

## The complaint

Mr H says FACET INVESTMENT MANAGEMENT LTD ('FACET') and its Appointed Representative ('AR') Berkeley Financial Partners Ltd. ('Berkeley') mismanaged his pension portfolio, leading to a financial loss.

## What happened

I issued a Provisional Decision ('PD1') in this case on 24 October 2023, and another Provisional Decision ('PD2') on 7 February 2024. PD1 did not uphold the complaint. At the outset of PD2 I explained as follows –

*"Based on my enquiries and considerations since PD1, my conclusion differs further, hence this [second] PD. For the reasons given below, I provisionally find that Mr H's complaint is upheld."*

PD2 then gave the following background summary –

*"PD1 summarised the background to the complaint. Both parties are aware of the contents of PD1. However, for the purpose of setting sufficient context in this PD, that summary mainly said –*

*"Berkeley was Mr H's financial adviser, and it recommended the use of discretionary investment management for his pension portfolio. FACET was the pension portfolio's Discretionary Investment Manager ('DIM'). The complaint is about FACET's use of the EF FACET Cautious Discretionary Portfolio (the 'CDP' fund) and the EF FACET Balanced Discretionary Portfolio (the 'BDP' fund) in the pension portfolio. The CDP fund occupied 75% of it and the BDP fund occupied 25% of it. A third-party firm – WAY Fund Managers Ltd. ('WAY') – was the fund manager for both funds.*

*Berkeley's recommendation happened in May 2016. Its suitability letter to Mr H noted that he had incurred a minor loss in the Standard Life Flexible Retirement Plan ('FRP') he had at the time, which was around 99% UK equities based. This led him to review how his pension was invested and to seek a reduction in his exposure to risk. The letter said he did not want to take unnecessary risks with his pension."*

*"A switch to a Standard Life Self-Invested Personal Pension ('SIPP') and the use of FACET's DIM service was Berkeley's advice to Mr H. It also recommended complete (100%) investment of the SIPP portfolio in the FACET Fund no.2, which it said matched his Low Medium risk profile. Mr H followed the recommendation. Later in 2016 FACET gave notice that the investment in the SIPP was to be changed to its own newly launched funds. Thereafter it invested the portfolio in the CDP and BDP funds as described above. On 31 October 2019 FACET shared, with investors, news about suspension of both funds."*

*"The CDP's main characteristics can be summarised as follows – it was to be actively managed by WAY; its risk profile was rated at 3 out of 7; its objective was to provide a long-term return above that of the UK Consumer Price Index, using multi-asset investments (potentially including, amongst others, derivatives, Unregulated Collective Investment*

*Schemes ('UCIS') and bonds with increased illiquidity risks issued by companies providing project financing) whilst focusing on capital preservation and limited volatility; and its 2018 factsheet confirms it contained 46% in mutual funds, almost 44% in global fixed interest securities, around 7% in equities and 3% in money market securities.*

*The BDP's main characteristics were – it too was to be actively managed by WAY; its risk profile was rated at 4 out of 7; its objective was to provide long term total return with an emphasis on capital appreciation; it too used multi-asset investments (potentially including, amongst others, derivatives, UCIS and bonds with increased illiquidity risks issued by companies providing project financing); and its 2018 factsheet confirms it contained around 54% in mutual funds, around 31% in global fixed interest securities, around 13% in equities and around 1.6% in money market securities.”*

*“One of our investigators looked into the matter and concluded that FACET had mismanaged the portfolio as Mr H alleges.*

*He agreed that Mr H's Low Medium risk profile was fairly assessed, and he highlighted aspects of the risk profile assessment that showed he was more concerned about avoiding losses than achieving gains; he sought certainty in investment returns; he did not want high-risk investments and did not consider it important to take financial risks; and he could not stand to lose 0-5% of the portfolio without incurring a significant impact on his future standard of living.*

*The investigator noted that both of the invested funds were described as having potential to invest in some high-risk assets (such as UCIS and the project financing bonds) which could become illiquid. He referred to evidence from the funds' suspension notice that the winding down of a particular sub-fund (the Carpe Valorem ('CV') bond), which existed in both funds, was the material cause of their suspension. He said the underlying operation of the CV bond was the purchasing and restructuring of high-risk credit lines, that its bond yield of 7% was considered as quite high at the time and was an indication of correlated high risks.*

