

complaint

Mr M has complained about advice to transfer his existing personal pension to a self invested personal pension (SIPP). The SIPP fund was then invested in a plot of land and an unregulated overseas investment scheme.

Meyado Private Wealth Management London Ltd (Meyado) is now responsible for the advice that was given in connection with the transfer and the steps taken to facilitate the transfer.

background

I've considered Mr M's complaint before. I issued a provisional decision on 23 February 2021. I've attached it and it forms part of this decision. For the reasons I set out I upheld the complaint.

Mr M didn't want to comment further. Meyado's legal representative did make further representations which I've summarised:

- Mr M's decision to open a SIPP and transfer the value of his pension benefits was made with assistance and advice from a number of entities, not just HDIFA. I'd continued to ignore the other entities' involvement, even though it was factually undeniable that other parties were materially involved.
- That wasn't fair or reasonable but irrational. Our unwillingness to look into the relationship between Mr M and Mr B – who was materially involved in advising Mr M to invest in the illiquid investments at the heart of his complaint and (once the SIPP was open) was to advise on his planned investments – meant my decision was being made in the light of a deliberate choice to exclude relevant matters. The requirement (under FSMA) to take into account all the circumstances means the actions of other entities with whom Mr M interacted as part of his decision making can't be excluded.
- Our approach suggests, where multiple entities are involved, we'll disregard all but the one at which the complaint is explicitly directed and hold that firm accountable for all failings, irrespective of where liability should properly lie. Entities are at the mercy of who a complainant happens to name on the complaint form and when many complainants won't have a true understanding of the roles and responsibilities of those with whom they've dealt. That's contrary to our obligations under FSMA and demonstrably unjust to one or more parties.
- That approach had handicapped Meyado. Our reluctance to examine Mr B's involvement has meant that key documents and evidence which must have been available to Mr B have been unavailable to Meyado and us. Our enquiries have been at best incomplete and Meyado's ability to defend itself has been seriously impaired.
- That had led to a fundamental error as to causation. My decision was based on the premise that, without HDIFA's involvement, the investments – and so Mr M's losses - wouldn't have occurred. That oversimplifies the true position and failed properly to take into account both Mr M's decision to invest and that it is the investments, and not the SIPP, which are the primary cause of his losses. The decision also disregards how Mr M held himself out to HDIFA.

Meyado also highlighted sections of my provisional decision:

- Mr M had already decided to transfer his existing pension before HDIFA was involved. His determination to transfer can't have been influenced by HDIFA. And, following the transfer, Mr B was to advise on the investment. My decision was

irrational and relied on speculation.

- The correct factual position was that an entity other than HDIFA was the advising entity. Our unwillingness to investigate other entities' involvement properly or at all evidences irrationality and unfairness. We hadn't properly considered what's fair and reasonable in all the circumstances of the case.
- In terms of causation it must be accepted as a matter of fact that a party other than HDIFA actually advised on the material investment. HDIFA had no involvement in the ultimate decision to invest in cultivated land in Argentina. It's difficult, if not impossible, properly to ascribe knowledge of, and blame for, any investment decision made after HDIFA's involvement ceased and when HDIFA didn't and couldn't have had any influence or control over the ultimate investments.
- My assertion, that if HDIFA had advised against the transfer (even though it expressly had no involvement with the specific investment Mr M ultimately chose), was conjecture and at odds with the evidence which strongly pointed to Mr M's determination not to heed warnings and ignores the reality that he ultimately invested in a product in which HDIFA had no involvement. And I'd disregarded Mr M's assessment of his own investment experience and attitude to risk.
- I'd referred to the regulator's alert dated 18 January 2013. But I'd conceded that dealt with where an adviser took on a client from an unregulated introducer. As I'd acknowledged, it was unclear whether Mr B was operating in a regulated capacity. Assuming he was I hadn't attempted to deal with that key distinction.
- In conclusion Meyado said my decision was unfair, unjust and irrational. Nothing should detract from its sympathy for Mr M. He'd suffered loss as a result of investing (on the advice of others) in investments which had failed. But my decision failed properly to appreciate causation and reliance issues. Based on the information we'd considered – or chosen not to consider – the decision was unfair and unjust in apportioning the entire responsibility for Mr M's losses on Meyado and didn't meet our obligations under FSMA.

my findings

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so I've taken into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice and what I consider to have been good industry practice at the relevant time. And, as set out in my provisional decision, I've paid attention to the relevant Dispute Resolution (DISP) rules. I've also carefully considered Meyado's comments in response to my provisional decision.

