DRN-5356070

The complaint

Mr B complains that IFG Pensions Limited ('IFG') – formerly Sovereign Pension Services (UK) Limited and MW Pensions Limited, but I'll refer to IFG for ease of reference – shouldn't have allowed him to invest in its Self-Invested Personal Pension ('SIPP') and that it failed to carry out sufficient due diligence on the investments made within it. He says it should compensate him for his loss.

For simplicity, I refer to Mr B throughout, even where the submissions I'm referring to were made by his representative.

What happened

I've outlined what I think were some of the key parties and events involved in Mr B's complaint below.

<u>Involved parties</u>

IFG

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

Firm B

At the time of the events complained of, Firm B was (and seemingly still is) an independent financial adviser authorised by the then regulator – the Financial Services Authority ('FSA'), which later became the Financial Conduct Authority ('FCA'), the latter of which I'll largely refer to throughout for ease.

And I understand that Firm B's permissions included advising on investments (except on Pension Transfers and Pension Opt Outs). Other permissions Firm B held included arranging (bringing about) deals in investments.

<u>The transaction</u>

In or around early 2010, it seems Mr B received advice from Firm B to switch his existing pensions to an IFG SIPP to make investments including Ethical Forestry.

On 2 March 2010, Mr B signed a Firm B document which said he understood that the private equity investments it had recommended – seemingly Swop2Shop Ltd and Ology Ltd – were high risk, illiquid shares in unlisted companies. And that Firm B's sister company, of which Firm B has a shareholding in, receives a commission on monies invested into the equities promoted.

On 8 March 2010, IFG received a letter from Firm B enclosing Mr B's SIPP application form along with his investment application forms. The latter of which said he wanted to invest

£12,000 in Ethical Forestry, £3,000 in Swop2Shop and just over £5,000 in Ology, as well as £10,000 via a Transact wrap account.

Mr B's SIPP application form, signed by him on 2 March 2010, said that he was employed – but not in financial services or pensions – earning £47,500 per annum. Under 'Financial Adviser Details' Firm B's details were provided, setting out that it would be paid an ongoing fund percentage of 0.5%. And Mr B went on to tick a box confirming he wanted to waive his 30-day SIPP cancellation rights.

Mr B's completed Ethical Forestry purchase order form, which he'd signed on 2 March 2010 said that he wanted to invest £12,000. And, amongst other things, this said in small writing that Mr B understood the risks association with the investment, including (but not exclusively) those relating to currency risks, illiquidity and un-recoverable local taxation and that Mr B had carried out his own due diligence to his satisfaction.

Mr B then received written advice from Firm B in a suitability report dated 9 March 2010 in respect of the SIPP transfer and investments. This said, amongst other things, that:

- Mr B's objectives in switching his pension were to have greater flexibility and options, fund choices to meet his current circumstances and access to private equity and bespoke investments such as Ethical Forestry.
- While Mr B's usual attitude to risk could be considered as medium, it could be described as adventurous specifically in relation to his IFG SIPP monies. This is because Mr B was willing to accept a large risk to benefit from possible returns from such investment opportunities. However, for the remainder of the funds it said Mr B was willing to invest in a range of funds provided the overall balance was in line with his medium attitude to risk.
- Overall, Firm B recommended Mr B transfer to an IFG SIPP and invest around 23% of his SIPP pension monies into private equity investments – namely Ology Ltd and Swop2Shop – and then just under 33% in Ethical Forestry, with 27% invested via a Transact wrap account.
- Firm B had looked at closely at Ethical Forestry and commissioned a report on this from three-sixty services, which was available on request.
- Firm B had left the Ethical Forestry brochure with Mr B for him to read, which contained full details of the scheme. It said the list of risk factors in the suitability report wasn't exhaustive and that Mr B '*should read the enclosed brochure before choosing to invest in this bespoke product*'.
- Past performance is no guarantee of future returns. Investments into land and property can be difficult to sell and mean investors may not be able to sell/cash in investments when they want to.
- Mr B's Ethical Forestry investment could have no end value should anything occur that results in the failure of the crop. The investment is being made overseas, so it may be affected by fluctuations in exchange rates.
- This should be regarded as a long-term investment. The Ethical Forestry fund is close-ended and no redemptions are permitted. Mr B will not be able to realise his investment during the life of the fund other than by private sale, and there is no certainty that a buyer could be found or a particular price obtained.
- It would receive commission from Ethical Forestry for arranging the investment of £960 in total.
- Firm B had a conflict of interest when discussing private equity investments in single company shares and would receive commission from providers for arranging these.

On 9 March 2010, IFG also confirmed that Mr B's SIPP had been established. And, across March 2010, just under £37,000 was transferred into Mr B's IFG SIPP from his existing personal pension schemes.

On 16 and 17 March 2010, Mr B went on to make the investments and in the same amounts as those set out above, as well as investing via his Transact account on 26 March 2010.

Most of the investments Mr B made within his IFG SIPP failed, or reduced substantially in value, over successive years, as follows:

- Ology Group Ltd – dissolved in or around October 2012 with zero value.
- Swop2Shop Ltd – dissolved with zero value in or around January 2014.
- Ethical Forestry – was placed into liquidation in late 2015 and is valued at £1. The liquidator's report, dated 24 January 2022 said, amongst other things, that many investors were led to believe they had ownership of trees and cropping rights in relation to the trees and were given GPS co-ordinates to these. However, it's clear these rights weren't given as these weren't capable of being granted under Costa Rican law. The abrupt collapse of Ethical Forestry led to the Serious Fraud Office ('SFO') opening a criminal investigation into it. And the SFO later brought charges related to alleged fraud concerning the running of Ethical Forestry.

Mr B doesn't appear to have received any return on the investments listed above.

<u>Mr B's complaint</u>

Mr B said he appointed his representative in October 2018. And, after complaining to Firm B, Mr B complained to IFG in July 2021. Mr B said, in summary, that at the time of the events complained of his attitude to risk was cautious and that he was not adventurous with financial decisions. He was reliant on Firm B's advice and vulnerable to the influences of poor advice. He was presented with several investment choices and was persuaded to use his pension monies to invest in Ethical Forestry. The underlying investments were non-standard UCIS, which aren't suitable for inexperienced retail clients like Mr B. He also said that IFG should have known to conduct due diligence on the investment and on Mr B entering the SIPP in the first place.

While IFG acknowledged Mr B's complaint, I can't see that it provided him with its final response letter. And Mr B referred his complaint to our Service in April 2022.

During the course of Mr B's complaint he's told our Service, amongst other things, that:

- He first appointed his representative to look into a possible mis-sold pension and investment claim. And it first made a complaint against Firm B after an information gathering exercise which took a considerable amount of time.
- He complained to Firm B but nothing was done and he didn't receive any compensation.
- He didn't receive any payment at the time and he hasn't received any compensation from any other parties in respect of the events complained of since.
- His existing personal pension schemes were all switched to the IFG SIPP.
- He'd previously received advice from Firm B following the sale of his house. And Firm B then advised Mr B on his pensions in 2010 – it advised him to invest his pension monies via a SIPP, as it was 'worth a punt and not much to lose' and all the investments failed.
- Mr B wasn't interested in changing his pensions at the time, until Firm B advised him that poor returns vs a higher risk SIPP with money he could afford to lose would be

worth a try. And Mr B was promised a 100% return on Ethical Forestry.
- Mr B recognised there were risks, but all the investments that Firm B researched and advised him to invest in failed.

IFG said, in summary, that:

- Mr B's complaint had been made too late for our Service to consider it. It said he ought reasonably to have become aware he had cause to complain more than three years before he did, as Ology dissolved in 2013, Swop2Shop in 2014 and Ethical Forestry was placed in liquidation in 2015.
- It isn't authorised to provide advice and can't be held responsible for losses associated with that given by Firm B.
- IFG was provided with Mr B's suitability report by Firm B, which discussed his risk level (adventurous) and the recommended investments, along with the pros and cons of each.
- In respect of due diligence on the investment funds and whether these were suitable in a SIPP, responsibility here was with the adviser and IFG was guided by the suitability report.
- The 2009 Thematic Review was published the year before Mr B's investments were made, outlining the responsibilities of SIPP providers at the time. And it complied with those in respect of how the SIPP application was handled.
- In March 2010, Mr B signed Matrix's conflict of interest document, recognising the investments were high risk. And the evidence supports that Mr B's SIPP application and investments were made with him being fully aware of this and this is why his portfolio was balanced with an array of investments, including the Transact portfolio.

