DRN-3414685

The complaint

Mr B is represented and his representative says that Options UK Personal Pensions LLP (trading as Carey Pensions UK LLP [Carey] at the time of the relevant events) failed to carry out appropriate due diligence on the 'Green Oil Plantations Limited' (GOP) investment before it allowed such an investment to be made within Mr B's Options SIPP. Mr B's representative says that this investment was unregulated, high risk and Options should have prevented this investment from being held in Mr B's SIPP. It said that Options did not act in Mr B's best interests.

It also said that Options:

- Failed to properly warn Mr B about the appropriateness of the investments.
- Failed to warn Mr B about transferring to a SIPP to invest in illiquid funds.
- Failed to consider how GOP would operate.
- Unreasonably attempted to exclude its liability.
- If GOP was a UCIS, failed to ensure Mr B fell within one of the requisite exemptions to permit investment in the fund. And/or failed to carry out additional due diligence.
- Failed to consider the appropriateness of Mr B transferring to a SIPP.
- Failed to properly investigate him or his desired investment outcome.
- Failed to act in a manner expected of a regulated firm.
- Failed to categorise him as a retail investor
- Failed to prevent questionable transactions.

What happened

I issued a provisional decision on 21 February 2022. In that decision I set out why I believed the complaint should be upheld. I have included the content of the provisional decision in italics below and the provisional decision should be read in conjunction with, and forms part of, this final decision. Although Carey is now Options UK Personal Pensions LLP, I will refer to Carey throughout.

Provisional decision of 21 February 2022

At the time of the events in question, Mr B dealt with Carey. Therefore, whilst Carey has been renamed Options, I will refer to Carey throughout.

In 2010 Mr B switched two existing occupational money purchase schemes to a SIPP with Options. Subsequently he invested £272,000, or the majority, of the money

transferred, into GOP.

In 2014 GOP was placed into liquidation. My understanding is that Mr B lost the majority of his investment in GOP.

The administrator's report confirms GOP went into administration in April 2013. Essentially it says GOP ran out of money due to it having to pay the high promised returns to investors and fees, and the plantation having failed to yield its first harvest by that time, as a result of various delays. The report says:

"The majority of products were structured such that fixed returns were paid to investors from the first investment anniversary. However, the first harvest of green nuts was not initially forecast to be achieved for a period of 2 years (and in practice, may be significantly longer) Furthermore, only one plot was planted in 2010, following delays caused by, inter alia, bad weather (which delayed planting) and an FSA investigation in the UK which led to a delay In raising funds (and therefore making funds available to GOPH for the purchase of land) The remainder of the plots (with the exception of plot 13) were planted over an extended period and required the same maturity period. This resulted in the obligations to pay returns to investors outstripping income generation.

The business model relied on initial forecasts for the Millettia plantation that showed high yields after two years of tree growth. This was based on a plantation operating model that involved growing the trees at a high density (supported by ongoing irrigation and addition of fertiliser). We understand that this is an untested technique for this species and scale of plantation the initial forecasts also relied on income from supplementary products, primarily animal feed and fertiliser. To date, these supplementary products have not generated revenue and there are material uncertainties as to whether these are capable of generating significant net revenue.

Additionally, there were high upfront establishment costs and ongoing fees. These included circa 15 per cent commission and fee payments on investments raised and a 15 per cent plantation management fee (which was levied on all costs incurred by GOPH, including land acquisition costs)."

The Financial Services Authority investigation referred to was a review of GOP by the FSA in 2010, to ascertain whether or not GOP was a collective investment scheme. The administrator's report says the FSA initially concluded GOP was not a collective investment scheme but then, in May 2013 (i.e. after GOP had entered administration), concluded it was.

I've set out the various parties involved in Mr B's pension switch and subsequent investment in detail below.

GOP

GOP was an investment which aimed to deliver returns by cultivating a plantation of Millettia Pinnata trees, to produce green oil, animal feed, fertilizer, honey and carbon credits. The plantation was in Australia, and aimed to use intensive farming methods to achieve high yields.

The investment was aimed at UK investors, and was first marketed in March 2010.

Investment in GOP came with various options. Mr B's selected option involved taking a lease over a plot of the plantation, and then renting the plot back to GOP, with it managing the plot for the duration. The duration of the arrangement was ten years and GOP offered rental returns for those ten years plus the option for Mr B to sell the trees back to GOP for the cost of the lease at the end of the ten year period.

The annual returns were stated to be:

Year 1 = 4% of the lease value
Year 2 = 8% of the lease value
Year 3 = 12% of the lease value
Year 4 to 10 = 17% of the lease value

Carey (now Options UK Personal Pensions LLP)

Carey is a SIPP provider and administrator. It was regulated by the Financial Services Authority (FSA) at the time of the events complained about – now the Financial Conduct Authority (FCA). It was – and still is – authorised to arrange (bring about) deals in investments; deal in investments as principal; establish, operate and wind up a personal pension scheme; and make arrangements with a view to transactions in investments.

Fertile Planet Limited (FPL)

FPL was registered at Companies House and had one current Director – Ms Joanne White. It currently has 'dissolved' status – as of 19 September 2017. The record sets out that FPL was incorporated on 21 July 2009. Ms White is also recorded as the Managing Director of Global Plantations Limited from 30 March 2010. That company was dissolved on 15 July 2019.

Mr B's submissions

Mr B's representative provided some detail of Mr B's circumstances and the events leading up to his investment in GOP. It said:

"In 2010, the client was introduced to a range of alternative investments through Joanne White and Fertile Planet. Joanne White sent in the completed GOP form to Carey Pensions UK.

The client decided to go ahead with the GOP investment as ethical investments appealed to him. The client was not willing to put his pension monies at risk and chose Carey Pensions based on the fact that they were known to Joanne White and accepted GOP as an investment and thus had carried out appropriate due diligence on GOP. The very fact that Carey accepted GOP as an approved investment after they had carried out their due diligence gave the client confidence in both GOP and Carey Pensions UK.

The client did not believe that there was much risk involved as he understood that because the SIPP providers accepted this product, it must have been vetted and thus appropriate and suitable."

And:

"Prior to investing in 2010, the client had some investment experience. He had mainly invested in stocks and shares (FTSE) and had an investment in property. Subsequent toinvesting in GOP, the client also invested in GreenLeaf Global through the SIPP which Carey accepted into the SIPP. This also went into administration.

(Mr B) has worked in the pharmaceutical sector for over thirty years and as a Regulatory Manager (within the sector) for over 20 years and had company pensions into which he contributed monthly.

