DRN-3311423

The complaint

Mr W complains that Options UK Personal Pensions LLP ("Options" - formerly Carey Pensions) accepted his investment into a self-invested personal pension (SIPP) when, he says, it shouldn't have accepted business from the business who introduced him to Options; Caledonian International Associates (Caledonian). Mr W transferred his Armed Forces Pension into the Options SIPP in 2012. He says his pension is "*worth less than when invested* [and] *the future retirement looks bleak*".

Mr W wants to be put back in the position he would have been in if he hadn't transferred out of the Armed Forces Pension Scheme.

What happened

Mr W has explained that he and other work colleagues were approached by a representative of Caledonian whilst working abroad in July 2012. He says he met with the Caledonian rep (first at his place of work and then in a local coffee shop) and they recommended that he transfer his Armed Forces Pension into an Options SIPP and invest in a Friends Provident International (FPI) bond "*on the basis that it would outperform the benefits with the Armed Forces*". He told us:

> "*I wasn't particularly interested in transferring out of the* [Armed Forces Pension scheme] *at the time and only did it because the Caledonian Rep told me that the pension was frozen in the UK whereas it would grow if I moved it to Carey … There was no discussion on the risk with FPI and no one explained about the guaranteed, index linked benefits I was giving up by transferring …*"

On 9 July 2012 an Armed Forces Pension Scheme Analysis was prepared by Caledonian for Mr W. This document set out two options – transfer to a SIPP or a qualifying recognised overseas pension scheme (QROPS) – and compared six areas of difference between 'Transfer to SIPP / QROPS' and 'Armed Forces Pension Scheme'. The six areas were retirement age, death benefit, investment control, income tax, currency of denomination and guaranteed income. Both transfer options used investment with FPI for the illustration. The front page of the document included the following wording:

> "*This is intended solely as a general overview and should be in no way considered advice …It is always important that clients seek individual tax and financial advice specific to their circumstances*."

The Options SIPP "Application Form For Direct Clients" was signed by Mr W on 11 July 2012 and sent to Options by Caledonian on 26 July. Caledonian included a checklist of documents or enclosures. The following items were ticked: Carey Application, [Pension Transfer Department] Letter, PTV, Carey Instruction Letter, LOA for Caledonian, Transfer Letter, Signed Fee Structure, Passport, Utility/Bank Statement/Driving Licence, Advice, Trust Document. The following items were marked 'N/A': Castlestone Disclaimer, FP Illustration, TVA.

In summary, on the application form Mr W confirmed his UK address, age, occupation,

annual earnings and selected retirement age (55). He also confirmed that the transferring pension scheme was the Armed Forces Pensions Scheme (a defined benefits scheme), gave an approximate pension value of £18,000, detailed that he'd be investing 100% of his fund with FPI and nominated his death benefit beneficiary.

The selected retirement age, details of transferring scheme and details of the investment were pre-populated, rather than handwritten like the rest of the form. And the box waiving cancellation rights was ticked.

The final page of the application form – headed '12. Declaration' included the following:

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

The application form was accompanied by a separate page-long indemnity with a table at the start which detailed the Member Name, Address, Occupational Scheme name, Occupational Scheme type and Adviser. This was signed by both Mr W and the Caledonian rep. The Caledonian rep was named as "Adviser" and the rep's signature was made in the space for "Adviser Name" in the signature box. The declaration included, amongst other statements, the following:

> "*I confirm that I have received full and appropriate advice from Caledonian International and following this advice I wish to proceed with the transfer*."

The declaration concluded with the statement:

> "*I fully indemnify both Carey Pensions UK LLP and Carey Pension Trustees Ltd at all times against any and all liability arising from this transaction*."

A Fee Schedule detailing an annual administration fee of £300 payable to Options, and that Caledonian would be paid £500 by Options from the SIPP scheme funds, was also signed by Mr W.

Mr W's SIPP was established on 27 July 2012 and Options sent him the SIPP Terms and Conditions, Key Facts document and Right to Withdraw notice.

In September 2012 the Armed Forces Pension Scheme confirmed the value of his accrued pension rights – £20,357 – and the transfer. A sum of £18,927 was then invested with FPI in October 2012.

Mr W has shown us a valuation report that he received in early 2018 – this gave his FPI portfolio a value of £21,266. Around this time, he consulted an Independent Financial Adviser (IFA) who made him aware of the risk of transferring away from the Armed Forces Scheme and recommended he complain.

Mr W's complaint

In October 2018 Mr W complained to Options, via his representative, about the role Options had played in the transfer of his pension and subsequent investments. He was unhappy that the growth of his investment was "*well below expectations*". He complained that he'd been "*inappropriately advised to transfer his deferred Armed Forces Pension by an unregulated, offshore adviser, into a SIPP or QROPs account with* [Options]" and that Options hadn't performed any "*due diligence*" ahead of that transaction.

Options' response to Mr W's complaint

Options investigated Mr W's complaint and gave its final response in December 2018, rejecting it. In summary it said:

- Options provides execution only (i.e. non-advised) SIPP administration services and this was explained in the documentation when Mr W's signed up to his SIPP. By signing the documents Mr W's confirmed to Options that he understood this.

- It was required to execute Mr W's specific instructions by virtue of Rule 11.2.19 of the Conduct of Business Sourcebook (COBS). Options would have been in breach of this rule if it had not executed Mr W's specific instruction to invest in FPI. It treated Mr W fairly by complying with the regulations and so is not liable for his alleged loss.

- Options is not permitted to provide advice nor comment on the suitability of a SIPP, the underlying investment, nor the suitability of the introducer a customer has chosen to use.

- Caledonian was an unregulated introducer, but Options is not restricted to dealing with regulated brokers.

- Options' strict processes for dealing with unregulated introducers were followed.

- Options undertook due diligence on Caledonian on a number of occasions and had no reason to believe that it should not accept introductions from this source at the time it accepted the introduction of Mr W.

- Mr W claims he received advice from Caledonian but Options can't comment as it was not party to this and had no control over the information provided to Mr W by Caledonian.

- Options considered Mr W to be a direct client who had not used a financial adviser. The documentation provided to Mr W by Options recommended that he seek independent, regulated financial advice.

- Options is not the investment manager and is not responsible for the performance of the investments held within the FPI investment portfolio – the value of the portfolio is outside Options' control.

Options also highlighted the key information included on the various documents Mr W had read and signed in 2012. In summary it said:

- The application form made clear it was for "Direct Clients" establishing a SIPP without advice, and that the SIPP would be established on an execution only basis. Mr W understood at the time that he did not have a financial adviser and had not received any form of advice.

- The application form made it clear Options had not provided advice, was not responsible for the suitability or appropriateness of the decision to establish a SIPP and was not responsible for investment choices or decisions. It also guided Mr W to seek financial advice, but he chose not to do so.

- If Mr W believed he'd received advice, he did not raise the fact that he was completing an application form for non-advised clients.

- It is not for Options to look behind Mr W's signature – he should not have signed the documents if he'd received financial advice. Options is not responsible if Mr W chose not to heed warnings spelt out in plain, simple English.

Overall, Options said it had complied with its regulatory obligations by providing Mr W with clear and accurate information about the SIPP he was applying for and acting in accordance with his written instructions.

The parties involved

Given the various parties involved in Mr W's pension transfer and subsequent investment I've set out a summary of each below.

Options

Options 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.

Caledonian

Caledonian was the trading name of MMG Associates, which was registered in the British Virgin Islands. Caledonian was not authorised in the UK to undertake regulated activities and it does not appear on the FCA's Financial Services Register. And there is no evidence it was authorised to carry out such activities in any other jurisdiction.

Creechurch Capital

Creechurch Capital (Creechurch) is an investment manager based in the Isle of Man. The evidence is that Creechurch agreed to manage or provide oversight of some of the investments taken out by Caledonian's customers after they had transferred their pensions. I shall call the individual representing Creechurch, who was involved in some of Caledonian's general dealings with Options, Mr P.

Friends Provident International

Friends Provident International is registered in the Isle of Man. It provided a single premium, unit-linked international whole of life assurance policy (bond) called Zenith which allowed investment in a number of funds with a number of fund providers. Mr W invested in a number of funds within a Zenith bond.

The relationship between Caledonian and Options

I've set out the background to Mr W's complaint and his dealings with Caledonian and Options above. But alongside those events it's important to understand the underlying relationship between Caledonian and Options.

Options has said that it carried out due diligence checks on Caledonian and has provided supporting evidence of the checks it made.

I have set out below a summary of what I consider to be the key events and/or actions during the relationship between Options and Caledonian, which I have observed from the available evidence (this includes evidence from Mr W's case file and generic submissions

Options has made to us about its due diligence on, and its relationship with, Caledonian).

