DRN-3284928

The complaint

Mr F complains about Options UK Personal Pensions LLP, (and trading as Carey Pensions UK LLP [Carey] at the time of the relevant events) accepting an application for a Self-Invested Personal Pension (SIPP), and an investment in Store First, from an unregulated business called Commercial Land and Property Brokers (CL&P). For simplicity, I have referred to Options UK Personal Pensions LLP as 'Carey' throughout this decision. Mr F's representative says that Carey showed no consideration for FSA Principles of business and did not treat him fairly. Mr F's representative says Carey had a duty to carry out due diligence on CL&P before accepting business from it and, had it done so, it ought to have been aware of various reasons not to deal with CL&P. It also says the Store First investment was unregulated, high risk, highly speculative and unsuitable for Mr F.

What happened

We issued a final decision on another complaint involving Carey's acceptance of a SIPP application and Store First investment application from CL&P in February 2021. That final decision has been published on our website under DRN5472159. I have reached my decision in this case independently. The published decision however sets out the general detail of Carey's relationship with, and due diligence on, CL&P and the general detail of Store First and Carey's due diligence on that investment, across pages 2 to 11 (up to "Mr S's dealings with CL&P and Carey"). So I will rely on that detail set out in the published decision here, rather than repeat it – I will only include the key factual background of this particular complaint here.

Mr F's dealings with CL&P and Carey

Mr F says he first came into contact with CL&P when it 'cold-called' him. Mr F says he was advised by CL&P to invest in Store First after first transferring his pension from an existing occupational pension scheme to a SIPP with Carey.

Before being contacted by CL&P, Mr F had an existing occupational pension scheme. Following the contact by CL&P the cash value of this pension was transferred into a SIPP with Carey, and invested in Store First. The key events which took place during Mr F's dealings with Carey were as follows:

- Mr F signs a Carey SIPP application form – 23 January 2012.
- Carey sends its welcome letter, confirming the establishment date of the SIPP – 27 January 2012.
- Mr F's occupational pension administrators confirm about £108,000 will be transferred to Carey, *"in the next few days".*
- Mr F signs Carey's member declaration and indemnity in respect of Storefirst (referred to as 'the indemnity' in the published decision, using the wording quoted in full there) – 18 December 2012.
- Carey sends cash from Mr F's SIPP to Store First (about £103,000) – 2 January 2013.

Mr F has confirmed he was paid £6,000 'cashback' by CL&P, after the Store First investment was made.

CL&P and Carey

The below is a chronological summary (set out in greater detail in the published decision) of the key events during the relationship between CL&P and Carey.

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

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

27 September 2011 - Carey asked CL&P to complete a non-regulated introducer profile.

29 September 2011 - The non-regulated introducer profile was completed by CL&P. It was completed and signed by Terence Wright.

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

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

13 March 2012 - Carey's Head of Service and Operation, said in an email to CL&P:

"On another matter, we need our Terms of Business for Non Regulated introducers in place between our two companies. So that our records are all straight from a Compliance aspect I attach the Terms of Business and have entered a commencement date of 15 August 2011 which is the date of your first case with us and would be grateful if you could agree and complete the terms and return."

The agreement was signed by CL&P on 20 March 2012. It was signed by Ms

Adams. 23 March 2012 - Carey's compliance support said in an email to CL&P:

"*To comply with our in house compliance procedures could you please supply the following information relating to CLP Brokers:*

A copy of the latest set of accounts

A certified copy passport for each of the main directors/principals/partners of the company"

29 March 2012 - a Team Leader at Carey sent an email to Ms Hallett, Carey's Chief Executive, with the subject – "*03-29-2012 - Storefirst Investment Query re Cash Back* [reference removed]". That email forwarded an email sent by the Team Leader to a consumer, which included the following:

"*you mentioned in our conversation a cash back amount you are expecting in the sum of £1,800 from CL&P following completion of the Storefirst investment*"

And the text addressed to Ms Hallett by the Team Leader said, "*this is the second member this week to ask when are they getting their money*".

3 April 2012 - Carey's compliance support followed up on its 23 March 2012 email:

"*It is now becoming urgent that we receive the outstanding documentation. You very kindly passed this on to your colleague and I would be very grateful if we could receive the documentation as a matter of urgency Thank you in anticipation of your assistance*."

When asked, Carey said it has no record of receiving the information from CL&P.

