DRN-3149523

The complaint

Mr H complains about the switch of his personal pension into a Carey Pensions (now Options Plc) Self-Invested Personal Pension (SIPP) for the purpose of investing in development land in the Cayman Islands. Mr H says he was contacted by a business called IPL Services (IPL) who suggested investing his pension fund in land investments in the Cayman Islands. He says he was promised high returns. He says he was then introduced to a business called Crown Acquisition Worldwide Plc and also a business called Sovereign Asset Management (SAM). He does not believe the transfer was appropriate for him and says that he was 'mis-sold'.

What happened

Mr H says he was contacted in 2011 by an unregulated business called IPL Services. Following that contact he switched his pension to Carey and invested in, or purchased an interest in, a plot of land in the Cayman Islands – described as Plot 27, Little Cayman LCW Block 99A Parcel 2. This was through an investment vehicle or company called Crown Acquisitions Worldwide. He invested £52,000.

After considering Mr H's complaint, I issued a provisional decision on 8 October 2021. In the provisional decision I set out why I was minded to uphold the complaint and make an award.

I have not received any further submissions from Options.

Mr H has accepted the provisional decision. When doing so, he commented that, "*The original investment was 5-10 years and is stuck with solicitors after 11 years and going nowhere*.".

What I've decided – and why

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

I have repeated here the material findings I reached in my provisional decision. Much of the comment will be the same.

I've set out the various parties involved in Mr H's pension switch and subsequent investment in detail below.

Carey (now Options Plc)

Carey is a SIPP provider and administrator. It was regulated by the Financial Services Authority (FSA) at the time of the events complained about – now the Financial Conduct Authority (FCA). It was – and still is – authorised to arrange (bring about) deals in investments; deal in investments as principal; establish, operate and wind up a personal pension scheme; and make arrangements with a view to transactions in investments.

IPL

There is little evidence as to the status of IPL or its operation. I have not seen evidence that it is still operating. There are no records on the FCA Register of it ever being a regulated business. However, Mr H has said that this business contacted him in 2011 and discussed investing his pension in land investments in the Cayman Islands. He says that business then introduced him to Crown Acquisition Worldwide Plc and SAM. As I will go on to discuss, there are some documents that indicate IPL was facilitating Mr H's pension switch to the SIPP. I believe it is most likely that IPL was an unregulated business that contacted Mr H with a view to promoting an investment in land in the Cayman Islands. And then it introduced Mr H to SAM (a regulated business) and Crown Acquisition Worldwide Plc.

SAM

SAM is a business based in Gibraltar and regulated by the Financial Services Commission of Gibraltar. According to the FCA register, SAM has had some passported permissions with the FCA since 8 January 2009. The permissions recorded on the Register are:

A(1) Reception and transmission of orders in relation to one or more financial

instruments A(2) Execution of orders on behalf of clients

A(4) Portfolio

management A(5)

Investment advice

SAM's permissions *did not* include providing advice as to pension transfers or opt out's.

According to information that has been provided, the company was part of a larger group called the Sovereign Group. The Sovereign Group has a range of international offices each regulated within its own specific jurisdiction.

SAM was formed as an asset management company. It provides investment advice and other management services.

Crown Acquisitions Worldwide/CrownWorld/CrownWorld Limited

The evidence indicates that these are a group of linked businesses specialising in overseas land or property developments/investments.

CrownWorld or CrownWorld Limited described itself in 2014 (and still does describe itself on its website) as offering, *"Global. Real Estate. Solutions."* It referred, in an email dated 10 July 2014, in respect of *"Cayman & Ocala investments",* that, *"our investments are a medium to long term project (5 – 10 years)."*

Currently CrownWorld's marketing literature says that it, *"is now one of the market-leading luxury real estate brands in the Cayman Islands, specialising in the acquisition of prime residential building plots and the delivery of turnkey design and build solutions".* It also says that it is, *"Cayman's Leading property specialist".*
CrownWorld's contact details indicate it has a business address in the Cayman Islands but they also include a telephone number for an address in Cheshire, UK.

Crown Acquisitions Worldwide Limited is registered with Companies House. It has a previous listed company name of Crown Acquisition Worldwide Plc.

The evidence is that these businesses are linked entities and are part of a business group. But what is material for the purposes of this complaint is that Mr H's investment (which I will henceforth refer to as the 'Crown' investment) was a purchase of an interest in a land plot in the Cayman Islands. The purpose of the investment was to invest in residential development land with the prospect of obtaining planning permission - and then selling the plot to property developers. The completion of the land purchase has not yet taken place. CrownWorld has said that infrastructure has been completed and investors have been asked to instruct solicitors to complete the purchase of title.

The relationship between SAM and Carey

The relationship between Carey and SAM came through contact with the main 'Sovereign Group' based in the UK. Carey's point of contact at the Sovereign Group was Mr S Denton and its contact with SAM was Mr C Walker.

In 2011, Carey say it had a meeting with Mr Denton - Managing Director of Sovereign Group. A follow-up email was sent by Carey on 4 September 2011, discussing the prospect of Sovereign Group working with Carey. After obtaining information about SAM's status and business model, Carey agreed to accept introductions from it with a view to setting up SIPPs for SAM's clients. This was with the intention that investment within the SIPPs would be made in CrownWorld investments.

The first pension scheme that Carey established that was introduced by SAM was on 11 November 2011 and the last scheme established was on 6 July 2012. The relationship ended in January 2013, when Mr C Walker, who was one of the advisers at SAM, stopped working for SAM. No further new business introductions were received from SAM after that point.

Mr H's submissions

Mr H originally lodged his complaint with Carey on 4 February 2015. In brief, he said that he was unhappy with the investment he made in Crown and he was not given appropriate advice at the time he made the investment.

Carey did not uphold the complaint. In response to the complaint it said, in brief, that it had followed Mr H's instructions to set up the SIPP and make the investment and it acted on an 'execution only' basis. Carey said Mr H had signed declarations to that effect. It said that it was not responsible for the suitability of the pension switch to its SIPP, or the investment he made.

Mr H then referred his complaint to this service. When Mr H lodged his complaint with this service he said:

"I am writing to complain about the handling of my personal pension fund. I was firstly contacted by a company called IPL services regarding moving my fund into land in the Cayman Islands. These were firstly email messages followed by phone calls. There were promises of high returns. Another company was introduced, Crown Acquisition Worldwide plc and also an advisory company called Sovereign Asset management. It did get a bit confusing. However, the pension scheme was run by Carey group

authorised in the UK. I did not receive any advice as I was assured I was making a good investment."

In Mr H's complaint form he noted SAM and 'Crown World' as the adviser or business who originally sold the product or service.

Mr H has provided some further detail. He said that he made a general enquiry online regarding his pension. He said he then started receiving telephone calls from numerous companies. He said one of the first calls he received was from SAM, who were offering 5% of the value of the pension as *"cash back".* Mr H said that SAM told him this money was a *"goodwill gesture"* and not coming out of his pension fund. He said that SAM sent him the paperwork to sign. Mr H said he did not think he was correctly advised by SAM.

