DRN-3504059

The complaint

Mr W has complained, through his representative, about the shares he bought through Templeton Securities Limited (an appointed representative of Alexander David Securities Limited). The representative has said that the firm's failings resulted in Mr W investing in shares which were high risk and unsuitable.

What happened

I sent out my provisional decision on this complaint on 27 April 2022. The background and circumstances to the complaint, and the reasons why I was provisionally minded to uphold it were set out in that decision. I have reproduced part of that provisional decision here, and it forms part of this final decision.

The provisional decision said:

"My understanding is that Mr W was advised by an unauthorised firm to open a SIPP (Self Invested Personal Pension) and transfer his existing personal pension into it. The total amount transferred into the SIPP was approximately £40,000. My understanding is that Templeton Securities Limited wasn't involved in the advice given to Mr W to transfer his pension to the SIPP.

Mr W was then persuaded by another unauthorised firm to open an account with Templeton Securities. He completed an application form on 13 May 2014 for a Private Client Portfolio account.

On the same date (13 May 2014), Mr W signed a letter of authority for the unregulated firm allowing it to obtain information about his pension.

When Mr W opened the account he completed a Private Client Portfolio Agreement and Application Booklet. These said, amongst other things:

What to expect as a client of Templeton Securities

We understand that individual client investment needs vary with differing goals and as an independent stockbroker, Templeton Securities aim is to provide the best private client investment service with clarity and vision whilst tailoring our advice to suit individual client needs.

To understand your investment requirements and to create your personal portfolio, we will need to know the details of your financial background and your plans for the future which will enable us to advise a tailored solution to suit your aims and objectives. It is therefore imperative that you fully complete this Application as failure to do so may mean that we are unable to affect a suitable portfolio or offer an appropriate service.

…We are required under the Financial Services and Markets Act 2000 {"FSMA") to provide you with suitable investment advice and services, based on the information you

provide to us about your circumstances. By completing this form in its entirety, you will enable us to fully comply with the requirements of this Act.

Under the section “Important Financial Information” it said:

In order for us to properly assess your ability to bear investment risks in relation to the services we provide, we need to understand the composition of your assets and liabilities, and income and expenditure. We are required to take this into account when assessing the suitability of our investment management service we provide...

…Please enter details of your total assets and liabilities (Please enter amounts to the nearest thousand pounds)

Under a list of asset types including Property, Cash, Investment ISAs, Equity Investments and Investment Bonds, £3 million was listed under “Property”, £100,000 under “Cash”, and £40,000 under Pension Plans. Mr W’s total assets were recorded as £3,140,000. His liabilities were recorded as £700,000. Mr W’s income was noted as £1,950 per month and his expenditure as “Nil”.

Under “Investment Risk and Objectives” it said:

Preferred Level of Portfolio Risk

Please indicate below your preferred level of portfolio risk as part of your overall investment strategy.

Ticks were placed in the “Medium/High” and “High” categories.

The section headed ‘Investment Experience’ asked what types of investment Mr W had traded previously and the box ‘Advisory Broking’ was ticked. When asked to describe his level of experience for various asset classes, the novice category (less than 1 year) was ticked for equities, fixed interest and alternative assets. And the intermediate (1-5 years) for Funds.

Under “Acceptance Form” it said, amongst other things:

I/We wish Templeton Securities Limited (“Templeton") to advise on a portfolio of investments for me in accordance with the Terms and Conditions, a copy of which we have received and which I agree to.

The relevant sections of the General Terms and Conditions of Business included:

2 Introduction

2.1 This document contains details of the investment advisory and execution only services which Templeton Securities (“TEMPLETON”) shall provide you with our services in accordance with the Client Application Form, and it sets out the obligations and rights applying between us and you.

2.2 These Terms and Conditions and all transactions are subject to Applicable Regulations. The term ‘Applicable Regulations’ means:

a. the rules of the Financial Conduct Authority (“FCA”) including the Handbook issued by the FCA (“FCA Rules”) or any other rules of a relevant regulatory authority;
b. the rules of a relevant stock or investment exchange; and

c. all other applicable laws, rules and regulations as in force from time to time.