15 May 2012 - Carey conducted a World Check on Terence Wright. The report highlighted that he appeared on the FSA list of unauthorised firms and individuals.

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

"*Despite your assurances that no clients have been or will be offered inducements (monetary or otherwise) for making investments through their SIPPs with us, we have received enquiries as to when client can expect to receive their money and have today been informed by a new client that they are expecting circa £2,000 on completion of the Storefirst investment purchase, which they confirmed was offered by a member of your staff.*

We have advised this client that we will not proceed with this case.

In light of this, it is with regret that I have to notify you that we are terminating our Introducer Agreement with you, with immediate effect, and can no longer accept business from you."

In reply to this email CL&P asked, *"Regarding business which you have already accepted from us, will you still be processing this as the client's SIPPs have already been established?"*

28 May 2012 - Carey's Ms Hallett sent the following reply to CL&P:

"*We will process them where we have already established the schemes, we will be writing to all clients informing them if they have received any monies then they must declare this to HMRC and their fund would also be vulnerable to a tax charge as well.*

HMRC have already asked a number of SIPP providers for lists of clients who are investing in alternatives, they will I am sure be doing some random checks and will charge people for unauthorised transactions if they have received cash sums for transferring their pension and making investments.

I would urge you and your agents to review your position if you are continuing this as part of your sales process, ultimately no SIPP providers will be taking the business, it is not allowable as we have explained to you previously."

Submissions made by Mr F

We asked Mr F for some further detail of his recollections. We asked the following questions, and received the replies quoted in italics:

- Were you interested in changing your pension at the time of being contacted by CL&P? Why? What attracted you to CL&P? What attracted you to the Store Pod investment?

  "No I was not looking to change my pension as I did not realise this was something you could do. CL&P offered an immediate cash bonus for swapping pensions into a SIPP with Careys. They recommended Store Pod Investment as a good alternative to my current pension arrangements."

- What role did you think CL&P had in this transaction?

"They raised the necessary documentation and liaised with the SIPP provider to arrange the transfer."

- Did CL&P recommend any products to you? Can you recall what it said to you?

  "They recommended Store Pod Investment and said that this would also generate an instant cash bonus."

- What was your understanding of the payment CL&P was offering? What did you think of this?

  "I thought it was a marketing initiative to encourage people to invest in Store Pod Investment."

- If you had been aware that this payment might have tax consequences, what would you have done?

  "No I was not aware and would not of (sic) *agreed to transferring my pension arrangements."*

- If Carey had told you that Mr Terence Wright, a director of CL&P, was the subject of an FSA alert, what would you have done?

  "I would not have transferred my pension to Carey's SIPP."

- Carey ended its relationship with CL&P in May 2012. If you had been made aware of this what would you have done?

  "I would not have transferred my pension to Carey's SIPP."

- What is your understanding of how the Store First investment works?

  "I thought that I purchased POD's and funds were generated by the rental income."

- Did you understand the risks associated with a high risk, speculative investment? What are they in your own words?

  "No and I did not realise that this was a high risk speculative investment."

- What was your understanding of the risks associated with the Store First investment? Please explain your answer fully.

  "I was not aware that there were any risks with the Store First Investment."

- What did you think Carey's role was at the time?

  "The financial institution that would ensure the SIPP was being looked after for when I would wanted to retire and receive pension payments."

- Your SIPP was set up in 2012 and your investment in Store First was made sometime later in January 2013. Were you aware that you were still free to choose whether or not to invest in Store First after the SIPP had been set up?

  "No I was not."

- I understand that you signed a Members Declaration & Indemnity (the indemnity) which included the following statement *"I am fully aware that this investment is an Alternative Investment and as such is High Risk and / or Speculative".* Did you read the indemnity before signing it? What does this indemnity mean to you in your own words?

  "I do not recall reading this. If I saw this I would think that it was a statement that would be required in any transfer of financial arrangements."

Submissions made by Carey

The submissions made by Carey in this complaint are essentially the same as those summarised in the published decision.

The summary in the published decision also includes general submissions about Carey's relationship with CL&P. So I will rely here on the summary given in the published decision under "*Carey's submissions*" rather than repeat the detail.

The investigator's view

- The FCA's Principles for Businesses and the regulatory publications which remind SIPP operators of their obligations and set out how they might achieve the outcomes envisaged by the Principles were relevant considerations here.

