

## **The complaint**

Mr S complains that Yorsipp Limited failed to action a request to sell an investment held in his self-invested pension plan ('SIPP'). He went on to complain that Yorsipp failed to carry out appropriate due diligence on that investment before accepting it into his SIPP.

## **What happened**

Mr S applied for a SIPP with Yorsipp in February 2010 through his financial adviser, at which time it was an appointed representative of a business I'll call Firm T. The SIPP application was accepted and it was opened on 5 March 2010.

Firm T advised Mr S to transfer £33,000 that he held in another pension plan with an alternative provider to the Yorsipp SIPP. This was for the purpose of investing around £30,000 (plus fees) in a plot of land ultimately intended for housing development. The investment completed in June 2010.

In April 2015 Mr S asked Yorsipp to start the process of selling his share in the investment. Mr S provided his agreement to the associated costs of marketing the land in May 2015. By this time, his financial adviser was a business I'll call Firm A.

Mr S says he understood that it could take time to sell the land and he didn't have any immediate concerns about this. However, in late 2017 Mr S says it became apparent to him that in order to sell the investment, at least 75% of the other investors also needed to agree to this. In May 2018 he started to complain to the parties involved, including Yorsipp.

Yorsipp said that Mr S only held a share in the plot through his SIPP, and this land formed part of a larger area of land, along with four other plots which were owned by other Yorsipp SIPP members. Yorsipp explained that the original intention was for all of the land to be cleared and services put in, so that the whole area could be sold for development. It understood the land originally had planning permission for housing, so the intention was to sell the land to a housing developer.

Yorsipp said that in 2015, Firm A (which was also the adviser firm for a number of other SIPP members invested in the land) informed it of the potential to market the land for sale. It said Mr S, and other members, had informed Yorsipp of their intention to sell the land. But before it could agree to action this, Yorsipp had to seek agreement from the other SIPP members as they would also be required to approve the sale and take on the associated costs. However, it was unable to obtain many of the other SIPP members' agreement, so it could not approve the sale. Yorsipp explained it now had agreement from the majority of members to proceed with marketing the land for sale.

Mr S wasn't satisfied with the response so he referred the complaint to the Financial Ombudsman Service. He added he was also unhappy that Yorsipp continues to charge him significant fees, even though it does little more than provide valuations of the investment, and he is unable to sell the investment in order to close the SIPP down. Mr S wants Yorsipp to return the sum he invested, plus growth, and a refund of SIPP fees.

Mr S also made complaints against Firm T and Firm A, which have been considered separately by the Financial Ombudsman Service.

Mr S later added that he was unaware he'd have responsibility for selling the land as part of a syndicate; he was led to believe by Firm T that it would sell the land. Mr A also said that he wanted us to consider how such a high-risk investment, which was difficult to sell, was sold to him when he wasn't an experienced investor and couldn't afford to lose the money. Mr S said he was advised to invest in the land by Firm T and now realises it was very poor advice and wasn't at all suitable for him.

Mr S further added that he found out the planning permission attached to the land had expired in 2013. He said no one had informed him and it explains why the land couldn't be sold. Mr S says that Yorsipp must be responsible for marketing and selling the land and it had failed to manage the investment throughout.

Yorsipp thought Mr S had made his complaint too late, more than six years after the event he'd complained about and more than three years after he was aware or ought reasonably to have been aware of his cause for complaint. But our Investigator ultimately concluded the complaint had been made in time. That's because even though Mr S had asked Yorsipp to sell the investment in April 2015, it wasn't fair to say that Mr S's awareness of his cause for complaint – that he was unable to sell his share of the plot – started on that day. It would've been reasonable to allow a period of at least six months for the sale to be completed. So, he thought the earliest Mr S would've had awareness of his cause for complaint was October 2015, and as he'd complained to Yorsipp on 13 July 2018, he'd made his complaint within three years of this.

Yorsipp accepted this and provided its file on the complaint, including the due diligence it carried out on the investment before accepting it.

