DRN-3042695

## The complaint

Mr B complains that an unregulated business called Commercial Land and Property Brokers (CL&P) introduced him to Options UK Personal Pensions LLP, ('Options', which was trading as Carey Pensions UK LLP at the time of the relevant events) and gave him advice and made arrangements when doing so, despite not having the regulatory authorisation needed to do this.

Mr B says he was contacted by CL&P and, following its advice he transferred away from his personal pension plan to a Self invested Personal Pension (SIPP) and invested in two unregulated investments.

A Claims Management Company (CMC) has brought Mr B's complaint on his behalf. The CMC says Mr B was an inexperienced investor, and that Options failed to carry out the appropriate checks on CL&P. The CMC says that had Options carried out appropriate due diligence on CL&P, it would've been clear that no business introduced by it should've been accepted, so it says Options is responsible for Mr B's losses. All references to Mr B will include submissions and/or evidence provided by the CMC.

## What happened

*Options*

Options is a SIPP provider and administrator. At the time of the events in this complaint, Options was regulated by the Financial Services Authority (FSA), which later became the Financial Conduct Authority (FCA). Options was authorised in relation to SIPPs, to arrange (bring about) deals in investments, to deal in investments as principal, to establish, operate or wind-up a pension scheme, and to make arrangements with a view to transactions in investments.

*CL&P*

CL&P was an unregulated business based in Spain. At the time of the events here, one of the directors of CL&P was a Terence (Terry) Wright. On 15 October 2010, the following was published on the FSA website in a section called: *"Firms and individuals to avoid",* which was described as: *"a warning list of some unauthorised firms and individuals that we believe you should not deal with":*

> ***"ALERT***
>
> *The Financial Services Authority ("FSA") has today published this statement in order to warn investors against dealing with unauthorised firms.*
>
> *The purpose of this statement is to advise members of the public that an individual*
>
> ***Terence (Terry) Wright***
>
> *is not authorised under the Financial Services and Markets Act 2000 (FSMA) to carry on a regulated activity in the UK. Regulated activities include, amongst other things,*

*advising on investments. The FSA believes that the individual may be targeting UK customers via the firm Cash In Your Pension.*

*Investors should be aware that the Financial Ombudsman Service and the Financial Services Compensation Scheme* [FSCS] *are not available if you deal with an unauthorised company or individual.*

*To find out whether a company or individual is authorised go to our Register of authorised firms and individuals at http://www.fsa.gov.uk/register/home.do"*

*CL&P and Options*

Options has told us that it was first approached by CL&P in 2011 and that it entered into discussions about accepting introductions from it. Options began to accept introductions from CL&P on 15 August 2011 and ended its relationship with it on 25 May 2012. Options says it carried out some due diligence on CL&P. It says it reviewed CL&P's profile, conducted searches, reviewed CL&P's website and literature, and had conversations with CL&P's representatives over the telephone.

I have set out below a summary of what I consider to be the key events and/or actions during the relationship between Options and CL&P, which I've taken from the available evidence. This includes evidence from Mr B's case file and generic submissions Options has made to us on other case files about its due diligence on, and its relationship with, CL&P.

I've not seen any evidence to show Options carried out any due diligence on CL&P before it began accepting introductions from it. Rather, as I set out below, it began to accept introductions then carried out its due diligence whilst accepting business from CL&P.

Some of what I set out below includes events which post-date Options' acceptance of Mr B's SIPP application and post-date Options sending his money for the investments. And as I set out in my findings, some of what Options found out about CL&P during the course of its relationship with CL&P, and the action it took, is relevant in this complaint even where it does post-date Mr B's application and investments.

*Summary*

**15 August 2011** - Options begins to accept introductions from CL&P.

**20 September 2011** - Options conducted a 'World Check' (a risk intelligence tool which allows subscribers to conduct background checks on businesses and individuals) on a Zoe Adams and a Mark Lloyd. Ms Adams and Mr Lloyd were two of the people at CL&P that Options initially had contact with. This check did not reveal any issues.

**27 September 2011** - Options asked CL&P to complete a non-regulated introducer profile. The form itself explains its purpose as follows: *"As an FSA regulated pensions company we are required to carry out due diligence as best practice on unregulated introducer firms looking to introduce clients to us to gain some insight into the business they carry out."* Furthermore, when making this request, by email, Options' Chief Executive, Christine Hallett, explained: *"...we require for our compliance process to perform due diligence on company's who we enter into a business and professional relationship with."*

**29 September 2011** - The non-regulated introducer profile was completed by CL&P. It was completed and signed by Mr Wright, and confirmed the following:

- CL&P was a Spanish firm and was trading from a Spanish address.

- It used an ‘0845’ telephone number.
- It had been trading for two years and had two directors – Mr Wright and Lesley Wright.
- It had eight agents and promoted four unregulated investments.
- It worked with four other SIPP operators.
- Its source of business was *“referrals and web enquiries”.*
- Its sales process involved a call and follow up emails.
- It took 2-5% commission, and this was the source of its earnings.
- Its staff had been given training and it had worked with *“various compliance officers.”*

The document makes no mention of Ms Adams or Mr Lloyd. After completing the document Mr Wright was asked to make the following declaration:

> *“I declare the above is a true and accurate reflection of* [name of individual or Firm] *and that Options Pensions UK LLP can rely on this information.*
>
> *I/we fully indemnify Options Pensions UK LLP against any costs incurred as a result of any inaccuracies within this form.*
>
> *I/we also acknowledge and accept that Options Pensions UK will undertake any enquiries about the firm and its Directors/Partners it feels appropriate.”*

**9 December 2011 -** Options had a conference call with representatives of CL&P. During that call the issue was raised of consumers being offered cash incentives by CL&P to transfer or switch to a SIPP and make investments. The note of the call included the following:

> *“*[Options staff member] *also raised a concern that a potential member had asked when they would receive their money from their Store First Investment,* [CL&P representatives] *confirmed that no clients or connected parties referred by CL&P receive any form of inducement for either establishing the SIPP or making the Store First Investment and that CL&P policy does not include offering inducements.*
>
> [Options staff member] *emphasised that it is completely against all rules that clients or connected parties receive any form of inducement for making particular investments.”*

**13 March 2012 -** Options’ Head of Service and Operations said in an email to CL&P: *“On another matter, we need our Terms of Business for Non Regulated introducers in place between our two companies. So that our records are all straight from a Compliance aspect I attach the Terms of Business and have entered a commencement date of 15 August 2011 which is the date of your first case with us and would be grateful if you could agree and complete the terms and return.”* The agreement was signed by CL&P on 20 March 2012. It was signed by Ms Adams.

**23 March 2012 -** Options’ compliance support said in an email to CL&P:

> *“To comply with our in house compliance procedures could you please supply the following information relating to CLP Brokers:*
>
> *A copy of the latest set of accounts*
> *A certified copy passport for each of the main directors/principals/partners of the company”*

**29 March 2012** - a Team Leader at Options sent Ms Hallett an email with the subject – *"03-29-2012 - Storefirst Investment Query re Cash Back* [reference removed]". That email forwarded an email sent by the Team Leader to a consumer, which included the following: *"…you mentioned in our conversation a cash back amount you are expecting in the sum of £1,800 from CL&P following completion of the Storefirst investment".* And the text addressed to Ms Hallett by the Team Leader said: *"…this is the second member this week to ask when are they getting their money".*

**3 April 2012** - Options' compliance support followed up on its 23 March 2012 email: *"It is now becoming urgent that we receive the outstanding documentation. You very kindly passed this on to your colleague and I would be very grateful if we could receive the documentation as a matter of urgency Thank you in anticipation of your assistance."* When asked, Options said it had no record of receiving the information from CL&P.