One of our Investigators said that Mr B's complaint had been made in time. He said, in summary, that:

- Mr B's complaint was made more than six years after the events complained of and more than three years after IFG has said he was made aware of problems with his investments.
- However, it's clear from Mr B's email correspondence with Firm B that he understood it to be responsible for the problems. There's nothing to suggest Mr B linked IFG to this more than three years before he complained to it in July 2021.
- And it wasn't until following Berkeley Burke SIPP Administration Ltd v Financial Ombudsman Service [2018] EWHC 2878 (Admin) ('BBSAL'), which was published on 30 October 2018, that it could be seen that the industry's previously espoused position that SIPP provider's obligations were very limited might not be the correct view. Around this time, there was publicity and comment surrounding this case and the unsuccessful court challenge to the decision made by our Service, in which we found the SIPP operator responsible for the losses an investor had suffered where it had failed to make checks on an investment. So it was after 30 October 2018 that it could be seen that SIPP providers did have responsibilities which meant they could, in some circumstances, be held responsible for problems with the SIPPs they administered and the investments within them.
- In which case, after allowing time to notice the change in the landscape following the BBSAL judgment and work out the implications for him (either through his own research or by appointing an expert), Mr J ought reasonably to have become aware of his cause for complaint about IFG by the start of 2019. And Mr J made his complaint to IFG about its role in the transactions complained about within three years of this, in July 2021.
- So Mr B's complaint had been made in time for us to be able to consider it.

In response, IFG accepted our Investigator's position, as it asked to investigate Mr B's complaint.

Our Investigator went on to uphold Mr B's complaint. He said, in summary, that:

- Firm B's business model involved recommending non-standard products which should have prompted IFG to ask further questions about this. There is no evidence that IFG considered this when accepting the business. And Mr B was the 63rd client introduced by Firm B to IFG, such that by that time IFG had already received a significant number of clients from Firm B who were being recommended non-mainstream products.
- The investment due diligence IFG carried out was limited to relying on information provided to it by the investment providers – IFG has confirmed it didn't receive any third-party due diligence. Had IFG carried out sufficient due diligence into Ethical Forestry, for example, it would have found out that the information in the due diligence pack was unlikely to have been accurate. The liquidator has subsequently raised doubts over title and the FCA has determined it was an unlawful scheme. And it seems likely, had IFG carried out sufficient due diligence, that it would have had questions over the credibility of the scheme and identified such concerns.
- He said IFG should put things right by putting Mr B back in the position as though he'd remained in his existing pension schemes. And that it should pay him £300 in compensation to make up for the loss of his pension, as this would have been distressing for him.

IFG didn't agree. Amongst other things, IFG said in its responses in respect of Mr B's complaint and on similar complaints with our Service involving Firm B and the same type of investments, including Ethical Forestry, that:

- It didn't agree, and has never agreed, to waive the time limits in which Mr B has made his complaint – it maintains that Mr B has made this too late for our Service to consider it. IFG thinks that it should have been obvious to Mr B that IFG may have caused his loss, given he received a welcome letter from it and therefore knew it had accepted the investment.
- FCA guidance post-dates some of the events complained of. It isn't fair or reasonable to retrospectively apply such guidance. The SIPP industry and its regulation is dynamic and continually developing. So to consider the complaint on an assumption that the regulatory expectations on providers as per the 'Dear CEO' letter were the same as those prior to that being published is a misunderstanding of the SIPP market as it existed at the relevant time. The due diligence it carried out was in accordance with good practice at the time.
- It was the responsibility of Firm B to provide advice and Mr B's loss is a result of negligent or sub-standard advice. We have upheld advice complaints against Firm B and Mr B's complaint should be directed to it. Directors of Firm B also personally invested in Ethical Forestry.
- The SIPP application made it clear that IFG acted simply as SIPP provider, ensuring it met its pension obligations but requiring financial advisers in the chain to provide financial advice to their clients in line with their regulatory obligations.
- Firm B was regulated and authorised to advise the client and had the appropriate approvals from the FCA. At the time there was no regulatory requirements to conduct additional checks, but IFG checked that Firm B was authorised by the FCA on a quarterly basis. While it can't evidence how far back it carried out these checks, it can evidence from an internal document that it did so from May 2009.
- It received its first introduction from Firm B in 2007. Firm B introduced 107 (I note that at other times IFG has said that this was 84) customers to it and that Mr B was

number 63. IFG also said that 95% of these customers invested in non-standard investments. Around 5-11% of customers introduced to it were proposing to transfer at least one pension with safeguarded benefits or from defined benefit occupational pension schemes. The introductions to it from Firm B accounted for around 6.5% of IFG's new business over that period.

- It had no terms of business ('TOB') in place with Firm B until the end of September 2009, which were put in place in line with FCA recommendations following the first Thematic Review. These TOB are still in place as Firm B remains authorised.
- IFG expected Firm B to complete a diligent fact find on client circumstances, financials and attitude to risk, providing advice on an independent, whole of market, basis for an appropriate solution and product to meet the client's specific requirements.
- Financial advisers don't act for it and are mandated to consider clients best interests, therefore it is inappropriate for IFG to target or expect a new business forecast from an adviser. It doesn't build a new business forecast into its revenue forecast. It didn't have any agreement to receive any volume of business. And IFG hasn't paid any renumeration or commission to any financial adviser.
- IFG said that at the time of acceptance of the introductions, it wasn't provided with any information as to the type of investments Firm B would agree with its clients. This was commensurate with requirements at the time. And that, upon review, all members introduced to it by Firm B received a recommendation to invest in Ethical Forestry. Although IFG later said that it did discuss Firm B's business (and Ethical Forestry) with it but, due to the passage of time, it no longer has a record of those discussions.
- After the initial agreement IFG didn't have any further discussions with the adviser about the client process/business they were referring to it as, having established appropriate suitability reports were taking place prior to each recommendation, no additional discussion was required.
- The September 2009 report is clear that IFG wasn't responsible for advice given by third parties. And the focus was on the FCA's concern that SIPP operators' systems and controls failed to identify 'obvious potential instances of poor advice and/or potential financial crime', of which there were none in the context of Firm B.
- Suitability reports it obtained and reviewed from Firm B in respect of setting up the SIPPs were usually obtained at around the same time as the SIPP and investment applications. Obtaining the suitability reports helped IFG check the risk profile of the investment and that the investor wasn't 100% exposed to a potentially higher risk investment i.e. there was a spread of risk to meet the stated risk profile.
- In addition, all new applications were reviewed by IFG's compliance director prior to these being processed for them to assess the type and size of investment (and any anomalous investments), whether the clients were execution-only or had waived cancellation rights – which the vast majority of investors do to allow their SIPP to be set up more quickly. Although IFG hasn't provided us with any evidence that it did this in respect of Mr B from the time.
- The fine which Firm B received in April 2011 was in respect of failings which occurred between 2004 and 2006, some years before IFG's relationship with it and many years before the events complained of here. And it is denied that a sanction based on such historic matters ought to have caused IFG to refuse to work with Firm B, particularly when it remained authorised by the FCA.
- It's unclear how a greater insight into Firm B's business model would have caused IFG to have decided not to accept further business from it and the questions we've said IFG should have asked Firm B go well beyond the scope of guidance in place at the time.
- It's denied that IFG should have stopped accepting business from Firm B just because some of its investments were potentially high risk, in circumstances where

customers had sought independent advice from a regulated adviser, had provided all necessary confirmations/consents and there was no suspicion or detection that the investment was fraudulent.

- The Pensions Ombudsman previously concluded, in a case where the customer's investment had been made prior to the 2012 report, 2013 guidance and 'Dear CEO' letter, amongst other things, that it could 'not apply current levels of knowledge or understanding, or present standards of practice, to a past situation'. And that the obligations placed on the SIPP operator at the time were limited to assessing whether a proposed investment met the relevant HMRC requirements. In any event, what our Service has set out goes well beyond what these documents envisaged. And the 2012 report and 2014 'Dear CEO' letter aren't formal guidance, which means these aren't exhaustive, prescriptive or mandatory. These are at best indicative of what a SIPP operator might have chosen to do as examples only.
- In December 2008, IFG took part in a pensions conference which representatives from Ethical Forestry attended and presented at. The proposal used current and historic timber valuations from three independent sources, which were cited in the due diligence pack.
- Ethical Forestry was well known to the FCA at the time and no explicit concerns regarding this was represented at that time. Instead, as part of IFG's due diligence it received a letter between the FCA and MD of Ethical Forestry dated April 2008 which indicates how the asset must be managed so as not to breach relevant sections of FSMA. IFG also liaised with solicitors in respect of the asset structure, anti-money laundering checks and the wording of the draft contract for the sale of the crop in June 2008. And it received marketing materials and terms and conditions, for example.
- IFG took all reasonable steps to validate the investment itself as a new proposal and couldn't have foreseen what subsequently took place.
- Firm B was responsible for checking the suitability of the investment for the client and explaining the potential hazards. When Firm B provided Mr B with advice he was given information to decide whether to invest in Ethical Forestry, including being provided with a number of warnings around the risks.
- Mr B declared he'd read the investment terms and conditions and that he understood the associated risks, including illiquidity. And he confirmed he had been fully advised by Firm B and that he'd carried out his own due diligence on the investment to his satisfaction. Mr B's complaint is in contradiction to this documentation.
- The marketing material our Service has taken into account post-dates the investment when this isn't relevant as it wasn't in existence at the time. We've accepted there was marketing material which included relevant information about risks. And there's no reason to conclude that Mr B didn't see this, as he did confirm he was made aware of the risks. And there was no reason to think Mr B wasn't being properly advised by Firm B in respect of these.
- It's accepted that it appears that from some point in time Ethical Forestry was run as fraud. However, investments can and do fail from time to time. And in circumstances where failure couldn't reasonably be foreseen several years before it happened.
- To impose a blanket ban on accepting business from Firm B and on accepting investments into Ethical Forestry would not be treating customers fairly in the circumstances.
- Due diligence conducted on Ethical Forestry included a review of the nature of the investment and various supporting documentation, including product literature. Non-standard assets aren't barred from SIPPs. It conducted an independent review and didn't reply on any reports by a third party. A thorough and extensive dialogue was conducted with Firm B regarding the investments. IFG didn't just rely solely on Ethical Forestry's solicitor or what it was told by it given that it sought information from its own lawyers too.

