Financial Ombudsman Service

Complaint

Mr R is being represented by solicitors. He's complaining about Best Practice IFA Group Limited (Best Practice) because he says he was given unsuitable advice to switch pension benefits into a self-invested personal pension (SIPP) and place the money in unregulated investments.

Mrs R received similar advice around the same time. I've issued a separate decision on her case, but I've referred to some of the evidence on our file for her complaint in responding to Mr R's.

Background

Mr R says he met Mr H, the adviser who he says dealt with his pension and investments, after he was introduced to his wife at the end of 2011 by a member of her family who he'd previously advised.

Mr R's representative says Mr H held himself out as a regulated adviser and agent for Future Financial IFA Group Ltd (Future Financial). It says Mr H recommended Mr R switch some of his pension benefits to a SIPP and invest in alternative investments, as he'd already recommended Mrs R do with her own pension benefits. The documentation from the time also refers to somebody called Mr G, who was an agent of Future Financial. As Future Financial was an appointed representative (AR) of Best Practice, Mr R believes Best Practice is responsible for his losses.

Following discussions with Mr H, Mr R says he was advised to switch the benefits in a Free-Standing Additional Voluntary Contribution (FSAVC) with Standard Life into a SIPP with The Lifetime SIPP Company (Lifetime), administered by Hartley-SAS (Hartley). According to the SIPP transaction history, it was established on 1 June 2012 and £16,244 was received from Mr R's Standard Life pension on 15 June 2012. Shortly afterwards, most of this money was placed in unregulated investment schemes with Invest US Ltd (£10,000) and Ukrainian Income Developments Ltd (£5,000).

Mr R did receive some income payments from the investments, but they haven't generated the ongoing returns he was expecting or repaid his capital in full. According to his representative, the risks of the investments weren't properly explained and he wouldn't have proceeded if they had been.

Best Practice didn't accept Mr R's complaint. In its defence it has said:

- Mr H was never authorised as its representative and it considers any alleged advice provided while he purported to be associated with Future Financial or Best Practice to be a fraudulent act.

- While he wasn't a representative of Future Financial, the Financial Services Register shows Mr H did represent other businesses listed at the same address.

- It has no record of Mr R as one of its clients.

- It hasn't been proven Mr G gave advice. But it didn't authorise him to advise on investments and pensions, including pension transfers, so it can't be held responsible for his alleged actions in any event.

- Future Financial ceased to be its appointed representative in June 2012 and it can't be held responsible for anything done after that.

I previously issued my provisional decision explaining why I thought we could consider this complaint and it should be upheld. An extract is attached and forms part of this decision.

Best Practice contacted us to say that it remained disappointed with my conclusions but doesn't feel there's anything it can meaningfully add. But, for the sake of completeness, it said it has previously spoken to Mr G about this complaint and he denied advising Mr R. It also said it understands the fact find was dated while Mr and Mrs R were out of the country, but notes it was unsigned and that it isn't one of the standard documents used by its firms at the time.

Mr R accepted the outcome set out in my provisional decision, but his representative made some comments about how the redress is to be paid. It said that, based on its experience, it may be difficult to close the SIPP if Best Practice is unwilling to take assignment of the illiquid investments and the SIPP provider is unwilling to close the SIPP while they remain within it. It notes I've allowed for this by awarding a sum to cover future SIPP fees. But nevertheless, it says Mr R no longer wants anything to do with the SIPP and would prefer the compensation amount is paid directly to him (via his representative) as a lump sum.

In addition, Mr R's representative has noted he's been advised by an independent financial adviser (IFA) that payment of compensation into the SIPP would be classed as an unauthorised payment. It's also pointed out that Mr R has agreed to pay a percentage of the compensation to his representative to cover its fees and he doesn't have ready access to another lump sum to cover this. The IFA has also said any subsequent payment out of the pension to pay the fees would conflict with his existing protection.

My Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having reconsidered the case, including the responses to my provisional decision, my conclusions haven't changed.

I note Best Practice says Mr G denies having advised Mr R. But in the absence of further comments from him or any other supporting evidence, it remains my view that he did advise him for the reasons I've set out in my provisional decision. With regard to the fact find, this does seem to include Mr and Mrs R's signatures on the date I've referred to so it's not clear why Best Practice has said it wasn't signed. And while it might not have been the standard document used by its ARs at the time, I don't think that's sufficient to outweigh the other evidence I've referred to that I think shows Mr G did advise Mr R and was acting as Best Practice's AR when he did so.

When awarding compensation, my principal aim is to return Mr R (as close as possible) to the position he'd now be in but for the inappropriate advice he received. It remains my view the money he has lost would otherwise have been in his pension and that's where it should be paid if this can be done. I understand the potential issue with closing the SIPP while it contains illiquid investments, but I think the solution I've proposed – which includes Best Practice paying SIPP fees for the next five years – adequately takes account of this.

This notwithstanding, it may be the case that it's not possible to pay the compensation into Mr R's pension and this shouldn't happen if it would conflict with any existing protection or allowance. I previously set out how compensation can be paid direct to Mr R in such a situation.

The issue of how Mr R pays his representative is a matter between them that they presumably discussed before it began to act for him. It's not something that has an impact on what Best Practice needs to do to return him to the correct financial position.

My Final Decision

My final decision is that I uphold this complaint.