Mr H has explained that he, *"first came into contact with IPL after responding to an email that I had received".* It, *"called him several times over a two to three week period".* He says he was told that, *"the returns on these investments were doubling people's money"* and that, *"a payment of 5% of the value of the pension fund would be on offer as an incentive and would not come from the pension fund itself"*. Mr H says that, *"I was carrying out a lot of home improvements at the time and the commission from the transfer went towards the cost".*

He also says that, *"Sovereign asset management was a name but I don't remember any contact with this company. A lot of the communication was from Crown world…. The contact number and address for Sovereign was a Spanish address and phone number for a Carlo Walker. As Careys were my pension company I did not think this would be a problem dealing with a UK company."*

Mr H confirms that, *"..since investing my fund I was asked for £10 - 12000 for solicitors fees from Careys with regard to the plot of land. When I complained they gave me an option to sell it myself. The last statement I checked the fund was worth half the value I invested."*

Mr H has confirmed that he does not have the resources to pay for the legal fees and has not therefore taken any further steps with regard to his investment or action in respect of having legal title to the land transferred.

Options investigation of Mr H's complaint

In its response to the complaint, it:

- Said Mr H instructed it to open his SIPP, transfer in his existing pension and make the CrownWorld investment. Carey's dealings were with an introducer – SAM, and not IPL.

- Said Carey did not provide advice in relation to the SIPP or subsequent investment. It acted on Mr H's specific instructions. It acts on an execution only basis.

- Said Carey is not responsible for the acts of IPL and it was not privy to any discussions Mr H had with it.

- Said Carey has acted in a transparent and reasonable manner and treated Mr H fairly.

- Set out various declarations Mr H had signed when setting up the SIPP.

- Set out that its Terms and Conditions noted that it did not provide advice,

was not responsible for any investment decisions the individual made and that it recommended that advice from a financial adviser is sought.

- Said SAM acted as an introducer to it. It did not act inappropriately in accepting an instruction from SAM or an *"unlicensed' broker".* It is not liable for the actions of IPL or SAM. It cannot be held liable for Mr H's decision to transfer or make the investment concerned.

- Mr H was aware that he was investing in land in the Cayman Islands and that this was high risk and speculative – as this is indicated in the *"Member Declaration"*. The relevant declaration Mr H signed when making the investment set out that it was an alternative investment, considered high risk and/or speculative. This also confirmed Carey acted on an execution only basis in terms of the investment.

Mr H's complaint was then considered by an investigator at this service. The investigator thought the complaint should be upheld. Essentially the investigator said that he thought Carey should have been aware that Mr H was likely receiving advice from SAM to transfer his pension and make the investment SAM. And as SAM did not have FCA permissions to provide advice as to pensions and pension transfers, then Carey should have been aware that consumer detriment could result and declined to accept the transfer. The investigator thought that Carey had not acted correctly in terms of the FCA Principles.

Mr H accepted the investigator's assessment.

Options did not accept the investigator's assessment and made significant further submissions. I have considered those submissions in their entirety but, in summary, it:

- Said that there was no consideration of the fact that Mr H came to it via an FCA regulated business, which was appointed on an 'execution only' basis, not an advisory mandate as the investigator suggested. There was no evidence that SAM had provided any advice to Mr H and it was not informed of that – Mr H indicated he had not received any advice at the time. Mr H's complaint should be against SAM. It was clear that SAM was introducing business on an execution only basis. On the 'introducer profile' SAM made it clear it did not provide advice and it was not remunerated by the client. The 'Introducing Business to Carey Pensions' document was a standard document and it did not mean that SAM was providing advice.

- Said that the investigator had not considered the notices, guidance and risk warnings it provided to Mr H – which would have allowed him to make an informed decision about whether he wished to take advice on the transactions he was instructing it to undertake. Mr H should not have signed to say he understood the risk warnings and statements if he found them confusing as he says now. It was entitled to rely on the signed declarations that Mr H made.

- Said that it acted on an execution only basis and didn't advise Mr H. And it made this clear to him. It's not allowed to give advice or comment on the suitability of investments.

- Said that it had complied with the relevant FCA Principles. It did undertake due diligence as to SAM. It also had terms of business in place. It was aware

of SAM's 'passported' permissions. It acted on Mr H's clear signed instructions after it had provided him with all the risk warnings.

- Said that, following the due diligence it carried out on SAM, it did place a number of obligations on SAM before it would accept business from it. The 'Introducing Business to Carey Pensions' document requires businesses to document their recommendations and that provision of advice is not a condition of Carey accepting introductions. SAM was also required to inform Carey if advice had been given. It was clear that SAM would not be providing advice, that Mr H appointed SAM on an execution only basis and that SAM did not hold the relevant passported permissions to advise on the transactions being undertaken.

- Said that Options was not prohibited from accepting business from unregulated introducers or introducers with restricted FCA permissions. And following the completion of its review, it could find no reason not to accept introductions from SAM. So Options complied with FCA Principles 2 and 3. FCA Principle 6 was satisfied because of the literature it provided to Mr H and warnings he was given and declarations he completed. It also advised him to seek advice should he require it.

- Said it was not aware of the other parties that Mr H had dealt with – Mr H did not inform it that he had dealt with other parties or businesses. Only SAM was noted on the SIPP application form.

- Set out that, of the FCA's SIPP reports that the investigator referred to in his assessment, only the 2009 SIPP report existed at the point Mr H's SIPP was set up. In terms of the 2012 report, it believes the standards set out are being applied with hindsight, the FCA's expectations of SIPP providers has evolved over time and the FCA has higher expectations now. It was not reasonable to apply these higher standards when considering Mr H's transaction in 2011. The 2012 report wasn't guidance and all it did was make suggestions. The other report the investigator referred to and *"Dear CEO"* letter referred to, weren't relevant and it's not fair and reasonable to consider the complaint in the context of them. The way the regulator expects the SIPP sector to implement the rules and Principles has developed over time and should not be applied retrospectively.

- Said that, in any event, the SIPP reports are only guidance, not rules, and they make suggestions as to what steps a business might take. The ombudsman should state what legal liability it had and the duty of care it owed Mr H. It should take into account any legal liability or otherwise when arriving at a decision. It is being held liable for actions that took place before it became involved.

- Set out the documents that Mr H had been provided with and signed – such as the application for the SIPP and the Terms and Conditions. It said these contained clear warnings about the fact that advice had not been given and that Mr H was acting on an execution only basis. And that he should seek out advice if he required it. The documentation also set out clearly that Mr H was investing in land in the Cayman Islands.

- Said that Mr H chose to appoint SAM as his Investment Manager on an execution only basis, when there were options to indicate that SAM was being appointed on an advisory or discretionary basis. The instruction was in no way

ambiguous. Carey concluded that Mr H did not wish or intend to be advised as it was clear from his instructions that he was appointing SAM on an execution only basis.

