DRN-5303711

The complaint

Mr S's complaint concerns investments made in a self-invested personal pension (SIPP) provided by IFG Pensions Limited (IFG). The investments were in shares of a company which said it intended to buy and develop land in Cyprus, generating profit for shareholders. Mr S says he is aware other holders of the shares have been told they are entitled to compensation, due to failings in the due diligence SIPP operators carried out into the shares. Mr S says he should also be entitled to compensation from IFG on this basis. Mr S also complains about IFG, more recently, having concluded it will not allow further investment in the shares. Mr S feels the basis of this conclusion is unsound and that, by not allowing him to invest further, IFG is denying him the opportunity to recover the money he initially invested.

What happened

There were a number of parties involved in the events subject to complaint. I have set out a summary of each.

IFG

IFG is a SIPP provider and administrator. At the time of the events in this complaint, IFG was regulated by the Financial Conduct Authority (FCA) or its predecessor, the Financial Services Authority (FSA). IFG was authorised, in relation to SIPPs, to arrange (bring about) deals in investments, to deal in investments as principal, to establish, operate or wind up a pension scheme, and to make arrangements with a view to transactions in investments. IFG provided Mr S's SIPP, and operated under a number of different trading names. The trading names of MW Pensions, The MW SIPP, MW SIPP 2, and Sovereign Pension Services were used during the course of the events subject to complaint. It has however ultimately been the same business throughout, and I will refer to IFG throughout this decision.

The Company – "C"

I will refer to the company Mr S invested in though his SIPP as "C". We have been provided with an unsigned copy of the Memorandum and Articles of Association and a copy of a presentation dated 16 November 2007, which sets out the plans for the company and how investment in it was intended to work. The presentation carries the branding of an Independent Financial Advisor I mention below - Robert Magee and Associates Ltd.

The company was registered in Cyprus in late 2007. The Cypriot company register shows the company was dissolved in late 2022. I understand no returns have been paid to shareholders.

The Independent Financial Advisors (IFAs)

There were two IFA businesses involved in Mr S's dealings with IFG. Monmouthshire Independent Financial Advisers (Monmouthshire IFA) and Robert Magee and Associates Ltd (Robert Magee). Both were authorised by the relevant regulator (the FSA or FCA), at the relevant times.

Mr S's dealings with the parties

I have set out below a timeline of what I consider to be the key events:

- 13 October 2008 – Mr S applies for a SIPP with IFG, naming Monmouthshire IFA as his financial advisor.

- 21 October 2008 - Monmouthshire IFA issues a suitability report to Mr S. This recommends IFG's SIPP but confirms "*no advice has been provided in respect of your chosen investment*".

- 24 October 2008 – IFG issues a welcome letter to Mr S, confirming acceptance of his SIPP application.

- 27 October 2008 – Mr S makes an application to buy 50 shares of C at £1,000 each. The application was sent to IFG by Monmouthshire IFA under a letter of this date, but the copy application provided to us was not signed by Mr S until 13 December 2008, and countersigned by the SIPP trustees on 19 January 2009.

- 12 January 2009 – IFG writes to Mr S in respect of the application to buy shares, confirming the basis on which it has been accepted. This letter refers to IFG having seen a suitability report from Robert Magee, which Mr S had countersigned.

- 13 October 2009 – Robert Magee sends authority to change the IFA on Mr S's SIPP to it, from Monmouth IFA.

- 21 January 2010 - Mr S makes an application to buy 75 shares of C at £1,000 each. This application was sent to IFG by Robert Magee and was signed by Mr S on this date. The copy application provided to us is not countersigned by the trustees.

- 27 October 2010 – Robert Magee signs an introducer agreement with IFG.

- 24 June 2011 - Mr S makes an application to buy 60 shares of C at £1,000 each. The application was signed by Mr S on this date. I have not seen a covering letter for this application.

- 29 August 2011 – Robert Magee writes to Mr S to "*confirm we have acted upon your instructions to purchase a further 60 (sixty) ordinary shares*". The letter also confirms Robert Magee "*is carrying out your instructions on an execution only basis*". The letter notes that other investments held in the SIPP were sold to fund this purchase.

I mention other investments in the final point above. I understand Mr S transferred the remainder of his pension (i.e. the element of it which was not used to buy shares in C) to IFG at some point. The available evidence shows the money which was not invested in C was invested in a portfolio of collective investments managed by an FCA authorised business. I also understand there is no complaint about these investments; the complaint is only about the investments in C.

IFG's initial due diligence into C

Our investigator asked IFG about the due diligence it carried out into C at the time of Mr S's investments. IFG told us, in summary:

- Due diligence took place according to the requirements at that time.

- It took account of the fact Robert Magee promoted C, and was an FSA regulated financial adviser.

- Memorandum and Articles of Association for C were obtained and reviewed.

- No evidence of any correspondence exchanged can be located. Communications were made by phone and/or email between the original Trustees who left the business in 2016.

- It had expressed concerns about potential illiquidity of this type of investment to Robert Magee, when additional investment requests were made by it on behalf of Mr S.

- It relied on third party reports to provide information about the structure of the investment (IFG has not said which reports it relied on, or provided any other details about them).

- Initial due diligence took place prior to FSA's 2009 report of its thematic review of SIPP operators. At this time, the responsibilities and expectations of the SIPP administrator and trustees where not as comprehensive as they have since become.

- Following the FSA's 2009 report of its thematic review of SIPP operators, SIPP operators were asked to tighten processes in respect of unquoted share purchases. It therefore limited the total amount invested into unquoted shares to 30% of total pension assets.

- The SIPP was established on an execution only basis, and it was explained the SIPP does not provide investment advisory services.

- The asset was not being sold by a connected party of the beneficial owner of the SIPP.

- Mr S had been provided with information about this investment by a regulated financial adviser, and subsequently made the decision to invest in the asset at the proposed price prior to making an application to use the SIPP to facilitate this.

IFG's later due diligence into C

In 2019 parties associated with C asked Mr S and other shareholders to invest more money. This prompted enquiries from IFG which, in turn, led it to conclude it should not allow any further investment in C. IFG has highlighted the following:

- The existing shares are not registered to the SIPP. MW SIPP Trustees do not appear as a shareholder on the public records of the Cyprus Registrar of Companies.

- It has been unable to obtain a valuation of the land.

- The land is currently not owned either directly or indirectly by C, nor was the land ever owned by C.

- An agent visited the land and took photographs, which show that no development has taken place.

In early 2022 IFG wrote to shareholders in C and said:

- It had concluded that the shares in C cannot be disposed of.

- Having completed its investigations, it is its view that the investment has failed and that consideration should be given to liquidating C.

IFG's due diligence into the IFAs

Our investigator also asked IFG about the due diligence it carried out into the IFAs. IFG told us, in summary:

- Both IFAs were authorised to provide advice and were reasonably expected to complete a diligent fact find on Mr S's circumstances, financials, and attitude to risk, providing advice on an independent, whole of market basis for an appropriate solution and product to meet the specific requirements of Mr S.

- Its understanding was that advice would be given by the IFAs. The advisors' role was to provide regulated financial advice. It received a copy of the financial planning report that Monmouthshire IFA produced for Mr S (this refers to the 21 October 2008 suitability report mentioned in the timeline above).

- The FSA's 2009 report of its thematic review of SIPP operators recommended that SIPP operators put in place terms of business with introducers. It accordingly put terms of business in place with Robert Magee, after it became Mr S's advisor.

