DRN-5200512

Financial Ombudsman Service

The complaint

Mr C complains that IFG Pension Services Limited ('IFG') – formerly Sovereign Pension Services (UK) Limited and MW Pensions Limited, but I'll refer to IFG for ease of reference – shouldn't have allowed him to invest in its Self-Invested Personal Pension ('SIPP') and that it failed to carry out sufficient due diligence on the investments made within it. He says it should compensate him for his loss.

For simplicity, I refer to Mr C throughout, even where the submissions I'm referring to were made by his representative.

What happened

I've outlined the key parties involved in Mr C's complaint below.

Involved parties

IFG

IFG is a regulated pension provider and administrator. It's authorised to arrange deals in investments, deal in investments as principal, establish, operate or wind up a personal pension scheme and to make arrangements with a view to transactions in investments.

Firm B

At the time of the events complained of, Firm B was (and seemingly still is) an independent financial adviser authorised by the then regulator – the Financial Services Authority ('FSA'), which later became the Financial Conduct Authority ('FCA'), the latter of which I'll largely refer to throughout for ease.

And I understand that Firm B's permissions included advising on investments (except on Pension Transfers and Pension Opt Outs). Other permissions Firm B held included arranging (bringing about) deals in investments.

Ethical Forestry Limited ('Ethical Forestry')

Ethical Forestry was a company based in Bournemouth which invested in an offshore investment scheme relating to plantations of what appears to be two types of hardwood tree crops, Acacia and Melina. The Ethical Forestry brochure said that the investment worked by planting trees for private investors and institutions on a "for profit" basis on plantations in Costa Rica. The trees would be grown and then harvested for their wood for sale to the timber trade.

This investment was advertised as one that would return a high yield to investors over time once the trees were grown and sold. Some of the benefits investors were informed about included that these trees can grow to impressive heights over a 12-year period and don't suffer from humidity and moisture changes compared to other trees in Costa Rica. These

trees were, however, subject to other naturally occurring weather issues, disease, pests, political shifts in Costa Rica, as well as management and ownership issues.

In December 2015, Ethical Forestry went into liquidation. The liquidator's report, dated 24 January 2022 said, amongst other things, that many investors were led to believe they had ownership of trees and cropping rights in relation to the trees and were given GPS co-ordinates to these. However, it's clear these rights weren't given as these weren't capable of being granted under Costa Rican law.

The abrupt collapse of Ethical Forestry led to the Serious Fraud Office ('SFO') opening a criminal investigation into it. And the SFO later brought charges related to alleged fraud concerning the running of Ethical Forestry.

The transaction

On 16 September 2011, Firm B provided Mr C with its suitability report. Amongst other things, this set out that:

- Mr C was a machine operator. He aimed to retire at age 65, but was likely to work beyond this due to his current pension provision being unlikely to provide sufficient income for him to do so. Mr C's income comfortably exceeded expenditure and he had £5,000 in savings.
- Mr C approached Firm B seeking to use his pension to invest in Ethical Forestry. He wanted to place some of his pension funds into bespoke investments, such as this, and he required tax-free cash for home repairs.
- Firm B said Mr C's attitude to investment risk was adventurous specifically in relation to the £12,000 of his pension that it was recommending he invest in Ethical Forestry, as he was willing to accept a large degree of risk to benefit from possible returns. While Mr C wished to adopt a medium/low risk profile in an area offering a degree of protection for the remainder of his pension funds.
- Firm B noted that one of Mr C's pension plans had a GAR (I'll refer to this as the 'GAR policy') and while it initially recommended Mr C keep this policy as a result of its attractive benefits, Firm B went on to recommend that Mr C transfer this, on the basis Mr C was comfortable losing this to achieve his objectives, alongside three other existing schemes. So Firm B recommended Mr C switch his existing schemes to the IFG SIPP and invest £12,000 into Ethical Forestry and £15,000 (later increased to £17,000), I note) in Metlife International TIP ('TIP') protected growth bond 90% (partial guarantee).
- Firm B had looked at closely at Ethical Forestry and commissioned a report on this from three-sixty services, which was available on request.
- Firm B had left the Ethical Forestry brochure with Mr C for him to read, which contained full details of the scheme. It said the list of risk factors in the suitability report wasn't exhaustive and that Mr C '*should read the enclosed brochure before choosing to invest in this bespoke product*'.
- Past performance is no guarantee of future returns. Investments into land and property can be difficult to sell and mean investors may not be able to sell/cash in investments when they want to.
- Firm B had taken reasonable steps to ensure Ethical Forestry – an unregulated collective investment scheme (UCIS) – was suitable for Mr C and it had undertaken an adequate assessment of his experience and knowledge which had given it reasonable assurance that he was capable of his own investment decisions and of understanding the risks involved.
- Unregulated investments such as Ethical Forestry tend to be inherently complex and many of the regulatory protections don't apply to it, including

access to our Service and the Financial Services Compensation Scheme ('FSCS').
- Mr C's investment could have no end value should anything occur that results in the failure of the crop.
- The investment is being made overseas, so it may be affected by fluctuations in exchange rates.
- This should be regarded as a long-term investment. The fund is close-ended and no redemptions are permitted. Mr C will not be able to realise his investment during the life of the fund other than by private sale, and there is no certainty that a buyer could be found or a particular price obtained.
- It would receive commission from Ethical Forestry for arranging the investment of £960 in total.

On 3 November 2011, IFG confirmed receipt of Mr C's SIPP application form – signed and dated 19 October 2011 – to transfer four of his existing pension schemes into one with it. The form detailed that Mr C was a machine operator earning £24,500 per annum. Mr C ticked a box to say that he was happy for his adviser to make all investment decisions on his behalf and he provided Firm B's details as his financial adviser later in the form, setting out that it would be paid an ongoing fund percentage of 0.5%. And Mr C went on to tick a box confirming he wanted to waive his 30-day SIPP cancellation rights.

Mr C also signed IFG's 'Application to invest in Unregulated Collective Investment Schemes or other investments not regulated in the UK' form on 19 October 2011. This set out, amongst other things, that:

- Mr C wanted to invest in Ethical Forestry and Firm B was providing him with advice.
- Mr C was asking IFG to '***make an UNREGULATED Investment***' (no emphasis added) in his SIPP, which are by nature more risky.
- When Mr C was asked whether he'd completed a sophisticated or high net worth investor form with his adviser, he ticked 'no'. And, in which case, he was asked whether he'd been provided with a suitability report which confirmed his adviser viewed the investment as suitable for him – as it wouldn't otherwise accept this investment into the SIPP – to which Mr C ticked 'yes'.
- Mr C ticked 'yes' when asked whether he was happy to send a copy of the suitability to IFG, after being told that in some cases it may require a copy of this.
- Mr C ticked 'yes' when asked whether his adviser had given him a clear indication that they were permitted to promote UCIS to him and explained why the scheme was suitable for his particular circumstances.
- The risk factors are covered in the key features document and/or prospectus, which Mr C might ensure he's received and discussed with his adviser.
- Encashment of the investment may not be possible, or may be difficult before the end of any specified term.
- There's unlikely to be any ready market, so selling/encashing the investment to pay benefits or for reinvestment may be very difficult, which could result in delays or restrictions on benefits payable.
- If there is no liquid market in the investment, it may be difficult for it to obtain a valuation for accounting purposes. And if it's unable to obtain an up to date market value, it may have to value the investment at cost or give this a nil value if the investment can't realised at the time.
- If the organisation offering the investment or the investment itself aren't recognised or authorised in the UK then Mr C won't have recourse to the FSCS or our Service.
- Mr C should confirm with his adviser whether the rate of return is actual or targeted.
- Mr C declared that he'd received details of the risk factors and terms and conditions for the investment and wished to proceed with this.

- He confirmed that IFG hadn't provided him with any advice on the suitability of the investment and he understood that it wouldn't accept any liability for issues that might arise in respect of the investment.

On 4 September 2011, IFG sent Mr C a letter confirming his SIPP had been established.

In mid-November 2011, just under £42,000 was transferred into Mr C's IFG SIPP from his existing pensions schemes.

On 14 November 2011, IFG sent Mr C's completed Ethical Forestry Melina purchase order form to Ethical Forestry, which I note was also signed by Mr C on 19 October 2011. This said that Mr C of Firm B was the adviser and that Mr C would be purchasing two units costing £12,000. And in small writing this said, amongst other things, that Mr C understood the risks association with the investment, including (but not exclusively) those relating to currency risks, illiquidity and un-recoverable local taxation and that Mr C had carried out his own due diligence to his satisfaction.

The same day, £12,000 of Mr C's SIPP monies was invested into Ethical Forestry. And, on 21 November 2011, £17,000 of this was invested in TIP.

On 18 November 2011, Ethical Forestry sent IFG a receipt, noting the number of trees Mr C had purchased. And under '*What happens now*…' it said that Mr C's trees would be reserved and prepared for planting and that once these were six months old it would count out his allocation, assign the GPS co-ordinates to his property lease and issue this to him along with title documents. I don't appear to have been provided with a copy of any such information or title documents that might have been issued to Mr C – that's despite asking IFG to do so in response to my provisional decision, by the deadline.

On 13 December 2011, Mr C received just under £10,500 in tax-free cash from his IFG SIPP.

Mr C doesn't appear to have received any return from his Ethical Forestry investment.

<u>Mr C's complaint</u>

Mr C instructed his representative in March 2019. And he first complained, via his representative, to IFG in July 2020. Mr C said, in summary, that at the time of the events complained of:

- His attitude to risk was low, he wasn't adventurous with financial decisions. He was reserved and cautious given the importance of securing a pension fund for later use.
- He was a machine operator and didn't work in pensions and investments. And, while Mr C was presented with several investment choices, he was influenced to use his pension to invest in Ethical Forestry by Firm B, which was a UCIS.
- UCIS are unsuitable for inexperienced retail customers like him, who couldn't recover from losses especially when funds primarily being used are pension funds.
- IFG shouldn't have turned a blind eye to clearly high risk and unsuitable investments present in its SIPPs.
- Mr C asked IFG to put him back in the position as thought he hadn't switched to the SIPP.

Mr C referred his complaint to our Service in January 2021. And IFG replied with its final response letter in February 2021. It said, in summary, that

- Mr C’s suitability report identifies him as adventurous. It indicates that Mr C approached Firm B specifically to invest in Ethical Forestry, that he’d undertaken his own due diligence and the investment was permitted in a SIPP.
- A SIPP is an appropriate product for a retail client and allows more flexibility and choice as to how funds are invested. Ethical Forestry was non-standard investment that was permitted within a SIPP. Mr C was made aware of the risks and confirmed his understanding of on the Ethical Forestry Application Form.
- It, as a SIPP provider, doesn’t give advice. The SIPP was established on an execution only basis. Any complaint in relation to advice should be directed to Firm B.

