complaint

Mrs A complains about advice given by HDIFA (then part of Berkshire Financial Advisers Ltd) to transfer the value of her deferred benefits in a former employer's pension scheme, a Section 32 policy and a personal pension to a self invested personal pension (SIPP) to invest in an unregulated investment.

Meyado Private Wealth Management London Ltd (Meyado) is now responsible for the advice HDIFA gave.

background

I've considered Mrs A's complaint before. I issued a provisional decision on 29 July 2019. I've summarised the findings I reached below. But I'll first recap the facts and how our investigation progressed.

Mrs A's pension arrangements included deferred benefits in a former employer's final salary scheme. She was referred to Firm A (an appointed representative of a regulated firm) by an unregulated introducer. But Firm A's adviser didn't have the necessary permissions to advise on final salary pension transfers so Mrs A was referred to HDIFA.

In March 2012, following advice from HDIFA, Mrs A transferred her Section 32 policy and her personal pension plan to a SIPP (in total £15,883.89). And in April 2012 she transferred the value of her deferred benefits in her former employer's scheme (£86,197.84) to the SIPP. Later that month £94,997.50 was invested in carbon credits.

In 2016 Mrs A, through her representative, complained to Meyado. It didn't uphold the complaint. Mrs A asked us to look into it.

Our adjudicator upheld the complaint. She said HDIFA had known that Mrs A intended to invest in an unregulated investment (White Sands, a resort development in Brazil) and HDIFA had recommended a SIPP to facilitate that investment. HDIFA should have considered the suitability of the proposed investment. The adjudicator referred to the regulator's alert issued in January 2013. She said the investment carried significant risks. She didn't think Mrs A had the capacity to take the level of risk involved and which meant she could lose a high proportion of her pension savings. The investment was unsuitable and HDIFA should have advised Mrs A against investing. The adjudicator thought Mrs A would have followed that advice.

Meyado didn't agree that the complaint should be upheld. In summary it said our analysis of the factual matters was flawed; there was an absence of evidence about Firm A's role; it wasn't fair and reasonable to hold HDIFA liable in full when the money was invested on the advice of someone else; and HDIFA had no control over but was being blamed for Mrs A's investment decisions.

We then made some further enquiries of Mrs A, including about the change to the proposed investment – the paperwork referred to White Sands but Mrs A had actually invested in carbon credits. We also asked if she'd received any incentive payment.

Mrs A told us that she'd been introduced by a business contact to the idea of moving her pension fund and investing in a hotel/property option in Brazil. She'd been self employed since 2009 and she was concerned about her pension as no further contributions were being

made. She said she was vulnerable to the suggestion that good returns could be made on options outside the UK where low interest rates had impacted on pensions. And she liked the idea of investing in property as she'd benefitted from that in the UK.

At some point when the SIPP was being set up she was given an alternative investment option – carbon credits. She didn't know anything about that but was told the government was promoting them '*as the way forward*' and an environmentally friendly investment. And the potential returns were higher than the property investment. She now thought she'd been foolish to believe the '*sales pitch'*. But she said it had all seemed so positive and she thought the involvement of a regulated adviser meant it had their '*seal of approval'*.

She confirmed that she hadn't received any incentive payment. The bank statements she produced to us didn't show any payment.

Our adjudicator wrote to the parties explaining that, although the actual investment was different – carbon credits and not White Sands – she still thought the complaint should be upheld. She also set out updated redress, following the regulator's revised guidance and to include Mrs A's Section 32 policy and personal pension plan.

In the provisional decision I issued on 29 July 2019 I upheld the complaint. In brief my findings were:

was HDIFA's advice suitable?

- HDIFA couldn't fulfil its regulatory duties to Mrs A 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. HDIFA knew from the outset that Mrs A's intention was to invest in an unregulated investment. It appeared that HDIFA had been told the particular investment was White Sands but Mrs A actually invested in carbon credits. To be able to advise about the transfer properly and in accordance with the rules, HDIFA had to understand the risks of the proposed investment, whether it was White Sands or carbon credits.
- The regulator's alert 18 January 2013 alert makes it clear that HDIFA couldn't just advise on the SIPP itself. The underlying investments were part and parcel of the transfer. HDIFA needed to consider their suitability too. And even if the introduction had come from another regulated firm and HDIFA had made it clear that it wasn't giving advice on the underlying investments.

what would suitable advice have been?