The Investigator didn't uphold Mr S's complaint. He thought that Firm T was responsible for the suitability of the advice to invest in the land, but he said Yorsipp still had a responsibility to conduct appropriate due diligence checks on Firm T as the introducer of the investment, and the investment itself.

The Investigator said Yorsipp hadn't carried out any specific checks on Firm T, but had it done so it would've found that Firm T was regulated to provide investment advice and was not subject to any restrictions. While the Investigator noted Mr S had said that the specific representative of Firm T that he dealt with wasn't permitted to sell unregulated investments, he said Yorsipp wouldn't have been party to the agreement between Firm T and its appointed representative. In terms of the investment, the Investigator thought it was reasonable for Yorsipp to accept the investment into Mr S's SIPP as it was a genuine asset and was not residential property, it was land to be developed, which was permitted to be held in the SIPP under HMRC rules. Overall, he wasn't persuaded that Yorsipp had acted unfairly by accepting the investment application.

Mr S didn't accept this. He said that planning permission had lapsed in 2013 and he hadn't been informed of this. He feels he should have been given the opportunity to sell his share before this. He also feels he was duped into giving his consent to sell the property in 2015, which would've resulted in a loss given the planning permission had lapsed. Mr S added that Yorsipp had provided him with misleading property valuations up to 2018; the land was worth less than the valuation showed because the planning permission had lapsed. Lastly he said it was unreasonable for Yorsipp to leave it until 2021 to take action to sell the land given this was intended to be a two to five year investment.

Mr S has since instructed a solicitor to represent him in this complaint, who further commented:

*“One of the fundamental issues clearly overlooked by all involved was the lack of liquidity of the investment. At no point in the letter or the subsequent transfer into the SIPP was any warning provided to our client that the investment lacked liquidity and could not be transferred, sold or cashed out. The letter suggested that the investment was for a period of 1-5 years. It is now 13 years later and our client is of pensionable age. He is unable to realise his pension as a result of the manner in which the Yorsipp trustees have managed the investment. In particular, this relates to the basis of our client’s complaint with regards to the allowing of planning permission to lapse without consultation of the SIPP members.*

*Further there was no explanation at the outset that matters of that nature would be put to majority vote of SIPP members. Nor was it made clear at any point that our client would hold a percentage share in one plot only. If our client’s SIPP holds a share in one single plot with a number of other owners in that single plot, then it would appear that our client and those other owners would be in a position to decide how to administer that plot with the agreement of the SIPP trustees. Despite that, it appears our client has been given conflicting information regarding the holding and the basis upon which SIPP members can decide upon how to administer their holdings, namely the entire development (all 5 plots) must be decided on a majority basis, rather than each individual plot (which appears to be what all 25 SIPPs hold actual units in).*

*Despite all of the above, the Trustees have failed to administer the property at all and have simply allowed the plots to deteriorate in value due to inactivity. In particular, the letter which induced our client to enter into the investment stated that it would be realised within a maximum of 5 years for more than a 5% return. There has been no valid explanation as to why the investment is still held by Yorsipp a full 8 years beyond the maximum stated within the letter of 1st March 2010.”*

The Investigator didn’t change their opinion so the complaint was passed to me to decide.

I shared Mr S’s representative’s comments with Yorsipp and asked for its response.

Yorsipp said that when Mr S decided to purchase property through his SIPP, decisions were made by Yorsipp (Trustees) Limited in accordance with the terms of the Trust Deed. It added that the duties and obligations of Yorsipp (Trustees) Limited are set out in the Trust Deed, in particular, at clause 11 and clause 14.

Yorsipp explained that although the plots could be sold individually, doing so would reduce their marketability. So, Yorsipp (Trustees) Limited made the decision to proceed only in the event of a unanimous decision in favour of such sale. Given the discretion at clause 11, as qualified by clause 14, Yorsipp states that it was fully within the discretion given to Yorsipp (Trustees) Limited to require that, in the event of jointly owned property, all those with an interest in it needed to agree to the disposal of such property. Yorsipp says that Yorsipp (Trustees) Limited, as it was entitled to do, was acting in good faith pursuant to what it regarded as being in the interests of all those that owned property.