Generally what Meyado has said isn't new. Meyado's main point remains the involvement of others and, in particular, Mr B. I don't agree we haven't made sufficient enquiries about that. Or that I've misunderstood or ignored the part played by Mr B such that my decision can't properly be said to have taken into account all the circumstances of the case as required by FSMA.

The central point is that Mr M had been referred to HDIFA for advice about transferring to a SIPP. HDIFA may have said it wasn't considering the proposed investments. But HDIFA should have known it couldn't fulfil its regulatory duties to Mr M without looking at the overall transaction. To determine if the SIPP was suitable, HDIFA needed to understand what it was going to be invested in.

Meyado says the regulator's 18 January 2013 alert deals with the situation where a firm takes on a client from an unregulated introducer, whereas here the referral came from Mr B. First, as I've explained in my provisional decision and as Meyado has acknowledged, what capacity Mr B was acting in isn't clear. It's possible he was an unregulated introducer. If he was, Meyado would presumably agree that the alert does apply.

But, even if the referral had come from another regulated firm, I don't see that would have changed HDIFA's responsibility to consider the proposed underlying investment. The regulator issued a further alert on 28 April 2014. Again it didn't follow the introduction of new regulations but restated the existing position. It included the following:

'Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable.'

'If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole.'

The alert went on to reiterate that suitable advice generally required consideration of the overall transaction, that is the vehicle and the wrapper and the expected underlying investments and whether or not such investments were regulated products. It said, despite the initial alert (in January 2013), some firms continued to adopt a model which purportedly restricted advice to the merits of the SIPP wrapper. But advising on the suitability of a pension transfer or switch couldn't reasonably be done without considering the existing pension arrangement and the underlying investments intended to be held in the SIPP.

I think it's clear that, even if the introduction had come from a regulated firm (as and I've said it's unclear here if it did) HDIFA had to consider the proposed underlying investment too.

HDIFA says it didn't know about the Argentinian farmland investment. But, even if that's right, HDIFA should have found out. Any advice about transferring to a SIPP had to take into account the proposed investment.

I don't think the SCS Farmland investment was suitable for Mr M. And certainly not for approaching 40% of his pension fund. I'd also refer to what I said in my provisional decision about a SIPP being generally unsuitable for Mr M, given his modest pension fund, lack of investment experience and that he didn't have capacity for loss.

Meyado's main point is the involvement of others and in particular Mr B. I've considered carefully Mr B's part in the matter. I acknowledge it's possible he gave investment advice. And that might have been in a regulated capacity. But even if Mr B (whether in an unregulated or regulated capacity) had advised Mr M in connection with the investment, Mr M was referred to HDIFA for advice about transferring his pension. HDIFA thought it could limit its advice to the transfer and the SIPP. As I've explained, its understanding was wrong: HDIFA needed consider the proposed investments too.

I've focused on HDIFA's own responsibilities as its role was pivotal, since the eventual investments were wholly contingent on the transfer taking place. I don't think Mr M should

have been advised to transfer to a SIPP so he could invest about in a plot of land and the SCS Farmland investment. But for the transfer Mr M couldn't have invested as he did.

I don't agree that we'll always disregard the involvement of any other entities and hold the business at which the complaint is explicitly directly responsible for all failings, irrespective of where responsibility might properly lie. I agree a complainant won't always understand the different roles and responsibilities where more than one party is involved.

