DRN-5644415

The complaint

Mr S complains that James Hay Administration Company Ltd ('James Hay') caused him to make investments which have now failed, that it didn't carry out sufficient due diligence on these investments before allowing him to invest in them, and that it didn't keep him informed about their status or seek valuation/recovery of them. So Mr S thinks James Hay caused him a significant financial loss and should compensate him.

Mr S had a professional representative at the start of this complaint, but no longer. For ease, I'll refer only to Mr S.

What happened

In August 2006, Mr S signed an application form for a self-invested personal pension ('SIPP') with James Hay. This form included the following details:

- The section asking for details of his financial adviser was left blank and crossed through.
- An employer contribution of £101,000 would be made to the SIPP.
- Mr S intended to make 'other permissible investments' with his SIPP monies.
- He did not have an investment manager.
- A regulated advisory firm I'll call 'Firm G' signed to verify Mr S's identity.

James Hay's internal checklist recorded Mr S as a direct client. It accepted his application form and opened his SIPP in August 2006.

Employer contributions totalling £209,000 were made into Mr S's SIPP between August 2006 and October 2010. This employer was a company that Mr S was a director of at those times.

On 18 September 2006, Mr S signed a James Hay waiver cancellation letter – this letter said James Hay was obliged to offer this to direct clients.

On 22 September 2006, Firm G wrote to James Hay to say it was the 'authorised representative' for a list of clients, including Mr S.

The transaction list James Hay provided to our Service for Mr S's SIPP shows that in November 2006 and January 2007 SIPP monies totalling £200,000 were invested through what I'll call 'Investment Manager C' into a particular UK commercial property related investment. But this £200,000 was returned to Mr S's SIPP soon after, in early March 2007. Mr S was sent a copy of a letter from Investment Manager C, explaining it would no longer proceed with this investment because its due diligence had uncovered fundamental issues the property developer hadn't disclosed or addressed.

In late March 2007, £100,000 of Mr S's SIPP monies were used to buy another UK commercial property related investment I'll call 'No.6', again through Investment Manager C.

And more of Mr S's SIPP monies were paid into further UK commercial property related investments through Investment Manager C, as I'll now set out.

- ‘No.1’ investment - £50,000 on 10 May 2007

  On 30 April 2007 Mr S signed a typed letter addressed to James Hay saying *“Please invest £50,000 in* [No.1] *for me. Please debit my* [SIPP account] *with the above amount.”*

  On the same day, he also signed what appears to be a pre-printed disclaimer that said:

  “I fully understand that this investment may not be readily realisable and that this could impact on my ability to take pension benefits from my plan if there are not sufficient other liquid assets held in the plan.”
  …

  “I understand that if the Trust invests in residential property and HM Revenue & Customs deems this not to be a genuinely diverse commercial vehicle, there may be a tax charge and that I would be liable for this.

  Furthermore, given the nature of this investment, I understand that it will not be valued as regularly as an authorised unit trust would be. Therefore, any value provided to me by James Hay may not be up to date or may be a best estimate based on the last valuation and subsequent distributions.”

  On 10 May 2007, James Hay wrote to Investment Manager C enclosing the investment application and saying it had sent the funds. It added that Firm G was *“the financial adviser involved in this case… please contact them regarding commission payable on this investment.”* And the section of the investment application titled ‘to be completed by Authorised Adviser’ recorded Firm G’s details.

- ‘No.7’ investment - £50,000 on 31 March 2008

  In late March 2008, Firm G faxed and emailed James Hay an investment application for Mr S to invest in No.7. Firm G’s details were recorded in the ‘financial adviser’ details section of this application. At this time, James Hay called Firm G to check if it was now Mr S’s financial adviser, but I’ve not seen that this was clarified.