Our investigator's view

Our investigator only considered Mr S's complaint about IFG not allowing him to invest further money into C. In relation to this our investigator said, in summary:

- IFG fulfilled its obligations in relation to conducting due diligence on C and its concerns with the investment are, in his view, well founded. It's apparent that IFG has not taken its responsibilities lightly and evident that it has adopted a robust process for determining the validity of investment in C.

- He appreciated that IFG's intervention has caused frustration as Mr S believes there were prospects for recovery, with further investment. However, from the evidence available, he believes that IFG had acted in its members' best interests, and taken action to prevent potential consumer detriment.

Mr S did not accept this view, and exchanged further correspondence with the investigator. In short, Mr S's view is that the concerns IFG has highlighted are not well-founded and, through its actions, IFG has lost him the opportunity to realise a profit on his investment.

Our investigator acknowledged there was a clear difference of opinion between IFG and Mr S but was not persuaded to change his view. Mr S's complaint was accordingly passed to me for consideration.

My provisional findings

I recently issued a provisional decision. My provisional findings were as follows:

- I was satisfied Mr S's complaint related to both the initial due diligence which had been carried out on his investments, as well as the later due diligence, which had led

IFG conclude it should not allow further investment.

- The information which appears to have been available to IFG at the outset about the investment and the way in which it was being distributed/promoted should have led IFG, with its regulatory obligations in mind, to identify a significant risk of consumer detriment.

- This should have led IFG, acting fairly and reasonably to meet its regulatory obligations, to decline to accept the investment, or make enquiries.

- Had further enquiries been made, IFG should reasonably have concluded it should not accept the investment.

- Had the investment in C not been accepted initially, the further investments would not have come about.

- Setting that aside, it is also the case that further concerns should have been identified at the time of the additional investments Mr S made in C. So, these additional investments should not have been allowed by IFG, in any event.

- Having carefully considered the circumstances, I was satisfied it was fair to ask IFG to compensate Mr S for the loss he had suffered through the investments.

IFG did not accept my provisional decision. It appointed a representative to respond on its behalf. The key points made, in my view, were, in summary:

- It does not agree that Mr S's complaint relates to the initial due diligence. It is clear his complaint is not about the initial due diligence, but the later due diligence which led IFG to conclude it should not allow the investment. It is not appropriate for me to consider grounds of complaint Mr S has not chosen to pursue.

- Setting that aside, it does not agree it was required to undertake due diligence at the relevant time. The reports and guidance I cite in my provisional decision were not good industry practice at the time the initial investment was made – that investment predates the reports and guidance.

- A decision issued by The Pensions Ombudsman (a copy of this decision was provided with the response) makes the finding that regulatory publications cannot be retrospectively applied.

- It accepts the Principles applied but does not accept they obliged it to do more than it did at the time of the investments. It treated Mr S fairly and acted with due skill, care and diligence at all times.

- IFG met the requirements of the 2009 report, in any event, and reasonably relied on the advice provided to Mr S by his financial advisor and the documents Mr S signed.

- The later investments post-date some of the publications but by findings go well beyond what the publications required. These publications were, in any event, not exhaustive, proscriptive or mandatory.

- A refusal of the investment, accompanied by reasons for that refusal, would have amounted to advice, and would have been viewed as such by Mr S.

- The decision of The Pensions Ombudsman in a similar complaint is clear that the duty of a SIPP operator extended to only making basic checks and the consumer is ultimately responsible for the investment choices they make. The complaint was dismissed on this basis.

- It is unclear how it could have treated Mr S fairly by refusing an investment on the basis of "red flags" in circumstances where he had said he understood the significant risks involved. It was not its role to ensure Mr S did not expose himself to the risk of an investment's failure.

- It considers the suitability report shows Mr S was given advice on the investments, and was certainly advised about the risks generally associated with such investments, as well as the transfer into the SIPP from his existing pensions.

- It was fair and reasonable for it to rely on Mr S's advisor to manage any conflicts of interest.

- Mr S was intent on making the investments into C and would have done so by different means even if IFG had refused to make them.

- Mr S's financial advisors are primarily responsible for any loss Mr S suffered, not IFG.

- It is not fair to hold IFG responsible for losses arising from Mr S making a high risk investment, in circumstances where Mr S accepted a high level of risk.

- It is speculative to find Mr S would have made a lower risk investment, in circumstances where he said he was willing to accept high risk.

This is not intended to be an exhaustive summary of the response – and I confirm I have considered it in full.

What I've decided – and why

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

I have carefully considered all IFG has to say about the scope of Mr S's complaint. Having done so, I remain of the view it is appropriate to consider both the initial and later due diligence due diligence carried out by IFG when deciding what is fair and reasonable in the circumstances of this complaint.

In his initial referral to us, Mr S said:

"*I believe my sipp is in jeopardy because sovereign* [IFG]*….have not undertaken the correct due diligence on my mw sipp purchase of unlisted shares of* [C]"

This clearly refers to due diligence on the investments he made. He goes on to say:

"*I understand other shareholders of [C] who hold their shares through their own sips (sic) … have recently been contacted by the financial services ombudsman. To be told the FO findings are indeed that their sipp has failed in its did* (sic) *duties and redress is entitled to those shareholders. Under FOS rules I am requesting the same*"

This seems to refer to consumers who held shares in C through another SIPP, and to

conflate this service with the Financial Services Compensation Scheme (and possibly the business which took over the other SIPP). But it does show Mr S is seeking compensation for losses suffered through investments made – not only a refusal to later allow further investments.

I acknowledge our investigator only looked into Mr S's complaint about IFG not allowing him to invest further money into C and, when doing so, said Mr S "*confirmed he was satisfied*" with the initial due diligence carried out into C. However, as I set out in my provisional decision, the focus of the conversation between Mr S and the investigator was Mr S's concern about IFG not allowing further investment; the initial due diligence carried out by IFG was only mentioned briefly. And Mr S did not challenge what was briefly said about the initial due diligence; but he did not say he did not want us to consider that point either.

It should also be noted that the investigator did not correct what, in my view, appears to have been a critical misunderstanding of the facts on the part of Mr S, who was under the impression IFG took over from another SIPP operator in 2014, rather than the same operator having been responsible throughout (albeit under different ownership from time to time). This of course conflicts with a complaint IFG was responsible for the initial due diligence into the investments (which all predate 2014). But it shows (like Mr S's initial complaint submission) that there was, generally, a lot of confusion on the part of Mr S as to which parties were responsible and on what basis; and I think that is important context when considering the scope of his complaint.

Ultimately, Mr S has referred a single complaint to this service which, in my view, although based on some misunderstandings, encompasses both the initial and ongoing due diligence into C. And I am satisfied he has not withdrawn that complaint.

Furthermore, and in any event, we have an inquisitorial remit which, in the circumstances of this case, brings me to consider *all* the due diligence carried out on C by IFG, not only the due diligence carried out latterly.

As I set out in my provisional decision, it is important to keep in mind the complaint about IFG's later due diligence is made in the context of Mr S being in a position of potentially having lost all he invested in C and wanting to pursue what he sees as an opportunity to recover his investment. In other words, the issues Mr S sees with IFG later having later declined to allow the investment all stem from it having accepted it in the first place. And, as I have set out above, there seems to be some confusion on Mr S's part as to which parties were responsible and on what basis. Therefore, even if Mr S has not complained about the initial due diligence IFG carried out (or has not clearly done so), I am satisfied it is appropriate to use my inquisitorial remit to consider it.

All in all, I remain satisfied it is appropriate to consider both the initial and later due diligence due diligence carried out by IFG, and I will therefore proceed to again do that.

