

## complaint

Mrs B complains, with the help of a representative, that she was mis-sold high risk investments by Wealthmasters Financial Management Ltd (WFM). This involved the switch of her existing personal pension provisions to a newly set up Self-Invested Personal Pension (SIPP) and the subsequent investment in Green Oil Plantations (GOP) and an investment called Physical Gold.

## background

Mrs B attended the meetings with WFM and signed the paperwork with her husband. But because this complaint relates to Mrs B only, I have referred only to Mrs B and her circumstances within this decision.

On 9 August 2011, a client agreement and a fee agreement were signed between Mrs B and WFM. The client agreement classified her as a retail client. On the same day WFM completed a fact find for Mrs B, this recorded that she wanted to retire at 65.

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

*"...As [Mrs B's husband's first name] and [Mrs B'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 [sic] review 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 Mrs B was concerned about the performance of her pensions, that she wanted more flexibility and that she no longer had any fixed intention of retiring at the age of 65. So, she required a more flexible approach regarding investments and the drawing of funds.

It appears that WFM's adviser, Mr S, then met with Mrs 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 to a 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 higher charges applicable to the SIPP were discussed but Mr S says, in his report, that Mrs B was willing to accept this for the chance of better performance and more flexibility.

Mr S worked for WFM in a regulated capacity. He was also the managing director of Stratford Collins Consultants Limited (SCC), an unregulated business.

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

- Mrs B had around £6,000 in investable assets outside of her pensions, this money was held in a cash ISA.
- Mrs B held three personal pension plans, the total value of these came to just over £13,000.
- Mrs B was a member of the teachers' superannuation scheme.

This report ended with the recommendation that Mrs B switch all of her personal pensions into a SIPP to allow full flexibility, including phased retirement and drawdown, and to facilitate investment in various options including alternative investments. It recommended the product provider and type of SIPP but not the underlying investments or a specific investment strategy.

On 23 March 2012, as part of the WFM advice process, Mrs B signed 'cancel and replace' forms for each of the policies that she was transferring into the SIPP, these listed the features and pros and cons (as described by Mr S) of each of the policies and the merits of moving these to a SIPP.

On the same day Mrs 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 Mrs B intended on appointing an investment manager, 'yes' was ticked in answer to this and WFM was appointed as the entity providing this service. Mrs B later elected to make regular contributions to the SIPP.

On 16 May 2012, Mr S, acting for WFM, emailed Mrs B and her husband 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. Mrs B and her husband responded by email agreeing to the meeting. The GOP application form was signed on the day of the meeting.

On 28 May 2012 Mr S wrote to Mrs B, the letter confirmed that she 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.

The investments were then made through the SIPP as follows:

- 8 June 2012 – Meteor (around £1,600)
- 26 June 2012 – GOP (around £3,300)
- 17 August 2012 – Physical Gold (around £600)

A portion of her fund was placed in a deposit account (around £3,700). And the remaining funds were held in the SIPP cash 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.

Mrs B signed a client agreement with SCC on 14 April 2014, this set out, amongst other things that:

*“Stratford Collins Consultants Limited 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 Mrs B complained to WFM. That complaint was ultimately escalated to this service. Details of the original complaint and submissions to this service were set out in detail in my provisional decision. That decision is attached and forms part of this decision. For the sake of completeness, I have included details of the circumstances of the complaint, but I have not repeated details of the original complaint submissions here.

In my provisional decision I explained why I thought the complaint should be upheld. I said that I would consider anything either party wanted to add.

Both parties responded.

#### **What WFM said:**

- The original complaint was only about the GOP investment and it had nothing to do with that.
- Mrs B is happy with the SIPP overall and the investments other than GOP, it continues to meet her needs and objectives whereas a stakeholder or personal pension plan would not.
- Prior to WFM's review of her pensions she was unhappy with their performance.
- Mrs B has continued to employ the same type 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 are not in line with those reached on other similar cases.
- Mrs B had no interest in purchasing an annuity, such options did not fit with her new flexible requirements and would have resulted in tax implications, which she wanted to avoid.
- Mrs B was a longstanding member of the teachers' superannuation scheme, and her benefits were worth a significant amount.
- So, the amount she invested in the SIPP was essentially play money for her.
- Mrs B's pension has made an overall gain. She 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 transaction (it goes on to explain scenarios that demonstrate this).
- The risks and costs involved with the transaction, on which WFM advised, were fully disclosed and Mrs B was given sufficient time to consider these before proceeding with the transaction.
- 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 Mrs B's pension 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.
- Also, Mrs B was introduced to GOP and carried out her own due diligence before the meeting on 28 May 2012.
- The SIPP advice and the investment advice should be separated.