In **March 2012** a business profile was completed which recorded Options' first meeting with Mr C of Caledonian where he set out their proposed business model. This detailed that Mr C was "***preferred adviser*** (my emphasis) *for the Armed Forces occupational pension scheme*" for clients who were described as:

> "*30 to 50 year olds*
>
> *Had been in the armed forces for between 6 to 10 years*
>
> *Had left the armed forces and wanted to transfer their pension arrangements*
>
> *They had no expectation of long-life expectancy*
>
> *They were living today so wanted to access funds earlier then they could if their pension stayed in the armed forces pension scheme*
>
> *They were generally still resident in UK but some were now living abroad in various countries such as Thailand, Germany, Spain etc.*
>
> *They were now earning quite large salaries circa £70k plus*"

The business profile detailed that clients were referred to Mr C from his armed forces pensions contact or by other clients, and that he was "*currently putting them into an international Friends Provident Bond, the underlying investments were regulated*". It went on:

> "[Mr C] *himself was not a regulated adviser, he was a consultant to these clients and* ***advised*** (my emphasis) *them on their armed forces transfers only, he was a qualified accountant and was a member of the Chartered Institute of Accountants …*
>
> *He was developing a relationship with* [Mr P]*, and may consider Creechurch as an alternative investment provider in due course. Although he was currently wanting a relationship with a SIPP provider.*
>
> [Mr C] *was looking at volume business in the region of 50 schemes a month*."

On **16 March 2012** Mr C signed and dated Options' "Non-Regulated Introducer Profile". The form began:

> "*As an FSA regulated pensions company we are required to carry out due diligence as best practice on unregulated introducer firms looking to introduce clients to us to gain some insight into the business they carry out …*"

In the company information section Mr C explained that Caledonian had been trading since 1997 and had branches in Chile, Peru, Colombia, Argentina, Brazil and Switzerland. He went on to detail that they dealt with the following products:

> "*Offshore savings plans + investment bonds – Friends Provident International + Generali*"

And indicated that these products had been accepted by other SIPP providers, including Options, and hadn't been declined by any pension scheme operators.

Under the heading "*Sales and Marketing Approach*" the document detailed that clients would be obtained by "*referral*" and that the sales process would be:

"*Referral – Visit – Analysis – Visit*"

A question on the form about typical commission structure was answered:

"*7% up front from bond – 0.5% trail*"

Under the heading "*Training and Information*" Mr C explained that agents were provided with "*ongoing product training and accompanied meetings*" and that their pensions training was delivered through "*visits to providers directly*". He went on to say that the business produced by agents was monitored by:

"*Full administrative structure – Caledonian, Careys – compliance, FPI – compliance*"

Under the heading "*Legal and Regulatory Information*" Mr C confirmed that Caledonian didn't work with any Financial Services Authority (FSA) regulated company or adviser, wasn't a member of any professional or industry body, had no professional indemnity insurance, and hadn't been subject to any FSA supervisory visits or censure.

In response to the question: "*What measures are in place to ensure the Firm engage legal advice on the activities it carries out to ensure regulated activities are not carried out?*" the response read:

"*Majority of business carried out in unregulated jurisdictions but where regulations apply we are licensed to carry out our activities*."

To the question: "*How does the firm demonstrate it is treating its customers fairly?*" the response read:

"*Compliance & Procedures in current alignment with FSA TCF*."

Mr C's other responses on the form were that Caledonian's business objective was "*to continue to develop a fully compliant business of PT to HM Forces*" and that with regards to member-directed pension scheme business they were looking to achieve "*compliant business in a regulated structure*."

On **23 March 2012** Options asked Mr C by email for a copy of Caledonian's latest company accounts and a certified copy of each director's/principal's passport. Options chased a response to this email on 3 April. A Senior Consultant at Caledonian then supplied a copy of Mr C's passport (uncertified) and said they'd ask Mr C about the accounts when he returned from a trip. On 4 April Mr C emailed Options:

"*… my apologies for not having replied before now … I am back tomorrow Thursday and will have te* (sic) *appropriate documents over to you early next week* …"

On **27 April 2012** Options started to receive introductions from Caledonian (Options has confirmed there were 509 introductions to it made by Caledonian between 27 April 2012 and 20 May 2013).

On **1 August 2012**, ahead of a compliance audit, a Team Leader at Options contacted Caledonian to ask again for the certified passports and annual accounts. In an internal email the Team Leader confirmed she'd spoken with Mr C and he'd be "*sending an urgent request for the documentation we require*".

In or around August 2012 Options had sight of a "*Certificate of Non-Solicitation*" signed by Mr C on behalf of Caledonian and addressed to FPI. This certificate related not to Mr W's

investment with FPI, but that of another client. The certificate read:

> "*… The company is not authorised to conduct investment business in the United Kingdom. We acknowledge that this means that you are only able to accept the introduction from us if we have not been carrying on investment business in the United Kingdom.*

We therefore certify that:

(i) We do not have a permanent place of business in the United Kingdom; and

(ii) We did not approach the above named client

(iii) The advice was given in Jordan

(iv) *The client approached us directly and requested us to give him advice*"

On **4 September 2012** a "*Non-regulated Introducer Agreement Terms of Business*" document between Options and "*MMG Associates Ltd T/A Caledonian International Associates*" was signed and dated by Mr C and Options' CEO. That agreement included, amongst other terms, the following undertaking:

> "*The Business Introducer undertakes that they will not provide advice as defined by the Act in relation to the SIPP – for the avoidance of doubt this includes reference to advice on the selection of The SIPP Operator, contributions, transfer of benefits, taking benefits and HMRC rules;*"

On that agreement document Mr C gave an address in Switzerland as the business address.

Options has said that these terms of business were received by Caledonian in March 2012 - and so it seems there was a delay in Mr C signing and returning them.

On **1 November 2012** Options conducted a 'World Check' (a risk intelligence tool which allows subscribers to conduct background checks on businesses and individuals) on two Caledonian employees – one of which was Mr C. This check did not reveal any issues.

Options has said that in **early 2013**, it "*appointed a dedicated in-house compliance officer and they enhanced the compliance framework within the firm, compliance monitoring programme and risk assessment*."

On **7 March 2013** an internal email was sent by an Options Manager to several other Options employees summarising a call she'd held with Mr C. The summary included these key points:

- Options had explained that following recent FSA reviews and guidance SIPP providers were being asked to look at business received from their introducers against expectations of type and profile.

- Options explained that several applications received recently had moved away from the expected profile of client and queried whether the profile was changing/extending.

- Mr C "*explained that predominantly the members were in the close protection industry which as @ 5 years ago they all went into. He said that foreign operatives were now coming in in a more organised structure. Some were getting promoted into*

senior positions. Many were previously divers in the military and so going into Diving elsewhere."

- Options asked Mr C to put together a note for its CEO to update Caledonian's business profile and expectations.

On **20 March 2013** the Options' Manager sent Mr C an email following up on their conversation. Options asked again for "*an update as to the changes in profile*", and highlighted that a further two applications had been received for individuals outside of the expected profile.

Options has provided a document titled "*Overseas Introducer Assessment Proforma*". This document is undated but, given that it refers to "*recently received business outside of profile*" and also the World Check completed in November 2012 I think it's likely to have been completed around the end of March 2013, and certainly no earlier than November 2012.

I have set out below what I consider to be the most relevant parts of the form recorded, and the level of risk that was noted:

Heading	Notes	Risk
Section 1 - Company Assessment		
Google Search and FCA	"*No adverse comments*"	Low
Regulatory	"*Cannot find any regulatory information from the details held*"	High
Company	"*No UK branch. Cannot see any EEA regulatory details … Unknown company establishment time – cannot find any details from information received. No accounts requested? No Articles of association requested? / received*"	Mainly Medium
Compliance Officer	"*Unknown if have compliance officer or not*"	High
Professional Qualifications	"*No qualifications documented other than meeting note from March 2012 where* [Mr C] *stated he was a qualified accountant …*"	High
Meeting	"*Meeting held at Carey Pensions UK office March 2012*"	Medium
Section 2 - Advice/Client Profile/Investment		
Advice	"*Unregulated – No details of how advice given. No regulatory bodies / permissions seen. Although suggested on email that advice given in Jordan? Advice possibly given in Jordan, although not sure if true for UK based clients*". It was also noted that the funds for investment within	High

	the SIPP were to be generated from: "*Transfers from Armed Forces Pension occupational scheme*."	
Client Profile	"*Client Profile: 30-50 years old. Part of armed forces 6-10 years. Generally still UK residents, some abroad. Now working in security earning c. £70k pa. HOWEVER, recently received business outside of profile*."	High
Investment	"*Initially Friends Provident International bond. Now using James Brearley. Both FCA regulated*."	Low

At the end of the 'Company Assessment' section the overall result was recorded as Amber, a result described as "*Queries to raise*". The wording against this result read:

> "*Company details are a mixture of Green and Amber raise with technical review committee before proceeding*".

The overall result at the end of the 'Advice/Client Profile/Investment' section was recorded as Red, a result described as "*Decline*".

On **26 April 2013** an Options Compliance Officer sent an email to several other Options employees titled "*Review of relationship with Caledonian*". It began:

> "*We have a responsibility to proactively monitor our distribution channels to ensure our products do not end up with customers for whom it is not suitable. Based on recent correspondence with Caledonian I am increasingly concerned by their business practices and therefore believe we should review our relationship with them and the business they have introduced. I will arrange a meeting for next week to discuss. In the meantime we need to determine the answers to the questions below to help facilitate our discussions*."

The Options Compliance Officer then set out 18 questions and statements about Caledonian and the relationship with Options and invited recipients of the email to "*please provide answers to the following where you can*".