  James Hay’s internal documentation records that it thought No.7 was a tax exempt unauthorised unit trust and an unregulated collective investment scheme (‘UCIS’), but that it was willing to proceed because *“the limited partnership is regulated”*, and that it did not require Mr S to sign a disclaimer. However, James Hay’s documentation stipulated that Mr S *“Must purchase units in the trust. Cannot invest directly in the limited partnership.”*

  James Hay sent an investment instruction to the manager of the No.7 fund on 31 March 2008. Its covering letter said Firm G was *“the financial adviser involved in this case… Please note commission on this investment will be paid to* [Firm G]. *For all enquiries contact us initially.”*

  On the same day, James Hay faxed Firm G to say *“Thank you for your investment instructions for the above member. Please be advised that we have today sent monies to the sum of £50,000 along with an investment instruction to* [fund manager] *for investment into the* [No.7 investment]*.”*

- No.1 investment – a further £12,500 on 3 July 2009

> On 10 June 2009, Investment Manager C wrote to Mr S regarding No.1, saying *"We are writing in connection with the above Fund of which* [we are] *the operator. Following a meeting held at* [Firm G's] *offices on 14th April 2009 between* [Investment Manager C] *and several investors, it was agreed that each investor will contribute further cash to the Fund in an amount equal to 25% of their initial investment".*
>
> The letter went on to explain that these additional monies would be used for ongoing professional fees for development of the No.1 site, and for covering interest payments to the lender. The letter asked Mr S to sign his agreement and said Investment Manager C intended to ask James Hay for this 25% (equating to £12,500) from his SIPP. James Hay sent Firm G a copy of this letter. And Mr S signed his agreement on 18 June 2009.

The annual SIPP statement James Hay sent Mr S in August 2010 valued his No.1 holding as £0, and his SIPP in total at £150,327.

In March 2011, No.6's fund manager wrote to James Hay to say the fund's debt provider no longer wanted to support it and options were being explored. But if these weren't successful, there was unlikely to be any return to investors of their original investment.

The annual SIPP statement James Hay sent Mr S in August 2011 valued his holdings in both No.1 and No.6 as £0, and his SIPP in total at £51,238.

In April 2012, the No.7 fund manager wrote to James Hay to say the commercial property market meant the development's current value was likely to be less than the debt owed. And if that remained the case, it was highly unlikely there'd be any return to investors of their original investment.

In May 2012, the No.6 fund manager wrote to James Hay to say the holding companies had entered administration and the No.6 fund had terminated.

The annual SIPP statement James Hay sent Mr S in August 2013 valued his holdings in both No.1 and No.7 as £0, with no mention of No.6. And it valued his SIPP in total at £376.

In 2014, Mr S closed his James Hay SIPP. He says he did so because there was no point continuing to pay for the SIPP when there was little to nothing in it.

Mr S has told us that in January 2019, a conversation took place between his current financial adviser and a SIPP specialist solicitor, and that it was this conversation that made him aware James Hay could be responsible for his SIPP investment losses.

In August 2019 Mr S engaged that solicitor and complained to James Hay that, in summary, it had caused him to make these investments totalling about £200,000, hadn't carried out sufficient due diligence on them before allowing him to invest, and hadn't kept him informed about the status of his investments or sought valuation/recovery of them.

James Hay's final response to Mr S's complaint said the provision and administration of a SIPP was not a regulated activity when his SIPP opened in 2006. And that Mr S had complained too late under the time limit rules.

Unhappy with this, Mr S brought his complaint to our Service. I issued a jurisdiction decision in which I said the establishment of Mr S's SIPP with James Hay and his investment in No.6 had taken placed before the administration and operation of SIPPs became regulated. So

these matters didn't fall within our jurisdiction and therefore our Service couldn't consider them.

However, the jurisdiction decision went on to say that Mr S's complaint point about James Hay's due diligence checks on the No.1 and No.7 investments did fall within our Service's jurisdiction and could be considered by our Service. Because these investments had been made after the administration and operation of SIPPs became regulated, and Mr S's complaint point about James Hay's checks on them had been brought within the relevant time limits. For clarity, it's the merits of that complaint point that are being addressed in this decision.

At my request, both James Hay and Mr S provided further comments and evidence. I've carefully considered all of this, but here I'll only summarise what I think is relevant to this complaint about James Hay's due diligence checks on the No.1 and No.7 investments made with Mr S's SIPP monies.

Mr S's submissions to our Service include that:

- He'd heard of these investments through a childhood friend who had invested too. But the time passed meant he couldn't recall those conversations and he didn't have any documentation.

- His understanding of these investments, and the reason he was attracted to them, was that they involved properties that were rented and that the cashflow covered all outgoings.