**What Mrs B's representative said:**

- She agreed with my findings as set out in my provisional decision, in particular, that WFM's unsuitable SIPP advice led to her transferring her personal pensions in order to invest in high risk investments such as GOP.
- She was never prepared to lose 100% of her investments or incur a significant loss to her pension income.
- Her complaint stems from the negligent SIPP advice received from Mr S acting on behalf of WFM, which led to her investing in alternative high-risk products such as GOP. To say that her original complaint had nothing to do with the SIPP is incorrect.
- At all times she relied on the advice given by Mr S, who she considered to be her trusted financial adviser and expected him to act in her best interests.
- WFM was at all times aware that Mr S held various discussions at Mrs B's home where he advised her to consider alternative investments and on the SIPP into which she should transfer her personal pensions.
- It is clear that Mr S of WFM advised Mrs B on a SIPP which would accept alternative investments such as GOP.
- She's an ordinary unsophisticated retail client and relied wholly on WFM's advice.
- As previously raised, 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:
  - Mrs 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 Mrs B on alternative investments and the SIPP pension transfer prior to the subsequent investment in GOP.
  - At all times Mrs B relied on Mr S of WFM to provide suitable advice.
- At no time was the distinction between regulated and unregulated advice explained to her.

- At all times she believed she was being advised by Mr S of WFM.
- The evidence submitted illustrates that:
  - Mr S of WFM arranged meetings with her using his WFM address and not via his unregulated company.
  - At all times, Mr S liaised with the SIPP provider and it corresponded with him as the acting financial adviser.
  - The SIPP application form appoints Mr S of WFM as the investment manager of the SIPP.
  - The first time that Mrs B became aware of the involvement of Mr S' unregulated company was when she received the letter dated 24 May 2012 with details of the unregulated investments made, which arrived after the investment was made.

Mrs B also referred to part of her witness statement describing her recollections:

*"He never told us that GOP was high risk. Had he done so we would not have invested in it. I understand that [Mr S' name] is now saying that he did not advise however at all times he was our IFA and we looked to him for advice.*

*He introduced us to GOP (and Gold) and advised us on the investments at our home. He said that Gold was a good investment, although by its very nature, it would rise and fall, We discussed Green Oil as being a good investment, discussing the need to be ethical in our choices in relation to climate change etc..*

*After talking to him for some time, (he usually spends around 1-2 hours at our home when we meet with him,) and on at least two occasions (one when he gave us the literature and one when the investment was made), we were confident that it was a safe investment.*

*I had no real understanding/experience of alternative or unregulated investments at the time. I still do not really understand what is meant by unregulated or alternative investments."*

Mrs B and her husband 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 [Mrs B's husband'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 [Mrs B's husband's name] and 60 for [Mrs B'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."*

Mrs B and her husband met with WFM in August 2019. WFM then made further submissions in relation to what it considered to be new material evidence. I shared WFM's submissions with Mrs B and her representative. They also made further submissions.

I considered all of these submissions in their entirety and wrote to Mrs B and WFM. I set out a brief summary of the submissions and my findings taking these and everything else into account.