*The investigator considered that the above conflicted with Mr H's risk profile, so exposure of his SIPP's portfolio to high risks that he did not want amounted to a failure in FACET's discretionary management of it.”*

*“FACET strongly disagreed with this outcome. It mainly said:*

- It maintains its previous submissions in the case.*
- There is an earlier Ombudsman decision featuring the CDP and BDP funds, and complaint facts that are similar/comparable to Mr H's (including FACET's DIM service, similar CDP and BDP investments, WAY's fund management and complainants with the same investor risk profile). In the decision, the Ombudsman concluded that both funds, overall, were suitable for the complainants.*
- Unlike the Ombudsman in the decision, the investigator in Mr H's case took the wrong approach of singling out the CV bond as the reason to uphold the complaint, instead of considering the suitability of the funds overall and of the SIPP portfolio as a whole. Suitability cannot fairly be determined by focusing on a single sub-fund within the portfolio.*
- Despite their ability to invest in UCIS neither fund, as a matter of fact, ever invested in UCIS. As such their ability to do so is irrelevant to the complaint. Both funds had independent risk scores provided by FE Trustnet, which ranged between 25 and 35*

out of 100. Given that 0 stands for cash and 100 for the FTSE 100 it cannot reasonably be said that the range of 25 to 35 was unsuitable for Mr H's Low Medium risk profile.

- *Failure of the CV bond was not foreseeable by FACET and it happened under WAY's fund management. The same Ombudsman's decision acknowledged this, noted that FACET could not have reasonably foreseen the bond's outcome and said it would be unfair to hold it responsible for that when the matter was under WAY's control (not FACET's).*"

*PD1 provisionally rejected the complaint, and its main findings were as follows –*

*"I acknowledge that FACET has mentioned another Ombudsman's decision, which it believes should inform our consideration of Mr H's case. Our service works towards consistency in the decisions we issue, but each complaint must be addressed on its own facts. A previous Ombudsman's decision is not automatically binding on another Ombudsman's treatment of a subsequent case. Therefore, my provisional conclusion is based on my assessment of the facts in Mr H's case, and it stands for the reasons given below. Having said this, and on balance, I do agree with FACET's core argument that its DIM service should be considered in the context of the SIPP portfolio as a whole, not on the basis of a singled out sub-fund.*

*Mr H's presentation of the complaint refers to the advice he received from Berkeley and the DIM service from FACET that followed closely. There is also a form of overlap in terms of Berkeley being FACET's AR, and FACET therefore being ultimately responsible for the advice it gave. However, the complaint relates to how investment of his pension portfolio was managed. This is what is featured in his submissions. He essentially says the portfolio was mismanaged and that the investments made were too risky for him."*

*"I agree with the investigator's observations about aspects in the profile assessment which show Mr H prioritised the avoidance of losses, but there is also evidence that he understood and accepted the need to pursue growth. A need for growth is arguably inherent within a pension arrangement, given that its purpose is commonly to create a future increased fund value from which income during retirement can be derived. The correlation between risk exposure and investment returns is generally recognised. Therefore, his desire to reduce exposure to the risk of losses appears to have been reasonably balanced by the need for some of such exposure in order to give the portfolio some prospects for better investment returns (and growth).*

*For the same reasons, I do not find any conflict between the above approach and Mr H's capacity for loss assessment which required a more cautious Investment approach (based on the Low Medium risk profile).*

*FACET's overall DIM service to the SIPP portfolio should be considered in its entirety and in the context of the above mandate. In a nutshell, its task was to manage the portfolio (as a whole) for long term growth, based on the Low Medium risk profile and with a relatively cautious approach."*

*"Given the portfolio split – 75% for the CDP holding and 25% for the BDP holding – I consider, on balance, that the Low Medium risk profile was suitably reflected within this combination of fund objectives. Overall, all but a quarter of the portfolio held an emphasis on capital preservation in order to observe Mr H's desire to avoid loss of value in his pension. However, a quarter of it was more exposed to the pursuit for growth (capital appreciation), which the portfolio needed. Overall, this also achieved the more cautious approach required by his capacity for loss.*