The purpose of this decision is to set out my findings on what is fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, whilst I've carefully considered all the submissions made by both parties, I've focussed here on the points I believe to be key to my determination of what's fair and reasonable in the circumstances.

In a similar vein, I confirm have read – and carefully considered – everything the parties have said and submitted. But the summary I have set out above is not intended to be exhaustive; rather, it is intended to be a summary of what I consider to be key.

I'm required to determine this complaint by reference to what I consider to be fair and

reasonable in all the circumstances of the case. When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

With that in mind I'll start by again setting out what I have identified as the key relevant considerations to deciding what is fair and reasonable in this case. Before doing so, I wish to confirm that I have carefully considered all IFG had to say about this in its response to my provisional decision.

Relevant considerations

The Principles

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

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

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

And at paragraph 77 of BBA Ouseley J said:

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

In *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ("BBSAL"), Berkeley Burke brought a judicial review claim challenging the decision of an Ombudsman who had upheld a consumer's complaint against it. The Ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it

had done so, it would have refused to accept the investment. The Ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and had not treated its client fairly.

Jacobs J, having set out some paragraphs of 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 FSMA and the approach an Ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the Ombudsman in that complaint, which I have described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

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

I note IFG accepts the Principles are a relevant consideration, but does not accept what I said in my provisional decision about what it should have done in practice to meet the Principles. That is a point I consider later in this decision.

The *Adams* court cases and COBS 2.1.1R

I remain of the view, having considered the Adams judgements (*Adams v Options SIPP* [2020] EWHC 1229 (Ch), *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474 and *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188) 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 is a relevant consideration here. So, I have again considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr S's case, including IFG's role in the transactions.

I note IFG accepts COBS 2.1.1R is a relevant consideration but does not accept it required to carry out due diligence at the time of Mr S's initial investment. Again, this is a point I consider later in this decision.

Court of Appeal case

I have also considered the Court of Appeal's judgment in Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541, which refers to the case law I mention above and approved the decision of the ombudsman in the case in question.

A decision of The Pensions Ombudsman

In its response to my provisional findings IFG has referred to a decision issued by The Pensions Ombudsman (TPO).

TPO is a different scheme, subject to a different statutory remit and, like us, it decides cases on their own facts, and issues decisions which do not set precedents. Furthermore – and in any event – the decision IFG has mentioned was issued around nine years ago and predates (with the exception of the BBA judgement) all the legal authorities I have mentioned above. In particular, the approach taken by the Financial Ombudsman Service in two similar (but not identical) complaints was challenged in judicial review proceedings in the *Berkeley Burke* and the *Options* cases. And in both cases the approach taken by the ombudsman concerned – which is the approach I have taken in this case - was endorsed by the court. A number of different arguments have therefore been considered by the courts since the TPO decision was issued and may now reasonably be regarded as resolved. I do not think the TPO decision give me reason to revisit these points.

The TPO decision is not therefore, in my view, a relevant consideration to this case.

Regulatory publications

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

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

I have reconsidered the relevance of these publications. I again acknowledge all were published after IFG's acceptance of Mr S's SIPP application and initial application to invest in C. And I have considered the points IFG has made about this in its response to my provisional decision. However, I remain of the view, for the reasons I set out below, they are relevant considerations. I have again set out material parts of the publications here.

The 2009 Thematic Review Report

The 2009 report included the following statement:

"*We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its customers and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.*

It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes …

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

asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to clients.

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

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

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

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

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

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

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

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

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

<u>The later publications</u>

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

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

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

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

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

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

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

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

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

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

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

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

Examples of good practice we have identified include:

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

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

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

from nonregulated introducers"

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

"***Due diligence***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is relevant that when deciding what amounted to good industry practice in the BBSAL case, the Ombudsman found that "*the regulator's reports, guidance and letter go a long way to clarify what should be regarded as good practice and what should not*." And the judge in BBSAL endorsed the lawfulness of the approach taken by the Ombudsman. To confirm, I remain of the view that the standards I'm holding IFG to do apply and were applicable at the time.

At its introduction the 2009 Thematic Review Report says:

"In this report, we describe the findings of this thematic review, and make clear what we expect of SIPP operator firms in the areas we reviewed. It also provides examples of good practices we found."

And, as referenced above, the report goes on to provide "…*examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms."*

So, I'm satisfied that the 2009 Report is a *reminder* that the Principles apply and it gives 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. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So, I remain satisfied it's relevant and therefore appropriate to take it into account.

The remainder of the publications also 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 to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I am therefore remain satisfied it is appropriate to take them into account too.

The obligation to act in accordance with the Principles existed throughout the events in this case – a point I note IFG does not dispute. It is also clear from the text of the 2009 and 2012 Thematic Review Reports (and the "Dear CEO" letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulator's comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

I note that HHJ Dight in the *Adams* case didn't consider the 2012 Thematic Review Report, 2013 guidance and 2014 "Dear CEO" letter to be of relevance to his consideration of Mr Adams' claim. But it does not follow that those publications are irrelevant to my consideration of what is fair and reasonable in the circumstances of this complaint. I am required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

That doesn't mean that, in considering what is fair and reasonable, I will only consider IFG's actions with these documents in mind. The reports, Dear CEO letter and guidance gave non-exhaustive examples of good industry practice. They did not say the suggestions given were the limit of what a SIPP operator should do – and, in that regard, I agree with IFG's submission they were "non proscriptive". As the annex to the "Dear CEO" letter notes, what should be done to meet regulatory obligations will depend on the circumstances. Ultimately, as I set out, I need to decide what is fair and reasonable in the circumstances of this complaint with *all* of the relevant considerations I mention in mind.

To be clear, I do not say the Principles or the publications obliged IFG to ensure the transactions were suitable for Mr S. It is accepted IFG was not required to give advice to Mr S, and could not give advice. And I accept the publications do not alter the meaning of, or the scope of, the Principles. But, as I've said above, they're evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles.

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

And in determining this complaint, I need to consider whether, in accepting Mr S's application to establish a SIPP and to invest in C, IFG complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what IFG should have done to comply with its regulatory obligations and duties.

What did IFG' obligations mean in practice?

As noted above, Mr S's initial application to invest in C predates all the regulatory publications. But it does not pre-date IFG's being an FSA authorised firm and it was, at all material times, subject to the regulatory obligations I have set out.

I note the points IFG has made about the Principles and COBS not requiring it to carry out due diligence of the type I described in my provisional decision. However, having reconsidered this, whilst I again acknowledge IFG was not required to give advice to Mr S (and did not have permissions to do so) and this was a non-advisory, execution only relationship, I am satisfied that meeting its regulatory obligations when conducting this

business would include deciding whether to accept or reject referrals of business and/or particular investments.

Pausing there, I have considered what IFG has said about due diligence of the type I described in my provisional decision amounting to advice. I consider this point in my findings but, at this stage, I confirm I am satisfied that, as a general point, deciding whether to accept or reject particular investments or referrals of business does not amount to advice on the suitability of the investment(s) concerned. Refusing to accept an application, having given the introducer and the application proper scrutiny and identifying concerning issues, is not the same thing as advising Mr S on the merits of the SIPP and/or the underlying investments.

Taking account of the factual context of this case, I remain of the view that in order for IFG to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into C and the IFAs at all relevant times.

What I'm considering here is whether IFG took reasonable care, acted with due diligence and treated Mr S fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issue in Mr S's complaint is whether it was fair and reasonable for IFG to have accepted his SIPP application and to allow the initial and subsequent investments in C. So, I need to consider whether IFG carried out appropriate due diligence checks on C and the IFAs *before* deciding to accept Mr S's application and/or instructions to invest in C.