### **My summary of the submissions made:**

#### What WFM has said:

- During a meeting with Mr S on 21 August 2019 Mrs B detailed her plans to commence full drawdown of her pension benefits under flexible drawdown.
- She intends to use the funds for home improvements and – in line with the objectives stated at point of transfer – to have full access to her pension without the requirement to be tied to an annuity.
- Mrs B wants to have full access to her pension funds to use these at her discretion and without restriction.
- Mrs 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.
- As set out in Mrs B's complaint submission, her complaint is about the alleged advice in respect of the Green Oil investment only, not the SIPP.
- At no point during the complaint process has the client commented on the transfer advice.
- Our comments in relation to Mrs B's background and her receipt of regulated advice in respect of her regulated pension and other needs from WFM have not been disputed.
- The circumstances that led to the sale of Green Oil are vehemently disputed and significant evidence has been provided showing that WFM was not involved in this.
- The review of Mrs B's SIPP provider's acceptance of the investment will compensate her for the Green Oil investment.
- Mrs B's full and continued use of the flexible benefits she required instead of the suggested annuity brings into question our decision to expand the scope of the complaint – and, indeed, the award of compensation based on Mrs B taking an annuity, which she did not want and would not have taken.
- We have not taken into account any of its additional objections, made in response to our findings. In particular:
  - Mrs B has invested in capital at risk products without FSCS protection.
  - Mrs B's speculative approach to investments and her objectives were recorded on numerous occasions as were the risks associated with those objectives.
  - The investments she has made show that she was not a cautious investor as has been claimed.
  - Detailed information was provided where WFM provided regulated advice.
  - The advice was fully documented and in keeping with Mrs B's stated, documented and signed attitude to risk assessment.
  - Fact finds, signed terms of business and suitability letters were produced in accordance with WFM's terms of advice.
  - All of this establishes a clear process for when WFM was providing advice.

- Substantial evidence has been provided showing that all documents relating to Green Oil were issued by Mr S' unregulated business.
  - All of the above evidence cannot be ignored.
  - WFM was neither aware nor complicit in the direct investments by Mrs B into Green Oil and it has been established that knowledge after the event does not infer culpability.
  - Despite the fact that the pension transfer did not form part of Mrs B's complaint, it has evidenced that the transfer was suitable.
- Mrs B's complaint should be redirected to the SIPP provider for failing in its duties in respect of due diligence.

**What Mrs B's representative has said (broken down into topics as set out in its response):**

*General points*

- Mrs B remains of the view that the findings reached in the provisional decision are accurate.
- She did not have a speculative attitude to her pension investments and was not knowledgeable in the world of pensions and unregulated investments.
- Mr S was recommended by a family member and Mrs B thought she could trust him to act in her best interests.
- Mr S knew that Mrs B was not an avid investor and led her to believe that the course of action was in line with her objectives.
- The letter prepared by Mr S of WFM is self-serving, misleading and inaccurate.

*Purpose of the meeting*

- The primary purpose of the meeting was not to discuss Mrs 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.
- Mrs B's primary concern was the level of 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 [Mrs B's surname] have purchased outright a mobile home (from a lump sum from Mrs [Mrs B's surname]) 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 Mrs B did withdraw her 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 Mrs B wanted to release monies from her 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);
- Mrs B did not confirm that her objectives remained as they were when she originally transferred or that she did not want to be tied to an annuity;
- Mrs B had not previously weighed up the advantages and disadvantages of annuities as the note suggests, she simply acted on Mr S' advice.
- The note has been produced by WFM to support its position that it is not responsible to Mrs B for Mr S' negligent advice.

*Comments on the suitability report*

- Again, this fails to mention that Mrs 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.
- Mrs B was not concerned with funding her lifestyle.

*Mrs B's intentions*

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

*Comments on WFM's submissions of 18 September 2019*

- The arguments raised are issues that have previously been dealt with, it is not new evidence.
- Mrs B did not confirm she wanted to drawdown her full pension and – contrary to what is suggested in Mr S' comments – she did not require the money for major purchases (purchasing a motorhome/garden redevelopment).
- Mrs B does not believe she told Mr S that she does not want to purchase an annuity and does not recall the topic being discussed during the meeting.



- WFM's insistence that Mrs 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 Mrs B to suffer.

***My findings on the merits of the complaint taking into account the submissions:***

*The complaint raised*

- I have taken into account everything that WFM has said 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 fair and appropriate.
- Mrs B's complaint submissions refer to issues beyond simply the sale of Green Oil.
- In any case, I can look beyond the complaint as expressed by Mrs B, our remit is inquisitorial.

*WFM's responsibility for the advice*

- There is no dispute that Mrs B received regulated advice from WFM in respect of her pension.
- That advice was to transfer her existing pension plans to a SIPP. Apart from the benefits she accrued in her occupational pension scheme – which did not form part of the advice.
- 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 (the category within which GOP falls).
- WFM was appointed as 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.
- Mrs B did not need access to investments only accessible via a SIPP.
- Alternative investments were not suitable for Mrs B.
- There was no justification for Mrs B incurring the fees associated with the transfer and the SIPP.
- There is insufficient evidence that Mrs B required flexibility – or, that she could afford to bear the risks involved with implementing high risk strategy.
- Even if Mrs B did want to take a more flexible approach at retirement she did not need to transfer at the time she did and incur higher fees for several years before she intended on taking benefits from her pension.

