DRN-3632777

The complaint

Mr S complains about Rowanmoor Personal Pensions Limited, in relation to:

- The mis-sale and maladministration of his Self-Invested Personal Pension (SIPP).
- The failure to disclose the relationship between Regency and Rowanmoor to him.
- The failure to conduct adequate due diligence in respect of the April Salumei product or update him in a timely fashion in relation to the fact that it was potentially an illiquid asset not capable of being traded as a product of value.
- Rowanmoor's failure to follow or obtain instructions from him.
- The concealment of fees paid and transactional fees with solicitors.
- The failure to provide annual statements.

What happened

Parties involved in the transaction:

Carbon Energy Resources Ltd – unregulated introducer who introduced Mr S to Carbon Credits, Regency Financial Resources Ltd and Rowanmoor pensions.

Regency Financial Resources Ltd – a UK regulated financial advisory firm that was registered as Mr S' adviser in respect of the SIPP.

Rowanmoor Personal Pensions Limited – Rowanmoor is a regulated pension provider and administrator. It is authorised to arrange deals in investments, deal in investments as principle, establish, operate or wind up a pension scheme and to make arrangements with a view to make transactions in investments.

Mr S says he was cold called by an introducer and told that he would introduce him to a financial adviser connected with Rowanmoor to give him an amazing opportunity for investment. He says the introducer presented as if he was handling everything and that the relationship between Rowanmoor, Carbon Energy Resources Ltd (the introducer) and the financial adviser was very close.

Mr S completed a SIPP application form, this was signed on 12 September 2011. This confirmed that:

- He was self-employed.
- His pension was to be invested in April Salumei via Carbon Energy Resources.
- His adviser in respect of the SIPP was Regency Financial Resources Ltd.

On the same date Mr S signed a transfer out form for his existing SIPP.

Mr S transferred his existing SIPP to Rowanmoor in order to invest in the Carbon Credits investment. The amount transferred was just over £106,000.

Some promotional material provided in relation to the investment said, amongst other things, that:

- It was expected that the value of the credits would increase as the project achieved certain milestones such as CCB (Climate, Community & Biodiversity*)* and VCS (Verified Carbon Standard) accreditation.
- Changes to legislation in certain countries was expected to enable industry to use REDD (VER) Carbon Credits as a fully qualifiable means of carbon offset.

On 30 May 2011, Scientific Certification Systems issued a "Final CCBA Project Validation Report" on the April Salumei project. This said:

> *"This report presents the findings of an audit conducted by Scientific Certification Systems (SCS), to validate the claim made by Rainforest Project Management Limited that the April Salumei Sustainable Forest Management Project conforms to the Climate, Community and Biodiversity Project Design Standards (Second Edition). SCS has been accredited by the Climate, Community & Biodiversity Alliance (CCBA) to perform such validation audits."*

And

> *"Following completion of SCS's duly-accredited validation process, it was our conclusion that the April Salumei Sustainable Forest Management Project could conform to the CCBA Climate, Community and Biodiversity Project Design Standards (Second Edition) at the Gold Level (see Appendix A), subject to 43 Non-conformity Reports (NCRs), 6 Opportunities for Improvement (OFIs) and 1 New Information Requests (NIRs). Rainforest Project Management Limited provided prompt and satisfactory responses to the NCRs issued as a result of the initial evaluation. Rainforest Project Management Limited was cooperative in providing evidence requested to support their comments and responded to the public comments submitted through the CCB website. It is our opinion that the Project now fully meets the requirements of the standard."*

And

> *"Based on the evidence collected during the site visit, supplemental documentation and interviews with local authorities, the Project appears to have permission from the appropriate authorities, however the government authorities seems to regularly change their positions which makes it difficult."*

The April Salumei Sustainable Forest Management Project received CCB validation by SCS on 13 June 2011.