The client was interested in investing in green/ethical investments and GOP ticked those boxes. He was also interested in the potential returns. Joanne White provided

the product information and also informed the client that he could invest through the Carey SIPP….

As the client was preparing for his retirement, he needed to invest his pension fund safely to provide for his future. The client was a novice with regard to SIPP pensions as he had always been involved in a company pension scheme which was managed for him and so had little if any experience with regard to the complexities of the pensions sector and alternative investments."

Mr B also provided a 'witness statement'. He said:

"Around mid-2010 Joanne White of Fertile Planet provided me with marketing material for GOP."

I was aware that I would need to set up a SIPP to be able to use money held in my pensions with (company) and (company) to invest in GOP. I discovered from the GOP brochure that GOP was accepted within SIPPs and that it was specifically accepted and advertised by Carey Pensions.

After reviewing the GOP material, I chose to set up my SIPP with Carey Pensions. As my knowledge of the alternative investment world is very minimal, I put my total trust in Carey Pensions to vet and accept the GOP investments on my behalf. As a retail investor I also trusted Carey Pensions' Due Diligence process to highlight any potential weaknesses or inappropriateness of these investments for myself on the basis that they approve pension investments into GOP."

And:

"As the SIPP provider accepted the above investments, I was confident that due diligence had been undertaken into the investment methodology and people running the investment to ensure the product was appropriate to offer as a pension investment. I was not willing to put my pension monies at risk."

"Without the involvement of the SIPP provider, I would not have been able to invest money into these investments as the pension monies was the only way I could invest.

I do not understand how or why Carey Pensions can allow inexperienced investors such as myself to have access to and invest in these products. I fail to understand how they can include these extremely dubious investments in their SIPP options if they had conducted proper research into GOP, particularly without an IFA to explain the suitability. I also fail to understand how such high risk investments can be sold without having any meaningful information about their clients."

And:

"I feel I have been misled by Carey Pensions who never explained the paperwork and in particular what is meant by "execution only".

At the time of the SIPP creation and the investment in GOP, I was not advised by an IFA in relation to the setting up of the SIPP or the underlying investment in GOP.

My pension funds were transferred into the SIPP for the purpose of a high risk investment without understanding me or my needs. It is now clear that the investment was entirely inappropriate for me."

Mr B was also asked about his interactions with Ms White and a colleague who made a similar investment.

Mr B's representative said that Mr B had confirmed that he, "met Jo White when she worked for Plantation Capital. Ms White later left and set up her own business." And "(Mr

B) used Ms White/her new business to make the GOP investment. Due to the passage of time (Mr B) cannot be 100% sure about the series of events / discussions but recalls that he was informed about Carey Pensions who could accept such an investment, that it was being recommended by IFA's, and Jo White spoke highly of CEO at Carey."

It was also confirmed that Mr B worked with the individual Carey refers to that took out a similar investment and told him about the investment.

The investigator did not uphold the complaint. He thought that Carey had undertaken a reasonable level of due diligence into the GOP investment. And he also thought that Mr B would have appreciated the risk of investing in GOP.

Carey accepted the investigator's assessment.

Mr B's representative did not accept the investigators assessment. In summary it said:

- *Options failed in its duty to carry out proper due diligence on GOP and this due diligence should have been outsourced to an independent third party. The investment was not genuine and was a 'scam'.*
- *Options did not fully understand the nature of the investment and the risks before allowing Mr B to invest. It was not a 'land transaction' but was an investment whose returns were based on a novel agricultural investment with no clear market.*
- *Mr B did not work in financial services and whilst he "is well versed in regulatory documents" these were in respect of an unrelated profession. This would not have assisted him in respect of the GOP investment. He was also not a professional or sophisticated investor.*
- *The recent Court of Appeal decision in Adams v Options "prioritises consumer protections" and there are synergies between the case brought by Mr Adams and Mr B. Here Mr B was introduced to Options by an unregulated introducer - which brings into play the "section 27 arguments".*
- *It wishes the complaint to be reviewed.*

The complaint was therefore passed to me for review.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In arriving at a decision that I believe is fair and reasonable in the circumstances, I will take 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 time.

I have considered these matters in light of Carey's further submissions to arrive at a decision that is fair and reasonable in the circumstances.

The Principles

In my view, the FCA's Principles for Businesses are of particular relevance to my decision. The Principles for Businesses, which are set out in the FCA's handbook "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G). And, I consider that the Principles relevant to this complaint include Principles 2, 3 and 6 which say:

"Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.

Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems

Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly."

I have carefully considered the relevant law and what this says about the application of the FCA's Principles. In R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) ("BBA") Ouseley J said at paragraph 162:

"The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirement they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."

And at paragraph 77 of BBA Ouseley J said:

"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."

In (R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service [2018] EWHC 2878), Berkeley Burke brought a judicial review claim challenging the decision of an ombudsman who had upheld a consumer's complaint against it. The ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and had not treated its client fairly.

Jacobs J, having set out some paragraphs of BBA including paragraph 162 set out above, said (at paragraph 104):

"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles- based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."

The BBA judgment also considers section 228 of Financial Services & Markets Act 2000 ("FSMA") and the approach an ombudsman is to take when deciding a complaint. The judgment of Jacobs J in the Berkeley Burke case upheld the lawfulness of the approach taken by the ombudsman in that complaint, which I have described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

Ouseley J in the BBA case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what is

fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in Berkeley Burke. So the Principles are a relevant consideration here and I will consider them in the specific circumstances of this complaint.

Regulatory publications

The FCA (and its predecessor, the FSA) has issued a number of publications which remind SIPP operators of their obligations and set out how they might achieve the outcomes envisaged by the Principles:

- *The 2009 and 2012 thematic review reports.*
- *The October 2013 finalised SIPP operator guidance.*
- *The July 2014 "Dear CEO" letter.*

I have set out below what I consider to be the key parts of the publications (although I have considered them in their entirety).

The 2009 Thematic Review Report

The 2009 report included the following statement:

"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its customers and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.

It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.

We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the member to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate the SIPPs that are unsuitable or detrimental to clients.

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their clients' interests in this respect, with reference to Principle 3 of the Principles for Business ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not*

appear on the FSA website listing warning notices.

- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

- ***Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*** *(my emphasis)*

- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*

- ***Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*** *(my emphasis)*

- *Identifying instances of clients waiving their cancellation rights, and the reasons for this."*

The later publications

In the October 2013 finalised SIPP operator guidance, the FCA states:

"This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.

All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a "client" for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes."

The October 2013 finalised SIPP operator guidance also set out the following:

"Relationships between firms that advise and introduce prospective members and SIPP operators

Examples of good practice we observed during our work with SIPP operators include the following:

- *Confirming, both initially and on an ongoing basis, that: introducers*

that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un- authorised business warnings.

- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*
- ***Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.***
- ***Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*** *(my emphasis)*
- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers.

Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*
- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*
- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non- regulated introducers*

In relation to due diligence the October 2013 finalised SIPP operator guidance said:

"Due diligence

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that*

charge is identifiable, HMRC is informed and the tax charge paid

- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*
- *having checks which may include, but are not limited to:*
    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*
    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*
- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*
- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*
- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax-relievable investments and non-standard investments that have not been approved by the firm"*

The July 2014 "Dear CEO" letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The "Dear CEO" letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *Correctly establishing and understanding the nature of an investment*
- *Ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation*
- *Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)*
- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently*
- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc)*

I acknowledge that the 2009 report (and the 2012 report and the "Dear CEO" letter) are not formal guidance (whereas the 2013 finalised guidance is). However, I am of the view the fact that the reports and "Dear CEO" letter did not constitute formal (i.e. statutory) guidance does not mean their importance or relevance should be underestimated.

The publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I am therefore satisfied it is appropriate to take them into account.

I do not think the fact that the later publications (i.e. those other than the 2009 Thematic Review Report), post-date the events that are the subject of this complaint mean that the examples of good industry practice they provide were not good practice at the time of the relevant events. It is clear from the text of the 2009 and 2012 reports, (and the "Dear CEO" letter published in 2014), that the regulator expected SIPP operators to have incorporated the recommended good industry practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' understanding of how the standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

The later publications were published after the events subject to this complaint, but the Principles that underpin them existed throughout, as did the obligation to act in accordance with those Principles. I note that HHJ Dight in the Adams case I refer to in more detail below, did not consider the 2012 thematic review, 2013 SIPP operator guidance and 2014 "Dear CEO" letter to be of relevance to his consideration of Mr Adams' claim. But it does not follow that those publications are irrelevant to my consideration of what is fair and reasonable in the circumstances of this complaint. I am required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

That doesn't mean that in considering what is fair and reasonable, I will only consider Carey's actions with these documents in mind. The reports, Dear CEO letter and guidance gave non-exhaustive examples of good industry practice. They did not say the suggestions given were the limit of what a SIPP operator should do. As the annex to the "Dear CEO" letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

To be clear, I do not say the Principles or the publications obliged Carey to ensure the investment in GOP was suitable for Mr B. It is accepted Carey was not required to give advice to Mr B, and could not give advice. And I accept the publications do not alter the meaning of, or the scope of, the Principles. But they are evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles.

I would also add, that even if I took the view that any publications or guidance that post-dated the events subject of this complaint do not help to clarify the type of good industry practice that existed at the relevant time (which I don't), that does not alter my view on what I consider to have been good industry practice at the time. That is because I find that the 2009 report together with the Principles provide a very clear indication of what Carey could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting any introduction from Fertile Planet or Ms White and/or allowing the investment into the SIPP.

Ultimately, in determining this complaint, I need to consider whether Carey complied with its regulatory obligations as set out by the Principles to act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regards to the interests of its customers, to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Carey could have done to comply with its regulatory obligations.

COBS2.1.1R

I confirm I have taken account of the judgment of the High Court in the case of Adams v Options SIPP [2020] EWHC 1229 (Ch) and the Court of Appeal judgment in Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474.

I am of the view that neither of the judgments say anything about how the Principles apply to an ombudsman's consideration of a complaint. But, to be clear, I do not say this means Adams is not a relevant consideration at all. As noted above, I have taken account of both judgments when making this decision on Mr H's case.

I acknowledge that COBS2.1.1R (A firm must act honestly, fairly and professionally in accordance with the best interests of its client) was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of FSMA ("the COBS claim"). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

Although the Court of Appeal ultimately overturned HHJ Dights judgment, it rejected that part of Mr Adams appeal that related to HHJ Dight's dismissal of the COBS claim on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal did not so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

I note that, in Adams v Options, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at para 148:

"In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction."

However, the facts in Mr B's case are very different from those in Mr Adams cases. There are also significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and from the issues in Mr B's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened after the contract was entered into. In Mr B's complaint, I am considering whether Options ought to have identified that the introduction from Fertile Planet involved a risk of consumer detriment and, if so, whether it ought to have accepted Mr B's application.

I think it is also important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And, in doing that, I am required to take into account relevant considerations which include: law and regulations; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This is a clear and relevant point of difference between this complaint and the judgments in Adams v Options SIPP. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I have proceeded on the understanding Carey was not obliged – and not able – to give advice to Mr B on the suitability of its SIPP or the GOP investment for him personally. But I am satisfied Carey's obligations included deciding whether to accept particular

investments into its SIPP and/or whether to accept introductions of business from particular businesses.

I acknowledge Carey has applied to the Supreme Court for permission to appeal the Court of Appeal judgment and the outcome of that application is awaited. However, the grounds of appeal are in respect of issues not directly relevant to my determination of this case and therefore it is unnecessary to await either the consideration of the application or, if permission is granted, the Supreme Court judgment. I am satisfied it is appropriate to determine this complaint now.

what did Carey's obligations mean in practice?

In this case, the business Carey was conducting was its operation of SIPPs. I am satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject particular investments and/or referrals of business.

The regulatory publications provided some examples of good industry practice observed by the FSA and FCA during their work with SIPP operators including being satisfied that a particular introducer is appropriate to deal with and a particular investment is an appropriate one for a SIPP.

I am satisfied that, to meet its regulatory obligations, when conducting its business, Carey was required to consider whether to accept or reject particular referrals of business, with the Principles in mind.

Documents

In terms of documentation from the time the transaction took place, I have seen:

- *An email from an employee of Carey to Mr B dated 15 September 2010. The email set out:*

  "Regarding the alternative investment fees, I should explain that, unlike many SIPP/SSAS Providers we do not make a separate charge for reviewing investments, however, there is still a cost element for that work which can be very involved, technical and time consuming, hence the 1% fee. Having said that, I have discussed with my CEO, Christine Hallett, the fact that you will be investing a large sum in GOP and she has agreed that as a concession to you and as you have an association with ***Jo who we are working with****, that we can agree to the fee of 1% for any alternative investment being capped at £850(+VAT) which is a considerable reduction and I hope an acceptable compromise. (my emphasis)*

  We received the information regarding the GOP investment yesterday and have commenced our review and certainly in principal it appears acceptable. I am out of the office both Friday and Monday and will therefore have a final decision by close of play tomorrow evening, with commentary and paperwork following during next week.