This means that:

(i) if there is any conflict between these Terms and Conditions and any Applicable Regulations, the latter will prevail;

3. The services we will provide

3.1 If you are designated as an execution-only client or if you have not supplied us with sufficient information (either orally or in writing) about your investment objectives, financial circumstances and the degree of risk you are prepared to accept or when, even though you have previously supplied us with information, we may reasonably believe that you are not expecting us to advise you about the merits of a particular transaction in a "non-complex" financial instrument, then we will not make any personal or product investment recommendations. Nothing in our literature or in these Terms & Conditions should be treated as a solicitation or recommendation to buy, sell or maintain any product. We will action all instructions on an 'execution-only' basis. This means that we are only able to act on the instructions that you provide. We cannot give you advice about what instructions you should give us. You are responsible for the investment decisions that you make when you engage our services as an execution-only customer. We do not accept responsibility on a continuing basis for advising you on the composition of your portfolio…

3.2 If we have agreed to provide you with an advisory service, we accept responsibility for advising you as to the merits of any particular investment based on the information supplied by you in the TEMPLETON Application Form pertaining to your individual circumstances, requirements and objectives. We may provide you with investment advice on your request. Information supplied by you, via the TEMPLETON Application Form, should be updated as necessary before we give you advice on a particular transaction. If you do not inform us of any investment or types of investments, which you do not wish us to recommend or purchase for you, we may recommend to you any investments provided that we have reasonable grounds for believing that each investment product we do recommend is suitable and appropriate for you, in accordance with FCA rules. We do not undertake discretionary management of your investments, any investment advice we give you is provided on the understanding that we do not accept responsibility on a continuing basis for advising on the composition of your portfolio.

3.7 We may, at our discretion, decline to accept any order or instruction from you or instigate certain conditions prior to proceeding with your order.

4.9 Specific client instructions

4.9.1 Where you give us a specific instruction as to the execution of an order, we will execute the order in accordance with those specific instructions.

5. Suitability

5.1 In providing a managed portfolio service or giving investment advice to you, we are required by the FCA to obtain the necessary information from you regarding your knowledge and experience in the investment field relevant to the specific type of investment or service provided to you, your financial situation and your investment objectives in order to assess the suitability of our advice and of the transactions to be entered into by us on your behalf. In particular, we must obtain from you such information as is necessary for us to understand the essential facts about you and have a reasonable basis for believing, giving due

consideration to the nature and extent of the service provided, that the specific transactions to be recommended, or entered into in the course of managing:

(a) meets your investment objectives;
(b) is such that you are able to financially bear any related investment risks consistent with your investment objectives; and
(c) is such that you have the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of your portfolio.

6. Appropriateness

6.1 In providing services other than investment advice management, we may be subject to an obligation under Applicable Regulations to assess the appropriateness of the contemplated product or service for you by determining whether you have the necessary experience and knowledge in order to understand the risks involved in relation to the specific type of product or service offered or demanded. In such circumstances, where on the basis of information received we consider that the contemplated product or service is not appropriate for you, we will provide you with a warning to that effect.

6.4 Please note, however, that we will not advise you about the merits of a particular transaction if we reasonably believe that, when you give the order for that transaction, you are not expecting such advice and are dealing on an execution-only basis. Where the transaction relates to non-complex financial instruments such as shares, bonds and UCITS, we will inform you at the time that we will execute your order on that basis and we will not be required to ensure that the transaction is suitable or appropriate for you. Please note therefore, that you will not benefit from the protection of the relevant FCA Rules requiring us to assess the suitability or appropriateness of the transaction for you.

The Term's definitions provided *"Execution-Only" means that we act on your instructions and offer no advice as to whether such an investment is suitable for you.*

A total of £39,363 was transferred into the account on 2 June 2014.

Templeton sent a letter to Mr W dated 29 May 2014. Amongst other things it said:

"*We are required to classify each of our clients into one of three categories: Retail Client, Professional Client or Eligible Counterparty. Based on the information available to us, we have classified you as a Retail Client in respect of all the services we make available to you. This means you are within the category of clients who receive the highest level of protection under the regulatory system.*

We note your interest in high risk products, investments in smaller companies, in particular 'Penny Shares' and investments that are not readily realisable e.g. small unquoted companies involve a high risk that all or part of your investment may be lost. You may also have difficulty in selling these shares at a reasonable price and in some circumstances you may not be able to sell at any price. There can be a big difference between the buying and selling price and if they have to be sold immediately, you may get back much less than you paid for them."

On 4 June 2014 Mr W e-mailed Templeton Securities. The e-mail included:

"I wish to invest £19,681.50 in Eligere investments plc (ELI) gxg listed securities with a 55 pence limit for T3 settlement.

