DRN-3079642

Complaint

Mr J complains about an investment of £40,000 he made into Green Oil Plantations (GOP) in 2012, in a Self Invested Personal Pension (SIPP) operated by The IPS Partnership plc ("IPS", which now trades as The James Hay Partnership). Mr J says he was a retail investor (not sophisticated nor high net worth), did not wish to take high levels of risk and did not understand GOP to be high risk (which it is now clear it was). He says IPS is responsible for the loss he suffered through making the investment because:

- IPS failed to act in his best interests
- IPS failed to carry out sufficient due diligence into the suitability or appropriateness of GOP, when it should have carried out additional and extensive due diligence, due to GOP being unregulated, and possibly a UCIS.
- Failed to properly warn him about the appropriateness of the investments or consider with him the associated risks of investing in an illiquid fund such as GOP.
- Failed to consider how GOP would operate.
- IPS unreasonably attempted to exclude its liability.
- IPS failed to adequately explain (or at all) the content or effect of the signing of the High Net Worth Statement he signed, particularly in light of the fact there was no financial advisor involved in the investment.
- IPS failed to properly investigate him or his desired investment outcome.
- IPS failed to act in a manner expected of a regulated firm.

Background

Mr J opened a SIPP with IPS in July 2010. He switched his existing SIPP to IPS. His existing investments were moved to IPS "in specie". The switch was done on the advice of his Independent Financial Advisor (IFA). The application from also stated that the IFA was to be the investment manager to the SIPP.

GOP

GOP was an investment which aimed to deliver returns by cultivating a plantation of Millettia Pinnata trees, to produce green oil, animal feed, fertilizer, honey and carbon credits. The plantation was in Australia, and aimed to use intensive farming methods to achieve high yields.

The investment was aimed at UK investors, and was first marketed in March 2010.

Investment in GOP came with various options. The one Mr J took was a "*Tenancy and Buyback Agreement*". This involved Mr J taking a lease over a plot of the plantation, and then renting the plot back to GOP, with it managing the plot for the duration. The duration of the arrangement was five years and GOP offered a total return on invested capital of 80%, and a buy back at the purchase price at the end of the term (in other words, a return of capital). It was explained as follows:

Your first years returns will be paid in 2013 and every year thereafter, on the anniversary of your investment which is stated in your application and buyback contract.

You will receive the following rate of returns which is always based on the capital invested:

2013 = 5%
2014 = 10%
2015 = 13%
2016 = 15%
2017 = 37%

A month prior to each anniversary you will receive a letter and a statement from us confirming the returns due, and we will ask you to verify the bank account details you would like it to be paid into.

IPS says it considered the following documents, when deciding whether or not to accept GOP:

- A letter dated 15 December 2010 from GOP to IPS, confirming the land the plantation is on was designated for agricultural use only.

- A GOP brochure – "A Clean and Ethical Way of Powering the World", produced by a UK agent for GOP called The Ideas Factory. The brochure has a 2010 copyright date.

- A GOP Company Information Pack. This is a 15 page document which is undated but contains a number of pieces of correspondence from June 2010. The pack includes:

    - Details of the company and its officers.

    - Details of the land on which the plantations were based, with confirmation of the title registration.

    - Details of the professional bodies working for GOP – solicitors in the UK and Australia, accountants, auditors etc.

    - Two letters from an Australian insurance broker, detailing the insurance taken out by GOP.

    - Various letters of support from Australian banks, law firms, politicians and local associations.

    - A letter from an electricity company, confirming its interest in purchasing energy produced by GOP's product.

I have seen copies of each of these documents. I have also seen the administrator's report, dated 5 June 2013, and a third party due diligence report, dated "*spring 2012*". The administrator's report clearly post-dates IPS's acceptance of GOP into Mr J's SIPP and I am not aware the due diligence report was relied on by IPS – it was found during the course of our investigation of Mr J's complaint.

The third party due diligence report details a site visit to GOP's plantations in Australia by a UK business which specialises in reporting on alternative investments. The 53 page report

sets out all stages of the investment and the projected returns. It features photographs of the plantation, nursery, and the harvesting and processing machinery. It explains the first harvest is due in late 2012 and the anticipated return from that harvest.

