complaint

Mr T has complained about advice given by HDIFA (then part of Berkshire Financial Advisers Limited) to transfer the value of his deferred benefits in a former employer's occupational pension scheme and a personal pension to a self invested personal pension (SIPP) to invest in an unregulated investment.

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

background

I've considered Mr T's complaint before. I issued a provisional decision on 28 October 2020. I've summarised the findings I reached below. But I'll first recap the facts and how our investigation has progressed.

Mr T had deferred benefits in a former employer's final salary pension scheme. He was referred to a firm I'll call Firm A (an appointed representative of a regulated firm) by an unregulated introducer. Firm A didn't have the necessary permissions to advise on final salary pension transfers. So Mr T was referred to HDIFA.

In January 2012, following advice from HDIFA, Mr T transferred £20,130.20 from his personal pension to SIPP. And on 15 March 2012 £16,061.50 was invested in carbon credits. On 1 May 2012 a transfer value of £12,158 was paid from Mr T's former employer's scheme. And on 30 May 2012 Mr T invested a further £10,998 in carbon credits.

In March 2016 Mr T complained to Meyado that he'd been given unsuitable advice. Meyado rejected his complaint. Mr T referred his complaint to us.

Our adjudicator upheld the complaint. In summary he said Mr T's former employer's scheme had valuable guaranteed benefits. The impact of the SIPP charges on the critical yield hadn't been fully explained. The suitability report recommended leaving funds in cash until an investment objective had been decided. But, with no investment recommendation, HDIFA couldn't be satisfied the transfer was suitable. The carbon credits investment had inherent liquidity risks and wouldn't be suitable for most retail investors. There was no evidence that Mr T was made aware of the risks in transferring his pension to a SIPP to invest in an unregulated product. He had no previous experience of higher risk investments and didn't have the capacity to incur a total loss of all his pensions.

Meyado didn't agree that the complaint should be upheld. It said the adjudicator's reasoning and conclusions were flawed. Mr T had said he'd been advised by someone I'll call Mr C. We'd not made proper enquiries into Mr C's involvement. And Firm A was involved before HDIFA. Mr T had made his investment decision either prior to or following HDIFA's involvement. HDIFA had justifiably relied on the pension review questionnaire Mr T signed. It confirmed his high degree of investment knowledge, that he'd accept high volatility and that he was an adventurous/speculative investor. And that the fund was to be held in cash with Firm A to provide investment advice. HDIFA's involvement had ceased in January 2012 when the SIPP was set up. The carbon credits investment was made later. HDIFA wasn't aware Mr T intended to invest in carbon credits. A Dubai property fund had been mentioned.

Meyado also said that we hadn't properly investigated Firm A's involvement or obtained documentation from Firm A. HDIFA was simply arranging the transfer (because Firm A didn't have the relevant permissions) and had made it clear it wouldn't be advising on the underlying investment. It wasn't fair and reasonable (but irrational) to hold HDIFA 100% liable for the fact that, on another party's advice, the sums transferred were then invested in carbon credits. Meyado didn't argue that transferring Mr T's accrued benefits to invest in carbon credits was appropriate. But, properly viewed, HDIFA's recommendation was to move Mr T's benefits to a SIPP. It was the separate decision to invest in carbon credits which caused the loss.

We made some further enquiries of Mr T. We were aware that in some cases investors had received incentive payments. Mr T told us that he'd been introduced to Mr C by his then partner who Mr C was helping with a re mortgage. After Mr T had met him a few times Mr C asked about Mr T's pensions and reinvesting them. Mr C said SIPPs were new to the market and if Mr T transferred he'd get a tax free sum - 20% to 25% was mentioned. Mr T says he was told SIPPs were safe, growth was good and at worse he wouldn't lose what he'd transferred. Mr C then introduced Mr T to Firm A who in turn referred him to HDIFA.