On **30 April 2013** another member of the compliance team inserted her answers and comments:

> "*Overview of business*
>
> *Date relationship commenced: April/May 2012*
>
> *What is the agreed profile of clients introduced by Caledonian: Ex Armed Forces, Approx age 38, working in the Close protection industry (security), earnings of Approx £70k*
>
> *Number of clients introduced: 497 (363 now invested, 134 ongoing)*
>
> *Value of investments held: £16m*

Nature of investments, i.e. any alternative investments: Friends Provident Int. (Funds) or, James Brearley Investment Platform with Creechurch acting as DFM.

Number of complaints from Caledonian introduced clients: None

How many transfers were also accompanied by a TVAS [Transfer Value Analysis]*? Who has provided the TVAS? 37 – Only TVs over £100k (from Armed Forces Pension) or any amount no matter how small on other TVs. TVAS provided by* [Mr P] *(Creechurch)*

Overview of Caledonian

What due diligence was undertaken on Caledonian prior to establishing the relationship? – Unknown but AML was received

Location of head office: Geneva, Switzerland

Do they have a business address in the UK? They confirm that they do not have a permanent place of business in the UK, however they have a business address for correspondence and [Mr C] *is based in the UK …*

Where do they meet with clients, i.e. in the UK? Unknown.

What is Caledonian's regulatory status, i.e. are they regulated in their home jurisdiction? [Mr C] *- The Chartered Insurance Institute - ID Number XXXXX.* [Mr C] *certifies all ID and signs the investment Application Form.*

Are they regulated to provide advice in their home jurisdiction? Unknown

They have confirmed that they provide advice in Jordan. How does this work? Do they have a place of business in Jordan? Do they need to be regulated in Jordan to provide advice? Unknown - Caledonian provide a Non Solicitation Letter which is sent to Friends Provident with the investment App. A copy of a Non Solicitation Letter is attached

How did we establish Caledonians knowledge of SIPPs and UK pension rules? Unknown

Based on our contact with Caledonian and reviewing the illustrations they provide to clients, do we have concerns that Caledonian is providing poor advice/ information? Yes due to illustrations

Do Caledonian provide advice on investments within the SIPP? Caledonian send to us the Friends Provident Investment Applications with the Application to set up the SIPP. The funds table in the investment App is pre-populated by Caledonian. The Member does see a copy of this document - which we send to them prior to investing their funds.

What due diligence did we undertake on Creechurch Capital? Unknown"

A further reply was made later on **30 April 2013** by Options' CEO. She wrote:

"*To add to* [Options employee's] *information. I attach a business profile which details how the relationship emerged with Caledonian which provides background information, also the process notes that were agreed at a meeting held in our old MK*

offices which was a workshop to present our SIPP proposition and understand their business better… In answer to some of [Options employee's] *unknowns*

Where do they meet with clients? Generally abroad depending on where their next assignment is, they will also hold meetings in the UK

Are they regulated to give advice in their home jurisdication (sic)? No because they are not regulated they are introducers of business

They have confirmed they give advice in Jordan? When they mean advice they are talking about consultancy they are not regulated in any jurisdication (sic)

How did we establish their knowledge of UK Pension and SIPP marketplace? By meeting with them twice and by running a workshop for them output from which is attached

Based on our contact with Caledonian and reviewing the illustrations they provide to clients, do we have concerns that Caledonian is providing poor advice/ information? I am not sure it is our place to comment on this maybe on the information but not on advice, if we commented on whether we thought even our regulated advisers were providing poor advice I would probably think we would say yes. Think we need to be careful what questions we are looking to answer comfortable on the information piece but not on the advice piece

Do Caledonian provide advice on investments within the SIPP? No they don't, they consult with the client on the feasibility of transferring their Armed Forces Pension Scheme into a SIPP and their partner to manage the investment is Creechurch Capital…"

On **10 May 2013** Options' CEO sent Caledonian an email requesting further information. The email confirmed Options was reviewing its terms of business "*in light of recent announcements from the FCA and our internal compliance reviews*". Options made clear it was keen to continue doing business with Caledonian but must "*do so in a framework that is robust and compliant and will satisfy the regulators*". The email continued, "*so we must start with ensuring we understand each stage of the process, to enable us to develop a robust and compliant process for this business moving forward*." Options said that as a starting point it would like Caledonian to clarify a number of issues. The email read:

"*1. Can you provide your organisational structure and the jurisdiction in which each is registered and the regulation/regulator that each company operates within. If you are relying on any exemptions please state which exemptions and the reasons you believe you can operate within those exemptions*

2. Are you giving advice and if so in what capacity and under what regulatory environment are you providing this advice.

3. What offices do you have and where, do the jurisdictions in which you have offices have a regulatory regime, if so can you provide details of the regulators in those jurisdictions.

4. On what basis are you providing illustrations and the reasons for this basis

5. Do you meet all your clients in Jordan, if not why do your Non Solicitation forms signed by yourself confirm the advice was given in Jordan

6. Please confirm the profile of your clients

7. Please confirm how you receive introductions to your clients

8. Can you update information about your team their background, expertise in dealing with pensions

9. On the Non Solicitation letters you note that Caledonian does not have a permanent place of business in the UK. However, you request correspondence to be sent to The Pensions Service Centre, [UK city]*. Please can you clarify Caledonian's presence in the UK and the nature of the office in* [UK city]."

The email closed with a reminder to Caledonian that from 1 May 2013 Options had implemented some changes to its requirements and "*must have a UK FCA regulated adviser providing the TVAS and the sign off for the suitability of transfers from occupational schemes of any values*."

Options says that the last introduction made to it by Caledonian was on 20 May 2013.

On **23 May 2013** Options met with Mr P of Creechurch and Mr C of Caledonian. In the handwritten summary of that meeting the following was noted:

- Mr C was a consultant to armed forces and not an adviser in the FCA sense.
- The [UK City] address was a postal address and not a working office.
- Mr C met with clients in the UK but initial contact was abroad. The client contacts Caledonian if they want to transfer their pension (it was noted that the documents said that he met them in Jordan and that FPI need a letter about where advice was given).
- Caledonian's website didn't mention that it would give advice, and their documents made it clear no advice was given and clients should take advice from a regulated adviser.
- Mr P explained that the reason for lots of transfers was the market and their relationship with the providers.
- The proposal going forward involved an appointed representative of a Manchester IFA being a pension specialist of Creechurch – it had the necessary qualifications. Going forward the Manchester IFA would deal with business.
- Options agreed to allow Caledonian a four-week window to put the proposal in place.
- The question about advice was irrelevant to Options as no advice is given – FPI want a letter about advice but no advice is given.
- Caledonian said its illustrations were provided to facilitate the business. Options queried whether this was advice.
- A question was noted – is there a terms of business for Caledonian with client?

I have not seen evidence that any of the agreed actions were completed.

Options has provided a copy of a document titled 'Caledonian Relationship Review 2013'.

This explained:

> "*We have decided to review our relationship and terms of business for a connection named Caledonian who provides new business applications to our firm. The reason for the review has been driven by the following:*
>
> *1. % of schemes from this introducer in relation to new business volumes has increased in proportion to other new business being received*
>
> *2. % of schemes in relation to our overall schemes total has increased*
>
> *3. They have recently changed their investment partner*
>
> *4. They have also started introducing business which does not match their original profile of client.*
>
> *The review has taken the following approach:*
>
> *1. A detailed review of the documentation we receive*
>
> *2. A review of the process they adopt when talking to the clients*
>
> *3. A number of phone calls*
>
> *4. A meeting*
>
> *5. A request for additional Information*
>
> *6. Internal meetings with our Compliance Officer*
>
> *The objectives of the review were:*
>
> *1. To determine whether we continue to receive on-going new business from them within their current modus operandi and*
>
> *2. To determine whether we would continue to receive on-going new business if an alternative approach to introducing business were adopted.*
>
> *This short paper documents the review and includes the compliance officers comments and position on the relationship today and going forward, the paper is submitted to the Executive to consider and to direct the business whether the relationship today and going forward is an acceptable relationship to accept business from.*"

The document went on to describe the original rationale for accepting business from Caledonian by repeating the information from the business profile completed in March 2012. It then described the updated position under the heading "*Where we are today*". It read:

> "*The FCA have issued a number of alerts which has prompted a review of business relationships.*
>
> *We are now less comfortable with receiving this type of business on an execution only basis.*
>
> *The % of business being received is increasing in terms of our overall exposure against any other introducer of business and also against the overall volume of new*

business being received on a daily basis, which is a potential increase in risk.

The majority of members introduced still match the original profile of client … however there are some that don't.

They are now using a DFM regulated in IOM Creechurch Capital which uses the platform/custodian of James Brearley a FCA UK regulated entity for managing the investments; this is seen as an improvement in terms of investments as it reduces the overall costs to the clients. The James Brearley agreements were checked by a UK law firm and the technical and compliance officers of the firm.

Following a detailed review of the process and documentation concerns were raised regarding whether the clients could be deemed to be receiving advice through an unregulated entity.

Following a request for further clarification on these points we have not been able to satisfy ourselves that this is not the case.

We have insisted that they move to a model that all cases are fully advised by an FCA regulated firm/individual, which has been accepted.

We have continued to take business on in the interim on the basis that within 4 weeks (which ends on week ending 14th June 2013) that they would have the fully regulated process in place and that they have committed to a review of the back book of clients by the regulated firm/individual as a remedial project.