- As per COBS (Conduct of Business Sourcebook)19.1.6G, HDIFA should have started by assuming that the transfer of Mrs A's defined benefits in her former employer's scheme wouldn't be suitable. Further examination would have confirmed that.
- Investing virtually all of Mrs A's pension funds (her defined benefits and her two other pensions) in an unregulated investment – whether it was White Sands or carbon credits – wasn't suitable for Mrs A. The regulator has said, about such investments, that they are high risk and generally considered unsuitable for the vast majority of retail customers. And, even if that sort of investment might be considered suitable – perhaps for a high net worth or sophisticated investor – that would only usually be for a proportion of the investor's funds.

- The assessment of Mrs A's attitude to risk wasn't credible. It was based on answers she gave to a generic questionnaire. What she'd said hadn't been tested. She'd said she had a '*fair degree*' of knowledge and understanding about investments. But she was apparently looking for '*exposure to extreme markets*' which would usually require a much greater level of expertise and experience. Mrs A may have had some capacity for loss. But I didn't think she'd have been comfortable with the possibility that she might lose her entire investment.
- Suitable advice would have been that Mrs A didn't transfer and that she retained her existing pension arrangements.

what would Mrs A have done if HDIFA had given her suitable advice?

I hadn't seen anything to suggest Mrs A would have gone ahead anyway (presumably as an insistent client) if HDIFA had advised her against transferring to SIPP and investing in an unregulated investment. She'd been referred to HDIFA for specialist advice. I thought she'd have placed significant weight on what HDIFA said and any advice that she shouldn't do what she was planning. I noted what she'd said about regretting falling for the '*sales pitch*' in deciding to invest in carbon credits. HDIFA should have explained to Mrs A that what she was planning to do was very risky and could mean the loss of her entire pension fund. That would have counterbalanced any overly positive views expressed by others and made Mrs A reconsider. I didn't think she'd have gone ahead with the transfers.

the role of Firm A and others

- I acknowledged that HDIFA wasn't the only party involved. Firm A was a regulated business too. As is the SIPP provider. I recognised that what other parties did (or didn't do) may have impacted on what happened and that it may be right to take that into account in deciding who was responsible for Mrs A's losses.
- But Mrs A's complaint had been made against HDIFA. So I'd concentrated on what HDIFA did (or didn't do) and, in particular, if the advice it gave Mrs A was suitable. Meyado might argue that Mrs A's losses arose from the investment and not the transfers or the SIPP itself. But if the transfers hadn't happened and the SIPP hadn't been set up, Mrs A wouldn't have been in a position to make the investment, whether in White Sands or carbon credits. So HDIFA's role was instrumental.
- Firm A may have given advice about the White Sands and carbon credits investments. And unregulated advice may have been given too. But, even if Firm A (or another party) had advised Mrs A to invest in White Sands or carbon credits, that wouldn't make any difference, given that Mrs A wouldn't have been able to invest as she did if she hadn't transferred to a SIPP on advice from HDIFA.
- Once the investment had been made Mrs A couldn't have disinvested. HDIFA can't avoid responsibility for its unsuitable advice by saying that another party should have reviewed things later and told Mrs A she should invest differently. The investment had been illiquid throughout. It wasn't the case that Mrs A's losses had arisen a long time after her investment was made. It was impossible to know exactly when her losses arose, as opposed to when it became apparent to her that she may have lost her money. Depending on how the investment was run her losses may have arisen relatively early on. But what was more important was if the losses arose directly from HDIFA's unsuitable advice. I thought they did.
- I set out what I considered would be fair compensation.

responses to my provisional decision

Mrs A's representative didn't wish to comment further. Meyado did. In summary Meyado said:

- Mrs A's decision to open a SIPP and transfer the value of her deferred pension benefits into it was made with assistance of or advice from a number of entities, not just HDIFA. I'd continued to ignore the material involvement of others.
- I'd been unwilling to look into the relationship between Mrs A and Firm A – the business which had advised her to invest in the illiquid investments at the heart of her complaint. I'd deliberately excluded relevant matters. That suggests, where multiple entities are involved (regulated or otherwise), we'll ignore all but the one at which the complaint is directed and hold it liable, irrespective of where responsibility properly lies. And when a complainant may not have a true understanding of the roles and responsibilities of the entities they dealt with. That's contrary to our obligations under the Financial Services and Markets Act (FSMA) and unjust to one or more parties.
- That approach had handicapped Meyado. Key documents and evidence from Firm A hadn't been made available. Our enquiries are at best incomplete. Meyado's ability to defend itself had been impaired.
- That had led to a fundamental error as to causation – that without Meyado's involvement, the investments and Mrs A's losses, couldn't have happened. That oversimplified the true position and failed to take into account Mrs A's decision to invest and that it is the investment, not the SIPP, which is the primary cause of her losses.
- We'd assumed Mrs A was an inexperienced investor. That's contrary to how she described herself and her investment profile. It's irrational and ignores evidence in favour of assumptions.

Meyado also highlighted sections of my provisional decision.

- I'd commented on Mrs A's reasons for wanting to move her pension. She'd made it clear she wanted higher returns than a 'traditional' pension, she was keen on property given her past experience, and carbon credits was also recommended (not by HDIFA) as a possible investment. In my provisional decision the providers of such advice were ignored in favour of a convenience approach.
- I'd referred to Mrs A's '*entire pension fund*'. But she had significant property assets and her pension, while an important part of her retirement planning, wasn't (as my decision implied) her sole source of intended retirement income.
- HDIFA took great care to remind Mrs A she should take advice about what investments she wished to make, highlighted that she was to seek that advice from Firm A and made sure her initial investment was in cash – which protected her assets and gave her time to properly consider her investment thinking on the basis of the advice HDIFA reasonably believed she was going to seek.
- The regulator's alert deals with the situation where an adviser takes on a client from an unregulated introducer. I'd acknowledged that HDIFA's situation was different but I hadn't *'faced up'* to that key difference or attempted to '*grapple with its significance*'.
- The alleged failings in HDIFA's fact finding were based on unsubstantiated assumptions about Mrs A's behaviour and understanding of the process more suited to a wholly inexperienced retail client.
- I'd acknowledged that what other parties did (or didn't do) may have impacted on what happened and that it might be right to take that into account. But I'd then failed to do so, without offering any justification. The failure to engage with Firm A's role undermines the whole thrust of the decision. Saying I'd concentrated on what HDIFA

did (or didn't do) amounted to a refusal to consider all the circumstances. And saying that we already know what Firm A did – introduce Mrs A to HDIFA – understates and misrepresents Firm A's role and renders the decision irrational.

- I'd said HDIFA might not be responsible if Mrs A made a particular investment sometime later and without HDIFA's knowledge. That's precisely what Mrs A did – she chose to invest in carbon credits instead of White Sands.
- Meyado expressed its sympathy for Mrs A. She'd lost a significant sum as a result of investing on the advice of others in investments which had failed her. But I'd failed to properly appreciate causation and reliance issues. Based on the information I'd considered – or chosen not to consider – the decision unfairly placed the entire responsibility for Mrs A's losses on Meyado and so didn't comply with our obligations under FSMA.

Meyado has more recently made some further representations about 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). 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 Mrs A's complaint. Meyado said it would be making further submissions.

my findings

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. And, as set out below, I've paid attention to the relevant DISP rules. I've also carefully considered Meyado's comments as summarised above. I'm sorry that it has been some time since I issued my provisional decision. But I don't think anything has changed or that my views and reasons why I am upholding the complaint are going to come as any surprise to Meyado.

<u>was HDIFA's advice suitable?</u>

There's no dispute that HDIFA recommended that Mrs A transfer the value of her deferred benefits in her former employer's defined benefit pension scheme and her two other pension arrangements to a SIPP.