If Mr R accepts my decision, Best Practice IFA Group Limited must pay compensation calculated using the method set out in my provisional decision. It should provide him with details of its calculations in a clear and understandable format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 February 2021.

Jim Biles
ombudsman

Extract from provisional decision:

Background

. . . .

Once the complaint was referred to us, I considered whether it fell within our jurisdiction to investigate, particularly whether Best Practice could be held responsible for the actions of its AR. I concluded that we could consider the complaint.

Our investigator then considered the merits of the complaint and concluded it should be upheld. He felt Mr R received unsuitable advice to switch his pension benefits to a SIPP to fund unregulated investments and recommended compensation be paid to return him (as close as possible) to the position he'd now be in but for that advice.

Mr R's representative contacted us to say that he accepted the investigator's findings but would prefer the proposed compensation was paid to him directly rather than into his pension.

Best Practice didn't accept the investigator's assessment and its legal representative sent a response covering both Mr and Mrs R's complaints. It strongly disagrees with my decision that the complaint falls within our jurisdiction. It also maintains that Mr R's representatives should be required to answer a series of questions it proposed asking in February 2020. And, in response to my earlier decision and the investigator's assessment, it made the following key points in respect of the merits of the complaint:

- The Investigator's position on causation in both cases relies on inferences and statements from Mr and Mrs R's solicitors, without input or submissions from Best Practice. The purpose of the questions it proposed asking in February was:

    - to seek evidence to support or refute the statements made in their letter of complaint relating to causation;
    - to assist Best Practice make submissions on the alleged losses suffered;
    - to clarify the position around Future Financial's alleged acts that are said to have caused those losses;
    - to clarify the financial sophistication of Mr and Mrs R at the time they entered into the SIPP and investments;
    - to understand whether it was their intention to enter into the investments in any event; and
    - to understand any steps taken by Mr and Mrs R to mitigate their losses.

    Requiring Mr and Mrs R to answer the questions proposed is necessary and proportionate for the fair and reasonable determination of their complaints. It also accords with the principles of procedural fairness and natural justice. Best Practice is being denied the opportunity to challenge unproven assertions made by Mr and Mrs R in relation to their alleged losses.

- The relevance of some of the key questions is as follows:

    - Questions 1 to 5 - Mr and Mrs R's representative has referred to a number of *'brochures'* for their investments, which the investigator also referred to in his assessment. The comments in their complaint letter indicate these brochures may have suggested the investments were especially high-risk, speculative and/or UCIS. In view of their occupations, it's arguable that Mr and Mrs R had a higher than average degree of financial sophistication. Further, it's arguable they would have known that financial products are normally accompanied by formal documentation, and it is unclear if they were given any, and if not, whether they accepted this as a reasonable position.

  - Question 7 - This is intended to explore whether, at any time before they made their investments, Mr and Mrs R could have fallen into any of the categories listed in The Conduct of Business Sourcebook (COBS) 4.12. This is particularly relevant in view of Mrs R's occupation.

  - Questions 8 and 11 - Mr and Mrs R seem to suggest that both the fact find and suitability report state the incorrect attitude to risk. But it's unclear why they didn't challenge this at the time and signed the fact find if this wasn't correct. Further, if they think Mr H deliberately attempted to mis-state their attitude to risk in the fact find, this supports Best Practice's concern that he may have impersonated Mr G and/or Future Financial. Alternatively, if Mr and Mrs R say they didn't see these documents, the question arises as to how they could be said to have caused their loss.

  - Question 18 - It's unclear what (if any) steps Mr and Mrs R took to mitigate their loss when they first had concerns with the performance of their investments.

- Best Practice hasn't seen the investment brochures referred to above and should have the opportunity to comment on them before a decision is reached.

- It was inappropriate for the investigator to rely on documentation in another unrelated complaint. Each case must be looked at on its own merits.

After this letter was received, I asked our investigator to send Best Practice copies of the various investment brochures Mr and Mrs R have said were given by Mr H before their pension benefits were switched to a SIPP. I also asked him to contact Mr and Mrs R with a series of questions to obtain further information on issues I believed required clarification. Many of the questions I asked related to issues raised by Best Practice's representative in its letter of February 2020. I've asked the investigator to send a copy of their response, including evidence of Mrs R's travel arrangements in February 2012, to Best Practice.

My Provisional Findings

Both parties and their representatives have made extensive submissions and I've read and considered these carefully. But I haven't tried to address every single issue raised and I've instead concentrated on those that I believe are central to the outcome of this complaint.

Jurisdiction

It remains my view that this complaint is one we can consider for the reasons set out in detail in my jurisdiction decision dated 19 February 2020. These can be summarised as follows:

- The complaint is essentially about Future Financial's alleged role in advising on and arranging Mr R's SIPP and unregulated investments and their suitability for his circumstances and needs.

- The evidence shows the regulated activities of advising on and arranging Mr R's SIPP and pension switch were carried out by Mr G of Future Financial. It doesn't support Best Practice's view that Mr H impersonated him without his knowledge.

- These activities were among those Future Financial was authorised to carry out by Best Practice under the terms of their AR agreement. Restrictions covering how Future Financial should have carried out the activities it was authorised for, including the status of the individual involved and the requirement to notify the principal of business within 30 days, aren't sufficient for Best Practice to avoid responsibility. So Best Practice is responsible for Future Financial's acts as if they were its own.