**15 May 2012** - Options conducted a 'World Check' on Mr Wright. The report included the following:

> ***"THE FOLLOWING INFORMATION WAS REPORTED IN ONE OR MORE OF THE SOURCES BELOW***
>
> *[FINANCIAL SERVICES WARNING]*
> *Appears on the UK Financial Services Authority.*
> *[REPORTS]*
> *Appears on the FSA list of unauthorised firms and individuals,*
>
> ***INFORMATION SOURCES;***
> *http://www.fsa.gov.uk/pages/Doing/Regulated/Law/Alerts/unauthorised.shtml - ARCHIVE*
> *http://www.fsa.gov.uk/Pages/Doing/Regulated/Law/Alerts/Index.shtml - ARCHIVE*
>
> *Entered: 2011/10/24"*

**25 May 2012** - Options terminated its agreement with CL&P. Options' Head of Service and Operation told CL&P of Options' decision in an email to CL&P of that date:

> *"Despite your assurances that no clients have been or will be offered inducements (monetary or otherwise) for making investments through their SIPPs with us, we have received enquiries as to when client can expect to receive their money and have today been informed by a new client that they are expecting circa £2,000 on completion of the Storefirst investment purchase, which they confirmed was offered by a member of your staff.*
>
> *We have advised this client that we will not proceed with this case.*
>
> *In light of this, it is with regret that I have to notify you that we are terminating our Introducer Agreement with you, with immediate effect, and can no longer accept business from you."*

*Store First*

The Store First investment took the form of one or more self-storage units, which were part of a larger storage facility in a UK location. Investors bought one or more units in the facility and were offered a guaranteed level of income for a set period of time. After that, they could either take whatever income the unit(s) provided or sell them (assuming there was a market for them).

The Store First investment was marketed as offering a guaranteed 8% return in the first two years, an indicated return of 10% in the following two years, and 12% in the next two years. It was also marketed as offering a 'guaranteed' buy back after five years. But little of this materialised. It seems most investors received one or two years' income of 8%, but nothing beyond that. And investors have found it very difficult to sell, with those that have sold receiving a small fraction of the amount they paid for their 'pods'.

In the High Court judgment of Adams v Options SIPP UK LLP (formerly Options Pensions UK LLP) [2020] EWHC 1229 (Ch) ('Adams v Options HC'), the judge found the value of Mr Adams' pods, acquired for around £52,000 in July 2012, to be £15,000 as of January 2017. But several results of auctions of the pods show the sale price has been much lower than the price at which the pods were purchased.

In May 2014, the Self Storage Association of the UK (SSA UK) issued a press release (amended in January 2015), detailing the outcome of a review it had commissioned Deloitte LLP to undertake of the marketing material made available to potential investors by Store First. The release recommended that any potential investors in Store First storage units consider the following key points before taking any investment decision:

- What will the impact be on the business model if VAT is charged on the rental of storage units to customers following a review by HMRC?
- How is Store First funding guaranteed returns to investors? Is this from operating profits, the proceeds from the sale of other storage pods to investors, or a different source?
- Compare the total value being paid for all the units in a Store First self storage site against the price at which stand-alone self-storage businesses have been valued and sold at recently.
- Consider if there is a realistic re-sale opportunity for, and exit, from this investment, particularly if Store First exits the business.
- Research the performance of investments based on a similar investment model that have been offered primarily in Australia, such as Ikin Self Storage in Townsville, Queensland and Strata Self Storage in Melbourne (these schemes had failed).

The release refers to a number of misleading and inaccurate statements made by Store First in its marketing material. It also makes the following observations:

> *"SSA UK's investigations indicate that these storage units are being rented to the general public at approximately £18 - £21 per square foot including insurance. Normally the rent paid by a self-storage operator would be at most half of the income per square foot earned through storage fees. Presuming the Store First sites were at industry average occupancy levels, SSA UK believe that they would have to be earning £23.95 per square foot just to pay the guaranteed rent to investors, excluding operating costs such as insurance, staff, business rates, utilities, marketing and management fees for Store First."*
>
> *"Store First is obliged to pay the guaranteed returns to investors, yet there does not appear to be sufficient income from the operations of the business to fund these returns."*
>
> *"The analysis SSA UK has seen indicates that the purchase price being paid per square foot by investors to Store First for these self-storage units taken together equates to a much higher value than they would be worth if the whole sites were sold as stand-alone self- storage stores."*

*"...a very serious question arises over how Store First is funding the guaranteed returns to existing investors, considering the absence of bank funding and the likely level of losses that require funding in each new store. It may yet prove to be the case that the rental returns being paid to investors are in fact being funded from the sale proceeds of new units, and not the operation of the self-storage business."*

On 30 April 2019 the courts made an order shutting down Store First and three of the related companies, by consent between those four companies and the Secretary of State. The Official Receiver was appointed as liquidator. At the time, the Chief Investigator for the Insolvency Service said:

*"These four companies unscrupulously secured millions of pounds worth of investments using a variety of methods that misled investors, particularly those with pension savings.*

*The court rightly recognised the sheer scale of the problem caused by Store First's sales of a flawed business model, based on misrepresentation and misleading information and has shut down these companies in recognition of the damage done to investors retirement plans."*

*Timeline of the Store First investment*

**3 May 2011** – Options is contacted by a promoter of Store First, Harley Scott, about a newly launched product – Store First. Options says the investment will be put through its review process. In its submissions to us, Options says this review process was established in accordance with its obligations and FSA recommendations at the time, which required it to conduct: *"...due diligence into the Store First investment to assess its suitability for holding within a SIPP."*

**9 June 2011** – Options says it will accept the investment in its SIPP having considered:

- the brochure
- the agreement for Grant of Sublease
- the sublease
- Companies House searches
- a Compliance review (referring to an Enhanced Support Solutions report) Options has provided our service with copies of these documents

In the letter confirming its acceptance of the investment, Options noted:

- The investor purchases a 250-year lease of a storage unit within a storage facility. The unit is then sublet to the management company, Store First, subject to an initial six-year term with two-year break clauses.
- The investor's interest can be sold/assigned at any time. The break clauses allow the investor to rent out the units individually without the services of the management company (but it insisted they use the management company).
- There was no apparent established market for the investment.
- The investment was potentially illiquid in that it was a direct property investment which may take time to sell. However, it could be sold providing a willing buyer can be found and was assignable so could be transferred in specie to beneficiaries.
- It also said its acceptance was subject to a member declaration and indemnity being completed and signed by each member, and the appointment of a solicitor to act for the Trustees in respect of any purchase.

*The Walsall Burial Park (WBP) investment*

Mr B also purchased the WBP investment. This investment involved the purchase of burial plots in the Walsall Burial Park with the intention of selling them on for profit.

*Mr B's dealings with CL&P and Options*

Mr B had a personal pension plan valued at around £54,000. After Mr B had been 'cold called' by CL&P, he was persuaded to transfer his personal pension into a SIPP with Options and to use the majority of the funds to purchase the Store First investment. He later invested in the WBP investment. Both investments were unregulated and Mr B says both were recommended to him by CL&P.

Mr B said he received £4,000 from CL&P for agreeing to transfer his pension. He said his understanding of the payment was that it was an 'advance of profits' that he believed he'd receive from his SIPP.

On 25 September 2011, Mr B signed his SIPP application with Options and it was received by the business on 4 October 2011. The application form confirmed that Mr B intended to transfer his personal pension into an Options SIPP and invest £51,000 in the Store First investment. This amount later changed to £41,250 (see further below).

On 4 October 2011, Options also received a letter of authority from Mr B where he elected to use CL&P to act in relation to his pension arrangements. Options said that CL&P was not a regulated firm and acted only as Mr B's introducers, so it classified him as its (Options) direct client. On the same day (4 October 2011) Options said it sent Mr B a welcome letter acknowledging the SIPP application. Options also sent a copy of the SIPP terms and conditions as well as a key features document to Mr B.

Mr B's SIPP was established following completion of the application form. And his personal pension funds from his previous provider were received into the Options SIPP Scheme Bank account on 13 January 2012 (transferred funds of £56,335.08).

Mr B completed an *"ALTERNATIVE INVESTMENT – STOREFIRST MEMBER DECLARATION & INDEMITY"* form (the 'indemnity') in relation to the Store First investment on 25 September 2011, which instructed Options to invest £51,000 into the investment. However, a second indemnity was signed by Mr B on 26 February 2012, which instructed Options to invest £41,250 into the Store First investment.