Documents were sent to him, marked where he needed to sign. On reading over everything it all seemed in order. He was told, once the transfer was completed, the lump sum could be paid. He was asked for his bank details and told a different account, not his own, should be used, for tax reasons. He used his partner's bank account. He can't recall the exact amount but thinks it was between £4,000 and £5,000. He can't now get the details as he's no longer on good terms with his ex partner. Some of the money was spent on a car which cost about £2,500 which his ex partner kept when they split up.

Meyado had 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) [2020] EWHC 1229 (Ch). The claimant in that case 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 T's complaint. Meyado said it would be making further submissions.

In the provisional decision I issued on 28 October 2020 I upheld the complaint. In brief my main findings were:

was HDIFA's advice suitable?

- HDIFA couldn't fulfil its regulatory duties to Mr T without considering the overall transaction. To determine if the transfers to a SIPP were suitable HDIFA had to understand what the SIPP was going to be invested in.
- Meyado had said that HDIFA didn't know that Mr T intended to invest in carbon credits. But the referral process record dated 22 October 2011 said the introducer was Firm A and the reason for the transfer was to buy a specific investment – carbon credits. And, even if HDIFA had thought the planned investment was a Dubai property, that would raise similar concerns as to the unregulated nature of the investment.
- The regulator's 18 January 2013 alert makes it clear that HDIFA couldn't just advise on the SIPP itself. The underlying investment was part and parcel of the advice to transfer. HDIFA needed to consider its suitability too. 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 investment. And notwithstanding that Mr T had signed the investment application form to say he'd not received any advice about the proposed investment and the decision to invest was solely his responsibility. HDIFA should have known it couldn't, in accordance with its regulatory obligations, limit its advice even if Mr T apparently accepted advice would be given on that basis.
- Carbon credits wasn't a suitable investment for Mr T. On that basis the transfers were unsuitable too.

what would suitable advice have been?

- As per COBS 19.1.6G, HDIFA should have started by assuming the transfer of Mr T's defined benefits wouldn't be suitable. Further examination would have confirmed that.
- I noted what Meyado had said about Mr T having signed the pension review questionnaire. But I hadn't seen anything to suggest he was really an experienced or knowledgeable investor. His financial circumstances were relatively modest. He was a member of his current employer's pension scheme. But that didn't mean he could afford to take a significant level of risk with his two other pension arrangements.
- The assessment of Mr T's attitude to risk – that he was an '*adventurous, even speculative investor'* wasn't credible. A risk assessment completed on 12 October 2011 suggested he was a medium or slightly higher risk investor. That apparent inconsistency should have been explored, including if he had the capacity for loss that might result from taking an adventurous or speculative approach.
- The risks associated with the investment were considerable. It was unregulated. I referred to what the regulator had said about that type of investment – that it was high risk and unlikely to be suitable for the vast majority of consumers. And then usually only for a proportion of an investor's funds. Here virtually all of Mr T's SIPP fund was invested in carbon credits. He didn't have the capacity for loss that could result and should have been advised against transferring and investing any of his pension funds in carbon credits.
- Meyado didn't argue that its advice was suitable. Its position was that, due to the involvement of others, it isn't fair and reasonable to hold it responsible for Mr T's losses in full. It could be argued that Mr T's losses stemmed 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 carbon credits. The money was only available to invest because HDIFA had recommended the transfers and facilitated them.

other parties' involvement

- I referred to DISP 3.6.1R. It 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 also referred to DISP 3.5.2R, DISP 3.5.3R and DISP 3.6.3G. I agreed the involvement of other parties is a relevant factor. 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.
- I could understand why Meyado argued that Mr T's losses arose from the investments and not the transfers or the SIPP itself. But if the transfers hadn't happened and the SIPP hadn't been set up, Mr T wouldn't have been in a position to make the carbon credits investments. On that basis HDIFA's role was instrumental.

