Financial Ombudsman Service

complaint

Mr B's complaint is about Kingswood Financial Advisors (KFA) and its advice to a transfer his executive pension plan (EPP) and his self-invested personal pension (SIPP) to a new SIPP provider in 2010. The new SIPP was used to invest his pension in an unregulated property fund (Harlequin). Mr B says the Harlequin fund was unsuitable, that it resulted in a loss and that KFA should have advised him about its unsuitability. In 2011 he invested in another unregulated fund (Green Oil) – he says this was also unsuitable.

background

On 15 January 2018 I issued a provisional decision on the complaint (copy below). I provisionally concluded as follows:

"The crux of Mr B's complaint about Harlequin is his dissatisfaction with the investment in the fund through the new SIPP. As such, in order for the complaint to succeed I must be satisfied that KFA had an obligation to advise him about suitability of the fund, despite its disclaimers at the time, and that the fund was unsuitable for him. If the fund was unsuitable for him and if KFA should have told him that I need to consider whether Mr B would have taken its advice and if, as a result, the Green Oil investment in 2011 would (or would not) have taken place."

"KFA is aware of this service's treatment of a number of complaints against it in relation to the Harlequin fund. I stress that every complaint is determined on its own merits. However, where similarities exist within a group of complaints it is fair and reasonable to note them and approach them consistently – as I intend to do. In this respect, and on balance, I accept Mr B's account of his referral to KFA – that he was referred to it by a third party who was not in a position to advise him. I do not accept KFA's assertions about Mr B being advised by third parties. If that was the case, which appears doubtful, I have not seen evidence to explain why there remained a need to refer to KFA and why KFA considered that it had a role to play at the time."

"Having considered the overall circumstances of Mr B's complaint and the relevant regulatory rules I am persuaded that it would not have been fair or reasonable for KFA to separate the SIPP selection from the Harlequin fund that it knew Mr B would invest in. It had a duty to advise him on the suitability (or otherwise) of the fund – in addition to the SIPP selection. It did not do that … I am satisfied that the fund was unsuitable for Mr B. I consider that he would have taken advice not to invest in it, that he would not have transferred his pension into the new SIPP and that he would not have invested in the Harlequin fund. As such, Mr B's complaint about the Harlequin fund should be upheld."

"I am not persuaded that it is fair to hold KFA responsible for the Green Oil investment. Evidence suggests that in 2010 it understood that all of the value in the pension transfer and in the new SIPP was to be used in the Harlequin fund. It appears that nobody at the time foresaw that there would be remnant money within the new SIPP or that such money would be used for another investment over a year later. As such, it would not be right to hold KFA for an investment it knew nothing about or to hold it responsible on the grounds that had it advised Mr B not to transfer into the SIPP and not to invest in Harlequin, the subsequent Green Oil investment over a year later would not have happened. I consider that the correct approach is to say that what KFA should have reasonably advised about, foreseen and prevented at the time was the Harlequin investment alone – not the Green Oil investment. As such, Mr B's complaint about the Green Oil fund should not be upheld."

I proceeded to give provisional instructions on how redress should be calculated for Mr B. Both parties were invited to comment on my provisional decision. Mr B's representative said he accepts it. I understand that no comment was received from KFA.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I am satisfied to retain the findings and conclusions in my provisional decision – those findings and conclusions form part of this decision.

fair compensation

Fair compensation for Mr B should relate only to his investment in the Harlequin fund, for the reasons quoted above and detailed in the provisional decision. I am aware that a party involved with the Harlequin fund has been charged with fraud offences. A court might therefore conclude that Mr B's loss has not flowed directly from unsuitable advice (or lack of advice) from KFA. However, in assessing fair compensation, I'm not limited to the position a court might take. It may be there has been a break in the "*chain of causation*". That might mean it would not be fair to say that all of the losses suffered flowed from unsuitable advice. That will depend on the particular circumstances of the case. No liability will arise for an adviser who has given suitable advice; even if fraud later takes place, but the position is different where the consumer would not have been in the investment in the first place without the unsuitable advice (or the absence of advice that should have been given). In that situation, it may be fair to assess compensation on our usual basis. I consider this to be the case for Mr B.