Amongst other things, IFG said in its responses in respect of Mr C’s complaint and on another similar complaint with our Service involving the same introducer and Ethical Forestry investment that:

- It was the responsibility of Firm B to provide advice. The SIPP application made clear that as a SIPP provider IFG wasn’t responsible for this. It simply acted as SIPP provider, ensuring it met its pension obligations but requiring financial advisers in the chain to provide financial advice to their clients in line with their regulatory obligations.
- Directors of Firm B, in addition to recommending that their clients invest into Ethical Forestry have also personally invested into this.
- Firm B was regulated and authorised to advise the client and had the appropriate approvals from the FCA. At the time there was no regulatory requirements to conduct additional checks, but IFG checked that Firm B was authorised by accessing the FCA register which it does on a quarterly basis.
- There was no specific terms of business in place with Firm B until the end of September 2009 when Firm B signed IFG’s terms of business (‘TOB’), which were put in place in line with FCA recommendations following the first Thematic Review in 2009. This is still in place as Firm B remains authorised by the FCA.
- IFG expected Firm B to complete a diligent fact find on client circumstances, financials and attitude to risk providing advice on an independent, whole of market basis for an appropriate solution and product to meet the clients specific requirements.
- Financial advisers don’t act for it and are mandated to consider clients best interests, therefore it is inappropriate for IFG to target or expect a new business forecast from an adviser. It doesn’t build a new business forecast into its revenue forecast. It didn’t have any agreement to receive any volume of business. And it hasn’t paid any renumeration or commission to any financial adviser.
- At the time of acceptance of the introductions, it wasn’t provided with any information as to the type of investments Firm B would agree with its clients. This was commensurate with requirements at the time. And, upon review, all members introduced by Firm B receiving a recommendation to invest in Ethical Forestry.
- After the initial agreement IFG didn’t have any further discussions with the adviser about the client process/business they were referring to it as, having established appropriate suitability reports were taking place prior to each recommendation, no additional discussion was required.
- It received its first introduction from Firm B in 2007. Firm B introduced 107 (I note that at other times IFG has said that this was 84) customers to it, of which Mr C was the 77th. It said that 95% of these customers invested in non-standard investments, as did all 6 customers introduced to it by Mr C of Firm B. Around 5-11% of customers introduced to it were proposing to transfer at least one pension with safeguarded benefits or from defined benefit occupational pension schemes. And the introductions to it from Firm B accounted for around 6.5% of IFG’s new business over that period.

- Due diligence conducted on Ethical Forestry included a review of the nature of the investment and various supporting documentation, including product literature. Non-standard assets aren't barred from SIPPs. It conducted an independent review and didn't reply on any reports by a third party. A thorough and extensive dialogue was conducted with Firm B regarding the investments.

During the course of Mr C's complaint he's said, amongst other things, that:

- While he can't remember who contacted him or how as it was a number of years ago, Mr C recalls this was a Mr J.
- He was interested in changing his pensions at the time as he thought these might be better off amalgamated.
- He agreed to invest in Ethical Forestry to boost his pension fund, as he was told the figures were very good.
- He became aware he may have suffered a loss and that IFG may be to blame when Ethical Forestry went into liquidation in January 2016.
- To date he has received no compensation for his loss and he doesn't have any claims outstanding against any other involved party.

One of our Investigator's said to IFG, in an email dated 2 March 2023, that businesses are required in final response letters to confirm their consent or otherwise to our consideration of a complaint if it is referred outside our time limits. He said that IFG hadn't confirmed its 'consent' position in respect of our 'six and three year rule' in its final response letter. He explained that the events complained of took place more than six years before Mr C had made his complaint to it. And that it was therefore possible the complaint might have been referred late if there's reason to believe the consumer was aware, or ought to have been aware, they had cause for complaint more than three years before this was made. So he asked whether IFG consented to our Service considering Mr C's complaint if it was made late. And, if not, he asked it to provide evidence and comments as to why it felt this had been made out of time.

After initially asking to speak to our Investigator by phone, IFG let us know that a call was no longer necessary as it could see it '*did not issue FOS rights on* [its] *final response letter'.* And that as a result *'We therefore give our consent for FOS to consider the complaint*.'.

So our Investigator reviewed Mr C's complaint and said it should be upheld. IFG didn't agree. It said, in summary, that:

- Mr C's complaint had been made out of time. And it said that it had never agreed to waive the time limits for bringing the complaint under DISP.
- With the exception of the 2009 Thematic Review, FCA guidance post-dates Mr C's investment. It isn't fair or reasonable to retrospectively apply such guidance. The SIPP industry and its regulation is dynamic and continually developing. So to consider the complaint on an assumption that the regulatory expectations on providers in July 2004 as per the 'Dear CEO' letter were the same as those in November 2011 is a misunderstanding of the SIPP market as it existed at the relevant time. The due diligence it carried out in 2011 was in accordance with good practice at the time.
- In December 2008, it took part in a pensions conference which representatives from Ethical Forestry attended and presented at. The proposal used current and historic timber valuations from three independent sources, which were cited in the due diligence pack.
- Ethical Forestry was well known to the FCA at the time Mr C's investment took place and no explicit concerns regarding this was represented at that time. Instead, as part

of its due diligence it received a letter between the FCA and MD of Ethical Forestry dated April 2008 which indicates how the asset must be managed so as not to breach relevant sections of FSMA. IFG also liaised with solicitors in respect of the asset structure, anti-money laundering checks and the wording of the draft contract for the sale of the crop in June 2008. And it received marketing materials and terms and conditions, for example.

- The marketing material our Service has taken into account post-dates Mr C's investment when this isn't relevant as it wasn't in existence at the time.
- Mr C's loss is a result of negligent or sub-standard advice from Firm B. The suitability report refers to his risk appetite as adventurous. And we have upheld advice complaints against Firm B. So Mr C's complaint should be directed to Firm B.

As no agreement could be reached, the matter has been referred to me for a decision.

I issued a provisional decision on Mr C's complaint and said that it should be upheld. Mr C acknowledged receipt of the provisional decision, but provided no further comments in response to it. IFG added in respect of Mr C's complaint, and in other similar cases against it with our Service concerning the same introducer and investment, in summary, that:

- It maintained that Mr C's complaint had been made too late for our Service to consider it and referenced another complaint our Service considered where we said that customer's complaint had been made too late. However, IFG said that it accepted in the particular circumstances of Mr C's complaint that it gave consent to our Service to consider the complaint (albeit in error due to confusion on the part of its complaint handler concerned). And IFG said it accepts that its consent cannot now be withdrawn.
- It's accepted that it appears that from some point in time Ethical Forestry was run as fraud. However, investments can and do fail from time to time. And in circumstances where failure couldn't reasonably be foreseen several years before it happened.
- Mr C, when provided advice by Firm B, was given information to decide whether to invest in Ethical Forestry, including being provided with a number of warnings around the risks.
- Mr C also signed a number of IFG documents which contained a number of warnings around the investment risks, confirming her understanding of the investment and that he'd been fully advised by Firm B in respect of this. And Mr C's complaint is in contradiction to this documentation.
- It's denied that guidance and rules required a SIPP operator to conduct due diligence at the time it accepted Ethical Forestry in its SIPPs – at that time the FCA hadn't even issued any guidance on good industry practice – although IFG did carry out some.
- It isn't fair or reasonable to retrospectively apply guidance. The SIPP industry and its regulation is dynamic and continually developing. So to consider the complaint on an assumption that the later regulatory expectations on providers were the same as those at the time of the events complained of is a misunderstanding of the SIPP market as it existed at the relevant time.
- While Terms of Business with Firm B weren't in place until September 2009, after IFG had already begun to accept business from Firm B, these were put in place at that time in line with the regulatory recommendations in the 2009 report.
- that IFG wasn't responsible for advice given by third parties. And the focus was on the FCA's concern that SIPP operators' systems and controls failed to identify 'obvious potential instances of poor advice and/or potential financial crime', of which there were none in the context of either Firm B generally or Mr C's investment in Ethical Forestry specifically.
- While it can't evidence it carried out checks on Firm B on the FCA register as far

back as February 2009, it can evidence from an internal document that it carried these out from May 2009.

- While it can't tell us exactly when it obtained Mr C's suitability report from Firm B, the suitability reports it obtained and reviewed from Firm B in respect of setting up the SIPPs were usually obtained at around the same time as the SIPP and investment applications. Obtaining these helped IFG check the risk profile of the investment and that the investor wasn't 100% exposed to a potentially higher risk investment i.e. there was a spread of risk to meet the stated risk profile.
- In addition, all new applications were reviewed by IFG's compliance director prior to these being processed for them to assess the type and size of investment (and any anomalous investments), whether the clients were execution-only or had waived cancellation rights – which the vast majority of investors do to allow their SIPP to be set up more quickly. Although, given the passage of time, IFG is unable to identify specific record of this review in respect of Mr C.
- The Pensions Ombudsman previously concluded, in a case where the customer's investment had been made prior to the 2012 report, 2013 guidance and 'Dear CEO' letter, amongst other things, that it could 'not apply current levels of knowledge or understanding, or present standards of practice, to a past situation'. In any event, what our Service has set out goes well beyond what these documents envisaged. And the 2012 report and 2014 'Dear CEO' letter aren't formal guidance, which means these aren't exhaustive, prescriptive or mandatory. These are at best indicative of what a SIPP operator might have chosen to do as examples only.
- IFG did discuss Firm B's business (and Ethical Forestry) with it but, due to the passage of time, it no longer has a record of those discussions.
- The fine which Firm B received in April 2011 was in respect of failings which occurred between 2004 and 2006, some years before IFG's relationship with it. And it is denied that a sanction based on such historic matters ought to have caused IFG to refuse to work with Firm B, particularly when it remained authorised by the FCA.
- It's unclear how a greater insight into Firm B's business model would have caused IFG to have decided not to accept further business from it. And the questions we've said IFG should have asked Firm B go well beyond the scope of guidance in place at the time. In any event, IFG did raise enquiries in this regard in respect of Firm B's business model.
- It's denied that IFG should have stopped accepting business from Firm B just because some of its investments were potentially high risk, in circumstances where customers had sought independent advice from a regulated adviser, had provided all necessary confirmations/consents and there was no suspicion or detection that the investment was fraudulent.
- Had IFG contacted investors directly they would presumably have confirmed commitment to the investment and reiterated information provided to Firm B and it. They wanted to make the investments.
- In respect of the Ethical Forestry investment, IFG didn't just rely solely on Ethical Forestry's solicitor or what it was told by it given that it sought information from its own lawyers too.
- We've accepted these was marketing material which included relevant information about risks. And there's no reason to conclude that Mr C didn't see this, as he did confirm he was made aware of the risks. And there was no reason to think Mr C wasn't being properly advised by Firm B in respect of these.
- To impose a blanket ban on accepting business from Firm B and on accepting investments into Ethical Forestry would not be treating customers fairly in the circumstances.
- If it hadn't permitted the investment within its SIPPs and accepted Mr C's application to invest in this, he'd have gone on to do so via another SIPP provider in any event. There's ample evidence other SIPP providers were accepting business from Firm B

and to invest in Ethical Forestry.