- Carey carried out significant due diligence, but it took a piecemeal approach, and in the meantime accepted business from CL&P. Had it carried out all its due diligence at the outset, it ought to have concluded it should not accept business from CL&P at all.

- Carey should have conducted background checks on the directors of CL&P at the outset, rather than on two members of CL&P's staff. Had Carey checked the directors at the outset it would have discovered that Terence Wright was subject to a warning on the FSA's website.

- Carey's concerns were such that it actually stopped doing business with CL&P once it became aware of the warnings and incentives issue. Had it completed the relevant checks before accepting business from CL&P it ought to have concluded that it shouldn't enter into a relationship with it.

- It is not clear why Carey did not ask for accounts and identification documents at the outset, but only did this after the relationship had been ongoing for a number of months. The fact that CL&P failed to provide this information, despite reminders, was cause for concern. Had Carey asked at the outset and CL&P had failed to provide them, it should not have entered into a relationship with CL&P.

- The wording of the FSA warning about Terence Wright changed sometime between 2010 and 2013. However, the aim of the warning was clearly to highlight that this was an individual who parties ought to be wary of conducting business with, and that Terence Wright was *"targeting"* UK customers.

- Carey accepted Mr F's referral in January 2012 but it wasn't until March 2012

that Carey asked CL&P to complete a non-regulator introducer agreement. Carey should

have been concerned that this introducer agreement hadn't been signed by the Directors of CL&P.

- Carey was concerned CL&P was offering 'cash back' incentives to consumers in December 2011. But it accepted Mr F's referral in January 2012. Carey had been aware that incentives were being offered by CL&P before it passed Mr F's money for investment. This ought to have raised serious questions about the conduct of CL&P and the quality of the business it was bringing about. If CL&P was offering consumer's incentives that called into question its integrity.

- It was very concerning that by the time of Mr F's investment in Store First (2013), Carey had terminated its relationship with CL&P. It didn't warn Mr F of this but went ahead with the transfer of cash to Store First.

- Carey put some reliance on the indemnity signed by Mr F. But it should not have accepted his application at all, so should not have required him to sign any documents. And asking Mr F to sign the indemnity did not mean it was fair and reasonable to proceed with Mr F's investment instructions.

Carey's response to the investigator's view

- In assessing the complaint, we must take into account the overarching context of the relationship that Carey has with its customers, including Mr F, being one of a self- invested personal pension scheme in which Carey acts on a strictly execution only/non-advised basis and is member-directed throughout. Carey is not permitted to, and does not, provide advice or otherwise comment on the suitability of investments or any other aspect of a customer's SIPP. Carey expressly states that all customers should seek independent financial advice from an adviser who is regulated by the Financial Conduct Authority.

- The fundamental consideration that underpins the view is the contention that had Carey identified that Mr Terence Wright was on the FSA's warning list and informed Mr F of this, then it should not have accepted business from CL&P, or Mr F would not have proceeded with the investment.

- There is a material difference between a warning detailing that you should not deal with a particular individual and a notice informing you that an individual is not a regulated individual and that the ombudsman service and FSCS would not be available to you if you chose to deal with such individual. The wording in the FCA's notice published on 15 October 2010, which was available to Carey at the time it undertook its due diligence on CL&P, does not include any such warning stating that Terence (Terry) Wright is an individual to avoid or be wary of; the Notice amounts simply to a notification that Mr Wright is not authorised to carry on regulated activities, a fact of which Carey was well aware and upon which basis it accepted referrals from CL&P. Carey reasonably considered at all times that CL&P was an unregulated introducer which was not providing advice.

- There is nothing in the notice published on 15 October 2010 to indicate that Terence (Terry) Wright is an individual to avoid as such, it is not fair or reasonable to state that on the basis of a notice that simply informs that

Terence (Terry) Wright is not regulated by the FCA, that Carey should not have accepted this business.

- The fact that the FCA updated their notice in 2013 to a clear warning including an express comment that Mr Wright was an individual to avoid, a warning that would

  have put Carey on notice to stop accepting business from Mr Wright, is irrelevant in this case because Carey had already severed its Terms of Business some 18 months before the warning in 2013 regarding Mr Wright was published.

- The fact that the FSA later made express comment as to Mr Wright's conduct, but did not make any comment of a similar nature in the earlier wording plainly indicates that at the time that Carey accepted business from CL&P, the FSA did not believe
  Mr Wright to have been providing financial services or products without authorisation at that time, nor consider it necessary to express any concerns in this regard.