There was an April Salumei Sustainable Forest Management Project VCS Feasibility Assessment later prepared. This said:

> *"The April Salumei Sustainable Forest Management Project achieved validation against the Climate Community and Biodiversity (CCB) in June 2011. The project is now well defined and aims to move to validation and verification against the Verified Carbon Standard (VCS) by the end of 2012."*

And

> *"The project is now commencing the development of the project documentation and seeking approval to the Verified Carbon Standard to realise the value of protecting the pristine forests, biodiversity and unique communities of the April Salumei*

Sustainable Forest Management Project region and to realise the aspirations of the people whilst protecting this globally important forest area."

And

"Political risk was identified as the major external risk. This assessment is based on the average worldwide Governance Indicators which allocate PNG a rating of - 0.71. The main areas of internal risk relate to financial viability due to the current early development stage of the VCS project. Securing investment to assist in the development of the project would further reduce the risk rating potentially to the 10% minimum."

Rowanmoor sent Mr S a letter on 17 November 2011 highlighting some of the risks involved:

"We understand that you wish to use funds held by your Pension Scheme to invest in carbon benefit units relating to the April Salumei Sustainable Forest Management Project in Papua New Guinea.

As you will be aware, an investment of this nature carries a high risk. Investors must have no need for liquidity and be able to withstand a total loss of investment. Whilst we are able to inform you of the eligibility of such an investment under current pensions legislation and the Definitive Trust Deed and Rules of the Scheme, we do not endorse or recommend the services of any particular investment structure, nor can we advise you on the suitability of, and risk attached to, the proposed investment.

In addition we cannot advise on the complexities of the legal process of purchasing the carbon benefit units or in relation to the contractual documentation. Further, the Pension Scheme may become liable for costs, charges, taxes and other liabilities relating to the carbon benefit units of which you will not be aware of at the time of the initial investment.

As with all complex investments, we would strongly recommend that before proceeding you take appropriate legal and other professional advice in the matter, as this may prevent issues going forward, and reduce the possibility of incurring unnecessary costs in the future."

On 14 December 2011, Mr S signed the declaration confirming that he understood the outlined risks.

An initial contract note for Carbon Credits was issued on 22 December 2011, for 8535 units priced at £7.03 (£60,001). Issued by April Salumei Forest Management Project Foundation.

On 6 February 2012, another contract note was issued for 2845 units also priced at £7.03 (£20,000.35). Also, issued by April Salome Forest Management Project Foundation.

A further contract note was issued on 16 July 2012, for a further 2133 units at the same price (£14,994.99) and issued by the same entity.

Mr S explained that the introducer initially advised him to invest around £60,000 and then a few months later contacted him and said that he'd spoken to Rowanmoor and the adviser and that it was a good time to invest more.

On 28 January 2013, Rowanmoor wrote to Regency in relation to the alert the regulator issued on 18 January 2013 saying:

"Rowanmoor Personal Pensions Limited has no one authorised and regulated to give advice, and it has been our policy since Rowanmoor Personal Pensions Limited was established in October 2006 not to take direct business, nor to permit clients to continue a self-investment strategy without an intermediary in the relationship advising them.

We have previously pointed out to intermediaries that if they advise on the establishment of a SIPP, they must also advise on the underlying investment strategy. The FSA Alert not only confirms 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."

Regency signed and returned confirming that they had read and understood the regulator's alert.

Background to the complaint

Mr S made a claim to the Financial Services Compensation Scheme (FSCS) about his financial adviser. The FSCS upheld Mr S' complaint and it paid him compensation. Following this the FSCS provided Mr S with a reassignment of rights.

Mr S complained to Rowanmoor, it didn't uphold his complaint. It said the suitability of the investment was the responsibility of Mr S' financial adviser, Regency. The investment was submitted by Regency for Rowanmoor's consideration on 22 August 2011. As part of the due diligence process it carried out checks on and obtained corporate documentation for the companies involved:

- IFIT Fund Services (Cayman) Limited
- Carbon Energy Resources Limited
- Consolidated Carbon projects Limited
- Buss Murton Law LLP

Rowanmoor's final response letter went on to say:

"This verified that the companies all existed and that the Carbon Benefit Units would be held by IFIT Fund Services (Cayman) Limited, which was part of the larger IFIT group based in Switzerland, and the investment paperwork would be handled by UK solicitors. Buss Murton Law LLP.