- Mr C was clearly prepared to give up his GAR benefits to invest in Ethical Forestry as reflected by the suitability report, which sets out that Firm B recommended he transfer that policy on the basis he was comfortable losing those.
- Mr C clearly wanted to invest in this and a cash incentive isn't the only reason for him to have sought to do so. Seeking to secure the best pension for himself is sufficient incentive and he was advised he'd make significant returns from this investment.
- In any case, any fraud by Ethical Forestry is an intervening act that breaks the chain of causation. It would be unfair for IFG to be held responsible for the consequences of a fraud by Ethical Forestry, an unrelated third party. Such fraud wasn't foreseeable.
- If anyone should be held responsible it should be Firm B as Mr C's regulated financial adviser, rather than IFG.
- Mr C should take some responsibility for his loss given it resulted from his investment decisions.
- The Ethical Forestry February 2024 Notice of Process Report in respect of the winding up confirms investors who aren't eligible for FSCS compensation should submit a proof of debt in the liquidation, which Mr C should do.
- Our Service's proposed redress is very complicated. The calculation should ignore another investment that Mr C made, which we haven't identified any issues with or suggested that IFG shouldn't have accepted into its SIPPs.
- The redress calculation should not assume that Mr C's funds would have remained investment in a GAR. And the calculation should instead be in respect of the amount invested in Ethical Forestry i.e. what the current value of Mr C's investment in this is compared to what it would have otherwise been worth.
- Any undertaking from Mr C should be in respect of any future compensation received. For example, out of the Ethical Forestry liquidation process or in the event Firm B becomes insolvent then from the FSCS.
- It doesn't agree to pay ongoing SIPP fees, save insofar as these represent the difference between fees actually being paid and fees that would otherwise be payable.
- IFG shouldn't have to pay Mr C compensation for distress and inconvenience given he's had the opportunity for his complaint to be considered by our Service when it would have otherwise been made too late for us to do so, if it hadn't consented to this.
- In any event, compensation of between £100 to £300 for is fairer in the circumstances, in light of published information on our website that sets this out where there have been repeated small errors, or a larger single mistake, requiring a reasonable effort to sort out.

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.

Having done so, I remain of the view that we can consider Mr C's complaint, and that it should be upheld, for largely the same reasons as those set out in my provisional decision, which I've largely repeated below.

When deciding what's fair and reasonable in all the circumstances of this complaint, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I think was good industry practice at the relevant time.

While I've considered the entirety of the detailed submissions the parties have provided, my decision focuses on what I consider to be the central issues. The purpose of my decision isn't to comment on every point or question made, rather it's to set out my decision and reasons for reaching it.

Preliminary point – time limits

For the avoidance of doubt, I am considering this preliminary point on the basis of the applicable rules and law and not on the basis of what is fair and reasonable in all the circumstances.

Our Service must follow the rules we're bound by, known as the Dispute Resolution ('DISP') Rules – found in the Financial Conduct Authority's handbook. And DISP 2.8.2R says that, unless the business consents, we can't consider a complaint if it's referred to us:

> "… (2) more than:
>
> > (a) six years after the event complained of; or (if later)
> > (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;
>
> unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;
>
> unless:
>
> (3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2R…was as a result of exceptional circumstances; or
>
> …
>
> (5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R…have expired…".

In addition, DISP 2.8.2A(R) says;

> "If a respondent consents to the Ombudsman considering a complaint in accordance with DISP 2.8.2 R (5), the respondent may not withdraw consent."

I think the events complained of here – that IFG failed to exercise sufficient due diligence on the introducer and Ethical Forestry investment before accepting Mr C's applications in 2011, causing him to lose out – took place more than six years before he referred his complaint to IFG in July 2020 and then to our Service.

So I've considered whether Mr C was aware or should reasonably have become aware he had cause for complaint about this respondent firm, IFG, more than three years before he first made his complaint to it in July 2020.

We asked Mr C when he became aware he may have suffered a loss and that IFG may have been responsible for this. And, in response, he said that this was when Ethical Forestry went into liquidation. Our Investigator went on to remind Mr C of the question and his answer and asked Mr C to be more specific in his response as to when this was. And Mr C said he became aware of this in January 2016.

I've considered that Mr C might be confusing Firm B and IFG in his responses, but our Investigator also asked Mr C separate questions about Firm B, to which he gave distinct responses to those he gave in respect of the questions about IFG. For example, when we asked Mr C why he hasn't also complained to Firm B, he said he'd been told that such a claim was out of time. Whereas when he asked him when he'd complained to IFG, he said this was in 2020.

So I'm currently satisfied that Mr C's July 2020 complaint has been made more than six years after events complained of in 2011 and more than three years after he had awareness of cause for complaint about IFG in 2016. However, our rules do allow us to consider a complaint made outside of our time limits in some circumstances. One being where the respondent business has consented to us doing so.

While, following my provisional decision, IFG no longer seems to dispute that it consented to our Service considering Mr C's complaint and that it cannot withdraw this once given, I've still considered this for completeness.

As set out more fully in 'What happened' above, in what I think was a clear email dated 2 March 2023, our Investigator explained to IFG that Mr C's complaint might have been made too late for our Service to consider it in respect of our 'six and three year' rule, but that its final response letter had been silent on whether or not it consented to our Service considering the complaint still if it had been made late. So he asked IFG to confirm whether or not it did consent to this.

IFG has since said that it doesn't and has never agreed to waive the time limits for bringing the complaint under DISP. But, in response to the above email, IFG said that it '*did not issue FOS rights on* [its] *final response letter'.* And that *'We therefore give our consent for FOS to consider the complaint*.'.

I think that IFG's consent appears to be clear, unequivocal and unambiguous in response to a clear question from our Investigator. And, as set out above, DISP 2.8.2A says that:

> "If a respondent consents to the Ombudsman considering a complaint in accordance with DISP 2.8.2 R (5), the respondent may not withdraw consent."

So consent has been given and the rules expressly don't allow for this to be withdrawn now. When considering the application of the rules I must make a fact-based decision, and not one based on fairness or reasonableness. The rules are clear and explicit on this issue and I must follow them. IFG gave its consent and this can't be withdrawn.

So I think that this complaint is one that our Service can consider, as IFG has given its consent for us to do so.

Relevant considerations

I think the FCA's Principles for Businesses – which are set out in the FCA's Handbook – are of particular relevance. These "*are a general statement of the fundamental obligations of firms under the regulatory system*" (PRIN 1.1.2G – at the relevant date). And Principles 2, 3 and 6 provide:

> "*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've 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 requirements 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) ('BBSAL'), 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 hadn't treated its client fairly.

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

"*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 BBSAL judgment also considers s.228 of the FSMA and the approach an Ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the Ombudsman in that complaint, which I've 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.

As outlined above, Ouseley J in the BBA case held that it would be a breach of statutory duty if I were to reach a decision on a complaint without taking the Principles into account in deciding what's fair and reasonable in all the circumstances of a case. And Jacobs J adopted a similar approach to the application of the Principles in BBSAL. I'm therefore satisfied that the Principles are a relevant consideration that I must take into account when deciding this complaint.

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both judgments when making this decision on Mr C's case.

I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Carey SIPP. And, HHJ Dight didn't consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither judgment said anything about how the Principles apply to an Ombudsman's consideration of a complaint. But, to be clear, I don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of both judgments when making this decision on Mr C's case.

I acknowledge that COBS 2.1.1R (*A firm must act honestly, fairly and professionally in accordance with the best interests of its client*) overlaps with certain of the Principles, and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options 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 had complied with the best interests rule on the facts of Mr Adams' case.

The Court of Appeal rejected Mr Adams' appeal against HHJ Dight's dismissal of the COBS claim, on the basis he 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 didn't 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 SIPP*, 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 paragraph 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.*"

I note there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams (summarised in paragraph 120 of the Court of Appeal judgment) and the issues in Mr C's complaint. 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. And he wasn't asked to consider the question of due diligence before Carey SIPP agreed to accept the investment into its SIPP.

In Mr C's complaint, amongst other things, I'm considering whether IFG ought to have identified that the business introduced by Firm B and the Ethical Forestry investment involved a significant risk of consumer detriment. And, if so, whether it ought to have declined to accept Mr C's applications.

The facts of Mr Adams' and Mr C's cases are also different. I make that point to highlight that there are factual differences between *Adams v Options SIPP* and Mr C's case. And I need to construe the duties IFG owed to Mr C under COBS 2.1.1R in light of the specific facts of his case.

So, I'm satisfied that COBS 2.1.1R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of Mr C's case.

However, it's important to emphasise that I must determine this complaint by reference to what I think is fair and reasonable in all the circumstances of the case. And, in doing that, I'm 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. There 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 also want to emphasise that I don't say that IFG was under any obligation to advise Mr C on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr C on the merits of the SIPP and/or the underlying investments. But I am satisfied IFG's obligations included deciding whether to accept particular investments into its SIPP and/or whether to accept introductions from particular businesses.

The regulatory publications

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

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

I've considered the relevance of these publications. And I've set out material parts of the publications here, although I've considered them in their entirety.

<u>*The 2009 Thematic Review Report*</u>

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 clients 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 members 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 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 customers' interests in this respect, with reference to Principle 3 of the Principles for Businesses ('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.*

- *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.*

- *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 stated:

> *"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 unauthorised 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.*

- *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 nonregulated 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, and
- 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.)

Although I've referred to selected parts of the publications to illustrate the relevance, I've considered these in their entirety.

I acknowledge that the 2009 and 2012 reports and the "*Dear CEO*" letter aren't formal guidance (whereas the 2013 finalised guidance is). However, the fact that the reports and "*Dear CEO*" letter didn't constitute formal guidance doesn't mean the importance of these should be underestimated. These 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's treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take these into account.

It's relevant that when deciding what amounted to good industry practice in the BBSAL case, the Ombudsman found that "*the regulator's reports, guidance and letter go a long way to clarify what should be regarded as good practice and what should not*." And the judge in BBSAL endorsed the lawfulness of the approach taken by the Ombudsman.
At its introduction the 2009 Thematic Review Report says:

> "*In this report, we describe the findings of this thematic review, and make clear what we expect of SIPP operator firms in the areas we reviewed. It also provides examples of good practices we found*."

