DRN-3642311

The complaint

Mr C has complained about Rowanmoor Personal Pensions Limited ("Rowanmoor"). Represented by a claims management company ("CMC"), Mr C says it failed in its regulatory duties to carry out sufficient due diligence checks when accepting his Self-Invested Personal Pension ("SIPP") application.

Mr C says Rowanmoor should have had concerns about the business which introduced his application and accepting the investments which have resulted in him suffering losses

Background

The parties referred to in this complaint

BLT Financial Services Limited ("BLT")

The FCA database states that BLT was an appointed representative of Burns-Anderson Limited and regulated from 24 December 2001 until 1 July 2010.

Rowanmoor Personal Pensions Limited ("Rowanmoor")

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.

The Harlequin Group ("Harlequin")

The Harlequin group of companies were involved in the promotion, development and distribution of off-plan overseas property investments and resorts – primarily based in to Caribbean. None of these companies were regulated by the FCA (or its predecessor, the FSA).

Harlequin Management (South East) Limited promoted the investment to UK investors, either directly or through a network of agents and financial advisers. Investors could invest into resorts developed in the Caribbean in the hope of purchasing an individual hotel room, apartment, cabana or villa.

The developments failed and funds invested were not always used as intended. In March 2013 the Serious Fraud Office, in conjunction with the police, started investigating the Harlequin Group of companies. Harlequin Management (South East) Limited subsequently went into administration and some senior figures involved with the companies are facing prosecution.

Green Oil Plantations Australia Limited ("Green Oil")

Green Oil offered investors the opportunity to invest in a 20-year land licence in Cairns, Australia. Green Oil would rent this land from the investor for the purpose of

growing Millettia trees, which could grow in infertile soil and required less water than equivalent bio-fuel crops such as Palm and Jatropha trees.

Green Oil's intention was that the trees would provide green oil and a range of by-products. The annual returns promised went from 4% in the first year of investment to 17% and above in the fourth year.

What happened

On 5 March 2010 BLT wrote to Rowanmoor enclosing the following documents:

- A Rowanmoor SIPP application signed by Mr C dated 4 March 2010. This set out that an individual from BLT was acting as his independent financial adviser (IFA).

- An adviser fee agreement which was also signed by Mr C dated 4 March 2010, with the adviser receiving 4% of the transfer value and then 0.5% annually on the SIPP anniversary.

Mr C transferred two occupational pensions into the SIPP once it was established, in the sums of around £71,000 and £25,000.

On 24 March 2010 BLT provided Rowanmoor with schedules for the Harlequin properties and the investment contracts.

On 26 March 2010 Rowanmoor wrote to Mr C providing a warning about the Harlequin investment and it asked him to let them know if he was going to be seeking legal advice. He said he wasn't, signing and returning the risk notice which said:

> *"with all property purchases, we strongly recommend that, before acquiring the property, appropriate legal and other professional advice in the matter is taken, as this may prevent issues going forward. And reduce the possibility of incurring unnecessary costs in the future. If you do not wish to appoint a legal representative, then please sign and return the enclosed copy of this letter in confirmation."*

On 17 April 2010 Mr C wrote to Rowanmoor explaining that he I understood there would be penalties in transferring his occupational pensions but asked it to proceed anyway.

On 15 June 2010 the Harlequin contracts had been signed in relation to:

- PCBBSG.4 - Buccament Bay, St Vincent, with a deposit of £37,500.

- PCBBSG.5 – Buccament Bay, St Vincent, with a deposit of £37,500.

The total purchase price for each property was £125,000 with a £1,000 reservation fee paid and a target completion date of 31 December 2012.

In October 2012 Mr C made a subsequent investment of £10,000 into Green Oil. On 16 October 2012 he signed the investment application form. The form detailed an individual as agent, but no FSA regulatory number was provided nor firm's name.

On 8 November 2012 Rowanmoor wrote to Mr C with a risk warning letter which he signed on 9 November 2012 to say he was not going to appoint legal advisers.

"As with all 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 highlight any risks involved the transaction."

On 15 November 2012 Rowanmoor contacted BLT to ask them to confirm that Mr C agreed with the £250 fee which was to be added to the £10,000 investment amount. They didn't receive a response from BLT. At this point BLT were no longer a regulated firm.

On 26 March 2013 Rowanmoor wrote to Mr C to let him know that the investment had completed.

