complaint

Mr S has complained about advice given by HDIFA (then part of Berkshire Financial Advisers Ltd) to transfer the value of his deferred benefits in a former employer's pension scheme to a self invested personal pension (SIPP) and invest in unregulated investments.

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

background

I've considered Mr S's complaint before. I issued a provisional decision on 30 October 2020. I've summarised the findings I reached below. But I'll first recap the facts and how our investigation progressed.

Mr S 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). Firm A didn't have the necessary permissions to advice on final salary pension transfers. So Mr S was referred to HDIFA.

In March 2012, following advice from HDIFA, Mr S transferred the value of his deferred benefits (£31,190.16) to a SIPP. And on 30 March 2012 he invested £26,994.50 in carbon credits.

In April 2016 Mr S's representative complained on his behalf to Meyado. It didn't uphold the complaint. The complaint was referred it to us.

Our adjudicator upheld the complaint. In summary he said Mr S'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 S 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 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 Mr S's investment decisions.

Meyado didn't seek to argue that the transfer of Mr S's accrued benefits, for the purpose of investing in carbon credits, was appropriate. But the issue was the extent to which Meyado could be held responsible for separate advice about carbon credits given by another entity or Mr S's own subsequent investment decision made irrespective of warnings. HDIFA's recommendation was to transfer Mr S's deferred benefits to a SIPP. It was the (separate) decision to invest in carbon credits which had caused the loss.

We shared what Meyado had said with Mr S's representative. Amongst other things it said the unregulated introducer was no longer in business and there was no evidence it would

have any relevant documentation. Mr S had provided all the documents he has and there's nothing from the introducer or Firm A. Meyado hadn't provided evidence to support what it says about Firm A advising on the underlying investment. Documentation from the SIPP provider didn't show any involvement by Firm A. HDIFA couldn't comply with its regulatory duties without advising on the intended investment. Mr S had relied on HDIFA's advice. There's nothing to support Meyado's claim Mr W would've made the investment in any event and even if HDIFA had advised against.

We made some further enquiries of Mr S. We knew some investors had received incentive payments. Mr S confirmed he'd received £10,797.80 on 2 April 2012. He told us he'd used most of the money to pay for a family holiday and to clear some existing debts. He said he'd been told about the payment when he was visited at home by someone he described as a financial adviser – although I think he was in fact an unregulated introducer. Mr S said the payment wasn't referred to as an incentive. Instead the introducer explained that Mr S would be able to withdraw a lump sum from the pension with the rest invested to deliver a better return as, according to the introducer, Mr S's pension, if left where it was, would be worthless by the time Mr S came to retire.

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) [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 S's complaint. Meyado said it would be making further submissions.

In the provisional decision I issued on 30 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 S 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 Mr S intended to invest in an unregulated investment – carbon credits.
- 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.
- Mr S's attitude to risk had been assessed as balanced or medium. Carbon credits wasn't a suitable investment for a medium risk investor. The risks associated with the investment were considerable. It was unregulated. The regulator has said that type of investment is usually 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. I didn't see that investing virtually all of Mr S's modest and only pension fund in carbon credits matched his medium or balanced attitude to risk. The investment represented a higher degree of risk than Mr S had said he was prepared to take and there was a real risk that he could lose his entire investment.

what would suitable advice have been?

- As per COBS 19.1.6G, HDIFA should have started by assuming the transfer wouldn't be suitable. Further examination would have confirmed that.
- Mr S's deferred benefits in his former employer's scheme represented his entire pension provision. His modest earnings meant his ability to make further pension contributions was limited. Mr S may have said that this pension wouldn't make a major contribution to his long term wealth. But, aside from his entitlement to a state pension, it was his only pension provision.
- HDIFA should have tested what Mr S said about how he regarded his deferred benefits in his former employer's scheme and explained that he'd be giving up guaranteed benefits in return for those dependent on investment performance. And explored with him if he really had the capacity for loss that could result. I don't think merely recording what Mr S had apparently said about how he regarded his pension means that his capacity for loss was taken into account.
- I noted what had been said about the funding position of the former employer's scheme. But I didn't think the transfer was driven by those concerns. The suitability report recorded that Mr S was disappointed with *'the level of service and ease of attainment of information from the current scheme administrators and wished to take action to ensure his pension fund is removed from the control of his previous employer'.* I didn't think those sorts of administrative problems would justify giving up the security provided by the employer's scheme. And, despite any deficit in the scheme, I was unaware of any issues as to payment of benefits from the scheme. The Pension Protection Fund (PPF) is also available if an employer's final salary scheme can't pay the benefits that are due.
- Meyado didn't argue that its advice was suitable. Its position is that, due to the involvement of others it isn't fair and reasonable to hold it responsible for Mr S's losses in full. It could be argued that Mr S'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. Mr S may have signed to confirm he 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.