Following a meeting in the Milton Keynes office … where [Mr C] *from Caledonian, and* [Mr P] *of Creechurch Capital explained their current process and documentation and described their future process,* [and] *further discussions … it was decided that they had not satisfied us enough with their current processes for us to continue to allow taking on new business in the interim without the use of a UK regulated firm or individual who was suitably qualified.*

[Options] *has instructed the team of this decision so from week beginning 28th May any new business received will be rejected unless it comes through an FCA regulated firm*."

It set out a detailed process and highlighted the benefits of this new approach as being:

"*All schemes are coming in on an advised basis*

Brings the process and clients into the UK regulated process

Brings the clients into the FSCS and FOS protections

Ensures all occupational schemes undergo analysis and advice"

I have not seen evidence that this advised or regulated process described ever came to pass insofar as any applications made by Caledonian.

Our investigator's view

Mr W brought his complaint to this service in 2019 and it was considered by an investigator. The investigator thought the complaint should be upheld. In summary:

- He accepted that Options wasn't under any obligation to advise Mr W on the SIPP and/or the underlying investment, and wasn't responsible for assessing the suitability of any advice Mr W may have received.

- He said he needed to determine whether Options acted fairly and reasonably when accepting Mr W's application from Caledonian.

- He acknowledged that Options did undertake some due diligence, but he concluded that Options ought to have done more at the outset of its relationship with Caledonian and did not, in any event, draw fair and reasonable conclusions from the information available to it by the time of Mr W's application.

- He said based on what it knew or ought to have known, Options should have concluded that it should not accept Mr W's application from Caledonian.

- He said Options ought to have concluded at the outset of its relationship with Caledonian that Caledonian would be giving advice. And, based on the information available to it before the conclusion of Mr W's application, Options should have been reasonably aware Caledonian was giving advice.

- He found that the available evidence indicates advice was given by Caledonian to Mr W and that Options knew, or ought reasonably to have been aware, advice had been given.

- He said it was reasonably clear from the outset that Caledonian would be giving advice on the merits of transferring out of the Armed Forces scheme, on Options' SIPP and on the investments to be made within that SIPP – the business model described an advice process and should have led to Options asking further questions.

- He noted that when Options did start asking questions of Caledonian's activities, questions which he said it should have asked at the outset of, or very early in, its relationship with Caledonian, this effectively led to the conclusion that advice was being given by Caledonian and the end of their relationship.

- He said that Options didn't appear, prior to May 2013, to clearly establish where Caledonian would be conducting business and so didn't know whether Caledonian was following any applicable laws or regulations.

- He said Options should have been alive to the risk that Caledonian might be undertaking regulated activities in the UK. It is clear Caledonian did assist in the completion of the SIPP application form for onward investment in the FPI bond in the UK – Options should have been aware a regulated activity had been undertaken by Caledonian in the UK even if it accepted the advice had been given overseas.

- Options didn't check that Caledonian had the required authority to give advice in the relevant country.

- Given the complexities of transferring out of a defined benefit scheme into a UK SIPP for investment in several investments Options should have satisfied itself that Caledonian had the appropriate qualifications to give advice. Advisers without appropriate qualifications risk consumer detriment.

- The customer profile was such that Caledonian should have recognized applicants would be reliant on Caledonian's advice.

- Advice on these complex transactions is tightly regulated in the UK – Options, acting fairly and reasonably, should have satisfied itself that a similar process was being followed, even if the advice was being given outside the UK.

- Options should have concluded by the time of Mr W's application (July 2012) that Caledonian did not have a process in place which supported suitable advice being given or ensured consumers were fully informed of the risks.

- Options should also have considered, and been concerned by, the volume of business being brought about by Caledonian, the high number of introductions from occupational pension schemes when the starting point is to assume that a transfer out of such schemes will not be suitable for retail customers (COBS 19.1.6G), the very high level of commission being taken by Caledonian (typically 7% as set out in the Non-Regulated Introducer Profile), and the fact that Caledonian failed to provide copies of its company accounts despite repeated requests.

- Individually and cumulatively the evidence indicated a high risk of consumer detriment, and Options ought reasonably to have concluded that it should not accept business from Caledonian and declined to accept Mr W's application to open a SIPP.

- Although the investment – the FPI bond – may not have been a cause for concern, Options should have had concerns about Caledonian's business model and that it could lead to consumer detriment.

- Whilst the declaration that Mr W signed did give clear warnings, he shouldn't have reached the point of signing it as the business shouldn't have come about at all. It was also signed on the basis that Mr W's had "*received full and appropriate advice from Caledonian International*" – something which Options should have been aware Caledonian did not have competency to give.

Finally, our investigator set out how Options should put things right by comparing the current position to the position Mr W would have been in if he had not transferred from the Armed Forces Pension Scheme, and paying him compensation. Our investigator also recommended Options pay Mr W £500 for the distress and inconvenience caused by their failure to act fairly and reasonably.

Options' response to our investigator's view

Options disagreed with our approach to what its responsibilities and obligations are when accepting new business. I have summarised below what I consider to be the key points, but have considered Options' response in its entirety. Options said:

- It's not fair or reasonable to consider the complaint in the context of guidance published after the events complained of – the FCA's guidance published in October 2013 and the "Dear CEO" letter published in 2014 "*introduced new expectations*".

- The investigator concluded that Caledonian provided advice to Mr W without any exploration of the law and application of the Regulated Activity Order as considered by the Court of Appeal in *Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474* ("*Adams*").

- At the material time the FSA regarded Options' approach to accepting business from unregulated introducers as acceptable – there was no duty on Options to assess introducers or investments.

- The investigator had placed the liability for Mr W's losses on Options "*by the device of retrospectively imposing new and unexpected duties of due diligence on introducers and investments*" – the effect is to force SIPP providers into a position of underwriting the performance of investments.

- The judge in *Adams* rejected the proposition that Options owed duties of the kinds relied on by the investigator.

- The criticisms made of Options' due diligence on Caledonian are unfounded.

- Options' decision to require that members had the protections of a regulated advisor being involved was a broader policy decision made by Options in February 2014, not a decision made in response to what it knew of Caledonian's practices. Likewise, its decision in August 2014 to no longer accept non-regulated introducer business was not about Caledonian specifically.

- Options did not at any point become aware that Caledonian were providing advice, nor has it seen any evidence that advice was provided.

- As an execution-only SIPP provider, Options was under no regulatory obligation to assess the suitability of the investment for Mr W.

- The investigator did not ask Mr W about his understanding of the investment and relationship with Options.

- Assessing the quality of the FPI investment, assessing the suitability of the investment for Mr W, or refusing Mr W's instructions would have been inconsistent with the terms of the contract between the parties, the relevant COBS Rules and the restrictions on Options' permissions.

- It is unfair to make an execution-only SIPP provider liable for the poor investment choices of consumers, especially when they've signed contractual documentation declaring that they understand they are not receiving advice and are establishing the SIPP on an execution only basis.

- Options did not cause Mr W's loss – had Options informed Mr W that it would not accept business from Caledonian, on balance Mr W would have gone ahead with the FPI investment – it is evident that Mr W wished to transfer his pension, whether through Options or another provider.

- Any compensation awarded, if at all, should be limited to the commission and advisor fee which was paid to Caledonian.

- Mr W's request to transfer their defined benefit pension was sent on or around 26 July 2012 – once the transfer request was made, Options was obliged to complete the transfer and so the loss of defined benefits was assured from that point.

- Mr W should bear some responsibility for his decisions, and this should be reflected in the calculation of any compensation due.

- The investment performed within a range of outcomes which Mr W could have foreseen – it is plainly not fair or reasonable for Options to bear Mr W's loss in circumstances where the investment simply did not perform as Mr W had hoped.

- In the event that the Ombudsman concludes that Mr W should be put back in the

position he would have been in had he not transferred his existing pensions, then Options would accept that the correct basis for calculating the compensation is as set out in the investigator's view under the headings "*Calculate the loss Mr W has suffered as a result of making the transfer*" and "*Pay compensation to Mr W for loss he has suffered calculated in (1)*", in accordance with the judgment of the Court of Appeal in *Adams*.

- In the event that Mr W is unable to return the investments to Options, the compensation should be recalculated to reflect this.

- The investigator provided no evidence to support their claim that Mr W has suffered any degree of upset.

- Oral exploration of; the extent of Caledonian's role in Mr W's decisions, his understanding of the investment and roles of FPI and Options, and his motivation for entering into the transaction with Options, is required. Options therefore requested an oral hearing.

As no agreement could be reached, the complaint was passed to me to decide.

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.

Having done so I've reached the same conclusion as our investigator did and for broadly the same reasons, I'm upholding Mr W's complaint. I'll explain why. But before I do so, I'll set out what I think about Options' request for an oral hearing.

Options' request for an oral hearing

Options say an oral hearing is necessary to explore the extent of Caledonian's role, Mr W's understanding of the investment and the roles played by the parties, and Mr W's motivation for entering into the transaction.