But HDIFA's role was central. I think HDIFA should have advised Mr M against transferring in order to invest as he'd planned. I think suitable advice would have been for Mr M to retain his existing pension arrangement with a major provider invested in a range of mainstream funds.

In my provisional decision I considered carefully what Mr M was likely to have done if HDIFA had told him it couldn't recommend he transfer. That does involve making some assumptions as to what Mr M was likely to have done.

Based on what I'd seen and for the reasons I set out I thought Mr M was likely to have gone ahead with the transfer to the SIPP so that he could sell the plot of land which he already owned to the SIPP for it to hold as an investment. I said that was the main driver for the SIPP.

But I thought the position was different in so far as the SCS Farmland investment was concerned. That was an unknown for Mr M. Unlike the plot of land he didn't have any personal or vested interest. He was presumably only proposing to invest because he'd been told about the investment and that it would do well. If HDIFA had explained to Mr M that a transfer, on the basis he was going to invest almost 40% of his only pension fund in an unknown, unregulated and speculative investment, I thought he'd have reconsidered whether he should invest in that fund.

I don't think my conclusions about what Mr M is likely to have done if HDIFA had given him suitable advice are irrational or at odds with the evidence. As I said in my provisional decision, as things stood, and in the absence of any indication from HDIFA about the risks posed by the SCS Farmland investment, Mr M had no real reason to question whether he should go ahead. That's still my view. I don't see why he'd have been determined to go ahead with that investment if he'd been told that it was too risky.

On that basis (and coupled with the fact that I didn't see that Mr M had suffered any financial loss in connection with the plot of land) I proposed limiting redress to the SCS Farmland investment. Mr M hasn't commented further or said that he doesn't accept my conclusions about the plot of land. Or said that it wasn't the main reason for the transfer to the SIPP.

All in all my views remain as set out in my attached provisional decision.

my final decision

I uphold the complaint.

Meyado Private Wealth Management London Ltd must redress Mr M as I've set out in my attached provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 April 2021.

Lesley Stead
ombudsman

PROVISIONAL DECISION dated 23 February 2021

complaint

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background

Heather Dunne, trading as HDIFA, an appointed representative of Berkshire Financial Advisers Limited, which later became Meyado Private Wealth Management London Ltd (Meyado) wrote to Mr M on 25 January 2012. HDIFA said Mr M had been referred to HDIFA by someone I'll call Mr B as Mr B didn't have the appropriate regulatory permissions to undertake the business – a pension transfer or switch.

The letter recorded that Mr M had completed and signed (on 23 January 2012) HDIFA's pension review questionnaire, letter of authority and letter of engagement. HDIFA would gather data and undertake research and analysis before preparing a formal advice report for Mr M, setting out HDIFA's recommendations about transferring. HDIFA's letter included the following:

'In relation to the underlying investments we understand that you have already decided where you wish to invest your pension fund monies. You have already satisfied yourself that this investment is suitable for your needs and are not seeking any further input from ourselves. Therefore the handling of these transactions will not be dealt with by HDIFA.

Please note that we will not be making any comments with regard to the underlying Investments that you have chosen. We accept no responsibility for your decision to purchase your preferred asset.'

There was a declaration attached to the letter, which Mr M was asked to sign and return. Amongst other things it said that Mr B would work closely with HDIFA and that the agency of the receiving plan would be transferred from HDIFA to Mr B to enable him to receive renewal commission and offer advice in respect of the SIPP monies in the future.

I haven't seen the suitability letter in connection with the transfer. I think HDIFA may have outsourced it to an adviser with Berkshire Financial Advisers Ltd (as Meyado was at the time known). But it isn't disputed that Mr M was recommended to transfer to a SIPP. Or that HDIFA undertook the transfer.

On 14 February 2012 £59,971 was transferred from Mr M's personal pension to a new SIPP. £31,000 was then invested in a plot of land and £23,000 into Food, Water and Energy SA - SCS Farmland. I understand that's an unregulated collective investment scheme involving cultivated land in Argentina.