It would be fair and reasonable to make an award, given the specific circumstances of this case. This is notwithstanding any arguments about a break in the "*chain of causation*". I am satisfied that Mr B would not have invested in the Harlequin fund (or moved his pensions) but for the absence of advice from KFA and I consider that KFA disregarded his best interests in this respect. As such, I consider it fair and reasonable to hold KFA responsible for the whole of the loss suffered by Mr B. I am not asking KFA 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 from the fund. That other parties might also be responsible for that same loss is a distinct matter, which I am not able to determine. However, that fact should not impact on Mr B's right to compensation for the full amount of his loss.

My aim is to put Mr B as close as possible to the position he would now be in if he had been given suitable advice. On balance, I consider that Mr B would not have made any changes to his pension arrangements if he was advised not to invest in the Harlequin fund. Investment in it was within his consideration at the time, however if he abandoned that plan it seems more likely (than not) that he would have had no other incentive to transfer his pensions. I appreciate that it is unlikely to be possible for KFA to reinstate Mr B into his previous pension arrangements. There are a number of possibilities and unknown factors in making an award in such circumstances. The potential variables are unknown and each may have an impact on the extent of any award this service may make. While it could be complicated to put Mr B back in the position he would have been in if suitable advice had been given, I consider that he should be compensated now. It does not seem fair or reasonable to wait and determine each and every possibility before making an award. What I set out below is a fair way of achieving this. KFA should do the following:

1. Obtain the notional transfer value of Mr B's previous pension arrangements, on the date of this decision, if there had not been a transfer to the SIPP.

   KFA should ask Mr B's former pension provider to calculate the notional transfer value that would have applied as at the date of this decision had he not transferred his pension but instead remained invested in the same funds. KFA should assume that any contributions or withdrawals that have been made would still have been made, and on the same dates.

   If there are any difficulties in obtaining the notional valuation then the FTSE UK Private Investors Income Total Return Index should be used. That is a reasonable proxy for the type of return that could have been achieved if suitable advice had been given.

2. Obtain the transfer value, as of the date of calculation, of Mr B's SIPP and excluding any values related to the Green Oil fund.

   This should be confirmed by the SIPP provider. KFA should then deduct the result of (2) from the result of (1). If there is a positive difference that will be the loss to Mr B.

3. Pay a commercial value to buy Mr B's share in the Harlequin property fund.

   Valuation of the investment may be difficult if there is no market for it. If so, KFA should agree an amount with the SIPP provider as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investment. If KFA is unable to take ownership of the Harlequin investment it should give it a nil value for the purposes of calculating compensation.

   Mr B, through the SIPP, paid a deposit under contract to the Harlequin fund. This is the loss I seek to redress for him. Mr B agreed to pay the remainder of the purchase price under a separate contract however that payment has not yet been made, so at present he has suffered no further loss in that respect. However, if the property is to be completed the scheme could require that payment to be made, so there is a potential for further loss. Mr B must understand this and must understand that he would not be able to bring a further complaint to us with regards to any such further loss. Mr B may want to seek independent legal advice in this respect and with regards to any continuing liability under the separate payment related contract.

4. Pay an amount into Mr B's SIPP so that the transfer value, excluding any values related to the Green Oil fund, is increased to equal the value calculated in (1) above. This payment should take account of any available tax relief and the effect of charges.

   The compensation should be able to be paid gross into a pension plan where it will remain until Mr B retires. He should also be able to contribute to pension arrangements and obtain tax relief as usual upon them.

   If it is not possible to pay the compensation into the SIPP, KFA should pay it as a cash sum to Mr B. Had it been possible to pay it into a pension plan it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid – to be calculated using Mr B's marginal rate of tax in retirement.

5. Pay Mr B £500 for the trouble and upset caused to him by this matter.

my final decision

For the reasons given above, I uphold Mr B's complaint.

I order Kingswood Financial Advisors to compensate Mr B as I have detailed above and to pay him £500 for the trouble and upset the matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 March 2018.