  You are able to set up a SIPP direct with us; however, you should note that we are not permitted to give advice and so where advice is needed or required you would need to speak to a suitably qualified person."

- *There followed a further email from the same employee of Options to Mr B dated 23 September 2010. The content was:*

  "Further to our recent emails, I am pleased to confirm that the Green Oil Investment has been formally approved and I attach the following documentation for your reference should you choose Careys as your pension provider.

  1. *A copy of the Adviser Notification letter - this letter will be issued to each Adviser that introduces business to*

Careys for the Green Oil Investment so I thought it prudent that you have a copy;

2. *A template Member Declaration - this will need to be completed and signed to proceed with the investment (we pre-populate with the relevant information) and issue to you (the fees would be as previously discussed, rather than the flat 1% for you);"*

- *A GOP application form which sets out that an investment of £272,000 is to be made. Mr B signed this application form on 23 September 2010. The 'Agent Details' recorded 'Jo White' of 'Fertile Planet'. The application set out the terms of the lease agreement (as discussed earlier in this decision) and also set out that, "If you feel that financial advice is needed, you should contact your Independent Financial Advisor. We can put you in touch with one if needed."*
- *An email from 'Joanne White' to an employee of Carey dated 23 September 2010. The content was:*

> *"Please find attached GOP application form for (Mr B). Utility bill and drivers license on next email.*
>
> *I think you agree this is a great start to our relationship and I hope to build more going forward.*
>
> *If you require anything from me… please do not hesitate to contact me."*

Mr B signed transfer forms on 21 September and 23 September 2010 to authorise the transfer of his existing pensions to the Options SIPP.

- *An 'Alternative investment – Green Oil Plantations Member Declaration & Indemnity' declaration. The content of the declaration was:*

  "I, (Mr B), being the member of the above Scheme write to instruct Carey Pension Trustees UK Ltd to Purchase a Leasehold Plot of Land through Green Oil Plantations for a consideration of £272,000 on my behalf for the above Scheme.

  I am fully aware that this is investment is High Risk and/or Speculative and confirm that I wish to proceed.

  I am fully aware that both Carey Pensions UK LLP and Carey Pension Trustees UK Ltd act on an Execution Only Basis. Neither Carey Pensions UK LLP nor Carey Pension Trustees UK Ltd have provided any advice whatsoever in respect of this investment.

  I do not hold Carey Pensions UK LLP or Carey Pension Trustees UK Ltd responsible for any exchange rate fluctuations that may adversely affect the value of this investment.

  If I decide not to lease the land to Green Oil Plantations I confirm that I will provide full details of my intentions to Carey Pensions UK LLP for their consideration and agree that the investment will not proceed until Carey Pensions UK LLP agreement to proceed has been given.

  I also understand and agree that, in the event of my demise, if Carey Pension Trustees UK Ltd is unable to sell the asset within HMRC timescales that it may be transferred to my beneficiaries through my estate and accordingly may be subject to any Inheritance Tax.

  Should any aspect of this investment be subject to a tax charge within

the Pension Scheme any such charges will be paid directly from the fund or by me as the member of the Scheme.

I agree to provide Carey Pension Trustees UK Ltd with any further information and/or documentation they may require prior to completing the purchase of this investment.

I indemnify both Carey Pensions UK LLP and Carey Pension Trustees Ltd against any and all liability arising from this investment."

Mr B signed this declaration on 24 September 2010.

- *A letter from Mr B to Carey dated 24 September 2010. This referred to Mr B's occupational pensions which were subsequently switched to Carey. The content was:*

  "Please find enclosed completed forms to allow transfer of 2 investment accounts into the Carey SIPP.

  Following recent changes to [occupational scheme] (closure), I had planned to move the above pension schemes to the [different occupational scheme] plan that is now being administered on behalf of [employer]. However, on close scrutiny of their rules for 'self-investment' it became apparent that the investment options were limited to those in place pre-2006 and no allowance made for subsequent changes. The transfers were stopped and I have now chosen Carey to make such investments that are allowed by HMRC.

  I will however be making regular contributions to the [different occupational scheme] since [employer] will only 'match' contributions if paid into that scheme. I understand that it is then possible to transfer these funds into the Carey Pension - and I will look into this at a future time.

  I have enclosed a cheque for £2,000 to be paid into my (bank account) that should together with the transfers pay for the proposed investment and all set up costs, assuming there has been no reduction in the value of the [occupational pension].

  I trust that I have provided all the information required to allow the transfers to proceed."

- *A letter dated 1 October 2010 from Options to Mr B confirming that his SIPP had been established as of 27 September 2010.*

- *An undated sample letter headed "Alternative Investment Request – Green Oil Plantations". It is my understanding that this was the 'Adviser Notification Letter' referred to in the email of 23 September 2010 that I have set out above.*

It sets out:

"Following your request to allow investment of the Carey Pension SIPP / SSAS into the Green Oil Plantations Investment, Carey Pensions UK LLP Investment Committee has considered the information provided and would draw your attention to the undernoted."

There then follows detail about the GOP investment such

*as: "**Structure***

Promoter is Green Oil Plantations Limited (GOP).

A 5 or 10 year peppercorn lease is acquired over land in Australia from GOP. Land is purchased in ¼ hectare plots. Investors can manage the land themselves or lease back to GOP using a sublease. GOP will then manage the land, trees & harvest to provide returns.

Option 1 – 5 year term. Land is purchased with a fixed number of trees. Purchase price is based on a price per tree. After 5 years the land is re-purchased by GOP at an increased value per tree.

Option 2 – 10 year term. Fixed income is paid over the term and the land is re-purchased by the GOP at the end of the term at the original cost price."

And:

"Marketability

There is no apparent established market so any sale / transfer is subject to locating a willing buyer.

The 10 year scheme offers an exit by providing 3 months notice and receiving accrued rental only.

GOP undertakes to buyback the land at the end of each term. GOP undertakes to buyback the land, subject to terms, in the event of death of a scheme member.

The options for GOP buying back the land are reliant on GOP being in existence."

And:

"How Liquid is the Investment?

"There appears to be an exit strategy, subject to GOP being in existence."

And:

"Investor Protection?

As the investment is unregulated no protection through FSCS is offered."

*Within the "**Comments"** section:*

"This investment is considered an alternative and high risk investment.

All members should take their own tax, investment and financial advice to determine whether this is a suitable investment for them and taking into consideration the overall value of the SIPP funds, the percentage of the SIPP to be invested and ongoing charges."

Carey's due diligence on GOP

As a preliminary matter I would confirm that Carey was not required to ensure an investment was suitable for a particular applicant or customer. It did have a responsibility to run certain checks, for example to ensure its customers weren't entering arrangements

that were clearly fraudulent.

