DRN-3387784

The complaint

Mr G complains about Options UK Personal Pensions LLP (and trading as Carey Pensions UK LLP [Carey] at the time of the relevant events) accepting an application for a Self-Invested Personal Pension (SIPP), and an investment in Store First and Gas Verdant, from an unregulated business called Commercial Land and Property Brokers (CL&P). For simplicity, I have referred to Options UK Personal Pensions LLP as 'Carey' throughout this decision.

Mr G's representative says that Carey failed to undertake adequate due diligence on the Gas Verdant and Store First investments and failed to make Mr G aware of the nature of the investments. It says that the investments were high risk, unregulated and speculative. It also says that Carey failed to undertake adequate due diligence on CL&P – an unregulated introducer. It says if it had undertaken due diligence it would have discovered that the Financial Conduct Authority had issued a warning about one of its Directors.

What happened

I issued a provisional decision on 16 February 2022. In that decision I set out why I believed the complaint should be upheld. I have included the content of the provisional decision in italics below and the provisional decision should be read in conjunction with, and forms part of, this final decision. Although Carey is now Options, I will refer to Carey throughout.

Provisional decision of 16 February 2022:

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

Mr G's dealings with CL&P and Carey

Mr G's representative says Mr G was advised by CL&P to transfer his pension arrangements to a SIPP with Carey and invest in unregulated investments following the transfer. It is submitted that Mr G thought that CL&P were his financial advisers. It says CL&P provided the relevant documentation for Mr G to complete so that the transfer could go ahead and investment made.

Before being contacted by CL&P Mr G had two occupational defined benefit pensions and a money purchase personal pension. Following the contact by CL&P the cash value of these pensions was switched into a SIPP with Carey, and a significant amount of that cash was then invested in Store First and Gas Verdant. The key events which took place during Mr G's dealings with Carey were as follows:

- *Mr G signs a Carey SIPP application form – 28 February 2012.*
- *Carey sends its welcome letter, confirming the establishment date of the SIPP – 6 March 2012.*

- *Carey confirms a transfer amount has been received from Scottish Life - 11 June 2012. Mr G's two defined benefit occupational schemes also confirmed transfers to Carey: £42,000 on 17 September 2012 and £205,000 on 1 June 2012.*
- *Mr G signs Carey's member declaration and indemnity in respect of Storefirst (referred to as 'the indemnity' in the published decision, using the wording quoted in full there) – 14 August 2012. He also signed a Carey indemnity for Gas Verdant on 12 October 2012.*
- *Carey confirms it has sent cash from Mr G's SIPP to Store First (£69,000) on 26 September 2012 and Gas Verdant (£95,000) on 23 October 2012.*

There is also a copy of an undated letter of authority signed by Mr G, authorising Carey to deal with CL&P.

CL&P and Carey

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

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

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

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

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

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

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

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

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

The agreement was signed by CL&P on 20 March 2012. It was signed by Ms Adams. 23

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

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

A copy of the latest set of accounts

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

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

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

And the text addressed to Ms Hallett by the Team Leader said "this is the second member this

week to ask when are they getting their money".

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

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

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

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

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

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

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

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

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

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

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

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

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

Submissions made by Mr G

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

Were you interested in changing your pension at the time of being contacted by CL&P? Why? What attracted you to CL&P? What attracted you to the Store First and GAS Verdant investments?

I had started getting a lot of cold calls leading up to my 55th birthday, none particularly interested me, CL&P strongly convinced me that GAS Verdant and Store First were the perfect investment for a man in my position with the amount of funds i had available to me with the pensions I held. I had no idea whatsoever about investments and was happy to just leave my pensions as having been a single parent for the years leading up to my 55th birthday I had just started to work full time. They convinced me I'd be a fool not to invest.

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

CL&P took the lead in the whole transaction, as I stated before I had no idea about pensions or investments.

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

GAS Verdant and Store First were the only options ever offered to me.