And the questions I need to consider include whether IFG ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by the IFAs and/or applying to invest in C were being put at significant risk of detriment. And, if so, whether IFG should therefore not have accepted Mr S's application or his applications to invest in C.

Summary of findings

Having taken account of the relevant considerations my findings, in summary, remain as set out in my provisional decision:

- The information available to IFG at the outset about the investment and the way in which it was being distributed/promoted should have led IFG, with its regulatory obligations in mind, to identify a significant risk of consumer detriment:
    - The presentation IFG says it relied on contains very little detail, and raises a number of questions as to how the investment was going to work. It also contained misleading information about the risks involved.
    - Monmouthshire IFA gave advice to Mr S on the establishment of the SIPP, but not the investment (and made it clear it was not going to give advice on the investment). IFG should have identified this as anomalous – and certainly should not have relied on Monmouthshire IFA's advice when accepting the investment in C, as it appears to have done.
    - There is no evidence of any independent verification of the claims being made by Robert Magee/C about the land purchase/ownership, the plans in place, and the projected growth.
    - There was also no evidence those investing, like Mr S, had received any

independent advice from someone with expertise in Cypriot property.

    - There was also a clear conflict of interest, as it seems Robert Magee was promoting its own investment; and I have seen no evidence of that conflict having been appropriately managed.

- All of this should have led IFG, acting fairly and reasonably to meet its regulatory obligations, to decline to accept the investment.

- IFG could, alternatively, have made enquiries, in a bid to address some of its concerns. But such enquiries are unlikely to have allayed its concerns. It seems unlikely, given what it later discovered, that IFG would have been able to get satisfactory answers to questions about land value, the ownership structure, the plans in place to generate the sort of returns predicted and how C intended to use the money invested.

- So, had further enquiries been made, IFG should reasonably have concluded it should not accept the investment.

- Had the investment in C not been accepted initially, the further investments would not have come about.

- Setting that aside, it is also the case that further concerns should have been identified at the time of the additional investments Mr S made in C.

- IFG says the shares are not registered to the SIPP; it ought to have known, at the time of the subsequent investments, that the initial investment had not resulted in shares that were registered to the SIPP.

- It is also not clear, given how the investment had been described in the presentation, on what basis further investment was required.

- The updates issued in relation to C around the time of these further investments ought reasonably to have given IFG further cause for concern about it, alongside the concerns it ought to have identified at the outset.

- In both instances of further investment it appears no advice was given by Robert Magee. In the first it seems a suitability report was requested by IFG but not provided. In the second it seems IFG was aware there was no suitability report as it saw a letter from Robert Magee confirming the transaction was an execution only one.

- Again, this should have been identified by IFG as anomalous, and appears to be in conflict with its own approach to accepting business, which puts a reliance on the IFA having given advice.

I remain of the view that, in the circumstances, it is fair and reasonable to ask IFG to compensate Mr S for the loss he has suffered through making the investments in C.

For completeness, I have also again considered the later due diligence IFG carried out on C. And I remain of the view that the view IFG reached following that later due diligence was reasonably held.

I have set again out some further detail of my findings below. As I have not been persuaded

to depart from my provisional findings, I have largely repeated them below, addressing some of the points raised by IFG in its response where I consider it appropriate to do so.

Mr S's initial investment in C

The presentation

The presentation (which IFG has described as a "prospectus"), dated 16 November 2007, is described at the outset as follows:

"*Proposition by Robert Magee and Associates Ltd*"

It begins with two slides carrying the title "*Proposal*", which include the following:

"*Through the activities of our sister company Robert Magee International, we have identified a parcel of land in Cyprus which we secured an option on and are planning to develop with the help of a local developer.*

We shall invite pension plan clients to invest some of their existing pension plans into a Cyprus company that will build 15 executive villas aimed at the local professional market, as opposed to the holiday home market.

The project will cost around 3.5 million pounds (Cyprus) and development works will be ready to go in January 2008 with a completion date of late summer 2010.

The scheme trustees will be MW Pension Ltd who are ready to act on this project and we are bringing together a syndicate of pension investors to provide the initial £2.5m of funding, with the balance being funded through a bank loan still to be agreed.

The villas will be offered for sale "off-plan" immediately works begins (sic) *and we expect to sell all 15 within a year*"

"*Investors will have the opportunity to invest some of their existing pension funds by transferring their funds from insurance company funds into the open architecture of the MW SIPP.*

The SIPP trustees would then buy shares in a newly formed Cyprus company that will own and build the development.

The properties will be sold "Off plan" and the proceeds returned to the company, which would then either be liquidated, returning the profits to the individual SIPP holders or rolled over into another project of similar quality."

"*The company will exchange contracts on the land in December 2007 and will commence preliminary work in Q1 of 2008 with completion in around 30 months*."

There then follows a number of photographs of Cyprus, and some architect images of prospective villas (with no source or attribution otherwise for the latter).

The only further details of the investment specifically arrive on slides titled "*Structure*", "*Project costs – Olive Grove Cyprus*" and "*Financing the deal Rounded*".

The "*Structure*" slide contains the following:

- "*The structure will be a syndicate of SIPP investors each owning a personal SIPP through MW Pensions.*

- *The trustees (MW Pensions) will then invest in a company in Cyprus who will buy and develop the project.*"

The "*Project costs – Olive Grove Cyprus*" slide contains the following:

- "*Land acquisition*
- *Initial project management*
- *Legal fees*
- *Construction costs*
- *Initial professional services*

Total (Rounded) *3,500,000*"

The "*Financing the deal Rounded*" slide contains the following:

- "*Investor funds 2,500,000*
- *Borrowing 1,000,000*
- *Total 3,500,000*

Bank borrowings serviced by "Off plan" sales deposits of 30%"

There follows a "*Projected returns – Pre tax profits*" slide, which says investors will receive a 44% return over the projected 30 month period for completion of the project.

Finally, there are "*Risk warnings!*" and "*Summary*" slides.

The "*Risk warnings!*" slide includes the following:

"*Whilst the investment will be into new overseas company shares, the company itself is simply a corporate vehicle by which to complete the project. The company will receive funds from the trustees as and when justified by contractual obligations or operating requirement, to purchase the land, pay professional fees and then to build and market the project.*

The shareholders will be the SIPP investors and these shares will be held in safe custody by the SIPP trustees. The ownership of the land and therefore the right to develop the project, rests with the company and therefore investors funds are secured by physical bricks and mortar. However, there are always risks associated with any investment and returns are not guaranteed. This applies to this project. Such as:

- *The landowner sells to other investors before we exchange contracts in December. In this case the funds would ether remain as cash, be invested in another project (subject to each investors approval) or be invested into a portfolio of equities etc.*
- *Cyprus Property market crash – In this case the trustees would hold stock and or rent stock*
- *Cypriot economic recession – Ditto above*
- *Currency fluctuations – unpredictable*"

The "*Summary*" slide includes the following:

- "*Low to Moderate risk project*
- *Low volatility investment*"

IFG says it relied on this "*presentation prospectus delivered to potential investors*" when it carried out its initial due diligence into C. I remain of the view, had IFG been mindful of its regulatory obligations to treat customers fairly, act in their best interests, with reasonable care, and to conduct its business with due skill, care and diligence, and acted fairly and reasonably to meet those obligations it ought to have concluded, from the contents of this presentation, that it should not accept investments in C.