- Said that Carey was not the cause of Mr H's losses. Mr H was motivated by an inducement payment, and he signed various declarations setting out the risks. Mr H's conduct has contributed to his losses. In all likelihood Mr H would have invested anyway – even if Options had declined to accept the business. He was driven by the cash incentive and would have found another way to invest – he would still have suffered the same losses. There is no reason to hold it liable for any losses.

Further Information

We asked Carey for some additional information about its relationship with SAM. It said:

- Its relationship with SAM came about, *"through contacts with the main Sovereign Group based in the UK".* Its specific contact was the Managing Director of Sovereign UK.

- It classified SAM as a regulated introducer, but SAM did not provide pension transfer advice.

- It did not pay SAM any commission or fees.

- Its contact at SAM was Mr C Walker. He first introduced business to Carey on behalf of SAM in 2011. The last scheme that was introduced by SAM was established on 6 July 2012. Mr H's scheme was established on 13 December 2011.

- An introducer profile for SAM was signed by SAM managing director Mr R Foster on 19 October 2011. Mr Foster also signed an *"Overseas Introducing Business to Carey Pensions - Roles & Responsibilities"* form on 19 October 2011. It said this was a generic form that regulated introducers and IFA's signed at the time. SAM also signed an Investment Agreement/Terms of Business on 21 October 2011.

- It carried out *"company checks"* on SAM - which included obtaining the Certificate of Incorporation and the Memorandum of Association. It obtained passports for the Directors of SAM.

- There were 62 clients introduced by SAM to Carey Pensions in total. Four of these client applications were never progressed and were marked as 'Not Taken Up'.
  Therefore, no SIPP was established, nor any investments made for these four clients.

- The first scheme that Carey established, that was introduced by SAM, was on 11 November 2011.

- Out of the 58 clients whose applications proceeded, 50 appointed SAM as both their Financial Adviser and their Investment Manager (in an execution only capacity), one appointed SAM as their Investment Manager only (in an

execution only capacity). Seven were introduced by SAM but were not appointed as the client's Financial Adviser or Investment Manager. None of the 58 clients appointed had any other Investment Manager or Financial Adviser.

- All of the investments made by clients introduced by SAM were unregulated.

- The majority of clients instructed investment into Crown Acquisitions. This investment is the purchase of land plots in the Cayman Islands, for the purpose of obtaining planning permission and then selling the plots to property developers. 49 clients introduced by SAM invested in Crown Acquisitions. 10 clients invested into Global Forestry Investments and two clients invested into Carbon Credits. Both the Global Forestry Investment and the Carbon Credit investments are valued at Nil.

- Carey provided its members with numerous documents which set out the obligations, roles and responsibilities of both parties. These documents also contain information, risk warnings and guidance to seek regulated advice.

- Carey received an email from Mr R Foster on 23 January 2013 confirming that Mr C Walker, who was one of the advisers at SAM and who was also working under one of their trading names, Walker Wealth, no longer worked for the firm as Walker Wealth was no longer trading. It said that all of his clients should be moved away from SAM. No further new business introductions were received from SAM.

- The majority of members appointed SAM as their financial adviser and their investment manager and an adviser of that business signed the members' SIPP applications confirming that he is their financial adviser and investment Manager.

Carey also supplied several documents:

- Copies of SAM website pages in which it set out that it was a, *"fully regulated asset management company….. based in Gibraltar."* It was noted that *"SAM is consequently authorised to passport its services into other EU countries.*

  It was also set out that:

  "SAM provides investment advice and other asset management services to Sovereign Group clients. As an independent asset manager, SAM is not tied to any financial institution in respect of its products and services. It can therefore offer genuinely impartial advice, as well as enhanced levels of oversight and security, to its clients."

  And:

  "SAM's focus is on building strong, mutually beneficial relationships with its clients in order to offer a compelling and bespoke asset management service. SAM will first evaluate your financial background, requirements and objectives before formulating appropriate investment and risk strategies. Its goal is to help you grow your wealth."

- A Gibraltar Financial Services Commission (FSC) record that showed SAM was authorised to provide certain financial services in Gibraltar. An FSC letter of 31 July 2008 set out SAM was permitted to carry out activities as a *"portfolio*

manager". An FSC schedule showed that this included portfolio management and investment advice.

- A record of the FSA Financial Services Register for SAM. This recorded SAM's business address in Gibraltar. And it recorded that it was permitted to undertake certain activities in the UK effective from 8 January 2009. This included the provision of investment advice and transmission/execution of orders in certain financial instruments. The record did not include any history of disciplinary proceedings against SAM.
- A Carey *"Independent financial adviser introducer profile"* which had been signed by Mr R Foster on 19 October 2011. This document set out that SAM was regulated in Gibraltar, it had five advisers but no pension advisers or pension transfer specialists. In terms of pensions established in the last 12 months and/or pension transfer completed in the last 12 months, *"None"* was recorded. And *"what percentage of the firms business would be SIPP's"* was recorded as *"currently none".* Handwritten on the document was the comment:

  "SAM provides a fund platform for introducing IFA's to use on QROPS. But we provide no advice, have no direct pension clients but do act as investment adviser to the scheme trustees"

  A typical client of the firm was noted to be a *"HNW* (High Net Worth) *Client"*. The investment strategy the business utilized within a pension scheme was *"Platforms"* and *"Crown Acquisition to be Used for SIPPs".* The firms pension business was said to be *"growing".*

  As to *"other relevant information"* it was noted that, *"SAM Gibraltar has recently employed a new appointed rep specialising in SIPPS business but all on an execution only basis".*
- An ***"****Introducing Business to Carey Pensions - Roles & Responsibilities"* document which set out the role of the business making introductions. In general this set out that it was the introducing business's responsibility to assess the clients financial

  circumstances, suitability for a SIPP, suitability for a transfer and/or suitability of an investment.
- A *"Carey Pension Scheme third Party Investment Agreement"* document for SAM.

In addition to these submissions I have seen the following documents:

- An undated letter from IPL Services to Mr H. This says it encloses a *"Member Declaration"* and asks Mr H to sign that declaration and send it to Carey Pensions. The letter sets out that:

  "This will enable the process to be as quick as possible as all documents will be in place for when your funds arrive in your new SIPP."

  The 'footer' of the letter contains the following statement:

  "As mentioned previously we are not an advisory service and not here to offer you advise (sic) *on the future of your pension We act solely as an introductory agent to the investment product"*

- A Carey SIPP application form which Mr H dated 5 December 2011. This set out that a transfer was to be made to the SIPP from Mr H's existing pension scheme. The investment manager section set out that the investment manager was to be Mr C Walker who represented SAM. There was a statement in this section of the application which set out:

  "Please note: Carey Pensions UK LLP and Carey Pension Trustees UK Ltd will not at any point review any aspects of your appointed Investment Manager's financial status or investment and risk strategies.