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

If CL&P had ever mentioned anyone or anything was subject to any investigation. Everything was portrayed as a win win situation. The amount of money involved any hint of any investigation I'd have never dreamt of risking my money.

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

There was never any mention of Carey ending any relationship with CL&P at any point? Again with the amount of money involved I'd have certainly asked questions? I never had that opportunity.

What is your understanding of how the investments work? Did you understand the risks associated with a high risk, speculative investment? What are they in your own words?

Even with my limited knowledge of investments I understood that it was certainly a risk but the information I was given that even in the worst scenario the bulk of my money would be safe. They even hinted that even if one investment was risky the chance of both being at risk was more or less impossible. That's why I was advised to go with two separate investments.

What was your understanding of the risks associated with these investments? Please explain your answer fully.

My understanding was that no matter what happened the farm land and the storage pods were always going to be there so in the worst situation I'd still own both of my investments.

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

My understanding was that Carey were looking after my interests. Not at one point did Carey mention any hint of any risk or problem until they just stopped paying me my monthly interest on my investments. When I rang to ask where my monthly payment was the only response I got was there is no money left? The first year they sent a folder with my predictions for the investments and even the worst scenario looked good to me? They sent similar predictions in the second year? Not at one point did I even think there was any foreseeable problem.

Your SIPP was set up in March 2012 and your investments in Store First and GAS Verdant were made in September and October 2012. Were you aware that you were still free to choose whether or not to make those specific investments after the SIPP had been set up?

As far as I was aware from the information given to me by Carey the investments were up and running on my 55th birthday.

On 12 October 2012, you signed a Members Declaration & Indemnity (the indemnity) which included the following statement "I am fully aware that this investment is an Alternative Investment and as such is High Risk and / or Speculative". Did you read the indemnity before signing it? What does this indemnity mean to you in your own words?

I was told that signing was just my acknowledgment that any investment was a risk which I understood to be as stated before that the land and pods would always be there but just not as valuable as the higher predictions. Indemnity to me meant that Carey would be liable to any false or misleading information?

Submissions made by Carey

The submissions made by Carey in this complaint are essentially the same as those summarised in the published decision. That is with the further submission in Mr G's case that there was no reason for Carey not to accept the investment in GAS Verdant – and it undertook due diligence on that

investment.

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

The investigator's view

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

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

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

- *Carey's concerns were such that it actually stopped doing business with CL&P once it became aware of the warnings and incentives issue. But it did not advise Mr G of this.*

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

- *Once Carey's non-regulator introducer agreement was signed, it was not signed by the Directors of CL&P but by members of staff. If Carey had questioned why the Directors had not signed it might have led Carey to conclude that it shouldn't do business with CL&P.*

- *Carey was concerned CL&P was offering 'cash back' incentives to consumers in December 2011. Carey's concerns were such that by May 2012 in stopped doing business with CL&P.*

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

Carey's response to the investigator's view

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

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

- *There is a material difference between a warning detailing that you should not deal with a particular individual and a notice informing you that an individual is not a regulated individual*

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

- *There is nothing in the notice published on 15 October 2010 to indicate that Terence (Terry) Wright is an individual to avoid as such, it is not fair or reasonable to state that on the basis of a notice that simply informs that Terence (Terry) Wright is not regulated by the FCA, that Carey should not have accepted this business.*

- *The fact that the FCA updated their notice in 2013 to a clear warning including an express comment that Mr Wright was an individual to avoid, a warning that would have put Carey on notice to stop accepting business from Mr Wright, is irrelevant in this case because Carey had already severed its Terms of Business some 18 months before the warning in 2013 regarding Mr Wright was published.*

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

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

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

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

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

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

- *Carey did undertake a reasonable level of due diligence, both on CL&P and the investments. There was nothing of concern at the time. Carey did conduct its affairs with the FCA's Principles in mind. Carey determined that Mr G had not appointed a financial adviser and Mr G understood that he had not been advised on the suitability of the transaction at the time. Carey provided Mr G with Member Declarations which reaffirmed his investment instructions and provided him with risk warnings about his chosen investment to enable him to make an informed decision on whether to proceed. It was Mr G's decision to proceed on an execution only basis and it made this clear to him. Mr G confirmed that he had read and understood all the documentation he had been given and this should be taken into account.*