I wish to invest £19,681.50 in Emmit plc (EMT) aim listed securities with a £1.95 limit for T1

settlement.

Please advise me via e-mail when this has been transacted."

Templeton Securities bought these shares investing £19,556 in Eligere and £19,806 in Emmitt (including costs). My understanding is that the instruction was prompted by the one of the unregulated firms who provided Mr W with the wording for it.

Mr W received £2,472 from one of the unregulated firms which he says was described as "commission sacrifice."

The FCA issued a statement about the promotion of shares in EMMIT on 31 October 2014. It said it had been made aware that individuals were being encouraged to transfer money from their work pension schemes into Self-Invested Personal Pensions (SIPPs) and use that money to buy shares in Emmit plc. It said some investors were being offered "cash back" on their investments in Emmit plc of up to 30% of the transfer value, paid by a third party, as an incentive to do this. Some investors appeared to have invested 100% of their pension assets into Emmit plc shares and could suffer significant financial loss if they have done this without fully understanding what they were doing.

Trading of shares in Emmitt plc and Eligere Investments plc was suspended in May and June 2015 respectively.

Mr W complained to Alexander David through his representative in January 2020. The representative said, in brief, that Templeton Securities knew or ought to have known that it was extremely suspicious to receive multiple almost identical instructions to invest in at least two non-mainstream companies trading on alternative markets within a short space of time. It said if proper enquiries had been made it would have become apparent that Mr W didn't understand the potential risks and consequences of making the investments. And if they had been pointed out he could have avoided proceeding. It said that it should have been clear to Templeton Securities that the nature of the investments made were wholly unsuitable for Mr W. And that Templeton Securities shouldn't have permitted the investments to be made.

Templeton Securities didn't uphold Mr W's complaint, and Mr W's representative referred the complaint to us. One of our investigators considered the complaint. He recommended that it should be upheld. In summary, he thought that the circumstances of the transaction ought to have alerted Templeton Securities that a third party was likely to be involved. And that if Templeton Securities had investigated it would likely have concluded that Mr W was acting on instructions from an unregulated firm which was acting in breach of s19 of the Financial Services and Markets Act 2000 (FSMA). The investigator said Templeton Securities should have used its discretion to reject the investment instruction. And given the circumstances he didn't think Mr W would have invested had it done so.

Mr W, through his representative, said he had nothing further to add.

Alexander David/Templeton Securities didn't respond to the investigator's assessment.

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.

The Financial Ombudsman Service can consider a complaint under its compulsory jurisdiction if that complaint relates to an act or omission by a firm in the carrying on of one

or more listed activities, including regulated activities (DISP 2.3.1R).

Regulated activities are specified in Part II of the Regulated Activities Order (RAO) and include advising on investments (article 53 RAO). And arranging deals in investments (article 25 RAO). So I can consider the complaint either about advice – or the omission to provide advice. Or about arranging the purchase of the shares if it was an execution only sale.

I've therefore read and considered all the available evidence and arguments to provisionally decide what is, in my opinion, fair and reasonable in the circumstances of this complaint. When doing that, I'm required by DISP 3.6.4 R of the Financial Conduct Authority's Handbook to take into account the:

'(1) relevant:

(a) law and regulations;
(b) regulators' rules, guidance and standards;
(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.'

When evidence is incomplete I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is most likely to have happened given the available evidence and the wider circumstances.

My understanding is that both shares were allowable as per the SIPP Permitted Investment document.

The documentation and literature that was provided at the time that the Private Client Portfolio account was opened clearly described it as providing an advisory service. However, whilst the account was advisory, the terms did also provide for Templeton Securities to accept execution only instructions in some circumstances.

Clause 6.4 came under the heading Appropriateness. Clause 6.1 said "…*we may be subject to an obligation under Applicable Regulations to assess the appropriateness of the contemplated product or service."* I think this is reference to the requirements under COBS 10 (the regulator's Conduct of Business Rules). My understanding is the shares bought here weren't subject to COBS 10. But Clause 6.4 went onto say:

Please note, however, that we will not advise you about the merits of a particular transaction if we reasonably believe that, when you give the order for that transaction, you are not expecting such advice and are dealing on an execution-only basis*. Where the transaction relates to non-complex financial instruments such as shares, bonds and UCITS, we will inform you at the time that we will execute your order on that basis and we will not be required to ensure that the transaction is suitable or appropriate for you*.