- Had IFG contacted investors directly they would presumably have confirmed commitment to the investment and reiterated information provided to Firm B and it. They wanted to make the investments.
- If it hadn't permitted the investment within its SIPPs and accepted Mr B's application to invest in this, he'd have gone on to do so via another SIPP provider in any event. There's ample evidence other SIPP providers were accepting business from Firm B and to invest in Ethical Forestry.
- Mr B clearly wanted to invest in Ethical Forestry and a cash incentive isn't the only reason for him to have sought to do so. Seeking to secure the best pension for himself is sufficient incentive and he was advised he'd make significant returns from this investment.
- In any case, any fraud by Ethical Forestry is an intervening act that breaks the chain of causation. It would be unfair for IFG to be held responsible for the consequences of a fraud by Ethical Forestry, an unrelated third party. Such fraud wasn't foreseeable.
- Mr B should take some responsibility for his loss given it resulted from his investment decisions.
- The Ethical Forestry February 2024 Notice of Process Report in respect of the winding up confirms investors who aren't eligible for compensation from the Financial Services Compensation Scheme ('FSCS') should submit a proof of debt in the liquidation, which Mr B should do.
- Our Service's proposed redress is very complicated. The calculation should ignore another investment that Mr B made, which we haven't identified any issues with or suggested that IFG shouldn't have accepted into its SIPPs.
- Any undertaking from Mr B should be in respect of any future compensation received. For example, out of the Ethical Forestry liquidation process or in the event Firm B becomes insolvent then from the FSCS.

As no agreement could be reached, the matter has been referred to me for a decision.

What I've decided – and why

Having considered all the available evidence and arguments, for the reasons given below and for largely the same as those given by our Investigator, I think that we can consider Mr B's complaint and that it should be upheld.

Preliminary point – time limits

For the avoidance of doubt, I am considering this preliminary point based on the applicable rules and law and not based on what is fair and reasonable in all the circumstances.

Our Service must follow the rules we're bound by, known as the Dispute Resolution ('DISP') Rules – found in the Financial Conduct Authority's handbook. And DISP 2.8.2R says that, unless the business consents (IFG doesn't), we can't consider a complaint if it's referred to us:

> "… (2) more than:
>
> > (a) six years after the event complained of; or (if later)
> > (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

> unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;
>
> unless:
>
> (3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2R…was as a result of exceptional circumstances;".

I think the events complained of here – that IFG failed to exercise sufficient due diligence on Firm B and the investments before accepting Mr B's respective SIPP and investment applications in 2010, causing him to lose out – took place more than six years before he referred his complaint to IFG in July 2021 and then to our Service.

So I've considered whether Mr B was aware or should reasonably have become aware he had cause for complaint about this respondent firm, IFG, more than three years before he first made his complaint to it in July 2021.

The term 'cause for complaint' is not defined in the Handbook. The term complaint (in italics) is defined, and it is reasonable to infer in light of the above guidance on interpreting the Handbook (and guidance in GEN 2.2.1R in the Handbook: "Every provision in the Handbook must be interpreted in the light of its purpose.") that the definition of the word complaint, was intended to apply to the phrase 'cause for complaint'.

The term 'complaint' is defined for the purposes of DISP in the FCA handbook as:

> "…any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, *claims management service* or a *redress determination*, which:
>
> > (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
> > (b) relates to an activity of that *respondent*, or of any other *respondent* with whom that *respondent* has some connection in marketing or providing financial services or products or *claims management services*, which comes under the jurisdiction of the *Financial Ombudsman Service*.."

So the Glossary definition of 'complaint' requires that the act or omission complained of must relate to an activity of 'that respondent' or firm.

Accordingly, the material points required for Mr B to have awareness of a cause for complaint include:

- awareness of a problem
- awareness that the problem had or may have caused him material loss, and
- awareness that the problem was or may have been caused by an act or omission of IFG (the respondent in this complaint).

As such, to be aware of cause for complaint the complainant should reasonably know there is a problem, that they have or may suffer loss or damage, and that someone else is or may be responsible for the problem – and who that someone is, as the respondent to the complaint. Knowledge of a loss or damage alone is not enough. It can't be assumed that upon obtaining knowledge of a loss a consumer had knowledge of its cause.

So to have knowledge of his cause for complaint about IFG, Mr B had to be aware, or be in a position where he ought reasonably to have become aware, that there was a problem which had or may have caused him loss or damage **and** that IFG was or may be responsible for this.

Even if Mr B was aware, or ought reasonably to have become aware, that there was a problem with his investments that had or may have caused him some loss or damage, I've seen nothing to suggest Mr B was aware, or ought reasonably to have become aware, that IFG had or may have responsibility for the position he was in more than three years before he first complained to it in July 2021.

I've seen no evidence that Mr B was sent or told anything more than three years before his complaint was referred to IFG in July 2021, that made him aware or ought reasonably to have indicated to him, or a reasonable retail investor in his position, that IFG may have done something wrong and caused him to think it had or may have responsibility either wholly or in part for the position he was in – that of having a SIPP with investments in that had or may have suffered a loss. It seems likely that Mr B was made aware of this at some point by his representative, which he appears to have first instructed in October 2018. And Mr B made his complaint to IFG within three years of doing this, in July 2021.

As set out below, the FCA published reports on the results of two thematic reviews on SIPP operators in 2009 and 2012, issued guidance for SIPP operators in 2013 and wrote to the CEOs of SIPP operators in 2014. A common theme of those communications is that the FCA considered that SIPP operators had obligations in relation to their customers even where they don't give advice, and that many SIPP operators had a poor understanding of those obligations.

It was after the BBSAL judgment was published on 30 October 2018, that it could be seen that the industry's previously espoused position that SIPP provider's obligations were very limited might not be the correct view. Around this time, there was publicity and comment surrounding this case and the unsuccessful court challenge to the decision made by our Service. In that decision the Ombudsman found the SIPP operator responsible for the losses an investor had suffered where the SIPP operator had failed to make checks on an investment. So, it could be seen that SIPP providers did have responsibilities which meant they could, in some circumstances, be held responsible for problems with the SIPPs they administered and the investments within them.

So, after allowing time to notice the change in the landscape following the BBSAL judgment and work out the implications for Mr B (either through his own research or an expert) I think he ought reasonably to have been aware of his cause for complaint about IFG by the start of 2019. And this would've given him until the start of 2022 to complain to IFG about its role in the events he's complained about here.

I don't think Mr B would need to have understood the details of a SIPP provider's obligations to have been aware (or in a position whereby he ought reasonably to have become aware) of his cause for complaint. But I think Mr B would have needed to have actual or constructive awareness that an act or omission of IFG had, or may have, a causative role in his loss. And I don't think there was any information available to Mr B more than three years before his complaint was first made to IFG in July 2021 that ought reasonably to have made him aware that he could attribute his problem to acts or omissions by IFG.

In summary, I haven't seen anything to make me think that Mr B was aware, or that he ought reasonably to have become aware, that he had cause for complaint against IFG more than three years before his complaint was first raised with it in July 2021.

So, I think that Mr B’s complaint has been made in time and I haven’t considered this issue any further.

The merits of Mr B’s complaint

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

When deciding what’s fair and reasonable in all the circumstances of this complaint, I need to take account of relevant law and regulations, regulator’s rules, guidance and standards, codes of practice and, where appropriate, what I think was good industry practice at the relevant time.

While I’ve considered the entirety of the detailed submissions the parties have provided, my decision focuses on what I consider to be the central issues. The purpose of my decision isn’t to comment on every point or question made, rather it’s to set out my decision and reasons for reaching it.

Relevant considerations

I think the FCA’s Principles for Businesses – which are set out in the FCA’s Handbook – are of particular relevance. These “*are a general statement of the fundamental obligations of firMr Bnder the regulatory system*” (PRIN 1.1.2G – at the relevant date). And Principles 2, 3 and 6 provide:

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

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

> “*The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirements 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 hadn't treated its client fairly.

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

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

The BBSAL judgment also considers s.228 of the FSMA and the approach an Ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the Ombudsman in that complaint, which I've described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

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

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both judgments when making this decision on Mr B's case.

I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Carey SIPP. And, HHJ Dight didn't consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither judgment said anything about how the Principles apply to an Ombudsman's consideration of a complaint. But, to be clear, I don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of both judgments when making this decision on Mr B's case.

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

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

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

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

I note there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams (summarised in paragraph 120 of the Court of Appeal judgment) and the issues in Mr B's complaint. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened after the contract was entered into. And he wasn't asked to consider the question of due diligence before Carey SIPP agreed to accept the investment into its SIPP.