- In reaching these conclusions I have taken into account that Mrs B had fairly significant pension provision through her occupational pension scheme. That does not mean that it was suitable for Mrs B to transfer her personal pension provision to a more expensive product, incurring commission upon transfer and subsequently make high risk investments.

#### *Impact of recent events*

- WFM says that it recently met with Mrs B and that that meeting confirmed that its advice was suitable, and that Mrs B would never have agreed to the course of action I have suggested would have been appropriate.
- Mrs B says that she only wants to withdraw the monies from her 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 Mrs 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 Mrs 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 Mrs B planned to draw benefits.
  - Whilst Mrs B may now be considering drawing her entire pension, she is now in a different position – and, in any case, this does not mean that the advice was suitable – or, indeed, that if suitable advice had been given Mrs B was likely to disregard this.

#### *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 Mrs B to transfer her pensions to a SIPP.
- The advice that WFM has accepted responsibility for was not suitable.
- That advice resulted in Mrs B suffering the losses that are the subject of this complaint and it should compensate her for that.

#### **Final submissions**

Mrs B did not make any further submissions. WFM disagreed with my findings and made further submissions to support its position. I have considered these submissions in their entirety, here I have included a brief summary of the key points:

- We have expanded the complaint beyond that raised by Mrs B.
- There is a lack of consistency between the view reached by the adjudicator in this case and that reached at decision stage and, similarly between the decision reached in this case and that reached in other cases.
- The primary purpose of the meeting was to discuss pension benefits.
- Mrs B accessing her benefits in a tax efficient manner was the focus in line with her objectives.

- The ongoing SIPP fees were not raised as a concern, fees were only mentioned in passing.
- The reasons for Mrs B wanting to access her benefits were as stated not because of the ongoing fees.
- If fees had been the reason for withdrawing funds from the SIPP then transfer to another cheaper product would have been considered instead.
- The note it prepared is not misleading.
- All of the options available to Mrs B were discussed in detail.
- Mrs B was concerned about funding her lifestyle, it is inconceivable that an individual retiring early in her circumstances would not be.
- It has been evidenced that Mrs B was a speculative investor with pension provision elsewhere, which meant she was not reliant on the funds.
- The process was fully documented, and Mrs B confirmed on numerous occasions her understanding of the advice and the process.
- During the original advice process Mrs B expressed an interest in alternative investments, that is why these are recorded as possible investments in the suitability report and appropriate risk warnings were given.
- Being aware of the client's intentions, commenting on these and giving risk warnings, does not result in responsibility for those actions.
- The advice given was justified by the recorded objectives, requirements and attitude to risk.
- Key facts that are material to the outcome of the complaint are in dispute.
- Extensive documentation has been provided to support its position, we should be relying on contemporaneous evidence ahead of assertions made by the complainant.
- The outcome reached involves concluding that Mrs B would have done something differently if she had been advised differently, such a strong assertion cannot reasonably be reached on the basis of the case file alone and the file does not support the conclusion reached.
- Mrs B was in an informed position and was happy to proceed. This is supported by the evidence provided and the fact that Mrs B complained about the GOP investment alone.

In addition to the points WFM raised about the merits of the complaint it also raised service issues, these will be addressed separately. I have proceeded with my consideration of the complaint and my decision in the meantime. The service issues raised do not impact the merits of the complaint, so I am satisfied that I can fairly progress the complaint.

### **My findings**

I have reconsidered 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.

I am required to take into account *all* of the evidence submitted by both parties when making my decision and I reconsidered this before making my final decision. It is for me to decide how much weight to attach to a particular piece of evidence, based on the circumstances of the particular case. There is no fixed 'hierarchy', as WFM suggests.

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*

Mrs 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 and transfers 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 Mrs B's existing pensions. It is also clear that Mr S' advice was sought for the purpose of ensuring Mrs B's retirement was safely planned for. Clearly, GOP was not suitable for Mrs B.