In January 2018, Mr M, through his representative, complained to Meyado. It said the complaint should be redirected to HDIFA. Mr M's representative replied, pointing out that HDIFA was an appointed representative of Meyado and so the complaint had been properly directed at Meyado as principal. Meyado didn't respond. The complaint was referred to us.

When we contacted Meyado it said the complaint had been made too late - more than six years after the event complained of. Our adjudicator didn't agree. He said the complaint had been made by email to Meyado on 23 January 2018. Meyado had said the event complained of had taken place on 27 January 2012. On that basis the complaint had been made within six years. Even if time ran from the date Mr M signed HDIFA's letter of engagement – 23 January 2012 – the complaint had still been made in time.

The adjudicator went on to consider the merits of the complaint. He thought the complaint should be upheld. Transferring to a SIPP wasn't suitable for Mr M. HDIFA had said it wouldn't be commenting on the underlying investments Mr M had chosen. And that it accepted no responsibility for his decision to purchase his preferred assets. But the regulator's alert in January 2013 made it clear that suitable advice generally required consideration of the suitability of the overall proposition, that is the wrapper and the expected underlying investment which was in an unregulated scheme. Although the alert post dated HDIFA's advice, it represented the position at the time the advice was given (and so served as a reminder to advisers as to the regulator's expectations).

Meyado didn't accept the adjudicator's view. In summary Meyado said:

- We'd failed to give proper regard to Mr B's role. HDIFA's letter dated 25 January 2012 recorded its understanding that Mr M had already decided where he wanted to invest his pension fund and he wasn't seeking any input from HDIFA.*
- It wasn't a 'non standard' transaction. Emails between HDIFA and Mr B refer to the SIPP provider and not the investments about which Mr M now complains. He hadn't provided any evidence about the decisions concerning the actual investments he's complaining about.*
- Statements issued in 2013 and 2016 by the SIPP provider had been referred to but copies hadn't been provided to HDIFA and Meyado. If Mr M is relying on statements issued over four years after the advice was given, issues of causation arise, including if any intervening advice.*
- We'd wrongly disregarded information Mr M had given in the fact find – which he'd signed on 23 January 2012 and, in doing so, acknowledged that HDIFA would rely on what he'd said. He'd unequivocally categorised himself as having a high attitude to risk, confident in taking risks, willing to accept investment volatility and acknowledging that there might be dramatic fluctuations in the value of his investments. It was inappropriate to seek now to reinterpret the answers he'd given.*
- We hadn't requested information about the role of and advice given by Mr B. That failure had frustrated any possibility of us discharging our statutory responsibility under the Financial Services and Markets Act 2000 (FSMA) to reach a conclusion which is fair and reasonable in all the circumstances. Meyado pointed to emails showing that Mr M was dealing direct with Mr B about his pension investments. And HDIFA's letter of 25 January 2012 referred to Mr M's previous discussions with Mr B. We'd reached an adverse finding (against HDIFA) without properly considering Mr B's involvement. That was irrational, illogical and unfair.*
- There should be some apportionment of compensation. HDIFA was simply (to its knowledge) arranging the transfer because Mr B didn't have the necessary permissions. HDIFA had made it clear in writing that it wouldn't be advising on the underlying investments. It's irrational to say HDIFA should be held 100% liable for investments made outside its advice and on another party's advice. That incorrect conclusion goes back to our failure to consider Mr B's role.*
- Full documentary evidence as to advice given by Mr B about the investments was needed. Further consideration should be given to whether Meyado is the proper respondent to the complaint. The award against it should be significantly reduced.*

The adjudicator considered all Meyado had said. But he still thought the complaint should be upheld. He said Mr B was Mr M's initial contact. But Mr B had referred the matter to HDIFA. Mr M had every right to expect suitable advice from HDIFA's adviser. The suitability of the transfer could only be considered after proper consideration had been given to the proposed underlying investments. Whatever Mr M had discussed with Mr B should have been considered in terms of its suitability by HDIFA's suitably qualified adviser.

