to purchase the investment the value of it should be assumed to be nil for the purposes of the loss calculation.

Provided Mr T is compensated in full. Rowanmoor may ask Mr T to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the investment. That undertaking should allow for the effect of any tax and charges on the amount Mr T may receive from the investment and any eventual sums he would be able to access from any costs in drawing up the undertaking.

If Rowanmoor does not take ownership of the of the TRG investment, and it continues to be held in Mr T's SIPP there will be ongoing fees in relation to the administration of that SIPP. Mr T would not be responsible for those fees if Rowanmoor had not accepted the transfer of his personal pension in to the SIPP. So, I think it is fair and reasonable for Rowanmoor to waive any SIPP fees until such time as Mr T can dispose of the TRG investment and close the SIPP.

3. Pay compensation to Mr T for loss he has suffered calculated in (1).

Since the loss Mr T has suffered is within his pension it is right that I try to restore the value of his pension provision if that is possible. So, if possible, the compensation for the loss should be paid into his SIPP. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance. Payment into the pension should allow for the effect of charges and any available tax relief. This may mean the compensation should be increased to cover the charges and reduced to notionally allow for the income tax relief Mr T could claim. The notional allowance should be calculated using Mr T's marginal rate of tax.

On the other hand, Mr T may not be able to pay the compensation into the SIPP. If so compensation for the loss should be paid to Mr T direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income. Therefore, the compensation for the loss paid to Mr T should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr T's marginal rate of tax in retirement. For example, if Mr T is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction

in the total amount equivalent to the current basic rate of tax. However, if Mr T would have been able to take a tax-free lump sum, the notional allowance should be applied to 75% of the total amount.

I appreciate that Mr T has been paid some compensation by the FSCS. But, like the investigator before me, I don't think I can ignore the terms of the reassignment agreement he had to sign as part of his claim to the FSCS. To do so would mean that Mr T would not be compensated for Rowanmoor's failings – which, as I've said above, has caused his entire loss irrespective of the separate roles and obligations of other parties.

So, I will make no allowance for what has been paid by the FSCS and award Mr T compensation for the full loss he has suffered. He will not benefit from 'double-recovery' as a term of his reassignment from the FSCS was that he will need to pay back any monies it awarded to him.

If Rowanmoor believes other parties to be wholly or partly responsible for the loss, it is free to pursue those other parties. So compensation payable to Mr T should be contingent on the assignment by him to Rowanmoor of any rights of action he may have against other parties in relation to his transfer to the SIPP and the investments.

4. Pay £500 for the trouble and upset caused.

Mr T has been caused some distress and inconvenience by the loss of his pension benefits. This is money Mr T cannot afford to lose and its loss has caused him to lose all confidence in pension providers. I consider that a payment of £500 is appropriate to compensate for that upset.

interest

The compensation must be paid as set out above within 28 days of the date Rowanmoor receives notification of his acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% simple per year from the date of my final decision to the date of settlement if the compensation is not paid within 28 days.

my provisional decision

For the reasons given, my provisional decision is that I uphold Mr T's complaint against Rowanmoor Personal Pensions Limited.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £150,000, plus any interest and or costs that I think are appropriate. If I think that fair compensation is more than £150,000, I may recommend that the business pays the balance.

The full extent of Mr T's losses have not yet been calculated (as set out above), but it is possible his loss may exceed the £150,000 award limit.

***Decision and award*:** I provisionally uphold the complaint. I think that fair compensation should be calculated as set out above. My decision is that Rowanmoor should pay Mr T the amount produced by that calculation – up to a maximum of £150,000. It should also pay any interest accrued if the compensation is not paid within 28 days of acceptance of a final decision by Mr T.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I recommend that Rowanmoor pays Mr T the balance.

This recommendation is not part of my determination or award. Rowanmoor doesn't have to do what I recommend. It's unlikely that Mr T can accept my decision and go to court for the balance. Mr T may want to get independent legal advice before deciding whether to accept this decision.

I now invite responses from the parties.

Ross Hammond
Ombudsman