In Mr B's complaint, amongst other things, I'm considering whether IFG ought to have identified that the business introduced by Firm B and the Ethical Forestry investment involved a significant risk of consumer detriment. And, if so, whether it ought to have declined to accept Mr B's applications.

The facts of Mr Adams' and Mr B's cases are also different. I make that point to highlight that there are factual differences between *Adams v Options SIPP* and Mr B'ss case. And I need to construe the duties IFG owed to Mr B under COBS 2.1.1R in light of the specific facts of his case.

So, I'm satisfied that COBS 2.1.1R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of Mr B's case.

However, it's important to emphasise that I must determine this complaint by reference to what I think is fair and reasonable in all the circumstances of the case. And, in doing that, I'm required to take into account relevant considerations which include: law and regulations; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. There is a clear and relevant point of difference between this complaint and the judgments in *Adams v Options SIPP*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I also want to emphasise that I don't say that IFG was under any obligation to advise Mr B on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr B on the merits of the SIPP and/or the underlying investments. But I am satisfied IFG's obligations included deciding whether to accept particular investments into its SIPP and/or whether to accept introductions from particular businesses.

The regulatory publications

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

- The 2009 and 2012 Thematic Review reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 "*Dear CEO*" letter.

I've considered the relevance of these publications. And I've set out material parts of the publications here, although I've considered them in their entirety.

<u>*The 2009 Thematic Review Report*</u>

The 2009 report included the following statement:

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

> *"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, and

- 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 the relevance, I've considered these in their entirety.

I acknowledge that the 2009 and 2012 reports and the "*Dear CEO*" letter aren't formal guidance (whereas the 2013 finalised guidance is). However, the fact that the reports and "*Dear CEO*" letter didn't constitute formal guidance doesn't mean the importance of these should be underestimated. These 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's treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take these into account.

It's 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.

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.

I think the Report is also directed at firms like IFG acting purely as SIPP operators, rather than just those providing advisory services. The Report says that "*We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses*…" And it's noted prior to the good practice examples quoted above that "*We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs*."

I'm also satisfied that IFG, at the time of the events under consideration here, thought the 2009 review was relevant. IFG acknowledged in its submissions that the review is relevant to how it conducts its business and highlights some areas of good practice.

The remainder of the publications also provide a *reminder* that the Principles 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 therefore remain satisfied it's appropriate to take them into account too.

I've carefully considered what IFG's said about publications being published after Mr B's SIPP was set up. But, like the ombudsman in the BBSAL case, I don't think the fact the publications post-date the events that took place in relation to Mr B's complaint mean that the examples of good practice they provide weren't good practice at the time of the relevant events. Although the publications were published after the events subject to this complaint, the Principles that underpin them existed throughout, as did the obligation to act in accordance with the Principles.

It's 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 regulators' comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it's clear the standards themselves hadn't changed.

I note that the judge in the *Adams* didn't consider the 2012 Thematic Review Report, 2013 SIPP operator guidance and 2014 "*Dear CEO*" letter to be of relevance to their consideration of Mr Adams' claim. But it doesn't follow that those publications are irrelevant to my consideration of what's fair and reasonable in the circumstances of this complaint. I'm required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider to amount to good industry practice at the relevant time.

That doesn't mean that in considering what's fair and reasonable, I'll only consider IFG's actions with these documents in mind. The reports, "*Dear CEO*" letter and guidance gave non-exhaustive examples of good practice. They didn't say the suggestions given were the limit of what a SIPP operator should do. As the annex to the "*Dear CEO*" letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

To be clear, I don't say the Principles or the publications obliged IFG to ensure the transactions were suitable for Mr B. It's accepted IFG wasn't required to give advice to Mr B, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But as I've said above these are 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. And, as per the FCA's Enforcement Guide, publications of this type "*illustrate ways (but not the only ways) in which a person can comply with the relevant rules*". So it's fair and reasonable for me to take them into account when deciding this complaint.

I'd also add that, even if I agreed that any publications or guidance that post-dated the events subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time (which I don't), that doesn't alter my view on what I consider to have been good industry practice at the time. That's because I find that the 2009 Report together with the Principles provide a very clear indication of what IFG could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting Mr B's applications.

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 B's application to establish a SIPP and to invest in Ethical Forestry, 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.

I'm deciding what's fair and reasonable in the circumstances of this complaint – and for all the reasons I've set out above I'm satisfied that the Principles and the publications listed above are relevant considerations to that decision.

And taking account of the factual context of this case, I think 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 Firm B and the business it (Firm B) was introducing and on the Ethical Forestry investment, both initially and on an ongoing basis.

In deciding what's fair and reasonable in the circumstances, it's appropriate to take an inquisitorial approach. And, ultimately, what I'll be looking at here is whether IFG took reasonable care, acted with due diligence, and treated Mr B fairly, in accordance with his best interests. And what I think's fair and reasonable in light of that. I consider the key issue in Mr B's complaint is whether it was fair and reasonable for IFG to have accepted his SIPP and investment applications in the first place. So, I need to determine whether IFG carried out appropriate due diligence checks before deciding to accept Mr B's applications.

As noted above, IFG says it did carry out due diligence on Firm B and Ethical Forestry before accepting business from it and permitting the investment within its SIPPs. And from what I've seen I accept that it undertook some checks. However, the question I need to consider is whether IFG ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by Firm B and/or making the Ethical Forestry investment were being put at significant risk of detriment. And, if so, whether IFG should therefore not have accepted Mr B's applications.

The contract between IFG and Mr B

As set out above, my decision is made on the understanding that IFG acted purely as a SIPP operator. I don't say IFG should (or could) have given advice to Mr B or otherwise have ensured the suitability of the SIPP or Ethical Forestry investment for him. I accept that IFG made it clear to Mr B that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that forms Mr B signed confirmed, amongst other things, that losses arising as a result of IFG acting on his instructions were his responsibility.

I've not overlooked or discounted the basis on which IFG was appointed. And my decision on what's fair and reasonable in the circumstances of Mr B's case is made with all of this in mind. So, I've proceeded on the understanding that IFG wasn't obliged – and wasn't able – to give advice to Mr B on the suitability of the SIPP or Ethical Forestry investment. But I remain satisfied that, to meet its regulatory obligations when conducting its operation of SIPPs business, IFG had to decide whether to accept introductions of business and/or investments with the Principles in mind. And I don't agree that it couldn't have rejected introductions or applications without contravening its regulatory permissions by giving investment advice.

What did IFG's obligations mean in practice?

The business IFG was conducting was its operation of SIPPs. The regulatory publications provided some examples of good industry practice observed by the FCA during its work with SIPP operators, including being satisfied that it should accept applications from a particular introducer, and being satisfied that a particular investment is an appropriate one to accept. So I'm satisfied that, to meet its regulatory obligations and good industry practice, when conducting its business, IFG was required to consider whether to accept or reject particular referrals of business and particular applications for investment in its SIPPs.

The regulators' reports and guidance provided some examples of good practice observed by the FCA during its work with SIPP operators. This included being satisfied that an introducer is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting due diligence checks to make informed decisions about accepting business. This obligation was a continuing one. And its obligations and duties in this respect weren't prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

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

All in all I am satisfied that, in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, IFG should have carried out due diligence which was consistent with good industry practice and its regulatory obligations at the time. And in my opinion, IFG should have used the knowledge it gained from this to decide whether to accept or reject business or a particular investment.

IFG's due diligence on Firm B

As I've said, IFG had a duty to conduct due diligence and give thought as to whether to accept business from third parties arranging or advising on investments. That's consistent with the Principles and the regulators' publications as set out earlier in this decision.

And this is also seemingly consistent with IFG's own understanding of its obligations at the relevant time, as it seems to have done more than just check whether the proposed investment met the relevant HMRC requirements, for example. IFG has said that before accepting business from Firm B it verified that Firm B was and remained authorised by the FCA, that it had the requisite permissions and that it also obtained and reviewed Firm B customer suitability reports.

These steps go some way towards meeting IFG's regulatory obligations and good industry practice. But IFG hasn't provided us with sufficient information when asked to persuade me that it conducted sufficient due diligence on Firm B before accepting business from it, or that it didn't fail to draw fair and reasonable conclusions from what it did know about Firm B.

<u>*The volume and type of business*</u>

An example of good practice identified in the FCA's 2009 review was:

> *"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."*

Given all that I've said above, I don't think simply keeping records without scrutinising the information would be consistent with good industry practice and IFG's regulatory obligations. As highlighted in the 2009 review, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

It's clear IFG had access to information about the number and nature of introductions that Firm B made to it, as it's been able to provide details about this when requested.

IFG has told our Service that it received its first introduction from Firm B in 2007. It has said that Firm B introduced 107 customers to it, of which Mr B was introduction number 63 and that 95% of these Firm B introduced customers invested in non-standard investments. Around 5-11% of customers introduced to it were proposing to transfer at least one pension with safeguarded benefits or from defined benefit occupational schemes. IFG has said that these introductions accounted for around 6.5% of its new business over that period.