*In terms of the funds' risk profiles, and whether (or not) they matched the SIPP portfolio's mandate, I consider that FACET makes a fair point about the need to view them as complete funds – instead of focusing unduly on an individual sub-fund. In another case with different facts (and/or circumstances) such focus might be fair and justified. For example, where there is evidence that a reasoned need or instruction to avoid a specific investment (or type of investment) was expressly or implicitly part of the mandate. I have found no such facts or circumstances in Mr H's case. FACET's DIM service was subject to the mandate defined by his profile, but nothing in those terms instructed it on specific investments to avoid. As such, its role was to constitute and manage a SIPP portfolio, at its discretion, that matched the mandate.*

*The CDP's risk profile was 3 out of 7, and the BDP's was 4 out of 7. I also acknowledge FACET's reference to the independent FE Trustnet risk scores for both funds of between 25 and 35 out of 100. In the context of the 75% (CDP holding) and 25% (BDP holding) portfolio split, I am satisfied that the combination of both fund holdings was within the risk profile mandate for the portfolio. The same reasoning as summarised earlier – about coupling the capital preservation and appreciation approaches – applies in this respect too. Furthermore, overall and on balance, I consider that the components of each fund (as summarised in the previous section above) were broadly consistent with their risk profiles. For example, it is noteworthy that the CDP's lower risk profile and capital preservation emphasis are reflected in it having around half of the equities exposure found in the BDP and over 10% more exposure to lower risk fixed interest securities than that in the BDP.*

*As the investigator noted, the funds were exposed to the CV bond. In hindsight, given what has happened to the bond and given what we all now know, this stands out. However, I have seen no evidence of grounds on which this exposure ought reasonably to have stood out (as a potential problem) to FACET at the time the CDP and BDP funds were invested in. I repeat, the components of both funds were broadly consistent with their risk profiles and the combination of those risk profiles matched the mandate for the SIPP's portfolio.*

*WAY, not FACET, managed the funds. If Mr H argues that the funds' exposure – distinct from the SIPP portfolio's exposure – to the CV bond was a wrongdoing, or that the funds were in some way mismanaged because of that exposure, that is a matter of fund management and one beyond FACET's responsibility. For this reason, I make no finding on such an argument."*

*Mr H did not accept the outcome of PD1 and he made submissions about that. Around the same time, I became aware of additional and wider information (and evidence) from other cases about FACET (and about the CDP and BDP funds) that had been referred to our service. I then put further enquiries to FACET, updated Mr H that I had done so, and addressed his submissions about PD1.*

*The contents of the enquiries I put to FACET were as follows –*

*"Upon consideration of wider evidence, especially evidence your firm has submitted to us in other cases, there is a need for me to review the following –*

- Details on the specific components of the EF FACET BDP and CDP funds between the start of 2017 and the end of 2019, and throughout in between (whenever the components were changed). I consider this information must be accessible to FACET because both funds were/are FACET funds.*
- Information on FACET's awareness at the time, and during the above period, of the funds' components, based on its responsibility as a DIM to be aware of their*

*components at the time and during the above period. This is distinct from WAY's fund management activities. It relates to FACET's 'awareness' (and awareness it ought reasonably to have had, given that they were FACET funds) of the sub-fund components of the pension portfolio it discretionarily managed for Mr H."*

*"As you know, the PD referred to a summary of both funds' composition in 2018 based on their factsheets in that year. I have since become aware of much more detailed information about their compositions in 2020, including information about each individual sub-fund held in the BDP and CDP and information about their percentage allocation. Such details were not available in the 2018 factsheets and I consider them to be relevant to my determination of the complaint.*

*I acknowledge that 2020 is beyond the period that relates to Mr H's complaint. However, the types of sub-funds listed in the 2020 evidence that I have seen arguably resulted in BDP and CDP funds which, overall and in 2020, would have mismatched the low-medium risk profile/mandate that FACET had for his pension portfolio.*

*The implications arising from the above are that the reliance I placed upon the 2018 factsheets in the PD could be insufficient, because those factsheets lack relevant details that could provide better insight; and that if the components of the BDP and CDP funds in 2020 were similar to what they were between 2017 and 2019, then they could have mismatched FACET's mandate for Mr H during the period relevant to his complaint.*

*Please note that, depending on the information you provide in response and on my consideration of it, a further PD might be necessary, in which Mr H's complaint could be upheld. I am aware of the arguments and submissions that have been made for FACET in this case, but ultimately the 'facts' about how Mr H's pension portfolio was actually discretionarily managed – in the context of knowledge that FACET had and/or ought reasonably to have had about the BDP and CDP funds (and their components) throughout the management period – are arguably paramount. Evidence that I have seen since the PD suggests that the 2018 factsheets do not provide a reliable picture on this, hence my enquiries above."*

