PO-15140

Ombudsman's Determination

Applicant	Mr Y
Scheme	Rowanmoor SIPP (**the SIPP**)
Respondent	Rowanmoor Group plc (**Rowanmoor**)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by Rowanmoor

Complaint summary

2. Mr Y's complaints against Rowanmoor are about:

    - its failure to perform sufficient due diligence in relation to his proposed investments;
    - its lack of communication with him since the opening of the SIPP;
    - its failure to close the SIPP when requested; and
    - its ongoing fees for the SIPP, now that the SIPP has no value.

Background information, including submissions from the parties

3. When Mr Y was looking for a cheaper mortgage, he contacted Nicholls & Associates. They subsequently introduced him to Pacific Life Limited, later known as Pacific IFA Limited, which offered to undertake a pension review. Mr S, who was one of its regulated financial advisers, then introduced Mr Y to Rowanmoor as a provider of SIPPs. Mr Y established the SIPP in March 2009, signing a Trust Deed and Rules (**TD&R**), Client Agreement and related documents.

4. The SIPP was set up as a "family pension trust". This was an arrangement normally for the use of more than one member, with a more expensive charging structure than a one-man scheme, but Rowanmoor told Mr Y that it would permit him to use this structure "to expedite an investment in property."

5. The family pension trust is a hybrid arrangement described as a cross between a Small Self-Administered Scheme (SSAS) and a SIPP. Rowanmoor says it is designed for like-minded investors or family members. By combining investment

resources, the members can benefit from greater leverage and reduced investment charges. It is structured so that members can either retain full control over their own pension investments, via separate arrangements within the one scheme, or they can pool funds with other members and invest jointly in one or more common funds, widening the investment options and potentially decreasing costs.

6. The SIPP is governed by the TD&R dated 25 March 2009. The Trustees were Rowanmoor Trustees Limited as Independent Trustee, and Mr Y as the Member Trustee. The Operator was Rowanmoor Personal Pensions Limited. The TD&R was signed by all the parties in the presence of a witness.

7. Clause 21 of the TD&R sets out the investment powers of the Trustees. Clause 21.1 says:

> "The Trustees shall subject to the agreement of the Operator invest the Fund and the Members Funds as directed by the Member Trustees".

8. Clause 17.2 of the TD&R says:

> "Subject to clause 18 each and all of the Operator, the Administrator and the Trustees shall be indemnified by each Member and his Member's Fund (or from the Fund as a whole, as appropriate) against any costs, claims, demands, expenses, proceedings and liabilities which they may incur through acting as a Trustee, Operator or Administrator of the Scheme except in cases of fraud by any Trustee, Operator or Administrator (where the person who committed fraud and any person who knowingly ignored the fraud shall not be so indemnified)".

9. Clause 18 of the TD&R clarifies that the indemnity set out in Clause 17 shall not protect: any person in relation to fraud; a Trustee in relation to any deliberate breach of trust or duty committed in bad faith; or the Operator or Administrator in relation to any deliberate breach of trust or duty committed in bad faith.

10. The Client Agreement, setting out the services to be provided by Rowanmoor and the fees payable by Mr Y, was signed by Mr Y on 20 March 2009, and by Rowanmoor Trustees Limited and Rowanmoor Personal Pensions Limited on 25 March 2009.

11. Appendix II of the Client Agreement set out the services included in the annual administration fee. Item vii said:

> "Specialist guidance with regard to the following
> - day to day running of the Scheme
> - interpretation of the Trust Deed and Rules and HMRC practice
> - ensuring Scheme investments will be acceptable to HMRC and are in accordance with the Trust Deed and Rules"

12. The Member Questionnaire and Installation Questionnaire signed and dated by Mr Y on 1 March 2009 shows that he was advised, both as a member and as a member trustee, by Pacific Life Limited. The Installation Questionnaire gives the reason for

establishing the SIPP as being “Harlequin Property purchase (property form to follow) and Zurich Trustee Plan to be set up!”.

13. Mr Y agreed to transfer his existing pension funds (invested with Scottish Equitable) to the SIPP. With his agreement, most of the money that was not used to pay him a pension commencement lump sum was used to purchase off-plan interests in beach hotel suites to be built in St Lucia and St Vincent through Harlequin Resorts (St Lucia) Limited and Harlequin Property (SVG) Limited respectively (**Harlequin**). The balance was invested in a policy with Zurich Life.