And Clause 3.1 provided:

3.1 If you are designated as an execution-only client or if you have not supplied us with sufficient information (either orally or in writing) about your investment objectives, financial circumstances and the degree of risk you are prepared to accept or when, ***even though you have previously supplied us with information, we may reasonably believe that you are not expecting us to advise you about the merits of a particular transaction in***

a "non- complex" financial instrument, then we will not make any personal or product investment recommendations. [My emphasis].

The documentation that has been provided doesn't show that Mr W was 'designated' as an execution-only client. However Clause 3.1 and 6.4 provided an alternative basis for carrying out execution only services as highlighted. And Clauses 3.1 and 4.9 went onto say:

You are responsible for the investment decisions that you make when you engage our services as an execution-only customer. We do not accept responsibility on a continuing basis for advising you on the composition of your portfolio…

4.9 Specific client instructions

4.9.1 Where you give us a specific instruction as to the execution of an order, we will execute the order in accordance with those specific instructions..

Given the particular wording of the 4 June 2014 e-mail, I think Templeton Securities was entitled to *"reasonably believe*" that Mr W wasn't expecting advice about the merits of the transaction. It was an order to buy particular shares and at a particular price, on a specific settlement basis. I don't think there was anything in the e-mail that suggested that Mr W was asking for advice about the merits of the purchases or otherwise suggested that Mr W was expecting Templeton Securities to give him advice. I think this is consistent with the transaction been driven by the unregulated firm(s). Templeton Securities wasn't therefore accepting responsibility for the investment decision executed on an execution only basis as per Clause 3.1. And it carried out the instruction as per Clause 4.9.

Clause 6.4 of the terms said that Templeton Securities would write to Mr W where it executed a transaction in non-complex financial instruments to inform him it had placed the order on that basis. Templeton Securities didn't do this at the time. It says it did write to Mr W on 11 September 2014 which I will consider further below.

I'm required to decide what's fair and reasonable in *all* the circumstances of a case. We have received a number of complaints against Templeton Securities representing Alexander David, about very similar transactions that all happened at around the same time.

It's apparent that Templeton Securities received a number of requests to open this type of advisory account with it, all within a relatively short period. And very shortly after the accounts were opened e-mailed instructions with almost identical wording were sent to Templeton Securities asking to invest in these same two shares (and in some cases one other share).

By the time that Templeton Securities received Mr W's e-mail (4 June 2014), it had already received a significant number of e-mails from different investors all with near identical wording. The e-mails were sent to the same person at Templeton Securities (who I understand held the CF30 function with Alexander David Securities at that time). Templeton Securities/Alexander David should have copies of these e-mails on their files. However

details (to the degree that it is appropriate to provide) of these e-mails can be requested from the investigator if required.

Templeton Securities' primary duty was to implement its client's instructions. But that duty wasn't unqualified.

Firstly, it had a broad contractual discretion whether to accept any order or instruction from Mr W as provided in Clause 3.7 of the Terms and Conditions. Second, it had an obligation to comply with the FCA's rules.

As I have set out above, the accounts Terms and Conditions included:

2.2 These Terms and Conditions and all transactions are subject to Applicable Regulations. The term 'Applicable Regulations' means:
a. the rules of the Financial Conduct Authority ("FCA") including the Handbook issued by the FCA ("FCA Rules") or any other rules of a relevant regulatory authority;
b. the rules of a relevant stock or investment exchange; and
c. all other applicable laws, rules and regulations as in force from time to time.

This means that:
(i) if there is any conflict between these Terms and Conditions and any Applicable Regulations, the latter will prevail.

So the duty to comply with the FCA's rules was recognised in the Terms and Conditions as an overriding duty that prevailed over anything to the contrary in those Terms.

The FCA is responsible for consumer protection which it seeks to achieve through application of its Rules, including its Principles for Business (PRIN). Templeton Securities was providing regulated financial services and was bound by these Principles and other Rules. This is consistent with the account's terms and conditions.

In *British Bankers Association v The Financial Services Authority & Anor* [2011] EWHC 999 (Admin), Ouseley J said [at paragraph 162]:

"The Principles are best understood as the ever-present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirement they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."