So, it's by the time IFG received Mr B's application, it already received a significant number of introductions from Firm B and most of these customers invested in non-standard investments.

It's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of the population and in respect of a small proportion of their pension – sophisticated and/or high net worth investors. So I think IFG should've been concerned that such a volume of introductions, which related almost exclusively to consumers investing in high-risk esoteric investments, such as Ethical Forestry, was unusual.

And so I think IFG either was aware, or ought reasonably to have been aware, that the type of business Firm B was introducing was high risk and therefore carried a potential risk of significant consumer detriment.

<u>*Anomalous features*</u>

The 2009 Thematic Review Report said that requesting copies of the suitability reports provided to clients by the intermediary giving advice was an example of good practice. And I recognise IFG has said that it obtained copies of suitability reports from Firm B in respect of new applications, at or around the same time as it received the SIPP and investment applications, to ensure appropriate reports were taking place.

The 2009 report said that the purpose of requesting such was to:

> *'… enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.'*

IFG has said that obtaining Firm B's suitability reports helped it check that the investor wasn't 100% exposed to a potentially higher risk investment '*i.e. that there was a spread of risk to meet the investor's stated risk appetite*'. And, in addition, IFG said that all new applications introduced by Firm B were reviewed by IFG's compliance director prior to being processed for them to assess, for example, the type and size of the investment (and, in part, to identify any anomalous investments).

So I think IFG understood at the time that it wasn't enough for it to just obtain copies of suitability reports, it needed to use these to enhance its understanding of its customers to help identify potentially unsuitable SIPPs.

Looking at the suitability reports provided to us in Mr B's and in other similar cases against IFG with our Service involving Firm B and the Ethical Forestry investment though, I can see Firm B tended to say in these that while a particular customer's risk profile was otherwise medium, their attitude to risk specifically in respect of the amount being invested in high risk investments, such as Ethical Forestry, was adventurous. Such a pattern in Firm B's customer's attitudes to risk and the way it was considering this strikes me as highly unusual.

IFG has confirmed that all customers introduced to IFG by Firm B received a recommendation at some point to invest in Ethical Forestry, a high-risk non-standard investment. In addition, in my experience a number of customers, like Mr B, that Firm B introduced to IFG were advised to invest in shares in the same unquoted private companies including, for example, Ology and Swop2shop. And customers, like Mr B, were often advised to invest a significant part – in Mr B's case, over 50% of his SIPP pension monies – of their overall SIPP pension monies into these high risk non-standard investments. That's despite such investments generally only being suitable for a small proportion of the population, and in respect of a small proportion of their pension, in the way I've said above.

IFG has openly said that it – and one person in particular at IFG – reviewed Firm B's suitability reports to specifically check things like the spread of risk, stated risk appetite and type and size of investment. So I think it was aware or ought reasonably to have become aware, and before Mr B's application, that there was a potential risk of customer detriment given the very clear and specific pattern, as set out above, to Firm B's approach to its advice in respect of such matters. I think it's clear from the suitability reports that Firm B wasn't doing things in a conventional way. And I think that IFG should have had cause for concern as result.

Alongside this, I've seen suitability reports which said that Firm B would be paid commission for arranging the investments. And I think this also raises questions about Firm B's motivation behind the approach it was taking in the circumstances.

In addition, in April 2011, Firm B was fined for reasons which included failing to gather information about its clients and failing to match attitude to risk for the recommended products. While I recognise this related to advice given between late 2004 and 2006 and the fine itself post-dates the events in Mr B's complaint, I think this information helps build a picture of the type of business Firm B was involved in.

What should IFG reasonably have done?

IFG could simply have concluded that, given the potential risks of consumer detriment – which I think were clear and obvious at the time – it shouldn't have continued accepting applications from Firm B and before it received Mr B's application. That would have been a fair and reasonable step to take, in the circumstances. Alternatively, IFG should have taken fair and reasonable steps to try to address the potential risks of consumer detriment in the first instance.

Requesting information directly from Firm B

As part of its due diligence on Firm B, I think it's fair and reasonable to expect IFG, in line with its regulatory obligations, to have made some specific enquiries and obtained information about Firm B's business model. IFG ought to have found out more about how Firm B was operating *before* it accepted applications from it.

As set out above, the 2009 Thematic Review explained that the regulator would expect SIPP operators to have procedures and controls, and for management information to be gathered and analysed, so as to enable the identification of, amongst other things, '*consumer detriment such as unsuitable SIPPs*'. Further, that this could then be addressed in an appropriate manner '*…for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification*'.

The October 2013 finalised SIPP guidance gave an example of good practice as:

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

I think that IFG, prior to accepting business from Firm B, should've checked with it about things like: how it came into contact with potential clients, what agreements it had in place with its clients, what its arrangements with any unregulated businesses or third parties were, how and why retail clients were interested in making these high risk esoteric investments, whether it was aware of anyone else providing information to clients, how it was able to meet with or speak with all its clients, and what material was being provided to clients by it.

IFG has most recently said that it did raise enquiries in this regard in respect of Firm B's business model. But it hasn't provided evidence to show that it discussed Firm B business model with it before accepting introductions and putting in place TOB with it. Instead IFG has previously said that at the time it accepted introductions from Firm B it wasn't provided with any information as to the type of investments Firm B would agree with its clients, for example. And that it didn't have any further discussions with Firm B about the client process/business being referred to it.

If IFG had done this prior to accepting business from Firm B, then I think it would likely have become aware of the above and the resulting significant potential risk of consumer detriment either from those initial discussions with Firm B or more detailed discussions this ought to have led. And, in the alternative, if Firm B had been unwilling to answer such questions if put to it by IFG, I think IFG should simply then have declined to accept introductions from Firm B.

IFG might say that it didn't have to obtain this information from Firm B. But I think this was a fair and reasonable step to take, in the circumstances, to meet its regulatory obligations and good industry practice.

And, in that case, I think IFG should have concluded, and before it accepted Mr B's business from Firm B, that it shouldn't accept introductions from it.

Making independent checks

In light of what I've said above, I think it would also have been fair and reasonable for IFG, to meet its regulatory obligations and good industry practice, to have taken independent steps to enhance its understanding of the introductions it was receiving from Firm B.

The 2009 Thematic Review Report said:

> '…*we would expect* [SIPP operators] *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 members to confirm the position, or by contacting the firm giving advice and asking for clarification*.'.

So I think it would've been fair and reasonable for IFG to speak to some applicants directly and/or contact Firm B for clarification.

To be clear, I accept IFG couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view such steps included addressing a potential risk of consumer detriment by speaking to applicants and/or contacting Firm B for clarification, as this could have provided IFG with further insight into Firm B's business model. I think these were fair and reasonable steps to take in reaction to the risks of consumer detriment I've mentioned. Had IFG taken appropriate steps, such as seeking clarification from Mr B, I think it would likely have found out that he was a retail rather than high-risk investor.

If IFG had undertaken the type of due diligence I've mentioned above, then I think it ought reasonably to have identified, and before it accepted Mr B's application, that Firm B's business carried a significant risk of consumer detriment, there were anomalous features and Firm B had a disregard for its consumers' best interests. Retail consumers, like Mr B, were transferring pension monies to IFG to invest in higher-risk esoteric investments, like Ethical Forestry, when it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. And I think IFG either was aware, or ought reasonably to have been aware, that the type of business Firm B was introducing was high risk and therefore carried a potential risk of consumer detriment.

In summary

I think IFG should have identified that the business it was receiving from Firm B raised serious questions about its motivation and competency and that there was a risk of customer detriment. And I think IFG should have concluded, and before it accepted Mr B's business from Firm B, that it shouldn't accept introductions from Firm B. I therefore conclude that it's fair and reasonable in the circumstances to say that IFG shouldn't have accepted Mr B's SIPP application from Firm B.

IFG didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly by accepting his application from Firm B. To my mind, IFG didn't meet its regulatory obligations or good industry practice at the relevant time and allowed Mr B to be put at significant risk of detriment as a result.

As I've explained above, IFG shouldn't have accepted Mr B's introduction from Firm B in first place. I think it is fair and reasonable to uphold this complaint on that basis alone. Even if I thought differently, I've also considered the due diligence that IFG carried out on the Ethical Forestry investment, for example, and I've decided to uphold Mr B's complaint, for the reasons given below. When doing so, I have taken the same approach to considering this as I did to considering the due diligence undertaken on Firm B.

IFG's due diligence on the Ethical Forestry investment

I think IFG's obligations certainly went beyond checking that the Ethical Forestry investment existed and would not result in tax charges and I think it understood this at the time. I say this because, IFG has provided us with some of the information that it has said it considered before accepting the Ethical Forestry investment within its SIPPs.

This shows that prior to permitting the investment into its SIPPs (and before accepting Mr B's application to invest in this in 2010), amongst other things, IFG:

- Obtained conference slides (from a conference that IFG attended in late 2008) which includes a presentation by Ethical Forestry, that IFG has said used current and historic timber valuations from three independent sources and which were cited in the due diligence pack.
- Reviewed a letter between the FCA and Ethical Forestry dated April 2008, which IFG has said indicated how the asset must be managed so as not to breach relevant sections of FSMA.
- Liaised with solicitors in respect of the asset structure, anti-money laundering checks and the wording of the draft contract for the sale of the crop in 2008.