I remain of the view there are a number of significant points of concern the presentation gives rise to; and I think these should reasonably have been identified by IFG at the time. In summary (and no particular order):

- There is no evidence of an independent valuation of the land – and no evidence of its suitability for development, advice being given on planning permission, building permits etc having been received. There was therefore a risk this was a "landbanking" scheme of the type the FCA later warned investors about, where land was effectively being sold to investors at an inflated price, with no reasonable prospects of offering a return to investors, ether because the land wasn't suitable for development or because development was not commercially viable.

- The presentation describes the trustees as effectively holding the money invested in escrow, only releasing it on the production of evidence to show it is needed. There is no evidence the trustees had taken on any such role; they were simply transferring money to C, in return for shares in C.

- The presentation describes investment in C as "*secured by physical bricks and mortar"* when, in fact, no land had been purchased by C at the time of investment; much less developed into bricks and mortar properties. Mr S was, in reality, investing in the shares of a property development company – and an unlisted one, with no track record. There was no security associated with such an investment.

- It was, in my view, wholly misleading to describe the investment as "low to moderate risk" and "low volatility". This was, by any reasonable measure, a high risk investment and, as mentioned, was an investment in the shares of a newly-formed unlisted overseas property development company; an investment which was therefore potentially illiquid and highly volatile.

- The risk factors listed, in my view, fall a long way short of adequately disclosing the risks associated with investing in C, which were complex and multi-factorial. One obvious risk which is not highlighted – and appears to have come to pass – was that C spent all of the money invested but did not complete the project. Another obvious risk is that there was no market for such properties off plan. It is not clear how the suggestions to "*hold stock*" or "*rent stock*" deal with that risk, given that the invested money, apparently, was to be used wholly to buy the land and reach an off plan stage, with deposits from off plan purchases to be used to fund the borrowing which was apparently going to be taken.

- A number of claims made in the presentation appear to be baseless – for example, the 30 month completion time and the 44% projected return.

- There is no reference to any third parties which it would be reasonable to expect would be involved from this early stage – lawyers, builders, architects etc.

- Borrowing is mentioned but no details are provided of whether it had been secured, who the lender was, the rate and terms, and any charge being taken over the land by the lender (and what this would mean for shareholders in C).

- There are no details of how the money invested was to be used. There is a list of project costs but no amount is attached to these – only a rounded total is given, with no information about how that total had been arrived at. It would be reasonable to expect quotes would have been obtained, and the sources of those quotes provided.

- It is said that £2.5m is needed from investors. But nothing is said about what happens if this target is not met.

- It is not clear how C was going to generate such a high return over a relatively short period of time by, apparently, simply buying land, getting planning permission, then reselling as off-plan plots.

- Given the timescale and projections, the project would have needed to be, at this point, thoroughly researched and planned, with local business with track records and appropriate credentials being involved. But there is no evidence anything had in fact been done, other than "an option" being taken on some land in Cyprus by those who were setting C up (Robert Magee and his co-director).

- There was no evidence that those involved had any track record of Cypriot property development.

- It is clear Robert Magee is targeting those with existing pensions held in relatively safe, conventional, pension arrangements ("*insurance company funds")* for investment in C. IFG should have been aware it was highly unlikely that investment in C, at any level, would be suitable for the holders of such pension arrangements, and have noted a risk of consumer detriment arising from this.

This is not an exhaustive list; but it is in my view sufficient to demonstrate the point that there was a clear identifiable risk the investment might not be genuine, or at least be poor quality. I note IFG says, in its response to my provisional decision, that the presentation made the risks of the investment clear, and it could therefore reasonably rely on Mr S's acknowledgement he understood those risks. For the reasons I have set out, I do not agree – the presentation, in my view, clearly does not explain the risks associated with this investment.

I am not necessarily saying IFG had to explore/answer all these points. Rather that it should have identified them and, with its regulatory obligations in mind, ought reasonably to have concluded that, cumulatively, they amounted to a "red flag". The points should therefore have been sufficient for it to conclude it should not allow the investment as there was a risk it might not be genuine, or at least be poor quality.

IFG says many investments of this nature will have documentation that raises further questions. I accept that is the case. But my finding here is that this should have been viewed as anomalous. This goes far beyond circumstances where literature is of a standard that might reasonably be expected and provides a comprehensive, fair and balanced set of information is given but an investor might still have some questions on some points of complexity. The presentation lacks basic professional standards – it makes clearly misleading statements, lacks any detail of how the investment would work in practice, and makes claims of a return which appear to amount to little more than bare assertions. And I think it is fair and reasonable to say a competent market participant should have been alive

to the fact the presentation lacks many of the features associated with legitimate investments offered by competent professionals.

IFG also says refusing to allow the investment on the basis of what I have described as "red flags" would not be treating Mr S fairly, given he wanted to make the investment and had declared his understanding of the significant risk involved. It says it was not its responsibility to prevent Mr S exposing himself to the risk of loss. To be clear, my finding is not that IFG should simply have identified that the investment as a high risk one and, on this basis, concluded it would not be consistent with its regulatory obligations to allow the investment. My finding is that IFG should have identified a risk the investment might not be genuine, or be of poor quality – and there was therefore a risk of consumer detriment associated with it. It is in my view fair and reasonable to find, in such circumstances, that IFG ought to have concluded it would not be treating Mr S fairly, or acting with due skill, care and diligence by allowing the investment in its SIPP.

The alternative to IFG having simply concluded it should not accept investments in C is that it could have made enquiries, in a bid to allay the concerns it ought to have had. But there is, in my view, insufficient evidence to show that reasonable enquiries would have yielded satisfactory answers. Considering the content of the updates subsequently sent by C and the results of the enquiries IFG made from 2019, I think it unlikely full answers would have been received and that any answers which were received would have intensified IFG's concerns, rather than allaying them.

I note, for example, that some ten years later C had still not obtained building permits and there was no evidence of any activity on the land. I also note that the total sum initially invested in C ultimately (£1.2m) was a fraction of the £3.5m originally set out as being required to finance the deal and no bank borrowing seems to have been taken; but C nonetheless said there was sufficient funds to proceed as originally planned, with the land apparently being purchased, ultimately, for £765,000 (it should be noted I have still not seen evidence to show C did in fact purchase the land or whether this was a fair open market price, based on a valuation from an independent party).

None of the above suggests that reasonable enquiries would have yielded responses which were sufficient to answer the concerns IFG ought to have identified. I think it more likely that such enquiries would have revealed further cause for concern.

So, I think, acting fairly and reasonably to meet its regulatory obligations, IFG should not have accepted investments in C, on the basis I have set out. I remain of the view that this alone is sufficient basis for it to be fair and reasonable to uphold Mr S's complaint. But I will go on to set out the remainder of the findings summarised above, for completeness.

No advice from Monmouthshire IFA

I note all IFG says about the steps it took in relation to the IFAs - checking they were authorised, putting Terms of Business in place, and explaining the roles of the IFAs and it, as SIPP operator. But, to meet its regulatory obligations, IFG should nonetheless have considered the quality of the business being referred to it, and have been alive to risks of consumer detriment. I remain of the view there were a number of risks it should reasonably have identified here; and that it was not therefore reasonable for it to place reliance on the involvement of the IFAs to the extent it has described.

At the outset of the suitability report (which post-dates the SIPP application) the advisor says:

"*No advice has been provided in respect of your chosen investment into* [C]"

The report does go on to say the following:

"*International Property Investment*

….We discussed the associated risks, and after considering the risks and rewards, you have decided you would like to transfer some of your [existing pension] *into a suitable Self-Invested Personal Pension (SIPP), which will allow you to invest in the Cyprus Development project*."

"I refer you to the prospectus passed to you at the meeting, especially pages 35-37 which highlight the risk warnings."

