BERKELEY BURKE HAS LOT THE LEGAL APPEAL!

And so it has begun – we have finally had a ruling and Berkeley Burke has lost its legal appeal against FOS decision!

The SIPP provider has had its claim for a judicial review dismissed against a decision by the Financial Ombudsman Service, which held it responsible for failing to perform the required due diligence in accepting unregulated investments.

Back in 2014 the Financial Ombudsman Service had found Berkeley Burke was [responsible for failing to perform the required](https://citywire.co.uk/new-model-adviser/news/fos-upholds-ucis-complaint-against-berkeley-burke/a763973) due diligence over accepting unregulated investments it accepted.

The SIPP Provider disagreed and launched a legal challenge.

The company – as so many others - claimed that, as a Sipp provider, it did not have a regulatory duty to ensure all investments were suitable.

However Justice Jacobs found the FOS followed Financial Conduct Authority guidelines when making its decisions. He has therefore dismissed the appeal claim.

'I do not accept that the Ombudsman, in his decision, was creating a new rule at all. His approach was simply to identify the existing rules, specifically the principles which had been consulted upon, and then to decide how those rules applied in the context of the particular facts before him. This is apparent from the decision as a whole,' Justice Jacobs said.

The complaint related to a client who transferred his personal pension to Berkeley Burke to invest in a Green Oil otherwise known as Sustainable AgroEnergy.

A large number of other individuals invested in the scheme, with some 616 investors investing around £12.25 million in Sipps operated by Berkeley Burke, according to the judgement.

In setting out the verdict, the judge stressed he had not found that Berkeley Burke should have assessed the suitability of the high-risk investment for Charlton.

'I accept Berkeley Burke had no obligation to give advice, or to ensure otherwise the suitability of an investment for him. My finding isn't that Berkeley Burke should have concluded that Mr C wasn't a candidate for high-risk investment. It's that Berkeley Burke should have concluded the investment wasn't acceptable for his pension scheme and thereby failed to treat Mr C fairly or act with due skill, care and diligence when accepting the investment.

'I'm satisfied that if Berkeley Burke had acted fairly and reasonably in its dealings with Mr C by carrying out adequate due diligence, it wouldn't have accepted SA as a permitted investment. I therefore don't accept Berkeley Burke's submission that it had no choice but to make the investment, or that the rules allowed it to simply give risk warnings and go ahead.’

A spokesperson for Berkeley Burke said that the company would seek to appeal the decision:

'The company notes the ruling in the judicial review and, on legal advice, will be seeking leave to appeal, while continuing to maintain that it acted in this matter, and in all its other SIPP administration work, in full compliance with its primary duties as set out in the FCA.

We have already seen other SIPP providers, such as the Lifetime SIPP and Greyfriars (GAM) and going into Administration.

Brooklands, Monteplier & Essential SIPP’s being declared in default and this is only the beginning.

We hope for all clients which haven’t had regulated IFA involved that this will finally open the gates to fair compensation.