Yorsipp says that if Mr S is unhappy with the way Yorsipp (Trustees) Limited has exercised its discretion, that is not something that our Service can consider. That is because Yorsipp (Trustees) Limited is not regulated by the Financial Conduct Authority (‘FCA’) so it does not fall within our compulsory jurisdiction. Yorsipp (Trustees) Limited also hasn’t joined our voluntary jurisdiction.

Mr S also made some comments about the company that owned the land prior to selling them to the syndicate and asked what due diligence Yorsipp carried out on it.

I issued a provisional decision on 16 October 2023, in which I explained why I wasn't inclined to uphold the complaint. I said on balance it was fair and reasonable, considering the obligations Yorsipp had to Mr S, for it to accept the SIPP application from Firm T and to allow the investment to be held in Mr S's SIPP. I also said I didn't think Yorsipp was responsible for managing the investment thereafter or that it was responsible for the SIPP trustee's decision not to allow the individual sale of the plots of land.

Yorsipp provided no response to my provisional decision, but Mr S's representative didn't agree with my findings. It said:

- The decision had been issued on the misapprehension that the SIPP trustee, Yorsipp (Trustees) Limited, was entitled to carry out investment management functions at its discretion. And although Mr S had requested Yorsipp to undertake actions on his behalf, there's no comment in the decision that Yorsipp put forward Mr S's complaints to the SIPP trustee, sought appropriate answers and then relayed those to Mr S.
- There does not appear to have been an 'arm's length' approach by Yorsipp and Yorsipp (Trustees) Limited in light of this.
- Mr S purchased a 25% stake in a single plot of land as part of a syndicate of four. At no point was it highlighted to Mr S that this could be arbitrarily diluted to a 25<sup>th</sup> for decision-making purposes. This had a fundamental bearing on the liquidity of the investment. Given that Yorsipp had access to the advice letter sent to Mr S, it ought to have noted this and explained that the advice given to him in relation to the mechanics of the investment wasn't correct, or had the potential to become incorrect.
- If Mr S' SIPP was administered for his benefit then his instructions ought to have been dealt with in that manner. Yorsipp had a conflict of interest because it was managing 24 other SIPPs, the interests of which were being taken into consideration when Mr S gave it instructions.

As the deadline for responses has passed, I'm now providing my 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.

Although I have considered Mr S' representative's response to my provisional decision carefully, I'm not upholding the complaint for essentially the same reasons I gave in that decision. So, I've largely repeated my findings below, but I have addressed any new arguments put forward.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The Principles for Businesses, which are set out in the Financial Conduct Authority's ('FCA') handbook, "*are a general statement of the fundamental obligations of firms under the regulatory system*" (PRIN 1.1.2G). And I consider that Principles 2, 3 and 6 are relevant to my consideration of this complaint. They say:

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

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

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

I’ve also considered the High Court decision in *Adams v Options SIPP*. In that case, Mr Adams had made an investment into storage pods through his SIPP. Since that decision the Court of Appeal has handed down its judgment following its consideration of Mr Adams’ appeal. I’ve taken both judgments into account when making this decision.

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

- The regulator’s 2009 and 2012 Thematic Review reports;
- The regulator’s October 2013 Finalised SIPP Operator Guidance; and
- The regulator’s July 2014 “Dear CEO” letter.

I have considered these publications in their entirety when reaching my decision on this complaint.

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

#### *Mr S’s relationship with Yorsipp and other connected parties*

Yorsipp says it is an execution only SIPP administrator, which means that it only acts on the instruction of the investor or any third party professional who has authority to make an instruction on their behalf. Yorsipp said it does not provide financial advice so it was not involved in the advice given to Mr S as a member of the SIPP, or assessing whether the investment was suitable for him. It said these were matters for the financial adviser.