- Firm A had introduced Mr T to HDIFA. It was possible that Firm A had given advice about the carbon credits investment, although from what I'd seen it hadn't. Mr C was also involved and he may have given (unregulated and so unlawful) advice, whether about a property investment in Dubai or carbon credits. But there's no dispute that HDIFA did give advice. HDIFA thought it could limit its advice to the transfer 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 Mr C) had advised Mr T, and in the strongest possible terms, to invest in carbon credits, my decision would have been the same. Mr T had deferred benefits in a former employer's defined benefit scheme. Firm A wasn't competent to advise on transferring those benefits and didn't have the necessary regulatory permissions. Firm A had to refer the matter to HDIFA.
- HDIFA had the requisite permissions, expertise and responsibility to advise Mr T 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 Mr T should transfer to a SIPP so that he could invest in a high risk, unregulated, illiquid investment was unsuitable. But for the transfer Mr T couldn't have invested as he did.
- My starting point as to causation was that HDIFA advised Mr T to transfer. So it was responsible for the losses he 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 Mr T transfer. Mr T was only able to invest in carbon credits because HDIFA's unsuitable advice unlocked the money from his former employer's pension scheme and his personal pension scheme. The transfers themselves were unsuitable - and Meyado hadn't argued otherwise.
- If Meyado considered that others had some responsibility in the matter it was presumably open to Meyado to pursue those other parties. I didn't think Mr T would object, if Meyado met his losses in full, to assigning his rights to Meyado.

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

- We'd seen that in other cases substantial incentive payments were made in return for investing. We'd asked Mr T about that. He'd confirmed he did get a payment which was paid into his ex partner's account. He can't now recall exactly how much and he's unable to get information from his ex partner.
- The availability of a tax free cash lump sum would have been attractive and a motivating factor in Mr T's decision to go ahead. But I thought the evidence indicates that he transferred and made the carbon credits investment because he thought he'd get a good return which would improve his pension benefits.
- Mr T may have trusted the unregulated introducer. But, regardless of what had gone on before, Mr T had to get regulated advice from a firm that had the necessary permissions to advise on defined benefit transfers. Firm A didn't. The transaction – the transfers and the investment – hinged on HDIFA's advice.
- HDIFA were the experts and had the requisite skill, experience and regulatory permissions to advise on such transfers. I thought Mr T would have placed significant weight on what HDIFA said.
- If HDIFA had given suitable advice HDIFA would have advised Mr T against transferring from his former employer's defined benefit scheme and existing personal pension scheme to invest in carbon credits. HDIFA would also have made it clear why it was unable to advise Mr T 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 Mr T it didn't recommend the transfers, he'd have thought about whether what he was planning was a good idea after all.

- I didn't see that Mr T would simply have ignored such advice. In my view, HDIFA's advice would have carried significant weight and called into question what Mr T may have been told by others about the carbon credits investment and its potential. He'd explained that his aim was to improve his pension benefits. If he'd been told he might instead lose all the money he'd invested and HDIFA couldn't recommend the transfers because the proposed investment was too high risk and Mr T didn't have the capacity for loss that might result, I couldn't see that Mr T would have chosen to go ahead anyway.
- If HDIFA had said Mr T shouldn't go ahead and if he'd have wanted to proceed anyway, HDIFA would have needed to have treated him as an insistent client. HDIFA may not have been willing to act on that basis. And, even if it was, had the correct process been followed, that would've concentrated Mr T's mind on whether it was really advisable to transfer and give up the security of a defined benefits arrangement in favour of benefits that were dependent on investment returns from a high risk, unregulated and speculative fund.
- Mr T did receive an incentive payment. But he hadn't been able to produce full details for the reasons he's explained. Although he'd suggested a payment of between £4,000 and £5,000, in other cases we'd seen payments had been closer to, say, 25% of the transfer values. In Mr T's case the transfer values totalled £32,288.20. 25% of that would have been £8,072.05.
- That wasn't an insignificant amount. But I hadn't seen anything to suggest Mr T was in urgent need of the money (whether it was £4,000 or £5,000 or £8,000). The suitability report said his monthly expenditure exceeded his monthly income. But he hadn't disclosed his partner's income and personal expenditure. It was possible that some of the shortfall was picked up by Mr T's partner. There's nothing to indicate that Mr T had any debts or other liabilities which needed paying urgently.
- Unless Mr T could produce further evidence as to the actual amount that was paid I thought it fairest to assume he did get a payment of 25% of the transfer value. I set out what I considered would be fair compensation.

