complaint

Mr B complains, with the help of a representative, that he was mis-sold high risk investments by Wealthmasters Financial Management Ltd (WFM). The complaint focussed on an investment in Green Oil Plantations (GOP) and the switch of his existing personal pensions to a newly set up Self-Invested Personal Pension (SIPP) which happened before this investment was made.

background

Mr B attended the meetings with WFM and signed the paperwork with his wife – but, because this complaint relates to Mr B only, I have referred only to Mr B and his circumstances within this decision.

In August 2011, a client agreement and a fee agreement were signed between Mr B and WFM. The client agreement classified him as a retail client. On the same day WFM completed a fact find for Mr B; this recorded that he wanted to retire at 65.

There were some handwritten notes on the fact find. These say, amongst other things, that:

> *"…As* [Mr B's first name] *and* [Mr B's wife's first name] *have a whole array of personal pension* [sic] *with no real idea of what they have or where it is they have requested advice on review* [sic] *their existing arrangements to provide some clarity as to alternative options."*

And

> *"In light of the fragmented nature of their pension plans they are looking to clarify arrangements as well as review their retirement objectives, they are looking to take a more speculative approach to maximise growth potential whilst fully appreciating risk to capital* [sic] *and loss. Attitude to risk discussed in detail especially risk v reward and higher risk greater capacity for loss of capital."*

A pension review report dated 6 March 2012 issued by WFM says that Mr B was concerned about the performance of his pensions, that he wanted more flexibility and that he no longer had any fixed intention of retiring at the age of 65. So, he required a more flexible approach regarding investments and the drawing of funds.

It appears that WFM's adviser, Mr S, then met with Mr B to discuss the report. A meeting note dated 14 March 2012 written by Mr S says that having discussed the report it was agreed that the best option was to switch Mr B's existing pensions to a Pure SIPP with a family arrangement option.

This was to allow full flexibility, including phased retirement and drawdown, and to facilitate investment in various options including alternative investments.

The note also says that the loss of Guaranteed Annuities Rates (GARs) from two of Mr B's plans was discussed as well as the higher charges applicable to the SIPP – but, Mr S says in his report that Mr B was willing to accept this for the chance of better performance and more flexibility.

Mr S represented WFM in a regulated capacity. He was also the managing director of an unregulated business.

A pension transfer report was issued by WFM on 22 March 2012, this set out Mr B's circumstances, including his pension provisions, investments and savings. Based on this:

- Mr B had around £2,500 investable assets outside of his pensions, this money was held in a cash ISA.
- Mr B held six personal pension plans. The total value of these came to just over £67,000.
- Mr B's employer did not offer a pension scheme at that time.

This report ended with a recommendation that Mr B switch all of his personal pensions into a SIPP to allow full flexibility, including phased retirement and drawdown, and to facilitate investment in various options including alternative investments.

On 23 March 2012, as part of the WFM advice process, Mr B signed 'cancel and replace' forms for each of the existing pensions that he was transferring into the SIPP, these listed the features and pros and cons (as described by Mr S) of each of the pensions and the merits of moving these to a SIPP. One of the points that was highlighted was the fact that two of Mr B's existing pensions had GARs attached to them.

On the same day Mr B signed the SIPP application form; this confirmed that the sale of the SIPP was advised and that WFM provided this advice. The form also asked if Mr B intended to appoint an investment manager, 'yes' was ticked in answer to this. WFM was appointed as the entity providing this service. Mr B later elected to make regular contributions to the SIPP.

On 16 May 2012, Mr S emailed Mr B and his wife saying that:

> *"Pensions all finalised now and in a position to start the investments, how are you fixed to meet up Thursday 24th May* [sic] *around 7:30pm?"*

The email came from a WFM email address and included a WFM footer. Mr B and his wife responded by email agreeing to this. The GOP application was signed on the day of the subsequent meeting.

On 28 May 2012 Mr S wrote to Mr B. The letter confirmed that he had decided to invest in GOP and Physical Gold. The letter was not on headed paper but refers to Mr S as the managing director without reference to which business the letter was from. Brochures for the chosen investments and an SCC guide to alternative investments were enclosed with this letter.

Investments were then made through the SIPP as follows:

- 8 June 2012 – Meteor (around £3,000)
- 26 June 2012 – GOP (around £17,000)
- 17 August 2012 – Physical Gold (around £3,000)

Just under £19,000 was placed in a deposit account and the rest remained in the SIPP account.

The SIPP provider wrote to WFM confirming that the monies were transferred to the GOP investment on 26 June 2012.

In July and August 2012 commission vouchers were issued by a third party for commission to be paid to SCC for the GOP and Physical Gold investments respectively.

Mr B signed a client agreement with SCC on 14 April 2014. This set out, amongst other things that:

> *"*[name of Mr S' unregulated business] *is not regulated by the UK Financial Services Authority and is not authorised to provide investment, or legal advice. Before making any investment decisions we recommend that you seek independent advice on all of the information contained within any documentation provided to you by or on behalf of the investment providers."*

And

> *"The purpose of the introduction is to provide you with a general outline and generic information in relation to our range of alternative investments. Nothing contained in the documentation provided or our website should be taken as advice or endorsement of the investment or its suitability to meet your financial objectives or investment risk profile."*

In 2015 Mr B complained to WFM. The submissions are extensive. Briefly, he complained that:

- It was his understanding that he was dealing with the adviser (Mr S) as a representative of WFM at all times, but during the course of his complaint, WFM said that GOP was sold by Mr S' unregulated business.
- The distinction between Mr S acting in his capacity as a representative of WFM and him acting in his capacity as managing director of Mr S' unregulated business was not explained to him. This created a clear conflict of interests.
- He trusted the adviser to act in his best interests and not to put his monies into high-risk alternative investments.
- Mr S, in his capacity as a representative of WFM, recommended that Mr B move his pensions to a SIPP and invest in alternative investments, such as GOP.
- Mr S did not, at any point, explain to him that GOP was an unsuitable high-risk investment.
- It was not possible for WFM to advise him on the setting up of a SIPP without considering the underlying investment.
- Suggesting that WFM had no involvement in the GOP transaction is an attempt to *'game the system'.*
- GOP was a high-risk product that was not suitable for him.
- The advice was not in line with the regulator's Conduct of Business rules.
- The advice was sought for the purposes of ensuring that Mr B's retirement was safely planned for and it did not fulfil this purpose.
- It had always been Mr B's intention to retire at 65. Now he is not able to do so, as a result of the unsuitable advice.

WFM responded saying that it had no involvement in the sale of the GOP and Physical Gold investments. Mr S was interviewed as part of WFM's investigation and he confirmed that

Mr B was introduced to these investments by Mr S' unregulated business. Because of this, WFM believes that the complaint had been misdirected and ought to be referred to Mr S' unregulated business.