- *There was no reason for Carey to have refused to accept business from CL&P.*

After Carey rejected the investigator's view, it was advised that the complaint would now be reviewed by an ombudsman. Carey then provided a further submission. It said it couldn't provide

a full response because in its view the investigator had not addressed its points adequately. This was particularly in respect of COBS 11.2.19, the FCA's Notice on Terence Wright, FSA guidance on the duties of SIPP operators and that Mr G was not being held responsible for any of the loss he had suffered.

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

On this basis, Carey was asked to review outstanding complaints involving CL&P and Store First – including Mr G's - and if it was not prepared to make a settlement offer taking account of the detailed reasons set out in the published decision, to explain why it was distinguishing it from the published decision. Carey declined to carry out this review at this time. Mr G's complaint has therefore been passed to me for review and I'm satisfied that there is no need to wait any further before progressing this complaint.

What I've provisionally decided – and why

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

In considering what is fair and reasonable in all the circumstances of this complaint, I have taken into account relevant law and regulations; regulators rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time. Having done so, I have reached the same view in this complaint as that set out in the published decision.

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

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

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

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

I acknowledge that COBS2.1.1R (A firm must act honestly, fairly and professionally in accordance with the best interests of its client) was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of FSMA ("the COBS claim"). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

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

I note that there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr G's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, as HHJ Dight noted, he was not asked to consider the

question of due diligence before Options SIPP agreed to accept the store pods investment into its SIPP. The facts of the case were also different.

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

To be clear, I have proceeded on the understanding Carey was not obliged – and not able – to give advice to Mr G on the suitability of its SIPP or the Store First and GAS Verdant investments for him personally. But I am satisfied Carey's obligations included deciding whether to accept particular investments into its SIPP and/or whether to accept introductions of business from particular businesses. As the published decision sets out, this is consistent with Carey's own understanding of its obligations at the relevant time.

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

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

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

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

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

Due diligence on CL&P

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

Mr G's application was accepted on 6 March 2012. As the published decision sets out, it is fair and reasonable to say by that time Carey ought to have known that CL&P's director was Mr Terence Wright, and that he was on the FSA's "Firms and individuals to avoid" list, which was described on the website as "a warning list of some unauthorised firms and individuals that we believe you should not deal with".

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

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

The money was sent to Store First in September 2012 and GAS Verdant in October 2012. As the published decision sets out it is fair and reasonable to say by that time Carey knew, or ought to have known:

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

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

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

Investment due diligence

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

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

- *There were factors in the report Carey obtained on Harley Scott Holdings Ltd (the promoter of Store First) which ought to have been of concern – namely the adverse comments for the previous three years, the CCJ's, and the fact the business had recently changed its name.*
- *Dylan Harvey (one of three previous names of Harley Scott Holdings Ltd, which at the time had the web address dylanharvey.com) and one of its directors, Toby Whittaker, were the subject of a number of national press reports, online petitions and proposed legal action, as a result of a failed property investment.*
- *Harley Scott Holdings Ltd had recently been involved in a property investment scheme which had failed. It had also recently changed its name, and had been subject to a number of adverse comments in succession, following audit.*

- *Store First's marketing material set out high fixed returns, and said these were guaranteed. The material did not contain any type of risk warning, or illustrations of any other returns. No explanation of the guarantees was offered, or the basis of the projected returns – other than Store First's own confidence in its business model and the self-storage marketplace.*
- *The conclusion of the Enhanced Support Solutions report Carey had obtained was inconsistent with the result of Carey's own company searches. The report also makes no comment on the obvious issues with the marketing material.*