Meyado's more recent comments

Meyado had referred to the case of Adams v Options SIPP UK LLP. Meyado did indicate that it wished to make further comments about the case. We'd allowed Meyado ample time to do so. But we have to be fair to both parties. I didn't think it was unfair or unreasonable to proceed in the absence of any further detailed submissions about the case and when I didn't see that it was relevant.

First it relates to a SIPP provider's obligations whereas Mr T'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. Further, the court case involved a personal pension arrangement. In the present case HDIFA's advice was in respect of the transfer of the value of Mr T's benefits in his former employer's defined benefits scheme. I didn't see there was anything in the Adams v Carey judgement which was obviously relevant to the present case.

responses to my provisional decision

Mr T was happy with the provisional decision and didn't have any further comments.

Meyado did comment further. In summary, Meyado said:

- Mr T's decision to open a SIPP and transfer the value of his deferred defined benefits was made with assistance and/or 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 Firm A (a regulated entity) and an unregulated introducer (Mr C) were materially involved.
- That wasn't fair or reasonable but irrational. Our unwillingness to look into the relationship between Mr T and Firm A - which was materially involved in advising Mr T to invest in the illiquid investment 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 the Financial Services and Markets Act 2000 (FSMA)) to take into account all the circumstances means the actions of other entities with whom Mr T interacted as part of his decision making can't be excluded.
- Our approach suggests, where multiple entities (regulated or otherwise and here Firm A was regulated) 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 Firm A's involvement has meant that key documents and evidence has been unavailable to Meyado and us. Our enquiries have been at best incomplete and Meyado's ability to defend itself has been seriously impaired.
- It 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 T's losses – wouldn't have occurred. That oversimplifies the true position and failed properly to take into account both Mr T's decision to invest and that it is the investments, and not the SIPP, which are the primary cause of his losses. And the decision disregards how Mr T held himself out to HDIFA.

Meyado highlighted sections of my decision.

- Mr T had already decided to transfer his existing pensions before HDIFA was involved. His determination to transfer can't have been influenced by HDIFA. And, following the transfer, Firm A 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.
- I'd conceded that Mr T may have received an incentive payment. He was in desperate need of those funds. It was unfounded speculation to dismiss the incentive payment to conclude that Mr T wouldn't have proceeded in any event. It's irrational when the weight of evidence overwhelmingly points to the conclusion that Mr T would've proceeded with his chosen investment come what may.
- HDIFA had no involvement in the decision to invest in carbon credits. It's difficult, if not impossible, to say HDIFA had knowledge of, and should take the blame for, an

investment decision made after HDIFA's involvement ceased and when HDIFA did not and could not have had any influence or control over the ultimate investments.

- It was conjecture to say, if HDIFA had advised against transferring, Mr T would've thought again. It's at odds with the evidence as to Mr T's determination not to heed warnings and ignores the fact that he ultimately invested in a product in which HDIFA had no involvement. And I'd disregarded Mr T'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, which wasn't HDIFA's situation. 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 T. 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 T'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 above, I've paid attention to the relevant 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 Firm A and Mr C. I don't agree we haven't made sufficient enquiries about that. Or that I've misunderstood or ignored the part played by Firm A and Mr C 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 T's existing pension arrangements included deferred benefits in a former employer's final salary pension scheme. Firm A couldn't advise about that and referred him to HDIFA. There's no dispute that HDIFA did advise Mr T to transfer to a SIPP. HDIFA set up the SIPP and arranged the transfers.