  Carey Pensions UK LLP and Carey Pension Trustees UK Ltd will also not have any involvement in your investment choices and selection, nor give advice on the suitability of your investment choices.

  Your investment choices are the sole responsibility of you and/or your Financial Adviser/Investment Manager."

  A box has also been ticked on that section of the application to indicate that the investment manager has been appointed on an execution only basis.

  The *"Financial Adviser Details"* section has also been completed. This notes Mr C Walker as the contact and SAM as financial adviser. SAM's address in Gibraltar was noted. SAM was to be copied in to any correspondence. This section contains a declaration:

  "*Please sign to confirm your agreement that the above detailed fees be paid to your adviser and that any changes to your Financial Adviser or any changes in fees will be supplied in writing and signed by both parties"*

  Mr H and Mr C Walker (noted as the IFA) have signed this

  section. The declaration section of the application records:

  "I give my authority to accept correspondence by fax and email to Carey Pensions UK LLP and for Carey Pension Trustee UK Ltd to accept instructions by fax and

  email from myself and my Financial Adviser from the email addresses detailed in this application."

  And:

  "I understand that Carey Pensions UK LLP will in normal circumstances, send correspondence to my Financial Adviser unless I have stated otherwise.

  I confirm that I wish for Carey Pensions UK LLP to appoint the Investment Manager as detailed in the application form.

  I understand that it is my sole responsibility to make decisions relating to the purchase, retention or sale of any investment held within the Carey Pension Scheme."

  And:

"I understand that Carey Pensions UK LLP and Carey Pension Trustees UK Ltd are not in anyway able to provide me with any advice.

I confirm that I am establishing the Carey Pension Scheme on an execution only basis."

- A letter dated 13 December 2011 from Carey to Mr H confirming it had received his SIPP application form. It said the establishment date of his scheme was 13 December 2011.

- An email from Carey to Mr C Walker of SAM dated 13 December 2011 acknowledging receipt of the SIPP application.

- A letter from Carey to Mr H dated 16 January 2012 which confirmed the transfer of his pension has been completed and about £54,000 has been received from the transferring scheme.

- A Crown Acquisitions Worldwide Alternative Investment Member Declaration and Indemnity form which Mr H signed on 27 January 2012. He confirmed he wished to invest £52,000 to purchase land through Crown Acquisition Worldwide in the Cayman Islands. The declaration said, amongst other things:

  "I am fully aware that this Is investment is an Alternative Investment and as such is considered High Risk and/or Speculative.

  I confirm that I have read and understood the documentation regarding this investment and confirm that I have taken appropriate advice, including but not limited to financial, tax and investment advice."

  I am fully aware that both Carey Pensions UK LLP and Carey Pension Trustees UK Ltd act on an Execution Only Basis as directed by me as scheme member and confirm that neither Carey Pensions UK LLP nor Carey Pension Trustees UK Ltd have provided any advice whatsoever in respect of this Investment."

- A letter from Carey to Mr H dated 31 January 2012, confirming that the investment of
  £52,000 had been made in Crown.

- A letter from Carey to Mr H dated 1 July 2015. This refers to Mr H's investment –

  "Crown Acquisitions – Plot LDE L27 Little Dolphin Estate Cayman Brae". This describes his investment as: *"a residential building plot with outline planning permission".*

  The letter also sets out:

  "Crown World Ltd have informed us that the infrastructure around your plot has been completed and are now in a position to transfer the Title of your plot of land into the name of your pension scheme, which is the final part of the process. Carey Pensions are seeking quotes from Cayman Island based lawyers to verify that the infrastructure has been finished and to assist us with completions.

So that your pension scheme can own title to your plot, we have been advised by Crown World Ltd that Carey Pension Trustees UK Ltd will need to register as a foreign company in The Cayman Islands and we are currently seeking quotes from Cayman Island based lawyers to provide legal advice and to assist with this matter if necessary.

As previously mentioned, your plot of land has outline planning permission to build a residential property and a suite of architectural drawings for three designs were provided as part of your investment. Please note that owning a residential property within your SIPP will cause your pension fund to own 'taxable property' under HMRC pension rules, therefore, the Purchase and Sale Contract requires the land to be sold before any development proceeds.

To enable your investment to remain outside of this HMRC rule. Crown World Ltd has requested that a Deed of Waiver is signed in relation to your plot, so that you do not have to obtain full planning permission when your pension receives Title to the land. This is a legal document and we are seeking quotes from Cayman Island based lawyers to provide legal advice as to whether this is a necessary process and to ensure your investment will continue to have the outline planning permission should it be recommended that the Deed is signed."

- An *"Agreement of Purchase and Sale"* for *"Lot 27"* dated 16 January 2012 between Crown Acquisitions Worldwide Ltd and Carey. The agreement sets out that Crown Acquisitions Worldwide Ltd is the seller of Lot 27 and Carey is the Buyer. It is set out that Crown Acquisitions Worldwide Ltd is the owner of land in the Cayman Islands known as *"LCW Block 99A Parcel 2"* and that it:

  "has obtained planning permission from the Central Planning Authority of the Cayman Islands to develop the property into a sub-division comprising various residential lots."

  Also that:

  "The Seller has also arranged for the preparation of architectural plans and specifications for the construction of a residential home on the Lot and has further agreed to obtain the necessary approval of those plans and specifications from the Central Planning Authority of the Cayman Islands (the "CPA Approval" also known as HIAB Concept)"

  And:

  "COMPLETION

  3.1 As soon as the Seller is registered with title to the Lot, the Seller will serve on the Buyer a written notice giving the Buyer twenty-one (21) days to complete the purchase of the Lot with the twenty first (21st) day being the "Completion Date""

- A letter dated 9 September 2008 from the *"Planning Department Cayman Islands Government"* to Crown. This set out:

  "Re: Proposed Major Subdivision, CBC Block 99A

  Parcel 2 Dear (individual's name),

At a meeting held on the 9th September 2008 the Board resolved to approve the application subject to the following

1) The road shall be built and paved to PWD and NRA standards,
2) All utility poles shall be erected
3) The surveyor's drawing shall be submitted to the Planning Office for approval prior to registration of the lots"

- A letter dated 23 October 2015 from Carey to Mr H. This set out:

  "Following our letter of 1st July 2015 I am now writing to provide you with further detail of the expected costs for completion of your plot purchase.

  As outlined in the investment brochure, which you received prior to making the investment, there are a number of completion costs attributable to your investment, for example Stamp Duty Land Tax and other costs as there is with any property or land purchase. This letter provides you with more information about those costs and the next steps in the process.

  Appointment of a Cayman Islands Legal Firm

  To assist us in arranging the completion of the purchase of your building plot, we have received quotes from the following two law firms in The Cayman Islands.."

- A letter from Crown Acquisitions Worldwide Ltd to Mr H dated 2 February 2012 which set out:

  "We confirm the receipt of your funds from your SIPP administrator, Carey Pensions on 2nd Feb 2012. In due course Carey's will be sending you a welcome pack further outlining your SIPP investment with us and providing you with details of your new scheme.