Meyado's position remained that there was no proper basis to hold it liable for any losses that might have arisen. Meyado also said it couldn't undertake a loss calculation without evidence as to the actual performance of the investments. At least two SIPP statements had been referred to but hadn't been disclosed. Meyado reiterated what it had said about Mr B's involvement.

As agreement couldn't be reached, the adjudicator told the parties that the complaint would be referred to an ombudsman for a decision. The adjudicator shared the 2013 and 2016 statements with Meyado.

Meyado said the January 2013 SIPP statement (about twelve months after the initial transaction) didn't indicate any loss had been suffered. It warned that investment returns could vary and Mr M should review things with his financial adviser. The November 2016 statement was about three and a half years after the advice. It wasn't clear what further statements and/or warnings had been given in the interim. There's no information about when or how the alleged losses actually arose. It's surprising for property assets to have a zero value.

Meyado has more recently referred to the High Court's judgment handed down on 18 May 2020 in the case of Adams v Options SIPP UK LLP (formerly Carey Pensions UK LLP) [2020] EWHC 1229 (Ch). The claimant had argued that the underlying investment had been manifestly unsuitable and the SIPP provider had a duty to advise on the underlying investment. The claim was dismissed. The court held that the SIPP provider didn't owe a duty to advise on the underlying investments and there was no obligation to refuse the claimant's instructions to transfer. Meyado argued the judgment was material to Mr M's complaint. Meyado said it would be making further submissions.

We've also made some further enquiries. We asked Mr M if he'd got any incentive payment in return for investing. We didn't think he'd have got one in connection with the plot of land but there might have been a payment for the SCS Farmland investment. Mr M confirmed he hadn't received any incentive payment. He sent us copies of statements for his two bank accounts for the twelve month period after the investment had been made. We've examined those and no payment is shown.

We also asked who'd recommended the investments. And for some more information about the plot of land.

Mr M's representative said the unregulated introducer had suggested the investments. About the plot of land I understand that Mr M already owned it. Once the SIPP was set up, he then sold the plot (for £31,000) to the SIPP. That's evidenced by the SIPP application form completed on 23 January 2012. It records that Mr M was the vendor/transferor of a property he wanted to transfer into the SIPP. A solicitor's name is given. On 22 February 2012 Mr M's bank account received a credit of £30,972.40 from that solicitor's firm, labelled as being in respect of the plot of land. I assume that was the payment of the purchase price less fees. The 2016 SIPP statement shows the value of the plot as £1,373.

The value for the SCS Farmland investment is shown as zero. I understand that a dividend of £2,635.10 was paid into the SIPP on 16 May 2013. But that was the only payment Mr M has received in respect of the investment. I've also seen a letter dated 19 January 2015 from the SIPP provider to Mr M. Amongst other things it shows the value of the SCS Farmland holding as £0. The letter says: 'Please note, you are currently invested within SCS Farmland that is a distressed investment and valued at zero.'

my provisional findings

Meyado initially said the complaint had been made too late. I've considered jurisdiction. But I agree with what the adjudicator said – that Mr M's complaint wasn't made too late. The complaint was made to Meyado within six years of the event complained of. That was the recommendation to transfer and/or the transfer which then took place. In either case Mr M's complaint was made within the primary six year period and we can consider it.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so I've taken into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice and what I consider to have been good industry practice at the relevant time. I've also paid attention to the relevant DISP (Dispute Resolution) rules.

was HDIFA's advice suitable?

I note all HDIFA said in its letter of 25 January 2012 about why it wasn't considering the proposed investments. But HDIFA should have known that it couldn't fulfil its regulatory duties to Mr M without considering the overall transaction. To determine if the transfer to a SIPP was suitable HDIFA had to understand what the SIPP was going to be invested in.

It's clear from the regulator's January 2013 alert (and further alerts issued in April 2014 and August 2016) that HDIFA couldn't just advise on the SIPP itself. The proposed underlying investments were part and parcel of the advice to transfer. HDIFA needed to consider their suitability too. If the investments weren't suitable then neither was the SIPP. That's the case whether the introduction came from an unregulated introducer or another regulated firm. I've discussed below Mr B's status.