While Best Practice's representative has said it strongly disagrees with my jurisdiction decision, it hasn't provided any further evidence or arguments for me to consider and its response to the investigator's assessment is focussed on the merits of the complaint.

Merits

Mr R's complaint essentially centres on his view that the investments within his SIPP weren't suitable for his circumstances and needs. But switching his pension benefits to the SIPP was a necessary precursor to being able to incorporate the unregulated investments into his pension planning. So, I think it's clear that any advice on the pension and the investments was closely linked.

What was Mr H's role and who was he representing?

From the evidence I've seen, it appears to me that any advice on Mr R's investments within the SIPP was given by Mr H rather than Mr G. In my view, the email correspondence provided from the beginning of 2012 also shows Mr H was involved in promoting the investments, including providing various brochures, and then making the necessary arrangements with the investment providers. He was assisted in these activities by his colleague, Mr J, who described himself in an email dated 26 March 2012 as Mr H's *"little sidekick"*.

Mr H's status is not entirely clear. According to the Financial Services Register, he was never authorised through and didn't hold a regulated role with Future Financial or any other AR of Best Practice. And I note Mr and Mrs R's representative has told us he didn't provide a business card or similar indicating he was its employee.

But it's been suggested Mr H may have worked for Future Financial in a different capacity that wasn't regulated and I think there's evidence to support this. For example, he sent an undated letter on Future Financial headed paper to Mr and Mrs R after their initial meeting at the end of 2011. This described Mr H's *"initial brief"* as to *"identify savings that can be made to your family budget"* and initially referred to various insurance policies. Later on it said:

> *The pensions you both have should be looked at more thoroughly*

and suggested:

> *Self-Invested Personal Pensions (SIPPs) might make sense for either one or both of you.*

It then went on to explain some of the potential benefits of a SIPP in general terms.

While this appears to show Mr H acting for Future Financial at the time he first met Mr and Mrs R, I think it's relevant to note that this particular letter didn't offer specific advice on pensions and investments or promote particular investments to them.

The promotion of particular investments and any associated advice appears to have started at the beginning of 2012 and is evidenced by a number of emails from the time in which Mr H provided details of various investment offerings to Mrs R and discussed her views on them. But in terms of who Mr H was representing at this time, I note that he used either his personal email address or an address that appears to relate to a different firm, *"charterhouseam"*, which doesn't appear to have been authorised by the regulator. Mr J, who didn't hold a regulated role with Future Financial either, also used his personal email address for correspondence. So it's not clear they were acting for Future Financial at the time.

On balance, I think it's most likely that Mr H wasn't representing Future Financial (or Best Practice) when carrying out the regulated activities of advising on and arranging Mr R's investments, or the ancillary activity of promoting them. I think he was instead acting essentially as an unlicensed introducer. On that basis, Best Practice can't be held responsible for his actions.

What was Mr G's role and who was he representing?

As I discussed in my jurisdiction decision, I think there's considerable evidence Mr G gave advice on Mr R's SIPP and pension switch. In particular, the file of papers provided included a suitability letter that appears to have been issued by Mr G and referred to:

> *Having conducted a thorough Personal Financial Questionnaire and Needs Analysis . . .*

It also said:

> *We discussed all aspects of your financial situation and from the information I gathered in the Financial Questionnaire we have identified the only area which you all wish to address at this moment in time relates to your retirement planning only.*

It then discussed the merits of SIPPs as an alternative for the money held in Mr R's personal pension and said:

> *A number of other SIPP providers were identified as being suitable. We carried out market research as to which we felt would be most suitable for your needs. Given your risk profile and the types of investment you had expressed a desire in making, we felt only a SIPP offering genuinely alternative investments would meet your objectives. Either a Low Cost SIPP permitting one or two alternative investments or a Full SIPP would meet your needs. Most likely, given the modest level of funds available here, a low cost SIPP would be most appropriate as you would only be able to make one or two investments.*

Under the heading *"Recommendations"*, the letter then said:

> *Taking into your account your objectives, attitude to risk and affordability, I would recommend The Lifetime SIPP Co Cash Plus Two Investments Self Invested Personal Pension. We have agreed that you will initially be transferring in your Standard Life FSAVC. We believe this lo be the most suitable product to meet your needs.*

Then, under the heading *"Recommended Provider"*, the letter said:

> *We have identified that certain features of a Self Invested Personal Pension are essential for your current needs. This information has been used to provide a shortlist of companies, which meet your requirements. We have provided you with a list of these SIPP providers. The purpose of this research is to show you which of the SIPP providers we are able to offer to you together with a clear approach to their charges. As previously mentioned, it was felt and agreed that an established strong SIPP provider with competitive charges and good administration was essential and therefore The Lifetime SIPP co was recommended and agreed.*

Finally, the closing *"Confirmation"* section of the letter said:

> *I would like to thank you for seeking advice from Future Financial.*
>
> *We have identified your objectives and I hope you will agree that the recommendations that I have made coincide with your current needs and future requirements.*

We've also been provided with a copy of a fact find completed for Mr and Mrs R, and this is presumably the financial questionnaire mentioned in the suitability letter. I think these documents provide compelling evidence Mr G gave advice on Mr R's SIPPs and that he was acting for Future Financial when he did so. The suitability letter clearly states a *"recommendation"* was being made and thanks Mr R for seeking *"advice"* from Future Financial. The email correspondence between Lifetime and Mr H in August 2012 also shows it needed advice documentation to accompany Mr R's application.