The administrator's report confirms GOP went into administration in April 2013. Essentially it says GOP ran out of money due to it having to pay the high promised returns to investors and fees, and the plantation having failed to yield its first harvest by that time, as a result of various delays. The report says:

"The majority of products were structured such that fixed returns were paid to investors from the first investment anniversary. However, the first harvest of green nuts was not initially forecast to be achieved for a period of 2 years (and in practice, may be significantly longer) Furthermore, only one plot was planted in 2010, following delays caused by, inter alia, bad weather (which delayed planting) and an FSA investigation in the UK which led to a delay In raising funds (and therefore making funds available to GOPH for the purchase of land) The remainder of the plots (with the exception of plot 13) were planted over an extended period and required the same maturity period. This resulted in the obligations to pay returns to investors outstripping income generation.

The business model relied on initial forecasts for the Millettia plantation that showed high yields after two years of tree growth. This was based on a plantation operating model that involved growing the trees at a high density (supported by ongoing irrigation and addition of fertiliser). We understand that this is an untested technique for this species and scale of plantation the initial forecasts also relied on income from supplementary products, primarily animal feed and fertiliser. To date, these supplementary products have not generated revenue and there are material uncertainties as to whether these are capable of generating significant net revenue.

Additionally, there were high upfront establishment costs and ongoing fees. These included circa 15 per cent commission and fee payments on investments raised and a 15 per cent plantation management fee (which was levied on all costs incurred by GOPH, including land acquisition costs)."

The FSA investigation referred to was a review of GOP by the FSA in 2010, to ascertain whether or not GOP was a collective investment scheme. The administrator's report says the FSA initially concluded GOP was not a collective investment scheme but then, in May 2013 (i.e. after GOP had entered administration), concluded it was.

In 2014 GOP went into liquidation.

IPS's due diligence on GOP

In addition to referring to the documents listed above, IPS has told us:

- The investment was identified as a non-standard investment. This in itself is not a red-flag as non-standard investments are perfectly permissible. But IPS carried out additional checks over and above ascertaining that the investment was permissible and eligible for inclusion in a registered pension scheme (e.g. is not taxable moveable property as defined by HMRC).

- As the proposed investment was leasehold plots of land, this was deemed permissible and eligible. Beyond this, having established that it was a non-standard investment, IPS had to consider whether it was prepared to buy the asset on behalf of Mr J. As Mr J was reasonably deemed high net worth (as

validated by his FCA- regulated financial advisor as well as by Mr J himself) and was investing less than 10% of the value of his pension rights in the investment, IPS allowed the investment.

- IPS carefully reviewed the investment documentation at a senior management level and within its compliance and fund vetting teams, asking a number of questions to GOP's UK registered office that were satisfactorily answered. The proposed investment seemed legitimate and given the supporting documentation there was no indication that the investment was linked to fraudulent activity.

- It is not unreasonable to say in the circumstances that Mr J would, or should, reasonably have been aware of the risks of making an investment in GOP. Amongst other crucial declarations, the High Net Worth Statement Mr J signed (I have set out details of this below) specifically makes it clear that such an investment could mean a loss of assets.

- IPS is not regulated or authorised to provide financial advice. IPS did not endorse GOP as suitable for Mr J as this was neither expected by the regulator nor inside its regulatory mandate. It was for Mr J to decide if the investment was suitable as an investment for his SIPP based on his attitude to risk.

- The leases on the land were registered at the Australian land registry in the name of the investor's SIPPs. Even following the 2014 "Dear CEO" letter a similarly presented new investment would have been approved for purchase within its SIPP because its controls that meant only high net worth investors could invest subject to a percentage cap on the value of the investment when measured against their overall SIPP value.

- Where a valuation is required, IPS would ask the scheme member (as co-Trustee) to contact the investment administrator and arrange for this to be supplied. This is covered in the terms and conditions of the IPS SIPP booklet under the section headed 'Statements and Valuations' where it says that "*Valuations and statements for the investments you choose to make with your IPS SIPP will depend on the providers of these investments and you will need to agree this with them*".

Mr J's investment in GOP

On 27 January 2012 Mr J sent the following letter to IPS:

"On my behalf please arrange for a £40,000 pension scheme investment into the Green Oil Plantations 5 Year Project (lease purchase & buyback). I enclose a partially completed application and an investment prospectus. Please forward completed documentation directly to the company.