The Ombudsman Service provides a scheme under which certain disputes may be resolved quickly and with minimum formality (section 225 of the Financial Services and Markets Act 2000 (FSMA)). DISP 3.5.5R of the FCA Dispute Resolution rules provides the following:

> "*If the Ombudsman considers that the complaint can be fairly determined without convening a hearing, he will determine the complaint. If not, he will invite the parties to take part in a hearing. A hearing may be held by any means which the Ombudsman considers appropriate in the circumstances, including by telephone. No hearing will be held after the Ombudsman has determined the complaint.*"

Given my statutory duty under FSMA to resolve complaints quickly and with minimum formality, I am satisfied that it would not normally be necessary for me to hold a hearing in most cases (see the Court of Appeal's decision in *R (Heather Moor & Edgecomb Ltd) v Financial Ombudsman Service [2008] EWCA Civ 642*).

The key question for me to consider when deciding whether a hearing should be held is whether or not "*the complaint can be fairly determined without convening a hearing*".

We do not operate in the same way as the Courts. Unlike a Court, we have the power to carry out our own investigation. And the rules (DISP 3.5.8R) mean I, as the ombudsman

determining this complaint, am able to decide the issues on which evidence is required and how that evidence should be presented. I am not restricted to oral cross-examination to further explore or test points.

If I decide particular information is required to decide a complaint fairly, in most circumstances we are able to request this information from either party to the complaint, or even from a third party. In this case, our investigator sought some further information from Mr W, and he referred to what he considered to be the key points in his view. Options has had the opportunity to consider, and comment, on that view.

I have carefully considered the submissions Options has made. However, I think I am able to fairly determine this complaint without convening a hearing. In this case, I am satisfied I have sufficient information to make a fair and reasonable decision. So, I do not consider a hearing – or any further investigation by other means – is required. The key question is whether Options should have accepted Mr W's application at all. Mr W's understanding of the investment, the relationships involved, and his motivation are secondary to this. And I am, in any event, able to test this to the extent I think necessary by asking questions of Mr W in writing.

In any event – and I make this point only for completeness – even if I were to invite the parties to participate in a hearing, that would not be an opportunity for Options to cross-examine Mr W as a witness. Our hearings do not follow the same format as a Court. We are inquisitorial in nature and not adversarial. And, the purpose of any hearing would be solely for the ombudsman to obtain further information from the parties that they require in order to fairly determine the complaint. The parties would not usually be allowed direct questioning or cross-examination of the other party to the complaint.

As I am satisfied it is not necessary for me to hold an oral hearing, I will now turn to considering the merits of Mr W's complaint.

The relevant considerations

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable, I am required to take 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.

With that in mind I'll start by setting out what I have identified as the relevant considerations to deciding what is fair and reasonable in this case.

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 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.

In *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service [2018] EWHC 2878* ("BBSAL"), Berkeley Burke brought a judicial review claim challenging the decision of an ombudsman who had upheld a consumer's complaint against it. The ombudsman considered the 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 adopted a similar approach to the application of the Principles in BBSAL. The BBSAL judgment also considers section 228 of the 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. So, the Principles are a relevant consideration here and I will consider them in the specific circumstances of this complaint.

The Adams court cases and COBS 2.1.1R

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 note the Supreme Court refused Options permission to appeal the Court of Appeal judgment.

I've considered whether these judgments mean that the Principles should not be taken into account in deciding this case. And, I am of the view they do not. In the High Court case, HHJ Dight did not consider the application of the Principles and they did not form part of the pleadings submitted by Mr Adams. One of the main reasons why HHJ Dight found that the judgment of Jacobs J in BBSAL was not of direct relevance to the case before him was because "*the specific regulatory provisions which the learned judge in Berkeley Burke was asked to consider are not those which have formed the basis of the claimant's case before me*." Likewise, the Principles were not considered by the Court of Appeal. So, the *Adams* judgments say nothing about the application of the FCA's Principles to the ombudsman's consideration of a complaint.

I acknowledge that COBS 2.1.1R (*A firm must act honestly, fairly and professionally in accordance with the best interests of its client*) overlaps with certain of the Principles and that this rule 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.

Although the Court of Appeal ultimately overturned HHJ Dight's judgment, it rejected that part of Mr Adams appeal that related to HHJ Dight's dismissal of the COBS claim on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found 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 HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at para 148:

> "*In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction*."

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

On this point, I think it is also important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And, in doing that, I am required to take into account relevant considerations which include: law and regulations; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This is a clear and relevant point of difference between this complaint and the judgments in both *Adams* cases. 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 Options was not obliged – and not able – to give advice to Mr W on the suitability of its SIPP or the FPI investment for him personally. But I am satisfied Options' obligations included deciding whether to accept particular investments into its SIPP and/or whether to accept introductions of business from particular businesses. And this is consistent with Options' own understanding of its obligations at the relevant time. As noted above, the Options' Non-Regulated Introducer Profile completed at the start of Options' relationship with Caledonian began:

> "*As an FSA regulated pensions company we are required to carry out due diligence as best practice on unregulated introducer firms looking to introduce clients to us to gain some insight into the business they carry out …*"

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, namely:

- 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.*

- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*

- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*

- *Identifying instances of clients waiving their cancellation rights, and the reasons for this*."

The later publications

In the October 2013 finalised SIPP operator guidance, the 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*."

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 unauthorised business warnings.*
>
> - *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*
>
> - *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*

- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*

- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers. Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*

- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*

- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from nonregulated 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.

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.

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

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

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

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 Options' 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 Options to ensure the pension transfer was suitable for Mr W. It is accepted Options was not required to give advice to Mr W, 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 Options could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting any introduction from Caledonian, setting up the SIPP and facilitating the pension transfer into the SIPP.

Ultimately, in determining this complaint, I need to consider whether Options 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 Options could have done to comply with its regulatory obligations.

What did Options' obligations mean in practice?

I've set out above in some detail what I consider to be the considerations relevant to determining this complaint, and I'll start explaining my decision by saying what I think these meant in practice.

As part of meeting its regulatory obligations as a SIPP operator I'm satisfied that Options would need to decide whether to accept or reject particular investments and/or referrals of business. The regulatory publications I've cited above make it clear that good practice involves SIPP operators being satisfied that a particular introducer is appropriate to deal with, and that a particular investment is an appropriate one for a SIPP.

I'm also satisfied that to meet its obligations Options was required to consider whether to accept or reject a particular referral of business with the Principles in mind.

Summary of my decision

Taking into account the evidence of Options' relationship with Caledonian, mentioned above, I have considered what due diligence Options ought to have undertaken and what it ought to have concluded about Caledonian's business.

The 2009 Thematic Review Report dealt specifically with the relationships between SIPP operators and introducers or "*intermediaries*". And it gave non-exhaustive examples of good practice. In my view, to meet these standards, and its regulatory obligations, set by the

Principles, Options ought to have identified a significant risk of consumer detriment arising from the business model Caledonian described to it at the outset. And so, Options ought to have ensured it thought very carefully about accepting applications from Caledonian.

I think it's fair and reasonable to say that Options should have obtained a full understanding of Caledonian's business model and put in place a clear agreement with Caledonian addressing the risk generally posed to consumers by the introducer.

Although I think Options understood and accepted it had a responsibility to carry out due diligence on Caledonian (the opening statement of its 'Non-Regulated Introducer Profile' indicates this), I do not think it identified as it should have several issues which ought to have given it cause for concern until it was too late and it had already accepted Mr W's application.

Whilst I accept Options did take some steps which could be argued did amount to good practice consistent with its regulatory obligations I think, with its regulatory obligations and good industry practice in mind, Options ought to have done more at the outset of its relationship with Caledonian and did not, in any event, draw fair and reasonable conclusions from the information available to it by the time of Mr W's application. And, had Options done more at the outset and/or drawn fair and reasonable conclusions from what it knew, it ought in my view to have concluded that it should not accept Mr W's application from Caledonian.

What activities did Caledonian undertake and what should Options have concluded?

Advice

In my view, acting fairly and reasonably, including a reasonable level of investigation and due diligence on Caledonian's operation, and based on the information available to it, Options ought to have concluded at the outset of its relationship with Caledonian and certainly before the conclusion of Mr W's application, that Caledonian was providing advice as to the benefits of transferring his pension out of the Armed Forces Pension scheme, transferring into the SIPP, and making the investment within it.

At the very least there was information that should have caused it to suspect that advice was being given and it should have carried out further investigation into that. If it had done so, I believe it likely that it would have discovered that Mr W had been advised by Caledonian to transfer his pension into the SIPP and make the FPI investment.

Taking account of the available evidence I consider that Caledonian did provide advice to Mr W as to the benefits of transferring his pension, selecting the Options SIPP and investing in the FPI bond.

Mr W's own account of events, which is evidence that I take into account, is that he and colleagues were approached by a representative of Caledonian whilst he was working abroad in July 2012, and that the representative "*told* [him] *that* [he] *should*" transfer his Armed Forces Pension into an Options SIPP and invest in a Friends Provident International (FPI) bond as it would "*outperform*" his Armed Forces Pension. He says he was told that his pension would grow with Options rather than being "*frozen*".