There is other evidence that also indicates Future Financial's involvement in advising on Mr R's SIPP. For example, his Lifetime SIPP application dated 21 February 2012 said:

> *In return for the services to be provided by TLSC* [Lifetime]*, I agree that TLSC may deduct from my fund the charges as advised and such additional charges as I have agreed with (please insert name of IFA in box)*
>
> *Future Financial*
>
> *and may realise any of the investments held for my benefit in order to pay such charges and any third party costs/fees relating to those investments or advice I receive in respect of this arrangement.*

It also says:

> *I hereby appoint (please insert name of investment manager in box)*
>
> *Future Financial*
>
> *Investment managers for the purposes of the Lifetime SIPP and fully understand and agree that in all circumstances I am solely responsible for all decisions relating to the purchase, retention and sale of investments held under the SIPP for my benefit I agree to fully indemnify TLSC (the SIPP Provider) and The SIPP Trustee Provider Ltd (The SIPP Trustee) against any claim in respect of such decisions.*

Further, Lifetime has also provided a copy of its *"New SIPP Checklist"* for Mr R's application dated 1 June 2012 and this records Future Financial (with its correct reference number) as the independent financial adviser (IFA) involved. I also note that Hartley sent an email to Mrs R dated 24 September 2015, which began:

> *As confirmed on when we've spoken earlier, your original IFA details were:*
>
> *Future Financial*
> *IFA Registration Number - 542647*
>
> *The Lifetime group or Hartley SAS no longer do any business with Future Financial as they are no longer a regulated IFA. This was the case for both of yourself and your husband.*

Given that their SIPPS appear to have been set up in the same way around the same time, and in view of the other documentation provided, I think it's reasonable to believe Lifetime's records will also show Future Financial as the IFA that advised on and arranged Mr R's pension.

I note Best Practice has suggested Mr H somehow impersonated Mr G without his knowledge and that he was actually unaware of what took place. But no evidence has been provided to support that view. It did previously suggest it would obtain comments from Mr G on this point but nothing has been forthcoming so far.

I'm aware Mr and Mrs R say they didn't meet Mr G in person, but I think the documentation shows he actively considered their circumstances and offered advice. Whether he'd met them or was advising from a distance, he still had a responsibility to make sure that advice was suitable in line with the relevant regulatory requirements.

As I've said, I think Mr H was acting as an unlicensed introducer when advising on and arranging Mr R's investments. But that created a problem as the investments being used could only be established if he switched his pension benefits to a SIPP. The correspondence between Lifetime and Mr H and Mr J in August 2012 appears to show it would only accept applications from a regulated firm, which meant it was necessary for a regulated firm to advise on and arrange the SIPP and pension switches. I think that's where Mr G became involved and I believe the evidence shows he was representing Future Financial when advising on Mr R's pension arrangements.

Was Mr G of Future Financial responsible for ensuring the investments within Mr R's SIPP were suitable?

The background I've described is one where Mr H gave advice on and arranged Mr R's investments and Mr G's involvement in the process (acting for Future Financial) was limited to advising on his SIPP and pension switch. But even if his advice was limited to Mr R's pension arrangements, that doesn't mean he wasn't also responsible for ensuring his investments were suitable.

In January 2013, the regulator (at that time, the Financial Services Authority ("FSA")) issued an *"Alert"* on pension transfers with a view to investing into unregulated products through SIPPs. Although the alert was issued after the actions in this case took place, it commented on how the rules should have been complied with at the time.

The alert included the following:

> *It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes). Examples of these unregulated investments are … overseas property developments, store pods, forestry and film schemes, among other non-mainstream propositions.*
>
> *The cases we have seen tend to operate under a similar advice model…The financial adviser does not give advice on the unregulated investment, and says it is only providing advice on a SIPP capable of holding the unregulated investment (e.g. an overseas property development). When customers express an interest in the unregulated investment, the customer is introduced to a regulated financial adviser to provide advice on a SIPP capable of holding the unregulated investment. The financial adviser does not give advice on the unregulated investment, and says it is only providing advice on a SIPP capable of holding the unregulated investment. Sometimes the regulated financial adviser also assists the customer to unlock monies held in other investments (e.g. other pension arrangements) so that the customer is able to invest in the unregulated investment.*
>
> *. . . .*
>
> *Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.*
>
> *The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs…), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes. It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy the pension transfer must take account of the overall investment strategy the customer is contemplating.*

For example, where a financial adviser recommends a SIPP knowing that the customer will transfer out of a current pension arrangement to release funds to invest in an overseas property investment under a SIPP, then the suitability of the overseas property investment must form part of the advice about whether the customer should transfer into the SIPP. If, taking into account the individual circumstances of the customer, the original pension product, including its underlying holdings, is more suitable for the customer, then the SIPP is not suitable.

This is because if you give regulated advice and the recommendation will enable investment in unregulated items you cannot separate out the unregulated elements from the regulated elements.