I understand that you may need to check my eligibility to invest in this product and if so please contact my financial adviser who will be able to provide this confirmation."

Mr J applied to invest £40,0000 – which amounted to 1,852 trees (one hectare). I understand the total value of his SIPP at this time was around £450,000.

Mr J signed IPS's *Statement For Self-Certified High Net Worth Individual* on 17 February 2012. This required him to declare that he met the definition of a high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion)

Order 2005 (that definition was set out in the document). It also required him to declare:

"I accept that I can lose my property and other assets from making investment decisions based on financial promotions.

I am aware that it is open to me to seek advice from someone who specialises in advising on investments"

Mr J was also asked to complete and sign a further form by IPS, which I'll refer to as "the questions". This was signed and dated 17 February 2012, and asked the following of Mr J (his answers in brackets):

1. *Please explain how you became aware of the proposed investment and confirm that you fully understand that this is an unregulated investment and cannot be marketed to retail clients in the UK.* ("received promotional literature")

2. *In the preceding financial year did you have an income of £100,000 or more? (if yes, please provide a copy of your P60 and any other supporting documentary evidence)* ("no")

3. *In the preceding tax year did you own net assets of £250,000 or more? Not including your primary residence or any loan on it (if yes, please provide a detailed list of assets held and their value)* ("yes")

4. *Do you understand that the James Hay Partnership has NOT provided any advice in relation to your investment?* ("yes")

5. *Have you read and understood the Terms and Conditions of the investment?* ("yes")

6. *Do you understand the charges associated with the investment*? ("yes")

7. *Do you understand that higher risk investments can yield higher returns but there is no guarantee and you may get back less than you invested?* ("yes")

8. *Are you comfortable with the level of risk you are taking with this investment?* ("yes")

9. *Do you understand that the investment may be difficult to sell and this could impact on your ability to take benefits from your pension?* ("yes")

10. *Do you understand that If you die the investment may be difficult to sell and your beneficiaries may suffer financially?* ("yes")

11. *Do you understand that the investment's past performance is not a guide to future performance?* ("yes")

These forms were forwarded by email to IPS by Mr J's IFA, with the following covering note:

"[name of IPS staff member], *please find attached high net worth documents, the originals have been sent to you by post. Please confirm when you have sent the payment for this investment."*

On 20 February 2012 Mr J's IFA also sent the following letter to IPS:

"I have dealt with this client for 10 years and can confirm that he has personal investment

assets, excluding primary residence and pension funds, valued in excess of £250,000. I am of the opinion that this client can be considered a 'High Net Worth Individual' in accordance with the FS&MA 2000 qualification."

IPS has also provided us with copies of an email exchange which took place with Mr J's IFA prior to this. These show Mr J's IFA called IPS to ask what documents would be needed, for the GOP investment to go ahead.

On 21 February 2012 IPS confirmed £40,000 had been sent to GOP. Mr J received £997.76 from the liquidator of GOP on 15 October 2014 and £560.04 on 15 June 2015.

The complaint

Mr J's representative complained on his behalf to IPS. IPS did not uphold the complaint. Mr J's representative then referred the complaint to this service. In addition to repeating the points of complaint summarised above it said:

- IPS had not met its obligations under COBS 10 of the FCA Handbook.
- There are a number of reports issued by the FSA and FCA about the duties and obligations of SIPP providers, which are relevant to this complaint.
- Mr J had no experience of this type of investment.
- IPS did not properly explain it was carrying out the SIPP investment on an 'execution only' basis.
- Mr J was unaware what the ramifications of signing the 'High Net Worth Statement' were and it was not properly explained.
- Being an Unregulated Collective Investment Scheme (UCIS), GOP should not have been promoted to Mr J.
- IPS had breached FCA Principles 2, 3 and 6.
- By allowing its name to appear on the GOP literature, IPS (James Hay) had endorsed GOP.
- IPS had failed to highlight the risks of the investment to Mr J.

Our investigator's view

Our investigator concluded Mr J's complaint should not be upheld. He said, in summary:

- It's clear from the various submissions and statements that IPS accepts it had to think carefully about which investments it would allow in its SIPPs.
- Before accepting Mr J's business, IPS had:
    - Considered whether, according to HMRC's rules, GOP could be held within a SIPP.
    - Identified the investment as non-standard. And conducted additional checks as a result.