I agree with the adjudicator that transferring to a SIPP wasn't suitable for Mr M. His pension fund was modest. Even if his attitude to risk was apparently high, he didn't have investment experience. It seems this was his only pension fund. I can't see that it was suitable for him to transfer from a personal pension with a major provider invested in a range of funds to a SIPP to invest in two property based investments, one of which was an unregulated, overseas and specialist fund.

That's especially the case as Mr M was taking an income and so any illiquidity would be a problem. The investment in SCS Farmland represented approaching 40% of Mr M's fund. Even if he was apparently prepared to take a high degree of risk, I can't see that investing that proportion of his fund in a niche, unregulated overseas fund with no track record was suitable for him. He didn't have the capacity for loss that could and did result.

Meyado has argued that HDIFA's advice didn't involve non standard assets – the transfer was to a SIPP with a regulated SIPP provider. But, as I've explained, HDIFA couldn't ignore what the SIPP was going to be invested in. The proposed investments were part and parcel of the transaction. HDIFA couldn't give suitable advice about the wrapper without taking into account the proposed underlying investments.

I think suitable advice would have been for Mr M to retain his existing personal pension.

the involvement of others

Meyado's main point is that due to the involvement of others it isn't fair and reasonable to say that all Mr M's losses flow from HDIFA's unsuitable advice and so Meyado should meet those losses in full.

DISP 3.6.1R requires me to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. I've also considered DISP 3.5.2R (which says I may inform the complainant that it might be appropriate to complain against some other respondent); DISP 3.5.3R (which deals with where we have two or more complaints from one complainant relating to connected circumstances); and DISP 3.6.3G (which says, if we have complaints against more than one respondent in respect of connected circumstances, I may determine that the respondents must contribute towards the overall award in the proportion that I consider appropriate). I agree that the involvement of other parties is a relevant factor.

But Mr M's complaint has been made against HDIFA. A conclusion that, despite the involvement of other entities, the complaint should be upheld against the party complained about, and that party should meet the consumer's losses in full, won't necessarily be unfair or unreasonable.

Meyado might argue that Mr M's losses arise from the investments and not the transfer or the SIPP itself. But if the transfer hadn't happened and the SIPP hadn't been set up, Mr M wouldn't have been in a position to invest as he did. On that basis HDIFA's role was instrumental.

And I don't think Meyado can argue that later advice would have changed things – at least in so far as the SCS Farmland investment is concerned. My understanding is that it has been illiquid throughout. Mr M couldn't have sold the investment and reinvested the proceeds in something more suitable even if he'd been later advised to do that.

HDIFA's letter of 25 January 2012 records that Mr M had been referred to HDIFA by Mr B and that Mr B didn't have the necessary permissions to undertake that type of business. Mr B has been described as an unregulated introducer. But I note from the declaration attached to HDIFA's letter of 25 January 2012 that another firm is mentioned and which I think might be a regulated firm. It's possible that Mr B worked for that firm. I note from the FCA register that Mr B doesn't appear to have been working in a regulated capacity in 2012 although he previously had done.

But, whatever the position and any advice given by other parties, Mr B had referred Mr M to HDIFA for advice. HDIFA should have advised Mr M properly on the overall transaction. HDIFA's role was pivotal, since the eventual investments were wholly contingent on the transfer taking place. HDIFA's advice that Mr M should transfer to a SIPP so he could invest as he did – in a plot of land and a high risk, unregulated, illiquid fund - was unsuitable. But for the transfer Mr M couldn't have invested as he did. Regardless of what, if any, investment advice had been given by others, HDIFA needed to consider the proposed investments too.

My starting point is to causation is that HDIFA's advice that Mr M transfer was unsuitable. So it is responsible for the losses he's suffered in transferring to the SIPP and investing as he did. That isn't wrong in law or irrational but reflects the facts of the case and HDIFA's pivotal part in the matter. HDIFA could have prevented the investments. Instead it facilitated them, having given unsuitable advice that Mr M transfer. He was only able to invest as he did because HDIFA's unsuitable advice 'unlocked' the funds held in his existing personal pension.