There are clear requirements under the FSA Principles and Conduct of Business rules and also in established case law for any adviser, in the giving of advice, to first take time to familiarise themselves with the wider investment and financial circumstances. Unless the adviser has done so, they will not be in a position to make recommendations on new products.

I think the guidance is clear that Mr G shouldn't have been making arrangements to switch Mr R's pension benefits to the SIPP without first considering the type of investments he'd go on to use and whether these were suitable for him. We've been provided with a copy of a fact find and suitability letter covering the advice Mr G gave to Mr R on his pension. This information clearly shows he was aware Mr R planned to use the money switched to his SIPP to fund unregulated investments.

Taking everything into account, I think it's clear that I now need to consider whether Mr R's investments were suitable for his needs. And if not, whether it's appropriate to require Best Practice to put things right.

Were the investments suitable for Mr R?

For him to conclude the advice to switch his pension benefits to the SIPP was suitable for Mr R, knowing the type of investments that would then be used, Mr G needed to be broadly satisfied that:

- the type of investment planned met his investment objectives and attitude to risk;
- this type of investment fitted his financial position and he could reasonably afford to take the risks involved; and
- he understood and was prepared to accept those risks.

In considering these issues now, it's important that I don't base my decision on hindsight. Mr G wouldn't have known at the time that the investments would perform as they did and their nature doesn't mean they were automatically destined to fail.

Mr R used two different investments within his SIPP, both of which had different features and associated risks. But it's important to recognise they weren't mainstream investments. They were specialised investments that posed a complex series of risks. They invested in a single type of asset, which increased the chances of future liquidity problems and/or the failure of the investment. They were also based overseas, meaning they were subject to laws in other countries and potential currency fluctuations. Further, they were unregulated, meaning Mr R couldn't fall back on the protection offered by the Financial Services Compensation Scheme (FSCS) if things went wrong. All of this means the investments would reasonably be seen as involving a high degree of risk and that's why the regulator has consistently said they aren't suitable for and shouldn't be marketed to most retail investors.

When advising Mr R, Mr G should have treated him as a normal retail client and I've seen nothing to indicate a valid assessment was completed that meant he could reasonably have been treated in any other way. While he ran his own business, this had nothing to do with financial services and no other evidence has been provided to show he was an experienced or sophisticated investor. I've no doubt

Mr R would have discussed the proposed investment with Mrs R and Best Practice's representative has referred to her occupation before her career break. I accept this meant she should have had an understanding of company finance. But she wasn't a qualified financial adviser and her background didn't make her an expert in investments either, particularly non-mainstream, specialised investments like those she and Mr R ended up using. It certainly seems that Mr and Mrs R felt they required advice otherwise they presumably wouldn't have needed to contact Mr H in the first place.

Mrs R was provided with a considerable amount of promotional literature relating to the investments being considered and her email correspondence with Mr H in the early part of 2012 appears to show she read and considered this. For example, in an email dated 13 January 2012, she said:

> *Thanks for all of this* [referring to the various investment brochures Mr H had provided] *. . . I've got plenty to think about! I don't think I could get finances together quickly enough for the solar one as it is a minimum investment of £10,000 so it would have to be a SIPP, but I will look at all the others over the weekend and early next week.*

In another email dated 23 January 2012, she said:

> I've been slowly wading through them *[again referring to the various investment brochures Mr H had provided]* and have some which I prefer over others.

And in a later email dated 27 February 2012, Mrs R said:

> *I have been going through all the prospectuses etc that you left with me and have a couple of questions. I am trying to evaluate predicted returns in 10 years time for all the investments to allow some sort of crude comparison, but the Ukrainian one just says "at the end of the investment period the company intends to redeem all bonds" do you know long this period will be or is there no fixed time?*
>
> *Also do you have any performance information on the Vintage Cars fund? Either past or predicted would do, I just want to get an indication of potential returns.*
>
> *I am probably not going to do the Chateau scheme as I'm uncertain about the future occupancy levels of luxury hotels, but haven't discarded it completely yet.*

I've also no doubt Mrs R would have discussed this information with her husband. But the fact one or both of them read this information doesn't mean they didn't need advice on whether the investments were suitable. It's important to remember that any analysis of the investments they carried out would have been based on the content of the promotional literature and I've considered whether this explained nature and risks of the investments clearly and in a way that would have allowed them to make a fully informed decision.

By way of example, I'll refer to the content of the promotional literature for the Venture Oil investment made by Mrs R in her SIPP, the cover of which says it was targeted to produce returns of 20% to 30% per year. It then begins with a *"Notice to Recipients"* that says:

> *This information is not produced or intended for members of the public or general circulation. Only authorised and regulated advisors are able to provide investment advice to their clients whom they know to be certified sophisticated investors.*
>
> *This document details an alternative investment through the purchase of shares in an unquoted company.*

The following pages then provide an overview and summary of the investment, including its structure and tax position. Towards the end, it has a section entitled *"Risk Factors"*, which says (in full):

Potential investors should carefully consider the following risk factors in relation to the investment, which individually or in aggregate could have a material effect on the investment return, and should consult their financial adviser before investing. Investors should be aware that the value of this investment is linked intrinsically to the oil prices and in the event that oil prices dramatically reduced this would significantly reduce the investment returns.