HDIFA couldn't fulfil its regulatory duties to Mrs A 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. HDIFA knew from the outset that Mrs A intended to invest in an unregulated investment. HDIFA may have understood that the planned investment was White Sands and not carbon credits. But both investments were unregulated and higher risk.

The regulator's alert dated 18 January 2013 makes it clear HDIFA couldn't just advise on the SIPP itself. The underlying investment was part and parcel of the transfer. HDIFA needed to consider its suitability too. The alert post-dated HDIFA's advice. But the alert didn't follow any changes in legislation or the COBS rules. It was a reminder to advisers as to their existing obligations. It was issued because it had come to the regulator's notice that some firms were adopting advice models which didn't comply with the existing obligations and so there was a potential for consumer detriment.

HDIFA says its position was different to that envisaged in the alert. In particular the referral came from another regulated firm, not an unregulated introducer. But HDIFA should have known it couldn't, in accordance with its regulatory obligations, limit its advice even if Mrs A had accepted that advice would be given on that basis. I don't think White Sands or carbon credits was a suitable investment for Mrs A. On that basis the transfers were unsuitable too.

Further, and in any event, I don't think Mrs A should have been advised to give up valuable guaranteed benefits in her former employer's pension scheme – the transfer value paid in respect of those benefits formed the bulk of the money paid into the SIPP. As I said in my provisional decision, as per COBS 19.1.6G, HDIFA should have started by assuming the transfer of those benefits wouldn't be suitable. Further examination would have confirmed that.

I maintain that the assessment of Mrs A's attitude to risk – that she was an '*adventurous, even speculative investor*' – wasn't credible. HDIFA shouldn't have simply accepted that she was apparently prepared to take a very high level of risk without exploring that further with her, including whether she had the capacity for loss that could result.

Her deferred benefits in her former employer's scheme plus her other two modest pension arrangements represented her entire pension provision. She was self employed and not contributing to any pension arrangement. I note what HDIFA has said about Mrs A being able to rely on capital or income from her rental property in retirement. I recognise that and I did acknowledge in my provisional decision that Mrs A may have had some capacity for loss. But I maintain she shouldn't have been advised to expose her pension savings to the level of risk that investing in a single, high risk unregulated investment, whether White Sands or carbon credits, represented. I note that Mrs A worked in financial services and so may have had some knowledge of investments. But I can't see that she had any personal experience or history of investing in non mainstream, unregulated funds.

Mrs A should have been advised against transferring to a SIPP and investing any of her pension funds in White Sands or carbon credits. HDIFA's advice was unsuitable.

Meyado hasn't argued that the advice was suitable. Its position is that due to the involvement of others - Firm A - it isn't fair and reasonable to hold it responsible for Mrs A's losses in full. It could be argued that Mrs A's losses stem mainly from the failure of the investment. And, given the funds transferred were initially held in cash, no loss had resulted by the time HDIFA's role ceased. But HDIFA knew that, ultimately, the proposed investment was in an unregulated investment. The money was only available to invest because HDIFA had recommended the transfers and facilitated them. Mrs A may have signed to confirm she understood the investments may be high risk and that responsibility didn't rest with HDIFA. But that didn't absolve HDIFA from its responsibility to consider the investments too. It's unfortunate if HDIFA misunderstood the extent of its regulatory duties. But if, as a result of failings on HDIFA's part, Mrs A has suffered loss, HDIFA is responsible.

<u>other parties' involvement</u>

We're governed by the Dispute Resolution (DISP) rules set out in the regulator's handbook. 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. DISP 3.5.2R, DISP 3.5.3R and DISP 3.6.3G are relevant too. I agree the involvement of other parties is a relevant factor. In considering Mrs A's complaint, I've taken into account that HDIFA wasn't the only party

involved. Firm A was a regulated business too. As was the SIPP provider. And I recognise what other parties did (or didn't do) may have impacted on what happened and that it may be right to take that into account in deciding who is responsible for Mrs A's losses. But a conclusion that, despite the involvement of other (regulated) 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.