And at paragraph 77:

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

In deciding what is fair and reasonable, I've thought about the Principles which I think are relevant to this complaint. In my view they are 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'm obliged to consider the Principles and as I set out above this was recognised by the courts in the case *British Bankers Association v The Financial Services Authority & Anor* [2011] EWHC 999 (Admin). That the Principles must always be complied with has also been confirmed by Jacob J in *Berkeley Burke SIPP Administration v Financial Ombudsman Service* [2018] WHC 2878 (Admin) at paragraph 134. The Principles are not just guidance but 'rules' in their own right and it is established that firms must comply with them, and I have considered them in that context. And as I have said above, the duty to comply with the FCA's rules was provided in the Terms and Conditions as an overriding duty that prevailed over anything to the contrary in those Terms.

I've therefore considered the FCA's Principles in deciding what's fair and reasonable in all the circumstances of this complaint. Ultimately, I need to consider whether in conducting this business Templeton Securities complied with these Principles. I've considered the matter in the context of the wider circumstances as I have described in considering Templeton Securities' obligations; that Templeton Securities was receiving a number of e-mails sent to the same person; there was a pattern of remarkably similar worded execution only instructions from different clients with SIPP accounts it was being asked to process, in the same niche shares, on non-mainstream markets, and within a reasonably short period of time.

I think in these circumstances a stockbroker, acting reasonably, ought to have been alerted that something unusual and concerning might be going on. In my view, the circumstances ought to have been a trigger for Templeton Securities to intervene in the normal processing of the transaction and take a closer look behind it.

If it had done so, it would have identified that the instructions were coming from ordinary retail customers who:

- had all recently opened advisory accounts and yet within a short period of time from opening were all sending execution only instructions to make their first investment;

- were investing the majority of the money in their SIPP in these same niche shares presenting significant risks; they weren't the type of investments that you would normally expect to form the significant part of anyone's pension provision;

- had sent almost identically worded instructions to invest in the same niche shares, suggesting these retail consumers may be being systematically advised by someone to buy these shares and on how to go about it.

And this was in the context that:

- Only an FCA authorised firm was lawfully able to give investment advice. And a regulated firm giving investment advice would usually arrange the transactions themselves so as to charge dealing commission. It raised the possibility of serious malpractice if an unauthorised person was giving investment advice in breach of s19 of The Financial Services and Markets Act 2000.

- The number of instructions to purchase two niche shares, specifying particular days for settlement at particular prices, was highly unusual for seemingly unconnected retail customers. Including settlement details in their instructions was not only unusual but served no obvious purpose from a pension investor's point of view.

- The possibility that the advice to buy the shares was coming from an unauthorized person was increased by the riskiness of concentrating pension funds in the shares of one or two small, obscure companies: an FCA-authorised firm would have regulatory obligations not to give unsuitable investment advice, and would be unlikely to find such shares a suitable pension investment for many (if any) of their clients, let alone a string of clients, and all at around the same time.

In my view, the circumstances surrounding the receipt of Mr W's instructions ought reasonably to have caused Templeton Securities to take a closer look at the transaction. If it had done so, and looked at the information it already had available through the account opening documentation, it would have seen that Mr W had said he had a modest income; he had no investments; had £100,000 in cash/deposit type accounts, and the £40,000 invested in the SIPP represented his total pension provision. It was recorded that Mr W's preferred level of risk was "medium/high to high", and experience wise he was a novice investor in equities.

Mr W's instructions to invest his entire pension into two niche shares, presenting significant risks, was inconsistent with his other financial provision, no investments of note and savings in cash/deposit type accounts, him being a novice investor in equities, with a likely limited understanding of the investments, and preferring a medium/high to high level of risk.

Given these inconsistencies, I think Templeton Securities should have recognised that the investments were unsuitable for Mr W. And that Mr W's placing of the unsuitable order wasn't a result of some idiosyncrasy of Mr W himself, because others were giving virtually identical instructions in similar circumstances. There was plainly likely to be a third party behind all the instructions.

So in this context, is it reasonable to think that Templeton Securities should have discovered that the source of the numerous and similarly worded instructions to buy the niche shares came from an unregulated source?

Templeton Securities has said the unregulated firms weren't known to it. And it never had any discussions or agreements with either of them. It said it had no knowledge of or arrangement of any kind for the introduction of business or otherwise.

I've seen no persuasive evidence to suggest there was any formal arrangement between Templeton Securities and either of the unregulated firms.