Roy Kuku
ombudsman

Copy of Provisional Decision

complaint

Mr B's complaint is about advice given by Kingswood Financial Advisors ("KFA"), related to a transfer of his executive pension plan ("EPP") and self-invested personal pension ("SIPP") to a new SIPP provider in 2010. The new SIPP was used to invest his pension in an unregulated property fund (Harlequin). Mr B says the Harlequin fund was unsuitable, that it resulted in a loss and that KFA should have advised him about its unsuitability. In 2011 he invested in another unregulated fund (Green Oil) – he says this was also unsuitable.

background

In 2010, Mr B attended a Harlequin presentation, upon invitation by a third party. He says the same third party then introduced him to KFA in order to have his pensions reviewed. At the time, the combined value of his EPP and SIPP appears to have been £30,500.50 – about £5,000 held in the former and the rest held in the latter. He says he had no history of using his pension money in speculative investments. The money was reinvested through the new SIPP. KFA's adviser completed a fact find for Mr B in June 2010 and sent him a suitability letter in July 2010. In the main, the fact find document says:

- The "basis of advice" was to review Mr B's retirement provisions.
- Mr B was around 45 years old at the time, single and with three dependent children (all aged below 13 years). He was self-employed, owned a chain of businesses and planned to retire when he turned 65. His gross annual income was £60,000 and the net value of his assets was around £260,000.

In the main, the suitability letter says:

- The adviser was aware that Harlequin was the purpose behind the pension transfers, but KFA disclaimed responsibility for advice about its suitability.
- The pension money was to be used for the investment after the transfers. Mr B's attitude to risk ("ATR") was that he was prepared to take the risk of a small loss to his money.
- KFA recommended a new SIPP provider that it considered fitted "… *squarely into* [Mr B's] *investment strategy".* It expressed an *intention to offer* Mr B a service to review suitability of the funds within his new SIPP on an annual basis.

An "Adviser/Broker Agreement", from the new SIPP provider but issued by KFA, was signed by Mr B in June 2010. It says KFA was appointed by Mr B "*to provide* [Mr B] *with advice and manage* [his] *investments held*" in the new SIPP. It says KFA's remuneration for that was £1,500. It does not state remuneration for ongoing advice.

The "Harlequin Property Questionnaire & Guidance Notes" issued by the new SIPP provider in July 2010 says Mr B's investment was in a 50% share of a Harlequin property that was to be in construction and had a purchase price of £120,000. As such, his stake in the purchase was to be £60,000, however part of it was to be paid at the time and the balance was to be paid in March 2013 when the property's construction was completed.

Around October 2011 the Green Oil investment took place through the use of remnant money within the SIPP. However, very little documentation has been shared with this service in this respect. In July 2013 the new SIPP provider informed Mr B that the Harlequin fund had gone into administration. In the same month he complained to KFA about both the Harlequin and Green Oil funds. He said:

- KFA recommended both funds and that they were unsuitable. His losses, at the time, totalled almost £36,000 – including investment outlay and fees.

- KFA had not properly assessed his investor profile, it was wrong to recommend a new SIPP that cost him more in fees and it was wrong to recommend an investment strategy that lacked diversification.

KFA did not uphold the complaint. In the main, it said:

- It had previously addressed a complaint about the Green Oil fund separately and it would not repeat that.
- No advice was sought or given to Mr B in relation to the Harlequin fund. All its correspondence with Mr B stated this. Its advice to transfer Mr B's pensions to the new SIPP was based on his plan to invest in Harlequin and the inability of his previous SIPP to cater for that.
- The additional fees within the new SIPP, which related directly to his investment in the Harlequin fund, were not discussed because it did not advice Mr B on the Harlequin fund.

Mr B's complaint was referred to this service. One of our adjudicators considered it and concluded that it should be upheld. In summary, he said:

- Aspects of the Adviser/Broker Agreement, which was presented to Mr B by KFA, conflicted with the notion that no advice was given on the Harlequin fund. In the alternative, KFA had a regulatory obligation to advice on the fund.
- The Harlequin fund was unsuitable for Mr B and KFA should have advised him about that. Had it done so, Mr B was likely to have taken its advice and, in turn, he would not have transferred his pensions into the new SIPP and would not have invested in the Green Oil fund thereafter.
- Mr B should receive redress for the SIPP as a whole and £1,000 for the trouble and upset caused to him.

KFA and its solicitor disagreed with this outcome. The former made comments specific to the complaint whilst the latter made wider comments about the collection of complaints against KFA being addressed by this service. Together and in the main, they said:

- KFA had no knowledge of the Green Oil investment when it advised Mr B. That investment took place over a year after its advice to Mr B.
- Mr B had decided and committed to the Harlequin investment before receiving KFA's advice. KFA's role was limited to advising him on the selection of a new SIPP – he was told this in the suitability letter.
- The ceding scheme information about Mr B's pension was addressed to a third party around four weeks before it met with him, suggesting that he had received initial advice about his pension and the Harlequin investment elsewhere before meeting KFA. Other evidence also shows that Mr B received advice from other source(s) at the time.
- The Adviser/Broker Agreement does not serve as evidence that it received commission for the investments within the new SIPP.
- KFA's solicitor warned that we should not overlook the distinction in cases where the SIPP related investment in Harlequin was only a minor *part* of the investment – with private funds, outside the SIPP, catering for the majority balance. As such, it is arguable that advice on the minor (SIPP) part of the investment would not have influenced an investor's decision in the major part of the investment or in the investment as a whole.
- In terms of redress, KFA's solicitor was concerned that in the event of a successful complaint it might not be possible to transfer ownership of the fund to KFA, redress could put a complainant in a position of exposure to a 40% tax liability and, given that the investments were based on a combination of SIPP and non-SIPP money, it would be inconceivable to have KFA take ownership of the fund beyond the level of the SIPP investment or to take over only the SIPP related part of the fund and then share ownership of the fund alongside the complainant.

On 21 April 2016 this service wrote to both parties. We said that where the investments include a separate contract between Harlequin and the complainant, it is likely that the contract will remain, so if Harlequin demands payment on the basis of that contract the complainant will not be able to bring a further complaint to this service. The matter was then referred to an ombudsman.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I consider the following:

- The crux of Mr B's complaint about Harlequin is his dissatisfaction with the investment in the fund through the new SIPP. As such, in order for the complaint to succeed I must be satisfied that KFA had an obligation to advise him about suitability of the fund, despite its disclaimers at the time, and that the fund was unsuitable for him. If the fund was unsuitable for him and if KFA should have told him that I need to consider whether Mr B would have taken its advice and if, as a result, the Green Oil investment in 2011 would (or would not) have taken place.

- KFA is aware of this service's treatment of a number of complaints against it in relation to the Harlequin fund. I stress that every complaint is determined on its own merits. However, where similarities exist within a group of complaints it is fair and reasonable to note them and approach them consistently – as I intend to do. In this respect, and on balance, I accept Mr B's account of his referral to KFA – that he was referred to it by a third party who was not in a position to advise him. I do not accept KFA's assertions about Mr B being advised by third parties. If that was the case, which appears doubtful, I have not seen evidence to explain why there remained a need to refer to KFA and why KFA considered that it had a role to play at the time.

- Having considered the overall circumstances of Mr B's complaint and the relevant regulatory rules I am persuaded that it would not have been fair or reasonable for KFA to separate the SIPP selection from the Harlequin fund that it knew Mr B would invest in. It had a duty to advise him on the suitability (or otherwise) of the fund – in addition to the SIPP selection. It did not do that. As I explain below, I am satisfied that the fund was unsuitable for Mr B. I consider that he would have taken advice not to invest in it, that he would not have transferred his pension into the new SIPP and that he would not have invested in the Harlequin fund. As such, Mr B's complaint about the Harlequin fund should be upheld.

- I am not persuaded that it is fair to hold KFA responsible for the Green Oil investment. Evidence suggests that in 2010 it understood that all of the value in the pension transfer and in the new SIPP was to be used in the Harlequin fund. It appears that nobody at the time foresaw that there would be remnant money within the new SIPP or that such money would be used for another investment over a year later. As such, it would not be right to hold KFA for an investment it knew nothing about or to hold it responsible on the grounds that had it advised Mr B not to transfer into the SIPP and not to invest in Harlequin, the subsequent Green Oil investment over a year later would not have happened. I consider that the correct approach is to say that what KFA should have reasonably advised about, foreseen and prevented at the time was the Harlequin investment alone – not the Green Oil investment. As such, Mr B's complaint about the Green Oil fund should not be upheld.

The regulator's "client's best interests rule" (COBS 2), as it was in 2009 and as it remains to date, required KFA to act "… *honestly, fairly and professionally in accordance with the best interests of its client*". In this respect, it could not have been reasonable for KFA not to have advised Mr B on the suitability (or otherwise) of the Harlequin fund. The fact find exercise appears to have captured what KFA needed to know about his investor and risk profile – the implicit purpose of obtaining such information (the concept of "know your client" (KYC)), with knowledge about the potential Harlequin investment, would have been defeated if no consideration of fund suitability took place.