And, as referenced above, the report goes on to provide "…*examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms*."

So, I'm satisfied that the 2009 Report is a reminder that the Principles apply and it gives an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So I remain satisfied it's relevant and therefore appropriate to take it into account.

I think the Report is also directed at firms like IFG acting purely as SIPP operators, rather than just those providing advisory services. The Report says that "*We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses*…" And it's noted prior to the good practice examples quoted above that "*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."

I'm also satisfied that IFG, at the time of the events under consideration here, thought the 2009 review was relevant.

The remainder of the publications also provide a *reminder* that the Principles 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 therefore remain satisfied it's appropriate to take them into account too.

Like the Ombudsman in the *BBSAL* case, I don't think the fact that some of the publications post-date the events that took place in relation to Mr C's complaint, mean that the examples of good practice they provide weren't good practice at the time of the relevant events. Although the later publications were published after the events subject to this complaint, the Principles that underpin these existed throughout, as did the obligation to act in accordance with the Principles.

It's also clear from the text of the 2009 and 2012 Thematic Review Reports (and the "*Dear CEO"* letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it's clear the standards themselves hadn't changed.

I note that the judge in the *Adams* didn't consider the 2012 Thematic Review Report, 2013 SIPP operator guidance and 2014 "*Dear CEO*" letter to be of relevance to their consideration of Mr Adams' claim. But it doesn't follow that those publications are irrelevant to my consideration of what's fair and reasonable in the circumstances of this complaint. I'm required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider to amount to good industry practice at the relevant time.

That doesn't mean that in considering what's fair and reasonable, I'll only consider IFG's actions with these documents in mind. The reports, "*Dear CEO*" letter and guidance gave non-exhaustive examples of good practice. They didn't 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 don't say the Principles or the publications obliged IFG to ensure the transactions were suitable for Mr C. It's accepted IFG wasn't required to give advice to Mr C, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But as I've said above these 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. And, as per the FCA's Enforcement Guide, publications of this type "*illustrate ways (but not the only ways) in which a person can comply with the relevant rules*". So it's fair and reasonable for me to take them into account when deciding this complaint.

I'd also add that, even if I agreed that any publications or guidance that post-dated the events subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time (which I don't), that doesn't alter my view on what I consider to have been good industry practice at the time. That's because I find that the 2009 Report together with the Principles provide a very clear indication of what IFG could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting Mr C's applications.

It's important to keep in mind the judge in *Adams v Options* didn't consider the regulatory publications in the context of considering what's fair and reasonable in all the circumstances, bearing in mind various matters including the Principles (as part of the regulator's rules) or good industry practice.

And in determining this complaint, I need to consider whether, in accepting Mr C's application to establish a SIPP and to invest in Ethical Forestry, IFG complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what IFG should have done to comply with its regulatory obligations and duties.

I'm deciding what's fair and reasonable in the circumstances of this complaint – and for all the reasons I've set out above I'm satisfied that the Principles and the publications listed above are relevant considerations to that decision.

And taking account of the factual context of this case, I think that in order for IFG to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into Firm B and the business it (Firm B) was introducing, both initially and on an ongoing basis.

In deciding what's fair and reasonable in the circumstances, it's appropriate to take an inquisitorial approach. And, ultimately, what I'll be looking at here is whether IFG took reasonable care, acted with due diligence, and treated Mr C fairly, in accordance with his best interests. And what I think's fair and reasonable in light of that. I consider the key issue in Mr C's complaint is whether it was fair and reasonable for IFG to have accepted his SIPP and Ethical Forestry investment applications in the first place. So, I need to determine whether IFG carried out appropriate due diligence checks before deciding to accept Mr C's applications.

As noted above, IFG says it did carry out due diligence on Firm B and Ethical Forestry before accepting business from it and permitting the investment within its SIPPs. And from what I've seen I accept that it undertook some checks. However, the question I need to consider is whether IFG ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by Firm B and/or investing in Ethical Forestry were being put at significant risk of detriment. And, if so, whether IFG should therefore not have accepted Mr C's applications.

The contract between IFG and Mr C

My decision is made on the understanding that IFG acted purely as a SIPP operator. I don't say IFG should (or could) have given advice to Mr C or otherwise have ensured the suitability of the SIPP or Ethical Forestry investment for him. I accept that IFG made it clear to Mr C that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that forms Mr C signed confirmed, amongst other things, that losses arising as a result of IFG acting on his instructions were his responsibility.

I've not overlooked or discounted the basis on which IFG was appointed. And my decision on what's fair and reasonable in the circumstances of Mr C's case is made with all of this in mind. So, I've proceeded on the understanding that IFG wasn't obliged – and wasn't able – to give advice to Mr C on the suitability of the SIPP or Ethical Forestry investment. But I remain satisfied that, to meet its regulatory obligations when conducting its operation of SIPPs business, IFG had to decide whether to accept introductions of business and/or investments with the Principles in mind. And I don't agree that it couldn't have rejected introductions or applications without contravening its regulatory permissions by giving investment advice.

What did IFG's obligations mean in practice?

The business IFG was conducting was its operation of SIPPs. The regulatory publications provided some examples of good industry practice observed by the FCA during its work with SIPP operators, including being satisfied that it should accept applications from a particular introducer, and being satisfied that a particular investment is an appropriate one to accept. So I'm satisfied that, to meet its regulatory obligations and good industry practice, when conducting its business, IFG was required to consider whether to accept or reject particular referrals of business and particular applications for investment in its SIPPs.

The regulators' reports and guidance provided some examples of good practice observed by the FCA during its work with SIPP operators. This included being satisfied that an introducer is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting due diligence checks to make informed decisions about accepting business. This obligation was a continuing one. And its obligations and duties in this respect weren't prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

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

All in all I am satisfied that, in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, IFG should have carried out due diligence which was consistent with good industry practice and its regulatory obligations at the time. And in my opinion, IFG should have used the knowledge it gained from this to decide whether to accept or reject business or a particular investment.

IFG's due diligence on Firm B

As I've said, IFG had a duty to conduct due diligence and give thought as to whether to accept business from third parties arranging or advising on investments. That's consistent with the Principles and the regulators' publications as set out earlier in this decision.

And this is also seemingly consistent with IFG's own understanding of its obligations at the relevant time, as it seems to have done more than just check whether the proposed investment met the relevant HMRC requirements, for example. Having looked at the evidence IFG has provided to show what due diligence checks it carried out on Firm B and what conclusions it drew from these this shows that, by the time it accepted Mr C's application, IFG had entered into TOB with Firm B in September 2009. And IFG has said that before accepting business from Firm B it verified that Firm B was and remained authorised by the FCA, that it had the requisite permissions and that it also obtained and reviewed Firm B customer suitability reports.

These steps go some way towards meeting IFG's regulatory obligations and good industry practice. But IFG hasn't provided us with sufficient information to persuade me that it conducted sufficient due diligence on Firm B before accepting business from it, or that it didn't fail to draw fair and reasonable conclusions from what it did know about Firm B.

The volume and type of business

An example of good practice identified in the FCA's 2009 review was:

> *"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."*

Given all that I've said above, I don't think simply keeping records without scrutinising the information would be consistent with good industry practice and IFG's regulatory obligations. As highlighted in the 2009 review, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

It's clear IFG had access to information about the number and nature of introductions that Firm B made to it, as it's been able to provide details about this when requested.

IFG has told our Service that it received its first introduction from Firm B in 2007. It has said that Firm B introduced 107 customers to it, of which 95% invested in non-standard investments, as did all 6 customers (including Mr C) introduced to it by Mr C of Firm B. Around 5-11% of customers introduced to it were proposing to transfer at least one pension with safeguarded benefits or from defined benefit occupational schemes. IFG has said that these introductions accounted for around 6.5% of its new business over that period. And that Mr C's introduction to IFG from Firm B was number 77.

So, by the time of Mr C's application in November 2011, IFG had already received a significant number of introductions from IFG and most of those customers invested in non-standard investments.

It's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of the population and in respect of a small proportion of their pension – sophisticated and/or high net worth investors. So I think IFG should've been concerned that such a volume of introductions, which related almost exclusively to consumers investing in high-risk esoteric investments, such as Ethical Forestry, was unusual.

And so I think IFG either was aware, or ought reasonably to have been aware, that the type of business Firm B was introducing was high risk and therefore carried a potential risk of significant consumer detriment.

Anomalous features

The 2009 Thematic Review Report said that requesting copies of the suitability reports provided to clients by the intermediary giving advice was an example of good practice. And I recognise IFG has said that it obtained copies of suitability reports from Firm B in respect of new applications, at or around the same time as it received the SIPP and investment applications, to ensure appropriate reports were taking place.

The 2009 report said that the purpose of requesting such was to:

'… enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.'

IFG has said that obtaining Firm B's suitability reports helped it check that the investor wasn't 100% exposed to a potentially higher risk investment '*i.e. that there was a spread of risk to meet the investor's stated risk appetite*'. And, in addition, IFG said that all new applications introduced by Firm B were reviewed by IFG's compliance director prior to being processed for them to assess, for example, the type and size of the investment (and, in part, to identify any anomalous investments).

So I think IFG understood at the time that it wasn't enough for it to just obtain copies of suitability reports, it needed to use these to enhance its understanding of its customers to help identify potentially unsuitable SIPPs.

Looking at the suitability reports provided to us in respect of Mr C's complaint, and in other similar cases with our Service involving Firm B and the Ethical Forestry investment, I can see Firm B tended to say in these that while the particular customer's risk profile was otherwise medium, or sometimes medium/low as in Mr C's case, their attitude to risk specifically in respect of the amount being invested in Ethical Forestry was adventurous. IFG has confirmed that all customers introduced to IFG by Firm B received a recommendation (seemingly in the suitability reports) to invest in Ethical Forestry, a high-risk unregulated investment. And it seems that customers, like Mr C (after allowing for tax free cash), were advised to invest a significant part – nearly 50% or more – of their SIPP pension monies into Ethical Forestry That's despite such investments generally only being suitable for a small proportion of the population, and in respect of a small proportion of their pension, in the way I've said above. And, in Mr C's case, he was noted in the suitability report as being a machine operator earning £24,500 per annum and who was unlikely to have sufficient pension income to retire at age 65.