I’ve seen the recommendation letter of 1 March 2010 from Mr S’s financial adviser at the time, Firm T. This said:

*“I recommend that you transfer £33,000 of your pension fund which is with [former pension provider] over to Yorsipp in order to facilitate your land purchase. Especially as Yorsipp have agreed to discount their normal property fee of £600 and allow this fee to be split between the syndicate members this reduces the fee in a syndicate of 4 to £150 per member. Yorsipp have also agreed to allow syndication of conveyance fee’s etc.”*

So, it is clear to me that Firm T gave the advice to Mr S to transfer funds from his existing pension to Yorsipp, in order to facilitate the purchase of his share in the plot. As such,

I accept that Yorsipp didn't provide any advice here, and so it didn't have an obligation to consider the suitability of the investment for Mr S.

Mr S's representative said that the investment was significantly risky and lacked liquidity. So, Yorsipp had an obligation to consider the advice provided by Firm T and further consider whether the investment was appropriate for Mr S, based on his attitude to risk, demands and needs and other responses. What I think Mr S's representative is saying here is that Yorsipp also needed to take a view on the suitability of the investment for Mr S. However, I think that was for Mr S's adviser to determine.

Nevertheless, I think Yorsipp was required (in its role as an execution only SIPP provider) to consider whether it was appropriate to accept business from Firm T and to consider whether the investment in the land was an appropriate investment to make within its SIPP. And overall, I think Yorsipp's duty as a SIPP operator was to treat Mr S fairly and to act in his best interests. And taking account of the regulator's guidance and what I consider to have been good practice at the time, I think it ought to have carried out due diligence to check points such as whether:

- Firm T was regulated to provide pensions and investment advice and had a clear disciplinary history;
- it understood how the investment would operate;
- the investment was a genuine asset and was not part of a fraud or a scam or pensions liberation;
- the investment was safe/secure;
- the investment could be independently valued and that it wasn't impaired.

#### *What checks did Yorsipp carry out on Firm T*

Yorsipp has said that the SIPP was not introduced by an unregulated introducer but an appointed representative of a regulated financial adviser – Firm T. It says it was their responsibility to manage the client's investments; and all information it received would have been communicated through Firm T.

It doesn't appear that Yorsipp had an introducer agreement with Firm T before accepting business from it. While it would've been good practice to have had an introducer agreement in place with Firm T, I don't think the absence of one means Yorsipp should not have transacted with it.

At the time of the investment, Firm T was regulated, and the firm acting as appointed representative had authorisation to recommend and introduce new SIPPs and investments. While it doesn't appear that Yorsipp did any other checks on Firm T and its appointed representative, I don't think it would've found any adverse information had it done so. There were no changes or notices relevant to Firm T between the advice being given and the servicing of the SIPP moving to Firm A.

Furthermore, it is important to note that a land investment is not like, for example, an unregulated collective investment scheme ('UCIS'). So, where an adviser does need to be authorised to advise on UCIS investments, a land investment is not a regulated investment so an adviser does not need to be authorised to recommend such investments.

So, even though I don't think Yorsipp did enough in terms of checking Firm T and the appointed representative's permissions and disciplinary history, I don't think it would've made a difference here had it done so.

Overall, I don't think there were grounds to be concerned about accepting business from the appointed representative of Firm T. So it follows that I think it was reasonable in principle for Yorsipp to accept the SIPP application. Although, as I will go on to discuss, an important part of Yorsipp's decision to accept the application from the appointed representative of Firm T should also include its consideration of the investment proposition.

*What due diligence checks did Yorsipp carry out on the investment?*

Yorsipp says that Mr S has not really complained about the due diligence it carried out on the investment. Instead, Mr S was unhappy with how the investment had been managed, and his inability to sell his share in it without approval of the other members with shares in the plots of land. Furthermore, Yorsipp said that it would've expected Mr S's adviser to carry out due diligence on the investment, as part of their duty to assess the suitability of the investment for the member.