The response includes a statement from Mr S. In summary, he says that:

- Mr S' unregulated business has not carried on any regulated activities since 2008.
- Mr B was aware of the role of Mr S' unregulated business and had been a client of its since 2011, during this time he had used its services for guidance about Wills, Trusts and Powers of Attorney.
- The assertion that Mr B is still having to work because of the failed investments is wrong as he always intended to retire at his normal retirement age. And, he would need to work in any case because he and his wife had a repayment mortgage.
- Mr B had built up a significant amount of investment knowledge and experience.
- He did not recommend the alternative investments in his capacity as an adviser for WFM. Mr S' unregulated business introduced Mr B to them, but no recommendation was given.
- There was a clear divide between the regulated advice given to Mr B and the non-regulated activities undertaken by Mr S' unregulated business. Meetings were split into two parts, regulated matters were discussed first and then Mr S' unregulated business' matters were dealt with and there was a clear distinction between the two.
- No conflict of interests was created as the services offered by Mr S' unregulated business were not offered by WFM.
- The funds invested represented a small portion of Mr B's overall net asset value.
- Full consideration was given to the underlying investments that were considered at the time of setting up the SIPP in 2012 and risk warnings were given.
- Mr S has also refuted Mr B's claims that his actions were in breach of the regulator's rules.

Unhappy with this response, Mr B referred his complaint to us.

Our adjudicator reviewed the complaint and concluded that it should be upheld.

WFM responded disagreeing with the adjudicator, in summary, it said that:

- It is not in dispute that WFM did provide Mr B with regulated advice in relation to his regulated pension. But, it does dispute the circumstances around his introduction to GOP.
- Mr B has misdirected his complaint against WFM. The complaint should be directed at Mr S' unregulated business, as confirmed by Mr S.
- Mr B was not introduced to GOP by WFM nor did it facilitate the investment or process the application forms.
- WFM has no agency or other arrangement with any of the parties involved in the GOP investment.
- Mr S' unregulated business is a separate legal entity.
- Mr S has been a self-employed adviser for WFM since 2008 and it is only in this capacity that he was authorised to carry out regulated activities.
- If Mr S gave advice in relation to GOP in capacity as an adviser for WFM, he would have been acting outside the terms of his contract.
- WFM has provided evidence in support of all of the above assertions.

- The adjudicator awarded compensation for the switch of the policies that had GARs attached to them, but this is not something that Mr B complained about.
- WFM requested that if we do not agree that the complaint has been misdirected, it should be afforded the opportunity to provide a substantive response. This would involve it asking Mr S' unregulated business to put together a substantive response for it to put forward. It has not been afforded this opportunity.

WFM said that the adjudicator failed to properly consider these points and it referenced other cases reviewed by our service where different outcomes were reached.

I sent Mr B and WFM my provisional decision on 9 January 2018. The findings I reached in that are attached and form part of this decision. I explained why I thought the complaint should be upheld. In summary, I found that:

- When giving Mr B advice WFM had to take into account the overall transaction including the source of the funds and the intended investment strategy.
- If it had done so properly it ought to have concluded that transferring his existing pensions to a SIPP to invest some of the monies in high risk unregulated esoteric investments was not suitable.
- Suitable advice would have been for Mr B to retain the existing pensions he had which had GARs attached and either retain the other pensions or consolidate these into a cheaper product such as a stakeholder plan.
- If WFM had given suitable advice Mr B would have listened to this, so he would not have ended up in a SIPP invested in GOP or Physical Gold.

I said that I would consider anything either party wanted to add.

Both parties responded to my provisional decision. The submissions that have been made are extensive. I have considered these in their entirety. I have summarised the main points they have made below. This summary does not go into the same level as the submissions made, it is simply intended to provide an overview of the submissions made.

What WFM said:

- The original complaint was only about the GOP investment and it [WFM] had nothing to do with that.
- Mr B is happy with the SIPP overall and the investments other than GOP, it continues to meet his needs and objectives whereas a stakeholder or personal pension plan would not.
- Prior to WFM's review of his pensions he was unhappy with their performance.
- Mr B has continued to employ the same type of investment strategy including utilising the flexibility available.
- A lengthy and detailed advice process was followed, which ensured that the advice given was suitable, that it knew its client and that the client understood the review process, including the advice given.
- The conclusions reached on this case are not in line with those reached on other similar cases.
- Mr B had no interest in purchasing an annuity, such options did not fit with his new flexible requirements and would have resulted in tax implications, which he wanted to avoid.

- He was willing to forego the benefits of GARs – which were discussed with him at length – to take advantage of the flexibility available under the new contract.
- Mr B's pension has made an overall gain. He has not suffered a loss.
- WFM had nothing to do with GOP investment and is in no way liable for it – but, the SIPP provider ought to have conducted due diligence on the investments, so the complaint should be directed against it.
- Having knowledge of something does not result in responsibility for that thing, in this case the sale of GOP. WFM has provided various scenarios in support of this assertion.
- Full consideration was given to the investment portfolio but due to the time required to transfer the monies and the market conditions at the time it was decided that it would not be sensible to choose specific investments until the funds were in place. This was documented in the suitability letter.
- Discussions about Mr B's pensions and objectives began a long time before the introduction of GOP, so the transaction could not be said to have taken place for the purposes of investing in GOP.
- Mr B was introduced to GOP and carried out his own due diligence before the meeting on 28 May 2012.
- Mr B was not an inexperienced investor, he has remained happy with the SIPP, its features and the regulated investments made – it is only the GOP investment that has given rise to the complaint and WFM had nothing to do with this.
- The SIPP advice and the investment advice should be separated.
- WFM maintains that it is not responsible for the sale of the GOP and it believes that information it has about a review being undertaken by the SIPP provider supports this.

What Mr B's representative said on his behalf:

- He agreed with my findings as set out in my provisional decision, in particular, that WFM's unsuitable SIPP advice led to him transferring his personal pensions in order to invest in high risk investments such as GOP.
- He was never prepared to lose 100% of his investments or incur a significant loss to his pension income.
- His complaint stems from the negligent SIPP advice received from Mr S acting on behalf of WFM, which led to him investing in alternative high-risk products such as GOP. To say that his original complaint had nothing to do with the SIPP is incorrect.
- At all times he relied on the advice given by Mr S, who he considered to be his trusted financial adviser and expected him to act in his best interests.
- WFM was at all times aware that Mr S held various discussions at Mr B's home where he advised him to consider alternative investments and on the SIPP into which he should transfer his personal pensions.
- It is clear that Mr S of WFM advised him on a SIPP which would accept alternative investments such as GOP.
- He's an ordinary unsophisticated retail investor and relied wholly on WFM's advice.
- It is not reasonable for a firm to advise on a SIPP without taking the underlying investments into consideration. It is clear that Mr S of WFM introduced the concept of alternative investments by promoting GOP, so Mr S was aware of the intended GOP investment.
- The appendices attached to WFM's response to the provisional decision illustrate that:

  - Mr B was classified as a retail client and as such did not have a tolerance to invest in high risk esoteric investments.
  - Mr S of WFM advised Mr B on alternative investments and the SIPP prior to the investment in GOP.
  - At all times Mr B relied on Mr S of WFM to provide suitable advice.