  For further information please contact us directly on +44 (0)1704 551333 or email sales@crownworld.com at your earliest convenience. Alternatively please visit our website www.crownworld.com where you will find regular updates on all of our projects and company activity as well as interesting articles about the Cayman Islands and other investment related issues."

What I've provisionally decided – and why

In arriving at a decision that I believe is fair and reasonable in the circumstances, I will take into account relevant law and regulations; regulators' rules; guidance and standards; codes of practice; and what I consider to have been good industry practice at the time. I have considered these matters in light of Carey's further submissions to arrive at a decision that is fair and reasonable in the circumstances.

The Principles

In my view, the FCA's Principles for Businesses are of particular relevance to my decision. The Principles for Businesses, which are set out in the FCA's handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (PRIN 1.1.2G). And, I consider that the Principles relevant to this complaint include Principles 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 have 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 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), 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 FCA Principles and good industry practice at the relevant time. He concluded that 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):

"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 BBA judgment also considers section 228 of Financial Services & Markets Act 2000 ("FSMA") and the approach an ombudsman is to take when deciding a complaint. The

judgment of Jacobs J in the Berkeley Burke case 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 relevant considerations that were required to be taken into account.

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I have taken account of both these judgments when making this decision on Mr H's case.

I note that the Principles for Businesses did not form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight did not consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither of these judgments provide any assistance with the application of the Principles for Businesses, and in particular, they say nothing about how the Principles apply to an ombudsman's consideration of a complaint.

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.

Regulatory publications

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

- The 2009 and 2012 thematic review reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 *"Dear CEO"* letter.

I have set out below what I consider to be the key parts of the publications (although I have considered them in their entirety).

The 2009 Thematic Review Report

The 2009 report 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 customers 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 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.*** (my emphasis)

- *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.** (my emphasis)

- *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 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 October 2013 finalised SIPP operator 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.*** (my emphasis)
- *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 October 2013 finalised SIPP operator 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 been independently produced and verified*
- *good practices we have identified in firms include having a set of 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)*

I acknowledge that the 2009 report (and the 2012 report and the *"Dear CEO"* letter) are not formal guidance (whereas the 2013 finalised guidance is). However, I am of the view the fact that the reports and *"Dear CEO"* letter did not constitute formal (i.e. statutory) guidance does not mean their importance or relevance should be underestimated.

The publications provide a *reminder* that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I am therefore satisfied it is appropriate to take them into account.

I do not think the fact that the later publications (i.e. those other than the 2009 Thematic Review Report), post-date the events that are the subject of this complaint mean that the examples of good industry practice they provide were not good practice at the time of the relevant events. It is clear from the text of the 2009 and 2012 reports, (and the "Dear CEO" letter published in 2014), that the regulator expected SIPP operators to have incorporated the recommended good industry practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' understanding of how the standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

The later publications were published after the events subject to this complaint, but the Principles that underpin them existed throughout, as did the obligation to act in accordance with those Principles. I note that HHJ Dight in the Adams case did not consider the 2012 thematic 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 am 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 Carey's actions with these documents in mind. The reports, 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 Carey to ensure the investment in the Cayman Islands was suitable for Mr H. It is accepted Carey was not required to give advice to Mr H, 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.
I would also add, that even if I took the view that any publications or guidance that post-dated the events subject of this complaint do not help to clarify the type of good industry practice that existed at the relevant time (which I don't), that does not alter my view on what I consider to have been good industry practice at the time. That is because I find that the 2009 report together with the Principles provide a very clear indication of what Carey could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting any introduction from SAM and/or allowing the investment into the SIPP.

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

COBS2.1.1R

I confirm I have taken account of the judgment of the High Court in the case of Adams v Options SIPP [2020] EWHC 1229 (Ch) and the Court of Appeal judgment in Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474.

I am of the view that neither of the judgments say anything about how the Principles apply to an ombudsman's consideration of a complaint. But, to be clear, I do not say this means Adams is not a relevant consideration *at all.* As noted above, I have taken account of both judgments when making this decision on Mr H's case.

I acknowledge that COBS2.1.1R (*A firm must act honestly, fairly and professionally in accordance with the best interests of its client)* was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP 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 SIPP had complied with the best interests rule on the facts of Mr Adams' case.

The Court of Appeal rejected Mr Adams' appeal against 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 that 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 there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr H's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, as HHJ Dight noted, he was not asked to consider the question of due diligence before Options SIPP agreed to accept

the store pods investment into its SIPP. The facts of the case were also different.

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 Options SIPP. 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 Carey was not obliged – and not able – to give advice to Mr H on the suitability of its SIPP or the Store First investment for him personally. But I am satisfied Carey's obligations included deciding whether to accept particular investments into its SIPP and/or whether to accept introductions of business from particular businesses.

I acknowledge Options has applied to the Supreme Court for permission to appeal the Court of Appeal judgment and the outcome of that application is awaited. However, the grounds of appeal are in respect of issues not directly relevant to my determination of this case and therefore it is unnecessary to await either the consideration of the application or, if permission is granted, the Supreme Court judgment. I am satisfied it is appropriate to determine this complaint now.

What did Carey's obligations mean in practice?

In this case, the business Carey 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 and a particular investment is an appropriate one for a SIPP.

I am satisfied that, to meet its regulatory obligations, when conducting its business, Carey was required to consider whether to accept or reject particular referrals of business, with the Principles in mind. It seems Carey had this understanding, given it accepts in its response to the investigator's view that there were regulatory standards it had to meet.

The due diligence carried out by Carey on SAM and the Crown investment and what it should have concluded?

I have considered what a level of due diligence consistent with Carey's regulatory obligations and the standards of good practice at the time ought to have revealed. And what, with those same obligations and standards in mind, Carey ought to have concluded about SAM and the Crown investment. And, when doing this, I have taken into account the evidence I have mentioned above.

As set out above, the 2009 Thematic Review Report deals specifically with the relationships between SIPP operators and introducers or "*intermediaries".* And it gives non exhaustive examples of good practice. In my view, to meet these standards, and its regulatory obligations, set by the Principals, Carey ought to have identified a significant risk of consumer detriment arising from business brought about by a business introducing consumers to Carey which appeared to be specialising in one unusual unregulated

investment, on an execution only (that is, non-advised) basis. And so Carey ought to have ensured it thought very carefully about accepting applications from SAM and, therefore, Mr H.

I think it is fair and reasonable to say such consideration should have involved Carey getting a full understanding of the business model of the introducer, the nature of the investments to be made and putting a clear agreement in place between it and the introducer and ensuring careful thought was given to the risk generally posed to consumers by the introducer.
Carey did gain some information about SAM, as I have detailed earlier in this decision.