- *The marketing material showed there was a significant risk that potential investors were being misled.*
- *Store First appeared to be presenting the investment as one that was assured to provide high and rising returns, was underwritten by guarantees, and offered a high level of liquidity together with a strong prospect of a capital return - despite the fact that there was no investor protection associated with the investment and that, in Carey's own words, "there is no apparent established market" for the investment and "the investment is potentially illiquid"*
- *Store First had no proven track record for investors and so Carey couldn't be certain that the investment operated as claimed.*
- *Consumers may have been misled or did not properly understand the investment they intended to make.*

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

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

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

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

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

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

As to Gas Verdant, this was also an unregulated, esoteric, high risk investment. The 'Verdant Australian Farmland' investment took the form of a 'land purchase contract' which involved a company based in Cyprus (GAS Global Agricultural Services Ltd) leasing plots of agricultural

land in Australia to investors. Crops were to be planted on the plots, and the objective was to provide an income to investors through the sale of those crops and capital growth through the sale of the plot of land after an eight year period. This investment would now appear to have failed, with Mr G's investment being valued at zero.

Carey has not said what due diligence it carried on Gas Verdant. Be that as it may, by the time of that investment Carey should have been aware, as discussed, that it should not have accepted the application from Mr G and so the Gas Verdant investment should never have taken place. As well as that, and the fact that the Store First investment was suspect, it should have given Carey additional cause for concerns that a large proportion of Mr G's pension funds were being invested in another unregulated investment where total loss was possible.

The involvement of TPS

TPS was a trading name of Douglas Baillie Ltd. At the time of TPS's involvement Douglas Baillie Ltd was an FCA regulated financial adviser. TPS was appointed by Mr G on 12 March 2012, after he had made his SIPP application and that application had been accepted by Carey. Carey has said that TPS was appointed after Carey had told Mr G that it required him to seek advice about his intention to transfer his occupational (defined benefit) pensions to the SIPP. Carey has said that it received confirmation in 2012 that Mr G had received advice from TPS as to the intended transfers and copies of the Transfer Value Analysis Summary's (TVAS) that TPS completed for Mr G.

I have noted that Douglas Baillie Ltd was noted as Mr G's financial adviser on a Carey 'Financial Adviser Details' form – although this is dated 6 May 2012 – several months after Carey had accepted the SIPP application.

TPS wrote to Mr G on 3 May 2012. It its letter is set out its advice as to the transfer of one of Mr G's occupational schemes and his personal pension.

A similar letter was issued by TPS on 2 August 2012 with respect to Mr G's remaining occupational pension scheme.

I don't believe that Carey should have taken any particular comfort from the involvement of TPS in these specific circumstances. As discussed, Carey had already accepted Mr G's SIPP application and set up his SIPP by the time of TPS's involvement, something it should not have done given what it should have known about CL&P. Furthermore, Mr G's SIPP application and request to transfer had been introduced by CL&P without any involvement of a regulated financial adviser. It was only at Carey's request that a financial adviser was appointed. It was clear that CL&P was the material party that was inducing Mr G to transfer and then invest in unregulated investments. TPS was only appointed after the fact as a condition of Carey accepting the transfer of the occupational schemes. So the same concerns about CL&P's involvement and likely consumer detriment should have remained and led Carey to decline the application.

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

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

- *It was not fair and reasonable for Carey to have accepted Mr G's application from CL&P in the first place. So, Mr G's SIPP should not have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity should not have arisen at all, whether those investments were Store First or Gas Verdant.*
- *The Principles exist to ensure regulated firms treat their clients fairly. I consider there is a significant imbalance of knowledge between the parties which creates unfairness in the circumstances of this case. At the time of receiving Mr G's application and*

executing his investment instructions, Carey knew things that Mr G did not.

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

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

- *Mr G has told us that had he been made aware that Carey had ended its relationship with CL&P, he would have asked why. In my view, it is unlikely this would have led to Mr G having confidence to continue dealing with CL&P.*
- *Mr G has told us he was told by CL&P that the bulk of his money was safe. So, when he signed the indemnity, I am not persuaded that he did so with a full understanding of what high risk meant. Instead he was reassured by what he had been told by CL&P.*

Is it fair to ask Carey to compensate Mr G?