IFG has openly said that it – and one person in particular at IFG – reviewed Firm B's suitability reports to specifically check things like the spread of risk, stated risk appetite and type and size of investment. So I think it was aware or ought reasonably to have become aware, and before Mr C's application, that there was a potential risk of customer detriment given the very clear and specific pattern, as set out above, to Firm B's approach in respect of such matters in these. Firm B wasn't doing things in a conventional way. And I think that IFG should have had cause for concern as result. Alongside this, I've seen suitability reports which said that Ethical Forestry would pay Firm B commission for arranging the investment, I think also raising questions about Firm B's motivation behind the above in the circumstances. Mr C's suitability report, for example, said that Ethical Forestry would pay Firm B £960 commission for arranging the investment.

In addition, in April 2011, Firm B was fined for reasons which included failing to gather information about its clients and failing to match attitude to risk for the recommended products. While I recognise this related to advice given between late 2004 and 2006, I think this information helps build a picture of the type of business Firm B was involved in. This information was readily available at the time of Mr C's introduction to IFG in November 2011. And I think that if IFG had looked this up then given the concerns I think it ought to have had about the type and volume of business being introduced to it by Firm B, then at the very least it would have given IFG cause for concern about the quality of business Firm B was carrying out. And that this should have caused IFG to think very carefully before continuing to accept any introductions from Firm B and Mr C's applications from it.

What fair and reasonable steps should IFG have taken in the circumstances?

IFG could simply have concluded that, given the potential risks of consumer detriment – which I think were clear and obvious at the time – it shouldn't have continued accepting applications from Firm B and before it received Mr C's application. That would have been a fair and reasonable step to take, in the circumstances. Alternatively, IFG could have taken fair and reasonable steps to try to address the potential risks of consumer detriment in the first instance.

Requesting information directly from Firm B

As part of its due diligence on Firm B, I think it's fair and reasonable to expect IFG, in line with its regulatory obligations, to have made some specific enquiries and obtained information about Firm B business model. IFG ought to have found out more about how Firm B was operating *before* it accepted applications from it.

As set out above, the 2009 Thematic Review explained that the regulator would expect SIPP operators to have procedures and controls, and for management information to be gathered and analysed, so as to enable the identification of, amongst other things, '*consumer detriment such as unsuitable SIPPs*'. Further, that this could then be addressed in an appropriate manner '…*for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification*'.

The October 2013 finalised SIPP guidance gave an example of good practice as:

> '*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.*'

I think that IFG, prior to accepting business from Firm B, should've checked with it about things like: how it came into contact with potential clients, what agreements it had in place with its clients, what its arrangements with any unregulated businesses or third parties were, how and why retail clients were interested in making these esoteric investments, whether it was aware of anyone else providing information to clients, how it was able to meet with or speak with all its clients, and what material was being provided to clients by it.

IFG has most recently said that it did raise enquiries in this regard in respect of Firm B's business model. But it hasn't provided evidence to show that it discussed Firm B business model with it before accepting introductions and putting in place TOB with it. Instead IFG has previously said that at the time it accepted introductions from Firm B it wasn't provided with any information as to the type of investments Firm B would agree with its clients, for example. And that it didn't have any further discussions with Firm B about the client process/business they were referring to it.

If IFG had done this prior to accepting business from Firm B, then I think it would likely have become aware of the above and the resulting significant potential risk of consumer detriment either from those initial discussions with Firm B or more detailed discussions this ought to have led. And, in the alternative, if Firm B had been unwilling to answer such questions if put to it by IFG, I think IFG should simply then have declined to accept introductions from Firm B.

IFG might say that it didn't have to obtain this information from Firm B. But I think this was a fair and reasonable step to take, in the circumstances, to meet its regulatory obligations and good industry practice.

And, in that case, I think IFG should have concluded, and before it accepted Mr C's business from Firm B, that it shouldn't accept introductions from it.

Making independent checks

In light of what I've said above, I think it would also have been fair and reasonable for IFG, to meet its regulatory obligations and good industry practice, to have taken independent steps to enhance its understanding of the introductions it was receiving from Firm B.

The 2009 Thematic Review Report said:

> '…*we would expect [SIPP operators] 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 members to confirm the position, or by contacting the firm giving advice and asking for clarification*.'.

So I think it would've been fair and reasonable for IFG to speak to some applicants directly and/or contact Firm B for clarification.

To be clear, I accept IFG couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view such steps included addressing a potential risk of consumer detriment by speaking to applicants and/or contacting Firm B for clarification, as this could have provided IFG with further insight into Firm B's business model. I think these were fair and reasonable steps to take in reaction to the risks of consumer detriment I've mentioned. Had IFG taken appropriate steps, such as seeking clarification from Mr C, I think it would likely have found out that he was a retail rather than high-risk investor.

If IFG had undertaken the type of due diligence I've mentioned above, then I think it ought reasonably to have identified, and before it accepted Mr C's application, that Firm B's business carried a significant risk of consumer detriment, there were anomalous features and Firm B had a disregard for its consumers' best interests. Retail consumers, like Mr C, were transferring pension monies to IFG to invest in higher-risk esoteric investments like Ethical Forestry, when it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. And I think IFG either was aware, or ought reasonably to have been aware, that the type of business Firm B was introducing was high risk and therefore carried a potential risk of consumer detriment.

In summary

I think IFG should have identified that the business it was receiving from Firm B raised serious questions about its motivation and competency. And I think IFG should have concluded, and before it accepted Mr C's business from Firm B, that it shouldn't accept introductions from Firm B. I therefore conclude that it's fair and reasonable in the circumstances to say that IFG shouldn't have accepted Mr C's SIPP application from Firm B.

IFG didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr C fairly by accepting his application from Firm B. To my mind, IFG didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr C to be put at significant risk of detriment as a result.

As I've explained above, IFG shouldn't have accepted Mr C's introduction from Firm B in first place. I think it is fair and reasonable to uphold this complaint on that basis alone. Even if I thought differently, I've also considered the due diligence that IFG carried out

on the Ethical Forestry investment and I've decided to uphold Mr C's complaint, for the reasons given below. When doing so, I have taken the same approach to considering this as I did to considering the due diligence undertaken on Firm B.

IFG's due diligence on the Ethical Forestry investment

I think IFG's obligations certainly went beyond checking that the Ethical Forestry investment existed and would not result in tax charges and I think it understood this at the time. I say this because, IFG has provided us with some of the information that it has said it considered before accepting the Ethical Forestry investment within its SIPPs.

This shows that prior to permitting the investment into its SIPPs (and before accepting Mr C's application to invest in this in 2011), amongst other things, IFG:

- Obtained conference slides (from a conference that IFG attended in late 2008) which includes a presentation by Ethical Forestry, that IFG has said used current and historic timber valuations from three independent sources and which were cited in the due diligence pack.
- Reviewed a letter between the FCA and Ethical Forestry dated April 2008, which IFG has said indicated how the asset must be managed so as not to breach relevant sections of FSMA.
- Liaised with solicitors in respect of the asset structure, anti-money laundering checks and the wording of the draft contract for the sale of the crop in 2008.
- Obtained an Ethical Forestry One Exempt Unit Trust Information Memorandum dated March 2010 – seemingly in respect of an alternative route being proposed to facilitate investments in Ethical Forestry, if I've understood correctly.
- Obtained and reviewed investment brochures and leaflets.

It seems IFG went on to conclude that, based on the information provided, Ethical Forestry appeared to be an acceptable investment but that in order to proceed with this it needed the UCIS form Mr C completed, which included limitation of liability wording and as set out above in 'What happened' said, in summary, the following:

- Encashment of the investment may not be possible, or may be difficult before the end of any specified term.
- There's unlikely to be any ready market, so selling/encashing the investment to pay benefits or for reinvestment may be very difficult, which could result in delays or restrictions on benefits payable.
- If there is no liquid market in the investment, it may be difficult for it to obtain a valuation for accounting purposes. And if it's unable to obtain an up to date market value, it may have to value the investment at cost or give this a nil value if the investment can't realised at the time.
- The investor won't have recourse to the FSCS or our Service.

Having carefully considered all of the information that's been made available to us to date to evidence the checks IFG carried out on the Ethical Forestry investment, I'm satisfied this did allow it to broadly understand the nature of the investment. But I don't think IFG's actions went far enough. As I explain in more detail below, I'm not satisfied that IFG undertook sufficient due diligence on the Ethical Forestry investment before it decided to accept this into its SIPPs. And I think some of the information should have given IFG real cause for concern about the risk of consumer detriment associated with this.

As such, in my view, IFG didn't comply with its regulatory obligations and good practice, and it didn't act fairly and reasonably in its dealings with Mr C, by not undertaking sufficient due

diligence on the Ethical Forestry investment before it accepted his applications, which I think were made with the intention of investing in this.

Further, based on what it knew or ought to have known had it undertaken sufficient due diligence, I think IFG failed to draw a reasonable conclusion on accepting the Ethical Forestry investment into its SIPPs.

If IFG had completed sufficient due diligence, what ought it reasonably to have discovered?

IFG said that it liaised with solicitors in respect of the asset structure, anti-money laundering checks and the wording of the draft contract for the sale of the crop. And I can see from a 2008 letter that IFG did engage with what seems to be Ethical Forestry's solicitor (given the solicitor refers to its client as the ones who will be undertaking the harvest of trees) in respect of the draft contract wording, for example, and that IFG had input into this. However, when IFG asked the solicitor whether it had carried out any due diligence on the company and investment, for example, it said in response that other than in respect of money laundering purposes it hadn't done any such due diligence. So, while the solicitor went on to say this investment was straightforward product, it did so having already recognised it hadn't done any due diligence on this and, as I've said, it was acting on behalf of Ethical Forestry. So I think the solicitor's comments were of limited value in respect of due diligence on Ethical Forestry.

In some of its suitability reports I can see that Firm B referred to having carried out its own due diligence on the Ethical Forestry investment and having obtained a third-party report on Ethical Forestry from three-sixty research, which it said was available on request. And IFG has said that it conducted a thorough and extensive dialogue with Firm B regarding the investments, so I think it's likely IFG would have had access to and/or seen this report. But IFG hasn't provided evidence from the time of what it discussed with Firm B in respect of the investment, such as emails or call notes, or a copy of the three-sixty research report Firm B said it had obtained, for example – despite being asked to do so by the deadline to respond to my provisional decision.

Having seen a copy of a report on Ethical Forestry completed by three-sixty research though, I can see this included, amongst other things, the following points:

- There is no investor protection.
- There is an exchange rate risk to the investment.
- Trees are unlikely to have a value in the first three years.
- There are no 'buy back' arrangements and no effective secondary market is available. And there may be a considerable delay between issuing instructions to fell and receiving any payment.
- The investment should be considered illiquid and clients should be advised to give as much notice as possible when attempting to realise their investment.
- It's a high-risk investment that's clearly not for a first-time investor but as a small part of a portfolio for a higher risk investor.