If Meyado considers that others had some responsibility in the matter it's presumably open to Meyado to pursue those other parties. I don't think Mr M would object, if Meyado met his losses in full, to assigning his rights to Meyado.

what would Mr M have done if HDIFA had given him suitable advice?

I've thought carefully about what Mr M would have done if HDIFA had given him suitable advice – that he shouldn't transfer to a SIPP. Whether someone would have gone ahead with a particular transaction in any event will depend on the particular situation.

In some other cases we've seen that substantial incentive payments were made in return for investing in an unregulated fund. But Mr M has confirmed he didn't get any payment and he's produced his bank statements to evidence that. So there's no suggestion that he was motivated by the promise of a tax free cash lump sum.

But Mr M's circumstances were different from other cases I've seen in that he already owned one of the investments which was then acquired by the SIPP – the plot of land.

I've seen some emails between Mr M and Mr B. It seems Mr M was in contact with Mr B in January 2012. There's an email from Mr M to Mr B on 20 January 2012. Mr M thanks Mr B for his quick response, refers to his 'poultry' pension funds and says he likes 'the idea of being able to move my land portfolio into my Pension fund to release capital which is locked up in the land.' Mr M also refers to some health issues which are concerning him and which make 'the resolution of the disposal of the land more pressing.' I can also see that, later on, when Mr M was returning all the documentation, he asked Mr B 'to proceed with all haste'.

I think those emails are significant. They show that Mr M was very interested in realising the value of the plot of land he already owned. As he said in his email, selling the plot to the SIPP allowed him to free up the capital value of the land. I think releasing the value of that asset was the main driver for the transfer to the SIPP.

In order to sell the plot of land and realise its value, Mr M would have needed to transfer to a pension vehicle – such as a SIPP - that allowed that type of direct property investment. His existing personal pension arrangement wouldn't have permitted the investment. Although, as I've said, I don't think HDIFA's advice to transfer to a SIPP was suitable, I think Mr M would have transferred in any event on the basis that it allowed him to release the value of the plot of land and which he was keen to do and as quickly as possible.

Further, and in any event, I don't see that Mr M has suffered any financial loss in respect of the plot of land. As I've said above, on 22 February 2012, Mr M's bank account was credited with £30,972.40 which was I understand the net proceeds of the sale of the plot. I assume that the sale price agreed (£31,000) was the commercial value of the plot. I don't think the SIPP provider could have permitted the transaction otherwise. And Mr M's had the use and benefit of the sale proceeds since 2012.

According to Mr M's 2016 SIPP statement the value of the plot had fallen very substantially and was then only worth £1,373. I don't know why that is. Or what its current value is. But given Mr M was apparently paid the full market value of the plot in 2012 I don't see he's suffered any financial loss. Mr M might argue that his SIPP has suffered a loss. But as he's the owner of the SIPP I don't think it would be right to treat any loss to the SIPP separately. And, in any event, if Mr M was always going to go ahead with the investment in 2012, regardless of any advice to the contrary, Meyado won't be responsible for any loss he's suffered as, even with suitable advice from HDIFA, Mr M would have done what he did anyway.

But I don't think the position is the same for the SCS Farmland investment. I can see why Mr M would've felt confident in going ahead with the sale of the plot of land to his SIPP, despite any advice to the contrary. Mr M already owned the plot. It was a tangible, physical asset. I think that's very different to a decision as to whether to invest in a fund with which he had no connection and about which he had no knowledge or experience.

In deciding whether to go ahead with that sort of investment he'd be guided by what he'd been told about the investment, its prospects and the associated risks. I think in that situation Mr M would have been dependent on advice and so he'd have been much more likely to heed any advice against investing because of the unregulated and high risk nature of the investment.