- If the FSA did not consider there to be any cause for concern at the relevant time and there was no way through reasonable due diligence checks for Carey to establish any cause for concern, then plainly it is not fair or reasonable to have expected Carey to have rejected business from CL&P on this basis.

- COBS 11.2.19R, which deals with execution only business and was in force at the relevant time, stated as follows:

  "Whenever there is a specific instruction from the client, the firm must execute the order following the specific instruction.

  A firm satisfies its obligation under this section to take all reasonable steps to obtain the best possible result for a client to the extent that it executes an order, or a specific aspect of an order, following specific instructions from the client relating to the order or the specific aspect of the order."

  The significance of this rule to an execution only business, such as Carey, cannot be overstated. Carey would have been in breach of COBS if it had not executed Mr F's specific instructions to make the investment.

- Carey carried out due diligence on CL&P and Store First and acted in accordance with FCA Principles. It provided Mr F with Member Declarations which reaffirmed his investment instructions and provided him with risk warnings about his chosen investment to enable him to make an informed decision on whether to proceed. It was Mr F's decision to proceed on an execution only basis and it made this clear to him. Mr F confirmed that he had read and understood all the documentation he had been given, and this should be taken into account.

After Carey rejected the investigator's view, it was advised that the complaint would now be reviewed by an ombudsman. Carey then provided a further submission. It said it couldn't provide a full response because in its view the investigator had not addressed its points adequately. This was particularly in respect of COBS 11.2.19, the FCA's Notice on Terence Wright, FSA guidance on the duties of SIPP operators and that Mr F was not

being held responsible for any of the loss he had suffered.

After the published decision was issued, Carey was asked to take it into consideration, as an important representative decision, in accordance with the relevant Financial Conduct Authority (FCA) DISP Rules and Guidance (particularly DISP 1.4.1, 1.4.2 and 1.3.2A), which should be taken into account when assessing other similar complaints.

On this basis, Carey was asked to review outstanding complaints involving CL&P and Store First – including Mr F's - and if it was not prepared to make a settlement offer taking account of the detailed reasons set out in the published decision, to explain why it was distinguishing

it from the published decision. Carey declined to carry out this review at this time. Mr F's complaint was therefore passed to me for review.

After considering Mr F's complaint, I issued a provisional decision on 7 December 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

Carey. Mr F's representative accepted the provisional

decision.

As I revisit my provisional findings below I will not include a summary of them here.

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.

In considering what is fair and reasonable in all the circumstances of this complaint, I have taken into account relevant law and regulations; regulators rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

Having reconsidered matters, I remain of the view set out in my provisional decision. So, as I have no further submissions to consider, I have repeated below the findings set out in my provisional decision.

Although there are some factual differences between this complaint and the one which was subject to the published decision, I am satisfied the outcome detailed in the published decision is the fair and reasonable one to reach in this case, for the reasons set out in the published decision.

In my view the relevant considerations in this complaint set out in the published decision apply here – so I will refer to the published decision rather than repeat those considerations here.

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 F'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 F'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 F 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 a particular investment into its SIPP and/or whether to accept introductions of business from particular businesses. As the published decision sets out, this is consistent with Carey's own understanding of its obligations at the relevant time.

I acknowledge Carey 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.

Having carefully considered the relevant considerations I am satisfied that, in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, Carey should have carried out due diligence on CL&P to the sort of standard which was consistent with good industry practice and its regulatory obligations at the time *and* carried out due diligence on the Store First investment which was consistent with good industry practice and its regulatory obligations at the time. And Carey should have used the knowledge it gained from that due diligence to decide whether to accept or reject a referral of business or a particular investment.

I am also satisfied that, as in the complaint subject to the published decision, the contract between Carey and Mr F does not mean that Carey should not be held responsible for failing to comply with its regulatory obligations to carry out adequate due diligence on CL&P and the Store First investment which ultimately led to Mr F losing a significant part of his pension.

In this complaint, like the complaint subject to the published decision, Carey had obtained information many months before it facilitated Mr F's investment which led it to reject any further referrals from CL&P and had concerns about the Store First investment before it facilitated Mr F's investment. So in this complaint, like the complaint subject to the published decision, it would not be fair and reasonable to say the contract meant Carey could ignore all red flags and proceed with Mr F's business regardless.