However there is a "Form of Authority" relating to one of the unregulated firms on Templeton Securities' file that was signed by Mr W and dated 13 May 2014. Such a form was on the majority of the complaints that have been referred to the Ombudsman Service. But irrespective of that, I think there were clear warning signs in the existing information that Templeton Securities already had available to it. And on making further enquiries with Mr W and other clients directly, it would have become apparent that an unauthorised person was advising clients to invest in these shares and helping them do so; giving investment advice and arranging deals in investments in breach of s19 of The Financial Services and Markets Act 2000. I don't think Mr W or the other clients would have reason not to tell Templeton Securities who had recommended the transactions and the unregulated firm's role if Templeton Securities had asked the question and pointed out the reasons for its concern.

In this context, I think Templeton Securities should have identified that Mr W and other clients were probably being given regulated investment advice by a firm which lacked authorisation to give the advice, and that an unregulated firm(s) were probably breaching the general prohibition under s.19. On making reasonable enquiries it would have

discovered that the advice in Mr W's case was inconsistent with his circumstances and unsuitable for his pension fund, and that executing his instructions was entirely contrary to his best interests. In these circumstances I think it should have exercised its discretion to decline to accept the instruction.

So I don't think Templeton Securities met its obligations under Principles 2, 3 and 6. I think if it had conducted its business with skill care and diligence and took reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, it should have identified the unusual pattern of execution only requests and intervened to take a closer look at the transaction. If it had done so, in the circumstances as I have described, I think it should have spotted the clear risks to Mr W, and, acting in his best interests, exercised its discretion to decline to accept his instruction.

Taking all the circumstances into account, I consider that Templeton Securities unreasonably accepted Mr W's instruction when it had the opportunity and obligation to prevent the purchase of the shares.

Given that I think Templeton Securities failed to meet its regulatory obligations, I need to decide whether its failings caused the losses that Mr W has claimed. So I've considered what Mr W would likely have done if Templeton Securities had declined to carry out his instruction.

Mr W had already transferred his money to the SIPP and switched his money into the advisory account with Templeton Securities. So if Templeton Securities had declined to accept the instruction Mr W would have had practical difficulties if he still wanted to buy the shares; he would have needed to find another broker and get the SIPP provider to open another account to enable him to do so.

Mr W has confirmed that he received a payment of £2,472 from one of the unregulated firms. I recognise the influence of the unregulated firms who appeared to be driving the transactions in the background. And that a payment could have been motivation for Mr W to want to continue to buy the same shares, irrespective of the actions of Templeton Securities and therefore the practical difficulties of doing so.

However I think it's likely Mr W would have lost trust in the unregulated firm(s) if Templeton Securities, as a regulated firm, had said it wouldn't process his instruction and its reasons for not doing so.

When Mr W opened his account the documentation showed he had limited experience of investments, was a 'novice' investor in equities and his preferred level of risk was 'medium high to high risk'. This isn't consistent with an investment in these high-risk shares.

Templeton Securities said it sent a letter to Mr W dated 29 May 2014 which said amongst other things that it noted his "*interest in high risk products, investments in smaller companies, in particular 'Penny Shares' and investments that are not readily realisable e.g. small unquoted companies, involve a high risk that all or part of your investment may be lost.*"

However my understanding is this was an introductory letter and, regardless of whether the new client was low, medium or high risk, it was a generic paragraph that was included in the letter to give a general warning of trading in high risk shares.

I've currently seen no evidence that Mr W had expressed an interest *"…in high risk products, investments in smaller companies, in particular 'Penny Shares' and investments that are not readily realisable".* And when he opened his account the documentation showed he had

limited experience of investments and was a 'novice' investor in equities.

The account documentation also recorded that Mr W owned a house valued at £3 million. And he had £100,000 in cash type savings. The investigator asked Mr W's representative for further details about these given they didn't appear consistent with Mr W's other financial circumstances.

Mr W said that the 'house' was part of a business he had initially been gifted by his mother and he had subsequently bought the remaining share with a business loan – the outstanding amount being the £700,000 recorded on the account documents. He said the £1,950 monthly income was correct and was what he was drawing from the business. And the £100,000 referred to was in the business bank account. He has confirmed the £40,000 pension was his only source of private pension provision. And that the business was valued at approximately £2.25 million in 2007.

So I think on the one hand Mr W did therefore have the capacity to accept the risks that investing in the shares presented.