We received the Project Validation Report and Statement of CCB Standards Validation, produced by Scientific Certification Systems, which verified the April Salumei Project in Papua New Guinea, which was issuing the Carbon Benefit Units (a form of carbon credit). We also received a side letter from IFIT Fund Services (Cayman) Limited covering our liability and the withdrawal of funds. Our ongoing due diligence shows that the project does exist, and that Qantas and Dutch firm, Eneco have invested in the project. Units are still being held in the IFIT registry."

Rowanmoor believes that the issue with the investment is liquidity.

Unhappy with its response, Mr S referred his complaint to this service. Mr S told us that he was advised to make this investment, that the SIPP and underlying investment were safe. He says he didn't know his pension would be swallowed up by purchasing very risky illiquid assets.

One of our investigators reviewed the complaint and concluded it should be upheld. Briefly, she concluded:

- The complaint had been brought in time as the complaint response letter didn't meet the definition of a final response letter.
- Rowanmoor should've:
    - Identified the carbon credit project as a high-risk, speculative and non-standard investment, which should've led to it undertaking enhanced due diligence.
    - Given further consideration to whether or not the investment was suitable for a pension scheme.
    - Made sure the investment worked as claimed.
    - Ensured that the investment could be independently valued at the point of purchase and subsequently.
    - Ensured that there was a viable way for Mr S to sell the investment.
    - Ensured Mr S' SIPP wouldn't become a vehicle for a high-risk and speculative investment.
    - Been aware that Carbon Energy wasn't regulated.
- Rowanmoor took some steps to meet its obligations but it didn't do enough to satisfy all of these points.
- If it had undertaken sufficient due diligence it ought to have identified some points of concern. Based on the available evidence, at the time Rowanmoor accepted Mr S' instructions it knew or ought to have known that:

    - The FSA (Financial Services Authority) had issued a warning about carbon credit trading schemes on 3 August 2011 stating: "*Whilst not all carbon credit trading schemes are a scam, it is often not made clear to investors that trading on these markets requires skill and experience.*

      You may lose money on your investment by not being able to sell, or at least get a competitive rate, when trading a small volume of carbon credits."
    - Mr S' contract was for CBU credits, this market was unregulated, and these weren't traded on regulated exchanges.
    - The investment was predicated on carbon credits being sold for more than what they were purchased for. Carbon credits were sold at significantly inflated prices. Mr S was sold CBU units at £7.03, which was a mark up of up to 800% on what Carbon Energy originally purchased them for.
    - Carbon credits were unlikely to be suitable for the vast majority of retail clients.

- Overall Rowanmoor shouldn't have added Carbon Credits to its permitted investments list for Mr S' SIPP. In particular:

    - It wasn't clear there was or ever would be a market for the Carbon Credits Mr S was purchasing, this meant that he may have struggled to realise the investment when he wanted to take benefits.
    - The investment allowed Mr S' SIPP to become a vehicle for a high-risk and speculative investment that wasn't secure and may have been a scam.
    - Rowanmoor should've known that there was a significant risk of consumer detriment. In allowing the investment Rowanmoor didn't act with due skill, care and diligence and didn't treat Mr S fairly. It didn't meet its regulatory obligations and Mr S' funds were put at significant risk as a result.
    - There was no evidence the credits had a value and it should've been concluded that the credits were low quality.

- Rowanmoor did issue a number of warnings and had operated on the understanding that Mr S had received regulated advice. It could take some comfort in that, but it still had its own independent set of obligations.
- It received a large number of introductions from the same party all of which resulted in consumers' pensions being invested in carbon credits. It isn't plausible that carbon credits were suitable for all of a significant group of retail investors.
- Taking everything into account Rowanmoor shouldn't have accepted Mr S' application to open a SIPP with it in order to invest in carbon credits. If it had done so, it's most likely Mr S would never have opened a SIPP or entered into the transaction at all. So, it's fair and reasonable for Rowanmoor to compensate Mr S for the losses he's suffered.

Because agreement wasn't reached this case has been passed to me for review.

What I've decided – and why

Jurisdiction

I must decide whether we can consider a complaint on the basis of the jurisdiction rules that apply. Having done so, I've concluded the complaint is one we can consider.