- Reviewed the GOP marketing material at a senior management and compliance level.

- Asked GOP questions to further understand the investment and satisfy itself that it wasn't fraudulent.

- Requested that Mr J complete a High Net Worth Statement.

- It's important to emphasise that, at the time, Mr J's IFA was regulated by the FSA. IPS could take a significant level of comfort from this alone. IPS would be aware that regulated advisers are under many regulatory obligations to ensure they have their client's best interests in mind when providing their services. He had not seen any negative commentary about the IFA involved that would have put IPS on alert that it should not deal with it.

- IPS also received a letter from the IFA confirming the IFA had known Mr J for 10 years and he met the FSMA definition of a high net worth individual. So IPS wouldn't necessarily have had concerns about the promotion of this investment to Mr J.

- IPS was not required to ensure an investment was suitable for its customers. It did have a responsibility to run certain checks, for example to ensure its customers weren't entering arrangements that were clearly fraudulent. But IPS wasn't required to reject an investment simply because it was high risk or esoteric

- GOP was a freehold owner of the land that it would ultimately sub-lease to investors through its Australian subsidiary (governed by Queensland law). IPS confirmed that the leases on the land were registered at the Australian Land Registry in the names of the investors' SIPPs. As of February 2012 (the date of Mr J's investment) 386 hectares of land had crops planted on them. So there was legal ownership of land, and there were crops planted on that land. The way GOP intended to generate returns relied on planting crops on plots of land. Those plots of land were real, ownership was genuine and crops had been planted.

- GOP proposed to use a number of innovative farming techniques in order to generate the high anticipated returns. Whilst using untested farming techniques might increase the risk factor the investment presented, he did not think it would necessarily mean the investment should not be accepted in Mr J's SIPP.

- The five year plan projected very high returns. There is an intrinsic link between risk and reward. And, in his opinion, GOP was a very high risk investment. He would expect this to be rewarded with the potential for high returns.

- It could be argued that the level of return on offer was such that IPS ought to have enquired further to understand how these were to be generated. But GOP proposed to monetarize several different aspects of the Millettia plant to extract maximum value from the plantations. So although the returns were high, GOP's explanation of how this was going to be achieved was plausible.

- In the disclaimer section of the application form for the investment, GOP sets out:

"This does not guarantee that the company will be a success or that any investment is not liable to loss"

- It did not therefore appear that GOP was guaranteeing returns. So, on balance, taking into account other findings he had made about GOP, he did not think the high returns alone would give IPS reason not to accept the GOP investment.

- He had also taken into account the "spring 2012" third party due diligence report referred to above. The business which produced that report is a research company that specialises in supporting financial intermediaries, providing information on investments. The report explains:

  "In January 2012 [business name] *carried out their first annual inspection visit to the green oil plantations site in Queensland, Australia. The purpose of the visit was to carry out due diligence and review the operation…"*

- The business specialised in researching alternative assets. Its report raised no concerns with GOP's operations. He was not suggesting that IPS took this into account when making the decision whether or not to accept GOP in Mr J's SIPP. But it is relevant that a specialist alternative asset research firm had no concerns with the way GOP operated in January 2012 after an on-site visit. This led him to believe IPS, as a SIPP operator, could fairly have reached the same conclusion following its due diligence.

IPS accepted this view. Mr J's representative did not – but it did not make any significant new submissions.

My provisional decision

I recently issued a provisional decision. In that decision I identified a number of relevant considerations which were, in summary:

- The FCA's Principles for Businesses – in particular Principle 2, 3 and 6

- The relevant law and what this says about the application of the FCA's Principles and the approach an ombudsman is to take when deciding a complaint. This included *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) and *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878).

- The High Court judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch) and the Court of Appeal judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474.

- Regulatory publications, which reminded 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.

I concluded that, ultimately, in determining this complaint, I needed to consider whether

IPS 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, to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'd look to the Principles and the regulatory publications to provide an indication of what IPS could have done to comply with its regulatory obligations.

I then set out my provisional findings as follows:

What did IPS's obligations mean in practice?