Mr W's preferred level of risk was recorded as 'medium/high to high risk'. However this isn't consistent with a novice investor with limited experience of investing. And in making his complaint Mr W has said he wanted no more than low risk. Mr W was also recorded as a retail client, and given his inexperience I think it unlikely he was in a position to understand all the risks presented by the shares.

Taking all this into account, and given the significant risk of loss of the amount invested in the shares, approximately £39,000, relative to the £2,472 payment; the practical difficulties of buying the shares if Templeton Securities had declined his instruction, I think, on balance, it's unlikely that Mr W would have invested in Emmit and Eligere had it not been for Templeton Securities' failings.

In its final response letter dated 10 March 2020 Templeton Securities said it wrote to Mr W on 11 September 2014 concerning the suitability of the investments. A copy of that specific letter hasn't been provided with the firm's file, however my understanding is the letter said:

"Appropriateness of your Investment – Emmit

We are writing to draw your attention to the investment of your pension in the above type of stocks and believe that you need to consider whether or not you feel its appropriate to invest in such high risk investments.

We fully understand that you have purchased these 'Execution only' but wish to advise that in the provision of this execution, Templeton Securities is not required to assess the suitability of the service provided or offered and that therefore, as a client, you do not benefit from the corresponding protection of the relevant FCA Conduct of Business Rules."

I've thought about whether Mr W should have taken action to mitigate his losses on receipt of this letter in September 2014.

The letter was about the Emmit shares only. It did say the shares were high risk, but it said the investor should consider whether or not they felt they were appropriate for them. It was relatively brief. It did draw the investor's attention to the high-risk nature of the investment. And that Templeton Securities hadn't assessed suitability. But the letter didn't indicate there were any particular problems with the investment. So I don't think the wording was sufficiently strong or specific such as it ought to have prompted Mr W to act.

As I said, the letter only referred to Emmit – Eligere wasn't mentioned in any event. My understanding is that the Emmit share price was around 132.50p at that time. A sale at that price would still have represented a significant loss for Mr W, albeit in hindsight he'd have avoided the total loss of his investment which he now faces. But selling would've crystallised a loss. And I don't know if Mr W would've been able to sell and, if so, at what price. A sudden and large volume of sell instructions might not have been possible for the market to accommodate and is likely to have impacted adversely on the share price – I bear in mind that Templeton Securities appears to have written to other investors at about the same time.

Taking all the above into account, I don't think it would be fair to conclude that Mr W should have taken action to mitigate his losses on receipt of the 11 September 2014 letter. I think the onus was on Templeton Securities to do more, and but for Templeton Securities' shortcomings Mr W wouldn't have been invested in the shares in the first place.

So I think Mr W's losses flow from the failure of Templeton Securities to meet its regulatory obligations. And I think it is fair and reasonable in all the circumstances for Templeton Securities to pay compensation to Mr W for the losses that resulted from those failings.

We've been told that the FCA conducted an investigation into Templeton Securities with regard to Emmit, including a full review of all telephone calls and e-mails but then dropped the investigation, deciding that there was no case to answer and no wrongdoing found on Templeton Securities' part. I've seen a copy of a letter sent by the FCA to Alexander David about that investigation, but on the face of it I don't think the FCA were investigating the same matter. In the absence of full details of that investigation, I'm not persuaded it changes my findings as set out above. I'm considering if Templeton Securities met its obligations to Mr W in its dealing with him. For the reasons I've set out, I don't think it did.

Applying sections 27 and 28 FSMA

I have also examined a separate basis upon which Templeton Securities/Alexander David Securities Limited may be responsible for the same losses. I've considered the findings in the recent Court of Appeal case Adams v Options UK Personal Pensions LLP. In deciding what is, in my opinion, fair and reasonable in the circumstances, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account, amongst other things, relevant law and regulations. In doing so I've considered the facts of this case in light of the legal principles expounded by the Court of Appeal in the recent case *Adams v Options UK Personal Pensions LLP*, which I think are relevant.

The court considered, amongst other things, the application of sections 27 and 28 of the Financial Services and Markets Act 2000.

In summary, s27 may apply where an authorised person makes an agreement with another person in the course of carrying out a regulated activity, which was a consequence of something said or done by an unregulated party acting in breach of the general prohibition (s19 of FSMA). S27 provides that an agreement to which it applies is unenforceable against the other party, and sets out what the other party can recover.