And that as part of its ongoing due diligence obligations, IFG also went on to:

- Obtain an Ethical Forestry One Exempt Unit Trust Information Memorandum dated March 2010 – seemingly in respect of an alternative route being proposed to facilitate investments in Ethical Forestry, if I've understood correctly.

- Obtain a copy of Firm B's notes from its visit to Ethical Forestry in 2012.
- Obtain and review investment brochures and leaflets.

It seems IFG went on to conclude at some point (although it's unclear when) that, based on the information provided, Ethical Forestry appeared to be an acceptable investment but that in order to proceed with this it needed the UCIS form to be completed – although I don't appear to have been provided with a copy for Mr B – which included limitation of liability wording and said, in summary, the following:

- Encashment of the investment may not be possible, or may be difficult before the end of any specified term.
- There's unlikely to be any ready market, so selling/encashing the investment to pay benefits or for reinvestment may be very difficult, which could result in delays or restrictions on benefits payable.
- If there is no liquid market in the investment, it may be difficult for it to obtain a valuation for accounting purposes. And if it's unable to obtain an up to date market value, it may have to value the investment at cost or give this a nil value if the investment can't realised at the time.
- The investor won't have recourse to the FSCS or our Service.

Having carefully considered all of the information that's been made available to us to date to evidence the checks IFG carried out on the Ethical Forestry investment, I'm satisfied this did allow it to broadly understand the nature of the investment. But I don't think IFG's actions went far enough. As I explain in more detail below, I'm not satisfied that IFG undertook sufficient due diligence on the Ethical Forestry investment before it decided to accept this into its SIPPs. And I think some of the information should have given IFG real cause for concern about the risk of consumer detriment associated with this.

As such, in my view, IFG didn't comply with its regulatory obligations and good practice, and it didn't act fairly and reasonably in its dealings with Mr B, by not undertaking sufficient due diligence on the Ethical Forestry investment before it accepted his applications to invest in this.

Further, based on what it knew or ought to have known had it undertaken sufficient due diligence, I think IFG failed to draw a reasonable conclusion on accepting the Ethical Forestry investment into its SIPPs.

If IFG had completed sufficient due diligence, what ought it reasonably to have discovered?

IFG said that it liaised with solicitors in respect of the asset structure, anti-money laundering checks and the wording of the draft contract for the sale of the crop. And I can see from a 2008 letter that IFG did engage with what seems to be Ethical Forestry's solicitor (given the solicitor refers to its client as the ones who will be undertaking the harvest of trees) in respect of the draft contract wording, for example, and that IFG had input into this. However, when IFG asked the solicitor whether it had carried out any due diligence on the company and investment, for example, it said in response that other than in respect of money laundering purposes it hadn't done any such due diligence. So, while the solicitor went on to say this investment was straightforward product, it did so having already recognised it hadn't done any due diligence on this and, as I've said, it was acting on behalf of Ethical Forestry. So I think the solicitor's comments were of limited value in respect of due diligence on Ethical Forestry.

In some of its suitability reports I can see that Firm B referred to having carried out its own due diligence on the Ethical Forestry investment and having obtained a third-party report on

Ethical Forestry from three-sixty research, which it said was available on request. And IFG has said that it conducted a thorough and extensive dialogue with Firm B regarding the investments, so I think it's likely IFG would have had access to and/or seen this report. But IFG hasn't provided evidence from the time of what it discussed with Firm B in respect of the investment, such as emails or call notes, or a copy of the three-sixty research report Firm B said it had obtained, for example – despite having previously been asked to do so.

Having seen an undated copy of a report on Ethical Forestry completed by three-sixty research though, I can see this included, amongst other things, the following points:

- There is no investor protection.
- There is an exchange rate risk to the investment.
- Trees are unlikely to have a value in the first three years.
- There are no 'buy back' arrangements and no effective secondary market is available. And there may be a considerable delay between issuing instructions to fell and receiving any payment.
- The investment should be considered illiquid and clients should be advised to give as much notice as possible when attempting to realise their investment.
- It's a high-risk investment that's clearly not for a first-time investor but as a small part of a portfolio for a higher risk investor.

And, to correctly understand the nature of the investment and consistent with its regulatory obligations, IFG should have also had regard to, and given careful consideration to, how Ethical Forestry was marketed to investors when undertaking due diligence into the proposed investment. And this includes conducting some further basic independent searches. I note that IFG has provided a copy of the Ethical Forestry marketing material it says it reviewed as part of its due diligence. And, for the reasons given below, I think it's fair to say that the information provided about the Ethical Forestry investment was at best unclear and that a number of the statements made in promotional material were misleading.

The marketing material I've seen says Acacia is "a safe and secure investment". The brochures for the Melina and/or Acacia tree crops say the investment is "secure, dependable and stable" and that it is "Low risk – No peaks or troughs, just steady and stable increases".

And, in October 2008 as well as February and September 2009 for example, statements on Ethical Forestry's website read:

"*If you are looking for **certified, high return investments, low risk**, ethical investment which is both profitable and carbon friendly, our Tropical Hardwood Investments demand your serious consideration*" (my emphasis).

In October 2010:

"*Our forestry investments are suited for pensions because:*

- ***Timber investments Out-Perform** - As an asset class timber has consistently out-performed most stocks and commodities for the last 100 years, including oil, gas and gold.*
- ***Are low risk** - No peaks or troughs, just steady and stable increases.*
- ***Are Very Stable** - Timber prices are extremely stable and not correlated to the stock market.*
- ***Offer Higher returns** - Historically, timber investments offer higher returns than traditional investment"* (no emphasis added).

And in November 2010:

"*Ethical Forestry's investments offer* ***steady, stable increases*** *with* ***predictably high*** *returns, and as they are not correlated to the stock market, they do not suffer from unpredictable peaks and troughs*." (my emphasis).

In my view, IFG should have been concerned that neither the marketing material nor the website reflected the risks. It was an unregulated high-risk investment. The Ethical Forestry investment was certainly not "low risk" and "secure" on any reasonable analysis. Despite this, the investment appears to have been marketed as such to pension investors.

IFG should also have been concerned about how the projected returns were set out in the marketing material.

The slides that IFG has said Ethical Forestry presented at a conference it attended in 2008 said, for example, that the projected returns for an £12,000 investment over 12 years would be £84,000. In August 2009, Ethical Forestry's website said that the projected returns for a £12,000 investment over 12 years in Formaleta would be in excess of £84,000. And an Acacia brochure (dated October 2010 and provided to us by IFG) said, for example, that the projected returns for an £18,000 investment over 10 years would be £93,642 and for an accumulating investment over 22 years the projected return was £732,297. Another undated version of the Acacia brochure that I've seen said this would be "ideal for SIPPs pensions and personal investment portfolios" and that conservative figures were used in its projections.

The website also said in respect of Melina that "A typical investment of £18,000 invested over 10 years is projected to return £93,642. By comparison, a high-return account at 6% compound interest per annum would yield just £32,235 over 10 years".

An IFA and Agents newsletter for Melina dated May 2011 (provided by IFG) said in large bold font on the front page that this would provide higher returns for investors. It said Melina offered 'higher returns than Acacia' and that the projected returns for an £18,000 investment over 10 years would be £104,109 and for an accumulating investment over 22 years the projected return was £842,364.48, as did the Melina brochure dated May 2011 (provided by IFG). Another Melina brochure I've seen dated May 2012 added that an £18,000 24-year accumulating investment was projected to pay out £1,059,312.

I don't think that this marketing material contained any evidential basis for what appears to be wholly unrealistic "conservative" returns for investors – up to nearly 4,000% or 5,000% growth for an accumulating investment in the tree crops. Reference is made to historic figures from the Costa Rica National Forestry Office. But no detail is provided for investors to verify these figures. And, in any case, neither the website nor brochures say that past performance is no indicator of what might happen in the future, give alternative projections in different market conditions or highlight the risk factors associated with unregulated investments such as this.

IFG has said that the slides Ethical Forestry presented at a conference it attended in 2008 used current and historic timber valuations from three independent sources, which were also cited in the due diligence pack. But I think it's highly unlikely that investors would have seen this conference slide pack. And I note that as part of the slides Ethical Forestry said that, for example, it offered a guaranteed buy back of the investment at any time after the first year subject to the current timber market rate. I haven't seen anything to suggest that IFG sought to verify this with Ethical Forestry in respect of the strength of the guarantee or to query what circumstances later led to this guarantee being removed, given it wasn't in the other investment marketing material I've seen.

I recognise that a 20-page (undated although seemingly relevant to 2008) Due Diligence brochure (provided to us by IFG) held further information. But, again, it doesn't seem to contain any disclaimer which explained that Ethical Forestry wasn't regulated by the FCA, that investment values may rise or fall, there were no performance guarantees and customers might not get back the full amount paid, for example. I've seen another 42-page Melina Due Diligence brochure which I note did contain some of this type of information. But I'm not sure whether investors would've seen this lengthy document. Neither Due Diligence brochure explained that customers would not have recourse to the FSCS or our Service. And I think that a warning ought to have been given in all the marketing materials and on the website.