- He'd understood Firm G's role was to allow its offices to be used by the investment companies for a presentation. But Firm G was never his adviser, and he'd not received advice from Firm G or any other party. He speculated that perhaps the reason why records showed Firm G as being involved was because Firm G was maybe collating information from all the investors. He wasn't aware Firm G received any commission. And he'd not had a relationship with anyone at Firm G at any time; he first came across it at the presentation in its offices.

- Apart from this SIPP, he'd not had any other pension provision. He was relying on his businesses to provide his retirement income.

James Hay's submissions on this matter include that:

- It had not caused Mr S to make these investments; it had only acted on his investment instructions.

- It had thought the No.1 and No.7 investments were permitted within a SIPP. But it decided the No.1 investment required enhanced due diligence so it asked Mr S to sign the disclaimer.

- There was no reason for James Hay or Mr S to hesitate in making these investments. Earlier iterations of this type of investment had given investors positive returns, and there were no red flags at the time Mr S made them. They were legitimate and there had never been any suggestion of fraud or financial crime.

- Later iterations of this type of investments got into difficulty. But this was solely because they (and the underlying property) were unduly affected by the 2008 financial crisis, and the impact lasted several years; these were events outside of

James Hay's control and which couldn't have been predicted. And since most of Mr S's investments were made prior to the 2008 crisis, he wouldn't have been in a materially different position if he'd chosen to make other similar property investments.

- Mr S had the business acumen to run and direct several firms, including one that had the financial resources to fund his own SIPP with contributions of over £200,000, and to fund his wife's SIPP similarly. And publicly available information about the significant dividends paid by a firm that Mr S was a shareholder of indicated that Mr S had been a high net worth ('HNW') investor.

- It acknowledged there were documents referring to Firm G as the financial adviser. But James Hay had in fact treated Mr S's SIPP application as a direct client application and never recorded his business as having been introduced by Firm G. His SIPP hadn't paid any fees to Firm G.

- Nonetheless, at my request James Hay provided some information about its dealings with Firm G:

    - It entered an adviser agreement and agreed terms of business with Firm G. The agreement was routinely updated and James Hay provided the earliest copy it held, dated January 2017.

    - Firm G began introducing SIPP applications and investment business for Investment Manager C to James Hay prior to SIPP regulation in April 2007, and this is when Firm G made its first introduction to James Hay. Beyond this, James Hay received two investment applications from Firm G for Investment Manager C in April 2008.

    - James Hay's due diligence involved checking the regulator's register for Firm G's authorisation, permissions and any disciplinary action. It did this at each new introduction of business, and there was nothing to warrant further enquiry or rejection of its introductions. James Hay provided screenshots of the register checks it carried out in early and in late 2007.

    - James Hay could only find thirteen instances where Firm G were appointed as a client's financial adviser. Two of the thirteen were for SIPPs held by a Firm G director. And seven of the thirteen invested with Investment Manager C. James Hay recorded Mr S's SIPP application as being unadvised and on a direct client basis, so Mr S was not one of these thirteen.

    - James Hay's understanding was that Firm G would have advised all thirteen clients (excluding Mr S) on the SIPP, any contributions or pension transfers, investments, and pension benefits. But it doesn't presently have any information about Firm G's business model or structure. James Hay wasn't party to the advice Firm G gave its clients and wouldn't have requested copies; James Hay reasonably relied upon a regulated financial advice firm complying with its regulatory obligations as per COBS 2.4.

    - James Hay's agreement with Firm G hasn't ended. Firm G continues to be authorised by the regulator, and the appointed financial adviser for eight clients.

I issued a provisional decision in which I explained that James Hay needed to carry out due diligence checks before accepting Mr S's applications to invest in No.1 and No.7. But that I wasn't persuaded there was anything at that time that ought reasonably to have caused James Hay concern about the involvement of Firm G in Mr S's applications for these

investments. And that even if James Hay had carried out further independent checks, I'd not found anything that would've been discoverable to James Hay at the time that ought to have led it to refuse the No.1 or the No.7 investments to be made within its SIPPs.

Despite being provided with the opportunity to respond to the provisional decision, neither party provided any further comments or evidence for me to consider.

I'm now in a position to make a decision on the merits of Mr S's complaint about the due diligence checks James Hay carried out on the No.1 and No.7 investments.