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

- *I do not consider the fact that Mr G signed the indemnity means that he shouldn't be compensated if it is fair to do so.*
- *Had Carey acted in accordance with its regulatory obligations and best practice, it should not have accepted Mr G's application to open a SIPP introduced from CL&P. That should have been the end of the matter – it should have told Mr G that it could not accept the business. So if that had happened, the arrangement for Mr G would not have come about in the first place, and the loss he suffered could have been avoided.*
- *Had Carey explained to Mr G why it would not accept the application from CL&P or was terminating the transaction, I find it very unlikely that Mr G would have tried to find another SIPP operator to accept the business.*
- *In any event, I don't think it's fair and reasonable to say that Carey should not compensate Mr G for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found it did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted the application from CL&P, or would have terminated the transaction before completion.*
- *I'm satisfied that it would not be fair to say Mr G's actions mean he should bear the loss arising as a result of Carey's failings. I acknowledge Mr G was warned of the high-risk nature of Store First and Gas Verdant and declared he understood that warning. But Carey failed to act on, nor did it share, significant warning signs with Mr G so that he could make an informed decision about whether to proceed with the investment. And, in these circumstances, I am satisfied that Carey should not have asked him to sign the indemnity at all.*

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

Putting things right

I am satisfied that Carey's failure to comply with its regulatory obligations and industry best practice at the relevant time has led to Mr G suffering a significant loss to his pension. And my aim is therefore to return Mr G to the pension position he would now be in but for Carey's failings. When considering this I have taken into account the Court of Appeal's supplementary judgement ([2021] EWCA Civ 1188), insofar as that judgement deals with restitution/compensation.

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

As discussed, Mr G transferred two defined benefit pensions and switched one money purchase pension. Therefore different redress calculations will be required for each type of pension.

In summary, Carey should:

1. *Calculate the loss Mr G has suffered as a result of making the transfers and switch.*

2. *Take ownership of the Store First and GAS Verdant investments if possible.*

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

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

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

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

To do this, with respect to the money purchase pension, Carey should work out the likely value of Mr G's pension as at the date of this decision, had he left it where it was instead of switching to the SIPP.

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

With respect to the defined benefit transfers Carey should calculate redress 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.

The notional transfer value of the money purchase pension should be compared to that proportion of the transfer value of the SIPP that is represented by that switch. This will show the loss Mr G has suffered as to the money purchase pension.

The Store First and GAS Verdant investments should be assumed to have no value.

2. Take ownership of the Store First and Gas Verdant investments

I note that the Court of Appeal attached a value to the Store First investment. However,

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

If Carey is unable to take ownership of the Store First and Gas Verdant investments they should remain in the SIPP. I think that is fair because I think it is unlikely they will have any significant realisable value in the future. I understand Mr G has the option of returning his Store First investment to the freeholder for nil consideration. That may enable him (subject to the position with the Gas Verdant investment) to close his SIPP, if Carey does not take ownership of the Store First investment.

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

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

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

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

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

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

Mr G has been caused some distress and inconvenience by the loss of his pension benefits. This is money Mr G cannot afford to lose and its loss has undoubtedly caused him upset. I note the Court of Appeal did not find compensation should be paid for non financial loss. But my role here is to determine what, in my view, is fair compensation in the particular circumstances of this case. And I consider that a payment of £500 is fair to compensate for the upset Mr G has suffered.

***determination and money award**: my provisional decision is that Carey pay Mr G compensation as set out above, up to a maximum of £150,000.*

The compensation resulting from the loss assessment must where possible be paid to Mr G within

90 days of the date Carey 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 Carey to pay Mr G 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.