Both investments subsequently failed, and Mr C has lost the funds. He made a successful claim to the Financial Services Compensation Scheme ("FSCS") about the advice he was given by BLT, but I understand the compensation he received was below his total loss due to its award limits. Under the terms of the reassignment of rights granted by FSCS, Mr C would need to repay them out of any compensation he gained elsewhere.

Mr C's complaint

The CMC, on behalf of Mr C, complained to Rowanmoor about the due diligence it carried out when accepting his business in around March 2010. It said Mr C is a retail, not sophisticated, investor, who had a low risk profile with little or no investment experience. By permitting a transfer to an unsuitable pension and the subsequent purchase of a high risk, unsuitable illiquid investment caused Mr C a significant loss.

In summary, it said that Rowanmoor failed:

- to meet its statutory requirements and duty of care as trustees,
- to meet regulatory requirements,
- to carry out adequate due diligence checks on the investment and failed to protect the Mr C by accepting a very high-risk alternative investment, and
- to complete adequate due diligence on the introducer.

Rowanmoor responded to Mr C's complaint. It didn't uphold his concerns, and in summary said that it:

- does not advise on any particular investments, it insists that all SIPP investment business must be advised on by independent IFAs. Mr C's application form had the name of an adviser from BLT noted as his IFA with permission to carry out investments/disinvestments,
- is not responsible for advice provided by the IFA. The decision that was made to invest in Harlequin and Green Oil was based on advice from BLT,
- accepts Mr C is a retail client and consumer,
- does have corporate governance and due diligence procedures which have always been in keeping with regulatory requirements and compatible with what is now principle 2 of the Financial Conduct Authority's (FCA's) principles for business which require all firms to conduct their business with due skill, care and diligence,

- was satisfied the investment assets were satisfactory considering the involvement of BLT.

- undertook its own due diligence on the investment and satisfied itself there was no reason to reject the investments,

- complies fully with the 6 Treating Customers Fairly consumer outcomes,

- checked the IFA firm in question and the individual adviser against the FSA register at the time, and it didn't meet Mr C in person or speak over the telephone to discuss the investment choice.

Mr C didn't agree with Rowanmoor's response and so the complaint was referred to this Service for consideration.

Our investigator's assessment

One of our investigators looked into the complaint and reviewed everything. She concluded that Mr C's complaint should be upheld. In summary she noted:

- Rowanmoor said it only accepted business via regulated advisers, but it didn't have an introducer agreement in place with BLT, and by October 2012 when Mr C invested into Green Oil, BLT were no longer regulated.

- Initial checks were carried out by Rowanmoor on Harlequin and the investment was reviewed and accepted by its technical team in 2009. But it's documented that there were considerable concerns with the Harlequin investment before Mr C made his investment.

The investigator felt that had Rowanmoor carried out appropriate checks and reached reasonable conclusions based upon those checks, it would not have accepted Mr C's business. So, she suggested a means of compensation to put things right and compensate Mr C for his losses.

Mr C accepted the investigator's view and made no further comments.

Initially Rowanmoor confirmed it also accepted the investigator's view and would calculate the redress payable to Mr C. But following a couple of months of waiting for Rowanmoor to provide the calculation and pay compensation, it subsequently asked for the complaint to be passed to an ombudsman.

Rowanmoor didn't make any further comments for consideration, but said:

> *"While I realise we might previously have indicated that we would accept this adjudication, I think we would prefer to have it formally confirmed by an Ombudsman…"*

Accordingly, the complaint has been passed to me to review and 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.

Whilst I have reviewed and considered everything afresh and in full, I have only referred to the key issues central to my decision. In doing so, I note that Rowanmoor previously confirmed it accepted the conclusions reached by the investigator in the case and has made no further representations in relation to those conclusions.

So, where I consider it appropriate and my conclusions are broadly the same as the investigator, I have repeated some of the content from the initial adjudication in support of my decision.

What are the relevant considerations?

At the time Mr C's application form was accepted by Rowanmoor the regulator was the Financial Services Authority. Later, the regulator became the Financial Conduct Authority ("FCA"). For ease of reference I've referred to the FCA throughout.

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 provide:

> *"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 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly."*

I've 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've refused to accept the investment. The ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and hadn't treated its client fairly.

Jacobs J, having set out some paragraphs of BBA 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 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've 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'm therefore satisfied that the Principles are a relevant consideration that I must take 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've taken account of both these judgments.