Mrs 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 every reference to the wider transaction made in Mrs B's complaint submissions – or to the activities for which WFM has accepted responsibility. But I am satisfied that this is enough 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 Mrs B. I can take a wider view.

#### *WFM's responsibility for the GOP investment*

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

The advice WFM gave Mrs B to move her 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 the same person as 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.

WFM advised Mrs B to switch her pensions to a SIPP, gave advice on the regulated investments subsequently made and acted as investment manager, as noted in the SIPP application form. WFM's relationship with Mrs B was ongoing and it appears to have held ongoing reviews with her 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. Having considered the available evidence, I have found it most likely that 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 Mrs 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 event, I am satisfied from the available evidence that WFM's adviser knew Mrs B intended to invest in GOP and Physical Gold or that these investments were to be recommended to her, at the time of the advice to move her existing pension plans to the SIPP.

#### *Suitability of the advice*

WFM argue that the advice for which it has accepted responsibility was suitable in light of Mrs B's objectives.

Based on what I have seen, I don't think that Mrs B approached WFM intent on moving to a SIPP in order to invest in high risk investments (including alternatives) and take advantage of phased retirement. WFM's documentation indicates that Mrs B approached it because she had a few small pensions with different providers, and she wanted to work out what she had where. Through meetings with WFM Mrs B's objectives changed significantly.

I think it is more likely than not that this change was driven by WFM, particularly taking into account Mrs B's circumstances. Even if this was driven by Mrs B, WFM was required to give Mrs B suitable advice taking into account the transaction as a whole – including, the switches, the SIPP and the subsequent investments.

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

At the time of the advice Mrs B was almost 55, the personal pension plans she held were all invested in conventional funds and subject, broadly speaking, to what would likely be categorised as a cautious to medium level of risk. She held a relatively modest amount of around £6,000 in a cash ISA – the documentation from the time does not indicate that Mrs B was an experienced investor or that she had experience or knowledge of complex high-risk investments.

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

WFM has argued that because Mrs B had substantial occupational pension scheme benefits elsewhere the course of action was not unsuitable. I disagree. Mrs B having occupational pension benefits does not mean that it was suitable for her to switch her personal pensions to a considerably more expensive product that she did not need in order to make investments such as GOP.

#### *Is it fair to award compensation?*

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

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 Mrs B has complained about activities for which WFM accepted responsibility.

I am satisfied that if WFM had acted fairly and reasonably and fulfilled its obligations, by giving suitable advice, 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 Mrs B for the full measure of her losses as set out below.

#### *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 – what is fair and reasonable will depend on the facts of the individual case - and I am satisfied that my findings are fair and reasonable in the circumstances of this complaint.

As I mentioned above, my provisional decision is attached and forms part of this decision, within this decision I have focused on dealing with what I consider to be the key points raised in response to my provisional decision.

Taking into account the above, and my provisional findings, I remain of the view that Mrs B's complaint should be upheld, and it is fair and reasonable for WFM to compensate her for the losses she has suffered as a result of the unsuitable advice. In addition to the financial losses Mrs B has suffered, I think the unsuitable advice and resultant losses have caused her distress and inconvenience, WFM should compensate Mrs B for this as well.

### **Fair compensation**

My aim is that Mrs B should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs B would have invested differently. It's not possible to say *precisely* what she would have done differently. But I'm satisfied that what I have set out below is fair and reasonable given Mrs B's circumstances and objectives when she invested.

### **What should WFM do?**

To compensate Mrs B fairly, WFM must:

- Compare the performance of Mrs B's investment with that of the benchmark shown below. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

WFM should add interest as set out below.

If there is a loss, WFM should pay into Mrs B's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief.

Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If WFM is unable to pay the total amount into Mrs B's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mrs B's actual or expected marginal rate of tax at her selected retirement age.

For example, if Mrs B is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mrs B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mrs B £250 for distress caused by the loss of a significant portion of her personal pension provision.

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

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
the monies transferred into the SIPP	mixed	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	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 means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual* value of the investment. This is complicated where some of the investment is illiquid (meaning it could not be readily sold on the open market) as in this case. So, the *actual value*, of the illiquid investment, should be assumed to be nil to arrive at fair compensation. WFM should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as I set out above.