In this case, the business IPS 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.

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 a particular investment is an appropriate one for a SIPP.

I am satisfied that, to meet its regulatory obligations, when conducting its business, IPS was required to consider whether to accept or reject particular applications for investments, with the Principles in mind.

Should IPS have accepted Mr J's investment application?

As a preliminary point, I think it is important to highlight that some of the points Mr J's representative made, when making the complaint on his behalf, are misplaced. As mentioned, IPS did not have to ensure GOP was a suitable investment for Mr J – and it could not give him advice. Nor did it have to require Mr J to undertake a formal appropriateness test – GOP was not a type of investment to which such tests applied at the time. I also note Mr J's representative says no financial advisor was involved in the investment in GOP. But that is not supported by the available evidence (I will expand on this below).

Having carefully considered the available evidence, I think IPS should have done more to ensure its checks on GOP were independent – rather than simply relying on material produced by GOP or its agents, or answers given by GOP to its questions. I also think there were some points of concern about the investment which ought to have been apparent to IPS. But there were also several things it could take comfort from and, taking into account the full circumstances of this complaint, I do not think it would be fair and reasonable to say IPS should have refused Mr J's investment instruction. I have set out my reasons for reaching this conclusion below.

IPS's due diligence

IPS says it identified GOP as a non-standard investment and carried out additional checks over and above ascertaining that the investment was permissible and eligible for inclusion in a registered pension scheme. It has detailed the steps it took, which involved considering a promotional brochure for GOP and an information pack provided by GOP, and asking questions of GOP.

I think this went a long way to meeting IPS's regulatory obligations and the standards of good practice, and IPS could have taken some comfort from what it saw, whilst also identifying some points of concern. I will detail the latter first.

The investment structure essentially involved the investor taking a lease of a plot of the overall plantation, and renting it back to GOP (and the return being paid as rent). Thus the investor was the "landlord" and GOP the "tenant". The brochure explains:

"A quarter hectare is priced at £10,000, a half hectare £20,000 and a full hectare £40,000. You can buy multiples of the sizes available. The 8 year project currently has availability of quarter, half and full hectares.

The lease is fully registered in your name at the Australian land registry office for a one off registration fee of £550.00. The leaseholder has total freedom to sell, reassign, exploit the land themselves, appoint someone to do the farming on their behalf or let the plot to Green Oil Plantations.

You are given the choice to enter into a tenancy agreement where you become the landlord and Green Oil Plantations the tenant.

The landlord has the flexibility to give a 3 month's notice to exit the tenancy any time during the term of the tenancy.

The lease purchase amount will be refunded to the landlord at the end of the tenancy term.

Green Oil Plantations can pay such rental returns when they utilise each rented plot for the management and exploitation of your tree's produce."

Mr J entered into such a tenancy agreement, for a five year term, and was offered a very high return for doing so – 80% - meaning Mr J was due to receive £72,000 after five years.

By way of explanation as to how this return will be achieved the brochure says:

"Each plot produces the following products which can be sold locally in Australia.

- *Green Oil – this can be sold for the production of electricity or Biofuel*
- *Animal Feed*
- *Bio-Fertiliser*
- *Honey*
- *Carbon Credits*
- *Bio Herbicide*

Unique Features Of Our Intensive Millettia Plantations:

- *High density planting*
- *High yielding genetics*
- *High level of soil nutrition to encourage higher oil content of seed*
- *Secure and superior irrigation system installed, utilising channel water from the nearby dam which never runs out (not relying on natures sometimes unreliable rainfall)*
- *High pollination rate achieved with additional bee colonies introduced*
- *Superior pruning techniques to induce more flowering and subsequently more seed*
- *Superior mechanical harvesting techniques utilised*
- *Seed processed within 12 hours of harvesting to achieve higher oil recovery*
- *Superior processing equipment used to achieve highest extraction rate*

The plantation will produce 3 crops per year and the first crop will take place in 2012.

Crude Millettia oil prices are based on the Crude Palm oil price which is indexed on the stock market. Palm oil can be used for biofuel and electricity production however; its main use is for food. Over 90% of the food on the supermarket shelves contains palm oil. Non food oils like Millettia oil will fetch a higher price than palm oil as it is not affecting the food chain.