The indemnity form signed by Mr B hasn't been provided to this service by either party. However, other indemnity forms completed at around the same time by other clients contained the following wording:

> *"I,* [consumer's name] *being the member of the above Scheme instruct Carey Pension Trustees UK Ltd to Purchase a Leasehold Storage Unit(s) in the Store First investment through Harley-Scott Holdings Ltd for a consideration of* [amount invested]*, on my behalf for the above Scheme."*
>
> *"I am fully aware that this investment is an Alternative Investment and as such is High Risk and/or Speculative."*
>
> *"I confirm that I have read and understand the documentation regarding this investment and have taken my own advice, including financial, investment and tax advice."*

*"I am fully aware that both* [Options] *and Carey Pension Trustees UK Ltd act on an Execution Only Basis and confirm that neither* [Options] *nor Carey Pension Trustees UK Ltd have provided any advice whatsoever in respect of this investment."*

*"I confirm that my business/occupation is not renting out storage units."*

*"Should any aspect of this investment be deemed by HMRC to provide Taxable Moveable Property and/or any tax charges be deemed by HMRC to apply in future these will be paid directly from the fund or by me as the member of the Scheme."*

*"I also understand and agree that, in the event of my demise, if Carey Pension Trustees UK Ltd is unable to sell the asset within HMRC timescales that it may be transferred to my beneficiaries through my estate and accordingly may be subject to any Inheritance Tax."*

*"I instruct* Carey *Pensions to appoint the following solicitor to act on behalf of the Scheme:*

[details of solicitor]"

*"I confirm that I agree to [name of solicitor] fee of £400 + VAT for transacting this investment."*

*"I confirm I am fully aware that additional costs will be incurred in this transaction including, but not limited to:*
*£48 CHAPs Fee;*
*£8 Land Registry Search Fee;*
*Stamp Duty Land Tax - To be advised by Solicitor at completion;*
*Any other taxes - To be advised by Solicitor at completion;"*

*"I agree to* [Options] *Pensions fee of £500 + VAT, amounting for transacting this investment."*

*"I agree that any and all fees and costs will be paid by my Scheme, or in the event of default, by me personally."*

*"I indemnify both* [Options] *and Carey Pensions Trustees Ltd against any and all liability arising from this investment."*

Later indemnity forms also included the statement: *"As the Member of the Pension Scheme, I confirm that neither I nor any person connected to me is receiving a monetary inducement for transacting this investment".* However, it is not known whether this statement was included in Mr B's indemnity. A similar indemnity would have been signed in relation to the WBP investment. Options has said this was dated 20 September 2012. And that it instructed it (Options) to invest £12,000 in the WBP investment on Mr B's behalf.

Mr B's investment in Store First was completed on 23 March 2012. The investment in WBP was completed on 3 October 2012.

*Mr B's complaint*

Mr B complained through the CMC about Options in July 2017. His main complaint was about the adequacy of Options due diligence process both in respect of the introducer, CL&P, and the investments he had made. He said that if Options had carried out sufficient due diligence checks, he would not have suffered losses to his pension.

Options rejected the complaint. In brief, it said that as an execution only service it could not be held liable for Mr B's losses. It added that Mr B signed the indemnities, which made its (Options) role clear as well as making clear the risks involved in the investments. Options also noted that, as an execution only service, it was under a regulatory duty to carry out the instructions of the client.

When the matter was brought to the Financial Ombudsman Service, the investigator recommended the complaint be upheld mainly on the basis that Options should not have conducted any business with CL&P in the first place. In particular, the investigator noted the FSA Alert about Mr Wright issued in 2010, hadn't been sufficiently considered as part of Options due diligence process. And that it was likely that if it had been, Options would not have accepted introductions from CL&P in the first place. Our investigator concluded that, but for Options failings, Mr B would not have suffered losses to his pension funds as he would likely have remained with his previous personal pension provider.

Options disagreed. It considered the warning about Mr Wright would not have been sufficient enough reason to not do business with CL&P. It said this is evidenced by a clearer, stronger warning issued by the regulator in relation to Mr Wright in 2013. Options considered it was clear in this second warning (Alert) that Mr Wright was not someone to do business with, but it thought the first warning simply pointed out that Mr Wright was not regulated. Options also reiterated that as an execution only provider, it was under a regulatory duty to execute instructions from clients. It said not to do so would have been a breach of its duties in this regard.

A further view was sent to both parties more recently. Amongst other things, the investigator considered CL&P had breached the General Prohibition which in turn, made the SIPP agreement unenforceable under section 27 (s27) FSMA and therefore, provided another reason to uphold the complaint.

Options made no further comment following the subsequent view. And as no agreement could be reached, the matter has been passed to me for a 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.

Before I set out the reasoning for my decision, I consider it important for me to say that in considering what is fair and reasonable in all the circumstances of this complaint, I have taken into account relevant law and regulations; regulators rules; guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

**Relevant considerations**

<u>The Principles</u>

In my view, the FCA's Principles for Businesses (the 'Principles') are of particular relevance to my decision. The Principles, which are set out in the FCA's (formerly the FSA) handbook: *"...are a general statement of the fundamental obligations of firms under the regulatory system"* (PRIN1.1.2G). I consider the Principles most relevant to this complaint include Principle 2, 3 and 6 which 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 carefully considered the relevant law and what this says about the application of the FCA's Principles. In R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) ('BBA') Ouseley J said at paragraph 162: *"The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirement they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."*

And at paragraph 77 of BBA Ouseley J said: *"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS* [Financial Ombudsman Service] *would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."*

In (R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service [2018] EWHC 2878) ('BBSAL'), Berkeley Burke brought a judicial review claim challenging the decision of an Ombudsman who had upheld a consumer's complaint against it. The Ombudsman considered the Principles and good industry practice at the relevant time. The Ombudsman concluded it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The Ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and had not treated its client fairly.

Jacobs J, having set out some paragraphs of BBA including paragraph 162 set out above, said (at paragraph 104 of BBSAL): *"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."*

The BBSAL judgment also considers s228 FSMA and the approach an Ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the Ombudsman in that complaint, which I have described above, and included the Principles and good industry practice at the relevant time as considerations that were required to be taken into account.

As outlined above, Ouseley J in the BBA case, held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what is fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in Berkeley Burke. So, the Principles are a relevant consideration here and I will consider them in the specific circumstances of this complaint.

The Adams Court cases

I have taken account of the judgments of the Adams v Options HC and the Court of Appeal judgment in Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474 ('Adams v Options CA'). I note the Supreme Court refused Options permission to appeal the Court of Appeal judgement. I've considered whether these judgments mean the Principles should not be taken into account in deciding this case. I'm of the view they do not. In the High Court case, HHJ Dight did not consider the application of the Principles and they did not form part of the pleadings submitted by Mr Adams.

One of the main reasons why HHJ Dight found the judgment of Jacobs J in BBSAL was not of direct relevance to the case before him was because: *"...the specific regulatory provisions which the learned judge in Berkeley Burke was asked to consider are not those which have formed the basis of the claimant's case before me."* Likewise, the Principles were not considered by the Court of Appeal. So, the judgments say nothing about the application of the FCA's Principles to the Ombudsman's consideration of a complaint.

I acknowledge that COBS 2.1.1R (A firm must act honestly, fairly and professionally in accordance with the best interests of its client) overlaps with certain of the Principles and this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of FSMA (the 'COBS claim'). HHJ Dight rejected this claim and found that Options had complied with the best interests rule on the facts of Mr Adams' case.

Although Mr Adams' appeal of the High Court judgment was partially successful, the Court of Appeal rejected the part of Mr Adams' appeal that related to HHJ Dight's dismissal of the COBS claim on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found this part of Mr Adams' appeal did not so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

I note that in the High Court judgment, HHJ Dight found the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at paragraph 148: *"In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction."*

The issues in Mr B's complaint are different from the issues as pleaded in Adams. There are also significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and from the issues in Mr B's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened after the contract was entered into. In Mr B's complaint, I am considering whether Options ought to have identified that the introductions from CL&P involved a risk of consumer detriment and, if so, whether it ought to have ceased accepting introductions from CL&P prior to entering into a contract with him.