I've acknowledged it's possible that Firm A gave advice about the carbon credits investment. And (unregulated) advice may have been given too. But there's no dispute that HDIFA did give advice. HDIFA thought it could limit its advice to the transfer 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 the unregulated entity even though it couldn't lawfully have given advice) had advised Mr T, and in the strongest possible terms, to invest in carbon credits, my decision would have been the same. Mr T had 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.

I've focused on HDIFA's own responsibilities as the only business involved with the capacity to 'unlock' the funds held in Mr T's defined benefits scheme. HDIFA's role was pivotal, since the eventual investment was wholly contingent on the transfer taking place. HDIFA's advice that Mr T should transfer to a SIPP so that he could invest in a high risk, unregulated, illiquid investment was unsuitable. But for the transfer Mr T 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 that a complainant won't always understand the different roles and responsibilities where more than one party is involved. But here, as I've explained, it was HDIFA who gave the advice to transfer. Its role was central. I don't think concentrating on whether the advice HDIFA gave was suitable is unfair or unjust. Rather, and as I've said, it reflects HDIFA's central and pivotal role in the matter.

Meyado says our reluctance to examine Firm A's involvement means that key documents and evidence hasn't been made available. I've seen some emails between HDIFA and Firm A about progress of the transfer, including an email about an identification document and a request for the '*the agen*t' to chase it up, which could be a reference to the unregulated introducer. From what I've seen the arrangement between HDIFA and Firm A was that Firm A did some initial information gathering. And Firm A did get a fee (£500) for the introduction. So I can see that Firm A would have been interested in progress of the transfer and doing what it could to help any transfer go smoothly. Meyado says, following the transfer, Firm A was to advise on the investment. But, as I've made clear, HDIFA should have taken into account the investment before that and when it was advising on the transfer.

I don't see that Mr T, before HDIFA's involvement, had made a firm or irrevocable decision to transfer which couldn't have been influenced by HDIFA. I don't agree it wouldn't have made any difference if HDIFA had advised Mr T against transferring. I set out in my provisional decision why I thought he'd have placed weight on what HDIFA had said. And why, in practical terms, it wouldn't have been straightforward for him to have just disregarded HDIFA's advice and proceeded anyway. I maintain, if HDIFA had advised Mr T against, he'd have thought again.

Meyado says it was the investment and not the transfers that caused Mr T's losses. But HDIFA's advice meant Mr T was able to access his pension funds to make the unsuitable carbon credits investment. He didn't have any other funds he could've invested. And if HDIFA had said he shouldn't do it then Mr T would've needed to have overcome other hurdles to go ahead. As things stood, HDIFA's unsuitable advice made it easy for Mr T to proceed and didn't give him any reason to question whether what he was planning was really advisable. I don't think that's an oversimplification. As I've said I think it reflects HDIFA's central and pivotal role.

Meyado asserts that Mr T was in '*desperate*' need of the incentive payment which I'd said it was fair to assume he'd received. I don't doubt that the payment would have been welcome. But I haven't seen anything to show that, at the time, Mr T's financial position was as Meyado suggests. I don't think a finding that Mr T wouldn't have proceeded if HDIFA had advised against and despite the incentive payment is irrational.

Meyado says HDIFA can't be blamed for any investment decision made after its involvement ceased and where HDIFA didn't have any influence or control over the ultimate investments. But HDIFA knew from the outset (see, for example, its referral process record) that the reason for the transfer was to invest in carbon credits.

I note what Meyado says about Mr T's attitude to risk. But I explained in my provisional decision why I didn't think that was a credible assessment. And that HDIFA should have explored with Mr T if he really wanted, and could afford, to take a very high level of risk with his pension provision, especially given that it seemed he'd previously been assessed as a more medium risk investor.

Meyado also says that the regulator's alert deals with the situation where an adviser takes on a client from an unregulated introducer, whereas here the referral came from Firm A, a regulated business. I think there's evidence that HDIFA knew an unregulated introducer was involved too. But, in any event, it remains the case that it wasn't open to HDIFA just to advise on the transfer – it had to consider the proposed underlying investment too.