I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight didn't 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. So, neither of the judgments say anything about how the Principles apply to an ombudsman's consideration of a complaint. But, I don't say this means Adams isn't a relevant consideration *at all.* As noted above, I've taken account of both judgments when considering this complaint.

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 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 didn't

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. HHJ Dight said at paragraph 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."*

So, I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr C's case, including Rowanmoor's role in the transaction.

I've considered what is fair and reasonable in all the circumstances of the case. And, in doing that, as above, 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.

Overall, I am satisfied that COBS 2.1.1R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of Mr C's complaint.

Rowanmoor's role

I accept that Rowanmoor did not and could not give advice to Mr C. I have conducted my assessment on the understanding that Rowanmoor was not required to assess the suitability of the transaction for Mr C individually.

Instead, I am assessing whether Rowanmoor acted fairly and reasonably in relation to its distinct obligations to Mr C as a client or potential client, applying the Principles, regulation and regulatory publications that I have laid out above as a guide.

It's apparent to me from the text of the 2009 and 2012 reports, 2013 guidance and the "Dear CEO" letter in 2014 that the regulator expected SIPP operators to have incorporated the recommended good practices into their business models already. In addition, the regulator continued to express disappointment with SIPP operators' failure to have implemented such practices.

Taking everything into account, I'm satisfied Rowanmoor should have thought carefully about:

- Whether accepting the business from BLT was treating Mr C fairly; taking reasonable care; and acting with due skill, care and diligence.

- Whether accepting the investment into Harlequin or Green Oil was treating their customer fairly; taking reasonable care; and acting with due skill, care and diligence.

To accept everything that came its way and ask Mr C to accept warnings absolving them of the consequences wasn't enough. Declining to accept business doesn't amount to advice and Rowanmoor could have declined to accept the SIPP application and/or individual investments without giving investment advice. I therefore need to consider whether Rowanmoor gave enough thought to the nature of Mr C's referral to it and the investment that was being requested. And whether it ought to have been aware that the nature of the business and/or the nature of the investment meant it shouldn't accept it as there was a strong possibility of consumer detriment.

Rowanmoor's due diligence on the introducer, BLT

Rowanmoor has said that it only accepts business via a regulated IFA. When initially accepting Mr C's business in March 2010 to open a new SIPP and make an investment into Harlequin, Rowanmoor checked that BLT and the adviser noted within the SIPP application form were regulated by the FSA. It didn't have an agreement in place with BLT setting out the basis for their relationship and mutual obligations – and it confirmed this wasn't something it arranged with introducers.

In October 2012 when Mr C made an investment into Green Oil, BLT were no longer regulated to provide advice. It appears this transaction was carried out with no regulated adviser involved.

Rowanmoor's due diligence into the Harlequin investment

Rowanmoor has confirmed that it undertakes checks upon the body corporate promoting the investment, the investment structure and establish good title to any investment can be obtained. They check that the investment won't give rise to any unauthorised payment charge and that holding the investment doesn't create exposure beyond the investment amount.

I've seen internal email conversations between Rowanmoor's technical team, one of the larger introducers of the Harlequin investment to Rowanmoor and with Harlequin directly. Within these emails Rowanmoor discuss its concerns and the risks it feels are associated with accepting the Harlequin investment into its SIPPs.

Our investigator set out considerable detail of those emails and risks in her assessment of the complaint. Both Rowanmoor and Mr C have seen the relevant quotes from the email correspondence and neither have made any comment in response, so I will not repeat everything in full here. But in reaching my decision I have considered everything set out in that assessment.

In summary, the emails demonstrate that Rowanmoor had concerns about:

- potential liability for the full Harlequin purchase price, where the SIPP is only being used to fund the 30% deposit.
- how the balance of the Harlequin purchase price would be funded.
- the fact that in some instances Harlequin didn't have title to land or all consents to enable development to proceed.
- the possibility that the structure could result in 'fractional' ownership of the Harlequin investment.

- how a customer would be able to liquidate the asset if held in joint ownership.

- the impact of fees in comparison to the SIPP value.

- possible difficulties in recovering monies to the scheme in the event of the developer going bust before the development being completed.

More generally, individuals at Rowanmoor passed comment within the email communication to suggest they recognised there were risks. For example, in relation to the SIPP funds only covering a deposit for the Harlequin investment and requiring finance for the balance, on employee said said:

> *"My own personal opinion is that if you only have £30K in a pension you can't afford an offshore villa. Get over it and invest somewhere else!"*

In another email an employee of Rowanmoor repeatedly referred to Harlequin as *"sneaky"* and had concerns about the transparency of the Harlequin investment agreement.