Rowanmoor initially contended that the complaint had been brought out of time on the basis that Mr S referred his complaint to this service more than six months after it issued its final response letter in response to his complaint.

Our investigator concluded that the complaint had been referred to us in time because the letter Rowanmoor issued didn't meet the definition of a final response letter – and, in turn, didn't start the clock, so to speak, for the purposes of the six month rule.

Rowanmoor didn't make any further submissions in respect of this issue. However, for the sake of completeness, I've still considered whether or not the complaint was referred to us in time. Having done so, I agree with the investigator that the letter Rowanmoor has sought to rely on for the purposes of contending the complaint has been referred to us too late doesn't meet the definition of a final response letter. So, the complaint is one we can consider.

Merits of the complaint

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

The parties to this complaint have provided detailed submissions to support their position and I am grateful to them for taking the time to do so. I've considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings, on what I consider to be the main points, and reasons for reaching them.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

It's my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant as a result of this.

Relevant considerations

I've carefully taken account of the relevant considerations to decide what is fair and reasonable in the circumstances of this complaint.

When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. This goes wider than the rules and guidance that come under the remit of the Financial Conduct Authority (FCA). Ultimately, I'm required to make a decision that I consider to be fair and reasonable in all the circumstances of the case.

In my view, the FCA's Principles for Businesses are of particular relevance. 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). Principles 2, 3 and 6 are of particular relevance here, in my view.

Ouseley J in *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) 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 *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878). I am therefore satisfied that the Principles are a relevant consideration that I must take into account when deciding this complaint.

The Berkeley Burke judgment also considers section 228 of FSMA and the approach an ombudsman is to take when deciding a complaint. The judgment of Jacobs J 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.

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 on Mr 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.

I note that in Adams v Options SIPP, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. However, I think it is important to emphasise 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 am 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 this complaint and the judgments in Adams v Options SIPP. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I also want to emphasise here that I do not say that Rowanmoor was under any obligation to advise Mr S on the SIPP and/or the underlying investments. Refusing to accept an application or not permitting an investment isn't the same thing as advising Mr S on the merits of investing and/or transferring to the SIPP.

The regulatory publications

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

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

These reports provide a reminder that the Principles for Businesses apply and are an indication of 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 go some way to indicate what I consider amounts to good industry practice, and I am, therefore, satisfied it is appropriate to take them into account.

In determining this complaint, I need to consider whether, in accepting Mr S' SIPP application, 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 regard to the interests of its customers, to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the rules and the publications listed above to provide an indication of what Rowanmoor could have done to comply with its regulatory obligations and duties.

Taking account of the factual context of this case, it is my view that in order for Rowanmoor to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), it should have undertaken sufficient due diligence checks to consider whether to accept or reject particular applications for investments, with its regulatory obligations in mind.

I also want to reemphasise here that I do not say that Rowanmoor was under any obligation to advise Mr S on the SIPP and/or the underlying investment in Carbon Credits. Refusing to accept an application is not the same thing as advising Mr S on the merits of investing and/or switching to the SIPP.

Rowanmoor accepted Mr S' application on the basis that he was being advised by a regulated adviser, I think it could take some comfort in this. The volumes of business received from this adviser aren't, in and of themselves, concerning. However, it does appear that many of the consumers introduced by this adviser were investing in high-risk esoteric investments.

Overall, I've not seen enough to definitively conclude that Rowanmoor shouldn't have accepted business from Mr S' adviser. So, I've gone on to consider if Rowanmoor should've permitted Mr S' subsequent investment in Carbon Credits.

The due diligence carried out by Rowanmoor on the Carbon Credits investment – and what it should have done

Taking everything into account, I'm satisfied that it should – as a minimum – have:

- *Identified the Carbon Credits investment as a high-risk, speculative and non-standard investment, so it should've carried out thorough due diligence on it.*
- *Examined where Mr S' money would be invested – in other words, what type of Carbon Credit he was investing in.*
- *Considered whether the investment was suitable for a personal pension scheme.*
- *Made sure the investment was genuine – in other words, not a scam or linked to fraudulent activity.*
- *Made sure the investment worked as claimed.*
- *Ensured that the investment could be independently valued, both at the point of purchase and subsequently.*
- *Ensured Mr S' SIPP wouldn't become a vehicle for a high-risk and speculative investment.*

The FSA (the then regulator) had identified *that "trading on these markets requires skill and experience"*. These investments were unlikely to be suitable for the majority of retail investors. And they were only generally likely to be suitable for a small element of the investment portfolio of a sophisticated investor.