- At no time was the distinction between regulated and unregulated advice explained to him.
- At all times he believed he was being advised by Mr S of WFM.
- The evidence submitted illustrates that:

  - Mr S of WFM arranged meetings with him using WFM's address and not via his unregulated company.
  - At all times, Mr S liaised with the SIPP operator and it corresponded with him as Mr B's acting financial adviser.
  - The SIPP application form appoints Mr S of WFM as the investment manager of the SIPP.
  - The first time that Mr B became aware of the involvement of Mr S' unregulated company was when he received the letter dated 24 May 2012 with details of the unregulated investments made, which arrived after the investments were made.

Mr B also referred to part of his witness statement describing his recollections (his emphasis):

> *"I would never have known about Green Oil but for* [Mr S' name]*. We discussed a number of investments including Green Oil, Gold, big Yellow Storage and one or two other investments. He showed us brochures and returned later to discuss them.* [Mr S' name] *made us feel we had made good secure investments from the given advice.*
>
> *At the meeting when we discussed GOP,* [Mr S' name] *never mentioned that he was not working as an IFA for Wealthmasters. He explained and advised us on the investment details for Green Oil, at this point we were still under the impression that the investment was through* [Mr S' name] *and Wealthmasters. He also advised on Gold saying as a good backup investment. We were (and still are) under the impression that* [Mr S' name] *was working as an IFA on behalf of Wealthmasters. All correspondence from ourselves to* [Mr S' name] *was hand delivered via the Wealthmasters offices in* [location of offices]*. At no time were we ever made aware of a divide between* [name of Mr S' unregulated business] *and Wealthmasters.*
>
> *He did not tell me that GOP was high risk or that it was unregulated. I was never aware that different companies were doing different services for myself as* [Mr S' name] *was the only person I had dealt with – I always considered him to be my IFA."*

Mr B and his wife also provided a response to WFM's comments about their retirement plans:

> *"We never had a conversation as to when we intended to take the annuity payment as at the time we were both secure in our jobs, since then our circumstances have changed as I* [Mr B's name] *have now been made redundant, due to this fact we have requested via* [Mr S] *to withdraw monies from our* [name of SIPP provider] *SIPP*

account but as yet we are unable to get a satisfactory response as to when this withdrawal will be completed.

We had spoken to [Mr S' name] *saying we would be estimating our retirement age at 65 for myself* [Mr B's name] *and 60 for* [Mr B's wife's name]*, we did question details within paperwork we received where it stated that we intended to retire at 75 years of age, this was never our intention and had never said at any time to anyone we intended to retire at 75, when we questioned* [Mr S' name] *about this he advised this is just a standard age they put on the paperwork (or words to that effect) and said there was no need to take notice of it. We accepted his reply as we trusted him."*

I wrote to both parties setting out my revised view of redress. Mr B accepted the revised redress. WFM made further submissions disagreeing with my findings and the proposed redress. In summary it said:

- During a meeting with Mr S on 21 August 2019 Mr B detailed his plans to commence full drawdown of his pension benefits under flexible drawdown.
- He intends to use the funds for home improvements and – in line with the objectives stated at point of transfer – to have full access to his pension without the requirement to be tied to an annuity.
- Mr B's current plans support the original objectives, as set out at the time of the sale of the SIPP. And, that these could not be met by way of annuity purchase, even one with a guaranteed rate attached.
- As set out in Mr B's complaint submission, his complaint is about the alleged advice in respect of the GOP investment only, not the SIPP.
- Our comments in relation to Mr B's background and his receipt of regulated advice in respect of his regulated pension and other needs from WFM have not been disputed.
- The circumstances that led to the sale of GOP are vehemently disputed and significant evidence has been provided showing that WFM was not involved in this.
- The review of Mr B's SIPP provider's acceptance of the investment will compensate him for the GOP investment.
- Mr B's full and continued use of the flexible benefits brings into question our decision to expand the scope of the complaint – and, indeed, the award of compensation based on Mr B taking an annuity, which he did not want and would not have taken.
- Our latest response does not take into account any of its additional objections, made in response to our findings.
- Mr B's complaint should be redirected to the SIPP provider for failing in its duties in respect of due diligence.

I sent WFM's submissions to Mr B and his representative for their comment. Their response was broken down into topics which I have summarised below:

General points

- Mr B remains of the view that the findings reached in the provisional decision are accurate.
- He did not have a speculative attitude to his pension investments and was not knowledgeable in the world of pensions and unregulated investments.
- Mr S was recommended by a family member and Mr B thought he could trust him to act in his best interests.

- Mr S knew that Mr B was not an avid investor and led him to believe that the course of action was in line with his objectives.
- The letter prepared by Mr S of WFM documenting their recent meeting is self-serving, misleading and inaccurate.

Purpose of the meeting

- The primary purpose of the meeting was not to discuss Mr B's pensions; this came up as a secondary concern during discussions.
- The topic of pensions came up due to Mrs B's decision to retire.
- Mr and Mrs B wanted to access monies from their pensions in the most tax efficient way.
- Mr B wanted to release monies from his SIPP because he wants to stop incurring the high SIPP fees.
- Discussion about home improvement, the garden, lifestyle options and holidays arose during general small talk.
- Their current financial position was not as outlined in WFM's submissions, instead:

> *"Mr and Mrs* [Mr and Mrs B's surname] *have purchased outright a mobile home (from a lump sum from* [Mrs B's surname] *pension) and intend to spend their retirement making use of it. They have plans to renovate the garden, and we are told work on this starts this month. This is being paid for from savings and the* [Mr and Mrs B's surname] *do not need to draw down (fully or otherwise) from their pensions to pay for this."*

- The motivation behind discussing accessing their pensions was to find a way to stop paying the high charges incurred within the SIPP – if Mr B did withdraw his pension this would be put into savings.

Comments on the file note provided by WFM

- The note is misleading for a number of reasons.
- Mr S does not mention that the reason Mr B wanted to release monies from his SIPP was to avoid the on-going high charges.
- Mr S did not discuss the various available options (annuities, tax free cash, flexi access drawdown and uncrystallised funds pension lump sums or combinations thereof).
- Mr B did not confirm that his objectives remained as they were when he originally transferred or that he did not want to be tied to an annuity.
- Mr B had not previously weighed up the advantages and disadvantages of annuities as the note suggests, he simply acted on Mr S' advice.
- The note has been produced by WFM to support its position that it is not responsible to Mr B for Mr S' negligent advice.

Comments on the suitability report

- Again, this fails to mention that Mr B's primary concern was the high SIPP charges.
- The statement: *"confirming their plans to commence full drawdown of their pension benefits"*, is wrong in line with the above.
- Mr B was not concerned with funding his lifestyle.

Mr B's intentions

- Mr B has never been a speculative/high risk investor; he has modest pension provision accumulated through many years of hard work. He did not want to put these funds at risk.
- He followed Mr S' advice to invest in high risk investments and then invested in further investments to 'chase the losses'.
- He is now in a SIPP, the charges of which eat away at any returns the investments may make.
- This is not what he would have done if he had been properly advised of the value of, and protection afforded by, his original pensions and what he was being exposed to with regard to SIPPs and underlying high-risk investments.
- In respect of this, Mr B's intentions have not changed – he is looking to remove his exposure to the high charges associated with the SIPP – and, he is not – and never has been – interested in high risk gambles with his pension.
- One way of achieving this is to withdraw his pension from the SIPP and put it into savings.