But Carey wasn't required to reject an investment simply because it was high risk or esoteric. And it wasn't required to assess whether the investment was suitable for Mr B or met his particular needs. It didn't have to obtain details of his personal circumstances to assess whether he should make the investment as Mr B appears to believe. Carey was not Mr B's financial adviser and it was not providing regulated advice. It was confirmed several times (as detailed in the documents referenced) that Carey was not providing advice as to the suitability of the investment and the applicant should obtain that if necessary.

But, as discussed earlier, Carey did have a duty to act with due care and diligence when accepting business and acting in the best interests of its customers. And it did have to consider whether it should accept certain business. We have previously asked Carey the following questions and received the following answers:

- *What steps did Carey take to satisfy itself that the investment was genuine, not a scam or linked to fraudulent activity?*

  "Carey Pensions obtained a letter from KPMG, the audit firm appointed to the investment by Green Oil Plantations, who confirmed they had been appointed to act as the registered office of Green Oil Plantations, and they had also been appointed as the firms accountants and tax advisers. The letter from KPMG also confirms that they had been appointed since the incorporation of Green Oil Plantations (who we have found were incorporated on 29th March 2010) and that they have assisted the company in registering with the Australian Tax Office, deal with their tax returns and assist the firm with meeting its requirements under the relevant regulatory authorities. KPMG was, and still is, one of the World's top 10 Audit Firms providing reassurance that there would be an audit trail of the firms business transactions and assets.

  Also, Carey Pensions obtained the legal opinion from Regulatory Legal, an SRA regulated firm of UK Lawyers that, following a review of the investment documentation, found that the investment structure falls outside of the definition of an unregulated collective investment scheme and so investors were offered control to decide who they appointed to manage their Land. Carey Pensions also checked the Law Firm (MacDonnells Law) who was appointed to deal with the land transactions and who had confirmed the title of the land was in the name of Green Oil Plantations, were listed on the Law Society Register in Australia (Queensland) to check that they were regulated to provide legal services. We found them to be registered on the Queensland Law Society register.

- *What steps did Carey take independently to verify the investment's assets were real and secure and that the investment operated as claimed?*

  "Carey obtained copies of the Queensland Land Registry, evidencing Green Oil Plantations ownership of the land, from the appointed Law Firm in Australia (MacDonnells Law) who were dealing with the land transactions, as aforementioned

  Carey completed an independent internet search of the Queensland Law Society Register to evidence that the Australian Law Firm and the individual Lawyer was a genuine and regulated law firm and individual lawyer. This Law Firm, also verified that they had visited the plots of Land owned by Green Oil Plantations and had sighted the plantation of trees on the relevant plots. The letter also confirms that a

Surveyor had visited the plots and prepared a survey plan, they (the law firm) had prepared the sub-leases and that they would arrange the registration of the leases at the Queensland Land Registry. Carey were satisfied that the Law Firm were regulated by the relevant legal authority in Australia to undertake the land transactions relating to Green Oil Plantations and our members and have undertaken searches to verify ownership of the land and that there was also evidence of a plantation on the plots."

- *What steps did Carey take to satisfied the investment could be independently valued?*

  "The investment is a Land Lease to be used for growing trees. Independent valuers for the land and trees would need to be appointed in Australia i.e. appointing an Independent Land Surveyor to value the Land and a plant oil expert to value the trees and their yield. Appointing a surveyor to value land is standard practice in all land and property transactions and Carey was therefore satisfied it would be able to obtain a valuation of the land. In relation to valuing the trees, and the expected yield, the plant oil industry is an established industry and an expert valuer would need to be appointed where a valuation is required."

In addition Carey said:

> *"This investment was reviewed by Carey Pensions specifically for (Mr B) following his request to invest in this particular investment. (Mr B) confirmed that he wanted to invest in Green Oil Plantations with his current pension provider at the time, but they did not accept unregulated investments. (Mr B) also confirmed that he was reviewing his 'overall strategy', and wanted to know if Carey had a Qualifying Non UK Pensions Scheme as he wished to consider this option also. (Mr B) came to Carey Pensions as a direct client who also owned a similar plantation investment personally when he instructed the purchase of the lease with Green Oil Plantations as this was transferred into his SIPP from his personal ownership about the same time as his pension investment into Green Oil Plantations. Therefore we deem (Mr B) as being fully aware of the risks associated with this investment as he already had an investment of this nature when he transferred to the Carey Pensions Scheme."*

Carey says it carried out the checks detailed above, over and above ascertaining that the investment was permissible and eligible for inclusion in a registered pension scheme. It has detailed the steps it took, which involved obtaining information from GOP's auditors, obtaining legal advice about the investment, checking the status of GOP's legal advisers and checking title to the land in question.

I think this went some way to meeting Carey's regulatory obligations and the standards of good practice, and Carey could have taken some comfort from what it saw, whilst also identifying some points of concern. I will detail the latter first.

The investment structure essentially involved the investor taking a lease of a plot of the overall plantation, and renting it back to GOP (and the return being paid as rent). Thus the investor was the "landlord" and GOP the "tenant".

I have seen a marketing brochure for GOP (although Mr B has not supplied such) which explains:

"A quarter hectare is priced at £10,000, a half hectare £20,000 and a full hectare £40,000. You can buy multiples of the sizes available. The 8 year project currently has availability of quarter, half and full hectares.

The lease is fully registered in your name at the Australian land registry office for a one off registration fee of £550.00. The leaseholder has total freedom to sell, reassign, exploit the land themselves, appoint someone to do the farming on their behalf or let the plot to Green Oil Plantations.

You are given the choice to enter into a tenancy agreement where you become the landlord and Green Oil Plantations the tenant.

The landlord has the flexibility to give a 3 month's notice to exit the tenancy any time during the term of the tenancy.

The lease purchase amount will be refunded to the landlord at the end of the tenancy term. Green Oil Plantations can pay such rental returns when they utilise each rented plot for the management and exploitation of your tree's produce."

Mr B entered into such a tenancy agreement, for a ten year term, and was offered high returns for doing so – 17% a year from years four to ten.

By way of explanation as to how this return will be achieved the brochure says:

"Each plot produces the following products which can be sold locally in Australia.