Mr B had a risk profile in which he was prepared to take the risk of losing a small part of his money. I consider this to be a *low to medium* risk profile. An unregulated overseas property fund such as Harlequin would likely have been unsuitable for such a profile – given the inherent risk within such a fund that *all* of the capital invested could be lost. I have not seen evidence of Mr B being made aware of this risk. He invested the only pension funds that he had – again, I have not seen evidence of any advice to him at the time drawing his attention to the gravity of the potential risk of losing his entire pension.

I am satisfied that KFA would have known enough about the Harlequin fund and about Mr B to consider whether the fund was suitable for him. If it conducted itself reasonably it would have concluded that it was not – because it mismatched his capacity for loss and his ATR. An adviser, conducting itself reasonably, would have drawn the same conclusion. KFA could not have reasonably ignored this knowledge – which I consider, on balance, it would have had at the time – within the context of acting *honestly, fairly and professionally* in Mr B's *best interest*. In terms of its knowledge of the fund, I do not suggest that it was a direct part of Harlequin. However, it would have had professional knowledge of it and its characteristics.

In the context of the regulator's rules, COBS 9 required KFA to familiarise itself with Mr B's wider financial circumstances and to use information about those circumstances to inform the suitability of its advice. Even if it believed that its role was limited to the SIPP selection, it conducted an "advisory" role in that respect. Such *advice* amounted to a *personal recommendation,* which triggered the regulator's rule on suitability. That rule, combined with the client's best interest rule, made it necessary for KFA to take a complete view on Mr B's financial circumstances. KFA argues that it only had to consider suitability of the SIPP wrapper, not the underlying investment. The views expressed by the regulator in 2013 about scenarios like this suggests that such an approach fell below the regulator's minimum expectation. I appreciate that the events in Mr B's case happened before 2013, however the regulator's views did not create new rules. They reflected pre-existing rules. One of its views was:

"*… the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments …"*

I have noted the arguments that Mr B was already intended upon and committed to the investment in Harlequin prior to meeting KFA. However, as I explain below, I am not persuaded by them.

I do not have enough evidence to determine all the relevant aspects of Mr B's motives at the time of the investment. He appears to have held an interest in the Harlequin fund before meeting KFA, but that alone does not mean he was intent on investing in it at all costs. Even if he had that intention, that would not have diluted or removed KFA's duty to advise on suitability of the fund, as part of its advice on the SIPP. Mr B's complaint has a narrow scope – it is not about KFA wrongly assessing suitability of the fund it is about KFA not assessing suitability at all. There is not enough evidence to show that Mr B was insistent upon investing in Harlequin. Such evidence might have arisen if he had an incentive to do so that was strong enough to outweigh the effect upon him of advice he received about the funds unsuitability. He received no such advice.

On balance, I am persuaded that Mr B was not insistent on the Harlequin investment and that he would not have invested if KFA told him it was unsuitable. Events prior to his meeting with KFA or the suitability letter were not as pivotal as KFA suggests. The matter was not a "*done deal"* before KFA's involvement and, when it issued its suitability letter, it still had the responsibility to give its advice about the unsuitability of the fund and the opportunity to influence Mr B against investing in it. In this respect, I have considered the suggestion that Mr B had influence from another adviser(s). I have not seen enough evidence of such influence. Even if it existed, I consider that he would have given considerable notice to advice from an independent financial adviser (like KFA) telling him about the mismatch between the fund and his ATR and capacity for loss, and putting him on notice about the risk of losing all of his pension. I am satisfied that, on balance, he would have been more compelled to follow such advice – against any influence in favour of the investment, because Mr B could not afford to lose his only pension provisions. For the sake of completeness, I am aware that some investors had financial incentives to invest in the Harlequin fund. I have seen no evidence of such incentives in Mr B's case.

fair compensation

I provisionally consider that fair compensation for Mr B should relate only to his investment in the Harlequin fund, for the reasons given above. I am aware that a party involved with the Harlequin fund has been charged with fraud offences. A court might therefore conclude that Mr B's loss has not flowed directly from unsuitable advice (or lack of advice) from KFA. However, in assessing fair compensation, I'm not limited to the position a court might take. It may be there has been a break in the "*chain of causation*". That might mean it would not be fair to say that all of the losses suffered flowed from unsuitable advice. That will depend on the particular circumstances of the case. No liability will arise for an adviser who has given suitable advice; even if fraud later takes place, but the position is different where the consumer would not have been in the investment in the first place without the unsuitable advice (or the absence of advice that should have been given). In that situation, it may be fair to assess compensation on our usual basis. I consider this to be the case for Mr B.