Nevertheless, Yorsipp has provided the following information:

- SIPP application and transfer forms dated 5 March 2010 on the advice of Firm T;
- SIPP Master Trust Deed and Rules;
- Property purchase questionnaire;
- Survey report completed by 'B';
- Disposition in favour of Yorsipp (Trustees) Ltd;
- Land Registry Certificate; and
- Various correspondence in relation to the property purchase.

I've considered the checks Yorsipp carried out here and whether it met its obligations to Mr S in line with the Principles I've referred to above and COBS.

Yorsipp said that its role in terms of due diligence was to ensure that the investment was genuine and capable of being held in the SIPP (i.e. it was not prohibited by the FCA and holding it would not result in HMRC imposing tax penalties on the member and the pension scheme). It says that a holding of non-residential property within the SIPP is permitted by both the FCA and HMRC, and the documents it provided demonstrates that the land is genuine and that Yorsipp (Trustees) Ltd holds the title to it.

Yorsipp added that the proposed investment was solid property as opposed to an esoteric investment that was illiquid in nature; it was a tangible asset of which Mr S would own a 25% share. It explained that buying/selling land with an uplift in value for development purposes with planning permission is a viable commercial investment for a member-directed pension and would remain so today, and the member's SIPP holds a share in commercial property rather than an unregulated "product".

Yorsipp seems to suggest that its due diligence duty in respect of the investment made by Mr S was limited to ensuring that it could legitimately be held in the SIPP and was not a scam. But that is only partially in line with the Principles, guidance and what I think was good industry practice at the time. As the regulator has made plain, SIPP operators have a responsibility for the quality of the SIPP business that they administer. SIPP operators should undertake appropriate enquiries about the nature or quality of an investment proposed before determining whether to accept or decline it into its SIPP. Nevertheless, having considered the evidence provided and Yorsipp's comments, I'm satisfied that it was appropriate for Yorsipp to accept Mr S's investment into his SIPP.

I say this because I think Yorsipp understood the nature of the investment and made sure it could legitimately be held in the SIPP. Yorsipp understood that the land was purchased with

the intention of establishing services on it before selling it on for profit. The land already had planning permission for a number of dwellings on site. So, I think that the investment proposition was viable and could legitimately be held in the SIPP.

Furthermore, I think that Yorsipp established the investment was genuine and safe. Yorsipp (Trustees) Limited had appointed appropriately qualified experts throughout the transaction. This included appointing a surveyor, who was registered with the Royal Institution of Chartered Surveyors and whose company specialised in commercial and rural land. The report confirmed the market value of the property in line with the purchase price. Solicitors were also appointed to carry out the conveyancing, and they carried out appropriate searches. It was established that it was a genuine holding of land with good, clear title. The purchase of the land proceeded on this basis.

I don't think the investment contained any other concerning features that should've led Yorsipp to question it further – while it was an illiquid investment, I don't think it was esoteric in nature. While any investment in commercial property comes with risks, I don't think the specific investment proposed any additional risks such that Yorsipp ought to have refused to permit it to be held in the SIPP.

As the investment was being purchased as part of a syndicate, I think it would've been good practice for Yorsipp to carry out checks on the other syndicate members, given that all members were required to consent to the sale of the land. However, I'm mindful that the other syndicate members also held their investment in Yorsipp SIPPs. So I think it's more likely than not that Yorsipp would've carried out checks on these individuals in the same way it carried out checks, such as anti-money laundering checks, on Mr S. And in any event, there is no suggestion of any wrongdoing on the part of individual syndicate members. Instead, there was a disagreement between members of the syndicate about selling the land and this is what had led to the issues Mr S complains of, that he has been unable to dispose of the investment without the other members' agreement.

I've thought about whether the investment being part of a property syndicate should've given Yorsipp cause for concern, given Mr S could not take a decision on his own to dispose of the investment. But I don't think this is a particularly unusual arrangement for commercial property. And ultimately the terms of the Master Trust gave Yorsipp (Trustees) Limited discretion to make decisions in respect of the investment. So, I don't think that the existence of the syndicate should've been a barrier to Yorsipp accepting the investment into the SIPP.