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. Mr S's complaint had been made against HDIFA. That didn't mean I hadn't considered the involvement of others. Or that we won't consider whether any other party might have some responsibility. 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 S's losses arose from the investment and not the transfer or the SIPP itself. But if the transfer hadn't happened and the SIPP hadn't been set up, Mr S wouldn't have been in a position to make the carbon credits investment. On that basis HDIFA's role was instrumental.
- Firm A had introduced Mr S 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. The SAR

hadn't disclosed that advice was given. And unregulated advice may have been given earlier. But there was no dispute that HDIFA had given advice. It thought it could limit its advice to the transfer and the SIPP. But that was wrong. HDIFA needed to consider the proposed investment too.

- Even if Firm A (or indeed the unregulated entity even it couldn't lawfully have given advice) had advised Mr S, and in the strongest possible terms, to invest in carbon credits, my decision would have been the same. Mr S 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.
- HDIFA had the requisite permissions and expertise and responsibility to advise Mr S 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 M S should transfer to a SIPP so that he could invest in a high risk, unregulated, illiquid investment was unsuitable. But for the transfer Mr S couldn't have invested as he did.
- My starting point as to causation was that HDIFA advised Mr S to transfer. So it was responsible for the losses he'd 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 S transfer. Mr S was only able to invest in carbon credits because HDIFA's unsuitable advice unlocked the money from his former employer's pension scheme. The transfer itself was unsuitable - and Meyado hadn't argued otherwise.
- I didn't see that HDIFA could say that if Mr S's investment strategy had been reviewed his losses would have been reduced or avoided. My understanding was that the carbon credits investment was illiquid throughout. Any later advice to invest differently wouldn't have made any difference. Further, and in any event, it appears that HDIFA took at least one fee for ongoing advice. If so, responsibility for reviewing the investment rested with HDIFA.
- 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 S would object, if Meyado met his losses in full, to assigning his rights to Meyado.

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

- HDIFA had given unsuitable advice to transfer and so it was responsible for the losses flowing from the transfer including, for the reasons I'd explained, Mr S's investment losses. But I recognised there was an argument Mr S may have gone ahead in any event and even if HDIFA had advised him against.
- Mr S had said he'd have heeded advice from HDIFA not to transfer to invest as he'd planned. I didn't see any real reason to disbelieve that. He had to get regulated advice from a firm that had the necessary permissions to advise on defined benefit transfers. Firm A didn't. HDIFA were the experts and had the requisite skill, experience and regulatory permissions to advise on such transfers. I thought Mr S would've placed significant weight on what HDIFA said.
- If HDIFA had given suitable advice HDIFA would've advised Mr S against transferring from his former employer's defined benefit scheme. HDIFA would also have made it clear why it was unable to advise his 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 S it didn't recommend the transfer, he'd have thought about whether what he was planning was a good idea after all.

- In saying that I didn't underplay the unregulated introducer's role. He'd visited Mr S at home and Mr S had referred to him as a financial adviser. In talking about or promoting the carbon credits investment the introducer may have appeared knowledgeable and persuasive. And the investment may have seemed attractive. But I thought advice from HDIFA, as to the risks that the investment entailed and why it wasn't suitable for an investor such as Mr S with a balanced attitude to risk, would have put things into perspective for Mr S and he'd have been in a position to make an informed decision as to whether the investment was really right for him. I said he'd have thought again.
- Mr S did receive a payment - £10,797.80. That's a substantial sum. I acknowledged it would have been a motivating factor for Mr S to go ahead with the transfer and investment. Mr S had said he used the payment to clear some outstanding debts. But I hadn't seen anything to suggest that any liabilities were pressing or that his financial situation at the time was difficult. The fact find records he had a monthly disposable income of £250. That suggested any debts were managed although the lump sum gave Mr S the opportunity to pay them off which he did, with money left over for a family holiday.
- Mr S's aim was to improve his pension benefits at retirement. He'd said he was told his existing pension provision would be 'worthless', which prompted him to consider the alternative suggested by the introducer. If Mr S had been told that the proposed investment was risky and might bring about the result he was trying to avoid – that his pension wouldn't be worth anything at all – I thought he'd have paid attention to that. I didn't think he'd have been prepared to jeopardise his entire, albeit modest, fund by investing in an untested, specialist and unregulated fund in return for an immediate cash payment. On balance I accepted what he said and that he'd have reconsidered.
- If HDIFA had said Mr S 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. Even if it was, had the correct procedure been followed, that would've concentrated Mr S'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 S did receive a payment and he's had the use and benefit of that money so it should be taken into account in calculating redress.

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 S'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 S'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 S's representative said that Mr S accepted my provisional decision. Mr S asked that Meyado pay any legal costs in respect of the assignment of rights both in respect of the drafting of the agreement and any legal costs Mr S incurred in seeking advice about it. And the same for any undertaking required from Mr S.