It would be fair and reasonable to make an award, given the specific circumstances of this case. This is notwithstanding any arguments about a break in the "*chain of causation*". I am satisfied that Mr B would not have invested in the Harlequin fund (or moved his pensions) but for the absence of advice from KFA and I consider that KFA disregarded his best interests in this respect. As such, I consider it fair and reasonable to hold KFA responsible for the whole of the loss suffered by Mr B. I am not asking KFA 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 from the fund. That other parties might also be responsible for that same loss is a distinct matter, which I am not able to determine. However, that fact should not impact on Mr B's right to compensation for the full amount of his loss.

My aim is to put Mr B as close as possible to the position he would now be in if he had been given suitable advice. On balance, I consider that Mr B would not have made any changes to his pension arrangements if he was advised not to invest in the Harlequin fund. Investment in it was within his consideration at the time, however if he abandoned that plan it seems more likely (than not) that he would have had no other incentive to transfer his pensions. I appreciate that it is unlikely to be possible for KFA to reinstate Mr B into his previous pension arrangements. There are a number of possibilities and unknown factors in making an award in such circumstances. The potential variables are unknown and each may have an impact on the extent of any award this service may make.

While it could be complicated to put Mr B back in the position he would have been in if suitable advice had been given, I consider that he should be compensated now. It does not seem fair or reasonable to wait and determine each and every possibility before making an award. What is set out below is a fair way of achieving this. With regards to KFA's solicitor's queries about redress, and as I said above, a response was issued by this service on 21 April 2016.

what should KFA do?

6. Obtain the notional transfer value of Mr B's previous pension arrangements, on the date of this decision, if there had not been a transfer to the SIPP.

   KFA should ask Mr B's former pension provider to calculate the notional transfer value that would have applied as at the date of this decision had he not transferred his pension but instead remained invested in the same funds. KFA should assume that any contributions or withdrawals that have been made would still have been made, and on the same dates.

   If there are any difficulties in obtaining the notional valuation then the FTSE UK Private Investors Income Total Return Index should be used. That is a reasonable proxy for the type of return that could have been achieved if suitable advice had been given.

7. Obtain the transfer value, as of the date of calculation, of Mr B's SIPP and excluding any values related to the Green Oil fund.

   This should be confirmed by the SIPP provider. KFA should then deduct the result of (2) from the result of (1). If there is a positive difference that will be the loss to Mr B.

8. Pay a commercial value to buy Mr B's share in the Harlequin property fund.

   Valuation of the investment may be difficult if there is no market for it. If so, KFA should agree an amount with the SIPP provider as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investment. If KFA is unable to take ownership of the Harlequin investment it should give it a nil value for the purposes of calculating compensation.

   Mr B, through the SIPP, paid a deposit under contract to the Harlequin fund. This is the loss I seek to redress for him. Mr B agreed to pay the remainder of the purchase price under a separate contract however that payment has not yet been made, so at present he has suffered no further loss in that respect. However, if the property is to be completed the scheme could require that payment to be made, so there is a potential for further loss. Mr B must understand this and must understand that he would not be able to bring a further complaint to us with regards to any such further loss. Mr B may want to seek independent legal advice in this respect and with regards to any continuing liability under the separate payment related contract.

9. Pay an amount into Mr B's SIPP so that the transfer value, excluding any values related to the Green Oil fund, is increased to equal the value calculated in (1) above. This payment should take account of any available tax relief and the effect of charges.

   The compensation should be able to be paid gross into a pension plan where it will remain until Mr B retires. He should also be able to contribute to pension arrangements and obtain tax relief as usual upon them.

   If it is not possible to pay the compensation into the SIPP, KFA should pay it as a cash sum to Mr B. Had it been possible to pay it into a pension plan it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid – to be calculated using Mr B's marginal rate of tax in retirement.

10. Pay Mr B £500 for the trouble and upset caused to him by this matter. I am not persuaded by the adjudicator's assessment of £1,000 in this respect. I consider that £500 is an appropriate amount, aside from the main redress treated above, to compensate Mr B for the trouble and upset caused by the consequences of not being advised about the Harlequin fund when he ought to have been.

my provisional decision

For the reasons given above, I provisionally uphold this complaint and I provisionally order Kingswood Financial Advisors to compensate Mr B as I have detailed above and to pay him £500 for the trouble and upset the matter has caused him.

Roy Kuku
ombudsman