Valuation of the Royalties and Oil producing Wells

The sales comparison approach in valuing such an investment as this has some limited use in providing a range of values. Differences in location, procedures, facilities and property rights transferred and many other variables make a precise comparison between the comparable sales and this particular project difficult. Subjective adjustments used to lessen these difficulties are highly speculative. Moreover, there is no accurate way of determining whether the sales prices actually paid represent market values, because it is difficult to determine the exact motivations of the buyers and sellers, or what special conditions may have influenced the sale.

Operational risk

This risk represents the possibility that the operator is responsible for the extraction of the oil will under-perform and will therefore experience period of financial distress. However, given the relative experience of the operator appointed to extract the oil and maintain the level of oil production, the level of operational risk is not considered high.

Market risk

Volatility in economic, growth rates, oil prices, investment values and exchange rates may affect returns as a result of their impact on the performance of the investment.

Currency

The deposit into the investment is made from Sterling into US Dollars. Returns are paid into the Syndicate Company in US Dollars. There are inherent risks in any exchange rate dependent investment. Should the UK Pound against the US Dollar be stronger the return will be greater. Should the UK Pound against the US Dollar be weaker the return will be less. (This assumes that all other variables are constant).

Investors should consider the current risk associated with this investment over the lifetime of the investment as well as the political considerations associated with these jurisdictions and how they might affect these interacting exchange rates.

Sale

Whilst the shares in the Syndicate can be sold at any time following purchase (subject to the majority vote of its shareholders) the price that will be attained when shares are sold will be heavily dependent on a number of factors, most of which are detailed within this report. The better the performance of the income revenue at the time of sale, the higher the sale price will be. The sale of shares will be dependent on a number of factors including market liquidity and economic conditions at the time.

Liquidity

Though this investment is structured through the purchase of shares in a company, the asset behind the investment is oil which is of a less liquid nature than some other asset classes. The investment period id for the fixed term of 7 years (84 months).

If an investor wishes to sell their shares prior to the end of the investment term, then additional costs may have to be met by that investor, such as share valuation and administration costs.

Shares if sold prior to the end of the investment term will be offered for 30 days to remaining syndicate shareholders, before they can be offered for sale elsewhere.

The section on risk factors is followed by a *"Risk Statement"*, which says:

Investing in Oil and Gas Ventures has low to medium level risks, any person who is considering this type of investment who is in any doubt about the investment to which this Investment Analysis Document relates should consult an authorised person specialising in investments of this kind.

While this document certainly set out some of the factors that could affect how the investment performed, I don't think it was in any way comprehensive. For example, there's nothing I can see in the brochure that refers to the prospect of losing a significant part, or maybe even all, of the money invested. There's also no mention of the investment being unregulated and that this meant investors would have no recourse to the FSCS.

I think it's also fair to say that the risks of the investment are downplayed in way that undermines the warnings that are given. For example, it says the level of operational risk is *"not considered high"*. But most notably, I think this occurs in the final risk statement that claims this type of investment involved *"low to medium level risks"*. Even where it talks about the consequences of a dramatic fall in oil prices, the comment is framed in terms of how that would affect *"returns"*. It doesn't say investors could lose money. In view of the very high targeted returns, I think this could still give the impression that a positive return was expected.

On balance, I don't think any analysis Mr and Mrs R were able to carry out of this investment based on the information they were given would have led them to the conclusion that, by investing, they'd actually be exposing their capital to a high degree of risk. And after reviewing the rest of the promotional literature provided, I think the same can reasonably be said about the other investments they made.

I think this is relevant because it shows that it wouldn't have been good enough for Mr G to have assumed Mr R knew what he was getting into simply because he and his wife had received and read the promotional literature. He needed to actively consider whether the type of investments he was planning to use were suitable for his circumstances and needs and, if they weren't, to explain this and offer suitable alternative advice before he arranged the SIPP and switch of his pension benefits.

Based on the fact find and Mr R's suitability letter, along with the recent submissions from Mr and Mrs R, my understanding of their circumstances at the time is as follows:

- They were in their 40's and had dependent children;
- Mr R was a partner in a business and earned around £160,000 per year;
- Mrs R was on a career break and earned around £18,500 per year in rental income;
- they owned their own home, which was worth approximately £700,000 and had an outstanding mortgage of £100,000;
- Mr R owned a 50% share of his business premises valued at around £500,000;
- Mrs R owned two rental properties, valued at around £90,000 each with no outstanding mortgages;
- Mrs R owned a 3/8th share in another property worth £200,000 with an outstanding mortgage of £80,000;
- Mr R had accrued benefits in an occupational pension scheme, into which he was still contributing, and also paid into an Additional Voluntary Contribution (AVC);
- he also had a Free Standing Additional Voluntary Contribution (FSAVC) with Standard Life, which was switched into his SIPP;

- Mrs R had no pension benefits other than the personal pensions that were switched into her SIPP; and
- they had some savings in the bank (the fact find says this was approximately £19,000 but they say it was less than this), around £20,000 in listed shares and £65,000 in savings plans. Their representative says this was the extent of their investment experience.