"*Few SIPP providers will facilitate the purchase of unquoted overseas company shares. However, we have identified MW Pensions SIPP Ltd, whose SIPP will permit the aforementioned investments of the property development company*"

"*You have accepted that to exploit the opportunity of potentially increased rewards presented by the Cyprus project; you must also accept the significant risk to your fund*"

The reference to a prospectus for C, from the page number references mentioned in the report, appears to refer to something other than the presentation I consider above. It remains the case that I have not seen a copy of a prospectus, if there is one; and I note IFG has said it has provided us with everything it has in its records. IFG said its response to my provisional decision that there is no evidence to show Mr S did *not* see a prospectus. I accept that point but, even if there was a prospectus and Mr S did see it, I am not persuaded that this, ultimately, could reasonably have led IFG to conclude it would be consistent with its regulatory obligations to allow the investment, given what I have set out in my findings.

I remain of the view the suitability report makes it clear Monmouthshire IFA was not recommending investment in C, and that IFG should have noted that it was unusual that the suitability report does feature some advice on the risks associated with C, as quoted, but Monmouthshire IFA was not willing to recommend the investment. This ought to have been a further concern – particularly in the light of what I set out above. IFG, in its response to my provisional decision, says advice was effectively given on C as the advice was to take out a SIPP to facilitate investment in C and, in any event, advice was given on the risks associated with an investment of C's type. In my view, that simply emphasises the anomalous features here – despite the references to significant risk, and the fact it was clearly recommending the SIPP to allow investment in C, Monmouthshire IFA was not willing to recommend investment in C and set out that it was not doing so at the outset of its suitability report.

So, I remain of the view that IFG putting significant reliance on the involvement of the IFA does not seem to be reasonable in the circumstances.

The 12 January 2009 letter to Mr S from IFG, which was sent by IFG following receipt of Mr S's initial application to invest in C, included the following:

"*The original prospectus which Robert Magee discussed with you (dated May 2008) sets out not only the potential investment returns but, equally importantly, the risk associated with the investment. It also makes it clear that the investment is for a 3 to 5 year term, with there being no guarantee that you could realise the investment early should your circumstances change. This was confirmed to you in a "suitability" letter sent to you subsequently by Mr Magee, which you countersigned. We as Trustee have been supplied with a copy of that suitability letter.*

As trustee we are therefore satisfied that:

a. *you have been supplied with full details of the potential investment return*
b. *you have been fully appraised of the investment risks*
c. *you are aware that the investment is for a 3 to 5 year period and that there is no guarantee that the investment could be realised within that period should your circumstances change*
d. *by counter-signing the suitability letter, you have confirmed that you fully understand all the above*."

Although Robert Magee appears to have had some involvement from the outset it was not, as set out above, recorded by IFG as being Mr S's financial advisor at this time. The advisor was Monmouthshire IFA. So, it seems likely the reference to Robert Magee having sent a suitability letter is an error, and the reference should instead be to Monmouthshire IFA – it is a suitability report from Monmouthshire IFA that IFG holds on its files.

The suitability report from Monmouthshire IFA was counter signed by Mr S on 23 October 2008. So, IFG's letter is accurate on that point. But, as I have set out, Monmouthshire IFA did *not* recommend the investment in C; and took steps to make this clear to Mr S at the outset of its suitability report. Furthermore, the suitability report cannot, by any reasonable measure, be considered to amount to evidence Mr S had been *fully appraised* of the risks associated with C. The report does say the risk is significant, but it does not detail the risk factors, and simply refers Mr S to the prospectus, rather than confirming its contents had been discussed. As noted above, I do not know whether there was, in fact a prospectus or, if there was, what it said. And there is no evidence IFG had regard to a prospectus at the time. So, given the findings I have set out, I do not think IFG could reasonably have placed any reliance on the reference to a prospectus.

IFG should also have been mindful of the misleading statements about risk made in the presentation and the concerns otherwise which it ought to have identified, having seen that presentation. It should have been mindful that the warning about risk Monmouthshire IFA did give may be being undermined by what was being said by Robert Magee, which had downplayed the risk in the presentation and had a vested interest in investments in C proceeding.

So, the basis on which the application to invest was introduced ought to have led to further concerns and is, in my view, a further or additional basis on which it would be fair and reasonable to uphold the complaint.

Other issues – no independent verification, no expert advice, conflict of interest

I think IFG ought to have been concerned there did not appear to be any parties other than C involved with arrangements, other than Robert Magee, which was connected to the investment. There did not appear to be any independent verification of the basis of the proposals being made by C/Robert Magee. There was no basis on which an investor could satisfied that the land was being purchased at a fair value and the plans set out were viable, with reasonable claims being made about costs, timescales, anticipated timescales etc.

As with the points I list above about the presentation, I am not necessarily saying IFG should have sought verification; rather that it should have viewed the lack of it as meaning there was a significant risk of consumer detriment.

Fully understanding the risks associated with the investment would, in my view, involve having expertise in Cypriot law and the Cypriot property market. There is no evidence Mr S had received advice from anyone with this expertise, or had been told of the importance of

doing so. Given, as set out above, that Mr S does not appear to have received advice otherwise, it is not clear on what basis IFG could reasonably conclude Mr S had an understanding of the risks involved. This is particularly important, given the content of the presentation.

Finally, IFG should have noted that there was a clear conflict of interest in Robert Magee promoting an investment in which it had an interest. And it should have noted there did not appear to be any mechanisms in place to appropriately manage that clear conflict of interest (which links into the points I have made about the lack of advice on investing in C).

In its response to my provisional decision, IFG says Robert Magee did take steps to manage the conflict of interest, as it drew Mr S's attention to the risks involved with investment in C. I do not agree this is evidence the conflict of interest was appropriately managed. Even if I agree there was evidence to show Mr S was fully appraised of the risks (and, for the reasons I have given, I do not) I do not think this was sufficient basis to manage the clear conflict of interest. It was not, for example, evidence Mr S had been given genuinely independent advice on the merits of making the investment, or that Robert Magee had taken steps to demonstrate it had considered alternatives and, as IFG has put it in its submissions, offered advice on a "whole of market" basis.

Overall, I remain satisfied the only fair and reasonable conclusion IFG could have reached at the outset, if acting in a way which was consistent with its obligations to take reasonable care, act with due diligence and treat Mr S fairly, in accordance with his best interests, was to conclude it should not allow investment in C at the outset.

Mr S's later investments in C

I remain of the view, had the initial investment not been accepted, the question of further investments would simply not have arisen (at least insofar as the use of IFG's SIPP to make those investments was concerned). In my view there would have been no reasonable basis on which IFG could have later decided to accept investments in C, having initially declined to accept them. And, in any event, as I set out below, I remain of the view it is unlikely Mr S would have proceeded with any investments in C, had IFG acted fairly and reasonably to meet its regulatory obligations. So, I set out the following findings only for completeness.

The reason for Mr S's first additional investment in January 2010 is unknown. In a 25 January 2010 email to Robert Magee IFG's staff member asks "*please could you also email me a copy of the suitability report for the further share purchase*". But I have seen no evidence a suitability report was ever provided. I think this was reason, in itself, for IFG not to proceed with the further investment as it cannot reasonably have relied on Robert Magee having given advice when it had not seen any evidence of advice having been given. I note IFG, in its response to my provisional decision, says the 4% fee being taken from the SIPP by Robert Magee was evidence "full servicing" was being provided and advice hence being given. I do not think the fact a fee consistent with advice was being taken was sufficient for IFG to conclude advice definitely was being given. IFG evidently did not think so at the time either, as I do not think it would not have asked for a copy of the suitability report if that were the case. I also remain of the view that reliance on Robert Magee may not have been reasonable, in any event, given what I say above about the presentation and conflict of interest.