Mr M has said the SCS Farmland was suggested by Mr B. But, as I've explained, HDIFA had to take into account the proposed underlying investment too. It wasn't open to HDIFA to proceed on the basis that Mr M was dealing with Mr B about the proposed investments. If HDIFA didn't know what they were, HDIFA should have found out.

Mr M no doubt trusted Mr B. But, as things stood, and in the absence of any indication from HDIFA that what Mr B was proposing may not have been suitable, Mr M had no reason not to proceed with an investment in SCS Farmland. HDIFA should have said it couldn't recommend the transfer and the investment in SCS Farmland and explained why - because it was too risky.

If HDIFA had explained the unregulated and speculative nature of the investment and spelled out the risks that would have put into perspective what Mr M may have been told by others about the investment. I don't think it's reasonable to assume that Mr M would have ignored advice from HDIFA. I've explained why, despite any advice to the contrary, I think that Mr M would have gone ahead with the transfer to the SIPP and the investment in the plot of land. But, in my view, the same isn't true for investing in SCS Farmland. I think suitable advice from HDIFA would have made Mr M reconsider.

Meyado has queried the current value of that investment. I've referred above to the SIPP statements and the letter dated 19 January 2015 from the SIPP provider describing the SCS Farmland as a distressed investment. So I think it's clear the investment has zero value.

Meyado's comments about the court case

Meyado has referred to the case of Adams v Options SIPP UK LLP. Meyado did indicate that it wished to make further comments about the case. Meyado has had ample time to do so. I don't see that the case is relevant.

First it relates to a SIPP provider's obligations, whereas Mr M's complaint is made against his independent financial adviser. Secondly, the issue in the court case was the extent, if any, of the SIPP provider's obligations in an execution only transaction. Here HDIFA was providing regulated advice. I don't see there's anything in the Adams v Carey judgement which is obviously relevant to the present case.

fair compensation

My aim is awarding redress is to put Mr M as far as possible in the position he'd be in now if HDIFA had given him suitable advice and taking into account what I think Mr M would have done, had suitable advice been given. I'm limiting redress to the SCS Farmland investment. I think Mr M would have transferred to a SIPP in any event (to facilitate the purchase of the plot of land). I'm not making any award in relation to the SIPP itself or in respect of any ongoing SIPP fees on the basis that Mr M would have transferred to the SIPP in any event.

To that end, Meyado should.

- *Compare the performance of Mr M'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.*
- *Pay any interest set out below.*
- *If there is a loss, Meyado should pay it into Mr M's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.*
- *If Meyado is unable to pay the compensation into Mr M's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.*
- *The notional allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age. For example, if Mr M 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 Mr M would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.*
- *Details of the calculation should be provided to Mr M in a clear, simple format.*
- *Income tax may be payable on any interest paid. If Meyado considers it is required by HMRC to deduct income tax from that interest, it should tell Mr M how much it has taken off and give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.*
- *Pay Mr M £100 compensation for the distress and inconvenience he's suffered.*

<i>investment name</i>	<i>status</i>	<i>benchmark</i>	<i>from ("start date")</i>	<i>to ("end date")</i>	<i>additional interest</i>
<i>SCS Farmland investment</i>	<i>still exists</i>	<i>FTSE UK Private Investors Income Total Return Index</i>	<i>date of purchase</i>	<i>date of settlement</i>	<i>not applicable</i>

actual value

This means the actual amount payable from the investment at the end date. If, at the end date, the investment is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the investment. So, the actual value should be assumed to be nil to arrive at fair compensation. Meyado 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 above.

If Meyado is unable to purchase the investment the actual value should be assumed to be nil for the purpose of calculation. Meyado may wish to require that Mr M provides it with an undertaking to pay Meyado any amount he 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. Meyado 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. 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 Meyado totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I've chosen this method of compensation because:

- *Mr M wanted capital growth and was willing to accept some investment risk.*
- *The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.*
- *Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr M's circumstances and risk attitude.*

my provisional decision

I uphold the complaint. Meyado Private Wealth Management London Limited must redress Mr M as I've set out above.

Lesley Stead
ombudsman