Comments on WFM submissions of 18 September 2019

- The arguments raised are issues that have previously been dealt with, it is not new evidence.
- Mr B did not confirm he wanted to drawdown his full pension and – contrary to what is suggested in Mr S' comments – he did not require the money for major purchases (purchasing a motorhome/garden redevelopment).
- Mr B does not believe he told Mr S that he does not want to purchase an annuity and does not recall the topic being discussed during the meeting.
- WFM's insistence that Mr B should pursue a complaint against the SIPP provider is just another attempt to shift the blame and avoid liability for its actions and the losses it has caused Mr B to suffer.

I sent a summary of the submissions made as set out above to both parties. The submissions made included new information and arguments. Because of this, I included in my letter my findings taking into account the latest submissions from both parties and gave both parties additional time to respond to these.

<u>What I said in relation to the submissions made:</u>

The complaint raised

- I have taken into account everything that WFM has submitted in respect of the complaint raised both before I issued my provisional decision and since then. Despite its concerns I remain of the view that my interpretation of the complaint is reasonable and appropriate in light of the circumstances.
- Mr B's complaint submissions refer to issues beyond simply the sale of GOP; and
- In any case, I can look beyond the complaint as expressed by Mr B, our remit is inquisitorial.

WFM's responsibility for the advice

- There is no dispute that Mr B received regulated advice from WFM in respect of his pension.
- That advice was to transfer his existing pension plans (including two plans with GARs attached) to a SIPP.
- The primary reasons given for this within the suitability report were flexibility and access to a wider range of investments such as structured products and alternative investments.
- WFM was appointed to the role of investment manager of the SIPP.
- Once the pensions were transferred to the SIPP, investments were made in structured products and alternative investments.
- WFM says that it had no involvement in the sale of the alternative investments and that these were sold by Mr S' unregulated company but, there are numerous references to alternative investments within the advice for which WFM has accepted responsibility.
- So, I think that Mr S did (at least) have such investments in mind when undertaking activities for which WFM has accepted responsibility.

Suitability of the advice WFM has accepted responsibility for

- I remain of the view that the advice that WFM has accepted responsibility for was unsuitable.
- Mr B did not need access to investments only accessible via a SIPP.
- Alternative investments were not suitable for Mr B.
- There was no justification for Mr B losing the valuable guarantees attached to two of the policies transferred.
- There is insufficient evidence that Mr B required flexibility – or, that he could afford to bear the risks involved with implementing a high risk strategy.
- He would have had some flexibility if he had retained the policies with GARs attached and switched the rest to a stakeholder plan – he could have taken benefits from the GAR plans at 60 and 65 respectively and the rest at a point that suited him and withdraw tax free cash from each.
- Even if Mr B did want to take a more flexible approach at retirement he did not need to transfer at the time he did and incur higher fees for several years before he intended on taking benefits from his pension.

Impact of recent events

- WFM says that it recently met with Mr B and that that meeting confirmed that its advice was suitable, and that Mr B would never have agreed to the course of action I have suggested would have been appropriate.
- Mr B says that he only wants to withdraw the monies from his pension in full now to avoid continuing to pay the high fees being deducted for the SIPP.
- Clearly, there is a serious discrepancy between what WFM has said about the recent meeting and what Mr B has said about it.
- I am not persuaded that I should depart from my findings as set out in my provisional decision, I say this because:

    - There is insufficient evidence that Mr B required flexibility beyond that which would have been afforded had, what I have said would have been suitable advice, been implemented.

  - Even if I were to agree that a higher degree of flexibility was required, there was still no need to transfer to a SIPP years before Mr B planned to draw benefits.
  - Mr B's circumstances are now fundamentally different to what they were when WFM originally gave him advice – for example, he no longer has access to the valuable GARs (which would have effectively doubled the income he could receive via an annuity).

Conclusions

- We have considered the complaint fairly, reasonably and in line with our rules.
- There is no dispute that WFM is responsible for the advice to Mr B to transfer his pensions to a SIPP.
- The advice that WFM has accepted responsibility for was not suitable.
- That advice resulted in Mr B suffering the losses that are the subject of this complaint and WFM should compensate him for that.

Mr B did not make any further submissions. WFM explained that it had additional submissions to make and that it believed a hearing was required. I responded explaining that I did not think a hearing was required and that I could fairly and reasonably decide the complaint without one but I did give WFM additional time to make submissions.

WFM made further submissions. In summary, in relation to the merits of the complaint, it said that:

- It remains of the view that the decision I reached is unfair and unreasonable in light of the contemporaneous evidence.
- The decision relies on making a finding as to what Mr B would have done if different advice had been given – that cannot be judged from the file alone.
- The records provided evidence the process followed and the measures in place to ensure Mr B was in an informed position.
- All of the documentation supports WFM's position.
- This is also supported by Mr B's decision to only complain about the GOP investment and not the pension advice.
- It was this service's decision to extend the scope of the complaint. The service has an inquisitorial remit, but it disputes that we can extend the scope of the complaint itself.
- The conclusions reached in this case go against findings previously reached in similar cases and set an unreasonable precedent.
- My findings in relation to its liability would mean that any firm having given regulated advice in relation to a wrapper could later be held responsible for non-advised unregulated investments made by the consumer.
- The decision ignored the FCA requirements in relation to the advice process (fact-find, suitability report etc.) and instead we based our assessment on nothing but the consumer's submissions brought up only by our expansion of the complaint. By extension allowing any advice documents to be undermined by an unfounded undocumented claim.
- It has provided evidence of Mr B's track record of investing in capital at risk products – which he profited from, so we cannot assume that such investments would not have been considered by Mr B on his own.

- It did give due consideration to the intended investments in Mr B's SIPP as required by the FCA and gave appropriate risk warnings.
- Mr B's SIPP provider has already accepted its failings and liability for accepting GOP allowing an opportunity for him to be compensated in full for his losses.

WFM asked that we respond to its comments and said that if on review of these we do not agree that the case should be rejected – or that a hearing should be granted – it requires time to seek legal advice. I have written to WFM separately dealing with the procedural aspects of its submissions and I will deal with its comments in relation to the merits of the complaint within this decision.

my findings

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

The parties to this complaint have provided detailed submissions to support their position and I am grateful to them for taking the time to do so. I have considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings and reasons for reaching them.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

The responses to my provisional decision cover a number of different points and arguments. I have broken these down into the below topics and addressed these in turn. As I have explained above, my provisional decision is attached and forms part of this decision – a number of the arguments raised by WFM in response to my provisional decision cover issues that I have already considered and addressed within that decision, so I have not repeated my findings in respect of all of these at length again.