14. On 6 April 2009, Rowanmoor sent Mr Y a letter about his proposed investment. This said:

> “Whilst we are able to inform you of the eligibility of such an investment under current pensions legislation and the Definitive Trust Deed and Rules of the Scheme, we do not endorse or recommend the services of any particular property development company you may involve, nor can we advise you on the suitability of and risks attached to the proposed investment. In addition we cannot advise you on the complexities of the legal process of acquiring property in this overseas territory or in relation to the contractual documentation or seller’s title for the acquisition.
>
> As with all property purchases, we would strongly recommend that, before acquiring the property, the trustees and members take appropriate legal and other professional advice in the matter, as this may prevent issues going forward, and reduce the possibility of incurring unnecessary costs in the future.”

15. Mr Y signed the attached disclaimer saying that: “I confirm that I do not wish to take legal advice in relation to the purchase. I authorise you to release funds direct to Harlequin.” The purchase of the Harlequin investments was completed later in 2009.

16. On 11 July 2011, Mr Y told Rowanmoor that he wanted a breakdown of all its costs as he was not sure what its invoices were for. He added that “my off plan development has not generated any funds to go in my pension and to my knowledge has not even opened up yet.” He thought that Rowanmoor had not done any work for its fees. Rowanmoor explained that a registered pension scheme return had to be completed and submitted to HM Revenue & Customs each year, and the fee structure had been agreed with him.

17. In April 2012, Rowanmoor told Mr Y that there was insufficient money in his SIPP bank account to meet its annual fees. Rowanmoor pointed out that there was a Zurich Life investment held by the SIPP, which could be accessed to pay fees. As he was out of work, Mr Y eventually agreed to do that. He also decided to place his St Vincent investment on the market and look to sell it back to Harlequin, to give the SIPP some liquidity.

18. In December 2012, Mr Y told Rowanmoor that Harlequin had not responded to his enquiries, and he now thought its investments were fraudulent. He asked Rowanmoor to investigate. He says that he has seen no results from any investigation.

19. On 3 January 2013, Rowanmoor replied to Mr Y. It said:

> "Rowanmoor Group plc as your Pension Scheme provider has not and cannot offer advice on the suitability of investments for your Pension Scheme because we are not regulated by the Financial Services Authority to do so. Your investments…were advised as appropriate for your circumstances by your Independent Financial Adviser, Pacific IFA Limited.
>
> As your Pension Scheme provider we cannot comment or advise on the suitability of and the return on your investments, or correspond with Harlequin Property (SVG) Limited regarding completion of the properties and the anticipated revenue from these properties, as you have requested."

20. Later in 2013, Mr Y said he would ask Harlequin for his money back, citing a non-completion clause in his contract. Rowanmoor's overseas property team informed Harlequin of this.

21. Over the following months Rowanmoor sent further letters to Mr Y, asking him to meet its fees. On 19 November 2014, Rowanmoor told Mr Y that it would reduce the next annual administration fee as a gesture of goodwill, and the reduced fee would include the cost of the registered pension scheme return.

22. Harlequin later became insolvent. Mr Y was told in 2015 that the value of his Harlequin investments had been reduced to a nominal £1, as distressed assets.

23. On 4 September 2016, Mr Y told Rowanmoor: "I believe that you should have looked deeper into the dealings of my investment before handing over any money". In reply, Rowanmoor reiterated that it could not give him financial advice, saying that was the responsibility of Mr Y's appointed financial adviser at Pacific IFA Limited. Rowanmoor added that it had carried out its own due diligence on proposed investments, but its practice was not to share its findings with third parties.

24. On 19 September 2016, Mr Y told Rowanmoor that he wanted to close the SIPP and recover his money.

25. On 23 September 2016, Rowanmoor sent a response to Mr Y, listing the SIPP assets and values as Harlequin St Lucia property nil, Harlequin St Vincent property nil, Zurich Trustee Investment Plan £31,521.58 as at 5 April 2016, and Metro Current Account £1.76. Rowanmoor added "Please be aware that the Pension Scheme cannot be wound up whilst it still holds assets."

26. On 25 October 2016, following further correspondence with Mr Y about its fees, Rowanmoor told him that it would reduce its annual administration fee to £250 plus VAT from 1 March 2017. It explained that there would still be an annual charge for

completion of a registered pension scheme return, which was required for regulatory purposes.

27. In November 2016, Mr Y withdrew most of the Zurich investment from the SIPP, using flexible access drawdown. He says this was done as he was about to lose his home. The balance left in the fund was to pay Rowanmoor's fees.

28. Mr Y then contacted The Pensions Ombudsman's Office (**TPO's Office**), saying "I really did not understand my implications that I had really signed up for, nor was it ever explained".

29. A bankruptcy trustee and liquidator for Harlequin were appointed in 2017. They subsequently contacted both Mr Y and Rowanmoor about their administration processes, which are still ongoing. Mr Y says that at no time did Rowanmoor communicate with him apart from suggesting he contact a financial adviser.