What I've decided – and why

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

As neither party has provided me with anything further to consider, I see no reason to depart from what I said in the provisional decision, and so I will repeat that here.

Relevant considerations

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

I have taken into account a number of considerations including, but not limited to:

- The agreement between the parties.
- The Financial Services and Markets Act 2000 ("FSMA").
- Court decisions relating to SIPP operators, in particular Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541 (*"Options"*) and the case law referred to in it including:
    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474 ("*Adams"*)
    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service [2018] EWHC 2878 (*"Berkeley Burke"*)
    - Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The FSA and FCA rules including the following:
    - PRIN Principles for Businesses
    - COB Conduct of Business
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to SIPP operators, and good industry practice.

The legal background

As highlighted in the High Court decision in *Adams* the factual context is the starting point for considering the obligations the parties were under. And in this case it is not disputed that the contractual relationship between James Hay and Mr S is a non-advisory, or execution only, relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. James Hay was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

I have considered the obligations on James Hay within the context of the non-advisory relationship agreed between the parties.

The case law

I'm required to determine this complaint by reference to what is in my opinion fair and reasonable in all the circumstances. I am not required to determine the complaint in the same way as a court. A court considers a claim as defined in the formal pleadings and they will be based on legal causes of action. The Financial Ombudsman Service was set up with a wider scope which means complaints might be upheld, and compensation awarded, in circumstances where a court would not do the same.

The approach taken by the Financial Ombudsman Service in two similar (but not identical) complaints was challenged in judicial review proceedings in the *Berkeley Burke* and the *Options* cases. In both cases the approach taken by the Ombudsman concerned was endorsed by the court. A number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved.

It is not necessary for me to quote extensively from the various court decisions.

The Principles for Businesses

The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non-advisory basis, in a way appropriate to that relationship.

Principles 2, 3 and 6 are of particular relevance here. They 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 am satisfied that I am required to take the Principles into account (see *Berkeley Burke*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

The regulatory publications and good industry practice

The regulator 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.

The 2009 Report included:

> *"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…*
>
> *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."*

The Report also included:

> *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."*

I have considered all of the above publications in their entirety. It is not necessary for me to quote more fully from the publications here.

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter are not formal guidance (whereas the 2013 finalised guidance is). However all of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account (as did the ombudsman whose decision was upheld by the court in the *Berkeley Burke* case).

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.
- The comments made in the publications apply to SIPP operators that provide a non-advisory service.
- Neither court in the *Adams* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.
- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

What did James Hay's obligations mean in practice?

I'm satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business, James Hay was required to consider whether to accept or reject particular investments and/or referrals of business with the Principles in mind. I say this based on the overarching nature of the Principles (as is clear from the case law) and based on good industry practice. I am also satisfied that, bearing in mind the Principles and good industry practice, this obligation was not confined *only* to rejecting an investment on the basis it was not allowed by the SIPP Trust or HMRC regulations.

I am satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business a SIPP operator should for example reasonably refuse an investment if the SIPP operator had serious concerns about *"possible instances of financial crime and consumer detriment such as unsuitable SIPPs".* Or, for example if, the SIPP operator had concerns that the investment might not be genuine, or not be secure or might be impaired in some way.

I am satisfied that a non-advisory SIPP operator could decide not to accept a referral of business or a request to make an investment without giving advice. And I am satisfied that in practice many non-advisory SIPP operators did refuse to accept business and/or refuse to make investments without giving advice.

I am satisfied that, in order to comply with its regulatory obligations, a non-advisory SIPP operator should have due diligence processes in place to check any firms introducing business to them and the investments they are asked to make on behalf of members or

potential members. And James Hay should have used the knowledge it gained from its due diligence checks to decide whether to accept such business and/or allow a particular investment.

As set out above, to comply with the Principles, James Hay needed to conduct its business with due skill, care and diligence; organise and control its affairs responsibly and effectively; and pay due regard to the interests of its clients (including Mr S) and treat them fairly. 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.

It appears that James Hay understood it was required to carry out some checks on introducers of SIPP business and investment proposals before accepting these, because it has explained the process that was followed. But I think that James Hay also ought to have understood that its obligations meant that it had a responsibility to also carry out appropriate checks on introducers to check the quality of the business being introduced.