*My reply to Mr H included –*

*"I have just sent an email to FACET highlighting, and asking for further information on, specific aspects of your case that I wish to review before proceeding with either a final decision (that affirms the PD) or a second PD (if my determination changes). I have given it until 22 January 2024 to respond. Those aspects are about the components of the EF FACET BDP and CDP funds between 2017 and 2019 (the period relevant to your case), and about its awareness (and responsibility to be aware) of those components at the time."*

*"I note that your response mainly refers to – responsibility (between Berkeley/FACET and WAY) for the loss in your pension's value since Berkeley's 2016 advice and under FACET's management; the same with regards to the frozen component of the pension's present value; poor pension advice from Berkeley; your awareness of others making claims against Berkeley; your initial final salary pension transfer, advised by Greenhill Dobbin; and your view that the PD does not explain the outcome it delivers.*

*Please be aware that these points are unlikely to create further aspects for me to review, because –*

- *The PD was issued in your complaint against FACET (for whom Berkeley was an AR), so it did not address your separate case against WAY. This will not change.*

- *We do not consider cases like yours on the basis of performance or financial loss, in isolation, instead we look into whether (or not) a firm has given unsuitable advice and/or conducted investment mismanagement that has led to the complainant being in his/her present position. In your case, as stated in the PD, the core allegation appears to be mismanagement – related to FACET. The reasons why the PD concluded that it did not mismanage your pension portfolio are as stated within it. However, the review mentioned above might or might not change that conclusion.*
- *If your submission is that the case also relates to Berkeley's advice, the facts appear to conflict with that. Your complaint is about how your pension was invested in the BDP and CDP funds, roughly between 2017 and 2019. Berkeley's initial advice to you, around mid 2016, did not recommend the BDP and CDP funds. It recommended the FACET Fund No. 2 and only thereafter, under its discretionary management, did FACET change that to the BDP and CDP funds. Your case does not include a complaint specifically about the FACET Fund No. 2. It therefore appears that, as the PD states, your case is about alleged mismanagement by FACET.*
- *Neither the PD nor any future decision in your case can make findings on claims others are supposedly making against Berkeley.*
- *Your complaint, as submitted to us, is about events from 2016 onwards involving Berkeley and FACET (and, in your separate complaint, involving WAY). Any prior issues about a transfer of your final salary pension and Greenhill Dobbin are outside the scope of your complaint."*

*Mr H was invited to respond, but does not appear to have done so.*

*FACET provided the information that I requested, including its confirmation of the following –*

*"WAY Fund Managers reported to FACET on a daily basis on the underlying holdings within the EF FACET funds. Therefore FACET had full awareness of the holdings within each of the EF FACET funds on a daily basis (but not the full constitution of the holdings within any external funds)."*

*PD2 made the following main findings –*

*"My views on [Mr H's] comments about PD1 remain as I presented to him (as quoted above), and I incorporate them into this PD.*

*... my provisional conclusion in this case has changed mainly for the reasons I summarised to FACET – as I elaborate on below – and because of the contents of the additional information it provided.*

*As I explained to FACET, PD1 relied on information about the CDP and BDP funds in the 2018 factsheets. At the time, and in the absence of evidence (available to me) that suggested those factsheets could be unreliable or that they did not provide the full (or accurate) picture on the funds' contents, it appeared reasonable to do so. More detailed information about both funds' contents between 2017 and 2019 illustrates something notably different to, and more substantial than, the impression given by the 2018 factsheets.*

*The titles of both funds, the summary information in their factsheets, and their 75/25 allocations within Mr H's portfolio could suggest that the portfolio was being suitably managed. However, whilst I do not venture to regrade the risk ratings of either fund, I*

*consider it within my remit to say the balance of detailed information about their contents shows that, in reality, they did not match Mr H's low medium risk profile. Consequently, the balance of evidence says the portfolio was not suitably managed by FACET.*

*Both funds were FACET funds and, as it has confirmed, it had complete day to day awareness of their underlying contents at all times. WAY managed the funds, but FACET actively managed Mr H's portfolio. In this context, especially as it had discretionary management over the portfolio – which meant Mr H was uninvolved with that management, unaware of operations within it and fully relied on FACET to ensure it was being conducted in his best interests – it was responsible for doing more than just relying on the funds' titles.*