SAM indicated to Carey that it would introduce customers on an execution only basis and that most of the introductions would to be to set up SIPPs so that investment could be made in Crown land developments in the Cayman Islands. In my view, if Carey had carried out adequate due diligence on SAM (and, as I will discuss, the investment itself), and drawn reasonable conclusions from this, it ought to have been aware of several points of concern and to have concluded it should not accept this business from it is respect of Mr H.

In Carey's *"Independent financial adviser introducer profile"*, SAM confirmed to Carey that it usually dealt with HNW clients and that investments to be made within the SIPPs would be in Crown developments in the Cayman Islands. It also confirmed that, *"SAM Gibraltar has recently employed a new appointed rep specialising in SIPPS business but all on an execution only basis".*

So, Carey was aware that SAM's intention was to introduce non-advised customers to it so that investment could be made in Crown – an esoteric, unregulated, high risk overseas land development investment. As I referred to earlier, the FSA in 2009 had set out that an example of good practice would be for SIPP providers to be:

"…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."

These were exactly the kind of investments that Carey was told *at the beginning* of its relationship with SAM would be the investments chosen in respect of (an amount yet to be determined) SIPP applications. This should have been identified as anomalous because such investments are high risk and are therefore unlikely to be suitable for the vast majority of retail investors (such investments are only likely to be suitable, if at all, for a very small element of the investment portfolio of a sophisticated investor). In that respect, Carey was aware that Mr H was investing the majority of the sum transferred to its SIPP, into the unregulated investment.

Furthermore, SAM set out to Carey that, *"SAM Gibraltar has recently employed a new appointed rep specialising in SIPPS business but all on an execution only basis".*

The FSA in its 2009 communication also set out that good practice would include:

"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."

Carey knew in advance that all the customers introduced to it by SAM would be transacting on an execution only basis. And indeed Mr H's application was made on that basis, with declarations being submitted and completed indicating that he had not

received financial advice.

Whilst SAM had informed Carey that it usually dealt with HNW clients, there was no indication in the documents submitted by SAM that Mr H was such a client or was a sophisticated or professional investor.

Carey was also aware, or should have been, that SAM did not have any regulatory permissions to advise on pension switches (transfers) or opt outs. SAM confirmed it had no history of providing advice as to pensions.

So Carey was aware that introductions were to be made by a business which had no history transacting SIPPs or giving advice as to pension or pension transfers, was based offshore, and had recently appointed an adviser whose role was to introduce non-advised customers to it so they could invest in a highly speculative, unregulated overseas land development investment.

Beyond SAM's basic business model, based on the evidence I have seen, it would not have been clear to Carey how the individuals introduced to it had arrived at the decision to invest in an esoteric unregulated investment. Based on the information it was given, Carey proceeded on the understanding that all introductions, an amount yet to be determined, would be made on this basis. So it was aware in advance that all the introductions made to it to open SIPPs and transfers of money to those SIPPs, would likely be so that pension funds could be placed in Crown investments.

That SAM's basic business model was introduce non-advised customers in order to set up and transfer pensions to a SIPP, should have given Carey concern. That this was clearly from a new line of business should have added to that concern. And the fact that the intention was for all such customers to invest in unregulated high risk esoteric offshore land investments should have further highlighted that concern. It should have been clear that customers detriment might result from that – something the FSA had highlighted significantly *before* Carey decided to accept this business.

As set out above, Principle 3 sets out that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. So, I think Carey ought to have identified that introductions relating to one unregulated and esoteric investment from SAM was unusual and, given the nature of the investment, involved a high risk of consumer detriment.

Carey has said that no account has been taken of the fact that the introduction derived from a regulated business. SAM was regulated to conduct certain activities in the UK. But it is important to note that this did not include giving advice as to pension transfers or opt outs. SAM confirmed it did not have any advisers qualified to give pension advice and it also confirmed that it had not previously given pension advice or arranged SIPP's. That is likely the reason why its introductions to Carey were on an execution only (i.e. non-advised) basis. Furthermore SAM was based in Gibraltar and was regulated by FSC - because of that it has 'passported' permissions in the UK – as set out above. So I do not believe, given the other evidence I have discussed, that Carey should have drawn any particular comfort or confidence from the fact that SAM had regulated status in the UK when considering the nature of business it was transacting.

So, if Carey was meeting its regulatory obligations, it ought to have had adequate risk management controls in place to have allowed it to conclude very quickly that there was a high probability that the business introduced by SAM carried with it a high risk of significant consumer detriment. I do not think it was fair and reasonable for Carey to accept Mr H's application in such circumstances.

Given the matters I have discussed, I do not believe Carey should have accepted Mr H's introduction from SAM, set up the SIPP or facilitated his pension switch without undertaking further investigation. To do so would be failing in his responsibilities under

the Principles I have discussed.

When arriving at this view I have taken into account the nature of the investment itself and what Carey could have discovered about it, with a reasonable level of due diligence.

The investment

The evidence indicates that Crown Acquisitions Worldwide Ltd had title to undeveloped land in the Cayman Islands – said to be *"LCW Block 99A Parcel 2".* That land was set to be subdivided into smaller parcels and the evidence is that it was one of those parcels, *"Lot 27"*

that was to form Mr H's investment. Crown Acquisitions Worldwide Ltd then entered into an agreement with Carey (on behalf of Mr H) to sell it *"Lot 27"* once it had obtained title to that parcel and planning permission had been approved. Mr H was effectively buying the right (with his SIPP value) to future ownership of a parcel of residential development land.

As discussed, the evidence indicates that Carey was aware in advance of the introduction of Mr H that the investment was likely to be a Crown investment. This service has asked Options what due diligence it undertook as to this investment but we have not received a response. Therefore it is unclear what investigations Carey undertook to satisfy itself that the Crown investment was appropriate for investment within a SIPP.

Mr H's investment was an *interest* in land overseas. He obtained the right to that land *should* Crown obtain various permissions and carry out certain undertakings. The value and future prospects of Mr H's investment would therefore be materially determined by Crown's success or otherwise in obtaining those permissions and carrying out those undertakings. It would then depend on the prospects of there being a market for that land after Mr H's SIPP had obtained title and the planning permission had been obtained.

Carey understood the SIPP was buying land. The member declaration says:

"I [name] being the member of the above scheme instruct Carey Pension Trustees UK Ltd to purchase land through Crown Acquisitions Worldwide in the Cayman Islands, for a consideration of £52,000 on my behalf for the above Scheme.

I confirm I wish my scheme to purchase the land outright

I agree and confirm that the land will be sold prior to any residential development."

Bearing in mind the evidence I have seen, Mr H, nor his SIPP, had actual title to the land in question. Mr H's SIPP also entered into an agreement – and paid a fee – appointing Crown Acquisition to re-sell the land once planning permission had been obtained.

I haven't seen that any UK legal advice was obtained or seen by Carey in respect of the land 'purchase'. I would expect that it would have been reasonable in the circumstances, and the usual course of action, with a land purchase – especially an overseas land purchase of this nature - to obtain such.