Mr S's representative said in response to my provisional decision that Mr S purchased a 25% stake in a single plot of land as part of a syndicate of four. And at no point was it highlighted to Mr S that this could be arbitrarily diluted to a 25th for decision-making purposes because of the other plots purchased by other SIPP members. It says this had a fundamental bearing on the liquidity of the investment. And given that Yorsipp had access to the advice letter sent to Mr S, it ought to have noted this and explained that the advice given to him in relation to the mechanics of the investment wasn't correct, or had the potential to become incorrect.

But there is no suggestion that Yorsipp had sight of the advice letter from Firm T to Mr S. While I have considered the letter and referenced it in this decision, it was not provided to me by Yorsipp. Yorsipp did not request any of the advice documentation before it accepted the investment into the SIPP. While it would've probably been good practice for Yorsipp to have done so, I don't think that having sight of the advice letter would've made a difference to my decision. As I've said above, I don't think it was Yorsipp's role to determine the suitability of the investment for Mr S or highlight the features or risks of it, including that there were other syndicate members purchasing connected plots of land – that was Firm T's responsibility.



Mr S raised concerns about the seller of the land and asked what diligence was carried out on this company. Mr S says that the company that sold the land to the SIPP had a connection with the appointed representative of Firm T. He feels there is a conflict of interest at the very least here and possibly fraud. But the company Mr S has raised concerns about, a director of which has a connection with a director of the appointed representative of Firm T, is not the same company that sold the land to the SIPP. The company that sold the land to the SIPP is registered in another jurisdiction, whereas the company Mr S has found was registered in the UK several years after he made his investment. There is no evidence those two companies are connected.

It doesn't seem that Yorsipp directly carried out any checks on the company that sold the land to the SIPP, but the conveyancing process carried out by the solicitors appointed by Yorsipp would've involved such checks. And as I've said, Yorsipp carried out appropriate and reasonable checks on the land before the sale was completed and the investment accepted into the SIPP.

In bringing the complaint, Mr S's representative described the investment as significantly risky and illiquid, but I don't think it was overly complex such that Mr S wouldn't have understood the nature of it. Mr S was purchasing a share in a plot of land as part of a syndicate, which was part of a larger plot of land that was intended for development. The property purchase questionnaire, which Mr S signed, and the recommendation letter from Firm T, showed that the land was being purchased as part of a syndicate and came with planning permission. And I think that Mr S likely understood that the success of his investment largely depended upon the success of the project as a whole. Furthermore, I understand the opportunity to invest in the land arose because Mr S was, at the time of the investment, employed by Firm T. He also later became an employee of Firm A around the time the servicing of his SIPP was moved to it. While there is no suggestion that Mr S was a financial adviser, I think he clearly had experience in financial services and as such, was likely to have understood the investment proposition and the risks involved.

In summary, although Mr S was being advised to invest in commercial land, which might generally be considered to be a higher risk investment than many other regulated investments, I'm not persuaded that Yorsipp should've declined to accept the investment into Mr S's SIPP. The investment was not complex and Mr S had received advice from a regulated firm to invest in it, of which he was an employee at the time. So, I think it was reasonable for it to permit the investment to be held in the SIPP.

#### *Mr S's concerns about the management of the investment*

I'm mindful that Mr S originally made this complaint because he instructed Yorsipp to sell his investment in 2015 and it was unable to do so because it was unable to obtain consent from the other members. Mr S says he was unaware that he'd be unable to sell his share of the land without the other members' consent.

Yorsipp didn't advise on or sell the investment to Mr S, so I don't think it was Yorsipp's responsibility to explain to Mr S the terms on which Mr S could sell his investment. Nevertheless, based on what I've seen, I think Mr S likely understood he was purchasing land as part of a syndicate, and that he was part of a larger group who had shares in the larger plot of land that the planning permission covered. I also think that generally he would've understood that where there is shared ownership of any asset, he would need consent from the other owners before being able to sell it.