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. Even if the introduction came from a regulated firm, HDIFA had to consider the proposed underlying investment too. HDIFA knew that was carbon credits. It was unsuitable for Mr T. On that basis the advice to transfer was unsuitable too.

All in all my views remain as previously indicated. I uphold the complaint. Meyado must redress Mr T as set out in my provisional decision and which I've repeated here.

fair compensation

My aim is to put Mr T as closely as possible in the position he'd probably be in now if he'd have been given suitable advice. I think he'd have retained his existing pension arrangements.

what Meyado should do?

To compensate Mr T fairly, Meyado must determine the fair value of his transferred pension benefits as outlined in Step One and Step Two below. If the actual value is greater than the fair value, no compensation is payable.

actual value

This means the actual amount payable from the SIPP at the date of the calculation. We'd usually say that Meyado should purchase the illiquid investment at a value acceptable to the SIPP provider in order that the SIPP can be closed. But that's not necessary here as the SIPP has been closed - the SIPP provider has told us that it was closed on 14 July 2016 as all the investments had a nil value and there was no cash in the cash account. And, as the SIPP has been closed, I don't need to make any award for future SIPP fees.

But, if Meyado thinks Mr T may receive some value from the carbon credits investment in the future, Meyado may require, if Mr T is redressed in full, that he provides 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. Similarly, if Meyado requires an assignment of rights from Mr T, it will need to meet the costs involved. Any undertaking and/or assignment should be drafted in a clear and simple format.

fair value - step one

Meyado should undertake a redress calculation (in respect of the deferred defined benefits transferred) in line with the regulator's pension review guidance as updated 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 provider promptly following receipt of notification of Mr T's acceptance of the decision.

Meyado may wish to contact the Department for Work and Pensions (DWP) to obtain Mr T'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 occupational scheme on Mr T's SERPS/S2P entitlement.

fair value - step two

Meyado will also need to determine the notional value of Mr T's personal pension, had he not transferred to the SIPP.

Mr T's personal pension was invested in the provider's with profits fund. That suggests a cautious attitude to risk. But the attitude to risk assessment completed on 12 October 2011 indicated Mr T was a medium (or slightly higher) risk investor. On that basis an appropriate comparator would be the FTSE UK Private Investor Income Total Return index. Meyado should use that index to work out the personal pension transfer value would be worth as at the date of my final decision had it achieved a return in line with that index.

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment 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 will accept if Meyado totals all those payments and deducts that figure at the end instead of deducting periodically.

The combined value of the above two steps is the fair value.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr T's pension plan. 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 a payment into a pension isn't possible or has protection or allowance implications, it should be paid directly to Mr T as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to his 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 resulting from the loss assessment in step one must where possible be paid within 90 days of the date Meyado receives notification of his 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 Mr T this compensation.

It's possible that data gathering for a SERFS 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 DWP may be added to the 90 day period in which interest won't apply.

Interest at the rate of 8% per year simple is payable on the loss assessment in step two if not paid within 28 days of Meyado being notified of Mr T's acceptance of my final decision.

In carrying out the above calculations, Meyado should make an allowance for the lump sum I've assumed Mr T was paid. It should do this by applying a withdrawal of £8,072.05 from the calculation as at the date Mr T made the investment. As he made invested in two tranches the mid point date can be used. It's possible Mr T could face an unauthorised payment charge. But whether that will be the case and, if so, what amount Mr T may have to pay is uncertain. If required, Meyado should give Mr T an undertaking to meet any unauthorised payment charge that he may in the future have to pay.

In addition to the above, Meyado should pay Mr T £250 to reflect the distress and upset caused by its advice.

Meyado should provide details of its calculations to Mr T in a clear and simple format,

my final decision

I uphold the complaint.

Meyado Private Wealth Management London Ltd must redress Mr T as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 16 January 2021.

Lesley Stead
ombudsman