- *Green Oil – this can be sold for the production of electricity or Biofuel*
- *Animal Feed*
- *Bio-Fertiliser*
- *Honey*
- *Carbon Credits*
- *Bio Herbicide*

Unique Features Of Our Intensive Millettia Plantations:

- *High density planting*
- *High yielding genetics*
- *High level of soil nutrition to encourage higher oil content of seed*
- *Secure and superior irrigation system installed, utilising channel water from the nearby dam which never runs out (not relying on natures sometimes unreliable rainfall)*
- *High pollination rate achieved with additional bee colonies introduced*
- *Superior pruning techniques to induce more flowering and subsequently more seed*
- *Superior mechanical harvesting techniques utilised*
- *Seed processed within 12 hours of harvesting to achieve higher oil recovery*
- *Superior processing equipment used to achieve highest extraction rate*

The plantation will produce 3 crops per year and the first crop will take place in 2012. *Crude Millettia oil prices are based on the Crude Palm oil price which is indexed on the stock market. Palm oil can be used for biofuel and electricity production however; its main use is for food. Over 90% of the food on the supermarket shelves contains palm oil. Non food oils like Millettia oil will fetch a higher price than palm oil as it is not affecting the food chain.*

Our figures have been calculated on a price 25% below today's crude palm oil prices. *The price we can achieve selling our primary product, green oil, will continue to rise in the coming years. As you can see from the above, we will have the ability to choose who we sell the oil to and in what form – this is unprecedented for an energy product – as the demand can only increase substantially."*

In my view, although there is some detail about how GOP plans to generate returns, the basis of the projected return to those, like Mr B, entering a Tenancy and Buyback Agreement isn't completely clear. All the brochure effectively says is lots of things can be done with the products of the plantation and the oil price is high and will rise. So there was a risk consumers might be misled about the potential returns, or at least did not have sufficient information to assess their viability.

It is also clear from the brochure that GOP (or the return generated by the plantation) is to absorb all the costs, as the following is said:

***"Q:** What are my ongoing costs should I choose to appoint GreenOil Plantations to manage my trees and land?*

***A:** All costs and taxes will be covered by Green Oil Plantations should you choose to enter into a contract with us. Your only costs are your personal tax liabilities. We will be able to cover such costs from the revenue generated from your trees. We will also take an insurance cover at our own cost to protect your trees and any loss of returns."*

But no detail of these costs, which would assumedly include planting, maintenance, harvest, transport, insurance etc is given. The return was also payable on the sum invested, in Sterling. So the currency risk was shouldered by GOP too. It is not clear how all this is factored into the projected returns and, in the absence of this information, consumers may not have had sufficient information to fully assess the investment.

In respect of the insurance, the brochure says:

"Green Oil Plantations will also take at its own cost an annual comprehensive insurance to cover any risks of plantation damages.

For landlord protection our insurance will also cover loss of rental income.

***Q:** How does the insurance cover work?*

***A:** We commit to take a comprehensive insurance cover to protected (sic) the plantation and crop in event they are affected. This insurance will be put in place for those clients who appoint Green Oil Plantations to manage their plot through the tenancy or buyback contracts.*

The costs of such insurance will be the full responsibility of Green Oil Plantations."

But it is not clear how insurance would cover things to the extent described by GOP i.e. ensure that the very high returns promised would be paid. This is a further point of concern.

Finally, it is clear from the brochure that GOP was planning to pay returns before it generated any. The brochure (which, as a reminder, was dated 2010) contains several testimonials from investors who have already been paid their first year returns. But the brochure also confirms that the first harvest is not due until 2012. It is not clear how these returns are being funded.

So there were a number of points of concern. It would have been good practice for the due diligence to be independently produced/verified, rather than only obtain information

from the parties involved in GOP.

However, there were details of the title to the plantation land, credentials of those involved with GOP, letters of support from other sources, confirmation some insurance had been taken out and confirmation of the appointment of businesses which could reasonably be expected to be involved in the day to day running of a business such as GOP.

So I think Carey could reasonably have concluded from its due diligence that Mr B's SIPP would acquire title to an asset. There was sufficient information to ascertain GOP had title to the land it was leasing, and UK and Australian law firms had been appointed to deal with the registration of title.

But the projected returns were very high and there was considerable risk, as the returns required successfully obtaining several products from the plantation and intensive farming methods which did not appear to have been used in relation to the crop previously.

So, given all these factors, Carey should have given careful thought to the nature and source of any introductions relating to GOP investments.

Carey's due diligence on Fertile Planet Ltd

I have considered what a level of due diligence consistent with Carey's regulatory obligations and the standards of good practice at the time ought to have revealed. And what, with those same obligations and standards in mind, Carey ought to have concluded about Fertile Planet.

As set out above, the 2009 Thematic Review Report deals specifically with the relationships between SIPP operators and introducers or "intermediaries". And it gives non exhaustive examples of good practice. In my view, to meet these standards, and its regulatory obligations, set by the Principals, Carey ought to have identified a significant risk of consumer detriment arising from business brought about by Fertile Planet - a business introducing consumers to Carey which appeared to be specialising in one unusual unregulated investment, on an execution only (that is, non-advised) basis. And so Carey ought to have ensured it thought very carefully about accepting applications from Fertile Planet and, therefore, Mr B.

I think it is fair and reasonable to say such consideration should have involved Carey getting a full understanding of the business model of the introducer, the nature of the investments to be made and putting a clear agreement in place between it and the introducer and ensuring careful thought was given to the risk generally posed to consumers by the introducer.

We asked Carey a number of questions about its relationship with Fertile Planet Ltd. The questions and Carey's answers are detailed below:

- *What were Carey's dealings with Jo White?*

  "Jo White operates an investment called Global Plantations. Carey Pensions reviewed this investment for acceptance…. Please note, (Mr B) did not invest in Global Plantations."

- *How many clients were referred by Jo White and over what timeframe?*

  "No clients were referred to Carey Pensions by Jo White, Jo White has never been an introducer of business to Carey Pensions."

- *Can you please provide details of the investment associated with each referral made.*

  "Not Applicable as there were no referrals."

- *Was there any formal arrangement in place with Jo White? If so, could you please provide evidence of this.*

  "No, Jo White was not an Introducer of Business to Carey Pensions."

- *Was any commission paid to Jo White?*

  "No, we had no relationship with Jo White….."

- *Is Carey still 'working with' Jo White, and if not, why not?*

  "No, Carey Pensions has never 'worked' with Jo White, it had no business relationship with Jo White. Carey Pensions reviewed and accepted Global Plantations, an investment operated by Jo White but did not, and never has, accept any introductions from her."

It is my understanding that Carey takes the position that it did not undertake any due diligence as to Jo White or Fertile Planet in respect of Mr B because it had no relationship with her and it did not make any introductions to it on behalf of other individuals.

I do not believe the evidence bears this out.