Indeed, the paperwork supports that he was given advice. As I've noted in the background above, an Armed Forces Pension Scheme Analysis was prepared by Caledonian for Mr W which compared the current benefits of an Armed Forces Pension and the benefits of transferring it. Although the 'disclaimer' on the front of the document claimed the content wasn't advice I don't think that's conclusive. I think it's more likely than not that the Caledonian representative used this document in their meetings with Mr W to support a

recommendation that he should transfer out. The evidence is that the Caledonian representative presented themselves as an "Adviser" to Mr W. As I've highlighted above, the Caledonian representative's signature was made in the space for "Adviser Name" on the instruction letter accompanying the SIPP application form. And Mr W signed the declaration which included:

> "*I confirm that I have received full and appropriate advice from Caledonian International and following this advice I wish to proceed with the transfer.*"

Options has told us that it did not at any point become aware that Caledonian were providing advice, nor has it seen any evidence that advice was provided. Options has highlighted that Caledonian signed its Terms of Business undertaking not to provide advice, and that on the application form Mr W signed to confirm that he was "*a client establishing a SIPP without advice*" who had "*made this decision independently*" and was "*aware of the implications of this decision*".

However, I don't think Options' position is consistent with the other documentary evidence. As I've already noted, the Caledonian representative signed as "Adviser", and Mr W signed to confirm he *had* received advice.

As a minimum these contradictions should have alerted Options to the possibility that Mr W might have been given advice – and therefore further steps to clarify this were required.

It's also relevant that it would be quite unusual for an individual such as Mr W, with no particular financial understanding or background, to want to carry out what is quite a complex transfer of occupational pension scheme benefits without receiving a recommendation to do so or advice to do so. I think this fact, along with what else they knew, should have alerted Options to the significant risk that Mr W was being advised by an unregulated business. Had Options sought clarification from Mr W, which would have been a reasonable course of action in the circumstances, I think it would likely have been made aware he had received advice from Caledonian. In his responses to us Mr W has said, "*I thought Caledonian were legitimate advisers*".

The available evidence also shows that Options should have concluded at the start of its relationship with Caledonian that it might be providing advice, to customers like Mr W. I think it was reasonably clear in March 2012 that Caledonian's business model meant there was a risk that advice would be given on the merits of transferring out of the Armed Forces Pension scheme, on the Options' SIPP and on the investments to be made within that SIPP.

On the documentation recording Options' first meeting with Caledonian, Mr C was described as "***preferred adviser*** (my emphasis) *for the Armed Forces occupational pension scheme*" and as a "*consultant to these clients*" who "*advised them on their armed forces transfers only*" and was "*putting them into an international Friends Provident Bond*". The 'Non-Regulated Introducer Profile' signed and dated in March 2012 also described Caledonian's sales process as:

> "*Referral – Visit – Analysis – Visit*"

I think this develops a picture of an advice process taking place, not simple introductions. It indicates that Caledonian was advising consumers on transfers out of the Armed Forces Pension scheme and "*putting them into*" an investment bond. I think the only reasonable conclusion which could be drawn from that description was that advice was likely being given.

At the very least this should have led to further questions being asked by Options of

Caledonian and Mr W. In terms of Mr W, a reasonable line of enquiry would have been to ask him if he thought he was receiving advice as to whether to set up a SIPP and/or transfer his pension benefits to it and/or then make subsequent investments within the SIPP. And I think answers to those questions would have led to the conclusion that advice was being given.

I note that once an Options employee became "*increasingly concerned by their business practices*" in April 2013, Options asked a number of questions of Caledonian by email on 10 May 2013. These questions, which I've reproduced above, in my view, clearly indicate that Options weren't satisfied that Caledonian weren't advising SIPP applicants.

Although we haven't been provided with a copy of Caledonian's response to this email, a discussion of Caledonian's responses to these questions led Options to conclude:

> "*Following a detailed review of the process and documentation concerns were raised regarding whether the clients could be deemed to be receiving advice through an unregulated entity.*
>
> *Following a request for further clarification on these points we have not been able to satisfy ourselves that this is not the case*."

This effectively ended Options' relationship with Caledonian.

In my view these are investigations and questions, which Options, acting fairly and reasonably to meet its regulatory obligations and good practice at the time, ought to have been undertaking or asking at the outset of its relationship with Caledonian.

The need to ask these questions was clear based on the information available to Options before Mr W was introduced to it in July 2012. Options clearly had its own concerns about Caledonian's operation in 2013 – and this was something that it should and could have explored and interrogated much earlier and certainly before accepting Mr W's introduction. If Options had carried out a reasonable level of due diligence and investigation at the outset then I think it would have reached the same conclusion as it did in May 2013 – that any application received would be rejected unless it came through an FCA regulated firm. It follows that Mr W's application would not have been accepted and so there would never have been a contract between Mr W and Options.

I believe that Caledonian was providing advice, and Options' knowledge of that, whether acquired at the outset of the relationship with Caledonian or before or during the course of Mr W's application, should have been a red flag and given Options significant cause for concern. There was, I think, an obvious risk that the law, regulations and Principles were being breached, and that representatives without the necessary qualifications were giving advice, outside a recognised and regulated advice process. There was also an obvious risk of detriment to clients from giving up defined pension benefits.

I think these are all things which, acting fairly and reasonably to meet its regulatory obligations and good industry practice, Options should have factored into its thinking.

Arranging

It is also clear from what Options was told by Caledonian at the outset – and from the available evidence in this complaint and others like it – that Caledonian was heavily involved in the arrangement of pension transfers and subsequent investments. Caledonian's level of involvement was not simply that of 'introducer'. It did not introduce Mr W to Options and leave him to proceed with the SIPP and FPI applications. It was involved in arranging the

transfer out of Mr W's existing pension to the SIPP, the setting up of the SIPP and in arranging the FPI bond and associated investments. It was involved in gathering all the information and documents needed for things to proceed – that is clear from the checklist included with the paperwork sent to Options. And it seems it partly completed the SIPP application form for Mr W, and sent all the required information, forms, documents etc to all the parties involved, and dealt with any queries arising from these.

I think Options ought to have been aware of this. The extent of Caledonian's involvement was clear from the application documentation Caledonian sent to Options.

Where were the activities taking place?

I have not seen evidence that, prior to May 2013, Options established where Caledonian would be conducting business. It was therefore in no position to know what, if any, regulatory regimes applied. Indeed, Options noted in 2013 that, as to the questions of where Caledonian was meeting with clients and its regulatory status, the position was, "*unknown*".

At the start of Options' relationship with Caledonian it was recorded that its clients, "*were generally still resident in UK but some were now living abroad in various countries such as Thailand, Germany, Spain etc*." The 'Non-Regulated Introducer Profile' completed at the outset of the relationship records that Caledonian had branches in Chile, Peru, Columbia, Argentina, Brazil and Switzerland.

So, it is fair to say Options was not in a position to know whether Caledonian was following any applicable regulations and laws as it simply didn't know where it was carrying out its activities or, at the very least, was aware the activities were potentially being carried out in several different jurisdictions. And then it did not take sufficient steps to ascertain what regulations and laws applied in each of those countries and whether Caledonian was acting within them.

I think Options should have been particularly concerned about whether advice was being given (or any other regulated activity carried on) in the UK as Caledonian was not authorised by the FSA or, later, the FCA. Although Caledonian told Options that the "*Majority*" of their business was "*carried out in unregulated jurisdictions*" Options was also made aware that "*generally*" consumers who would be introduced to it were still UK residents. So, I don't think it was clear how the Caledonian business model worked logistically, and I think this is something Options ought to have satisfied itself of before accepting Caledonian's business.

In Mr W's case, although his permanent address was in the UK in 2012, he's told us his only meetings with the Caledonian representative were at, or local to, his place of work in the Middle East. He had two in-person meetings with Caledonian which seems to follow the business model it described:

> "*Referral – Visit – Analysis – Visit*"

So, it seems unlikely that Caledonian carried out regulated activities in the UK in relation to Mr W's case. However, that does not mean that, in the interests of its customer, Options shouldn't have taken steps to establish the regulatory regime or regimes Caledonian were operating under. I think it's also fair to say that in relation to other applications, from customers other than Mr W, Options ought to have been aware that regulated activities were taking place in the UK. And if Options had developed that awareness, as I believe it should have, through taking appropriate steps at the start of its relationship with Caledonian, it is more likely than not it either wouldn't have entered into a relationship with Caledonian at all, or would have ended its relationship with Caledonian before accepting Mr W's application.

As I've noted above, Options had sight of numerous examples of a "Certificate of Non-Solicitation" signed on behalf of Caledonian and addressed to FPI. Although I've not seen evidence it saw one of these in Mr W's case, I think the content of these certificates should have raised questions more generally. The certificate said in each instance (as far as I'm aware) that, "*The advice was given in Jordan*".

I think it's fair to say the picture about where Caledonian was doing business was far from clear – and Options should have been aware it was unlikely all of the information provided by Caledonian could be correct. It is not, for example, clear how the advice in every instance could have been given in Jordan when, by Caledonian's own account, it had a number of offices around the world (none of which were in Jordan), was dealing with consumers who "*were generally still resident in UK*" or "*living abroad in various countries*" and said elsewhere that it was carrying out business in various jurisdictions.

Options did not however check any of this at the outset. It was therefore in no position to know what, if any, regulatory regimes applied, and whether Caledonian required any authorisations to conduct the activities it did. Caledonian itself appears to have suggested it needed "*licences*" in some jurisdictions, but I have seen no evidence of it having given details of any such "*licences*".