On this point, I think it is also important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And, in doing that, I am required to take into account relevant considerations which include: law and regulations; regulator's rules; guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This is a clear and relevant point of difference between this complaint and the judgments in Adams v Option. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

To be clear, I have proceeded on the understanding that Options was not obliged – and not able – to give advice to Mr B on the suitability of its SIPP or the investments for him personally. But I'm satisfied Options' obligations included deciding whether to accept particular investments into its SIPP and/or whether to accept introductions of business from particular businesses. And this is consistent with Options' own understanding of its obligations at the relevant time.

As noted above, the introducer profile completed at the outset of Options' relationship with CL&P said: *"As an FSA regulated pensions company we are required to carry out due diligence as best practice on unregulated introducer firms looking to introduce clients to us to gain some insight into the business they carry out."*

<u>S27/28 FSMA</u>

The Court of Appeal overturned the High Court judgment on the basis of the claim pursuant to s27 FSMA. s27 FSMA provides that an agreement between an authorised person and another party, which is otherwise properly made in the course of the authorised person's regulated activity, is unenforceable as against that other party if it is made: *"...in consequence of something said or done by another person ("the third party") in the course of a regulated activity carried on by the third party in contravention of the general prohibition".*

s27(2) provides that the other party is entitled to recover:

> *"(a) any money or other property paid or transferred by him under the agreement; and*
>
> *(b) compensation for any loss sustained by him as a result of having parted with it."*

s28(3) FSMA provides that:

> *"If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow–*
>
> *(a) the agreement to be enforced; or*
> *(b) money and property paid or transferred under the agreement to be retained."*

The General Prohibition is set out in s19 FSMA. It stipulates that:

> *"…no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is –*
>
> *(a) an authorised person; or*
> *(b) an exempt person."*

In Adams, the Court of Appeal concluded that the unauthorised introducer of the SIPP had carried out activities in contravention of the General Prohibition, and so s27 FSMA applied. It further concluded that it would not be just and equitable to nonetheless allow the agreement to be enforced (or the money retained) under the discretion afforded to it by s28(3) FSMA.

At paragraph 115 of the judgment the Court set out five reasons for reaching this conclusion. The first two of these were:

> *"i) A key aim of FSMA is consumer protection. It proceeds on the basis that, while consumers can to an extent be expected to bear responsibility for their own decisions, there is a need for regulation, among other things to safeguard consumers from their own folly. That much reduces the force of Mr Green's contentions that Mr Adams caused his own losses and misled Carey;*
>
> *ii) While SIPP providers were not barred from accepting introductions from unregulated sources, section 27 of FSMA was designed to throw risks associated with doing so onto the providers. Authorised persons are at risk of being unable to enforce agreements and being required to return money and other property and to pay compensation regardless of whether they had had knowledge of third parties' contraventions of the general prohibition;"*

The other three reasons, in summary, were:

- The volume and nature of business being introduced by the introducer was such as to put Options on notice of the danger that the introducer was recommending clients to invest in the investments and set up Options SIPPs to that end. There was thus reason for Options to be concerned about the possibility of the introducer advising on investments within the meaning of article 53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the 'RAO').
- Options was aware that contrary to what the introducer had previously said, it was taking high commission from the investment provider. And that there were indications the introducer was offering consumers 'cash back' and one of those running the introducer was subject to an FSA warning notice.
- The investment did not proceed until after the time by which Options had reasons for concern and so it was open to Options to decline the investment, or at least explore the position with Mr Adams.

<u>The regulatory publications</u>

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

- The September 2009 and October 2012 Thematic Review reports (the 'review' or 'reviews').
- The October 2013 finalised SIPP operator guidance.
- The July 2014 *"Dear CEO"* letter.

*The 2009 Thematic Review report*

The 2009 review included the following statement:

> *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are*

*obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.*

*It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF* [treating customers fairly] *consumer outcomes.*

*We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the member to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate the SIPPs that are unsuitable or detrimental to clients.*

*Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their clients' interests in this respect, with reference to Principle 3 of the Principles for Business ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').*

*The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:*

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*
- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*
- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*
- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*
- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering*

*and analysing data regarding the aggregate volume of such business.*
- *Identifying instances of clients waiving their cancellation rights, and the reasons for this."*

*The later publications*

In the October 2013 finalised SIPP operator guidance (the 'guidance'), the FCA states:

> *"This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.*
>
> *All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a "client" for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes."*

The guidance also set out the following:

> *"**Relationships between firms that advise and introduce prospective members and SIPP operators***
>
> *Examples of good practice we observed during our work with SIPP operators include the following:*
>
> - *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un-authorised business warnings.*
> - *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*
> - *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*
> - *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*
> - *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*
>
> *Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers.*
>
> *Examples of good practice we have identified include:*

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*
- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*
- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non- regulated introducers"*

In relation to due diligence the guidance said:

*"**Due diligence***

*Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:*

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*
- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*
- *having checks which may include, but are not limited to:*
    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*
    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*
- *ensuring all third-party due diligence that the firm uses or relies on has benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*
- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax- relievable investments and non-standard investments that have not been approved by the firm"*

The July 2014 Dear CEO letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles. The Dear CEO letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *Correctly establishing and understanding the nature of an investment*
- *Ensuring that an investment is genuine and not a scam, or linked to*

*fraudulent activity, money-laundering or pensions liberation*

- *Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)*
- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently*
- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc)*

Although I've referred to selected parts of the publications, to illustrate their relevance, I have considered them in their entirety.

I acknowledge that the 2009 and 2012 reviews and the Dear CEO letter are not formal 'guidance', whereas the 2013 finalised guidance is. However, the fact the reviews and Dear CEO letter did not constitute formal guidance does not mean their importance should be underestimated. They provide a reminder that the Principles apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications, which set out the regulator's expectations of what SIPP operators, should be doing also goes some way to indicate what I consider amounts to good industry practice. I'm, therefore, satisfied it is appropriate to take them into account in this case.

It is relevant that when deciding what amounted to have been good industry practice in the BBSAL case, the Ombudsman found that: *"the regulator's reports* [reviews]*, guidance and letter go a long way to clarify what should be regarded as good practice and what should not."* And the judge in BBSAL endorsed the lawfulness of the approach taken by the Ombudsman.

Like the Ombudsman in the BBSAL case, I do not think the fact the publications, (other than the 2009 review), post-date the events that took place in relation to Mr B's complaint, mean that the examples of good practice they provide were not good practice at the time of the relevant events. Although the later publications were published after the events subject to this complaint, the Principles that underpin them existed throughout, as did the obligation to act in accordance with the Principles.

It is also clear from the text of the 2009 and 2012 reviews (and the Dear CEO letter in 2014), that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

I note HHJ Dight in the Adams case did not consider the 2012 review, 2013 SIPP operator guidance and 2014 Dear CEO letter to be of relevance to his consideration of Mr Adams' claim. But it does not follow that those publications are irrelevant to my consideration of what is fair and reasonable in the circumstances of this complaint. I'm required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

That doesn't mean that, in considering what is fair and reasonable, I will only consider Options' actions with these documents in mind. The reviews, Dear CEO letter and guidance gave non-exhaustive examples of good industry practice. They did not say the suggestions given were the limit of what a SIPP operator should do. As the annex to the Dear CEO letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

To be clear, I do not say the Principles or the publications obliged Options to ensure the pension transfer was suitable for Mr B. It is accepted Options was not required to give advice to Mr B, and could not give advice. And I accept the publications do not alter the meaning of, or the scope of, the Principles. But they are evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles.