This was an unregulated investment and illiquid. There was no ready market for it and its value was uncertain and difficult to assess. As discussed, the future prospects of the investment were dependent on a number of factors and there could be a total loss of value. This was the kind of esoteric high risk investment that was referred to by the FSA in its 2009 report (as referred to earlier). And here it was an investment supplied by a

small company with limited track record.

So Carey sent most of Mr H's pension funds to a small business for a land purchase without actually obtaining title to that land – on the basis that at some point in the future that business would obtain and grant title to that land to Mr H's SIPP – and only then if Crown was successful in obtaining the requisite permissions.

With reference to Mr H's comment in response to the provisional decision, I did take into account the fact that the evidence shows Carey understood Mr H's SIPP was purchasing land 'outright' but also suggests that Mr H's SIPP didn't acquire title to the land in question.

As discussed, I have not seen any evidence that Carey obtained – or required Mr H to obtain - at the time of the transaction any legal advice as to potential legal title, how that title might actually be acquired, when it might be acquired and what steps would be required to obtain it. These are all matters which, acting fairly and reasonably to meet its regulatory obligations, Carey should have explored at the time when carrying out its due diligence on the investment. Mr H's comment highlights this issue – he is now faced with potentially arranging title of some sort to the land at a cost he is not able to meet. These matters should have been taken into account with the other factors I have discussed when considering whether to accept Mr H's SIPP application and the investment itself.

Carey was aware that such investments were to form the majority of introductions from SAM. In my view it should have had concerns that a volume of this type of business would be introduced by SAM and whether consumer detriment would occur. Whilst Carey did not have a duty to assess the suitability of an investment for Mr H it should have been alive to the potential for individuals introduced to it to suffer detriment as a result of placing their pension funds into such an investment. To accept and facilitate the investment without any due diligence being undertaken (there is currently no evidence of such) would not be treating Mr H fairly and Carey should have been aware that Mr H could suffer detriment.

Other matters relevant to the investment

I believe it is also relevant to consider other information which Carey should have been aware of at the time it set up the SIPP and allowed the investment in the Crown investment. Before Carey did so there was published commentary from the FSA about retail customers being promoted unregulated investments, or being advised to invest in such.

In July 2010 the FSA published its findings as to a review it had undertaken into the promotion of Unregulated Collective Investment Schemes (UCIS) by small financial adviser firms, and/or the advice given by such businesses to consumers to invest in such schemes. It had significant concerns. It found that a very high proportion of small businesses had been non-compliant in their promotion of UCIS and, "*The most common reason for this non- compliance was found to be the firms' lack of knowledge and awareness of regulatory requirements for the promotion of UCIS..".* The FSA also had significant concerns about the advice given in relation to such investments. It said that:

"We were disappointed that our project identified only two firms out of our sample of 14 that appeared to adequately understand, and had adequately implemented, the regulatory requirements for UCIS business where we also identified no concerns with the advice that they had given. In contrast, we have identified a wide range of poor practice at the other 12 firms that we reviewed."

One of the material issues the FSA identified in respect of UCIS sales was:

"The firms recommended customers to invest, or transfer, a high proportion of their investment or pension portfolio into UCIS, which resulted in the portfolio's risk tolerance being misbalanced and not matching the customer's overall attitude to risk, as well as not matching the customer's needs and objectives."

In 2011, before Mr H's introduction to Carey, Tom Spender, head of retail enforcement at the FSA, said in relation to findings in respect of the sales of UCIS by a financial business:

"Ucis are rarely suitable for retail investors. Many are characterised by a high degree of volatility, illiquidity or both, and are therefore usually regarded as speculative investment.

Even when they are recommended they are unsuitable for anything more than a small share of a portfolio."

He added:

"We want firms to read the details of this case, along with the findings of our [thematic] review and other recent publications on Ucis and learn from them."

Here the FSA was discussing UCIS promotions and advice provided by small businesses, not SIPP providers. I am not suggesting that Carey had any part in the sale or promotion of an unregulated investment to Mr H, and the evidence is that it played no part in that. I am not suggesting that the FSA's statements are relevant to Carey in that context or it had any responsibilities to Mr H as to the suitability of the Crown investment for him or its promotion. But I do believe the findings of the FSA are relevant background to the environment in which Carey accepted Mr H's application for a SIPP and investment. This was publicly available information about the concerns the regulator had as to the promotion and/or advice given in relation to unregulated investments. Carey should have been aware of it.

I also recognise that the FSA was discussing UCIS. It is unclear whether the Crown investment was an unregulated *collective* investment scheme for the purposes of the applicable legislation. But the findings are clearly analogous to the situation here where an unregulated investment is being arranged by a small business.

In summary

Viewed holistically, Carey should have had concerns with both the nature of the business to be introduced by SAM and the investment itself. When viewing these issues in combination there should have been significant concern that this may not be in the best interest of Mr H, who could have been (and in fact was) a financially unsophisticated investor.

To be clear, I'm not making a finding that Carey should have assessed the *suitability* of the Crown investment for Mr H. I accept Carey had no obligation to give advice to Mr H, or to ensure otherwise the suitability of an investment for him. My finding isn't that Carey should have concluded that Mr H wasn't a candidate for high-risk investment. It's that Carey should have significant concerns about accepting Mr H's application for his SIPP so that an investment could be made in the Cayman Islands and accepting the investment itself bearing in mind the information it should have had and was aware of, and the particular circumstances applying here.

I am satisfied Carey could have identified the concerns I have mentioned, and ought to have drawn the conclusion I have set out, based on what was known at the time. It ought to have identified significant points of concern, and these ought to have led it to conclude

it should not accept the SIPP application and Crown investment. It ought to have known there was a high risk of consumer detriment as to Mr H and it should have had cause for concern that accepting the application from Mr H was unlikely to be in his best interests. I do not believe it fulfilled its responsibilities under the Principles – particularly Principles 2 and 6.
I say this because:

- Carey was aware that SAM did not have any history or background in arranging pensions or giving advice as to pensions.
- Carey was aware that introductions from SAM would *all* be on an execution only basis.
- Carey was aware this was new venture by SAM, derived from its association with one, newly appointed, adviser.
- It was unclear to Carey how the individuals to be introduced to it had made the decision to invest in one particular overseas unregulated and high risk investment.
- SAM was based overseas and regulated in Gibraltar but dealing with UK based customers.
- Carey was aware that all, or the majority, of the introductions to be made were with the intention to invest in unregulated, esoteric and high risk development land in the Cayman Islands, investments that would only usually be suitable for a minority of knowledgeable, sophisticated or professional investors.
- It had no particular information that would lead it to believe or should have led it to believe that Mr H was a knowledgeable, sophisticated or professional investor.
- The customers introduced to it could well be ordinary financially unsophisticated individuals.
- Carey should have been aware of the nature of the investment and that it was based overseas, was speculative, high risk and unregulated. The where the real potential for the total loss of the investment.
- It facilitated the investment aware that the vast majority of Mr H's pension money transferred to it was being invested in one esoteric high risk unregulated overseas investment. Such investment creates foreseeable issues with Mr H's pension - due to the likely issues with liquidity, valuation and the provision of income.
- Carey should have been aware of the general concerns of the regulator about the promotion of unregulated schemes.