It isn't the case, as Meyado has suggested, that who a complainant may think is responsible (whether on legal advice or otherwise) is determinative. Our investigation and determination of a complaint against HDIFA reflects its central role. It isn't irrational but consistent with the circumstances of the case.

Meyado may argue that Mrs A's losses arise from the investment and not the transfers or the SIPP itself. But if the transfers hadn't happened and the SIPP hadn't been set up, Mrs A wouldn't have been in a position to make the carbon credits investment. On that basis HDIFA's role was instrumental.

Meyado suggests we should get further information from Firm A. It introduced Mrs A to HDIFA. As I've acknowledged, it's possible that Firm A gave advice about the White Sands and/or the carbon credits investment. But, as I've also said, even if Firm A did give advice, that wouldn't change my view about why HDIFA is responsible. HDIFA thought it could limit its advice to the transfers and the SIPP. But, as I've explained, its understanding was wrong. HDIFA needed consider the proposed investment too. Even if Firm A (or indeed any other entity that may have been involved) had advised Mrs A, and in the strongest possible terms, to invest in White Sands and/or carbon credits, my decision would still have been the same.

Mrs A's pension provision included deferred benefits in a former employer's defined benefit scheme. Firm A wasn't competent to advise on transferring those benefits. Firm A didn't have the necessary regulatory permissions. Firm A had to refer the matter to HDIFA. HDIFA had the requisite permissions and expertise and responsibility to advise Mrs A properly on the overall transaction. Its role was pivotal, since the eventual investment was wholly contingent on the transfer taking place. HDIFA's advice that Mrs A should transfer to a SIPP so that she could invest in a high risk, unregulated, illiquid investment was unsuitable. But for the transfer Mrs A couldn't have invested as she did.

HDIFA advised Mrs A to transfer. My starting point as to causation is that HDIFA gave unsuitable advice. So it is responsible for the losses Mrs A suffered in transferring to the SIPP and investing in carbon credits. 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 investment. Instead it facilitated it, having given unsuitable advice that Mrs A transfer.

HDIFA gave the transfer advice and it is responsible for the losses which have been incurred as a result. Mrs A was only able to invest in carbon credits because HDIFA's unsuitable advice unlocked the money from her former employer's pension scheme and the other two arrangements. The transfers themselves were unsuitable – and Meyado hasn't argued otherwise.

<u>responsibility for underlying investments</u>

HHDIFA couldn't advise on the transfers to a SIPP without considering the intended underlying investments. So, in my view, HDIFA is responsible for the underlying investment. It isn't the case that HDIFA had no control over but is being blamed for Mrs A's investment

decisions. The situation is that she was referred to HDIFA for specialist advice about if she should give up valuable deferred defined benefits and invest in a high risk, speculative investment. HDIFA gave her unsuitable advice and it is responsible for the consequences of that. I don't see that HDIFA can say that Mrs A's investment strategy should have been reviewed over the years. My understanding is that the carbon credits investment was illiquid throughout. Any later advice to invest differently wouldn't have made any difference.

compensation

I've thought about if it's fair and reasonable for Meyado to compensate Mrs A in full. I don't agree that HDIFA was '*simply arranging the transfer*'. As I've explained, HDIFA advised on whether Mrs A should transfer. If that advice was unsuitable I don't see why HDIFA shouldn't be responsible for Mrs A's losses in consequence of that unsuitable advice.

Mrs A couldn't have invested as she did if she hadn't transferred. And my view (as discussed below) is that she wouldn't have transferred if HDIFA had given her suitable advice. I don't think my proposed redress is wrong in law or irrational. I think it reflects the facts of the case and HDIFA's pivotal part in the matter: HDIFA was in a position to prevent the transfer. Instead it facilitated it, having given unsuitable advice that Mrs A should transfer. I don't think it's unfair or unreasonable to say it is responsible for Mrs A's losses. If Meyado considers that others have some responsibility in the matter, it's presumably open to Meyado to pursue those other parties. I don't think, if Meyado meets Mrs A's losses in full, she would object to assigning her rights to Meyado.

what would Mrs A have done if HDIFA had given her suitable advice?