I also think that it's fair and reasonable to expect James Hay to have looked carefully at the investments it was allowing Mr S's SIPP to be invested in. To be clear, for James Hay to accept the investments without carrying out a level of due diligence that was consistent with its regulatory obligations, wouldn't in my view be fair and reasonable or sufficient. And if James Hay didn't look at an investment in detail, and if such a detailed look would have revealed that the investment might not be secure, might be fraudulent, or that the investment couldn't be independently valued, or that it was impaired, it wouldn't in my view be fair or reasonable to say James Hay had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

The involvement of Firm G

I must be clear that, as I've explained, in this decision I am not considering the establishment of Mr S's SIPP or his investment in No.6.

Instead, I am only considering Mr S's complaint point about James Hay's due diligence checks on the No.1 and No.7 investments. But in doing so, I need to take account of what James Hay knew, or ought to have known, at the time it was asked to accept those investments within its SIPPs.

James Hay says Mr S was a direct client i.e. he hadn't been introduced to James Hay by a third party, here Firm G. And Mr S has been very clear in his testimony that he did not receive any advice from Firm G or from anyone else, and that his understanding of Firm G's role was only that it allowed its offices to host a presentation by the investment companies.

However, at the time of Mr S's investments in No.1 and No.7, James Hay knew Firm G was one of its introducers of SIPP business, given what it's said in its submissions. And based on the documentary evidence I've seen, James Hay also knew Firm G had told it that it was Mr S's authorised representative, that Firm G had been recorded in some documents as Mr S's financial adviser (although I note Mr S's SIPP never paid any fees to Firm G), and that Firm G was involved in arranging his investments in No.1 and No.7 and was being paid commission in relation to these investments – although it's not clear who was paying this commission.

So I think it's fair to say that Firm G was involved in Mr S's investments in No.1 and No.7 but that it wasn't clear what capacity it was acting in. However, based on what I've seen, Firm G was at that time authorised and regulated by the regulator (the FSA, later the FCA) with no disciplinary action. And I think James Hay could reasonably take some comfort from that.

I've also considered what James Hay knew, or ought to have known, about the pattern of business Firm G was involved in. Unfortunately, it appears the passage of time means the information now available is limited, because James Hay has referred to only being able to find thirteen instances where Firm G was the client's financial adviser, and not presently having any information about Firm G's business model or structure. But I've considered the information that James Hay has been able to provide and, based on this, there isn't enough for me to reasonably conclude that the volume or the pattern of Firm G's business meant James Hay ought to have refused Mr S's applications to invest in No.1 and No.7 on the basis that Firm G was involved in them.

Even if I thought James Hay ought to have carried out additional checks on Firm G at the time of Mr S's investments in No.1 and No.7, I'm not persuaded it would have made a difference to this complaint. Because it is the information that would've likely been discovered as a result of carrying out those checks that's important here, and whether the information discovered ought to have led James Hay to decide the No.1 and No.7 investments were not appropriate assets to be held in its SIPPs.

And ultimately, I haven't been able to find any adverse information about Firm G at the time Mr S made his No.1 and No.7 investments. So, overall, I'm not persuaded there was any information at that time that ought reasonably to have given James Hay cause for concern about Firm G, such that it ought to have refused Mr S's applications to invest in No.1 and No.7 investment on the basis of Firm G's involvement.

Due diligence checks on the No.1 and No.7 investments

As I've said above, James Hay also needed to carry out appropriate due diligence checks on the No.1 and No.7 investments before allowing Mr S's applications to invest in them.

I've not seen evidence of what due diligence checks James Hay carried out on the No.1 and No.7 investments, although it appears to have understood that No.7 was a tax exempt unauthorised unit trust and a UCIS, and was willing to proceed because *"the limited partnership is regulated"*.

But even if I thought James Hay should have carried out additional due diligence checks on them, I'm not persuaded it would have made a difference to this complaint. Because, again, it is the information that would've likely been discovered as a result of carrying out those checks that's important, and whether the information discovered ought to have led James Hay to decide they were not appropriate assets to be held in its SIPPs.

As the regulator has made plain, SIPP operators have a responsibility for the quality of the SIPP business that they administer. So, SIPP operators should undertake appropriate independent enquiries about the nature or quality of an investment proposed before determining whether to accept or decline it into its SIPP, which would mean making checks that go beyond simply reviewing the investment literature.