Our figures have been calculated on a price 25% below today's crude palm oil prices.

The price we can achieve selling our primary product, green oil, will continue to rise in the coming years. As you can see from the above, we will have the ability to choose who we sell the oil to and in what form – this is unprecedented for an energy product – as the demand can only increase substantially."

In my view, although there is some detail about how GOP plans to generate returns, the basis of the projected return to those, like Mr J, entering a Tenancy and Buyback Agreement isn't completely clear. All the brochure effectively says is lots of things can be done with the products of the plantation and the oil price is high and will rise. So there was a risk consumers might be misled about the potential returns, or at least did not have sufficient information to assess their viability.

It is also clear from the brochure that GOP (or the return generated by the plantation) is to absorb all the costs, as the following is said:

***"Q:** What are my ongoing costs should I choose to appoint GreenOil Plantations to manage my trees and land?*

***A:** All costs and taxes will be covered by Green Oil Plantations should you choose to enter into a contract with us. Your only costs are your personal tax liabilities. We will be able to cover such costs from the revenue generated from your trees. We will also take an insurance cover at our own cost to protect your trees and any loss of returns."*

But no detail of these costs, which would assumedly include planting, maintenance, harvest, transport, insurance etc is given. The return was also payable on the sum invested, in Sterling. So the currency risk was shouldered by GOP too. It is not clear how all this is factored into the projected returns and, in the absence of this information, consumers may not have had sufficient information to fully assess the investment.

In respect of the insurance, the brochure says:

"Green Oil Plantations will also take at its own cost an annual comprehensive insurance to cover any risks of plantation damages.

For landlord protection our insurance will also cover loss of rental income.

***Q:** How does the insurance cover work?*
***A:** We commit to take a comprehensive insurance cover to protected* (sic) *the plantation and crop in event they are affected. This insurance will be put in place for those clients who appoint Green Oil Plantations to manage their plot through the tenancy or buyback contracts.*

The costs of such insurance will be the full responsibility of Green Oil Plantations."

But it is not clear how insurance would cover things to the extent described by GOP i.e. ensure that the very high returns promised would be paid. This is a further point of

concern.

Finally, it is clear from the brochure that GOP was planning to pay returns before it generated any. The brochure (which, as a reminder, was dated 2010) contains several testimonials from investors who have already been paid their first year returns. But the brochure also confirms that the first harvest is not due until 2012. It is not clear how these returns are being funded.

So there were a number of points of concern. IPS's due diligence also seems to have been limited to considering the brochure, the Company Information Pack and some questions asked of GOP. But it would have been good practice for the due diligence to be independently produced/verified. And so it would have been fair and reasonable for IPS to do this.

However, there is insufficient evidence to show the concerns should, fairly and reasonably, in the circumstances of this complaint, have led to the conclusion GOP should not be allowed in Mr J's SIPP at all or that independent checks would have revealed reason to refuse the investment.

As mentioned, IPS could have taken some comfort from what it saw. There were details of the title to the plantation land, credentials of those involved with GOP, letters of support from reputable sources, confirmation some insurance had been taken out and confirmation of the appointment of businesses which could reasonably be expected to be involved in the day to day running of a business such as GOP.

I think IPS could reasonably have concluded from its due diligence that Mr J's SIPP would acquire title to an asset. There was sufficient information to ascertain GOP had title to the land it was leasing, and UK and Australian law firms had been appointed to deal with the registration of title.

I think it is also clear from the third party due diligence report and the administrator's report that the investment operated as claimed. And so whilst it seems IPS had no independent confirmation of this when it decided to accept the investment in Mr J's SIPP, it seems this could have been sought, and obtained.

Although the projected returns were very high there was, as mentioned, some basis for the projections in what IPS saw. And there is much more detail in the third party due diligence report. So I think it is reasonable to say that further independent checks at the time of Mr J's investment would have revealed more detail about how GOP intended to generate the returns it projected. There would not, in my view, have been sufficient to suggest the projected returns might be illusory – only that there was considerable risk, as the returns required successfully obtaining several products from the plantation and intensive farming methods which did not appear to have been used in relation to the crop previously.