There is no price transparency – there is no independent source regarding the price being set, and nothing to confirm at what price the credits were acquired. So, there was no way to establish how the £7.03 price was being arrived at.

There could've been a very significant difference between the price the units were acquired at and the price these were sold to Mr S at. This is something Rowanmoor could have and should have investigated.

Assuming that Mr S would hold valid units or credits, there doesn't appear to be any measure of the quality of the credits in question. In other words, were the units or credits being 'generated' in Papua New Guinea valid? I haven't seen any independent verification that the units met the VCS standard, albeit in this case it appears that at the time of the sale VCS validation hadn't yet been applied for, this was planned for late 2012 according to the reports provided. So, at the time, there was a risk this validation wouldn't be achieved. I haven't seen evidence of a registration of the project with the United Nations Framework Convention on Climate Change (UNFCCC) at the time. The lack of that registration could suggest that the relevant standard hadn't been met.

I haven't seen that it was demonstrated that there was any ready market for Mr S' units. It wasn't demonstrated how Mr S would find businesses to buy his small allocation of Carbon

Credit units.

At the time there was little confirmation that Mr S' SIPP was acquiring anything of any realisable value, whether the units existed or, if they did, whether they were being sold at inflated prices.

Rowanmoor may consider that carrying out the kind of assessment that would be required to establish and interrogate such factors as I've discussed and carry out appropriate due diligence, imposes on it requirements over and above its responsibilities as a SIPP provider. But I'm satisfied these are the kind of things Rowanmoor needed to do when accepting Mr S' proposed investment to meet the regulatory obligations placed on it by the Principles. I don't think that this amounts to a conclusion that Rowanmoor should've assessed the suitability of the Carbon Credits investment for Mr S' individual circumstances.

Although I accept Rowanmoor did do some due diligence, this doesn't seem to have extended beyond looking at marketing brochures, corporation documents for the businesses involved and a report prepared for the project's CCB validation. The due diligence therefore didn't cover all – or even a significant number of – the points I've set out above. So, I'm satisfied that in these specific circumstances Rowanmoor didn't carry out due diligence at the time to satisfy its reasonable responsibilities as a SIPP provider.

If Rowanmoor had completed sufficient due diligence on Mr S' Carbon Credit investment, what should it reasonably have concluded?

It could be that the investment was/is legitimate, and that Mr S owns Carbon Credits. I also accept that technically there was a market for Carbon Credits. But it's now been highlighted that it often wasn't possible to sell them even though there was a market for them. And in particular, there are reports that voluntary Carbon Credits aren't actively traded and that buyers don't buy from private individuals. So, although they technically worked as claimed, the reality was very different.

The FSA warning was published before Mr S' SIPP was set up and this made it clear that there may be issues with selling Carbon Credits. I'm satisfied this is something Rowanmoor should've identified as part of its due diligence and the fact Mr S might then have struggled to realise the investment should've caused it significant concern – especially considering that almost all the money transferred (about £100,000) to the SIPP by Mr S was invested in Carbon Credits. It isn't clear how Mr S would be able to take benefits from his pension if the investment was difficult to value or realise.

It could be argued that not being able to independently value an investment wouldn't be indicative of its performance or legitimacy. But the investment was predicated on the Carbon Credits being sold for more than what was paid for them. And so, I think there should've been concerns if it wasn't possible to independently value them. And if an independent valuation had been possible, it's now been highlighted that voluntary Carbon Credits were sold at "significantly inflated prices" so it seems likely this would then have been identified.

Rowanmoor should also have been aware that Mr S was unlikely to benefit, in terms of the investment itself, from any regulatory protections (the investment being unregulated) such as access to the Financial Services Compensation Scheme or this service.