Despite this, I have seen no evidence to show Options identified this risk until around March 2013 when it noted that it hadn't seen any regulatory information or permissions, had "*No details of how advice given*" and wasn't sure where Caledonian's business was conducted.

When it finally challenged Caledonian on this point (amongst others) in May 2013, these enquiries (along with the other points of query put to Caledonian and then discussed with it) led to Options quickly concluding it should not accept further applications from Caledonian unless they came through a UK IFA with permissions to give pension transfer advice – a restriction which, it seems, had the effect of no further business being introduced to it by Caledonian.

Given what I say above, acting fairly and reasonably, Options should have made these enquiries at the outset. Had it done so; I think it's fair to say Options would have reached the same conclusion it did in May 2013. And it certainly should have done so, to act fairly and reasonably to meet its regulatory obligations and standards of good practice.

Caledonian's competence to undertake pension transfers

Caledonian's proposed business model involved former members of the armed forces who, it said, worked in security related jobs in dangerous areas. The business model was not one involving, say, former financial advisers or other finance professionals. There is, therefore, no reason to think that the typical client Caledonian was proposing to introduce to Options had a good level of understanding of pensions or were in a position to work out for themselves if a pension transfer was in their best interests. They would be reliant on Caledonian's advice.

The introductions, which Options knew were intended to number around 50 a month, involved transfers out of a defined benefit pension scheme into a UK SIPP for investment in several investments within an FPI bond. The transfer of defined benefit (final salary) pensions are usually not in the customer's best interests, are complex and present a variety of consequences and matters which the ordinary individual would be hard pressed to understand without professional financial advice. Those giving such advice in the UK are required by the FCA to pass specialist exams, reflecting the risks and complexities involved. Options, as a provider of SIPPs, would have been aware of this.

However, the information Caledonian disclosed to Options revealed that it didn't have any particular qualifications or expertise in pension transfers. There is no mention of any type of professional qualification (whether that be in the UK or any other territorial jurisdiction) relating to pensions.

I have seen no evidence to show Options noted this obvious risk until it reviewed its relationship with Caledonian in or around March 2013 and "*Professional Qualification*" was assessed as "*high risk*". The reason for this assessment was "*No qualifications documented other than meeting notes from March 2012 where* [Mr C] *stated he was a qualified accountant and member of Chartered Institute of Accountants*."

Although the undated 'Overseas Introducer Assessment Proforma' more likely than not post-dates Mr W's application, it demonstrates that Options did not know if any of Caledonian's staff had any qualifications to give advice on occupational pension scheme transfers at the time it accepted Mr W's application (July 2012). I have seen no evidence Options took any action about this until 26 April 2013 when it was asked "*How did we establish Caledonian's knowledge of SIPPs and UK pension rules?*". The answer to this was recorded as "*Unknown*" – I assume because Options could find no evidence to show it had addressed this risk either. The most Options had done before May 2013 to establish Caledonian's competence was meet with Caledonian twice and run "*a workshop*".

So, Options was aware that Caledonian's employees didn't likely have any qualifications to give advice as to pensions. And it seems that any steps to ascertain whether any qualifications were held would have revealed they were not. The steps taken in May 2013 where Options belatedly made enquiries of Caledonian, which as outlined above I think it should have actioned much earlier and certainly before accepting Mr W's application, led to Options quickly concluding it should not accept further applications from Caledonian unless they came through a UK IFA with permissions to give pension transfer advice – a restriction which had the effect of no further business being introduced by Caledonian.

Again, I think it fair to say Options would have reached the same conclusion had it taken this action at the outset of its relationship with Caledonian. And acting fairly and reasonably to meet its regulatory obligations and good practice, I think Options should have concluded at the outset of its relationship with Caledonian or at the very least by the time of Mr W's application, that Caledonian was proposing to give advice to bring about a large volume of business relating to a complex product for which it didn't have the appropriate qualifications.

The transfer process

As mentioned above, a defined benefit transfer is a complex transaction. It also involves many risks, and potentially the loss of significant guaranteed benefits. For this reason, advice on such transactions is tightly regulated in the UK and there are standards of good practice that those giving the advice are expected to follow. This means several steps need to be taken as part of the advice process and documentation such as fact-finds, suitability reports, transfer analysis reports (TVAS), and illustrations generally feature in the advice process. The purpose is to ensure any advice given takes into account all relevant factors, is suitable, and the recipient of the advice is in a fully informed position, where they understand the benefits they are giving up and the risks associated with the transfer.

Although the relevant UK regulatory requirements only apply in the UK, I think Options, acting fairly and reasonably, should have satisfied itself that a similar process was being followed here, even if the advice was being given outside the UK. I say this because, given that Caledonian's starting point appears to have been that the consumers it dealt with would be transferring out of the defined benefit scheme (i.e. it seems to have taken the view a transfer was suitable for all) there was a clear risk of consumer detriment if consumers were

not in a fully informed position and therefore able to understand the risks associated with the transfer.

I do not say Options should have checked any advice that was given – but it should have taken steps to ascertain if a reasonable process was in place and consumers were taking these steps on an informed basis. And I think if it had undertaken such steps and carried out even a cursory investigation of the individuals being introduced to it, then it would have become aware no reasonable process was in place and consumers were not fully informed of the risks. As discussed, I think it would have also quickly discovered that at least some of the individuals being introduced to it, including Mr W, had received what amounted to advice about the transfer from an unregulated introducer.

Had Options taken steps to ascertain if a reasonable process was in place it would have become aware no such process was in place, and consumers were not therefore fully informed before agreeing to make the transfer to the SIPP and the associated FPI bond investments. Options' reference to "Illustrations" made in response to the list of questions circulated by email by the Options' Compliance Officer on 26 April 2013 appears to be an acknowledgement of this risk:

> "*Based on our contact with Caledonian and reviewing the illustrations they provide to clients, do we have concerns that Caledonian is providing poor advice/ information? Yes due to illustrations*"

It seems Options took these steps, to an extent, belatedly in May 2013. And, in common with the other steps taken in May 2013 that appears to have led it to the conclusion that what was in place was not sufficient. However, acting fairly and reasonably to meet its regulatory obligations and good practice, Options should have concluded at the outset of its relationship with Caledonian or at the very least by the time of Mr W's application that there was a significant risk of consumer detriment, that Caledonian did not have a process in place which supported suitable advice being given or that ensured consumers were fully informed of the risks.

Volume of business

At the outset of the relationship between Options and Caledonian, Options was told that Caledonian would be introducing about 50 applications a month (and I note a similar volume was introduced, once the relationship began).

I think, acting fairly and reasonably, Options should have been concerned that Caledonian intended to (and did) make such a high volume of introductions, relating only to occupational pension schemes. In my view this was a further reason for Options to conclude there was a significant risk of consumer detriment – particularly when considered alongside the other points I have set out here.

Firstly, it is not clear how Caledonian would be, or was, bringing about such a high volume of applications without giving advice. I think Options should have recognised it as highly unlikely Caledonian could bring about this amount of applications without influencing consumer's' actions through a positive recommendation. Options also ought to have considered Caledonian's competence to deal with this volume of transfers – there is no evidence to show it had the significant resources this would require.

Further, Options, as a professional entity in the pensions industry, should have been aware of the very low likelihood the transfers would all be suitable. At the outset of Options' relationship with Caledonian (and at the time of Mr W's application) COBS 19.1.6 G said:

> "*When advising a retail client who is, or eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt out, a firm should start by assuming that a transfer or opt out* ***will not be suitable*** *(my emphasis). A firm should only then consider a transfer or opt out to be suitable if it can clearly demonstrate, on contemporary evidence that the transfer or opt out is in the client's best interest*."

I accept this aims to define the expectation of a regulated financial adviser when determining suitability of a pension transfer, but it emphasises the regulator's concern about the potential detriment such a transaction could expose a consumer to. And, being a regulated firm with a requirement to ensure its clients were being treated fairly, I'd expect Options to have been familiar with the guidance contained in COBS – even if it didn't apply to it.

Caledonian's business model, as set out to Options, appears to run counter to this, insofar as the starting point appeared to be an assumption that the transfer was suitable. When considered alongside the high volume of business being brought about by Caledonian, Options, acting fairly and reasonably, should have identified a significant risk of consumer detriment.

Options ought to have been aware that the introduction of such a large volume of applications for pension transfers (an estimated 50 a month), including Mr W's application, on a non-advised basis was unusual and interrogated further. I think Options should have been concerned about the motivations and competence of Caledonian, and have had adequate risk management controls in place to have allowed it to conclude very quickly that there was a high probability that much, if not all, of the business introduced by Caledonian (which was transfers from occupational pension schemes) carried with it a high risk of significant consumer detriment.

Commission

I also think the level of commission that was being paid to Caledonian should have given Options cause for concern.

It appears Caledonian was typically taking around 7% of the transfer amount in commission, and Options was told this was the case at the outset of its relationship. There is no evidence to show Caledonian carried out any of the usual work associated with a defined benefit transfer that would justify such a fee. Nor have I seen any other evidence to show there was any justification for such a high level of commission in the circumstances. I think this level of commission ought to have been another cause for Options to be concerned that Caledonian was putting its own interests ahead of the interests of consumers, including Mr W. And, of course, it was further reason to consider Caledonian might be giving advice, as commission at this level would have been very likely to motivate it to encourage consumers to proceed, through a positive recommendation.