I've considered what would constitute reasonable due diligence checks before accepting the No.1 and the No.7 investments into its SIPPs, and I think that would've included being satisfied in respect of the following points:

- that the investment was a genuine asset and was not part of a fraud or a scam or pensions liberation;

- that the persons with significant control over the investment had a clear disciplinary history;

- that the investment was safe/secure;

- that the investment could be independently valued and that it wasn't impaired.

It appears that No.1 and No.7 were high risk UCIS investments. Such schemes cannot be promoted to the general public unless the investor falls within certain exemptions. The exemptions are set out in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 ('the PCIS Order') and the regulator's COB 3 Annex 5 (then later COBS 4.12R (4)). The main exemptions in the PCIS Order are certified HNW individuals and sophisticated investors. Statements in prescribed form are required. If an exemption does not apply then the promotion is unlawful. So I've thought about whether this meant James Hay ought to have rejected Mr S's application to invest in No.1 and No.7.

James Hay suggests Mr S was a sophisticated and/or an HNW investor. But I've not seen that Mr S signed a sophisticated or a HNW investor certificate. And I don't think that the directorships Mr S held at the time he invested in No.1 and No.7, or the nature of his business experience, meant that he could properly be classed as a sophisticated investor.

However, I can see that Mr S was at that time a director of several companies. And I'm mindful that one of these had sufficient resources to make employer contributions totalling £209,000 into Mr S's SIPP, with £201,000 of this being made in the five months between August 2006 and January 2007. I'm also mindful that Mr S has told us that, apart from this SIPP, he'd not had any other pension provision as he was relying on his businesses to provide his retirement income. So taking all this into account, I think it's more likely than not that Mr S could be classed as a HNW investor.

I've also considered whether James Hay ought to have refused Mr S's No.1 and No.7 investments on the basis that he was investing all of his SIPP in these types of non-standard and high risk investment. But it's important to note that it was not James Hay's role to advise Mr S about his SIPP or the underlying investments (including their suitability for him), and that that there was no general requirement for customers to take advice before making an investment(s).

The No.1 and No.7 investments were high-risk and speculative. But this does not in and of itself mean that James Hay, acting in line with the Principles and guidance, should not have permitted them to be held in its SIPPs. And the risks were generally akin to those that should reasonably be expected with an investment of this nature. I appreciate these investments later failed, but it appears this was a consequence of the 2008 financial crisis, which I don't think that James Hay as a SIPP operator could've foreseen.

Overall, based on the information I've been able to find, I think James Hay could be satisfied that the assets behind No.1 and No.7 were genuine and not a scam. That established and reputable businesses were involved in them. And because the investments lay in UK property, I think a SIPP operator could be satisfied that the underlying assets could be independently valued. As such, I haven't seen sufficient evidence to persuade me that James Hay should have refused to accept the No.1 and No.7 investments into its SIPPs, at the time Mr S applied to invest in them.

So, while I appreciate that the failures of the No.1 and No.7 investments have had consequences for Mr S, I don't think James Hay should've reasonably refused to permit them in its SIPPs on the basis that they might fail in the future; that is an inherent risk of all investments. And SIPP investors may choose to invest in high-risk investments.

I note Mr S has also said that James Hay didn't keep him informed about the status of the investments and seek their valuations and recovery. But given what appears to be the reasons for the failure of the No.1 and No.7 investments, it is difficult to see what James Hay could ultimately have done here to recover any financial loss Mr S has suffered in respect of them.

Summary

James Hay needed to carry out checks in accordance with the regulator's rules, Principles and good industry practice before accepting Mr S's applications to invest in No.1 and No.7.

Overall, I'm not persuaded there was anything at that time that ought reasonably to have caused James Hay concern about the involvement of Firm G in Mr S's applications for these investments.

Even if James Hay had carried out further independent checks, I haven't found anything that would've been discoverable to James Hay at the time that ought to have led it to refuse the No.1 or the No.7 investments to be made within its SIPPs.

So while I appreciate this isn't the answer Mr S hoped for, taking everything into account, I'm not upholding this complaint.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 July 2025.

Ailsa Wiltshire
Ombudsman