And, in order to correctly understand the nature of the investment and consistent with its regulatory obligations, IFG should have also had regard to, and given careful consideration to, how Ethical Forestry was marketed to investors when undertaking due diligence into the proposed investment. And this includes conducting some further basic independent searches. I note that IFG has provided a copy of the Ethical Forestry marketing material it says it reviewed as part of its due diligence. So, clearly IFG thought it was important to look at this material at the time too. And, for the reasons given below, I think it's fair to say that

the information provided about the Ethical Forestry investment was at best unclear and that a number of the statements made in promotional material were misleading.

The marketing material I've seen says Acacia is "a safe and secure investment". The brochures for the Melina and/or Acacia tree crops say the investment is "secure, dependable and stable" and that it is "Low risk – No peaks or troughs, just steady and stable increases".

And, in September 2009, statements on Ethical Forestry's website read:

"*If you are looking for **certified, high return investments, low risk**, ethical investment which is both profitable and carbon friendly, our Tropical Hardwood Investments demand your serious consideration*" (my emphasis).

In October 2010:

"*Our forestry investments are suited for pensions because:*

- ***Timber investments Out-Perform** - As an asset class timber has consistently out-performed most stocks and commodities for the last 100 years, including oil, gas and gold.*
- ***Are low risk** - No peaks or troughs, just steady and stable increases.*
- ***Are Very Stable** - Timber prices are extremely stable and not correlated to the stock market.*
- ***Offer Higher returns** - Historically, timber investments offer higher returns than traditional investment"* (no emphasis added).

And in November 2010:

"*Ethical Forestry's investments offer **steady, stable increases** with **predictably high** returns, and as they are not correlated to the stock market, they do not suffer from unpredictable peaks and troughs*." (my emphasis).

In my view, IFG should have been concerned that neither the marketing material nor the website reflected the risks. It was an unregulated high-risk investment. The Ethical Forestry investment was certainly not "low risk" and "secure" on any reasonable analysis. Despite this, the investment appears to have been marketed as such to pension investors.

IFG should also have been concerned about how the projected returns were set out in the marketing material.

The slides IFG said that Ethical Forestry presented at a conference it attended in 2008 said, for example, that the projected returns for an £12,000 investment over 12 years would be £84,000. In August 2009, Ethical Forestry's website said that the projected returns for a £12,000 investment over 12 years in Formaleta would be in excess of £84,000. And an Acacia brochure (dated October 2010 and provided to us by IFG) said, for example, that the projected returns for an £18,000 investment over 10 years would be £93,642 and for an accumulating investment over 22 years the projected return was £732,297. Another undated version of the Acacia brochure that I've seen said this would be "ideal for SIPPs pensions and personal investment portfolios" and that conservative figures were used in its projections.

The website also said in respect of Melina that "A typical investment of £18,000 invested over 10 years is projected to return £93,642. By comparison, a high-return account at 6% compound interest per annum would yield just £32,235 over 10 years".

An IFA and Agents newsletter for Melina dated May 2011 (provided by IFG) said in large bold font on the front page that this would provide higher returns for investors. It said Melina offered 'higher returns than Acacia' and that the projected returns for an £18,000 investment over 10 years would be £104,109 and for an accumulating investment over 22 years the projected return was £842,364.48, as did the Melina brochure dated May 2011 (provided by IFG). Another Melina brochure I've seen dated May 2012 added that an £18,000 24-year accumulating investment was projected to pay out £1,059,312.

I don't think that this marketing material contained any evidential basis for what appears to be wholly unrealistic "conservative" returns for investors – up to nearly 4,000% or 5,000% growth for an accumulating investment in the tree crops. Reference is made to historic figures from the Costa Rica National Forestry Office. But no detail is provided for investors to verify these figures. And, in any case, neither the website nor brochures say that past performance is no indicator of what might happen in the future, give alternative projections in different market conditions or highlight the risk factors associated with unregulated investments such as this.

IFG has said that the slides Ethical Forestry presented at a conference it attended in 2008 used current and historic timber valuations from three independent sources, which were also cited in the due diligence pack. But I think it's highly unlikely that investor's would have seen this slide pack. And I note that as part of the slides Ethical Forestry said that, for example, it offered a guaranteed buy back of the investment at any time after the first year subject to the current timber market rate. I haven't seen anything to suggest that IFG sought to verify this with Ethical Forestry in respect of the strength of the guarantee or to query what circumstances later led to this guarantee being removed, given it wasn't in the other investment marketing material I've seen.

I recognise that a 20-page (undated although seemingly relevant to 2008) Melina Due Diligence brochure (provided to us by IFG) held further information. But, again, it doesn't seem to contain any disclaimer which explained that Ethical Forestry wasn't regulated by the FCA, that investment values may rise or fall, there were no performance guarantees and customers might not get back the full amount paid, for example. I've seen another 42-page Melina Due Diligence brochure which I note did contain this type of information. But I'm not sure whether investors would've seen this lengthy document. Neither Due Diligence brochure explained that customers would not have recourse to the FSCS or our Service. And I think that a warning ought to have been given in all the marketing materials and on the website.

For the reasons I've given, I think the investment promotional material was unclear and misleading. So, IFG should have had significant concerns about how the investment was being promoted and the information being provided to investors about the investment. There was a significant risk of consumer detriment, as there was a real risk that investors could be investing in Ethical Forestry without appreciating the risks involved. I think that these concerns alone ought to have led IFG to conclude that it shouldn't permit this investment within its SIPPs, and at the very least this ought to have led IFG to understand the importance of undertaking comprehensive independent due diligence.

Looking at all of the above, there were significant warning signs and risks associated with the Ethical Forestry investment, namely:

- There was no investor protection associated with this investment. It was illiquid, subject to currency fluctuations and there may be no market for it. There were also other risks involved such as disease or fire that could've destroyed the trees allocated to investors.

- It was being specifically targeted for investment by pension investors, it was a speculative overseas based investment with inherent high risks that made it very obviously unsuitable for all but a small category of investors and even then, only a small part of such an investor's portfolio.
- Ethical Forestry had no proven track record for investors and so IFG couldn't be certain that the investment wasn't impaired or operated as claimed.
- The very high projected returns set out should have been questioned. I don't expect IFG to have been able to say the investment would have been successful. But such high projected returns without any apparent basis should have given IFG cause to question its credibility.
- The marketing material was, at best, unclear as to the risks associated with the investment. So, IFG should have been concerned that consumers may have been misled or did not properly understand the investment they intended to make.
- As set out by the liquidator, investors were led to believe they had ownership of trees and cropping rights in relation to the trees and were given GPS co-ordinates to these, when these rights weren't given as these weren't capable of being granted under Costa Rican law.

While I've taken into account IFG's comments concerning what later become known about the investment, all in all I am satisfied that IFG ought to have had significant concerns about the Ethical Forestry investment from the beginning. I think such concerns ought to have been a red flag when it was considering whether to accept this investment into its SIPPs. And, knowing all this, I don't think it was fair or reasonable for IFG to have accepted the Ethical Forestry investment into its SIPPs.

Had IFG done what I think it should have, and drawn reasonable conclusions from what it knew or ought to have known, I think that it ought to have concluded there was a significant risk of consumer detriment if it accepted the Ethical Forestry investment into its SIPPs and that this wasn't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think IFG undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the Ethical Forestry investment before it did so. I don't think IFG met its regulatory obligations and, in accepting Mr C's application to invest in Ethical Forestry, it allowed his funds to be put at significant risk.

There's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. As I've said, I accept IFG wasn't expected to, nor was it able to, give advice on the suitability of the SIPP and/or the investment. To be clear, I'm not making a finding that IFG should have assessed this for Mr C. I accept it had no obligation to give him advice, or to otherwise ensure the suitability of an investment for him.

And I'm also not saying that IFG shouldn't have allowed the Ethical Forestry investment into its SIPPs because it was high risk. Instead, my fair and reasonable decision is that there were things IFG knew or ought to have known about the Ethical Forestry investment and how it was being marketed, which ought to have led IFG to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that IFG failed to act with due skill, organise and control its affairs responsibly, or treat Mr C fairly by accepting this into his SIPP.

I think the fair and reasonable conclusion based on the evidence available is that IFG shouldn't have accepted Ethical Forestry into its SIPPs and Mr C's application to invest in this. I think it ought to have concluded that it would not be consistent with its obligations to

do so. To my mind, IFG didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr C to be put at significant risk of detriment as a result.

Summary of my findings on due diligence

To be clear, even if I thought IFG had undertaken adequate due diligence on Firm B and acted appropriately in accepting Mr C's business from it (which, as I've explained earlier, I don't), I'd still consider it fair and reasonable to uphold Mr C's complaint on the basis that IFG didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr C fairly, by accepting the Ethical Forestry investment into its SIPPs and accepting his application to invest in this.

I make this point here to emphasise that while I've concluded *both* that IFG shouldn't have accepted Mr C's business from Firm B and also that it shouldn't have accepted his application to invest in Ethical Forestry, had I only reached the conclusions I've set out above on one of those aspects and not also gone on to reach findings on the other aspect for completeness, I'd still consider it fair and reasonable in all the circumstances to uphold this complaint. That's because IFG didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr C fairly by accepting his business from Firm B. And because, separately, IFG also didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr C fairly, by accepting the investment into its SIPPs. And to my mind, IFG didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr C to be put at significant risk of detriment as a result.

Did IFG act fairly and reasonably in proceeding with Mr C's instructions?

I recognise Mr C signed forms confirming he understood that IFG wouldn't accept any liability for issues that might arise in respect of the investment and that he declared that he'd received details of the risk factors and terms and conditions for the investment and wished to proceed with this.

For the reasons given above, I think IFG should have refused Mr C's application from Firm B and/or refused to permit the Ethical Forestry investment within its SIPPs though. So things shouldn't have progressed beyond that.

The indemnity

In my view it's fair and reasonable to say that just having Mr C sign indemnity declarations wasn't an effective way for IFG to meet its regulatory obligations to treat him fairly, given the concerns IFG ought to have had about his introduction and the intended investment. IFG knew that Mr C had signed forms intended to indemnify it against losses that arose from acting on his instructions. And, in my opinion, relying on such indemnities when IFG knew, or ought to have known, Mr C's dealings with Firm B and the intended investments were putting him at significant risk wasn't the fair and reasonable thing to do. In the circumstances I think very little comfort could have been taken from the declaration stating that Mr C understood the investment risks. Having identified the risks I've mentioned above, it's my view that the fair and reasonable thing to do would have been to refuse to accept Mr C's applications.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr C signed meant that IFG could ignore its duty to treat him fairly. I'm satisfied that indemnities contained within the contractual documents don't absolve IFG of its regulatory obligations to treat customers fairly when deciding whether to accept or reject business.