What, acting fairly and reasonably should Rowanmoor have done?

Rowanmoor carried out a variety of checks in completion of its due diligence into the Harlequin investment. It did lots of the things the regulator expected of it – such as checking that Harlequin had title over the land, requesting copies of planning permissions, having open discussions with Harlequin and asking lots of questions about the business model and how the financing would work.

Rowanmoor also acknowledges that its obligations went further than just checking the investment was SIPPable. But, having made those enquiries, I don't think it reached the correct conclusion.

It continued to accept business without some of the concerns it had being answered or addressed. About the way the investment was being marketed to consumers, the way it was structured, the lack of legal advice obtained to cover the risk to themselves or their consumers, what would happen should there not be finance available to complete and the type of consumers who they saw were investing into Harlequin.

So, having identified the risks, accepting they had obligations they should have done more to protect Mr C from the possibility of consumer detriment. I think had Rowanmoor acted fairly and reasonably towards Mr C, it ought to have refused to accept his application and investment. I think it had enough information available to it to conclude that allowing the transfer and investment would create a high chance of consumer detriment.

Rowanmoor had growing concerns about Harlequin's actions as a reputable and trusted firm to do business with. It internally discussed not trusting Harlequin to be transparent with its contract amendments, referred to it as 'sneaky' and thought it may be trying to find ways to get around restrictions Rowanmoor were trying to put into place. This ought to have made Rowanmoor even more cautious about Mr C's transaction.

Rowanmoor also expressed concerns about the lack of legal advice which had been sought other than by Harlequin themselves. It detailed why this was a concern within their internal communications clearly. It was suggested that they ought to insist that consumer's sought independent advice – but they didn't pursue that avenue. Instead they asked consumers to sign a waiver without explaining the risks to them in full of there having been no independent legal advice in the transaction (as they described and had considered internally).

The documentation from the time expresses consistent concerns about how consumers would be able to fund the remaining stage payments to completion. In order to circumvent this Rowanmoor sought to protect itself by limiting the liability of the pension scheme to the funds value. It identified the risks in fractional ownership and expressed dissatisfaction with the model a competitor was using to accept a SIPP and personal contract alongside one another. However, Rowanmoor itself went on to create a situation where a personal guarantee was needed, whereby should the scheme not have been able to meet the payments the consumer would enter into a personal contract and incur personal liability for a percentage of the investment.

It simply said it expected consumers to make the stage payments as they became due. I don't think this went far enough, I don't think it's reasonable for Rowanmoor to have identified a concern and simply looked to protect itself from the risk. There was no exploration of reassurance of whether a consumer could even secure the funds needed from any source to meet contractual obligations and make staged payments.

I think treating Mr C fairly and making sure he was not exposed to the likely chance of consumer detriment meant they should have done more to satisfy themselves that the consumers would also be protected. Rowanmoor was clearly in a position to have known more about the risks and pitfalls than Mr C.

It became evident to Rowanmoor that rolling up stage payments until completion was a large selling point of the investment. By the time of Mr C's application, it had also communicated with some of its consumers who let it know they had no intention of needing to provide additional funds into the scheme for fees or stage payments. It wasn't enough for Rowanmoor to know these facts but not act on them other than to simply say they expected consumers to make stage payments. Rowanmoor had enough knowledge about the business they had been receiving to conclude that a large proportion of consumers would struggle to meet the remainder of the investment payment.

I'm not suggesting Rowanmoor ought to have considered whether or not Harlequin was suitable for each individual consumer. It may be that in some cases a regulated adviser did assess this for consumers – but in this case I've seen nothing to show Rowanmoor sought that reassurance or asked to see suitability letters to address those concerns.

Again, I'm not saying that Rowanmoor should have provided advice, but instead it should have ensured no consumer detriment by sense checking the transaction overall. Had Rowanmoor asked Harlequin for more information about the 'friendly' lender mentioned by them, or for suitability reports to show how Mr C intended on making the stage repayments it would have had received confirmation of their concerns. Treating Mr C fairly it ought to have refused to accept his SIPP application via which it understood his intention of investing into Harlequin.

Investment into Green Oil

Mr C made a subsequent investment into Green Oil in October 2012. As set out above I don't think Rowanmoor should have accepted Mr C's application and so a SIPP would never have been set up. Mr C transferred his second pension into the SIPP to cover the small shortfall between the Harlequin deposits. Had this not occurred then the additional funds would not be held in the SIPP to be invested – so, the investment wouldn't have gone ahead.