Arguably, no one of these factors in isolation should have necessarily given Carey cause for concern. But, based on the available evidence at the time, in combination I think there were sufficient points of concern associated with Mr H's application, which ought to have been apparent, based on what was known by Carey and what it ought to have known had sufficient due diligence been undertaken, to reasonably lead it to conclude there was a significant risk of consumer detriment.

Did Carey act fairly and reasonably in proceeding with Mr H's instructions?

In my view, for the reasons given, Carey simply should have refused to accept Mr H's application. So things should not have got beyond that. Had Carey acted in accordance with its regulatory obligations and best practice, it is fair and reasonable in my view to conclude that it should not have accepted Mr H's application to open a SIPP.

My remit is, of course, to make a decision on what I think is fair and reasonable in all the circumstances. And my view is that it's fair and reasonable to say that just asking Mr H to sign declarations was not an effective way for Carey to meet its regulatory obligations to treat him fairly, given the concerns Carey ought to have had about his introduction and the investment.

Having identified a risk, it is my view that the fair and reasonable thing to do would be to refuse to accept this application from SAM and the investment in Crown– not put in place a process asking customers to sign declarations in an attempt to absolve itself of responsibility. I don't think the declarations Mr H signed meant that Carey could ignore its duty to treat him fairly.

I am also satisfied that, had Carey not accepted Mr H's application to open a SIPP introduced from SAM, the arrangement for Mr H would not have come about in the first place, and the loss he suffered could have been avoided. SAM was clearly reliant on Carey to facilitate things – but for Carey's acceptance of the application, Mr H's application wouldn't have been able to proceed.

Carey might argue that another SIPP operator would have accepted Mr H's application, had it declined it. But I don't think it's fair and reasonable to say that Carey should not compensate Mr H for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found it did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted the application.

Carey has also said that the payment Mr H received as a result of his application for the SIPP and investment was a material reason why he wanted to undertake the transaction and he would have found another way to make the pension investment in Crown. I do not agree. Firstly, as discussed, I don't believe another pension provider would have accepted the application.

But in any event, Mr H has said that the payment to be made to him after the application had been made was described to him as *"cash back"* and a *"goodwill gesture"* and was not being taken from his pension fund. I have not seen any evidence that Mr H should had seen this payment as anything other than a reward payment by the companies involved for

acceptance of his business. At 5% of the investment amount this payment would have likely been around £2500 – that being 5% of the money invested. Whilst not insignificant, I don't believe that is the level of sum that was so attractive to Mr H that he would have sought to make the transfer in any event – especially if it had been declined by a SIPP provider. Mr H has said that he used the cashback to supplement money he used for home improvements and the payment was just something that was due as additional benefit of the transfer – the material reason for the transfer being that he was told his pension benefits would be significant improved.

So I do not believe that the payment was a material factor in Mr H making the investment and switching his pension, or it was the overriding reason why he made his decision to proceed.

For all the reasons I've set out, I'm satisfied that it would not be fair to say Mr H's actions mean he should bear the loss arising as a result of Carey's failings. For the reasons I have set out, I am satisfied that the application should never have been accepted in the first place.

Putting things right

Bearing this in mind and that I have not received any further submissions to my provisional decison, having reviewed the complaint, I would confirm that my decision remains that the complaint should be upheld.

I am satisfied that Carey's failure to comply with its regulatory obligations at the relevant time led to Mr H switching his existing pension to a SIPP when he would not have otherwise have done so. And that led to the investment of the majority of his pension funds in an inappropriate investment. Bearing that in mind, my aim is to return Mr H to the pension position he would now be in but for Carey's failings.

So Options should calculate fair compensation by comparing the current position to the position Mr H would be in if he had not switched from his existing pension to the Carey SIPP.

In considering how to fairly compensate Mr H, I have noted that the current status of his investment is uncertain. The evidence indicates that it is possible that Mr H may now be in a position to have legal title to the land transferred into his name. However Mr H has said that he has been advised that this will cost around £10,000 to £12,000 in legal fees, which he cannot afford. And it is my understanding that he has not undertaken to have the legal title transferred to him. These legal costs are clearly fees that he would not have had to pay had the investment not gone ahead. I have taken this into account when suggesting fair compensation.

In summary, Options should:

1. Calculate the loss Mr H has suffered as a result of making the switch.

2. Take ownership of the Crown investment if possible.

3. Pay compensation for the loss into Mr H's pension. If that is not possible, pay compensation for the loss to Mr H direct. In either case the payment should take into account necessary adjustments set out below.

4. Pay £500 for the trouble and upset caused.

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 H has suffered as a result of making the transfer

To do this, Options should work out the likely value of Mr H's pension as at the date of my final decision, had he left it where it was instead of switching to the SIPP.

Options should ask Mr H's former pension provider to calculate the current notional transfer value had he not switched 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 H has suffered. The Crown

investment should be assumed to have no value. Account should however be taken of the cash back payment paid out to Mr H.

2. Take ownership of the Crown investment

Ideally Options should take ownership of the Crown investment and arrange any necessary measures, including legal work, to do so at its own cost. If Options is unable to take ownership of the Crown investment it should remain in the SIPP. But if Options is unable to take ownership of the Crown investment (and it can't otherwise be removed from the SIPP), it should waive any fees associated with the SIPP, until such a time as the SIPP can be closed. Options would also need to meet the cost of any legal fees Mr H might be compelled to pay to have legal title to the land transferred to him.

Provided Mr H is compensated in full, Options may ask Mr H to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the investment. That undertaking should allow for the effect of any tax and charges on the
amount Mr H may receive from the investment and any eventual sums he would be able to access from the SIPP. Options will need to meet any costs in drawing up the undertaking.

3. Pay compensation to Mr H for loss he has suffered calculated in (1).

Since the loss Mr H 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 H could claim. The notional allowance should be calculated using Mr H's marginal rate of tax.

On the other hand, Mr H may not be able to pay the compensation into a pension. If so compensation for the loss should be paid to Mr H 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 H should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr H's marginal rate of tax in retirement. For example, if Mr H 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 H would have been able to take a tax free lump sum, the notional allowance should be applied to 75% of the total amount.

4. Pay £500 for the trouble and upset caused.

Mr H has been caused some distress and inconvenience by the loss of a significant part of his pension benefits and the fact that he has not been able to access those benefits. I consider that a payment of £500 is appropriate to compensate for that upset.

The compensation must be paid as set out above within 28 days of the date Options receives notification of Mr H'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

I uphold the complaint and order that Options UK Personal Pensions LLP calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 February 2022.
David Bird
Ombudsman