In the circumstances, I'm satisfied there were a number of concerns Rowanmoor should've identified. It should've known there was a significant risk of consumer detriment and it shouldn't have added the Carbon Credits to the list of permitted investments for Mr S' SIPP. By doing so, I still think it didn't act with due skill, care and diligence or treat Mr S fairly.

To be clear, I'm not making a finding that Rowanmoor should've assessed the suitability of the Carbon Credit investment for Mr S. I accept Rowanmor had no obligation to give advice to Mr S, or to ensure otherwise the suitability of an investment for him.

At the point Mr S' investment was arranged Rowanmoor would've been aware that he was investing the vast majority of his pension fund in an unregulated, esoteric and high-risk investment which might be difficult to sell. I acknowledge that Rowanmoor wouldn't be aware whether that was the entirety of his pension savings because he may have had other benefits elsewhere. But it was an indicator of the kind of risk to which Mr S was being exposed. These were 'red flags' which should've caused Rowanmoor significant concern as to whether to allow Mr S to hold that investment in his SIPP.

I'm satisfied Rowanmoor could've identified the concerns I've mentioned, and ought to have drawn the conclusions I've set out, based on what was known at the time.

Rowanmoor ought to have identified significant concerns in relation to the investment, and they ought to have led it to conclude it shouldn't accept the Carbon Credit investment. It ought to have realised there was a high risk of detriment to Mr S.

In conclusion

After considering these points, I don't regard it as fair and reasonable to conclude that Rowanmoor acted with due skill, care and diligence, or treated Mr S fairly by accepting the investment in Carbon Credits or accepting the application for the SIPP. Rowanmoor didn't meet its regulatory obligations or the standards of good practice at the time, and it allowed Mr S' pension fund to be put at significant risk as a result.

Did Rowanmoor act fairly and reasonably in proceeding with Mr S' instructions?

In my view, for the reasons given, Rowanmoor should've refused to allow Mr S' investment in Carbon Credits. So, things shouldn't have progressed beyond that. Had Rowanmoor acted in accordance with its regulatory obligations and best practice, it is fair and reasonable in my view to conclude that it shouldn't have permitted the investment.

My remit is, of course, to make a decision on what I think is fair and reasonable in all the circumstances. And my view is that it's fair and reasonable to say that just asking Mr S to sign 'risk' or 'indemnity' declarations wasn't an effective way for Rowanmoor to meet its regulatory obligations to treat him fairly, given the concerns Rowanmoor ought to have had about the investment.

Having identified a risk, it is my view that the fair and reasonable thing to do would be to refuse to accept the investment in Carbon Credits – not put in place a process asking Mr S to sign declarations in an attempt to absolve itself of responsibility. I don't think the declarations Mr S signed meant that Rowanmoor could ignore its duty to treat him fairly.

I think Rowanmoor refusing to accept business and sharing the concerns that led to that decision would've likely meant that Mr S would've acted very differently. This refusal would've tended to highlight the concerns with making such an investment. Indeed, Mr S told us that one of the main reasons he was happy to go ahead was that he was reassured that Rowanmoor wouldn't have held an investment that wasn't safe and legitimate.

In any event, I don't believe it would be reasonable to assume that another SIPP operator would've allowed the investment, had Rowanmoor not permitted it. I don't think it's fair and reasonable to say that Rowanmoor shouldn't compensate Mr S for his loss on the basis of speculation that another SIPP operator would've made the same mistakes as I've found

Rowanmoor did. I think it's fair instead to assume that another SIPP provider would've complied with its regulatory obligations and good industry practice, and therefore wouldn't have allowed the investment.

It could be argued that other parties have contributed to Mr S' losses and so it's not fair to hold Rowanmoor fully responsible. But I've concluded Mr S wouldn't have invested but for Rowanmoor's failure to carry out sufficient due diligence. And in these circumstances, I'm satisfied it's fair to hold it responsible for the whole of the loss suffered. I'm not asking it to account for losses that go beyond the consequences of its failings.