The following disclaimer was also given in the brochure:

"GREEN OIL PLANTATIONS LTD is a company offering Agricultural land lease Project opportunities where ethical investors have the complete freedom to exploit the plot themselves or rent their plot out for the purpose of receiving a rent return in our 8 year project or receive capital appreciation on their trees in our 5 year project. It is offering these projects on a best efforts basis and the information supplied within this brochure reflects management's fair judgment of the returns, the mechanics and the commercial markets of the project at the time of writing.

As with all investments there are risks and these risks are taken by the purchaser. The

company is of good standing with a management team of 30 years' experience in the development of sustainable commercial Green Oil producing plantations.

This does not guarantee that the company will be a success or that any investment is not liable to loss."

So there was a warning that the projected returns might not be achieved and were based on GOP's judgement.

Finally, the brochure also said more information available on request – and GOP appears to have responded to the requests IPS made. So I think it would have been fair and reasonable for IPS to conclude that further information would have been available to Mr J, had he requested it.

So I think there was reason to be cautious about accepting GOP. But I do not think there is sufficient evidence to say the investment should not have been allowed in the SIPP at all, no matter what the circumstances.

IPS was cautious about accepting GOP in Mr J's SIPP. And it took steps which in my view were fair and reasonable in the circumstances.

The involvement of an IFA

Mr J's IFA was UK based, FSA regulated, long established, and appears to have had the regulatory permissions required to give advice on personal pensions and other investments. I have not seen any evidence to suggest that IPS had reason to be concerned about the IFA. I have seen no evidence, for example, of it having introduced unusually large volumes of business or of it specialising in unusual unregulated investments. Mr J's SIPP was conventionally invested, largely in mainstream managed funds. So I think it was fair and reasonable for it to deal with the IFA with confidence, and to assume the IFA was meeting its regulatory obligations.

When the SIPP was opened, the IFA was appointed as investment manager to the SIPP. So I think IPS could reasonably assume any investment decisions made thereafter were on the advice of the IFA, unless there was good reason to think otherwise.

In this instance, Mr J (rather than the IFA) did write the letter asking for an investment to be made in GOP. But his IFA was also involved. The IFA asked about IPS's requirements for allowing the investment in GOP in Mr J's SIPP. It called IPS about this, exchanged emails with IPS, and sent the completed High Net Worth Statement and the questions to IPS. It also endorsed the High Net Worth Statement in a letter to IPS and enquired as to when the investment would be made. This all suggests the IFA was involved with the transaction from the outset. And I think it would have been reasonable for IPS to therefore assume the IFA was giving Mr J advice (although I appreciate the IFA may not actually have given advice). Like the investigator, I think IPS could have taken significant comfort from this, given the significant regulatory obligations on the IFA.

Even if IPS was aware the IFA was not giving advice, or should have been aware the IFA was not giving advice, I still think it could take significant comfort from the IFA's involvement. The IFA was clearly aware of the detail of Mr J's proposed investment in GOP, and there was nothing to suggest the IFA had advised against the investment or otherwise discouraged it. On the contrary, the IFA took an active interest in ensuring the investment went ahead. There was nothing to suggest it had distanced itself from the investment. And in these circumstances the IFA would still have had significant regulatory obligations.

Overall, I think it was fair and reasonable for IPS to conclude Mr J's IFA was involved with the transaction and that IPS therefore took the fair and reasonable step of ensuring a regulated IFA was involved (which there appears to have been no reason for it to have concerns about), when making the decision to allow the investment in Mr J's SIPP.

The High Net Worth Statement

I think allowing the investment in GOP on the condition Mr J was a high net worth investor, was a further fair and reasonable step to take, to counter any risk of consumer detriment here.

Although GOP was not known to be a UCIS at the time, and so no formal rules about its promotion applied, IPS could take comfort from Mr J meeting the criteria for the promotion of such investments (which are often similar in nature to GOP) and that Mr J was therefore in the category of investor for which a small exposure to an investment like GOP might be suitable.

Mr J's representative says he did not understand the High Net Worth Statement or its implication. But there is insufficient evidence to show IPS ought to have known or suspected this. It was written in clear, plain language and I've seen nothing to show Mr J gave any indication that he did not understand it. Furthermore, his IFA was involved and endorsed the statement. So I think it was fair and reasonable for IPS to rely on the High Net Worth Statement when making the decision to allow the investment in Mr J's SIPP.