Our interpretation of the complaint

Mr B's original complaint focuses on the investment in GOP – which is understandable given that this is the most obvious loss suffered – but it is not limited to that in isolation. Amongst other things the original letter claims that:

- Mr S (WFM's adviser) could not advise on the setting up of a SIPP without considering the underlying investment.
- Mr S recommended the SIPP transfer for the purpose of investing in both standard investments and high risk alternative investments such as GOP.
- It is clear that WFM advised on the merits of taking the money out of Mr B's existing pensions. It is also clear that Mr S' advice was sought for the purpose of ensuring Mr B's retirement was safely planned for. Clearly, GOP was not suitable for Mr B.

Mr B's complaint to our service also refers to WFM's file note dated 14 March 2012, which says:

> *"I advised* [Mr B's first name] *and* [Mrs B's first name] *that leaving the fund invested without reviewing them was not an adequate solution as it failed to meet the majority of the previously discussed requirements including, diversification, investment control, good growth potential, ability to invest outside of traditional funds including structured products & alternatives…*
>
> *…unrestricted investment choice that can facilitate investments in any of the following stocks & shares…alternative investments etc (within HMRC guidelines)…*
>
> *We dismissed staying with the existing providers…The requirements…could only be achieved by transferring to a new Pure SIPP Provider…"*

This is by no means an exhaustive compilation of every reference to the wider transaction – or to the activities for which WFM has accepted responsibility – but I am satisfied that this is sufficient to show that the complaint does relate to more than just the sale of GOP in isolation. In any case, as I have explained previously, I am not limited to looking at the complaint solely through the lens of how it was expressed by the complainant. I can take a wider view.

WFM's responsibility for the complaint and the sale of GOP

There is no dispute that WFM advised Mr B to take out a SIPP and move his existing personal pension arrangements into it. It was appointed as the investment manager of the SIPP and it recommended the regulated investments held in Mr B's SIPP. WFM denies any involvement in the promotion of and investment in GOP and Physical Gold.

The advice WFM gave Mr B to move his existing pension plans into a SIPP made the investments in GOP and Physical Gold possible. One of the reasons given for taking out a SIPP listed consistently throughout WFM's paperwork is access to investments such as alternatives, amongst other things. WFM's adviser was one and the same person as that who WFM say sold the GOP and Physical Gold. These were the alternative investments which were made within the SIPP as soon as the funds became available.

A lot of WFM's arguments focus around the fact that it did not sell the relevant unregulated investments and that it therefore cannot be held responsible for these. I disagree with this assessment. WFM advised Mr B to switch his pensions to a SIPP, gave advice on the regulated investments subsequently made and acted as investment manager as denoted in the SIPP application form. WFM's relationship with Mr B was ongoing and it appears to have held ongoing reviews with him during which the investments held within the SIPP were discussed.

WFM's role meant that it was responsible for the suitability of the switches, the SIPP and the investment strategy it was taken out to employ. It could not fulfil its obligations without considering the overall transaction. The GOP and Physical Gold investments formed part of this plan. The suitability of the SIPP, in this instance, was inextricably linked to the suitability of the investments it was taken out to make.

Within WFM's paperwork, some of which I have referenced above, there are consistent mentions of alternative investments. Including that other pensions would not be suitable as these would not allow access to, amongst other things, alternative investments. WFM's adviser sold Mr B GOP and Physical Gold, WFM says that he did this in his capacity as a director of an unregulated company. I have not seen evidence of a clear distinction between

the activities undertaken by WFM and those undertaken by the unregulated company, other than a cover letter enclosing documentation about the alternative investments, which I do not think is sufficient in this instance.

In any case, even if I were to accept WFM's assertion, I think that WFM was, at very least, aware of the intentions and activities of the unregulated company (given that one and the same person was acting for both) and had to take these into account as part of giving suitable advice in relation to the SIPP and the intended underlying investments – which WFM has accepted responsibility for.

Suitability of the SIPP

WFM was required to give Mr B suitable advice taking into account the transaction as a whole – including, the switches, the SIPP and the planned subsequent investments, as set out above.

I remain of the view that the course of action recommended was unsuitable, taking into account Mr B's circumstances, for the reasons I set out in detail in my provisional decision.

The switches into the SIPP represented all of Mr B's personal pension provisions. Two of the plans that were moved into the SIPP had GARs attached to them. These were valuable benefits which I do not think there was any justification for losing in this instance.

The SIPP was subject to higher charges than Mr B's existing plans. Mr B could have accessed a plan with appropriate features and suitable investments at a lower cost – either by retaining his existing plans or switching all but the plans with the GARs to a cheaper product, such as a stakeholder plan. These issues were exacerbated by the fact a significant proportion of the fund went into unregulated esoteric investments.

Suitable advice would have been for Mr B to retain the two policies with GARs attached and either retain the remaining plans or consolidate these in a stakeholder plan.

WFM has placed a lot of weight on Mr B's need for flexibility, I have not seen enough to persuade me that Mr B did really require flexibility – and, I am not convinced he had the appetite for risk or capacity for loss to suit the approach recommended in this instance. But, I would note that having a number of different plans would have afforded a certain degree of flexibility in terms of staggering taking benefits, if he wished to do so.

Benefits from the two plans with GARs attached to them had to be taken when Mr B reached 60 and 65 respectively in order to benefit from the GARs. This was somewhat restrictive, but the value these added far exceeded the hindrance of these restrictions. For example, WFM has suggested that the tax implications would have made taking benefits from these plans on the relevant dates prohibitive. The GARs increased the buying power, so to speak, of Mr B's pensions by considerably more than 20%. Taking into account Mr B's income at the time of advice and the size of his pension funds I do not think it is likely that he would have been subject to higher rate tax even if he took his pension benefits whilst still working.

In considering the suitability of the advice and what Mr B would have done if suitable advice had been given, I have taken into account all of the information I have received from the parties to the complaint, including the August 2019 meeting and related submissions. As I set out in my recent letter, I remain of the view that the advice WFM gave Mr B was unsuitable and that the revised redress I set out is fair and reasonable.

Both WFM and Mr B seem to agree that Mr B is looking to withdraw money from his SIPP but they disagree on the reason for this. Mr B says that he only wants to withdraw the monies from his pension in full now to avoid continuing to pay the high fees being deducted for the SIPP. Whereas WFM believes that this evidences that its advice was suitable from the outset and that Mr B requires flexibility. I do not agree with WFM's position:

- There is insufficient evidence that Mr B required flexibility beyond that which would have been afforded if what I have said would have been suitable advice had been given and followed.
- There was no need to transfer to a SIPP years before Mr B planned to draw benefits.
- Mr B's circumstances are now fundamentally different to what they were when WFM originally gave him advice – for example, he no longer has access to the valuable GARs (which would have effectively doubled the income he could receive via an annuity making the purchase of an annuity considerably more attractive).

I have not seen enough to conclude that Mr B was likely to ignore suitable advice from a regulated adviser. So, I remain of the view that if WFM had given suitable advice Mr B would not have ended up in a SIPP invested in alternative investments. This means that I think it is fair to hold it responsible for Mr B's losses despite the involvement of other parties such as the SIPP provider.