For that reason, I have not gone on to consider the due diligence carried out in full at the time of this investment. However, BLT was no longer regulated – and Rowanmoor have said

it doesn't accept direct investment business. In addition, it asked an expert for their opinion on the claims Green Oil was making in relation to the return on the investment. That expert said the following:

> *"Essentially I find it impossible that one tree will carry 1 ton of seeds."*

Therefore, I think it's fair and reasonable to say the Green Oil investment wouldn't have gone ahead but for Rowanmoor's failures, and so consider that Mr C should be compensated for those losses within the complaint.

Is it fair to ask Rowanmoor to pay Mr C compensation in the circumstances?

Rowanmoor failed to carry out appropriate due diligence in relation to Mr C's business, nor did it reach the right conclusions from the information that was available to it. I understand that another regulated party (BLT) was involved here, but I'm looking at Rowanmoor's separate role and responsibilities – and for the reasons I've explained, I think it failed to meet those responsibilities.

But for Rowanmoor's failing, Mr C's pension switch and investments would not have been made in the first place. So, I'm not asking Rowanmoor to account for losses that go beyond the consequences of its failings.

Mr C has already received some compensation from the FSCS for failings by BLT. But under the terms of the reassignment between Mr C and the FSCS, Mr C is contractually bound to repay the FSCS from any compensation he receives from Rowanmoor.

It was necessary for Mr C 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 also note that my conclusions in this decision are in line with what was recommended by the investigator in the case. Both Mr C and Rowanmoor agreed with those recommendations some months ago – but it's only recently that Rowanmoor asked for an ombudsman's review and final decision. But it did not provide any further information disagreeing with the investigator's view for further consideration. So, I'm satisfied the fair compensation set out below and previously agreed by both parties is fair and reasonable in the circumstances of the complaint.

Fair compensation

To put things right, Rowanmoor should:

- Calculate and compensate Mr C for the loss he has suffered as a result of making the transfer.
- Take ownership of the investments if possible.
- Pay Mr C £500 for the distress and inconvenience he's experienced.

I'll explain how Rowanmoor should carry out these calculations below:

Calculate the loss Mr C has suffered as a result of making the transfer

Rowanmoor must undertake a redress calculation 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.

Rowanmoor may wish to contact the Department for Work and Pensions ("DWP") to obtain Mr C's contribution history to the State Earnings Related Pension Scheme (SERPS or SP2).

These details should then be used to include a 'SERPS adjustment' in the calculation which will take into account the impact of leaving the occupational scheme on Mr C's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr C's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. The notional deduction should be calculated using Mr C's marginal rate of tax in retirement. Typically, 25% of the loss could have been taken as tax free cash and 75% would have been taxed according to Mr C's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr C within 90 days of the date of his acceptance of this final decision. Further interest must be added to the compensation amount at a rate of 8% per year simple from the date of decision to the date of settlement for any time, in excess of 90 days, that it takes Rowanmoor to pay Mr C.

It's possible that the data gathering for the SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90-day period in which interest won't apply.

Take ownership of the investment(s)

In order for the SIPP to be closed and further SIPP fees prevented, the investment needs to be removed from the SIPP. If Rowanmoor is unwilling or unable to purchase the investments the value should be assumed as nil for the purposes of the loss calculation.

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

If Rowanmoor does not take ownership of the investments, and they continue to be held in his SIPP, there will be ongoing administration fees in relation to the SIPP. Mr C would not be responsible for those fees if Rowanmoor hadn't accepted the transfer of his pension provision into the SIPP. So, I think it's fair for Rowanmoor to waive any SIPP fees until such time as Mr C can dispose of the investments and close the SIPP.

Trouble and upset

Mr C has been caused some distress and inconvenience by the loss of his pension benefits. This is money Mr C 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.

My final decision

For the reasons given, my decision is that I uphold Mr C'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 C'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 uphold the complaint. I think that fair compensation should be calculated as set out above. My decision is that Rowanmoor should pay Mr C 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 90 days of acceptance of a final decision by Mr C as detailed above.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I recommend that Rowanmoor pays Mr C 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 C can accept my decision and go to court for the balance. Mr C 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 C to accept or reject my decision before 27 September 2022.

Ross Hammond
Ombudsman