**What did Options' obligations mean in practice?**

In this case, the business Options was conducting was its operation of SIPPs. I am satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject particular investments and/or referrals of business. The regulatory publications provided some examples of good industry practice observed by the FSA and FCA during their work with SIPP operators including being satisfied that a particular introducer is appropriate to deal with. As noted above, it's clear from Options' non-regulated introducer profile, that it understood and accepted its obligations meant it had a responsibility to carry out due diligence on CL&P.

I am satisfied that to meet its regulatory obligations when conducting its business, Options was required to consider whether to accept, or reject, particular referrals of business with the Principles in mind. This seems consistent with Options' own understanding. I note in submissions on other complaints Options has told us that 'adherence to TCF' is something it had in mind when considering its approach to introducer due diligence i.e. the question of whether it should accept business from a particular introducer.

Overall, I'm satisfied that in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, Options should have carried out due diligence on CL&P which was consistent with good industry practice and its regulatory obligations at the time. And in my opinion, Options should have used the knowledge it gained from its due diligence to decide whether to accept or reject a referral of business or particular investment.

**Due diligence on CL&P**

The actions Options took – which were carried out after its relationship with CL&P began, rather than before it accepted business from it – are set out in detail in the background sections above. So, I will not repeat them here. However, I would note at this point that the actions Options took, in addition to being taken after Options began accepting business from CL&P, appear to have been taken on a reactive, piecemeal, basis. In addition, the available evidence shows Options did not meet its own standards when carrying out due diligence on CL&P. From late 2011, in accordance with its own standards (as submitted to us), it should have carried out company checks on CL&P, reviewed CL&P's accounts, and checked 'sanctions lists'.

As I set out above, these standards appear to be consistent with good industry practice and Options' regulatory obligations at the relevant time (although it is not clear what a check of 'sanctions lists' would encompass). However, Options did not - in practice - act in a way which was consistent with good industry practice and its regulatory obligations at the relevant time. I explain this in more detail below.

*The FSA list*

CL&P was an unregulated business, based in Spain, and was proposing to deal with the pensions of UK consumers. Options ought to have known the FSA kept a list of Alerts, relating to unregulated businesses, which were often based overseas. Options has not explained what a search/check of 'sanctions lists' entailed. But I think a check of such lists should have included the FSA's list of Alerts.

In any event, as a SIPP operator considering accepting business from an unregulated overseas firm, it should have been mindful of the FSA's list of Alerts, and in compliance with its regulatory obligations, it ought to have checked this list before proceeding with accepting business from CL&P, whether it considered the FSA's list of Alerts to be a 'sanctions list' or not.

At the relevant time, the FSA's list featured warnings (Alerts) about unauthorised individuals and businesses. And, in my view, checking the warnings posted on the FSA's website is something that Options should have done as a matter of course before it began accepting any business from CL&P. This is consistent with good industry practice as highlighted in the 2009 review and later documents. And, I find it would have been fair and reasonable, and in accordance with its regulatory obligations, for such a check to take place before it entered into a relationship with CL&P.

As part of its independent checks, Options used a risk intelligence tool called 'World Check'. I understand this is a tool which is internationally recognised and commonly used by businesses to carry out background searches. And, I assume its use was part of what Options describes as searches when explaining the due diligence standards it introduced in late 2011, (which, in my view, if they had been implemented effectively, were consistent with good industry practice and in compliance with Options' regulatory obligations).

Although Options used the tool here, it failed to run checks on the appropriate persons at CL&P. On 20 September 2011 it ran checks on a Ms Adams and a Mr Lloyd. However, I understand that these individuals were only employees of CL&P and neither controlled nor managed CL&P. So, the fact the checks run on these individuals did not raise any issues is of little, if any, value. It does not mean that Options had met its regulatory obligations here. In my view, as a first step, Options ought to have carried out sufficient due diligence so as to properly establish who the directors or individuals who controlled CL&P were. Only then would it be able to run checks on the appropriate persons.

As part of its due diligence process, Options required CL&P to fill out a 'non-regulated introducer profile' questionnaire. CL&P completed the questionnaire on 29 September 2011. And the profile named the two directors, one of which was Mr Wright. The profile made no mention of Ms Adams or Mr Lloyd. So, at this point, Options was aware Mr Wright was one of the directors of CL&P.

I note the profile CL&P completed asked the question: *"Are you and/or the Firm subject to any on-going FSA or other regulatory body review, action or censure."* And, Mr Wright answered *"No"* to this question. However, it was not sufficient, in my view, to simply ask the introducer a general question. Rather, I think Options, acting fairly, with due regard to Mr B's interests, should have carried out its own check on Mr Wright. And that appears to have been Options' view too. Its comments suggest it understood it was good practice, consistent with its regulatory obligations, to make its own independent checks. So, it ought to have undertaken a check on Mr Wright before it began accepting introductions from CL&P.

Had Options checked the FSA's list in August 2011, it would have discovered that Mr Wright was the subject of the 'Alert' which I've set out above, so I won't repeat it again here. This 'Alert' was issued on 15 October 2010. If Options had acted in accordance with its regulatory obligations and good industry practice at the relevant time it ought to have undertaken sufficient enquiries on CL&P to understand who its directors were, and checked the FSA's warning list as part of its due diligence on CL&P. Had it carried out these checks before accepting business from CL&P it would have discovered that CL&P's director Mr Wright was on the FSA warning (Alert) list.

*Cash incentives*

In November 2011, Options become aware that: *"…a potential member had asked when they would receive their money from their Store First Investment".* This took place two months after Options accepted Mr B's SIPP application but before the payments for the relevant investments were made from his SIPP account. Options says the general risk of introducers offering cash incentives had been flagged to it by a trade body. Such payments are against the rules covering pensions and can attract a substantial tax charge from HMRC.

Options spoke to CL&P in a conference call on 9 December 2011. Options has told us that in that call CL&P: *"…confirmed that no clients or connected parties referred by CL&P receive any form of inducement for either establishing the SIPP or making the Store First Investment and that CL&P policy does not include offering inducements."* And an Options staff member: *"...emphasised that it is completely against all rules that clients or connected parties receive any form of inducement for making particular investments."*

I am not persuaded it was reasonable for Options to rely on what CL&P said when it clearly had information to show the position was contrary to that being set out to it by CL&P during the call. Options was aware cash incentives had been offered – discussing this was the purpose of the call with CL&P. In the circumstances, I do not think it was fair and reasonable for Options to proceed, based solely on a denial of this by CL&P. It should, at the very least, have taken independent steps to check things for itself – it could, for example, have contacted the consumers it had received applications for before the date of the call, to ask them about cash incentives.

Mr B has confirmed he was offered and received, £4,000 from CL&P for transferring his pension. Mr B's CMC said he (Mr B) was led to believe by CL&P that this payment was an: *"Advance of profits that he believed he'd receive from his SIPP."*

*Accounts*

Based on the available evidence, it appears a request for CL&P's accounts was not made by Options until 23 March 2012. It's not clear why the request was made at this time. But it seems CL& P did not respond as the request was repeated, as urgent, on 3 April 2012. But by this point Mr B's SIPP had already been set up. CL&P replied to Options to say the information would be in the post the next day. However, when asked, Options has told us it has no record of receiving the information and that this was another likely factor in its eventual decision to end its relationship with CL&P.

In my opinion, it is fair and reasonable that Options should have met its own standards, set in late 2011, and should have checked CL&P's accounts at the outset before accepting any business from it. This is a step it should reasonably have taken to meet its regulatory obligations.

Taking all of the above into consideration, I think in the circumstances it is fair and reasonable for me to conclude that Options failed to conduct sufficient due diligence on CL&P before accepting business from it. And, in light of the Principles and FSA/FCA regulatory publications I have quoted above, this means Options did not comply with its regulatory obligations, or with good industry practice, at the relevant time.

**If Options had completed sufficient due diligence, what ought it reasonably to have concluded?**

In my opinion, I think Mr Wright's appearance on the FSA's Alert list ought to have highlighted to Options that the regulator was concerned enough about his activities to warn consumers about him. I think in the circumstances it is fair and reasonable to conclude that the warning was aimed at protecting consumers from detriment in their dealings with him.