Overall, when considered alongside the high volumes of near identical introductions of business being made by Caledonian, I think this level of commission raises questions about the motives and role of Caledonian.

Caledonian's Accounts

I note that Options made repeated requests for Caledonian's accounts. It sent several emails to Caledonian between March and August 2012. Options also explained in its email of 23 March 2012 that in order to comply with its own compliance procedures this was needed.

On 27 April 2012 Options started accepting introductions from Caledonian having not received its company accounts nor the certified passports of all its directors – seemingly in

breach of its own procedures. Indeed, recognising that this was still needed, yet outstanding, this information was requested from Caledonian again on 1 August 2012, ahead of a compliance audit. And despite Mr C twice giving reassurances that the requested documents would be sent forthwith I have not seen any evidence the accounts were ever provided.

The undated document, but likely to have been completed around March 2013 - the "Overseas Introducer Assessment Proforma" - set out that Options had noted that Caledonian had no UK branch or EEA regulatory details and it could not discover how long it had been trading. It also noted that it still hadn't received any accounts from Caledonian.

In my opinion, it is fair and reasonable that Options should have met its own standards and should have checked Caledonian's accounts at the outset before accepting any business from it. And, based on Caledonian's conduct, it seems very unlikely accounts would ever have been forthcoming.

Caledonian's reluctance to provide basic information should also have been a further factor which ought to have led Options to question whether it should enter into or continue a relationship with Caledonian. It calls into question the competence and motivations of Caledonian and the ability of Caledonian to organise its affairs. It also meant Options was missing information which might be critical to the decision as to whether to enter into business with Caledonian. It is not clear why Options accepted introductions without it.

It is notable that Options accepted and set up Mr W's SIPP when it was still waiting for this information from Caledonian.

In conclusion

Taking all of the above into consideration – individually and cumulatively – I think in the circumstances it is fair and reasonable for me to conclude that Options ought reasonably to have concluded, had it complied with its regulatory obligations which required it to conduct sufficient due diligence on Caledonian before accepting business from it and to act on information received about the conduct of Caledonian before continuing to accept business from it, that it should not accept business from Caledonian, including Mr W's application. I therefore conclude that it is fair and reasonable in the circumstances to say that Options should not have accepted Mr W's application from Caledonian.

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

In my view, for the reasons given, Options simply should have refused to accept Mr W's application. So, things should not have got beyond that. However, for completeness, I have considered whether it was fair and reasonable for Options to proceed with Mr W's application.

I acknowledge Mr W signed an Options' declaration on 11 July 2012. I note this document does give warnings about the loss of benefits that would result in the transfer to the SIPP. And the indemnities sought to confirm that Mr W would not hold Options responsible for any losses resulting from the investments. However, I don't think this document demonstrates Options acted fairly and reasonably by proceeding with Mr W's instructions.

Asking Mr W to sign a declaration absolving Options of all its responsibilities when it ought to have known that Mr W's dealings with Caledonian were putting him at significant risk was not the fair and reasonable thing to do. Also, asking Mr W to sign declarations was not an effective way for Options to meet its regulatory obligations, given the concerns Options ought to have identified about his introduction. So, it was not fair and reasonable to proceed, on the basis of these. I make this point only for completion – the primary point is Mr W

should simply not have been able to proceed, as his application should simply not have been accepted.

What would have happened if Options had refused Mr W's application?

In response to the investigator's view Options have said it is evident that Mr W wished to transfer his pension, whether through Options or another provider, and so he would have gone ahead with the FPI investment even if Options had declined his SIPP application.

I have seen no evidence to suggest that Mr W would have gone ahead even if Options had rejected his application. He was approached by Caledonian – which was consistent with its business model of contacting ex-servicemen and encouraging them to consider transferring out of their pensions – and he's told us that his wasn't interested in transferring out of the Armed Forces Pension scheme before the Caledonian representative advised him to do so. Nor was he interested in the FPI bond until the Caledonian representative told him it was "*the best*" for him. I've seen no evidence to contradict what Mr W has said about this and I don't agree with Options that, outside of Caledonian's influence, Mr W was keen to transfer his pension.

In any event, I have not seen any evidence that any other SIPP operator dealt with Caledonian. And any operator acting fairly and reasonably should, I think, have reached the conclusion it should not deal with Caledonian. I do not think it would be fair to say Mr W should not be compensated based on speculation that another SIPP operator might have made the same mistakes as Options did.

For similar reasons, I am not persuaded Mr W should not be compensated by Options, or his compensation should be reduced, because I have not made the finding the FPI bond investment, in itself, was not something Options should have accepted. Or because the benefits from Mr W's existing pension were lost once the transfer request was made. If Options had acted fairly and reasonably to meet its regulatory obligations and good industry practice, the application would not have proceeded *at all.* So, no transfer request or FPI bond investment would have been made. Caledonian was clearly reliant on Options to facilitate things – but for Options' acceptance of the application, Mr W's business would not have been able to proceed.

So, I am satisfied that Options' failure to comply with its regulatory obligations and industry best practice at the relevant time have led to Mr W suffering a significant loss to his pension. And my aim is therefore to return Mr W to the pension position he would now be in but for Options' failings.

Putting things right

My aim is to return Mr W to the position he would now be in but for what I consider to be Options' failure to carry out adequate due diligence checks before accepting his SIPP application.

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

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

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

3. Pay compensation for the loss into Mr W's pension. If that is not possible pay

compensation for the loss to Mr W direct. In either case the payment should take into account necessary adjustments set out below.

4. Pay £500 to Mr W for the distress and inconvenience caused by Options' acceptance of his SIPP application.

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 W has suffered as a result of making the transfer ("the loss calculation")

Options should calculate redress for Mr W's Armed Forces pension in line with The FCA's pension review guidance in October 2017 (https://www.fca.org.uk/publication/finalised-guidance/fg17-9.pdf) using the most recent financial assumptions published.

2. Take ownership of any investments held within the SIPP which cannot be surrendered

In order for the SIPP to be closed and further SIPP fees to be prevented, the investment(s) need(s) to be removed from the SIPP. To do this, Options should calculate an amount it is willing to accept as a commercial value for any investments that cannot be surrendered and pay that sum into the SIPP and take ownership of the relevant investments. This amount should be taken into account for the loss calculation.

If Options is unwilling or unable to purchase the investment(s) the value of them should be assumed to be nil for the purposes of the loss calculation if the investments are not readily realisable (or for any portion of the investments which is not readily realisable).

I appreciate such investments may have a realisable value in the future. So, for any investments assumed to be nil value Options may ask Mr W to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from those investment(s) in the future. That undertaking should allow for the effect of any tax and charges on the amount Mr W may receive from the investment(s) and any eventual sums he would be able to access. Options should meet any costs in drawing up the undertaking.

If Options does not take ownership of the investment(s), and it/they continue to be held in Mr W's SIPP, there will be ongoing fees in relation to the administration of that SIPP. Mr W would not be responsible for those fees if Options had not accepted the transfer of his occupational pension into the SIPP. So, I think it is fair and reasonable for Options to waive any SIPP fees until such a time as Mr W can dispose of the investment(s) and close the SIPP.

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

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

On the other hand, Options may not be able to pay the compensation into the SIPP. If so

compensation for the loss should be paid to Mr W 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 W should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr W's marginal rate of tax in retirement. For example, if Mr W 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 W would have been able to take a tax-free lump sum, the notional allowance should be applied to 75% of the total amount.

If Options believes other parties to be wholly or partly responsible for the loss, it is free to pursue those other parties. So, compensation payable to Mr W should be contingent on the assignment by him to Options of any rights of action he may have against other parties in relation to his transfer to the SIPP and the investments.

4. Pay £500 for the trouble and upset caused

Mr W transferred his pension away from a valuable defined benefits pension to a SIPP and has had to suffer the loss of those benefits. These circumstances would have been avoided if Options had done what it should have done and declined the introduction of Mr W's business from Caledonian. Options' failure has, I believe, caused Mr W considerable distress, upset and worry. So, I consider that a payment of £500 is appropriate to compensate for the distress and inconvenience Options' actions caused.

The compensation resulting from the loss assessment must where possible be paid to Mr W within 90 days of the date Options receives notification of his acceptance of my final decision.

Further 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 for any time, in excess of 90 days, that it takes Options to pay Mr W this compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

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 and/or costs/interest on costs that I think are appropriate. If I think that fair compensation is more than £150,000, I may recommend that the business pays the balance.

I do not know what award the above calculation might produce in Mr W's case. So, whilst I acknowledge that the value of Mr W's original investment was around £20,000, for completeness I have included information below about what ought to happen if fair compensation amounted to more than our award limit.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as shown above. My decision is that Options UK Personal Pensions LLP should pay Mr W the amount produced by that calculation – up to a maximum of £150,000 – plus £500 to compensate for the distress and inconvenience Options' actions caused and interest at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Options to pay Mr W this compensation.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I recommend that Options pays Mr W the balance. This recommendation is not part of my determination or award. Options doesn't have to do what I recommend. It's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W may want to get independent legal advice before deciding whether to accept this decision.

My final decision

My final decision is that I uphold this complaint. To put things right Options UK Personal Pensions LLP should calculate and pay Mr W the award set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 August 2022.

Beth Wilcox
Ombudsman