As I've said my starting point as to causation is that Meyado gave unsuitable advice to transfer and so is responsible for the losses which flow from the transfer including, for the reasons I've explained, Mrs A's investment losses. But I've recognised there's an argument that Mrs A may have gone ahead in any event and even if Meyado had advised her against.

I've seen in other cases that substantial incentive payments were offered and made in return for investing. We've asked Mrs A about that. She's told us that she didn't get any incentive payment. We asked her to produce bank statements to evidence that no payment was received. She did that. From what we've seen she didn't receive any incentive payment. So that wouldn't have been a motivating factor in any decision Mrs A might have made to go ahead, even if HDIFA had advised her against.

It doesn't seem that Mrs A was actively looking to do anything with her pension arrangements at the time. It all appears to have come about following a discussion with a former business associate. Sometimes the influence of a close friend or relative might be paramount. But here there's nothing to suggest that sort of relationship here. I don't think, from what Mrs A has told us, that she was particularly committed to the investment, whether White Sands or carbon credits. Given she'd invested in property in the UK, a property investment (albeit overseas and in a resort development) may have seemed attractive to her and something she had some, albeit not direct, experience in. I can see she might have been interested in that sort of venture. But I'm not sure that interest would have been maintained if HDIFA had considered the investment and explained that it couldn't recommend it as it was too high risk, specialist, with no track record and unregulated – with the possibility that Mrs A might lose her entire investment.

I'm not sure why White Sands wasn't in the end available and why carbon credits was suggested instead. From what Mrs A has said the carbon credits investment was 'sold' to her but I'm not sure who did that – I'd suspect it might have been an unregulated party, although, as I've recognised that Firm A might have given advice about the investment too. Mrs A now feels she was foolish to accept what was said and invest so I'd assume whoever did the selling was persuasive and made the investment seem a good prospect. But, again, if HDIFA had told Mrs A she shouldn't transfer to invest in an unregulated fund (whether White Sands or carbon credits), I don't see that she'd have simply ignored that advice and gone ahead anyway.

Mrs A had to get regulated advice from a firm that had the necessary permissions to advise on defined benefit transfers. Firm A didn't. So the transaction – the transfers and the investments – hinged on HDIFA's advice. If HDIFA had given suitable advice, HDIFA would have advised Mrs A against transferring. HDIFA would also have made it clear why it was unable to advise Mrs A to transfer. HDIFA should have considered the investment and spelled out the risks. That would have countered any overly positive views expressed by any other party. If HDIFA had done that and told Mrs A it didn't recommend the transfers I think she'd have thought about whether what she'd been told by others about what she should do with her pension funds was such a good idea after all.

Mrs A had been referred to HDIFA for specialist advice because the other parties involved couldn't advise. HDIFA were the experts and had the requisite skill and experience and regulatory permissions to advise on defined benefit transfers. I think Mrs A would have placed significant weight on what HDIFA said. I don't think that it's unreasonable or irrational to say that Mrs A would be more likely than not to have heeded advice given by a specialist adviser. I think most people, in that sort of situation, would tend to pay attention to what a properly qualified and experienced adviser said.

If HDIFA had said Mrs A shouldn't go ahead and if she'd have wanted to proceed anyway, HDIFA would have needed to have treated her as an insistent client. HDIFA may not have been willing to act on that basis. Even if it was, following the correct procedure for insistent clients would have meant that HDIFA would have had to discuss with Mrs A why she wanted to go ahead despite specialist advice against and record her reasons. I think that would have further concentrated Mrs A's mind on whether it was really advisable to transfer and give up the security of a final salary arrangement in favour of benefits that were dependent on investment returns from a high risk, unregulated and speculative fund.

And, if HDIFA wasn't prepared to process the transfer on an insistent client basis, Mrs A would have needed to have found another adviser who presumably would have given her suitable advice – that she shouldn't transfer.

On balance I think it's more likely than not that, had HDIFA advised Mrs A not to transfer to a SIPP, that she'd have followed that advice and retained her existing pension arrangements.