***recommendation**: If the amount produced by the calculation of fair compensation exceeds £150,000, I also recommend that Carey pays Mr G the balance. I further recommend interest to be added to this balance at the rate of 8% per year simple for any time, in excess of 90 days, that it takes Carey to pay Mr G from the date it receives notification of his acceptance of the decision, as set out above.*

If Mr G accepts my determination, the money award is binding on Options SIPP UK LLP. My recommendation is not binding on Options SIPP UK LLP.

Further, it's unlikely that Mr G can accept my determination and go to court to ask for the balance of the compensation owing to him after the money award has been paid. Mr G may want to consider getting independent legal advice before deciding whether to accept my final decision.

My provisional decision

For the reasons given, my provisional decision is that I uphold Mr G's complaint.
Options SIPP UK LLP should calculate and pay compensation as set out above.

I have not received any further submissions from Carey in response to the provisional decision.

Mr G's representative confirmed that Mr G accepted the provisional decision.

What I've decided – and why

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

I have not received any further submissions in response to my provisional decision. My decision therefore remains that the complaint should be upheld – for the reasons set out in my provisional decision.

Putting things right

As set out in the provisional decision, Carey should:

1. Calculate the loss Mr G has suffered as a result of making the transfers and switch.

2. Take ownership of the Store First and GAS Verdant investments if possible.

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

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

I'll explain how Carey should carry out the calculation set out at 1-3 above in further

detail below:

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

To do this, with respect to the money purchase pension, Carey should work out the likely value of Mr G's pension as at the date of this decision, had he left it where it was instead of switching to the SIPP.

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

With respect to the defined benefit transfers Carey should calculate redress 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.

The notional transfer value of the money purchase pension should be compared to that proportion of the transfer value of the SIPP that is represented by that switch. This will show the loss Mr G has suffered as to the money purchase pension.

The Store First and GAS Verdant investments should be assumed to have no value.

2. *Take ownership of the Store First and Gas Verdant investments*

I note that the Court of Appeal attached a value to the Store First investment. However, here, I am able to ask Carey to take ownership of the investment. And I understand Carey has been able to take ownership of the Store First investment, for a nil consideration, in other cases. So it should do that here, if possible. I am satisfied that is a fair approach in the circumstances of this case, as it may allow the SIPP to close (subject to the position with the Gas Verdant investment) and gives Carey the option of retaining the investment or realising its current market value. If the Gas Verdant investment still exists then Carey should also take ownership of it.

If Carey is unable to take ownership of the Store First and Gas Verdant investments they should remain in the SIPP. I think that is fair because I think it is unlikely they will have any significant realisable value in the future. I understand Mr G has the option of returning his Store First investment to the freeholder for nil consideration. That may enable him (subject to the position with the Gas Verdant investment) to close his SIPP, if Carey does not take ownership of the Store First investment.

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

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

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

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

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

Mr G has been caused some distress and inconvenience by the loss of his pension benefits. This is money Mr G cannot afford to lose and its loss has undoubtedly caused him upset. I note the Court of Appeal did not find compensation should be paid for non financial loss. But my role here is to determine what, in my view, is fair compensation in the particular circumstances of this case. And I consider that a payment of £500 is fair to compensate for the upset Mr G has suffered.

determination and money award: my final decision is that Carey pay Mr G compensation as set out above, up to a maximum of £150,000.

The compensation resulting from the loss assessment must where possible be paid to Mr G within 90 days of the date Carey 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 Carey to pay Mr G 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.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I also recommend that Carey pays Mr G the balance. I further recommend interest to be added to this balance at the rate of 8% per year simple for any time, in excess of 90 days, that it takes Carey to pay Mr G from the date it receives notification of his acceptance of the decision, as set out above.

If Mr G accepts my determination, the money award is binding on Options SIPP UK LLP. My recommendation is not binding on Options SIPP UK LLP.

Further, it's unlikely that Mr G can accept my determination and go to court to ask for the balance of the compensation owing to him after the money award has been paid. Mr G may want to consider getting independent legal advice before deciding whether to accept my final decision.

My final decision

I uphold Mr G's complaint. Options SIPP UK LLP should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 April 2022.
David Bird
Ombudsman