As set out earlier, in an email between an employee of Carey and Mr B, the employee said:

"Having said that, I have discussed with my CEO, Christine Hallett, the fact that you will be investing a large sum in GOP and she has agreed that as a concession to you and as you have an association with ***Jo who we are working with****, that we can agree to the fee of 1% for any alternative investment being capped at £850(+VAT) which is a considerable reduction and I hope an acceptable compromise." (my emphasis)*

The statement that Carey was 'working with' Ms White would tend to indicate that there was some form of working relationship with her (or that there was an anticipation of such) and a financial concession for Mr B was being made because of that.

Furthermore Ms White submitted Mr B's GOP application to Carey with other documents necessary for the investment to go ahead. Ms White commented:

"I think you agree this is a great start to our relationship and I hope to build more going forward."

So the evidence is that Carey was aware that Ms White was making an introduction for Mr B. As Ms White was making the introduction for Mr B, Carey should have treated her as an introducer – who was not regulated. The evidence also indicates that there was an anticipated or actual business relationship between Carey and Jo White. It is more likely than not that this was in relation to similar introductions given that Ms White was promoting environmental investments through her various enterprises.

So Carey was aware that the introduction was being made by an unregulated party specialising in esoteric environmental developments which had significant risk, including a risk of total failure. But it did not seemingly undertake any due diligence into Ms White's or Fertile Planet's (which was clearly noted as Ms White's business on the GOP application) operation.

Had Carey undertaken a reasonable level of due diligence as to Ms White and Fertile planet, it would have found a very small unregulated, juvenile business with a very limited, in any, track record. Furthermore Mr B had confirmed to an employee of Carey that he had not received any financial advice as to the GOP investment. So the application bore

the material hallmarks of an application or transaction that could result in considerable consumer detriment. Furthermore there were risks that should have been apparent to Carey that Fertile Planet may be carrying out regulated activities, given the lack of any risk warnings being provided to Mr B and that a large occupational transfer was being facilitated by an unregulated business.

The total value of Mr B's pension swich was about £300,000. Of that the majority, £272,000, was to be invested in one investment – GOP. It was clear that there were significant risks in investing in that kind of product – of the type that the FSA/FCA had highlighted in its guidance. I have discussed the operation of GOP and its risks earlier in this decision. Carey was aware that a non-advised pension switch was being made, from occupational pension schemes to its SIPP so that the vast majority of the money transferred could be invested in GOP.

Considered holistically the matters I have discussed clearly amount to a 'red flag' that should have indicated to Carey that consumer harm could result. Carey ought to have identified significant points of concern, and these ought to have led it to conclude it should not accept the SIPP application or GOP investment. It ought to have known there was a high risk of detriment to Mr B.

I note that Mr B had another 'green' investment of the same nature. However that was for a much smaller sum - £15,000. Mr B has said this came about because he was looking at "so- called sustainable investments" and he thought this looked "interesting" and paid between 10% to 15% returns a year. He says he didn't receive any advice in respect of this investment.

I do not believe it reasonable to make the assumption that because Mr B had another investment of this nature that he was aware of all the risks of investing in this way, especially as he does not have a financial services background and did not receive regulated advice as to the investments. Mr B has said he had no such understanding. But, in any event, given the matters I have discussed, Carey shouldn't have accepted the application for the SIPP and investment. So Mr B's transaction would not, or should not, have proceeded in any event.

in conclusion

After considering these points, I don't regard it as fair and reasonable to conclude that Carey acted with due skill, care and diligence, or treated Mr B fairly by accepting the investment in GOP or accepting the application for the SIPP. Carey didn't meet its regulatory obligations or the standards of good practice at the time, and it allowed Mr B's funds to be put at significant risk as a result.

did Carey act fairly and reasonably in proceeding with Mr B's instructions?

In my view, for the reasons given, Carey simply should have refused to accept Mr B's application. So things should not have got beyond that. Had Carey acted in accordance with its regulatory obligations and best practice, it is fair and reasonable in my view to conclude that it should not have accepted Mr B's application to open a SIPP or make the investment.

My remit is, of course, to make a decision on what I think is fair and reasonable in all the circumstances. And my view is that it's fair and reasonable to say that just asking Mr B to sign 'risk' or 'indemnity' declarations was not an effective way for Carey to meet its regulatory obligations to treat her fairly, given the concerns Carey ought to have had about her introduction and the investment.

Having identified a risk, it is my view that the fair and reasonable thing to do would be to

refuse to accept the application – not put in place a process asking Mr B to sign declarations in an attempt to absolve itself of responsibility. I don't think the declarations Mr B signed meant that Carey could ignore its duty to treat him fairly.

Carey may say that it's most likely he would have gone ahead with the investment even if it'd taken all the steps the ombudsman said it should have.

I don't agree. Carey refusing to accept business and sharing the concerns that led to that decision may well have meant that Mr B would have acted very differently. This refusal would have tended to highlight the concerns with making such an investment. And he then may well have sought regulated advice as to the ramifications of the transfer. And in any event I do not believe it is reasonable to assume that another SIPP operator would have accepted Mr B's application on the same basis, had Carey declined it. I don't think it's fair and reasonable to say that Carey should not compensate Mr B for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found Carey did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted the application or investment.

I've concluded Mr B wouldn't have invested but for Carey's failure to carry out sufficient due diligence. And in these circumstances, I'm satisfied it's fair to hold it responsible for the whole of the loss suffered. I'm not asking it to account for loss that goes beyond the consequences of its failings.

Putting things right

I am satisfied that Carey's failure to comply with its regulatory obligations and industry best practice at the relevant time have led to Mr B suffering a significant loss to his pension.

And, my aim is therefore to return Mr B to the pension position he would now be in but for Carey's failings.

Carey should calculate fair compensation by comparing the current position to the position Mr B would be in if he had not transferred from his existing pension. In summary, Carey should:

1. *Calculate the loss Mr B has suffered as a result of making the switch and GOP investment.*

2. *Take ownership of the GOP investment if possible*.*

3. *Pay compensation for the loss into Mr B's pension. If that is not possible pay compensation for the loss to Mr B direct. In either case the payment should take into account necessary adjustments set out below.*

4. *Pay £500 for the trouble and upset caused.*

I'll explain how Carey should carry out the calculation set out at 1-3 above in further detail below:

1. *Calculate the loss Mr B has suffered as a result of making the transfer*

To do this, Carey should work out the likely value of Mr B's pensions as at the date of my final decision, had he left it where it was instead of switching to the SIPP.