IFG had to act in a way that was consistent with the regulatory obligations that I've set out in this decision. In my view, IFG was not treating Mr C fairly by asking him to sign an indemnity absolving it of all responsibility, and relying on such an indemnity, when it ought to have known that Mr C was being put at significant risk.

I'm satisfied that Mr C's SIPP shouldn't have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity shouldn't have arisen at all. And I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for IFG to proceed with Mr C's applications.

COBS 11.2.19R

IFG has said that it's an execution only SIPP provider and it might say that COBS 11.2.19R obliged it to execute investment instructions. As I've said though, it wasn't fair and reasonable for IFG to have accepted Mr C's applications in the first place. So his SIPP shouldn't have been established and the opportunity to execute investment instructions shouldn't have arisen at all.

In any event, an argument about having to execute the transaction as a result of COBS 11.2.19R was considered and rejected by the judge in BBSAL. In that case Jacobs J said:

> *'The heading to COBS 11.2.1R shows that it is concerned with the manner in which orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2 as a whole, namely: "Best execution". The text of COBS 11.2.1R is to the same effect. The expression "when executing orders" indicates that it is looking at the moment when the firm comes to execute the order, and the way in which the firm must then conduct itself. It is concerned with the "mechanics" of execution; a conclusion reached, albeit in a different context, in Bailey & Anr v Barclays Bank [2014] EWHC 2882 (QB), paras [34] – [35]. It is not addressing an anterior question, namely whether a particular order should be executed at all. I agree with the FCA's submission that COBS 11.2 is a section of the Handbook concerned with the method of execution of client orders, and is designed to achieve a high quality of execution. It presupposes that there is an order being executed, and refers to the factors that must be taken into account when deciding how best to execute the order. It has nothing to do with the question of whether or not the order should be accepted in the first place.'*

So I'm satisfied that Mr C's SIPP shouldn't have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity shouldn't have arisen at all. And I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for IFG to proceed with Mr C's application.

Is it fair to ask IFG to compensate Mr C in the circumstances?

The involvement of other parties

I accept that other regulated parties were involved in the transactions complained about, such as Firm B and I've carefully considered IFG's points in respect of this. In this decision I'm considering Mr C's complaint about IFG though. IFG had its own distinct set of obligations when considering whether to accept Mr C's application for a SIPP. And, as I explain below, I'm satisfied that it's fair to require it to compensate Mr C for the full measure of his loss.

The DISP rules set out that when an Ombudsman's determination includes a money award, then that money award may be such amount as the Ombudsman considers to be fair compensation for financial loss, whether or not a Court would award compensation (DISP 3.7.2R).

I want to make clear that I've taken everything IFG has said into consideration. And it's my view that it's appropriate in the circumstances for IFG to compensate Mr C to the full extent of the financial losses he's suffered due to IFG's failings. And, having carefully considered everything, I don't think that it would be appropriate or fair in the circumstances to reduce the compensation amount that IFG's liable to pay to Mr C. IFG accepted Mr C's business. And, but for IFG's failings, I'm satisfied that Mr C's pension monies likely wouldn't have been switched to an IFG SIPP and invested in Ethical Forestry via Firm B.

I am not asking IFG to account for loss that goes beyond the consequences of its failings. I am satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for that same loss is a distinct matter. And that should not impact on Mr C's right to fair compensation from IFG for the full amount of his loss. The key point here is that but for IFG's failings, Mr C wouldn't have suffered the loss he's suffered. As such, I'm of the opinion that it's appropriate and fair in the circumstances for IFG to compensate Mr C to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by other firms involved in the transactions.

I note that IFG has said, for example, that Firm B is primarily responsible for any loss suffered. And I've set out below that IFG could have the option to take an assignment from Mr C before compensation is paid. And that compensation could be made contingent upon Mr C's acceptance of this term of settlement.

As set out above, I'm satisfied that IFG should've put a stop to the transaction and that the switch to the IFG SIPP and investment into Ethical Forestry likely wouldn't have gone ahead if it'd treated Mr C fairly and reasonably. I've carefully considered causation, contributory negligence, and apportionment of damages. But in the circumstances here and for the reasons I've given, I'm still satisfied it's fair and reasonable for IFG to compensate Mr C for his full loss.

Mr C taking responsibility for his own investment decisions

Section 5(2)(d) of the FSMA (now section 1C) requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the general principle that consumers should take responsibility for their own investment decisions. Having considered this I'm satisfied that it wouldn't be fair or reasonable to say Mr C's actions mean he should bear the loss arising as a result of IFG's failings.

For the reasons given above, I think that if IFG had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr C's introduction from Firm B nor permitted his investment application. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr C wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

As I've made clear, IFG needed to carry out appropriate due diligence on Firm B and reach the right conclusions. I think it failed to do this. And merely having Mr C sign forms containing declarations wasn't an effective way of IFG meeting its obligations, or of escaping liability where it failed to meet these.

Mr C used the services of regulated firms and providers, trusting these to act in his best interests. So, I don't think it would be fair to say in the circumstances that Mr C should suffer

the loss because he ultimately instructed the transactions to be effected. Overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair to say IFG should compensate Mr C for the loss he's suffered.

Would Mr C's application have gone ahead elsewhere if IFG had declined it?

I've considered whether, in the circumstances, Mr C would have gone ahead with the switch and the investment if IFG had refused his applications. In *Adams v Options SIPP*, the judge found that Mr Adams would've proceeded with the transaction regardless. HHJ Dight says (at paragraph 32):

> *'The Claimant knew that it was a high risk and speculative investment but nevertheless decided to proceed with it, because of the cash incentive.'*

I recognise Mr C signed a declaration confirming he understood and accepted the level of risk and wished to proceed. But Mr C was a retail customer, who doesn't appear to work in finance or pensions. And, in any event, I'm not satisfied that Mr C was determined to move forward with the transactions in order to take advantage of a cash incentive – I've not seen any evidence to show Mr C was paid one.

It therefore cannot be said Mr C was incentivised to enter into the transaction. And, on balance, I'm satisfied that Mr C, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this case is very different from that of Mr Adams.

Further, I don't think it's fair and reasonable to say that IFG shouldn't compensate Mr C for his loss on the basis of speculation that another SIPP operator would've made the same mistakes as I've found IFG did. I think it's fair instead to assume that another SIPP provider would've complied with its regulatory obligations and acted according to good industry practice, and therefore wouldn't have accepted Mr C's application from Firm B nor permitted the Ethical Forestry investment had Mr C gone elsewhere.

On balance, I think it's fair and reasonable to direct IFG to pay Mr C compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to Mr C's loss, I consider that IFG failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding when it had the opportunity to do so by declining to accept Mr C's applications.

What would have happened if Mr C's pension monies hadn't been transferred to IFG so as to effect the Ethical Forestry investment?

As I've mentioned above, I'm satisfied that Mr C's existing pension monies were only switched to IFG so as to effect the Ethical Forestry investment. And I'm also satisfied that IFG should have decided not to accept business from Firm B and to invest in this. Further, that I think it's fair to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr C's business from Firm B or permitted the Ethical Forestry investment into its SIPPs.

If Mr C's pension monies hadn't been switched to IFG to effect the Ethical Forestry investment then he might have decided to leave his monies where they were or, alternatively, he might still have sought to transfer away to amalgamate these pension plans and take tax free cash. I'm aware Mr C was interested in the possibility of amalgamating some of these and that he did go on to take tax free cash immediately when his plans were transferred to IFG.

However, I'm also aware that one Mr C's existing pension policies – seemingly the biggest of the four plans that he transferred to the SIPP – had a GAR (as explained above). Mr C has said that he can't remember taking any benefits from his SIPP and I haven't seen anything to suggest that Mr C's desire for tax free cash for 'home repairs' was urgent, such that Mr C would have needed to transfer his GAR policy elsewhere, giving up valuable guaranteed benefits in doing so, to be able to access an increased amount of tax-free cash when he did. Instead I note that at the time Mr C was concerned about having sufficient income available at retirement. And, while the suitability report notes the particular GAR was 4.846% at age 60, elsewhere it refers to this as being 8.551% at age 60 and I'm aware that the type of pension scheme that Mr C had did provide some increasing GARs – neither party provided any further information in respect of this, despite being asked to do so in response to my provisional decision if they didn't agree with my understanding.

Given the available information, I consider that it more likely than not that Mr C would have retained his GAR policy and used the funds from this to purchase an annuity exercising the available GAR. I also think he would have taken any maximum tax-free cash allowance as this would have allowed him to take a proportion of his pension tax free. So, I have taken this into account when setting out the redress below.

In respect of the other non-GAR pension plans, I do think there's a possibility Mr C might well still have decided to amalgamate these. I can't state definitively which provider would have been used, or into what holdings, and in what proportions, the monies not taken as tax-free cash/pension income would have been invested. So, having carefully considered this issue, and given the lack of certainty on this point (including about the specific provider, holdings, and the specific proportions, monies would have been invested in post-transfer had transfers elsewhere still been effected), for the purposes of quantifying redress in this case I think the fair and reasonable approach is to assume that the non-GAR pension monies in question would have achieved a return equivalent to the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return index). I'm satisfied that's a fair and reasonable proxy for the type of return that could have been achieved over the period in question.

In conclusion

Taking all of the above into consideration, I think that in the circumstances it's fair and reasonable for me to conclude that IFG should have decided not to accept business from Firm B and not to permit its SIPP members to invest in Ethical Forestry *before* it received Mr C's business. And I'm also satisfied it's fair and reasonable to conclude that if IFG hadn't accepted Mr C's applications, including his introduction from Firm B and/or hadn't permitted its SIPP members to invest in Ethical Forestry in its SIPPs, then the transactions this complaint concerns wouldn't still have gone ahead – Mr C wouldn't have established and switched his pension monies into an IFG SIPP or invested in Ethical Forestry.

So, for the reasons I've set out, I think it's fair and reasonable to direct IFG to compensate Mr C for the full amount of the loss he's suffered as a result of it accepting his business from Firm B and permitting him to invest his IFG SIPP monies in Ethical Forestry.

I say this having given careful consideration to the *Adams v Options* judgments but also bearing in mind that my role is to reach a decision that's fair and reasonable in the circumstances of the case having taken account of all relevant considerations.

Putting things right

Mr C transferred monies from different pension schemes into the SIPP, including a GAR policy and three other existing pension schemes.