In my view, like the complaint subject to the published decision, had Carey done what it ought to have done here, and drawn reasonable conclusions from what it knew or ought to have known, it should not have accepted either the application for Mr F's SIPP from CL&P or the Store First investment.

Due diligence on CL&P

The published decision sets out what information Carey was privy to – or ought to have been privy to, had it carried out sufficient due diligence on CL&P.

Mr F's application was accepted on 27 January 2012. As the published decision sets out, it is fair and reasonable to say by that time Carey ought to have known that CL&P's director was Mr Terence Wright, and that he was on the FSA's "*Firms and individuals to avoid*" list, which was described on the website as "*a warning list of some unauthorised firms and individuals that we believe you should not deal with*".

Carey's Chief Executive, Ms Hallett, gave evidence to the court during the *Adams v Carey* hearing (at Paragraph 60) which HHJ Dight summarised as follows:

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

The money was sent to Store First in 2013. As the published decision sets out, it is fair and reasonable to say by that time Carey knew, or ought to have known:

- That what CL&P had told it in December 2011 about cash incentives not being offered was not correct. So CL&P was acting in a way which was, to use its own words, "*completely against all rules*". And CL&P was acting without integrity as it had not told it the truth when asked about cash incentives.

- Multiple requests had been made for copies of CL&P's accounts, but CL&P was unwilling to provide this information.

In addition, by the time Carey transferred Mr F's cash to Store First, its concerns about CL&P's operation were such that it had terminated its relationship with it. But it

did not advise Mr F of this.

So for the same reasons set out in the published decision, it is my finding that if Carey had carried out sufficient due diligence on CL&P or acted on the information it subsequently received in a timely manner, it should not have accepted Mr F's application from CL&P – or, at the very least, not continued to process it.

Investment due diligence

The published decision sets out what information Carey was privy to – or ought to have been privy to, had it carried out sufficient due diligence on Store First.

As the published decision sets out, at the time Mr F's application was accepted Carey knew or ought to have known:

- There were factors in the report Carey obtained on Harley Scott Holdings Ltd (the promoter of Store First) which ought to have been of concern – namely the adverse comments for the previous three years, the CCJ's, and the fact the business had recently changed its name.

- Dylan Harvey (one of three previous names of Harley Scott Holdings Ltd, which at the time had the web address dylanharvey.com) and one of its directors, Toby Whittaker, were the subject of a number of national press reports, online petitions and proposed legal action, as a result of a failed property investment.

- Harley Scott Holdings Ltd had recently been involved in a property investment scheme which had failed. It had also recently changed its name, and had been subject to a number of adverse comments in succession, following audit.

- Store First's marketing material set out high fixed returns, and said these were guaranteed. The material did not contain any type of risk warning, or illustrations of any other returns. No explanation of the guarantees was offered, or the basis of the projected returns – other than Store First's own confidence in its business model and the self-storage marketplace.

- The conclusion of the Enhanced Support Solutions report Carey had obtained was inconsistent with the result of Carey's own company searches. The report also makes no comment on the obvious issues with the marketing material.

- The marketing material showed there was a significant risk that potential investors were being misled.

- Store First appeared to be presenting the investment as one that was assured to provide high and rising returns, was underwritten by guarantees, and offered a high level of liquidity together with a strong prospect of a capital return - despite the fact that there was no investor protection associated with the investment and that, in Carey's own words, "*there is no apparent established market"* for the investment and *"the investment is potentially illiquid"*

- Store First had no proven track record for investors and so Carey couldn't be

certain that the investment operated as claimed.

- Consumers may have been misled or did not properly understand the investment they intended to make.

And, by the time the money was sent to Store First, as the published decision sets out, Carey knew, or ought to have known:

- Store First was paying commission of 12% to CL&P. Payment of such a high level of commission to an unregulated business was very serious cause for concern, given how the investment was being marketed. How Store First was funding such levels of commission alongside guaranteed income payments and guaranteed buy backs called the nature of the Store First investment into serious question.

- There were issues with Store First which were of sufficient concern for it to suspend acceptance of the investment.

On the latter point, Carey suspended acceptance of new investments in Store First in August 2012. It has not confirmed the date at which this suspension was placed. But it has provided details of an internal meeting, which took place on 15 August 2012, at which concerns about Store First were discussed. And it has provided a copy of an internal email dated 17 August 2012 which says new investments in Store First had been suspended. So it seems likely the decision to suspend new investments in Store First was taken during or shortly after the 15 August 2012 meeting. Mr F's investment therefore post-date's that decision.