In respect of his objectives, the suitability report completed for Mr R says:

> *You want to do something different with your Standard Life FSAVC. Whilst this has not performed especially badly in comparison with other equity funds, you are disappointed by the lack of growth achieved. You have read a lot about alternative investments and wish to use the money available from this pension to invest in this way. You are not reliant on the performance of this fund & can afford to take a much bigger risk with this fund; & this is your wish.*

The fact find recorded Mr and Mrs R's attitude to risk as being *"high"* on the following scale:

low	*low/medium*	*Medium*	*medium/high*	*high*

But Mr R's suitability report records his attitude to risk as *"medium/high"*, which was defined as follows:

> *Medium/High*
>
> *You are a balanced/high risk investor and want a high proportion of funds to be in a range of collectives, property and other alternative investments and asset classes. However, some investments could be in more cautious funds where there may be a limited degree of fluctuation of values. Your objective is the hope of achieving medium/long term capital growth.*

There is also a note on the fact find that records Mr R's Standard Life pension benefits as *"frozen – which I'd like to do something adventurous with"*.

In contrast, Mr R's representative says he doesn't recall discussing his attitude to risk at the time. Further, that he doesn't and has never considered himself as anything more than a low to medium risk investor. It also says Mr R wasn't provided with a copy of the fact find and suitability report at the time of sale.

There's clearly a dispute about Mr R's attitude to risk and I note the fact find and suitability letter aren't consistent on this point either, each offering a different assessment.

The fact find appears to have been signed by Mr and Mrs R, but the description of each level of risk can't be read on the copy of the document provided to me. It's also not clear what questions were asked of Mr R and how an assessment of his attitude to risk was reached. Without this information, I can't be sure he would have understood it and the possible implications or that it's reliable. Further, I'm conscious Mr and Mrs R's representative says they have no recollection of the fact find and have provided evidence that appears to show Mrs R was out of the country on the date it was meant to have been signed.

The attitude to risk assessment in the suitability letter does at least include an explanation of what medium/high might mean, but again there's no record of the questions Mr R was asked and how this assessment of his attitude to risk was reached. Again, Without this information, I can't be sure he would have understood it and the possible implications or that it's reliable. As with the fact find, I also need to be aware that Mr R says he doesn't recall receiving the suitability letter and I note it wasn't signed by either him or Mr G and we don't have a copy of a covering letter or anything else to demonstrate it was actually given to him.

In view of the inconsistencies in the assessment of Mr R's attitude to risk in the sales documentation and the issues I've identified with relying on either, I'm not inclined to accept the attitude to risk assessment in either the fact find or the suitability letter without question. I think it's necessary to consider Mr R's broader circumstances to determine what this was likely to have been.

Mr R's representative says he stopped paying into his FSAVC on the advice of an accountant who told him it wasn't increasing in value. So it seems he was looking to do something else with this money and I think it's likely Mr R was prepared to accept some risk in exchange for a potentially higher return. I think the comments from his representative confirm this. But I don't think a consideration of his circumstances supports the view that he understood he was exposing his money to the additional risks associated with high-risk unregulated investments like those he used or that he was willing to do so. There's no record of him having used high-risk, non-mainstream investments previously and I don't think vague references to *"other alternative investments and asset classes"* or doing *"something adventurous"* in the fact find and suitability letter (even if he had seen these documents) show he wanted to start doing so at this point.

Further, the consideration of whether the advice to switch to the SIPP was suitable for Mr R should have gone further than a consideration of the whether the type of investments he'd be using matched his attitude to risk. Mr G should also have considered other factors, including charges, which are typically higher for SIPPs than for other types of personal pension. He seems to have been aware of this point and the suitability letter states:

> *SIPPS tend to be expensively charged products in comparison with most other types of pensions and savings vehicles.*

This should have been a particularly important consideration in Mr R's circumstances given the amount switched was small and the negative impact of higher fees could be comparatively more significant than if he'd had a larger fund.

On reviewing the SIPP history provided by Hartley, I can see that Mr R paid an initial fee of £450 after the switch was completed, which equated to nearly 3% of this value of his pension. He then paid further SIPP fees of £360 in 2013, £372 in 2014, £504 in 2015, £504 in 2016, £864 in 2017, and £864 in 2018. I think this shows that the fees paid accounted for a significant portion of his funds and they're higher than I believe he needed to pay if he'd used a standard personal pension or FSAVC. In the absence of evidence Mr R was particularly looking to access non-mainstream investments that could only be used in a SIPP or that such investments were consistent with his attitude to risk, I think a consideration of the charges only serves to reinforce my view that advice to switch his pension benefits to a SIPP was unsuitable.

On balance, I think the type of investments he was planning to use within his SIPP involved a greater degree of risk than Mr R was prepared to accept and for this reason they were unsuitable. I also think the impact of the SIPP fees on the overall value of his fund, which was particularly significant in view of the amount being invested, meant the switch was unlikely to be suitable. If Mr G had carried out a proper suitability assessment as he should have, I believe he should have reached the same conclusions. Before arranging Mr R's SIPP or the switching of his pension benefits, he should therefore have explained to Mr R that the type of investments he'd been discussing with Mr H weren't suitable. He should have explained the reasons for this view and offered suitable alternative options. It's because he didn't do this that I'm currently proposing to uphold Mr R's complaint.

the consequences of this failing

I'm satisfied the decision to use unregulated investments came from Mr R's discussions with Mr H, but there's no suggestion he came up with this idea. As Mr H appears to have been operating as an unlicensed introducer promoting unregulated investments, I think it's most likely he suggested this option.