Consistency

WFM has highlighted a number of cases that it believes contradict the outcome reached in this case. We look at each case on its own individual merits and I cannot comment on the outcomes reached on other cases but I am satisfied that my findings are fair and reasonable in the circumstances of this complaint.

fair compensation

I have thought carefully about the points WFM raised in response to my provisional decision in terms of the complaint made and its responsibility for the activities complained about – but, I remain of the view that Mr B has complained about activities which WFM has accepted responsibility for.

I am satisfied that if WFM had acted fairly and reasonably and fulfilled its obligations this would have put a stop to the transaction and the business would never have arrived at the SIPP provider's door – because of this, I find that WFM should compensate Mr B for the full measure of his losses as set out below.

Mr B should be put as closely as possible to the position he would likely now be in if he had not been given unsuitable advice. As I have explained above I think that Mr B ought to have been told that switching to a SIPP was not suitable for him – and, I think that if he had been given suitable advice he would have listened to this.

If Mr B had been suitably advised, I am satisfied he would have retained the policies with GARs attached to them ("the GAR policies"), and taken the benefits when they were payable. So WFM will need to work out what loss Mr B has suffered through not receiving these benefits and what it would likely cost Mr B to now buy the future benefits that would have been payable.

In relation to the rest of his pension plans ("the other policies"), I think it is likely that if Mr B had not been given unsuitable advice he would have switched these plans to consolidate them but made investments that were suitable for him. So WFM will also need to work out what those plans would be worth now, if that had happened.

I have split the redress methodology into two main parts one covering the GAR policies and the second covering the other policies.

Due to the nature of the loss calculations both, in essence, involve comparing what Mr B would have had if suitable advice had been given with what he actually has in his SIPP – it would not be fair for the actual value of the SIPP established (including any amount added for the purchase of the illiquid investments, if applicable) to be deducted in full twice. So, the amount deducted/used for comparison under each calculation should be proportionate to the share of the original value of the SIPP that the GAR policies and the other policies respectively represented. The same applies to the comparison of the amount of tax free cash Mr B received with the amount he would likely have received if he had received suitable advice.

Mr B withdrew tax free cash from his SIPP in February 2018, based on the statements we have seen from the SIPP provider, no further withdrawals have been made since.

In order to undertake the calculation WFM will first need to work out the current value of the SIPP including any outstanding charges. Any illiquid assets should be treated as set out below for the purposes of establishing the current value of the SIPP.

Treatment of the illiquid assets held within the SIPP

I think it would be best if any illiquid assets held could be removed from the SIPP.
Mr B would then be able to close the SIPP, if he wishes. That would then allow him to stop paying the fees for the SIPP. The valuation of the illiquid investment/s may prove difficult, as there is no market for it. For calculating compensation, WFM should agree an amount with the SIPP provider as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investment/s.

If WFM is able to purchase the illiquid investment/s then the price paid to purchase the holding/s should be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding/s).

If WFM is unable, or if there are any difficulties in buying Mr B's illiquid investment/s, it should give the holding/s a nil value for the purposes of calculating compensation. In this instance WFM may ask Mr B to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the relevant holding. That undertaking should allow for the effect of any tax and charges on the amount Mr B may receive from the investment and any eventual sums.

The GAR policies

Both of these policies would have paid benefits to Mr B by now. To work out Mr B's loss WFM should:

- Establish the likely value of each of the policies at the original retirement dates had these not been transferred.

- Establish the amount of tax free lump sum that would likely have been payable to Mr B at his respective retirement dates under each policy.

- Calculate what net income would have been paid to Mr B from his retirement date – under each of the policies respectively – to the date of this decision.

- Establish the capital cost for buying an annuity on the same terms as the ones Mr B would have been entitled to at his respective retirement dates under each of the policies based on current annuity rates (as at the date of this decision) – assuming he took advantage of the highest available GAR in terms of how he took his benefits.

To establish the likely fund value at retirement for the purposes of working out the Tax Free Cash (TFC) and income that Mr B would have been entitled to under each of the policies; WFM should first contact the providers of each of the policies and ask them to provide notional values for each of the policies at the respective retirement dates.

For the purposes of the notional calculation the providers should be told to assume no monies would have been transferred away from the policies, the monies in the policies would have remained invested in an identical manner to that which existed prior to the actual transfer and any regular monthly contributions would have continued (it is my understanding that £20 per month was being paid into the policy under which Mr B's retirement date was 25 April 2014).

If there are any difficulties in obtaining notional valuations from the providers then WFM should instead arrive at a notional valuation by assuming half the monies would have enjoyed a return in line with the FTSE UK Private Investors Income Total Return Index and the other half would have enjoyed a return in line with the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis. That is a reasonable proxy for the type of return that could have been achieved over the period in question.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.

- The FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have invested 50% of his monies in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr B could have obtained from investments suited to his objectives and attitude to risk.

Once WFM has established the likely value of each of the policies, had they not been transferred, at the respective retirement dates – 25 April 2014 and 25 April 2019 – (either by getting notional values from the providers or using the above benchmark), it should work out how much TFC Mr B would have been entitled to from the policies. It is my understanding that his entitlement under each was 25%. To establish if Mr B has suffered a loss in respect of TFC WFM will need to compare what Mr B would have received under the GAR policies with the TFC that he received in February 2018.

As set out above, the comparison of the TFC available under each policy will need to be compared to the proportion of the TFC he actually received equal to the proportion of the value of the original transfer which each of the respective policies represented. So, for example, if the policy which I think Mr B would have taken benefits from in April 2014 represented 30% (of the total amount originally transferred into the SIPP), then the full amount of TFC that would have been available under that policy (as per the above calculation) will need to be compared to 30% of the TFC Mr B actually received. If the full TFC Mr B would have received is more than the relevant proportion of the TFC he did receive, then Mr B has suffered a loss. The total of the loss established under each of these comparisons will represent Mr B's loss in respect of TFC in relation to his GAR policies. WFM will need to pay interest, at a rate of 8% simple per year, on the amounts that Mr B has missed out on. Interest should be added as follows:

- On the full amount of TFC that Mr B would have received on 25 April 2014 from that date and up until he took TFC in February 2018;
- Then, from the date Mr B received TFC and up until the date of this decision on any loss established – as set out above – in respect of the TFC he would have received in April 2014; and
- On any loss established in respect of the TFC Mr B would have received on 25 April 2019, from that date and up until the date of this decision.

For each policy it should be assumed the residual fund would have been used to purchase an income using the GAR, at the most advantageous rate available under each policy and on the terms that would have allowed for this.

Based on what I have seen the relevant terms are as follows:

- For the policy which had a retirement date of 25 April 2014 – single life basis paid monthly in arrears.
- For the policy which had a retirement date of 25 April 2019 – payable monthly in advance with a 3% annual escalation, 5 Year guarantee and 50% widow's benefit.