*In terms of ensuring the portfolio was being suitably managed and that its exposure to risks did not conflict with the low medium risk mandate it was obliged to pay attention to changes in the contents of the CDP and BDP funds that resulted in, or threatened to result, in such conflict. This was particularly so given that whilst it was reasonable to pursue growth in the portfolio (for the reasons I gave in PD1) it cannot be ignored that Mr H's risk assessment answers did portray a defensive leaning low medium risk profile. To a reasonable extent, FACET ought reasonably to have been mindful of potential conflict with this defensive characteristic too.*

*Evidence shows that from 2017 onwards (up to 2019 and beyond) both the CDP and BDP funds, slightly more so in the latter, had and maintained a distinctly sizeable population of corporate bonds, high yield corporate bonds and funds for such bonds. This went beyond the CV bond. Without focus on, judgement of or prejudice to any individual bond, other examples of the high yield bonds in both funds include Ethika Finance plc 8.5% Sec NTS 01/13/2022, Dover Harcourt PLC 7% 2027 and EBIOS ENERGY AD 7% 2022. There was also a presence of structured product holdings within both funds.*

*In broad terms, corporate bonds – even when they are investment grade corporate bonds – tend to have higher credit worthiness and default related risks than investment grade sovereign bonds (or Gilts, as in the UK). Corporate bonds with high yields are commonly regarded as being even more speculative and having even higher risks, hence the higher yields. Also in broad terms, structured products are generally considered to have higher risk profiles.*

*These corporate bonds, high yield corporate bonds, associated funds and structured products constituted around 30-40% of the CDP and BDP, individually, between 2017 and 2019. They did not match the defensive leaning low medium risk profile that Mr H had, and that defined the mandate for his pension portfolio. In approximate terms, around a third of the 75% portfolio allocation to the CDP fund and around a third of the 25% portfolio allocation to the BDP fund exposed his pension to higher risks that conflicted with the portfolio's mandate.*

*The above provides an analysis that does not focus on individual sub-funds. The approach looks at the portfolio as a whole.*

*Combining both funds, based on the above analysis and looking at the portfolio as a whole, approximately 40% of the pension portfolio was exposed to unsuitably higher risks that went against Mr H's risk profile and the mandate for the portfolio. This provides grounds to conclude that the portfolio was mismanaged by FACET. Upon awareness, which it either had or ought to have had, of this breach of mandate it should have reviewed and corrected the portfolio to ensure it matched the mandate – but it did not. If it felt committed to using the CDP and BDP funds – perhaps because they were FACET funds – that should not have outweighed its primary responsibilities towards Mr H's best interests and management of his portfolio in line with the mandate. If such commitment existed then it should, at the very*

*least, have informed him of that and that the CDP and BDP funds were no longer suitable for his portfolio, and allowed him the opportunity to consider how he wished to proceed.*

*The above findings are distinct from any argument about FACET being unable to foresee problems within the funds or their contents. They are also distinct from WAY's responsibility for selecting the funds' contents and managing the funds. They are about FACET's awareness of components in the funds which were unsuitable and were at a level, in total, that created exposure to notably higher risks than Mr H was prepared to accept; and they are about its failure to correct that, as part of its DIM service to the portfolio.*

*Overall, on balance and for the above reasons, I provisionally uphold Mr H's complaint."*

PD2 then concluded by giving an indication of the redress provisions likely to be ordered in a final decision if PD2's findings and conclusions were retained.

FACET confirmed its acceptance of PD2 and the redress provisions indicated within it. It also suggested the matter could be settled without the need for a final decision. This was conveyed to Mr H. He agreed to consider and engage in FACET's settlement proposal. Some time was given for such settlement to conclude. FACET issued calculations and terms in this respect, which were shared with Mr H. However, he conveyed uncertainty about a particular term of the settlement, so the matter was progressed to this final decision.

### **What I've decided – and why**

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

I have reviewed PD2's findings and conclusions on merit in this complaint and I have not seen cause to depart from them or to revise them. Neither party has objected to PD2 and FACET has confirmed that it accepts PD2. I retain the findings and conclusions in PD2 and I incorporate them into this decision.

Mr H's complaint is upheld for the reasons given in PD2 (and as quoted above).