With this in mind, I think the warning should have acted as a significant reason for Options to be concerned about any business Mr Wright was involved in – not just 'Cash In Your Pension'. The Alert mentioned that Mr Wright was involved in the area of pensions – which is the same business area that CL&P was active in. And it said that Mr Wright was not authorised and may be *"targeting UK customers"* in connection with investment business conducted through an unregulated company, Cash In Your Pension. I also think the presence of Mr Wright on the list, after he had answered *"No"* to a question asking him if he was subject to any FSA action or censure, should immediately have raised a red flag to Options. It should've given rise to significant concern about Mr Wright's conduct and integrity.

I note that Options ended its relationship with CL&P shortly after completing the check on Mr Wright. I'm satisfied this check was a factor in its decision to end the relationship. Options has told us that the wording in the 2013 Alert, if it had been published at the time of it accepting business from CL&P, would have been sufficient to stop it doing business with Mr Wright and/ or CL&P. It said: *"The fact that the FCA updated their notice in 2013 to a clear warning including an express comment that Mr Wright was an individual to avoid, <u>a warning that would have put Options Pensions on notice to stop accepting business from Mr Wright.</u>"* (my emphasis)

Options says in relation to the FSA's list that the 2010 warning would not have led it to the same conclusion. It says: *"…the Notice (the alert) amounts simply to a notification that Mr Wright is not authorised to carry on regulated activities, a fact of which Options was well aware and upon which basis it accepted referrals from CL&P."* This seems to be at odds with the action it took in 2012, based on the 2010 warning. And I note Options' Chief Executive, Ms Hallett, gave evidence to the court during the Adams v Options HC hearing, which is summarised at Paragraph 60 of the judgment as follows:

> *"It was also brought to my attention that from October 2010 the FCA had published warnings about dealing with another director, Mr Terence Wright, who was not authorised under FSMA to carry out regulated activity. Ms Hallett accepted in cross examination that no check was made to see whether his name appeared on a regulatory warning notice on the FCA's website until May 2012. The relationship between the defendant and CLP was severed on 25 May 2012. She accepted that had she been aware of such a warning in 2010 the defendant would not have dealt with CLP."*

This, in my view, is inconsistent with Options' representations to us. In any event, although Options has said it believes the 2010 Alert was less significant than the 2013 one, by comparing the wording of the two, I think the 2010 Alert was a clear indication that the regulator had serious concerns about the way Mr Wright conducted his business. And therefore, should have put Options on notice that it should not accept business from him.

I accept the 2013 Alert provides strong advice to only deal with financial firms authorised by the FCA. However, I do not agree with Options' characterisation of the 2010 Alert and I'm surprised that Options suggests the regulator does not detail any concern about Mr Wright in this. A publication headed ***"ALERT"*** in bold is clearly not routine and unimportant. It's clear from the wording itself that the FSA was warning investors against dealing with unauthorised firms and specifically named Mr Wright. He was involved in 'targeting' (to use the FSA's phrase) UK based pension investors – which should have been of particular concern to a SIPP operator considering accepting business from him. The Alert also provided links to:

- A list of unauthorised firms
- A press release about unauthorised firms targeting UK investors
- A document telling investors about the tactics adopted by unauthorised firms targeting UK investors.
- A document explaining share scams.

In my opinion, it is fair and reasonable to conclude the warning was more than a mere statement of fact that an unauthorised firm could not carry out regulated activities. It was a clear warning – an Alert - relating specifically to Mr Wright, providing links to guidance on consumer protection and warnings about scams.

So, despite what Options says, in my view, CL&P's director Mr Wright's presence on the FSA warning list in 2010 should have led it (Options) to conclude it should not do business with CL&P. That is my view and I note it is a view which was held by Ms Hallett when she gave evidence to the court during the Adams v Options HC hearing. Ms Hallett told the court that if she had been aware of the warning in 2010 Options would not have dealt with CL&P. Such a conclusion was the proper one it ought to have reached bearing in mind Options' responsibilities under the Principles.

In addition, on the issue of cash incentives, I don't think it was fair and reasonable for Options to simply rely on a denial by CL&P in circumstances where it seems it was aware cash incentives were being offered. I think Options should've taken steps to independently check the position. And it is fair and reasonable to conclude that prompt action would've inevitably led Options to discover that cash incentive payments were being widely offered by CL&P at the time, and what it had told Options, wasn't correct. It follows that Options ought to have concluded – as it belatedly did when the issue of cash incentives came to light again in 2012 – that it couldn't rely on what CL&P had told it and it would not be consistent with its regulatory obligations to deal with any further business from it.

If Options had acted with a reasonable amount of diligence it would have discovered that CL&P was acting in a way which was, to use its own words, *"completely against all rules"*. And it would have known that CL&P was acting without integrity – it had not told it the truth when asked about cash incentives. In my view, the only fair and reasonable thing it could do would have been to decide not to accept any further business from CL&P and not to proceed with any applications which had not completed (that is to say the investment had not been made).

In Mr B's case, the SIPP was established in around late December/ early January 2012, which was after Options became aware of the cash incentives being offered to CL&P clients. Similarly, his investments had not been made until after it (Options) had become aware of this issue. Despite this, Options still proceeded with both investments.

I think if checks on CL&P's accounts had been attempted earlier, the fact that it was unwilling to provide basic information about its business, should have raised a red flag to Options, as it apparently eventually did. This is information that Options could have requested at the outset as part of its due diligence into CL&P.

Taking all of the above into consideration, I think it is fair and reasonable for me to conclude that Options ought reasonably to have concluded had it complied with its regulatory obligations, that it should not have accepted any business from CL&P in the first place. I, therefore, consider it is fair and reasonable in the circumstances to say Options should not have accepted Mr B's SIPP application from CL&P.

**Investment due diligence**

As I've explained above, Options should neither have accepted Mr B's introduction from CL&P nor proceeded with his SIPP application. I think it's fair and reasonable to uphold this complaint on that basis alone, so I do not think it's necessary to consider the due diligence Options carried out on the investments Mr B made subsequent to that.

**Did Options act fairly and reasonably in proceeding with Mr B's instructions?**

I note that Options has made the point that COBS 11.2.19R obliged it to execute investment instructions. It effectively says that once the SIPP has been established, it is required to execute the specific instructions of its client. Before considering this point, I think it is important for me to reiterate that, it was not fair and reasonable for Options to have accepted Mr B's SIPP application from CL&P in the first place. So, in my opinion, Mr B's SIPP should not have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity should not have arisen at all.

In any event, Options' argument about having to execute the transaction as a result of COBS 11.2.19R was considered and rejected by the judge in BBSAL. In that case Jacobs J said:

> *"The heading to COBS 11.2.1R shows that it is concerned with the manner in which orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2 as a whole, namely: "Best execution". The text of COBS 11.2.1R is to the same effect. The expression "when executing orders" indicates that it is looking at the moment when the firm comes to execute the order, and the way in which the firm must then conduct itself. It is concerned with the "mechanics" of execution; a conclusion reached, albeit in a different context, in Bailey & Anr v Barclays Bank [2014] EWHC 2882 (QB), paras [34] – [35]. It is not addressing an anterior question, namely whether a particular order should be executed at all. I agree with the FCA's submission that COBS 11.2 is a section of the Handbook concerned with the method of execution of client orders, and is designed to achieve a high quality of execution. It presupposes that there is an order being executed, and refers to the factors that must be taken into account when deciding how best to execute the order. It has nothing to do with the question of whether or not the order should be accepted in the first place."*

So, I don't think that Options' argument on this point is relevant to its obligations under the Principles to decide whether or not to accept an application to open a SIPP in the first place. Or to execute the instruction to make the investments.