Having established the level of income that would have been available to Mr B under each of the policies, WFM will need to work out how much net income Mr B has missed out on from the point at which he would have taken benefits under each of the policies and up until the date of this decision. I think it is most likely that Mr B will be a basic rate tax payer in retirement so basic rate tax should be deducted from the gross amount payable. Interest should be added at a rate of 8% simple per year from the date each payment would have been received and up until the date of this decision.

Once Mr B's past loss has been determined, WFM will need to find out the capital cost to Mr B of purchasing an annuity of the level established above and on the relevant terms on the open market.

If WFM believes Mr B would qualify for an enhanced annuity then a quotation (for the purpose of establishing the capital cost) may be sought on enhanced terms. However, the inconvenience caused to Mr B in obtaining a current enhanced annuity rate should be kept to the absolute minimum. So, if a medical examination is required to obtain enhanced rates then there should only be one examination (i.e. if obtaining a number of quotations were to necessitate a number of medical examinations then WFM will have to choose the provider it thinks is likely to be best positioned to underwrite for an enhanced rate in advance). If WFM opts to seek a quotation for an enhanced annuity rate then it will also be expected to meet any costs associated with Mr B undergoing any medical examination needed for underwriting.

WFM will need to compare the sum of the capital cost established for purchasing an annuity (as set out above) for each of the policies to the share of the current value of the SIPP which is proportionate to the share of the original value of the SIPP that the GAR policies represented. The resultant sum is Mr B's loss in respect of future income from the GAR polices.

The other policies

To work out what these policies would likely be worth now, WFM should work out what the amount switched would now be worth, had it performed in line with a benchmark which offers a reasonable approximation of the likely return Mr B would have received.

It should be assumed half of the monies from the relevant policies would have enjoyed a return in line with the FTSE UK Private Investors Income Total Return Index and the other half would have enjoyed a return in line with the average rate from fixed rate bonds.

For the purposes of this calculation it is to be assumed that any contributions which were paid into the SIPP, and which have not been allowed for by way of on-going contributions into the GAR policies (after April 2014 this should increase by £20 because Mr B would no longer be making contributions to the GAR policy which he would have taken benefits from at that point), would have been paid into the Stakeholder Pension and on the same date that they were actually credited to the SIPP. It is to be assumed that each contribution would have been invested half in a fund showing an equivalent return to the FTSE UK Private Investors Income Total Return Index and half in a fund showing an equivalent return to the average rate from fixed rate bonds.

The notional value of the policies established using the benchmark (as set out above) less the share of the current value of the SIPP which is proportionate to the share of the original value of the SIPP that the policies represented is Mr B's loss in respect of the 'other policies', excluding provision for TFC set out below.

Mr B withdrew TFC from his SIPP in February 2018. WFM will need to establish what the notional value of Mr B's other policies would have been as at that date if they had enjoyed a return in line with the benchmark as set above. Using that notional value WFM should work out how much TFC Mr B would have been entitled to (using 25% of the notional value established) and compare this to the proportion of the amount actually received which is equivalent to the proportion of the amount transferred into the SIPP which the other policies represented – in practice this should work out as any amount not already used for the TFC comparison under the GAR policies calculation.

If Mr B has received less TFC than he would have done if the other policies had performed in line with the benchmark, then he has suffered a loss. Interest should be added to any loss established at a rate of 8% simple per from the date TFC was actually and up until the date of this decision.

How should this compensation be paid?

The total amount of the missed net income payments, plus the interest on these amounts should be paid directly to Mr B. The 8% interest should be paid net, and a tax certificate provided.

The total loss established in respect of TFC under both sections plus interest (as set out above) should be paid to Mr B directly.

The remainder (the capital cost of purchasing annuities equivalent to those that would have been available under the GAR policies and the likely value of the other policies); less any current value of the SIPP should ideally be paid into a pension for Mr B, if this is possible. Any available tax reliefs can be applied, so WFM need only pay an amount that is sufficient to increase the transfer value of the pension by the total amount of the remainder.

If payment cannot be made into a pension, or if doing so would give rise to any protection or allowance issues, the money should instead be paid directly to Mr B. This should be paid net of basic rate tax, as the full amount of TFC potentially available to Mr B has already been taken into account.

Distress & inconvenience and SIPP fees

If Mr B is unable to close his SIPP once compensation has been paid (which is possible due to the ongoing uncertainty with GOP), WFM should pay an amount into the SIPP equivalent to five years' worth of the fees (based on the most recent year's fees) that will be payable on the SIPP. I say this because Mr B would not be in the SIPP but for WFM's unsuitable advice. So it would not be fair for him to have to pay fees to keep it open. And I am satisfied five years will allow sufficient time for things to be sorted out with GOP, and the SIPP to be closed.

WFM should pay Mr B £500 for the distress and inconvenience caused. Mr B has been caused significant distress by the loss of his pension benefits. I think that a payment of £500 is fair to compensate him for that distress.

Level of the award

I do not know what amount will result from these calculations. It is unlikely it will be more than the maximum amount of money award I can make. But I have accounted for that possibility below.

If WFM pays the full amount of compensation it can require Mr B to assign the right to pursue the SIPP provider to it. Alternatively, if WFM pays the maximum money award of £150,000 it can require Mr B to sign an undertaking to pay to it any compensation he may receive through pursuing a complaint about the SIPP provider which is greater than the balance due (i.e. the amount of the full loss less the £150,000 paid).

Although GOP has no realisable value, it is possible some return might be paid from that investment in the future. So WFM can ask Mr B to undertake to pay to it any amount he is paid in the future in relation to the GOP investment (if it does not take over the investment now), if it pays the full amount of compensation. Or any amount greater than the balance due, if it does not pay the full amount. Any such undertaking should allow for any cost or tax Mr B may incur upon withdrawal of the relevant sums.

In either case, account should be taken of any other amount already paid. So if, for example, Mr B receives compensation from the SIPP provider and later is paid a return from the GOP, account should be taken of the compensation paid by the SIPP provider when considering whether the return from GOP should be paid to WFM.

Determination and recommendation:

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate.

If I consider that fair compensation exceeds £150,000, I may recommend that Wealthmasters Financial Management Ltd pay the balance.

Determination and award:

I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Wealthmasters Financial Management Ltd should pay the amount produced by that calculation up to the maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest on the balance as set out above.

Interest should be added to this balance at the rate of 8% per year simple for any time that it takes Wealthmasters Financial Management Ltd to pay Mr B from the date it receives notification of his acceptance of the decision.

Recommendation:

If the amount produced by the calculation of fair compensation exceeds £150,000, I also recommend that Wealthmasters Financial Management Ltd pays Mr B the balance.

I further recommend interest to be added to this balance at the rate of 8% per year simple for any time that it takes Wealthmasters Financial Management Ltd to pay Mr B from the date it receives notification of his acceptance of the decision, as set out above.

If Mr B accepts my determination, the money award is binding on Wealthmasters Financial Management Ltd. My recommendation is not binding on Wealthmasters Financial Management Ltd.

Further, it's unlikely that Mr B can accept my determination and go to court to ask for the balance of the compensation owing to him after the money award has been paid. Mr B may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 March 2020.