For the reasons I've given, I think the investment promotional material was unclear and misleading. So, IFG should have had significant concerns about how the investment was being promoted and the information being provided to investors about the investment. There was a significant risk of consumer detriment, as there was a real risk that investors could be investing in Ethical Forestry without appreciating the risks involved. I think that these concerns alone ought to have led IFG to conclude that it shouldn't permit this investment within its SIPPs, and at the very least this ought to have led IFG to understand the importance of undertaking comprehensive independent due diligence.

Looking at all of the above, there were significant warning signs and risks associated with the Ethical Forestry investment, namely:

- There was no investor protection associated with this investment. It was illiquid, subject to currency fluctuations and there may be no market for it. There were also other risks involved such as disease or fire that could've destroyed the trees allocated to investors.
- It was being specifically targeted for investment by pension investors, it was a speculative overseas based investment with inherent high risks that made it very obviously unsuitable for all but a small category of investors and even then, only a small part of such an investor's portfolio.
- Ethical Forestry had no proven track record for investors and so IFG couldn't be certain that the investment wasn't impaired or operated as claimed.
- The very high projected returns set out should have been questioned. I don't expect IFG to have been able to say the investment would have been successful. But such high projected returns without any apparent basis should have given IFG cause to question its credibility.
- The marketing material was, at best, unclear as to the risks associated with the investment. So, IFG should have been concerned that consumers may have been misled or did not properly understand the investment they intended to make.
- As set out by the liquidator, investors were led to believe they had ownership of trees and cropping rights in relation to the trees and were given GPS co-ordinates to these, when these rights weren't given as these weren't capable of being granted under Costa Rican law.

While I've taken into account IFG's comments concerning what later become known about the investment, all in all I am satisfied that IFG ought to have had significant concerns about the Ethical Forestry investment from the beginning. I think the type of concerns set out above ought to have been a red flag when it was considering whether to accept this investment into its SIPPs. And, knowing all this, I don't think it was fair or reasonable for IFG to have accepted the Ethical Forestry investment into its SIPPs.

Had IFG done what I think it should have, and drawn reasonable conclusions from what it knew or ought reasonably to have known, I think that it ought to have concluded there was a significant risk of consumer detriment if it accepted the Ethical Forestry investment into its SIPPs and that this wasn't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think IFG undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the Ethical Forestry investment before it did so. I don't think IFG met its regulatory obligations and, in accepting Mr B's application to invest in Ethical Forestry, it allowed his funds to be put at significant risk.

There's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. As I've said, I accept IFG wasn't expected to, nor was it able to, give advice on the suitability of the SIPP and/or the investment. To be clear, I'm not making a finding that IFG should have assessed this for Mr B. I accept it had no obligation to give him advice, or to otherwise ensure the suitability of an investment for him.

And I'm also not saying that IFG shouldn't have allowed the Ethical Forestry investment into its SIPPs because it was high risk. Instead, my fair and reasonable decision is that there were things IFG knew or ought to have known about the Ethical Forestry investment and how it was being marketed, which ought to have led IFG to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that IFG failed to act with due skill, organise and control its affairs responsibly, or treat Mr B fairly by accepting this into his SIPP.

I think the fair and reasonable conclusion based on the evidence available is that IFG shouldn't have accepted Ethical Forestry into its SIPPs and Mr B's application to invest in this. I think it ought to have concluded that it would not be consistent with its obligations to do so. To my mind, IFG didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr B to be put at significant risk of detriment as a result.

For clarity, I think that effecting the Ethical Forestry investment was one of the main reasons that Mr B's existing pension monies were switched to the IFG SIPP, given Ethical Forestry was one of the first investments Mr B made through this and that it was where the highest proportion of his SIPP pension monies were invested.

Did IFG act fairly and reasonably in proceeding with Mr B's instructions?

I recognise might have Mr B signed forms confirming he understood that IFG wouldn't accept any liability for issues that might arise in respect of the investment and that it seems he declared that he'd received details of the risk factors and terms and conditions for the investment and wished to proceed with this.

For the reasons given above, I think IFG should have refused Mr B's application from Firm B and/or refused to permit the Ethical Forestry investment within its SIPPs though. So things shouldn't have progressed beyond that.

Indemnities

In my view it's fair and reasonable to say that just having Mr B sign indemnity declarations wasn't an effective way for IFG to meet its regulatory obligations to treat him fairly, given the concerns IFG ought to have had about his introduction and the intended investments. IFG knew that Mr B had signed forms intended to indemnify it against losses that arose from acting on his instructions. And, in my opinion, relying on such indemnities when IFG knew, or ought to have known, Mr B's dealings with Firm B and the type of intended investments were putting him at significant risk wasn't the fair and reasonable thing to do.

In the circumstances I think very little comfort could have been taken from the declaration stating that Mr B understood the investment risks. Having identified the risks I've mentioned above, it's my view that the fair and reasonable thing to do would have been to refuse to accept Mr B's applications.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr B signed meant that IFG could ignore its duty to treat him fairly. I'm satisfied that indemnities contained within the contractual documents don't absolve IFG of its regulatory obligations to treat customers fairly when deciding whether to accept or reject business.

IFG had to act in a way that was consistent with the regulatory obligations that I've set out in this decision. In my view, IFG was not treating Mr B fairly by asking him to sign an indemnity absolving it of all responsibility, and relying on such an indemnity, when it ought to have known that Mr B was being put at significant risk.

I'm satisfied that Mr B's IFG SIPP shouldn't have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity shouldn't have arisen at all. And I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for IFG to proceed with Mr B's applications.

COBS 11.2.19R

IFG has said that it's an execution only SIPP provider and it might say that COBS 11.2.19R obliged it to execute investment instructions. As I've said though, it wasn't fair and reasonable for IFG to have accepted Mr B's applications in the first place. So his SIPP shouldn't have been established and the opportunity to execute investment instructions shouldn't have arisen at all.

In any event, an argument about having to execute the transaction as a result of COBS 11.2.19R was considered and rejected by the judge in BBSAL. In that case Jacobs J said:

> *'The heading to COBS 11.2.1R shows that it is concerned with the manner in which orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2 as a whole, namely: "Best execution". The text of COBS 11.2.1R is to the same effect. The expression "when executing orders" indicates that it is looking at the moment when the firm comes to execute the order, and the way in which the firm must then conduct itself. It is concerned with the "mechanics" of execution; a conclusion reached, albeit in a different context, in Bailey & Anr v Barclays Bank [2014] EWHC 2882 (QB), paras [34] – [35]. It is not addressing an anterior question, namely whether a particular order should be executed at all. I agree with the FCA's submission that COBS 11.2 is a section of the Handbook concerned with the method of execution of client orders, and is designed to achieve a high quality of execution. It presupposes that there is an order being executed, and refers to the factors that must be taken into account when deciding how best to execute the order. It has nothing to do with the question of whether or not the order should be accepted in the first place.'*

Is it fair to ask IFG to compensate Mr B in the circumstances?

Would Mr B's application have gone ahead elsewhere if IFG had declined it?

I've considered whether, in the circumstances, Mr B would have gone ahead with the switch and the Ethical Forestry investment if IFG had refused his applications. In *Adams v Options SIPP*, the judge found that Mr Adams would've proceeded with the transaction regardless. HHJ Dight says (at paragraph 32):

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

I recognise Mr B may have signed a declaration confirming he understood and accepted the level of risk and wished to proceed. But Mr B was a retail customer, who doesn't appear to work in finance or pensions. And, in any event, I'm not satisfied that Mr B was determined to move forward with the transactions in order to take advantage of a cash incentive. I've not seen any evidence to show Mr B was paid a cash incentive.

It therefore cannot be said Mr B was incentivised to enter into the transaction. And, on balance, I'm satisfied that Mr B, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this case is very different from that of Mr Adams.

As I've said above, I think that effecting the Ethical Forestry investment was one of the main reasons that Mr B's existing pension monies were switched to the IFG SIPP by Firm B. And had IFG, as a regulated firm, explained to Mr B even in general terms why it would not accept his applications from Firm B and to invest in this, or that it was terminating the transaction, I think Mr B is likely to have lost trust in Firm B. And without the above firm(s) involvement I don't think Mr B would have otherwise had any interest in switching to an IFG SIPP to make high risk non-standard investments, including Ethical Forestry. So I find it very unlikely that Mr B would still have sought to make the investments he did elsewhere.

And, in any case, I don't think it's fair and reasonable to say that IFG shouldn't compensate Mr B for his loss based on speculation that another SIPP operator would've made the same mistakes as I've found IFG did. I think it's fair instead to assume that another SIPP provider would've complied with its regulatory obligations and acted according to good industry practice, and therefore wouldn't have accepted business from Firm B, nor permitted investment into Ethical Forestry in its SIPPs, and prior to Mr B's applications in 2010.