If WFM is unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. WFM may require that Mrs B provides an undertaking to pay WFM any amount she may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. WFM will need to meet any costs in drawing up the undertaking.

### **Fair value**

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, WFM should use 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.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.



Any withdrawal, income or other distribution out of the investment should be deducted from the *fair value* 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 WFM totals all those payments and deducts that figure at the end instead of deducting periodically.

### **Future SIPP fees**

If the business had done what I have concluded it ought to have done then I do not think there would be a SIPP. It is not fair that Mrs B continues to pay the annual SIPP fees if that SIPP cannot be closed.

Ideally the business would take over the GOP holding to allow the SIPP to be closed. This is the fairest way of putting Mrs B back in the position she would have been in. However, that is unlikely to be possible. To provide certainty to all parties, I think it is fair for WFM to pay Mrs B an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the most recent year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed. There are a number of ways they may want to seek to achieve that. It will also provide Mrs B with some confidence that she will not be subject to further fees.

### **Why is this remedy suitable?**

I have decided on this method of compensation because:

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

### **My final decision**

I uphold the complaint. My decision is that Wealthmasters Financial Management Ltd should pay the amount calculated as set out above.

Wealthmasters Financial Management Ltd should provide details of its calculation to Mrs B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs B either to accept or reject my decision before 7 August 2020.

Nicola Curnow  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

Mrs B complains, with the help of a representative, that she was mis-sold high risk investments by Wealthmasters Financial Management Ltd (WFM). This involved the switch of her existing personal pension provisions to a newly set up Self-Invested Personal Pension (SIPP) and the subsequent investment in Green Oil Plantations (GOP) and an investment called Physical Gold.

### **background**

Mrs B attended the meetings with WFM and signed the paperwork with her husband. Because this complaint relates to Mrs B only, I have referred only to Mrs B and her circumstances within this decision.

On 9 August 2011, a client agreement and a fee agreement were signed between Mrs B and WFM. The client agreement classified her as a retail client. On the same day WFM completed a fact find for Mrs B, this recorded that she wanted to retire at 65.

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

*"...As [Mrs B's husband's first name] and [Mrs B'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 [sic] review 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 Mrs B was concerned about the performance of her pensions, that she wanted more flexibility and that she no longer had any fixed intention of retiring at the age of 65. So, she required a more flexible approach regarding investments and the drawing of funds.

It appears that WFM's adviser, Mr S, then met with Mrs 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 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 higher charges applicable to the SIPP were discussed but Mr S says, in his report, that Mrs B was willing to accept this for the chance of better performance and more flexibility.

Mr S worked for WFM in a regulated capacity. He was also the managing director of Stratford Collins Consultants Limited (SCC), an unregulated business.

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

- Mrs B had around £6,000 investable assets outside of her pensions, this money was held in a cash ISA.
- Mrs B held three personal pension plans, the total value of these came to just over £13,000.
- Mrs B was a member of the teachers superannuation scheme.

This report ended with the recommendation that Mrs B switch all of her personal pensions into a SIPP to allow full flexibility, including phased retirement and drawdown, and to facilitate investment in various options including alternative investments. It recommended the product provider and type of SIPP but not the underlying investments or a specific investment strategy.

On 23 March 2012, as part of the WFM advice process, Mrs B signed 'cancel and replace' forms for each of the policies that she was transferring into the SIPP, these listed the features and pros and cons (as described by Mr S) of each of the policies and the merits of moving these to a SIPP.

On the same day Mrs 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 Mrs B intended on appointing an investment manager, 'yes' was ticked in answer to this and WFM was appointed as the entity providing this service. Mrs B later elected to make regular contributions to the SIPP.

On 16 May 2012, Mr S, acting for WFM, emailed Mrs B and her husband 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. Mrs B and her husband responded by email agreeing to the meeting. The GOP application form was signed on the day of the meeting.

On 28 May 2012 Mr S wrote to Mrs B, the letter confirmed that she 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.

The investments were then made through the SIPP as follows:

- 8 June 2012 – Meteor (around £1,600)
- 26 June 2012 – GOP (around £3,300)
- 17 August 2012 – Physical Gold (around £600)

A portion of her fund was placed in a deposit account (around £3,700). And the remaining funds were held in the SIPP cash 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.