It therefore seems clear from the available evidence that by the date on which Carey sent cash from Mr F's SIPP to Store First, Carey had the concerns that led to the suspension of the acceptance of new investments in Store First and had taken the step of suspending such investments. Carey has not said why it allowed Mr F's investment to proceed. Even ignoring that, as set out in the published decision Carey had concerns that related to, "*Rental Income Process/Delays*", "*Sale Process/Delays*", a tax investigation and that *"the marketing material provided for …. a guaranteed rental income"* but "*only a small proportion of Store First investors were receiving the rental income as expected".*

As in the complaint subject to the published decision, I think all of the points listed above should have been considered alongside the fact the investment was being sold by an unregulated business, which was clearly targeting pension investors. I think it is fair and reasonable to find that Carey ought to have concluded there was an obvious risk of consumer detriment here.

So, given the circumstances at the time of Mr F's application, I think the fair and reasonable conclusion, based on what Carey knew or ought to have known at the time, is that Carey should not have accepted Mr F's application to invest in Store First. In my opinion, it ought to have concluded that it would not be consistent with its regulatory obligations, or best practice, to do so.

Was it fair and reasonable in all the circumstances for Carey to proceed with Mr F's instructions?

My view on this point, in relation to this complaint, is largely the same as the view set out in the published decision. The key points here are:

- It was not fair and reasonable for Carey to have accepted Mr F's application

from CL&P in the first place. So, Mr F's SIPP should not have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity should not have arisen at all.

- The Principles exist to ensure regulated firms treat their clients fairly. I consider there is a significant imbalance of knowledge between the parties which creates unfairness in the circumstances of this case. At the time of receiving Mr F's application and executing his investment instructions, Carey knew things that Mr F did not.

- Carey was required by its regulatory obligations to ensure that it treated its customers fairly. In the circumstances, I am satisfied that this would have required Carey to either have stopped Mr F from proceeding any further with the Store First investment, or as a minimum, to have explained the situation to Mr F as soon as possible and let him have the opportunity of making an informed decision whether or not to proceed.

- If it had done the latter, I am satisfied that Mr F would not have proceeded with the investment in Store First. And he would therefore not have lost his entire pension fund.

- Mr F has told us that had he been made aware that Carey had ended its relationship with CL&P, he would not have proceeded with the transfer. I do think it unlikely in this situation that Mr F would continue to have confidence dealing with CL&P.

- Mr F has told us he was not aware there was any risk with the Store First investment. And thought the indemnity was something that was *"required in any transfer of financial arrangements".* So, when he signed the indemnity, I am not persuaded that he did so with a full understanding of what high risk meant. Instead he was assured by what he had been told by CL&P.

- I do not think the cash incentive was a factor of significant influence. Mr F describes this as a *"marketing initiative"* or *"cash bonus"* that derived from the transfer. Rather it seems it was the prospect of assured returns which was the main motivating factor for Mr F.

Is it fair to ask Carey to compensate Mr F?

My view on this point, in relation to this complaint, is also largely the same as the view set out in the published decision. The key points here are:

- I do not consider the fact that Mr F signed the indemnity means that he shouldn't be compensated if it is fair to do so.

- Had Carey acted in accordance with its regulatory obligations and best practice, it should not have accepted Mr F's application to open a SIPP introduced from CL&P. That should have been the end of the matter – it should have told Mr F that it could not accept the business. So if that had happened, the arrangement for Mr F would not have come about in the first place, and the loss he suffered could have been avoided.

- Had Carey explained to Mr F why it would not accept the application from CL&P or was terminating the transaction, I find it very unlikely that Mr F

would have tried to find another SIPP operator to accept the business.

- In any event, I don't think it's fair and reasonable to say that Carey should not compensate Mr F 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 from CL&P, or would have terminated the transaction before completion.

- I'm satisfied that it would not be fair to say Mr F's actions mean he should bear the loss arising as a result of Carey's failings. I acknowledge Mr F was warned of the high-risk nature of Store First and declared he understood that warning. But Carey failed to act on, nor did it share, significant warning signs with Mr F so that he could make an informed decision about whether to proceed with the investment. And, in these circumstances, I am satisfied that Carey should not have asked him to sign the indemnity at all.