Meyado didn't accept my provisional decision and made further comments. In summary:

- Mr S's decision to open a SIPP and transfer the value of his deferred pension 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) was materially involved. That wasn't fair and reasonable in all the circumstances but irrational.
- Our unwillingness to look into the relationship between Mr S and Firm A - which was materially involved in advising Mr S 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 S 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.
- And it had led to a fundamental error as to causation. The (provisional) decision was based on the premise that, without HDIFA's involvement, the investments – and so Mr S's losses – wouldn't have occurred. That oversimplifies the true position and failed properly to take into account both Mr S'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 S held himself out to HDIFA.

Meyado highlighted sections of my (provisional) decision.

- Mr S 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, 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 S had received a substantial incentive payment (£10,797.80). Mr S was in desperate need of those funds. It was unfounded speculation to dismiss the incentive payment to conclude that Mr S wouldn't have proceeded in any event. It's irrational, when the weight of evidence overwhelmingly points to the conclusion Mr S would have 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 that if HDIFA had advised against transferring Mr S would have thought again. It's at odds with the evidence as to Mr S'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 S'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 S. 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 S'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. 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 (or the unregulated introducer) 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 S had 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 S to transfer to a SIPP. HDIFA set up the SIPP and arranged the transfer.

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 S, and in the strongest possible terms, to invest in carbon credits, my decision would have been the same. Mr S 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 S'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 S should transfer to a SIPP so that he could invest in a high risk, unregulated, illiquid investment was unsuitable. But for the transfer Mr S 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. It's clear HDIFA knew an unregulated introducer was involved – it seems HDIFA received the referral for Mr S direct from the introducer. And the suitability report for Mr S was sent via the unregulated introducer (and copied to Firm A). I also note there's an email from HDIFA's adviser referring to the unregulated introducer and saying that he was '*intending to increase his marketing and push for more business for us* [ie HDIFA]'. Given that Firm A was getting a fee (£500) for the introduction, I can see it 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 Mr S hasn't produced any report or suitability letter from Firm A indicating that investment advice was given. In any event, as I've made clear, HDIFA should have taken into account the investment when it was advising on the transfer.

I don't see that Mr S, 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 S against transferring. I set out in my provisional decision why I thought he'd have placed weight on what HDIFA had said and heeded advice not to transfer to invest in carbon credits. And why, in practical terms, it wouldn't have been straightforward for him to have simply disregarded HDIFA's advice and proceeded anyway. I maintain, if HDIFA had advised Mr S against, he'd have thought again.

Meyado says it was the investment and not the transfer that caused Mr S's losses. But HDIFA's advice meant Mr S was able to access his pension fund 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 S would've needed to have overcome other hurdles to go ahead. As things stood, HDIFA's unsuitable advice made it easy for Mr S 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 S was in '*desperate*' need of the incentive payment he'd received. which I'd said it was fair to assume he'd received. But I maintain what I've said earlier about that. I don't doubt that Mr S was happy to get that sort of payment. But I haven't seen anything to suggest that his financial circumstances were difficult. I don't think a finding that Mr S 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.

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. But it's clear that HDIFA knew an unregulated introducer was involved and indeed the initial instruction seems to have come direct from the unregulated introducer. But, that aside, 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 S. 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 S as set out in my provisional decision and which I've repeated here.

I've thought about Mr S's request that Meyado, as well as meeting the costs of drawing up any assignment and/or undertaking, should cover the costs of Mr S obtaining legal advice about those matters. But I don't think that's necessary. I'd expect those formal agreements, if required and that isn't certain, to be relatively clear and simple and such that it wouldn't be necessary for Mr S to take legal advice.

fair compensation

I'm upholding the complaint. My aim in awarding redress is to put Mr S as far as possible in the position he'd be in now, if HDIFA had given him suitable advice. I think Mr S would have retained his deferred benefits in his employer's scheme.

I understand that Mr S's SIPP has been closed and the carbon credits investment has been assigned to him. On that basis I don't need to make any award for future SIPP fees.

But, if Meyado considers that Mr S may receive some value from the carbon credits investment in the future, Meyado may require, if Mr S 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 S, it will need to meet the costs involved. Any undertaking and/or assignment should be drafted in a clear and simple format.

what should Meyado do?

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 Mr S's acceptance of the final decision.

Meyado may wish to contact the Department for Work and Pensions (DWP) to for Mr S'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 Mr S'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 Mr S as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid.

For example, if Mr S 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 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 must where possible be paid to Mr S 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 S this 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.

In carrying out the above calculations, Meyado should make an allowance for the lump sum incentive payment Mr S received. It should do this by applying a withdrawal of £10,797.80 from the calculation on the date Mr S's carbon credits investment was made (30 March 2012). It's possible Mr S could face an unauthorised payment charge. But whether that will be the case and, if so, what amount Mr S may have to pay is uncertain. If required, Meyado should give Mr S an undertaking to meet any unauthorised payment charge that he may in the future have to pay.

Meyado should also pay Mr S £250 for the worry and upset this matter has caused him.

my final decision

I uphold the complaint.

Meyado Private Wealth Management London Ltd must redress Mr S as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 January 2021.

Lesley Stead
ombudsman