Mrs B signed a client agreement with SCC on 14 April 2014, this set out, amongst other things that:

*“Stratford Collins Consultants Limited 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 Mrs B complained to WFM. The submissions were extensive. Briefly, she complained that:

- It was her understanding that she was dealing with the adviser as a representative of WFM at all times but now WFM is saying that GOP was sold by SCC.
- The distinction between Mr S acting in his capacity as a representative of WFM and him acting in his capacity as managing director of SCC was not explained to her. This created a clear conflict of interests.
- She trusted the adviser to act in her best interests and not to put her monies into high-risk alternative investments.
- Mr S, in his capacity as a representative of WFM, recommended that she move her pensions to a SIPP and invest in alternative investments, such as GOP.
- Mr S did not, at any point, explain to her that GOP was an unsuitable high-risk investment.

- It was not possible for WFM to advise her 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 her.
- The advice was not in line with COBS 2.1.1, COBS 9.2.1, COBS 9.2.2, COBS 10.3 and COBS 11.
- The advice was sought for the purposes of ensuring that Mrs B's retirement was safely planned for and the advice did not fulfil this purpose.
- It had always been Mrs B's intention to retire at 60. And, now she 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 Mrs B was introduced to these investments by SCC. Because of this, WFM believes that the complaint had been misdirected and ought to be referred to SCC. The response includes a statement from Mr S, in summary, he says that:

- SCC has not carried on any regulated activities since 2008.
- Mrs B was aware of the role of SCC and had been a client of it since 2011, during this time she had used its services for guidance about Wills, Trusts and Powers of Attorney.
- The assertion that Mrs B is still having to work because of the failed investments is wrong as she always intended retire at her normal retirement age. And, in any case, she would need to work because she and her husband had a repayment mortgage.
- Mrs B 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, SCC introduced Mrs B to them but no recommendation was given.
- There was a clear divide between the regulated advice given to Mrs B and the nonregulated activities undertaken by SCC. Meetings were split into two parts, regulated matters were discussed first and then SCC matters were dealt with and there was a clear distinction between the two.
- No conflict of interests was created as the services offered by SCC were not offered by WFM.
- The funds invested represented a small portion of Mrs 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 Mrs B's claims that his actions were in breach of the regulator's rules listed above.

Unhappy with this response, Mrs B referred her complaint to us.

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

- The complaint had not been misdirected, WFM did give Mrs B advice and its adviser dealt with her throughout the transaction complained about.

- The relevant rules required WFM to give Mrs B suitable advice taking into account her knowledge, experience, financial situation and objectives. And, to gather such information as necessary to establish that Mrs B could bear any related risks consistent with her objectives and that she understood the risks involved.
- WFM was aware of Mrs B's intention to invest in GOP – and, as such, in recommending a SIPP to facilitate this investment, it was obliged to consider the suitability of that investment.
- The proportion invested in GOP was too high taking into account Mrs B's circumstances.

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

- It is not in dispute that WFM did provide Mrs B with regulated advice in relation to her regulated pension. But, the circumstances around her introduction to GOP are very much in dispute.
- Mrs B has misdirected her complaint against WFM. The complaint should be directed at SCC, as confirmed by Mr S.
- Mrs 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.
- SCC 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 his capacity as an adviser for WFM, he would have been acting outside the terms of his employment.

WFM has provided evidence in support of all of the above assertions.

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 SCC 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 a number of other cases reviewed by our service where different outcomes were reached.

### **my 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 Mrs B to invest in GOP or any other unregulated investment. Mrs 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 Mrs B within her 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 Mrs B on a number of occasions and had discussions with her about her pensions. As part of this, WFM reviewed Mrs B's circumstances. So it took steps to know its customer.

Mr S, acting as WFM's adviser, recommended that Mrs B switch all of her personal pension plans to a family SIPP, citing the flexibility this would afford her. WFM was nominated to be the investment manager of the SIPP after it was established, and the funds were received from Mrs B's existing pensions. Following this, Mr S met with Mrs B to discuss the investments to be made. This meeting was arranged via Mr S' WFM email address.