With all this in mind, I'm of the opinion that it is fair and reasonable in all the circumstances of this case to find that Carey is unable to rely on the indemnity that Mr F signed in order to avoid liability for the regulatory failings it has made in this case. So I am satisfied that it is fair and reasonable to conclude that Carey should compensate Mr F for the loss he has suffered to his pension.

Putting things right

Bearing in mind and that I have not received any further submissions since the issue of my provisional decision, 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 and industry best practice at the relevant time has led to Mr F suffering a significant loss to his pension. And my aim is therefore to return Mr F to the pension position he would now be in but for Carey's failings. When considering this I have taken into account the Court of Appeal's supplementary judgement ([2021] EWCA Civ 1188), insofar as that judgement deals with restitution/compensation.

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

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

2. Take ownership of the Store First investment if possible.

3. Pay compensation for the loss into Mr F's pension. If that is not possible pay compensation for the loss to Mr F 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 Carey should carry out the calculation set out at 1-3 above in further detail below:

1 Calculate the loss Mr F has suffered as a result of making the transfer

To do this, Carey should work out the likely value of Mr F's pension as at the date of this decision, had he left it where it was instead of transferring to the SIPP.

Carey should ask Mr F's former pension provider(s) to calculate the current notional transfer values had he not transferred his pension. If there are any difficulties in obtaining a notional valuation then the FTSE UK Private Investors Income Total Return index should be used to calculate the value. That is likely to be a reasonable proxy for the type of return that could have been achieved if suitable funds had been chosen.

The notional transfer value should be compared to the transfer value of the SIPP at the date of this decision and this will show the loss Mr F has suffered. The Store First investment should be assumed to have no value. Account should however be taken of the cash back payment paid out to Mr F. This can be taken into account in the calculation on the basis of it having been paid at the outset i.e. the same approach can be taken as was taken by the Court of Appeal in its supplementary judgement.

2 Take ownership of the Store First investment

I note that the Court of Appeal attached a value to the Store First investment. However, here, I am able to ask Carey to take ownership of the investment. And I understand Carey has been able to take ownership of the Store First investment, for a nil consideration, in other cases. So it should do that here, if possible. I am satisfied that is a fair approach in the circumstances of this case, as it allows the SIPP to close and gives Carey the option of retaining the investment or realising its current market value.

If Carey is unable to take ownership of the Store First investment it should remain in the SIPP. I think that is fair because I think it is unlikely it will have any significant realisable value in the future. I understand Mr F has the option of returning his Store First investment to the freeholder for nil consideration. That should enable him to close his SIPP, if Carey does not take ownership of the Store First investment.

In the event the Store First investment remains in the SIPP and Mr F decides not to transfer it to the freeholder he should be aware that he will be liable for all future costs associated with the investment such as the ongoing SIPP fees, business rates, ground rent and any other charges. He should also be aware it is unlikely he will be able to make a further complaint about these costs.

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

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

On the other hand, Mr F may not be able to pay the compensation into a pension. If so compensation for the loss should be paid to Mr F 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 F should be reduced to notionally allow for any

income tax that would otherwise have been paid. The notional allowance should be calculated using Mr F's marginal rate of tax in retirement. For example, if Mr F 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 F 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 F has been caused some distress and inconvenience by the loss of his pension benefits. This is money Mr F cannot afford to lose and its loss has undoubtedly caused him upset. I note the Court of Appeal did not find compensation should be paid for non-financial loss. But my role here is to determine what, in my view, is fair compensation in the particular circumstances of this case. And I consider that a payment of £500 is fair to compensate for the upset Mr F has suffered.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £150,000, plus any interest that I think is appropriate. If I think that fair compensation is more than £150,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out above. My decision is that Options UK Personal Pensions LLP should pay Mr F the amount produced by that calculation – up to a maximum of £150,000.

The compensation must be paid as set out above within 28 days of the date Options UK Personal Pensions LLP receives notification of Mr F'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.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I recommend that Options UK Personal Pensions LLP pays Mr F the balance.

This recommendation is not part of my determination or award. Options UK Personal Pensions LLP doesn't have to do what I recommend. It's unlikely that Mr F can accept my decision and go to court to ask for the balance. Mr F may want to get independent legal advice before deciding whether to accept this decision.

My final decision

I uphold Mr F's 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 F to accept or reject my decision before 28 February 2022.

David Bird
Ombudsman