In respect of the non-GAR policies, to date we haven't received anything to suggest that these were anything other than defined contribution plans without any guarantees attached. And neither Mr C nor IFG have disputed this or provided evidence to show otherwise. That's despite being given the opportunity to do so in response to my provisional decision and despite being made aware it won't be possible for us to amend this once any final decision has been issued on the complaint.

To put things right IFG will need to undertake different types of loss calculations, one in relation to the monies that originated from his GAR policy and another in relation to monies that originated from his other non-GAR defined contribution pension schemes.

As part of doing this IFG will need to calculate the portion of Mr C's current SIPP value that's attributable to each of the respective transfers/switches and apply these to the relevant calculations. And Mr C did receive a tax-free lump sum when he transferred his pension plans, so this will need to be taken into account across all of his pensions as I've set out below.

In summary, IFG should:

- Obtain the actual transfer value of Mr C's SIPP, including any outstanding charges.
- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).
- Undertake loss calculations as set out below in respect of each of the schemes from which monies were transferred into the SIPP and pay any redress owing in line with the steps set out below.
- If the SIPP needs to be kept open only because of the illiquid investment and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.
- Pay to Mr C £500 to compensate him for the distress and inconvenience he's been caused by this matter.

I've set out how IFG should go about calculating compensation in more detail below.

Treatment of the illiquid assets held within the SIPP

I think it would be best if any illiquid assets held could be removed from the SIPP. Mr C would then be able to close the SIPP and transfer away from IFG if he wishes. That would then allow him to stop paying the fees for the SIPP. The valuation of the illiquid investment may prove difficult, as there may be no market for it. IFG should establish an amount it's willing to accept for the investment as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investment.

If IFG is able to purchase the illiquid investment, then the price paid to purchase the holding will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding).

If IFG is unable, or if there are any difficulties in buying Mr C's illiquid investment, it should give the holding a nil value for the purposes of calculating compensation. To be clear, this would include the investment being given a nil value for the purposes of ascertaining the current value of Mr C's SIPP.

In this instance IFG may ask Mr C to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the relevant holding. That undertaking

should allow for the effect of any tax and charges on the amount Mr C may receive from the investment and any eventual sums he would be able to access from the SIPP. IFG will have to meet the cost of drawing up any such undertaking.

Calculate the loss Mr C has suffered as a result of making the transfer in relation to monies originating from his GAR policy

IFG should calculate the loss Mr C has suffered as a result of making the transfer in relation to monies originating from the GAR policy. IFG must undertake a redress calculation based on the normal retirement age (NRA) for the GAR policy. If Mr C is now over this age (which seems likely given he's older than 65 years), then IFG must calculate past loss as well as future loss as follows:

For Mr C's Past Loss (GAR)

1. IFG should contact the provider (now Royal London) of the GAR policy and ask it to provide a notional value for the policy as at the NRA. For the purposes of the notional calculation the provider should be told to assume no monies would have been transferred away from the plan, and the monies in the plan would have remained invested in an identical manner to that which existed prior to the actual transfer.

   If there are any difficulties in obtaining a notional valuation from Royal London, IFG should instead arrive at a notional valuation by assuming the monies would have enjoyed a return, from the point of their transfer to the IFG SIPP through until Mr C reached the NRA, in line with the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return index). That is a reasonable proxy for the type of return that could have been achieved over the period in question.

   This sum (notional valuation from either Royal London or the benchmark above) should then be used, for the purposes of the steps below, as the overall GAR policy fund value when calculating the tax-free cash and income that would have been available to Mr C had he taken benefits and exercised the GAR at the NRA.

2. Establish the annuity Mr C could have secured with sum had he exercised the GAR and purchased an annuity upon reaching the schemes NRA, having first taken the maximum available tax-free cash sum. It should be assumed that the remaining sum would have been used to purchase an income using the GAR, at the most advantageous rate available under the terms that would have allowed for this (for example, this is often monthly in arrears with no guaranteed term and on a single life basis).

   IFG should then calculate the total accumulated net annuity and tax-free cash payments Mr C would have received from this plan from reaching the NRA to the date of my final decision.

3. Work out how much of the total tax-free cash and net income (if any) that Mr C has received from the IFG SIPP which relates to monies transferred in from the Royal London GAR plan. For example, if the Royal London GAR plan transfer value represented 20% of the SIPP value, IFG should assume that 20% of the tax-free cash and any income Mr C had received from the SIPP plan to the date of my final decision related to the Royal London transfer value.

4. If the accumulated notional net annuity and tax-free cash payments provided for in step 2 are greater than the total accumulated actual net income and tax-free cash

payments provided for in step 3 then Mr C has suffered a loss, and IFG must pay the difference directly to Mr C plus interest as a lump sum.

5. In respect of the interest, IFG must calculate the earliest point in time when the accumulated payments provided for in step 2 would have become greater than the total accumulated payments provided for in step 3. IFG must then add interest at 8% simple to any further payments in step 2 that Mr C would have received and which he has missed out on from that point in time through until the date of the final decision. Interest should be added from the date each of the further payments would have been paid to Mr C through until the date of the final decision.

   Income tax may be payable on any interest paid. If IFG deducts income tax from the interest, it should tell Mr C how much has been taken off. And IFG should also then give Mr C a tax deduction certificate in respect of interest if Mr C asks for one.

For Mr C's future loss (GAR)

1. IFG must ascertain if there is a future loss by way of ascertaining the capital cost of purchasing an annuity of the level established above and on the relevant terms on the open market. And this then needs to be compared to the actual value of that portion of Mr C's actual current IFG SIPP transfer value that's attributable to monies transferred in from the GAR policy. If the former is greater than the latter, there is a future loss.

2. If there's a future loss IFG should pay this future loss sum into Mr C's SIPP. The payment should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into the SIPP if it would conflict with any existing protection or allowance.

   If a payment into the pension plan isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. It's reasonable to assume (as set out further below) that Mr C is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%.

3. For the purpose of ascertaining the capital cost of purchasing an annuity equivalent to the one Mr C would have secured from the GAR policy, IFG may ask Mr C to participate in a obtaining an enhanced annuity quotation. But mindful of the disruption to Mr C, IFG shouldn't ask him to assist with more than one enhanced annuity quotation. And if IFG does seek a quotation for an enhanced annuity rate, then it will also be expected to meet any costs associated with Mr C undergoing any medical examination needed for underwriting.

Calculate the loss Mr C has suffered as a result of making the transfer in relation to monies originating from his personal pensions without guarantees

To do this IFG must:

1. Calculate the current notional values, as at the date of my final decision, of the non-GAR monies that were switched into the IFG SIPP if they hadn't been switched into this.

2. Calculate the portion of Mr C's actual current SIPP value as at the date of my final decision, less any outstanding charges, that's attributable to monies transferred in from Mr C's previous non-GAR policies.

3. Deduct the sum arrived at in step 2 from the total accumulated sum arrived at in step 1.

4. Pay an amount into a pension arrangement for Mr C, so that the transfer value of that pension arrangement is increased by an amount equal to the loss calculated in step 3. This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.

I've set out more detail for parts of this calculation below.

1. *Calculate the current notional values, as at the date of my final decision, of the non-GAR monies that were switched into the IFG SIPP if they hadn't been switched into this.*

   IFG should calculate what the monies transferred into the IFG SIPP would now be worth had they instead achieved a return equivalent to the FTSE UK Private Investors Income Total Return Index from the date they were first transferred into the IFG SIPP through until the date of my final decision.

   I'm satisfied that's a reasonable proxy for the type of return that could have been achieved over the period in question.

   IFG must also make a notional allowance in this calculation for any additional sums Mr C has contributed to, or withdrawn from, his IFG SIPP since outset. To be clear this doesn't include SIPP charges or fees paid to third parties like an adviser. But it does include any pension commencement lump sums or pension income Mr C actually took after his pension monies were transferred to IFG.

   Any notional contributions or notional withdrawals to be allowed for in the calculation should be deemed to have occurred on the date on which monies were actually credited to, or withdrawn from, the IFG SIPP by Mr C.

2. *Calculate the portion of Mr C's actual current SIPP value as at the date of my final decision, less any outstanding charges, that's attributable to monies transferred in from Mr C's previous non-GAR policies.*

   This should be the current value of these monies as at the date of this decision.

3. *Deduct the sum arrived at in step 2) from the total accumulated sum arrived at in step 1).*

   The total sum calculated in step 1) minus the sum arrived at in step 2), is the loss to Mr C's pension.

4. *Pay an amount into a pension arrangement for Mr C, so that the transfer value of that pension arrangement is increased by an amount equal to the loss calculated in step 3. This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.*

   If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr C's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash 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.

Neither IFG nor Mr C have disputed that this is a reasonable assumption. That's despite being given the opportunity to do so in response to my provisional decision and being made aware that won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

IFG must also provide the details of its redress calculations to Mr C in a clear, simple format.

Assignment of rights

If IFG believes other parties to be wholly or partly responsible for the loss, it is free to pursue those other parties. So, if Mr C's loss does not exceed £160,000 (which is the maximum sum I'm able to award in a case such as this), or if IFG accepts my recommendation below that it should pay the full loss as calculated above, then the compensation payable to Mr C by IFG may be contingent on the assignment by him to IFG of any rights of action he may have against other parties, and to any future payment Mr C might receive from such parties, in relation to his transfer to the IFG SIPP and the investment if IFG is to request this. IFG should cover the reasonable cost of drawing up, and Mr C's taking advice on and approving, any assignment required.

SIPP fees

If the illiquid investment cannot be removed from the SIPP, and because of this it cannot be closed after compensation has been paid, then it wouldn't be fair for Mr C to have to continue to pay annual SIPP fees to keep the SIPP open. So, if the SIPP needs to be kept open only because of the illiquid investment and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

Distress & inconvenience

In addition to the distress that Mr C has suffered as a result of the problems with his pension since the transfer into the IFG SIPP, I think the impact of IFG's failings and the loss of a significant portion of his pension provision likely caused Mr C distress. And I think it is fair and reasonable that IFG should pay Mr C £500 to compensate him for this.

Interest

The compensation resulting from this loss assessment must be paid to Mr C or into his SIPP within 28 days of the date IFG receives notification of Mr C's 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 isn't paid within 28 days.

Income tax may be payable on any interest paid. If IFG deducts income tax from the interest it should tell Mr C how much has been taken off. IFG should give Mr C a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

For the reasons given, my final decision is that I uphold Mr C's complaint and IFG Pension Services Limited must pay fair redress as set out above.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

Determination and award: I require IFG Pension Services Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that IFG Pension Services Limited pays Mr C the balance.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my final decision when issued and go to court to ask for the balance. Mr C may want to consider getting independent legal advice before deciding whether to accept the final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 January 2025.

Holly Jackson
Ombudsman