Nicola Curnow
ombudsman

COPY OF PROVISIONAL FINDINGS

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

In its response to our adjudicator's view WFM said the complaint had been incorrectly directed at it as it did not advise Mr B to invest in GOP or any other unregulated investment. Mr B has asked us to consider a complaint against WFM. We have the jurisdiction to look at a complaint against WFM. So whether or not WFM is responsible for what has been complained about is a matter for me to decide on the basis of what is fair and reasonable in the circumstances. And, when doing this, I am not limited to simply answering the points of complaint – I can take a wider view.

Having carefully considered the available evidence, I think that the switches to the SIPP and the investments subsequently made by Mr B in his SIPP were unsuitable. And I think it is fair and reasonable to hold WFM responsible for this transaction as a whole. I'll explain why.

Mr S, acting as WFM's adviser, met with Mr B on a number of occasions and had discussions with him about his pensions. As part of this, WFM reviewed Mr B's circumstances. So it took steps to know its customer.

Mr S, acting as WFM's adviser, recommended that Mr B switch all of his personal pension plans to a family SIPP, citing the flexibility this would afford Mr B.

WFM was nominated to be the investment manager of the SIPP after it was established, and the funds were received from Mr B's existing pensions. Following this, Mr S met with Mr B to discuss the investments to be made. This meeting was arranged via Mr S' WFM email address.

I think it is likely that Mr S spoke to Mr B about alternative investments in general and more specifically about GOP and Physical Gold before that meeting. Or, at least, that Mr S had those investments in mind when recommending the switches to the SIPP. I think it is unlikely that Mr B agreed to make the switches, and that Mr S (acting as WFM's adviser) recommended those switches, without any investment in mind.

I say this because:

- There are a number of references to alternative investments in the pension reports and the suitability letter. This suggests such investments were in mind at the time of the advice to switch, and had been discussed.

- Mr B was classified by Mr S as having a speculative attitude to risk – suggesting that Mr S had discussed making speculative investments with him whilst discussing the switches. I've not seen sufficient evidence to show Mr B arrived at this attitude to risk independently.

- Mr S acted for WFM and SCC. So Mr S was one man with two hats, so to speak. He must therefore have known his later intentions when giving the advice to switch to the SIPP. I cannot accept that, when he was giving advice to switch to the SIPP as WFM's adviser, it did not enter Mr S' thinking that he would later introduce Mr B to speculative alternative investments.

- Mr S, acting as WFM's adviser, arranged the meeting to discuss the investments Mr B made. This suggests no clear separation between Mr S' activities as WFM's adviser and those for SCC.

- WFM has accepted responsibly for the regulated investment that Mr S recommended (Meteor).

- WFM, and Mr S acting as WFM's adviser, were involved in the switches to the SIPP right up until the point the investments were made.

So the evidence does not support there being the clear separation between the SIPP switches and the investments which WFM argues exists. It is clear to me that the switches to the SIPP were always

intended to facilitate the unregulated investments Mr B later made. That was the purpose of the switches. There was no demarcation. So the switch and the investments were coextensive and intrinsically linked.

WFM had to know its client, act in his best interests and give suitable advice. I do not think that it could fulfil these duties without considering the overall transaction. So Mr S, when acting for WFM, ought to have considered the suitability of the switches to the SIPP *and* the intended investments when giving advice to Mr B.

This view is reflected by an alert issued by the FCA in 2013 called "*Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP".*

This said, amongst other things, that:

> *"…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.*
>
> *…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 advice on the pension transfer must take account of the overall investment strategy the customer is contemplating."*

I acknowledge that this alert came after WFM's recommendation to Mr B but I do not think this means that it is not relevant to this complaint. I say this because the alert was a reminder of existing obligations under the COBS rules – it did not introduce a new set of obligations.

As mentioned, the available evidence shows WFM did take steps to know its client. Mr S, acting as WFM's adviser, gathered relevant details about Mr B's personal and financial circumstances. So Mr S was in a position to be able to give suitable advice. But, taking into account all I have said above, I do not think that Mr S, acting as WFM's adviser, gave suitable advice.

In my view, the advice to switch to a SIPP to facilitate the investments later made was not suitable. I say this because:

- There is insufficient justification for the switches to the SIPP. The switches came at a significant cost to Mr B and led to him incurring higher ongoing charges. Mr B could have accessed funds that were suitable for him through cheaper products. Or he could have explored making fund switches in his existing schemes.

- Mr B had GARs attached to two of the pension policies that he moved to the SIPP. These were valuable benefits, which could have significantly increased Mr B's income in retirement. Mr B lost those GARs by switching to the SIPP.

- I cannot agree that Mr B was a speculative investor. Whilst I acknowledge that this assessment was based on a risk questionnaire that Mr B signed, I do not think it is reasonable to use this, in isolation, to justify the recommendation. Due consideration needed to be given to his circumstances, investment experience and capacity for loss.

- Based on the information gathered at the time of the advice Mr B appears to have had £2,500 in investable assets outside of his pensions and all of this was held in a cash ISA. The funds

held within his personal pensions were in cautious to medium risk funds. Mr B did not have any other retirement provision. In addition to this, Mr B was within 10 years of his normal retirement age.

- WFM should therefore have concluded that Mr B could not reasonably be considered a speculative investor. Had it acted properly, it should have told Mr B that his circumstances meant he should take a much lower level of risk when investing his personal pensions.

- For the reasons given, Mr S, whilst acting as WFM's adviser, ought to have considered the suitability of the intended investments when advising on the switches to the SIPP.

The unregulated investments that Mr B invested in were wholly unsuitable for him in light of his circumstances. He was exposed to a significant risk of capital loss and illiquidity when he should not have been. Mr B was not someone who could afford to suffer significant losses to his personal pensions – his main source of income in retirement. And, in this case, Mr B, who had limited investment experience, was investing a large proportion of his pension in unregulated investments.

So, Mr S, whilst acting as WFM's adviser, ought to have concluded that switches to a SIPP to facilitate those investments were not suitable.

I have taken into account that Mr S worked as a self-employed adviser for WFM. The terms of his employment were set out in an agreement between Mr S and WFM. WFM might argue that it is not responsible for the investments as it did not allow Mr S to deal with them whilst acting for it.

I note that WFM has said that the agreement did not allow Mr S to give advice on/sell unregulated investments such as GOP and Physical Gold. And there is no evidence that Mr S was given approval from WFM to recommend them in this case.

But it did allow SIPP advice and there is no dispute about that being approved. I have found that the advice to go into a SIPP was unsuitable, for the reasons set out above. And if not for the unsuitable SIPP advice SCC (if it did introduce Mr B to GOP and Physical Gold) would not have been able to make that introduction.

Suitable advice would have been for Mr B to remain in his existing schemes or switch the policies which did not have GARs attached to them to a scheme that offered a wider range of suitable investments, on the basis of an attitude to risk that fairly reflected Mr B's circumstances – such as a stakeholder plan. Neither of these options would have allowed the relevant unregulated investments to be made. So, I still think it is fair for WFM to be held responsible for the investment loss in full.