I've considered Meyado's more recent comments. Meyado has referred to the case of Adams v Options SIPP UK LLP (formerly Carey Pensions UK LLP) [2020] EWHC 1229 (Ch). Meyado did indicate that it wished to make further comments about the case. We've allowed Meyado ample time to do so. But we have to be fair to both parties so I don't think it's unfair or unreasonable to proceed in the absence of any further detailed submissions about the case and when I don't see that the case is relevant.

First it relates to a SIPP provider's obligations whereas Mrs A's complaint is made against her 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. Further, the court case involved a personal pension arrangement. In the present case HDIFA's advice was, in the main, in respect of the transfer of the value of Mrs A's benefits in her former employer's defined benefits scheme. I don't see there's anything in the Adams v Carey judgement which is obviously relevant to the present case.

I'm upholding Mrs A's complaint. So I need to set out how Meyado should redress her which is as I said in my provisional decision and repeated here.

fair compensation

My aim in awarding redress is to put Mrs A as far as possible in the position she'd be in now if HDIFA had given her suitable advice. I think Mrs A would have retained her deferred benefits in her employer's scheme and not transferred her Section 32 policy or her personal pension plan. The redress I've set out below essentially requires Meyado to compare what Mrs A would have had with what she's got in her SIPP.

My understanding is that the SIPP was closed on 24 August 2016 – all investments had a nil value and there was no cash left. On that basis a nil value should be assumed. And no award for future SIPP fees needs to be made.

Ideally redress should be paid into a suitable alternative pension arrangement or failing that direct to Mrs A. In that case, and as I've said below, an adjustment for tax should be made.

what should Meyado do?

Mrs A's final salary benefits

Meyado should undertake a redress calculation in line with the revised methodology issued by the Financial Conduct Authority in October 2017. This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions published at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate actuarial services provider promptly following receipt of notification of Mrs A's acceptance of the decision.

Meyado may wish to contact the Department for Work and Pensions (DWP) for Mrs A's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the employer's scheme on Mrs A's SERPS/S2P entitlement.

The compensation in respect of any loss should if possible be paid into a suitable pension arrangement. The payment should allow for the effect of charges and any available tax relief. It shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance. If payment into a pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs A as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid.

For example, if Mrs A wouldn't yet have taken a tax-free cash sum from the employer's

scheme, 25% of the future loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation must where possible be paid to Mrs A within 90 days of the date Meyado receives notification of her acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Meyado to pay Mrs A this part of the compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from the DWP may be added to the 90 day period in which interest won't apply.

Mrs A's other benefits

Meyado should:

(1) Obtain the notional transfer value of Mrs A's two pension plans if they hadn't been transferred to the SIPP and assuming the funds remained the same.

(2) If obtaining a notional value is difficult then the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index) should be used.

That index is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return. Although it is called an 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 Mrs A's circumstances and risk attitude (properly assessed). It should be assumed that any contributions or withdrawals that have been made would still have occurred and on the same date

(3) Obtain the current transfer value of Mrs A's SIPP – as I've said above this is zero.

(4) Pay an amount into a suitable pension arrangement for Mrs A so that the transfer value is increased to equal the value calculated in (1). This payment should take account of any available tax relief and the effect of charges.

(5) The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

(6) If it is not possible to pay the compensation into the SIPP (or has protection or allowance implications) it should be paid directly to Mrs A as a lump sum after making a deduction of 15%. The payment would otherwise have been used to provide pension benefits, 25% of which would be tax free and the rest would have been taxed according to her likely tax paying status in retirement - presumed to be 20%. And so the 15% deduction adequately reflects this.

(7) Pay Mrs A £300 for the trouble and upset caused for the loss of her pension benefits.

(8) Simple interest should be added to the calculated losses at the rate of 8% gross a year from the date of calculation until the date of payment.

my final decision

I uphold Mrs A's complaint. Meyado Private Wealth Management London Ltd must redress Mrs A as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 14 November 2020.

Lesley Stead
ombudsman