Going beyond that, I note IFG says, following the due diligence it carried out from 2019, when Mr S wanted to make a further investment, that the shares in C are not registered to the SIPP. In my view IFG ought reasonably to have known, at the time of Mr S applying to make his first additional investment, that the initial investment had not resulted in shares that were registered to the SIPP. This, in itself, should have been sufficient for IFG to conclude it

should not allow further investment, had it acted fairly and reasonably to meet its regulatory obligations.

Finally, it is not clear, given how the investment had been described in the presentation, on what basis further investment was required in January 2010. I think questions ought to have been asked about what had been done with the money already invested and what the plans for this further investment were. And I think it unlikely IFG would have received satisfactory answers to such questions.

By the time of Mr S's second additional investment in June 2011 there had been some updates from C. A 6 April 2010 update says "*we were able to secure the land for a total price of £765,000*". There is then a further update in the 12 May 2011 annual report, which included the following:

"*Fund position*

- *We put together a syndicate of 29 pension clients who, after the costs of setting up their individual SIPP's, purchased £1,251,000 of shares in* [C]. *An average investment of £43,138.*
- *After an informal appraisal of the land we believe the current value to be in excess of £1,300,000. Therefore the face value of the shares has been maintained despite the recent market turmoil.*
- *There are a further £149,000 of shares available. We have had no need to issue these as the project has been sufficiently funded to meet its obligations up to the point of the sales programme.*
- *Furthermore we now hold a 100% asset backed investment to develop and generate profit return.*"

"*Planning and Building Permission*

- *We still await the building permit although we understand this is imminent.*"

This update also includes an interview with local estate agent, and "*Directors analysis and conclusions*" following this, which includes the following:

- "*Acknowledge current market conditions and adopt a strategy to reflect the sentiment and attitudes of current purchasers*
- *Off plan sales will be difficult to achieve currently and in the foreseeable future.*
- *Build commencement and infrastructure will greatly assist the sales and marketing campaign.*
- *Show house example, fully equipped and furnished, will generate security for potential purchasers (touch and experience the finished product).*"

It then sets out a "*further investment opportunity*", which involves investors lending money to C to build a show home, as follows:

- 10 investors @ £42,500
  2 year x 7% = 5,950 Income
  Plus 10% of the 50% of the infrastructure return = 8,750
  Total return = **14,700**
  = **17.3% p.a. Gross**

I have also seen a copy of an undated letter to shareholders, referring to the show home. It says a quote of £425,000 to build the show home had been obtained (it does not say where this quote has been obtained from). It then says *"we have examined a number of ways that*

this could be achieved" and provides these options (alongside discounted options of a bank loan or issuing further shares):

"***Increasing the share capital of the company***

Currently we have £149,000 of unallocated [C] *shares. If we wanted to we could introduce new capital to the company by way of additional subscription. With what we are holding in reserve at the bank and this additional capital injection we could complete the infrastructure, but we would not have sufficient to build the show house and this would require separate funding. Once the roads are in and the plots are segregated with marketing boards in place, sales may well follow avoiding the need for a show house. However, we still believe the show house route may be the best solution to selling the whole site in the shortest possible time.*"

"***Loan facility from existing shareholders***

We have identified an opportunity whereby the current investors could set up a separate company, invest sufficient capital into that company and then have a cross company loan note to[C]*. These funds would then be used to complete the show house.*

This loan would be a secured against plot 1 with interest accruing at 7% p.a. for a period of two years, whereupon the property would be sold.

As you will see in the report we have suggested that this would be an excellent way to fund the first property, although during the meeting the favoured route seemed to be to allow current investors to utilise, or make further contributions to, their Self Invested Personal Pension (SIPP) schemes and "Mop Up" the unpaid shares within the company to complete the infrastructure and then perhaps fund the actual build of the show house as phase two.

This would work well from the point of view of getting the project underway and the infrastructure could be completed within four months."

The letter concludes:

"*As your Directors we formally invite you as investors,* ***on a first come first served basis,*** *to either add to, or redirect funds within, your pension funds to apply for further shares to the value of £149,000.*

Given the likely rates of return on this late investment opportunity, we expect this to be taken up very quickly and already have significant requests from a small group of investors approaching 50% of the requirement, but in the interests of fairness and equity we wish to offer this to the entire shareholder group in the first instance."

So, it appears likely this is what led to Mr S's further application to invest in June 2011.

In my view, the letter and update raise further concerns, beyond those I have already set out. It is not clear how there had been a 70% increase in value of the land between April 2010 and May 2011 without, apparently, any change in the status of the project between those times (and the commentary otherwise suggesting market conditions are challenging). And that apparent growth in value was being used by C to claim that shareholders had a "*100% asset backed*" investment which, even if the £1.3m valuation was fair, was a misleading way of describing an investment in the unlisted shares of a property development company.

Finally, I note the 29 August 2011 letter sent to Mr S by Robert Magee following the investment says Robert Magee "*is carrying out your instructions on an execution only basis*". And I think all I have said above about the lack of advice being a point of concern IFG ought to have identified applies here.

Overall, I think it fair and reasonable to say IFG should not have allowed these further investments. Although, as I note above, I do not think these investments would have come about, in any event, had IFG acted fairly and reasonably to meet its regulatory obligations at the outset.

IFG's later due diligence into C

Mr S says, essentially, that he thinks IFG is unreasonably preventing shareholders of C from investing further funds which would allow the project to continue and returns to be paid to shareholders.

As a preliminary point, I should again say that I think this point of complaint is a result of Mr S not having received (as far as I am aware) any independent advice on C from a party with the appropriate knowledge and expertise. And it is also a result of Mr S being in the difficult position of either accepting a potentially significant loss or investing more in the hope that leads to a recovery.

I do not need to decide whether the views IFG reached, following its later due diligence, were "wrong" or "right", as such. Rather, the question I need to consider is whether those views were reasonably held. Having considered the due diligence IFG carried out from 2019 (which, in my view, was consistent with IFG's regulatory obligations), in my view:

- It was reasonable for IFG to take steps to independently verify, through the Cypriot land registry, that the land is owned by C.
- It was reasonable for IFG to ask what has happened to the money invested so far.
- It was not unreasonable for IFG to consider the investment as having failed.
- It was reasonable for IFG also to consider, if the land is owned by C, whether selling and liquidating is in the best interests of shareholders.
- And, in the light of all of this, it was reasonable for IFG to conclude it should not allow further investment in C.

So, I remain of the view it would not be fair and reasonable for me to uphold Mr S's complaint about this later due diligence. I think IFG reached a reasonable view, having carried out reasonable due diligence which was consistent with its regulatory obligations.

Is it fair to require IFG to compensate Mr S?

<u>Would Mr S's application have proceeded elsewhere?</u>

IFG says Mr S would have invested regardless – it says Mr S was motivated to make money, felt further investment at the later dates was his only option, and was determined to invest.

At the time of Mr S's initial investment in C, it seems consumers wanting to invest in C were being exclusively referred to IFG; that is consistent with what is said in the presentation,

which effectively describes IFG as a partner in the arrangements (under a previous trading name).

However, I am aware there was another SIPP operator which, at some point, accepted C. It seems awareness of compensation being paid by the Financial Services Compensation Scheme (FSCS) following claims against that other operator after it went out of business is what prompted Mr S to make his complaint to IFG (Mr S has referred to it being us awarding compensation to other investors but, as I mention earlier, I think that is a misunderstanding on his part). So, it is possible, if IFG had not accepted the initial instruction to invest in C, that Mr S would have applied for a SIPP with the other operator, and his investment would still have proceeded.