### **Putting things right**

#### ***Fair compensation***

My aim is to put Mr H as close as possible to the position he would now be in if his pension portfolio had not been mismanaged by FACET. On balance and for the reasons given in PD2 (and as quoted above), I consider that his portfolio's contents would have been different. It is not possible to say precisely how different it would have been, but I am satisfied that what I have set out below is a fair and reasonable basis for redress based on his low medium risk profile.

Mr H is ordered to engage meaningfully and co-operatively with FACET to provide it with all information and documentation, reasonably required for its calculation of redress, that it does not already have.

#### ***What must FACET do?***

To compensate Mr H fairly, FACET must do the following:

- Compare the performance of his pension portfolio with that of the benchmark shown in the table below. If the fair value is greater than the actual value the difference must



be paid to him in compensation. If the actual value is greater than the fair value, no compensation is payable.

- Pay any interest set out below. Income tax may be payable on any interest paid. If FACET is required by HM Revenue & Customs to deduct income tax from the interest, it must tell Mr H the deduction amount and give him a tax deduction certificate if he asks for one, for him to reclaim the tax from HM Revenue & Customs if appropriate.
- Pay the compensation into Mr H's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation should not be paid into his pension plan if it would conflict with any existing protection or allowance. If the compensation (and interest) cannot be paid into his pension plan, pay it directly to him. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. For example, if he is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Pay Mr H £500 for the distress, trouble and inconvenience caused to him. I agree with the investigator's earlier proposal in this respect. His pension portfolio was managed by FACET on a discretionary basis. That happened because of the trust and confidence he must have had in FACET. Its mismanagement of the portfolio essentially breached his trust and confidence, and that, in addition to his journey in trying to redress the matter, would have caused him a notable amount of distress, trouble and inconvenience. I consider that £500 is fair compensation to him for that.
- Provide the calculation of the compensation to Mr H in a clear and simple format.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Mr H's Standard Life SIPP portfolio	Still exists	For half the investment – FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index); for the other half – the Bank of England average return from fixed rate bonds	Start date of FACET's DIM service to the portfolio	Date of settlement	Not applicable

***actual value***

This means the actual amount payable from the investment at the end date.

If at the end date the investment (or any part(s) of it) is illiquid the actual value of the investment (or its illiquid part(s)) must be assumed to be zero. This is provided Mr H agrees to FACET taking ownership of the illiquid investment (or its illiquid part(s)), if it wishes to. If that is not possible then FACET may request a simply worded and clearly worded undertaking from Mr H – to be drawn up at FACET's expense – to the *sole* effect that he repays to FACET any amount he may receive from the illiquid investment (or its illiquid part(s)) in future.

### ***fair value***

This is what the investment would have been worth at the end date had it produced a return using the benchmark. To arrive at the fair value when using the fixed rate bonds as the benchmark, FACET should use the monthly average rate for fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investment should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if FACET totals all those payments and deducts that figure at the end instead of deducting periodically.

### ***why is this remedy suitable?***

- Mr H had a low medium risk profile for the SIPP's portfolio.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It is a fair measure for someone who was prepared to take some risk to get a higher return. The average rate for fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to capital.
- I consider that Mr H's profile was in between both benchmarks, in the sense that he was prepared to take a small level of risk to attain his objective. The 50/50 combination above would reasonably put him into that position and it broadly reflects the sort of return he could have obtained if the SIPP's portfolio had been suitably managed to match his risk profile.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000, £375,000 or £415,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr H's case, the complaint event began before 1 April 2019 and the complaint was referred to us after 1 April 2022, so the applicable compensation limit should be £170,000. It is unlikely that total compensation to him will exceed this limit. Nevertheless, he is invited to

consider taking independent advice as stated above.

***decision and award***

I uphold Mr H's complaint. Fair compensation should be calculated as I have stated above. My decision is that FACET should pay him the amount produced by that calculation, up to the relevant maximum.

***recommendation***

If the amount produced by the calculation of fair compensation is more than the relevant maximum, I recommend that FACET pays Mr H the balance. This recommendation is not part of my determination or award. FACET does not have to do what I recommend."

**My final decision**

For the reasons given above, I uphold Mr H's complaint and I order FACET INVESTMENT MANAGEMENT LTD to calculate and pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 April 2024.

Roy Kuku  
**Ombudsman**