I understand the concerns Mr S's representative has raised about Mr S being unable to sell his share of the plot he partially owns, even if the other owners of the same plot also agreed to sell. But, according to clause 14.1 of the Master Trust Deed:

*"The Scheme Trustee may in its absolute discretion from time to time impose restrictions on particular classes of descriptions of investments or other transactions;"*

So, it seems that the decision to only allow for the sale of all of the plots of land together (as opposed to individually) falls within the SIPP trustee's discretion. The explanation given for this was that while the plots could be sold individually, doing so would reduce their marketability. So, Yorsipp (Trustees) Limited made the decision to proceed only in the event of a unanimous decision in favour of such sale.

Mr S's representative suggests that this gives rise to a conflict of interest, because Yorsipp couldn't act on Mr S's instructions alone, it also had to take into account the interests of other investors in accordance with the SIPP trustee's discretion. But I don't think that this is a conflict of interest, it is simply a feature of joint property ownership. And in any event, it seems to me that the decision not to sell in 2015 following Mr S's instruction was in his interest as well as the other members. While Mr S may not have appreciated at the time that any sale of his share of land could be connected to the sale of others, I still don't think that this was something Yorsipp had to warn Mr S about or that it should've refused to permit the investment to be held in the SIPP because of this.

For the avoidance of doubt, Mr S's complaint that I am considering here is about Yorsipp Limited – the operator and administrator of his pension scheme. Whereas his concern about the restriction placed on the sale of his investment falls within the discretion of the SIPP trustee, Yorsipp (Trustees) Limited. Yorsipp (Trustees) Limited is not regulated and as such, does not fall with the Financial Ombudsman Service's jurisdiction. So, I can't comment on this point further.

Mr S's representative says that Yorsipp ought to have passed on his complaint to Yorsipp (Trustees) Limited and then relayed the response to him. But I'm mindful that Yorsipp (Trustees) Limited's position on the issues raised by Mr S have been relayed to him during the course of this complaint. So, I don't think Yorsipp needs to do any more here. But Mr S can still raise his concerns with Yorsipp (Trustees) Limited directly if he wishes to do so.

Mr S has also complained that he wasn't aware that planning permission attached to the land expired in 2013. He feels he should've been given an opportunity to sell his investment before then. He also feels Yorsipp should've reapplied for planning permission sooner as it appears it did not take any further action to attempt to sell the land until 2021.

I should say here that I don't think Yorsipp's role was to manage the investment for Mr S or the other SIPP members. As I've said above, Yorsipp is the SIPP administrator. Maintaining planning permission for property held in the SIPP is something I consider to be an investment management issue. And this would be a matter for the syndicate to deal with, or for another party the syndicate had appointed to deal with on their behalf.

Mr S had a financial adviser who was appointed to service the SIPP – Firm T, and later, Firm A – but I also think Mr S had some responsibility to check on and ensure the investment remained as per his expectations. I think Mr S would've understood that planning permission is not given indefinitely, and that it would be required to ensure the land could be sold in future. I don't think that it was Yorsipp's responsibility to ensure that planning permission remained in place, not least because that would involve costs that would have to be agreed to by the SIPP members. So, as I've said, it seems to me that this was most likely the SIPP members' responsibility rather than Yorsipp's.

Mr S also said that he feels he was duped into agreeing to sell the land in 2015 – at that point the planning permission had expired so had the sale gone through he would've made a loss. But it's evident that the sale did not go ahead, so I don't think Mr S has been impacted by this.

Mr S also complains that Yorsipp continues to charge him fees. But Mr S's investment is still held in his SIPP and Yorsipp is entitled to charge fees in line with its agreement with Mr S.

Overall, while I understand this will be very disappointing for Mr S, I'm not upholding his complaint.

### **My final decision**

For the reasons set out above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 December 2023.

Hannah Wise  
**Ombudsman**