I also need to keep in mind that Mr S invested in C three times. So, he was clearly committed to the investment. And part of his complaint is that he was not recently allowed to make a further investment in C (although, as I note above, the context of that point of complaint needs to be considered).

I am required to come to a decision that I consider to be fair and reasonable in all the circumstances. I remain of the view it is fair to consider here is that Mr S, it seems, has still not received any advice on his investment in C. His sole point of contact about the investment throughout (other than the advisor at Monmouthshire IFA, who did not give advice on the investment) has been the same advisor at Robert Magee (and the business he later moved to) who, in my view, has a conflict of interest. Mr S has not had the benefit of independent advice from someone with the appropriate credentials.

It is clear IFG was not authorised to give advice and so it was not in a position to advise Mr S whether his proposed investment was suitable for him. But it is also clear that an application can be refused without giving advice. IFG, and any other reasonable SIPP operator could have, for example, said it was not prepared to accept Mr S's application to open a SIPP and invest in C; or that it was not prepared to accept C, after the SIPP had been set up.

IFG was in a position to see the clear risks of potential detriment associated with investment in C. And I think, in the circumstances, it is fair to say IFG should not only have declined the investment but should also have told Mr S – as it later did – that it had significant concerns. It should also have encouraged Mr S to take independent advice before going any further. And I think it more likely than not that, in these circumstances, Mr S would have sought independent advice.

I note IFG says such steps would have amounted to it giving investment advice to Mr S. I do not agree. I do not think IFG stating, as a matter of fact, that it was not going to allow the investment in its SIPP because it had identified a clear risk of consumer detriment amounts to advice. It is not a comment on the merits of an investment for Mr S personally; it is a general finding as to the appropriateness of the investment for a pension scheme. As set out above, I am not making a finding that IFG should have concluded this was simply a high risk investment and that an investment with that level of associated risk was not suitable for Mr S; rather, as a general point, that the investment may not be genuine or might be of poor quality and it had identified risks of consumer detriment. And I note that when IFG later decided not to allow investments in C it told Mr S it would not allow the investment and set out in some detail why it would not. So, IFG itself was clearly of the view at this time that it was able to take the type of steps I describe, without giving advice.

I am satisfied that if Mr S had taken independent advice that would have clearly highlighted the particular risks associated with the investment – or at least highlighted the gaps in the

information available which were a barrier to making a full assessment of those risks - and the need to seek advice from someone – for example, a Cypriot lawyer – with local knowledge and expertise. And, in my view, such advice would have led Mr S to reconsider his commitment to investing in C. The likely alternative, in my view, to Mr S seeking independent advice would have been him deciding not to proceed at all. I agree he was clearly keen to invest; but that was based on him having only heard positive things about the investment and having, it seems, been misled about the level of risk and the returns he could possibly make. His being aware the provider of a SIPP was not willing to allow the investment in its scheme as it had serious concerns about it would, in my view, have given him cause to reflect on whether he should make the investment.

I do not therefore think that Mr S would inevitably have gone to the other operator, had IFG acted fairly and reasonably to meet its regulatory obligations. And, in all the circumstances, I remain of the view it is fair and reasonable to say that IFG should not be considered at fault, or that it should bear no responsibility for its faults, if another SIPP operator would have acted in the same way had IFG refused the application.

The involvement of other parties

In this decision I'm considering Mr S's complaint about IFG. But I accept other parties were involved in the transactions complained about, including Monmouthshire IFA and Robert Magee.

The DISP rules set out that when an Ombudsman's determination includes a money award, then that money award may be such amount as the Ombudsman considers to be fair compensation for financial loss, whether or not a Court would award compensation (DISP 3.7.2R).

In my opinion it's fair and reasonable in the circumstances of this case to hold IFG accountable for its *own* failure to comply with its regulatory obligations, good industry practice and to treat Mr S fairly.

The starting point, therefore, is that it would be fair to require IFG to pay Mr S compensation for the loss he's suffered as a result of its failings. I've carefully considered if there's any reason why it wouldn't be fair to ask IFG to compensate Mr S for his loss.

I accept that other parties, including Monmouthshire IFA and Robert Magee, might have some responsibility for initiating the course of action that led to Mr S's loss. However, I'm satisfied that it's also the case that if IFG had complied with its own distinct regulatory obligations as a SIPP operator, the investment wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

It's my view that it's appropriate and fair in the circumstances for IFG to compensate Mr S to the full extent of the financial losses he's suffered due to its failings. And, having carefully considered everything, I don't think that it would be appropriate or fair in the circumstances to reduce the compensation amount that IFG is liable to pay to Mr S.

Putting things right

My aim is that Mr S should be put as closely as possible into the position he would probably now be in if IFG had not accepted the investment in C.

I think Mr S would have invested differently. It's not possible to say *precisely* what he would have done. It seems likely he would have moved away from his existing pension, in any event, as he later moved the rest of his money to IFG. And Mr S's complaint is focussed

only on the investments he made in C. So, I am satisfied that what I've set out below is fair and reasonable given Mr S's circumstances and objectives when he invested.

What must IFG do?

To compensate Mr S fairly, IFG must:

- Compare the performance of Mr S's investments 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.

- IFG should also add any interest set out below to the compensation payable.

- If there is a loss, IFG should pay into Mr S's pension plan to increase its value by the 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 IFG is unable to pay the compensation into Mr S'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 compensation 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's actual or expected marginal rate of tax at his selected retirement age.

- It is reasonable to assume that Mr S is likely to be a higher rate taxpayer at the selected retirement age, so the reduction would equal 40%. 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 30%.

- It is also, in my view, fair to ask IFG to pay Mr S £500 compensation for distress and inconvenience. It is clear its acceptance of the investments has caused upset to Mr S, and he has entered into a significant amount of correspondence with IFG about the investment.

Income tax may be payable on any interest paid. If IFG deducts income tax from the interest, it should tell Mr S how much has been taken off. IFG 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
Shares in C	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.

IFG should take ownership of the illiquid assets by paying a commercial value acceptable to it. The amount IFG pays should be included in the actual value before compensation is calculated.

If IFG is unable to purchase the shares the *actual value* should be assumed to be nil for the purpose of calculation. IFG may require that Mr S provides an undertaking to pay IFG any amount he may receive from the shares in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan.

IFG 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 that Mr S paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal from the portfolio 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 IFG totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

The SIPP now only exists because of illiquid assets. In order for the SIPP to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by IFG taking over the investment, or this is something that Mr S can discuss with IFG directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If IFG is unable to purchase the shares in C, to provide certainty to all parties I think it's fair that it pays Mr S an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date), or agree to waive fees over the same period. This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr S wanted capital growth and was willing to accept some investment risk.

- 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's 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's circumstances and risk attitude.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that IFG Pensions Limited pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that IFG Pensions Limited should pay the amount produced by that calculation up to the maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on that amount as set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that IFG Pensions Limited pays Mr S the balance plus any interest on the balance as set out above.

If IFG Pensions Limited does not pay the recommended amount, then any investment 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 IFG Pensions Limited (excluding any interest) equates to the full fair compensation as set out above.

IFG Pensions Limited may request an undertaking from Mr S that either he repays to IFG Pensions Limited any amount Mr S may receive from the portfolio thereafter, or if possible transfers the investment to IFG 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 2 April 2025.

John Pattinson
Ombudsman