Carey should ask Mr B's former pension providers to calculate the current notional transfer values had he not switched his pensions. If there are any difficulties in obtaining a notional valuation then the FTSE UK Private Investors Income Total Return index should be used to calculate the values. That is likely to be a reasonable proxy for the type of return that could have been achieved if suitable funds had been chosen.

The notional transfer values should be compared to the transfer value of the SIPP at the date of my final decision and this will show the loss Mr B has suffered. The GOP investment should be assumed to have no value.

1. *Take ownership of the GOP investment**

Carey should take ownership of the GOP investment, for a nil consideration, if possible.

If Carey is unable to take ownership of the GOP investment it should remain in the SIPP. I think that is fair because I think it is unlikely it will have any significant realisable value in the future. However, it would not be fair for Mr B to have any ongoing fees to pay in relation to the SIPP. So, in the event Carey is unable to take ownership of the GOP investment (and it can't otherwise be removed from the SIPP), it should waive any fees associated with the SIPP, until such a time as the SIPP can be closed.

2. *Pay compensation to Mr B for loss he has suffered calculated in (1).*

Since the loss Mr B has suffered is within his pension it is right that I try to restore the value of his pension provision if that is possible. So if possible the compensation for the loss should be paid into the pension. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance. Payment into the pension should allow for the effect of charges and any available tax relief. This may mean the compensation should be increased to cover the charges and reduced to notionally allow for the income tax relief Mr B could claim. The notional allowance should be calculated using Mr B's marginal rate of tax.

On the other hand, Mr B may not be able to pay the compensation into a pension. If so compensation for the loss should be paid to Mr B direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income. Therefore, the compensation for the loss paid to Mr B should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr B's marginal rate of tax in retirement. For example, if Mr B is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr B would have been able to take a tax free lump sum, the notional allowance should be applied to 75% of the total amount.

3. *Pay £500 for the trouble and upset caused.*

Mr B has been caused some significant distress and inconvenience by the loss of his pension benefits. This was the majority of his pension and it appears to be lost. Mr B has said that he has had to take another job to try and rebuild his pension benefits. I consider that a payment of £500 is appropriate to compensate for that upset.

Interest

The compensation must be paid as set out above within 28 days of the date Carey receives notification of his acceptance of my final decision. 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 if the compensation is not paid within 28 days.

**It is my understanding that the GOP investment may have failed completely and no longer exist. If that is correct then there wouldn't be any issues associated with Mr B retaining it in his pension or Carey taking ownership of it."*

After I had issued my provisional decision, Carey requested that it be allowed until 31 March 2022 to provide a response. This was granted. However, I have not received any further submissions from Carey in response to the provisional decision. I believe it is therefore appropriate to now issue a final decision.

Mr B's representative accepted the provisional decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have not received any further submissions in response to my provisional decision. My decision therefore remains that the complaint should be upheld – for the reasons set out in my provisional decision.

Putting things right

As set out in the provisional decision, Carey should calculate fair compensation by comparing the current position to the position Mr B would be in if he had not transferred from his existing pension. In summary, Carey should:

1. Calculate the loss Mr B has suffered as a result of making the switch and GOP investment.

2. Take ownership of the GOP investment if possible*.

3. Pay compensation for the loss into Mr B's pension. If that is not possible pay compensation for the loss to Mr B direct. In either case the payment should take into account necessary adjustments set out below.

4. Pay £500 for the trouble and upset caused.

I'll explain how Carey should carry out the calculation set out at 1-3 above in further detail below:

1. Calculate the loss Mr B has suffered as a result of making the transfer

To do this, Carey should work out the likely value of Mr B's pensions as at the date of my final decision, had he left them where they were instead of switching to the SIPP.

Carey should ask Mr B's former pension providers to calculate the current notional transfer values had he not switched his pensions. If there are any difficulties in obtaining a notional valuation then the FTSE UK Private Investors Income Total Return index should be used to calculate the values. That is likely to be a reasonable proxy for the

type of return that could have been achieved if suitable funds had been chosen.

The notional transfer values should be compared to the transfer value of the SIPP at the date of my final decision and this will show the loss Mr B has suffered. The GOP investment should be assumed to have no value.

2. Take ownership of the GOP investment*

Carey should take ownership of the GOP investment, for a nil consideration, if possible.

If Carey is unable to take ownership of the GOP investment it should remain in the SIPP. I think that is fair because I think it is unlikely it will have any significant realisable value in the future. However, it would not be fair for Mr B to have any ongoing fees to pay in relation to the SIPP. So, in the event Carey is unable to take ownership of the GOP investment (and it can't otherwise be removed from the SIPP), it should waive any fees associated with the SIPP, until such a time as the SIPP can be closed.

3. Pay compensation to Mr B for loss he has suffered calculated in (1).

Since the loss Mr B has suffered is within his pension it is right that I try to restore the value of his pension provision if that is possible. So if possible the compensation for the loss should be paid into the pension. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance. Payment into the pension should allow for the effect of charges and any available tax relief. This may mean the compensation should be increased to cover the charges and reduced to notionally allow for the income tax relief Mr B could claim. The notional allowance should be calculated using Mr B's marginal rate of tax.

On the other hand, Mr B may not be able to pay the compensation into a pension. If so compensation for the loss should be paid to Mr B direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income. Therefore, the compensation for the loss paid to Mr B should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr B's marginal rate of tax in retirement. For example, if Mr B is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr B would have been able to take a tax free lump sum, the notional allowance should be applied to 75% of the total amount.

4. Pay £500 for the trouble and upset caused.

Mr B has been caused some significant distress and inconvenience by the loss of his pension benefits. This was the majority of his pension and it appears to be lost. Mr B has said that he has had to take another job to try and rebuild his pension benefits. I consider that a payment of £500 is appropriate to compensate for that upset.

Interest

The compensation must be paid as set out above within 28 days of the date Carey receives notification of his acceptance of my final decision. 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 if the compensation is not paid within 28 days.

*It is my understanding that the GOP investment may have failed completely and no longer exist. If that is correct then there wouldn't be any issues associated with Mr B

retaining it in his pension or Carey taking ownership of it.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £150,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £150,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as above. My decision is that Carey should pay Mr B the amount produced by that calculation – up to a maximum of £150,000. In addition, Carey must pay Mr B £500 for the trouble and upset caused. As set out above, interest must be added to the total compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation is not paid within 28 days.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I recommend that Carey pays Mr B the balance.

This recommendation is not part of my determination or award. Carey doesn't have to do what I recommend. It's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to get independent legal advice before deciding whether to accept this decision.

My final decision

I uphold Mr B's complaint. Options UK Personal Pensions LLP should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 May 2022.
David Bird
Ombudsman