As set out above, I'm satisfied that Rowanmoor should've put a stop to the transaction and that the investment wouldn't have gone ahead if it'd treated Mr S fairly and reasonably. I've carefully considered causation, contributory negligence, apportionment of damages and DISP 3.6.4. But in the circumstances here, I'm still satisfied it's fair for Rowanmoor to compensate Mr S for his full loss.

I acknowledge that Mr S has received a sum of compensation from the FSCS. However, the terms of his reassignment of rights require him to return any compensation paid by the FSCS in the event this complaint is successful. So, I will make no allowance for what he's been paid by the FSCS. It will be for Mr S to make the arrangements to make any repayments he needs to make to the FSCS.

Putting things right

I consider that Rowanmoor failed to comply with its own regulatory obligations and didn't put a stop to the transactions that are the subject of this complaint. My aim in awarding fair compensation is to put Mr S back into the position he would likely have been in had it not been for Rowanmoor's failings. Had Rowanmoor acted appropriately, I think it's *most likely* that Mr S wouldn't have invested in Carbon Credits.

I take the view that Mr S would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr S' circumstances and objectives when he invested.

What must Rowanmoor do?

To compensate Mr S fairly, Rowanmoor must:

- Compare the performance of Mr S' investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value there is a loss and compensation is payable.

- Rowanmoor should add interest as set out below:

- Rowanmoor should pay into Mr S' pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Rowanmoor is unable to pay the total amount into Mr S' pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to

notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr S won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr S would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay to Mr S £250 for the distress and inconvenience caused by the loss of the majority of this pension.

Income tax may be payable on any interest paid. If Rowanmoor deducts income tax from the interest it should tell Mr S how much has been taken off. Rowanmoor should give Mr S a tax deduction certificate in respect of interest if Mr S asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. Rowanmoor should establish an amount it's willing to accept for the investment/s as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investment/s.

If Rowanmoor is able to purchase the illiquid investment/s then the price paid to purchase the holding/s will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding/s).

If Rowanmoor is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. Rowanmoor may require that Mr S provides an undertaking to pay Rowanmoor any amount he may receive from the illiquid assets in

the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Rowanmoor will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Rowanmoor totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

SIPP fees

If the investments can't be removed from the SIPP, and because of this it can't be closed after compensation has been paid, then it wouldn't be fair for Mr S to have to continue to pay annual SIPP fees to keep the SIPP open. So, if the SIPP needs to be kept open only because of the illiquid investment/s and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

Why is this remedy suitable?

I've decided on this method of compensation because:

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr S' circumstances and risk attitude.

My final decision

For the reasons set out above, I uphold Mr S' complaint. Rowanmoor Personal Pensions Limited must pay Mr S compensation as set out above.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend the business to pay the balance.

Rowanmoor Personal Pensions Limited should provide details of its calculation to Mr S in a clear, simple format.

Determination and award: I uphold the complaint. I consider that fair compensation

should be calculated as set out above. My decision is that Rowanmoor Personal Pensions Limited should pay Mr S the amount produced by that calculation – up to a maximum of £150,000 (including distress or inconvenience but excluding costs) plus any interest on the amount set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Rowanmoor Personal Pensions Limited pays Mr S the balance plus any interest on the amount as set out above.

This recommendation is not part of my determination or award. It does not bind Rowanmoor Personal Pensions Limited. It is unlikely that Mr S can accept my decision and go to court to ask for the balance. Mr S may want to consider getting independent legal advice before deciding whether to accept this decision.

If Rowanmoor Personal Pensions Limited does not pay the recommended amount, then any portfolio currently illiquid should be retained by Mr S. This is until any future benefit that he may receive from the portfolio together with the compensation paid by Rowanmoor Personal Pensions Limited (excluding any interest) equates to the full fair compensation as set out above.

Rowanmoor Personal Pensions Limited may request an undertaking from Mr S that either he repays to Rowanmoor Personal Pensions Limited any amount Mr S may receive from the portfolio thereafter or if possible, transfers the portfolio to Rowanmoor at that point.

Mr S should be aware that any such amount would be paid into his pension plan so he may have to realise other assets in order to meet the undertaking.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 September 2022.

Nicola Curnow
Ombudsman