**The indemnity**

The indemnity sought to confirm that Mr B was aware the investments were high risk, had taken his own advice, and would not hold Options responsible for any liability resulting from the investment. The FSA's 2009 review said that SIPP operators should, as an example of good practice, be: *"Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for investment decisions and gathering and analysing data regarding the aggregate volume of such business."*

With the above in mind, I think Options ought to have been cautious about accepting Mr B's application even though he had signed the indemnities. Options had to act in a way that was consistent with the regulatory obligations that I've set out in this decision. In my view, Options was not treating Mr B fairly by asking him to sign an indemnity absolving Options of all responsibility, and relying on such an indemnity, when it ought to have known that Mr B's dealings with CL&P were putting him at significant risk.

**Summary of my findings on due diligence**

In summary, Options did not comply with good industry practice, act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly by accepting his application from CL&P and proceeding with the investment instructions. For all the reasons given, I'm satisfied that this is the fair and reasonable conclusion to reach.

**S27 and s28 FSMA**

As set out in the relevant considerations section above, I have also considered the application of s27 and s28 FSMA. I've set out the key sections of s27 and s28 above and have considered them carefully, in full. In my view, I need to apply a four-stage test to determine whether s27 applies and whether a court would exercise its discretion under s28, as follows:

1. Whether an unauthorised third-party was involved;
2. Whether there is evidence that the third-party acted in breach of the General Prohibition in relation to the particular transaction and, if so;
3. Whether the customer entered into an agreement with an authorised firm in consequence of something said or done by the unauthorised third-party in the course of its activities that contravened the General Prohibition; and
4. Whether it is just and equitable for the agreement between the customer and the authorised firm to be enforced in any event.

*Was an unauthorised third-party involved?*

There is no dispute CL&P was an unauthorised third party.

*Is there evidence CL&P acted in breach of the General Prohibition?*

Under Article 53 of the RAO (as set out in the version that was current at the relevant time) the following are regulated activities:

*Advising a person is a specified kind of activity if the advice is -*

*(a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and*

*(b) advice on the merits of his doing any of the following (whether as principal or agent)— (i) buying, selling, subscribing for or underwriting a particular investment which is a security or a relevant investment, or (ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.*

Under Article 25 of the RAO (as set out in the version that was current at the relevant time) the following are regulated activities:

*(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is -*

*(a) a security,*
*(b) a relevant investment, or*
*(c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article, is a specified kind of activity.*

*(2) Making arrangements with a view to a person who participates in the arrangements*

*buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity.*

There is an exclusion under Article 26 of: *"...arrangements which do not or would not bring about the transaction to which the arrangements relate."*

I've considered these in turn.

*Advice*

I think the following part of the Court of Appeal's judgment in the Adams case is of particular relevance here.

Paragraph 82: *"In short, CLP's recommendation that Mr Adams invest in storepods carried with it advice that he transfer out of his Friends Life policy and put the money into a Carey SIPP. Investment in storepods may have been the ultimate objective, but it was to be gained by transferring out of the Friends Life policy and into a Carey SIPP. CLP thus proposed that Mr Adams undertake those transactions too and, in so doing, gave "advice on the merits" of selling a "particular investment which is a security" (viz. the Friends Life policy) and buying another "particular investment which is a security" (viz. a Carey SIPP). Although, therefore, the advice to invest in storepods was not of itself covered by article 53 of the RAO, CLP nonetheless gave Mr Adams advice within the scope of article 53 and so acted in contravention of the general prohibition."*

Here, Mr B was 'cold called' by CL&P and his evidence is that CL&P advised him to transfer out of his existing personal pension plan into the Options SIPP and invest in the unregulated investments. I think that evidence is plausible, and credible. I do not think Mr B thought of taking this course of action of his own volition or would have done so without a positive recommendation from CL&P. I also note it was CL&P which contacted Mr B – he did not find CL&P in the course of looking for alternative pension options.

To confirm, I am satisfied CL&P advised Mr B to transfer out of his existing pension and transfer into the Options SIPP – and so it undertook the regulated activity defined at article 53 of the RAO.

*Making arrangements*

I think the following parts of the Court of Appeal's judgement in the Adams case are of particular relevance here.

Paragraph 99: *"…..The fact remains that CLP "pre-completed the application form so that [Mr Adams] could just sign it" (to quote Mr Adams' witness statement). It also told Mr Adams of documents he would need to supply for anti-money laundering purposes and explained that the "completed forms and [his] anti money laundering documents will be collected by courier and taken to Carey Pensions UK". "Arrangements" being a "broad and untechnical word" in article 25 of the RAO as well as section 235 of FSMA, it is apt to describe what CLP did."*

Paragraph 100:

> *"I consider, too, that the steps which CLP took can fairly be said to have been such as to "bring about" the transfers from Friends Life and into the Carey SIPP. Contrary to the Judge's understanding, it does not matter that CLP's acts "did not necessarily result in any transaction between [Mr Adams] and [Carey]" or that "the process was out of CLP's hands to control in any event".*

*"Nor is it determinative whether steps can be termed "administrative". CLP's "procuring the letter of authority", role in relation to anti-money laundering requirements and (especially) completion of the Carey application form were much more closely related to the relevant transactions than, say, the advertisement which originally prompted Mr Adams to contact CLP. It is to be remembered that CLP filled in sections of the application form dealing with "Personal Details", "Occupation & Eligibility", "Transfers", "Investments" and "Nomination of Beneficiaries". In my view, what CLP did was thus significantly instrumental in the material transfers. In other words, there was, in my view, sufficient causal potency to satisfy the requirements of article 26 of the RAO."*

In Mr B's case, at the outset he gave Options permission to liaise directly with CL&P in respect of all matters regarding his pension arrangements. And it seems the application form was, for the most part, pre-populated by CL&P. So, the steps which CL&P took can fairly be said to have been such as to 'bring about' the transfer from Mr B's existing personal pension into the Options SIPP – they had sufficient causal potency to satisfy the requirements of article 26 of the RAO.

I'm satisfied CL&P carried out regulated activities, and therefore, breached the General Prohibition. And any one regulated activity is sufficient for these purposes, so this test would be met if CL&P had only undertaken arranging (which, for the reasons I have set out, I do not think is the case).

*Did Mr B enter into an agreement with Options in consequence of CL&P's actions?*

I'm satisfied the SIPP was opened in consequence of the advice given, and arrangements made, by CL&P. If CL&P had not contacted Mr B, advised him to transfer his existing personal pension plan to SIPP with Options in order to invest in the unregulated investments, and then made the arrangements for that to happen, I am satisfied he would not have entered into an agreement with Options.

*Would the courts conclude it is just and equitable for the agreement between Mr B and Options to be enforced in any event?*

Having carefully considered this, I am satisfied a court would not conclude it is just and equitable for the agreement between Mr B and Options to be enforced in any event. I think very similar reasons to those mentioned by the Court of Appeal in the Adams case apply here:

- A key aim of FSMA is consumer protection. It proceeds on the basis that, while consumers can to an extent be expected to bear responsibility for their own decisions, there is a need for regulation, among other things, to safeguard consumers from their own folly.
- While SIPP providers were not barred from accepting introductions from unregulated sources, s27 FSMA was designed to throw risks associated with doing so onto the providers. Authorised persons are at risk of being unable to enforce agreements and being required to return money and other property and to pay compensation regardless of whether they had had knowledge of third parties' contraventions of the General Prohibition.
- As set out above Options was aware, or ought to have been aware:
    - Mr Wright featured on the FSA's list of alerts about unauthorised individuals and businesses.
    - It had not been privy to CL&P's company accounts.
    - CL&P was offering cash incentives to consumers and therefore, acting *"completely against all rules".*

- The investments did not proceed until these things were known or ought to have been known to Options and so it was – or should have been - open to it to decline the investments.

So, I am satisfied s27 FSMA offers a further and alternative basis on which it would be fair and reasonable to conclude Mr B's complaint should be upheld. I have therefore gone on to consider the question of fair compensation.

**Is it fair to ask Options to compensate Mr B?**

In deciding whether Options is responsible for any losses that Mr B has suffered on his investments, I need to look at what would have happened if Options had done what it should have done i.e. had not accepted Mr B' SIPP application in the first place. When considering this I have taken into account the Court of Appeal's supplementary judgment in Adams ([2021] EWCA Civ 1188), insofar as that judgment deals with restitution/compensation.