Adjudicator's Opinion

30. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Rowanmoor. The Adjudicator's findings are summarised below:-

- The first part of Mr Y's complaint is about Rowanmoor's failure to perform sufficient due diligence in allowing the investment in Harlequin.

- In December 2008, the Financial Services Authority (**FSA**), now the Financial Conduct Authority (**FCA**), began a thematic review of SIPP providers to determine the extent to which they were adhering to the Principles for Businesses and the rules within the FSA Handbook. The report was published on 4 September 2009 and set out the FSA's expectations and guidance on how SIPP providers should operate. Prior to that time SIPP investment decisions were member directed, based on the investment advice provided by his appointed IFA. The FSA did not require or expect providers to advise members in relation to the suitability or structure of investments, carry out due diligence on or monitor recommended investments, or second guess the advice of the appointed IFA.

- As the establishment of Mr Y's SIPP predated the guidance, the only obligation placed on Rowanmoor at the time was to assess whether a proposed investment met the HMRC requirements.

- Rowanmoor's role was to administer the SIPP in accordance with Mr Y's instructions. It was Mr Y's responsibility, as the member of a self-invested pension plan, to select the investments that he considered appropriate based on the advice he had received.

- Rowanmoor had satisfied itself, as was required, that the proposed investments were of a type that the SIPP could invest in, but Rowanmoor was not a regulated financial adviser and therefore was not responsible for advising Mr Y on the

suitability of his proposed investments. Mr Y should have taken advice on this from his own financial adviser. Indeed, Rowanmoor's letter of 6 April 2009 had recommended that he should take legal and other professional advice on his proposed property investments. However, Mr Y expressly authorised the investments without taking advice.

- Pacific IFA Limited is a regulated adviser which is still trading and so, on the face of it, Mr Y would appear to have a potential claim for redress relating to the advice it gave him to invest in Harlequin.

- Mr Y had also submitted a claim to the Financial Services Compensation Scheme (**FSCS**) regarding the failure of the Harlequin investment and had received £50,000 redress.

- The second part of Mr Y's complaint is about poor communication by Rowanmoor. Mr Y said that Rowanmoor employees never met him and, had Rowanmoor provided more information to him before October 2015, when the Harlequin investment values were downgraded, he might have been able to do something to reduce his losses.

- The Adjudicator's view was that it was not Rowanmoor's responsibility to keep Mr Y's SIPP investments under review once they had been purchased. That was the responsibility of Mr Y as the SIPP member, taking such professional advice as he considered appropriate. It seemed quite likely that the money invested in Harlequin disappeared shortly after it was received.

- Furthermore, it was not standard practice for SIPP administrators to hold face to face meetings with individual SIPP members. Some of Rowanmoor's correspondence was addressed and posted to Mr S, as Mr Y's appointed regulated adviser, but Mr S had a responsibility under the FCA guidelines to forward relevant correspondence to Mr Y in a timely manner.

- The third part of Mr Y's complaint is that Rowanmoor failed to wind up the SIPP in a timely manner, following his request in September 2016.

- The Adjudicator accepted the explanation given by Rowanmoor that it was not yet possible to wind up the SIPP. Even if the Harlequin investments had nil value, they still constituted assets of the SIPP. If any money is recovered by the Harlequin liquidators in future, the assets may then have some value. Therefore, until Mr Y's Harlequin investments have been assigned or sold to a willing third party they will remain in the SIPP, and therefore the SIPP cannot be wound up. If he has not already done so, Mr Y may wish to seek independent financial advice on whether he could assign his Harlequin interests to the FSCS or any other party.

- The final part of Mr Y's complaint is that Rowanmoor's annual charges are excessive, considering the current value of the SIPP investments.

- Mr Y is currently paying annually a pension scheme return fee and an administration charge. These charges are payable in accordance with a tariff that Mr Y agreed, pursuant to the family pension trust terms and conditions that he signed up to in 2009 and are flat fees: the amounts are not calculated by reference to the funds' size or investment performance from time to time. Mr Y was made aware by Rowanmoor that the family pension trust structure was more expensive than its one-man pension arrangements, but nonetheless agreed to use that structure to facilitate his intended property investments. The reason for this was unclear but was presumably in accordance with advice he had received.

- Rowanmoor had agreed to reduce some of its annual administration fees, but that did not mean that no charges should be paid. SIPP administrators run a commercial business, and it is standard practice to impose these charges on SIPP members. There were no grounds for relieving Mr Y of the contractual obligation to pay Rowanmoor's fees arising while the SIPP remained in existence.

31. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

32. Mr Y provided his further comments which do not change the outcome. He says that:-

- He was under the impression that his pension was established as a one-man SIPP. He was surprised to find that it had been set up as a "family pension trust" which he now understood to be a sort of hybrid arrangement.