I think it's likely that Mr S spoke to Mrs 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 Mrs 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.
- Mrs B was classified by Mr S as having a speculative attitude to risk this and the reports produced by WFM – suggest that Mr S had discussed making speculative investments with her whilst discussing the switches. I've not seen sufficient evidence to show Mrs 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 Mrs B to speculative alternative investments.
- Mr S, acting as WFM's adviser, arranged the meeting to discuss the investments Mrs B made. This suggests no clear separation between Mr S' activities as WFM's adviser and those for SCC.
- WFM has accepted responsibility 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 switches to the SIPP 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 Mrs 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 her best interests and give suitable advice. I don't 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 Mrs 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 Mrs B but I don't 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 most of the relevant details about Mrs 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 Mrs B and led to her incurring higher ongoing charges. Mrs B could have accessed funds that were suitable for her through cheaper products. Or she could have explored making fund switches in her existing schemes.
- I cannot agree that Mrs B was a speculative investor. Whilst I acknowledge that this assessment was based on a risk questionnaire that Mrs B signed, I don't think it is reasonable to use this, in isolation, to justify the recommendation. Due consideration needed to be given to her overall circumstances, investment experience and capacity for loss.
- Based on the information gathered at the time of the advice Mrs B appears to have had less than £6,000 in investable assets outside of her pensions and all of these were held in a cash ISA. The funds held within her personal pensions were in cautious to medium risk funds. In addition to this, Mrs B was within 10 years of her normal retirement age.
- WFM should therefore have concluded that Mrs B could not reasonably be considered a speculative investor. Had it acted properly, it should have told Mrs B her circumstances meant she should take a much lower level of risk when investing her 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 Mrs B invested in were wholly unsuitable for her in light of her circumstances. She was exposed to a significant risk of capital loss and illiquidity when she should not have been. 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 Mrs B to GOP and Physical Gold) would not have been able to make that introduction.

Suitable advice would have been for Mrs B to remain in her existing schemes or switch to a scheme that offered a wider range of suitable investments, on the basis of an attitude to risk that fairly reflected Mrs 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.

### **Fair compensation**

My aim is that Mrs B should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I think Mrs B would have invested differently. It's not possible to say *precisely* what she would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mrs B's circumstances and objectives when she invested.

### **What should WFM do?**

To compensate Mrs B fairly, WFM must:

- Compare the performance of Mrs B's investment with that of the benchmark shown. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable. WFM should add interest as set out below.

If there is a loss, WFM should pay into Mrs B's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If WFM is unable to pay the compensation into Mrs B's pension plan, it should pay that amount direct to her. 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 Mrs B's actual or expected marginal rate of tax at her selected retirement age.

For example, if Mrs B is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mrs B would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay five years' worth of future fees owed by Mrs B to the SIPP.
- Pay Mrs B £250 for the distress caused by the loss of a significant portion of her personal pension provision.

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

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
the monies transferred into the SIPP	mixed	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	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 means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual* value of the investment. This is complicated where some of the investment is illiquid (meaning it could not be readily sold on the open market) as in this case. So, the *actual value*, of the illiquid investment, should be assumed to be nil to arrive at fair compensation. WFM should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as I set out above.

If WFM is unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. WFM may require that Mrs B provides an undertaking to pay WFM any amount she may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. WFM will need to meet any costs in drawing up the undertaking.

### **Fair value**

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, WFM should use the monthly average rate for one-year fixed-rate bonds 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.

Any additional sum that Mrs B paid into the investment 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 investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if WFM totals all those payments and deducts that figure at the end instead of deducting periodically.

### **Future SIPP fees**

If the business had done what I have concluded it ought to have done then I do not think there would be a SIPP. It is not fair that Mrs B continues to pay the annual SIPP fees if that SIPP cannot be closed.

Ideally the business would take over the GOP holding to allow the new SIPP to be closed. This is the fairest way of putting Mrs B back in the position she would have been in. However, third parties are involved, and we do not have the power to tell them what to do. To provide certainty to all parties, I think it is fair that the business pay Mrs B an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the most recent year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed. There are a number of ways they may want to seek to achieve that. It will also provide Mrs B with some confidence that she will not be subject to further fees.

### **Why is this remedy suitable?**

I've chosen this method of compensation because:

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

### **My provisional decision**

I uphold the complaint. My provisional decision is that Wealthmasters Financial Management Ltd should pay the amount calculated as set out above.

Nicola Curnow  
**ombudsman**