So, on balance, I think it's fair and reasonable to direct IFG to pay Mr B compensation in the circumstances. I'm satisfied that Mr B would not have continued with the IFG SIPP and then the investments, had it not been for IFG's failings. And, whilst I accept other parties might have some responsibility for initiating the course of action that led to Mr B's loss, I consider that IFG failed to comply with its own obligations and didn't put a stop to the transactions proceeding by declining to accept Mr B's applications when it had the opportunity to do so.

The involvement of other parties

I accept that other regulated parties were involved in the transactions complained about, such as Firm B and I've carefully considered IFG's points in respect of this. In this decision I'm considering Mr B's complaint about IFG though. IFG had its own distinct set of obligations when considering whether to accept Mr B's application for a SIPP. And, as I explain below, I'm satisfied that it's fair to require it to compensate Mr B for the full measure of his loss.

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).

I want to make clear that I've taken everything IFG has said into consideration. And it's my view that it's appropriate in the circumstances for IFG to compensate Mr B to the full extent of the financial losses he's suffered due to IFG's 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's liable to pay to Mr B. IFG accepted Mr B's business. And, but for IFG's failings, I'm satisfied that Mr B's pension monies likely wouldn't have been switched to an IFG SIPP and then invested in Ethical Forestry via Firm B.

I am not asking IFG to account for loss that goes beyond the consequences of its failings. I am satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for that same loss is a distinct matter. And that should not impact on Mr B's right to fair compensation from IFG for the full amount of his loss. The key point here is that but for IFG's failings, Mr B wouldn't have suffered the loss he's suffered. As such, I'm of the opinion that it's appropriate and fair in the circumstances for IFG to compensate Mr B to the full extent of the financial losses he has suffered due to its failings, and notwithstanding any failings by other firms involved in the transactions.

I note that IFG has said, for example, that Firm B is primarily responsible for any loss suffered. And I've set out below that IFG could have the option to take an assignment from Mr B before compensation is paid. And that compensation could be made contingent upon Mr B's acceptance of this term of settlement.

As set out above, I'm satisfied that IFG should've put a stop to the transactions and that the switch to the IFG SIPP and the investment into Ethical Forestry likely wouldn't have gone ahead if it'd treated Mr B fairly and reasonably. I've carefully considered causation, contributory negligence, and apportionment of damages. But in the circumstances here and for the reasons I've given, I'm still satisfied it's fair and reasonable for IFG to compensate Mr B for his full loss.

Mr B taking responsibility for his own investment decisions

Section 5(2)(d) of the FSMA (now section 1C) requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the general principle that consumers should take responsibility for their own investment decisions. Having considered this I'm satisfied that it wouldn't be fair or reasonable to say Mr B's actions mean he should bear the loss arising as a result of IFG's failings.

For the reasons given above, I think that if IFG had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr B's introduction from Firm B nor permitted his investment application. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr B wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

As I've made clear, IFG needed to carry out appropriate due diligence on Firm B and reach the right conclusions. I think it failed to do this. And merely having Mr B sign forms containing declarations wasn't an effective way of IFG meeting its obligations, or of escaping liability where it failed to meet these.

Mr B used the services of regulated firms and providers, trusting these to act in his best interests. So, I don't think it would be fair to say in the circumstances that Mr B should suffer the loss because he ultimately instructed the transactions to be effected. Overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair to say IFG should compensate Mr B for the loss he's suffered.

What would have otherwise happened?

My aim is to return Mr B as closely as possible to the position he would now be in but for what I consider to be IFG's due diligence failings. For the reasons given, I'm satisfied that Mr B wouldn't have otherwise transferred to an IFG SIPP and then invested in high risk non-standard investments, like Ethical Forestry. And Mr B has said that he wasn't interested in changing his pensions at the time, until Firm B advised him to do so.

In light of the above, I think that IFG should calculate fair compensation by comparing the current position to the position Mr F would be in if he hadn't switched from his existing pension plans to the IFG SIPP and made the Ethical Forestry investment.

To date, we haven't received anything to suggest these were anything other than defined contribution plans without any guarantees attached. So my decision is made on this assumption.

Putting things right

In summary, on a fair and reasonable basis, IFG should:

1. Calculate a notional value, as at the date of this decision, of the monies that were transferred into the IFG SIPP if they'd not been transferred into this.

2. Obtain the actual current value of Mr B's IFG SIPP, as at the date of this decision, less any outstanding charges.

3. Deduct the sum arrived at in step 2) from the sum arrived at in step 1).

4. Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).

5. Pay an amount into Mr B's IFG SIPP, so that the transfer value of this is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.

6. Pay Mr B £300 for the distress and inconvenience the problems with his pension have caused him.

I've explained how IFG should carry out the calculation, set out in steps 1 - 6 above, in further detail below:

1. Calculate a current notional value, as at the date of this decision, of the monies that were transferred into the IFG SIPP if they'd not been transferred into it.

   IFG should ask the operator of Mr B's previous pension plan to calculate the current notional value of this, as at the date of this decision, had he not transferred into the SIPP. IFG must also ask the same operator to make a notional allowance in the calculations, so as to allow for any additional sums Mr B has contributed to, or withdrawn from, his IFG SIPP since the outset. To be clear this doesn't include SIPP charges or fees paid to third parties like an adviser.

Any notional contributions or notional withdrawals to be allowed for in the calculations should be deemed to have occurred on the date on which monies were actually credited to, or withdrawn from, the IFG SIPP by Mr B.

If there are any difficulties in obtaining a notional valuation from the operator of Mr B's previous pension plan, IFG should instead calculate a notional valuation by ascertaining what the monies transferred away from this would now be worth, as at the date of this decision, had these achieved a return from the date of transfer equivalent to the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index).

I'm satisfied that's a reasonable proxy for the type of return that could have been achieved over the period in question.

2. Obtain the actual current value of Mr B's IFG SIPP, as at the date of this decision, less any outstanding charges.

   This should be the current value as at the date of my final decision.

3. Deduct the sum arrived at in step 2) from the sum arrived at in step 1).

   The total sum calculated in step 1) minus the sum arrived at in step 2), is the loss to Mr B's pension provision.

4. Pay a commercial value to buy Mr B's share in any investments that cannot currently be redeemed.

   I'm satisfied that Mr B's IFG SIPP only still exists because of the illiquid investments that are held within it. And that but for these investments Mr B's monies could have been transferred away from IFG. For the SIPP to be closed and further SIPP fees to be prevented, any remaining investments need to be removed from the SIPP.

   To do this IFG should reach an amount it's willing to accept as a commercial value for the investments, and pay this sum into the SIPP and take ownership of the relevant investments.

   If IFG is unwilling or unable to purchase the investments, then the actual value of any investments it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include their being given a nil value for the purposes of ascertaining the current value of Mr B's SIPP in step 2).

   If IFG doesn't purchase the investments, it may ask Mr B to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from these investments. That undertaking should allow for the effect of any tax and charges on the amount Mr B may receive from the investments, and any eventual sums he would be able to access from the SIPP. IFG will need to meet any costs in drawing up the undertaking.

5. Pay an amount into Mr B's IFG SIPP, so that the transfer value of this is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.

   The amount paid should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into a pension plan if it would conflict with any existing protections or allowances.

If IFG is unable to pay the compensation into Mr B's SIPP, or if doing so would give rise to protection or allowance issues, it should instead 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.

The notional allowance should be calculated using Mr B's actual or expected marginal rate of tax in retirement at his selected retirement age.

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

Neither IFG nor Mr B have disputed that this is a reasonable assumption, despite being given the opportunity to do so in response to our Investigator's findings.

6. Pay Mr B £300 for the distress and inconvenience the problems with his pension have caused him.

   In addition to the financial loss that Mr B has suffered because of the problems with his pension, I think that the loss suffered to his pension provision has caused him distress and inconvenience. Mr B lost a significant proportion of his IFG SIPP pension monies and he is in his late 50's. So I think this is likely to have caused him some upset in the circumstances. And I think this is a fair and reasonable amount in the circumstances to compensate him for this.

IFG must also provide the details of its redress calculation to Mr B in a clear, simple format.

Assignment of rights

If IFG believes other parties to be wholly or partly responsible for the loss, it is free to pursue those other parties. So, if Mr B's loss does not exceed £170,000 (which is the maximum sum I'm able to award in a case such as this), or if IFG accepts my recommendation below that it should pay the full loss as calculated above, then the compensation payable to Mr B by IFG may be contingent on the assignment by him to IFG of any rights of action he may have against other parties, and to any future payment Mr B might receive from such parties, in relation to his transfer to the IFG SIPP and the investments if IFG is to request this. IFG should cover the reasonable cost of drawing up, and Mr B's taking advice on and approving, any assignment required.

SIPP fees

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

Interest

The compensation resulting from this loss assessment must be paid to Mr B or into his SIPP within 28 days of the date IFG receives notification of Mr B's acceptance of my final decision.

Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation isn't paid within 28 days.

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

My final decision

For the reasons given, it's my final decision that Mr B's complaint should be upheld and that IFG Pensions Limited must pay fair redress as set out above.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

Determination and award: I require IFG Pensions Limited to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £170,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that IFG Pensions Limited pays Mr B the balance.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my final decision when issued and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept the final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 March 2025.

Holly Jackson
Ombudsman