- It was only ever explained to him as a SIPP. He now understands this type of hybrid family trust arrangement is usually for more than one member and this was not the case with his SIPP. He therefore wonders if Rowanmoor manipulated a product to suit him alone; why Rowanmoor did not make him fully aware that this was anything other than a SIPP; and whether this was used as a way of being able invest in an unregulated investment.

- He accepts that he signed documents, but when he believed and trusted those that he thought knew better than him. He understood it was a product that may have had risk but what he was shown gave him reassurance, particularly with high profile celebrities providing endorsements.

- He agrees that Rowanmoor was not part of the selling process but believes it had a duty to make sure his money was being invested appropriately.

- He feels the Adjudicator did not explain why the Carey case does not apply to his complaint. He says Rowanmoor never carried out full due diligence, but the Adjudicator says it did but would not share the results with investors. He questions what Rowanmoor is hiding and why would it do its own due diligence if it did not have to.

Ombudsman's decision

33. Mr Y has questioned why the outcome of the Adams v Carey Pensions High Court judgment, does not apply to him. This case considered the scope of SIPP providers' due diligence duties towards SIPP members and judgment was handed down in May 2020. However, that judgment is now the subject of an appeal. My Office has currently suspended the investigation of some complaints by SIPP members regarding their SIPP providers pending the outcome of that appeal. However, in Mr Y's case the complaint relates to due diligence carried out prior to the FSA's guidance being issued in 2009. This guidance introduced the due diligence requirements that are central to the Adams v Carey Pensions case and so was not applicable at the time Mr Y established his SIPP. I therefore consider it is no longer necessary or appropriate to hold up our investigation of Mr Y's complaint.

34. While I agreed with the Adjudicator's Opinion, I did want to be certain that the fact that the SIPP was set up as a family pension trust was not material to the outcome of Mr Y's complaint.

35. Having reviewed the evidence, it is clear that the arrangement is effectively a group SIPP, although Mr Y is the only member. This means that it was regulated by the FSA at the time it was established, and subsequently by the FCA. In my view this does not affect the outcome and I am clear that this was not a way of manipulating matters to allow Mr Y to invest in unregulated assets. He would have been able to do that in a standard one-man SIPP. Using the family pension trust did open up the possibility for other members, whether or not related to Mr Y, to join the SIPP but in the event this did not happen. Whether this arrangement was appropriate was presumably something considered by Mr Y's adviser at the time it was established.

36. I have reviewed the documents provided by Rowanmoor. Although the Client Agreement refers to "investment monitoring" there is no specific charge relating to this, and there is nothing to suggest that any undertakings were given by Rowanmoor to vet or monitor the investments. Appendix II of the Client Agreement shows that Rowanmoor simply ensured that Scheme investments would be acceptable to HMRC and were in accordance with the Trust Deed and Rules.

37. Clause 17.2 of the TD&R contains a very comprehensive indemnity where the Rowanmoor entities are indemnified by the Member for all activities except fraud and deliberate breach of trust duty committed in bad faith. There is no evidence of either in the conduct of Rowanmoor in relation to this case, and so it is indemnified by Mr Y.

38. Clause 21.1 of the TD&R shows that investments are made at the direction of the Member Trustees (that is Mr Y) subject to the agreement of the Operator (Rowanmoor). In reality this agreement would involve just checking that the proposed investments do not conflict with HMRC rules as set out in the Client Agreement.

39. The Member Questionnaire and Installation Questionnaire make clear that Mr Y was advised by Pacific IFA Limited both in the establishment of the SIPP and in the selection of the underlying investments.

40. In summary, Mr Y made the investment decisions in conjunction with Pacific IFA Limited, ignored the warnings from Rowanmoor about the nature of the investment, and indemnified Rowanmoor against any liability in carrying out his instructions. As all the relevant events took place prior to the publishing of the FSA's first thematic review into SIPPs, it would be unreasonable to deem Rowanmoor responsible for the investment losses.

41. Mr Y has my sympathy for the position he now finds himself in and I acknowledge his comments regarding the fact that he trusted those he thought knew better than him. However, he had a responsibility to ensure he understood what he was signing and to ask questions if he did not.

42. That said, Mr Y was advised by a regulated adviser. As the Adjudicator pointed out in his Opinion, Pacific IFA Limited is still trading. On the face of it, Mr Y would therefore appear to have a potential claim for redress relating to the advice it gave him to invest in Harlequin. Mr Y has not commented on this and it is not clear whether he has already taken this course of action or, if not, why he has not done so. If Pacific IFA Limited is not engaging with him in this matter he can take his complaint to the Financial Ombudsman Service. Its contact details are:-

    Email: complaint.info@financial-ombudsman.org.uk

    Telephone helpline: 0800 023 4567

43. I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
21 July 2021