I'm required to make the decision I consider to be fair and reasonable in all the circumstances of the case. And I do not consider the fact that Mr B signed the indemnity means that he shouldn't be compensated if it is fair and reasonable to do so. In deciding whether Options is responsible for any losses that Mr B has suffered on the investments in his SIPP, I need to look at what would have happened if Options had done what it should have done i.e. not accepted Mr B's application.

Had Options acted fairly and reasonably it should have concluded that it should not accept Mr B's application to open a SIPP. That should have been the end of the matter – it should have told Mr B that it could not accept the business. And I am satisfied, if that had happened, the arrangement for Mr B would not have come about in the first place, and the loss he suffered could have been avoided.

The financial loss has flowed from Mr B transferring out of his personal pension plan and into a SIPP. For the reasons I set out, I am satisfied that had the SIPP application not been accepted, the loss would not have been suffered. I would reach a similar conclusion if Options had terminated the transaction at a later stage once it was in possession of certain facts that meant there was a significant chance Mr B could suffer financial detriment.

Had Options explained to Mr B why it would not accept the application from CL&P or was terminating the transaction, I find it very unlikely that he would have tried to find another SIPP operator to accept the business. So, I'm satisfied that Mr B would not have continued with the SIPP, had it not been for Options' failings and would have remained in his existing scheme. And, whilst I accept that CL&P is responsible for initiating the course of action that has led to his loss, I consider that Options failed unreasonably to put a stop to that course of action when it had the opportunity and obligation to do so.

I've considered paragraph 154 of the Adams v Options HC judgment, which says: *"The investment here was acknowledged by the claimant to be high risk and/or speculative. He accepted responsibility for evaluating that risk and for deciding to proceed in knowledge of the risk. A duty to act honestly, fairly and professionally in the best interests of the client, who is to take responsibility for his own decisions, cannot be construed in my judgment as meaning that the terms of the contract should be overlooked, that the client is not to be treated as able to reach and take responsibility for his own decisions and that his instructions are not to be followed."*

For all the reasons I've set out, I'm satisfied that it would not be fair to say Mr B's actions mean he should bear the loss arising as a result of Options' failings. I do not say Options should not have accepted the application because the investment was high risk. I acknowledge Mr B was warned of the high risk and declared he understood that warning. But, as I set out above, Options did not share significant warning signs with him so that he could make an informed decision about whether to proceed or not.

In any event, Options should not have asked him to sign the indemnity at all as the SIPP application should never have been accepted or, alternatively, the transaction should have been terminated at a much earlier stage in the process. Furthermore, as set out above, I am satisfied there is a legal basis on which Mr B is entitled to compensation, by virtue of s27 FSMA.

I note Options says, it is evident that Mr B wished to transfer his pension, whether through Options or another provider and would therefore have suffered the same loss as he did even if it had rejected his application. I have seen no evidence to show that Mr B would have proceeded even if Options had rejected his SIPP application. He was contacted by CL&P – which was consistent with its business model, in encouraging those with pensions to consider transferring out of these in favour of a SIPP in order to invest in one of several unregulated investments. And I've seen nothing to suggest Mr B was looking to make a transfer prior to that contact.

Overall, I am satisfied that Options failure to comply with its regulatory obligations and industry best practice at the relevant time have led to Mr B suffering a significant loss to his pension. And my aim is to return him to the pension position he would now be in but for Options' failings. I am satisfied Options' failings have caused the full extent of the loss in question. 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 fair compensation from Options for the full amount of his loss.

**Putting things right**

My aim is to return Mr B to the position he would now be in but for what I consider to be Options' failure to carry out adequate due diligence checks before accepting his SIPP application from CL&P or for not terminating the transaction before completion.

In light of my above findings, Options should calculate fair compensation by comparing the current position to the position Mr B would be in if he had not transferred from his existing personal pension. In summary, Options should:

1. Calculate the loss Mr B has suffered as a result of making the transfer.
2. Take ownership of any investments which can't be surrendered, if possible.
3. Pay compensation for the loss into Mr B's pension. If that is not possible pay compensation for the loss to Mr B direct. In either case the payment should take into account necessary adjustments set out below.
4. Pay £500 for the trouble and upset caused. Mr B has been caused some distress and inconvenience by the loss of his pension benefits. This is money Mr B cannot afford to lose. I consider that a payment of £500 is appropriate to compensate for that upset.

I'll explain how Options should carry out the calculation set out at 1-3 above in further detail below:

1. *Calculate the loss Mr B has suffered as a result of making the transfer*

To do this, Options should work out the likely value of Mr B's pension as at the date of this decision, had he left it where it was instead of transferring to the SIPP. Options should ask Mr B's former personal pension provider to calculate the current notional transfer value had he not transferred his pension.

If there are any difficulties in obtaining a notional valuation then the FTSE UK Private Investors Income Total Return index should be used to calculate the value. That is likely to be a reasonable proxy for the type of return that could have been achieved if suitable funds had been chosen. The notional transfer value should be compared to the transfer value of the SIPP at the date of this decision and this will show the loss Mr B has suffered. The Store First and WBP investments should be assumed to have no value.

2. *Take ownership of any investments which can't be surrendered, if possible*

I understand Options has been able to take ownership of the Store First investment, for a nil consideration, in other cases. So it should do that here, if possible. I am satisfied that is a fair approach in the circumstances of this case, as it may allow the SIPP to close (subject to the position with the WBP investment) and gives Options the option of retaining the investment or realising its current market value.

I understand Mr B has the option of returning his Store First investment to the freeholder for nil consideration. That may enable him (subject to the position with the WBP investment) to close his SIPP if Options does not take ownership of the Store First investment. In the event the Store First investment remains in the SIPP and Mr B decides not to transfer it to the freeholder he should be aware that he will be liable for all future costs associated with that investment such as business rates, ground rent and any other charges. He should also be aware it is unlikely he will be able to make a further complaint about these costs.

If the WBP investment still exists then Options should also take ownership of it. If Options is unable to take ownership of the WBP investment, it should remain in the SIPP. I think that is fair because I think it is unlikely it will have any significant realisable value in the future.

Mr B would only be liable for any SIPP fees if the WBP investment can be sold or no longer exists. If Options does not take ownership of the WBP investment and it still exists, and cannot be sold, then Options should waive any SIPP fees until it can be sold or ceases to exist.

3. *Pay compensation for the loss to Mr B's and make any necessary adjustments*

Pay compensation to Mr B for the loss he has suffered calculated in 1 above. Since the loss Mr B has suffered is within his pension it is right that I try to restore the value of his pension provision if that is possible. So, if possible the compensation for the loss should be paid into the pension. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance. Payment into the pension should allow for the effect of charges and any available tax relief. This may mean the compensation should be increased to cover the charges and reduced to notionally allow for the income tax relief Mr B could claim. The notional allowance should be calculated using Mr B's marginal rate of tax.

On the other hand, Mr B may not be able to pay the compensation into a pension. If so compensation for the loss should be paid to him direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income. Therefore, the compensation for the loss paid to Mr B should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr B's marginal rate of tax in retirement. For example, if Mr B is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr B would have been able to take a tax-free lump sum, the notional allowance should be applied to 75% of the total amount.

Account should however be taken of the cash back payment paid out to Mr B. This can be taken into account in the calculation on the basis of it having been paid at the outset i.e. the same approach can be taken as was taken by the Court of Appeal in its supplementary judgement. On this latter point, Mr B said he received £4,000. This is broadly consistent with the amounts we have seen on other cases.

*Interest*

The compensation must be paid as set out above within 28 days of the date Options receives notification of Mr B’s acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation is not paid within 28 days.

**My final decision**

My final decision is that I uphold Mr B’s complaint and I require Options UK Personal Pensions LLP to calculate and pay him the award and take the actions that I have set out above under ‘Putting things right’.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 19 April 2023.

Yolande Mcleod
**Ombudsman**