The questions

IPS asked 11 questions of Mr J, which I have set out above. In my view, this was a fair and reasonable step to take. The questions sought to confirm Mr J did meet the definition of a high net worth investor, had taken steps to understand the investment and its risks, and understood IPS's role. Clear, plain language is again used and I think, again, that there is insufficient evidence to show IPS ought to have known or suspected Mr J did not understand the questions asked of him. I therefore think it was fair and reasonable for IPS to rely on the questions, when making the decision to allow the investment in GOP in Mr J's SIPP.

Limited exposure to GOP

When making the decision to allow the investment in GOP in Mr J's SIPP, IPS says it also had regard to the amount of Mr J's SIPP which was to be invested in GOP, and noted that the investment in GOP represented less than 10% of Mr J's overall SIPP. In my view, this was a further fair and reasonable step to take – particularly when considered alongside the High Net Worth Statement and the questions.

Overall it seems IPS made the decision to allow the investment in GOP in Mr J's SIPP on the reasonable understanding:

- *His regulated IFA was involved in the transaction, and there was no reason to be concerned about that IFA.*
- *Mr J met the definition of a high net worth investor, and he and his IFA agreed to him being categorised as such.*
- *Mr J had taken steps to understand the investment and its risks, and understood the role of IPS.*
- *Mr J was investing a small portion of an already established SIPP, which was otherwise conventionally invested.*

And so I think a fair and reasonable amount of caution was exercised here and, in the particular circumstances of this complaint, it was fair and reasonable to allow the investment in GOP. So, all in all, I do not think it would be fair and reasonable to conclude that IPS should not have accepted Mr J's application to invest in GOP.

Responses to my provisional decision

IPS accepted my provisional decision, and made no further comments.

Mr J's representative did not accept my provisional decision. It said, in summary:

- The decision does not take into account fully the failure of IPS as the SIPP operator, in particular in the duty to carry out a thorough due diligence exercise on GOP before allowing Mr J to invest in a high-risk product.

- IPS had failed in its duty to carry out proper due diligence on GOP. It does not agree with the suggestion that because IPS reviewed the GOP Brochure, the Company Information Pack and asked GOP limited questions it has complied with its due diligence obligations.

- Due to its omissions, IPS were unable to recognise that this investment was not genuine and a total scam.

- It is obvious that IPS had not fully understood the nature of the investment and the risk involved before allowing the client to include GOP investment as part of his SIPP. IPS concluded that the investment was a land investment. But the evidence clearly demonstrates that this was not a land transaction at all. Had the IPS undertaken adequate due diligence it should have reached this conclusion and would not have allowed Mr J to invest.

- Any competent attempt at due diligence by IPS (or an independent third party) would have come to the same conclusion as the administrator's report dated 5 June 2013, namely that "*to date, these supplementary products have not generated revenue and there are material uncertainties as to whether these are capable of generating significant net revenue*"

My decision

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

I have not seen sufficient evidence to show that an appropriate level of due diligence, carried out at the time of Mr J's application to invest in GOP, would have revealed GOP was not genuine, and a "total scam" as Mr J's representative suggests. I remain of the view set out in my provisional findings. I think there were points of concern which should have been apparent at the time – but not to the extent that it ought to have been concluded the investment was not genuine. And there should have been some independent verification of things. But I remain of the view that would not have led to the conclusion, in the circumstances of this particular case, GOP should not have been allowed in Mr J's SIPP *at all*.

I note the quote from the administrator's report referred to by Mr J's representative. But that seems to me to be an assessment of how the investment had performed. And the possibility of poor performance – or that fact the investment was high risk - were not

sufficient reason, in themselves, in the circumstances of this case, to conclude GOP should not have been allowed in Mr J's SIPP *at all*. As set out above, IPS gave Mr J risk warnings and checked his understanding of the risk. And it took a number of other steps, as summarised in the conclusion of my provisional findings, quoted above.

So, having taken account of the points raised by Mr J's representative in its response to my provisional decision, I remain of the view set out in my provisional decision. The provisional findings I've quoted above are therefore confirmed as my final findings.

My final decision

For the reasons given, I do not uphold the complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 5 November 2021.

John Pattinson
Ombudsman