Either way, Mr G was a qualified adviser and if he'd explained to Mr R that the investments he was planning to use weren't suitable, explained the reasons for his view, and offered appropriate alternatives, I don't think it's likely he'd have proceeded. I don't think the evidence shows he was particularly attached to the use of unregulated investments or that he would have proceeded anyway if he'd been advised against it.

I'm aware Mr G of Future Financial wasn't the only person involved in the events being complained about. But, for the reasons I've explained, I believe Mr R would now be in a different position if he'd acted as he should have. I've already explained why I think Mr G was acting for Future Financial (and as an AR of Best Practice) when advising him and that this was something Future Financial was permitted to do under the terms of the AR agreement. I'm therefore satisfied it's appropriate for me to require Best Practice to put things right.

I note Mr R's unregulated investments weren't finalised until July and August 2012, which was after Future Financial ceased to be an AR of Best Practice on 26 June 2012. But I'm upholding this complaint because of shortcomings in the pension advice given by Mr G, which culminated with Mr R's Standard Life benefits being transferred to the SIPP on 15 June 2012, at which time Best Practice was still responsible for Future Financial's actions.

conclusions

I'm satisfied Mr G advised Mr R on his pension arrangements, that he was acting for Future Financial when he did so, and that Best Practice is responsible for his actions. When giving advice on Mr R's pension arrangements, he also had a responsibility to consider whether the investments he was planning to use were suitable. Because the investments were unsuitable and Mr G didn't explain this or offer suitable alternatives as he should have, I think Mr R is in a different position to that which he should be and that it's appropriate for me to require Best Practice to put things right.

Putting Things Right

My aim is that Mr R should be put as closely as possible into the position he would probably now be in if he'd been given suitable advice. On the basis that he seems to have been dissatisfied with his FSAVC and wanted to improve the returns he was receiving, I think it's likely he would have done something else rather than carry on investing in the same funds with the same provider. But with suitable advice, I don't think he would have used a selection of unregulated investments in a SIPP. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given his circumstances and objectives at the time.

Best Practice's representative appears to be questioning what steps Mr R took to mitigate his loss, but I don't think there's any failing on his part in this area that should affect any compensation he's now due. Mr R raised a complaint with Best Practice within the timeframe set out in our rules and, given the nature of his investments and what's happened to them, it's difficult to see what else he could reasonably have been expected to do to mitigate his loss.

What should Best Practice do?

To compensate Mr R fairly, Best Practice should compare the performance of his SIPP with that of the benchmark shown. If the *fair value* is greater than the *actual value*, there's a loss and compensation is payable. Best Practice should also add interest as set out below. If the *actual value* is greater than the *fair value*, no compensation is payable.

If there's a loss, Best Practice should pay into Mr R's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. I note Mr R's representative says he'd rather compensation wasn't paid into his pension, but I'm trying to return him to the position he'd now be in but for the unsuitable advice he received. If Mr G had offered appropriate advice, I think his money would be in a pension plan and that this is therefore how compensation should be paid. That said, compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If Best Practice is unable to pay the compensation into Mr R's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr R's actual or expected marginal rate of tax at his selected retirement age. For example, if he's likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr R would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

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

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
SIPP	still exists	FTSE UK Private Investors Income Total Return Index	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

Actual value

This is the actual value of the SIPP at the end date.

It may be difficult to find the *actual* value of the SIPP. This is complicated where some of the investments it contains are illiquid (meaning they can't be readily sold on the open market) as appears to be the case here. So, the *actual value* of any illiquid investments should be assumed to be nil to calculate fair compensation. Best Practice should take ownership of illiquid investments by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as set out above.

If Best Practice is unable to purchase any of the investments, the *actual value* should be assumed to be nil for the purpose of calculation. Best Practice may require Mr R to provide an undertaking to pay it any amount he may receive from those investments in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Best Practice will need to meet any costs in drawing up the undertaking.

Fair value

This is what the SIPP would have been worth at the end date had it produced a return using the benchmark. Any additional sum Mr R paid into the SIPP should be added to the *fair value* calculation at the point it was actually paid in. Any withdrawal, income or other distribution out of the SIPP should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if Best Practice totals all those payments and deducts that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

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

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

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

additional compensation

The SIPP only exists because of the unregulated investments used. In order for the SIPP to be closed and further fees to be prevented, any illiquid investments need to be removed from the SIPP. I've set out above how this might be achieved by Best Practice taking over the investments, or this is something Mr R can discuss with the SIPP provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. To provide certainty to all parties, I think it's fair that Best Practice pay Mr R an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

I think the problems Mr R has experienced with his pension arrangements as a result of the actions of Mr G of Future Financial have caused him considerable unnecessary trouble and upset over a prolonged period and that he should be compensated for that. The precise impact of this situation on Mr R, and therefore the amount to award, is difficult to assess. But in the circumstances, I think a substantial payment of £500 is fair and reasonable. Best Practice would need to pay this amount direct to Mr R (not into his pension) in addition to any compensation calculated using the method outlined above.

My Provisional Decision

My provisional decision is that I intend to uphold this complaint. I currently think Best Practice IFA Group Limited should pay Mr R compensation calculated using the method set out above, including the additional compensation covering future SIPP fees and for his trouble and upset.