S28 of FSMA provides the court with the discretion to allow an agreement to which s.27 applies to be in any event enforced, if it considers it is just and equitable to do so.

The relevant parts of section 27 and 28 of the Financial Services and Markets Act 2000 provide:

27 Agreements made through unauthorised persons.
(1) This section applies to an agreement that —
(a) is made by an authorised person ("the provider") in the course of carrying on a regulated activity,
(d) is made in consequence of something said or done by another person ("the third party") in the course of—
(i) a regulated activity carried on by the third party in contravention of the general prohibition,

(1A) An agreement to which this section applies is unenforceable against the other party.
(2) The other party is entitled to recover—
(a) any money or other property paid or transferred by him under the agreement; and
(b) compensation for any loss sustained by him as a result of having parted with it.
(3)"Agreement" means an agreement—
(a) made after this section comes into force; and
(b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.

28 Agreements made unenforceable by section 26 or 27 [general cases].
(1) This section applies to an agreement which is unenforceable because of section 26 or 27, other than an agreement entered into in the course of carrying on a credit related regulated activity.
(2) The amount of compensation recoverable as a result of that section is—
(a) the amount agreed by the parties; or
(b) on the application of either party, the amount determined by the court.
(3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow—
(a) the agreement to be enforced; or
(b) money and property paid or transferred under the agreement to be retained.
(4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must—
(b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
(6) The issue is whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.
(7) If the person against whom the agreement is unenforceable—
(a) elects not to perform the agreement, or
(b) as a result of this section, recovers money paid or other property transferred by him under the agreement, he must repay any money and return any other property received by him under the agreement.
(8) If property transferred under the agreement has passed to a third party, a reference in section 26 or 27 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.

The Court of Appeal decided that s27 of FSMA applied in the circumstances of that case.

So it went onto consider s28 (3) - would it be *just and equitable,* in the circumstances of the case, to allow the agreement to be enforced/ the money and property paid or transferred under the agreement to be retained. In deciding the matter s28 (4) required it to consider s28(6) – did the provider know the third party was contravening the general prohibition? It considered whether this meant actual knowledge of it or constructive knowledge. And decided it meant actual knowledge. It found that Carey didn't have actual knowledge. But then it went onto say:

"Where a provider actually knew that the general prohibition was being breached, that must weigh heavily against use of the power conferred by section 28(3) of FSMA. If, on the other hand, a provider lacked such knowledge, it may still be appropriate to deny relief under section 28(3)." And

"Likewise, meeting the requirements of section 28(6) will not necessarily mean that relief should be granted. Amongst the factors that it may be proper to take into account is whether the provider should reasonably have known that the general prohibition was being contravened."

The court decided, on the particular facts of the case, *not* to exercise the discretion provided to it in s28. It didn't think it was *"just and equitable"* to grant Carey relief under section 28(3) of FSMA. It referred to the surrounding circumstances that it thought ought to have given reason for Carey to be concerned about the possibility of the unregulated firm arranging and advising on investments, even though it didn't in fact appreciate that the general prohibition was being contravened.

The court made the following comments:

"A key aim of FSMA is consumer protection. It proceeds on the basis that, while consumers can to an extent be expected to bear responsibility for their own decisions, there is a need for regulation, among other things to safeguard consumers from their own folly. That much reduces the force of Mr Green's contentions that Mr Adams caused his own losses and misled Carey;" and

"While SIPP providers were not barred from accepting introductions from unregulated sources, section 27 of FSMA was designed to throw risks associated with doing so onto the providers. Authorised persons are at risk of being unable to enforce agreements and being required to return money and other property and to pay compensation regardless of whether they had had knowledge of third parties' contraventions of the general prohibition."

I've considered Mr W's complaint in light of the Court's findings. For s27 of FSMA to apply, an agreement must have been made by an authorised person (here, Templeton Securities) "in consequence of" a contravention of the general prohibition by a third party (here the unregulated firm(s)).

Given the facts of Mr W's complaint and the surrounding circumstances as I have set out above, I think it's most likely the unregulated firm(s) was/were breaching the general prohibition by arranging deals in and advising on investments – articles 25 and 53 of the Regulated Activities Order. And I think the advice and the unregulated firm(s) actions in providing Mr W with his draft purchase instruction clearly played a crucial part in Mr W buying the shares. As I have explained, I think it's hardly likely that so many ordinary retail clients would suddenly all unilaterally decide to invest in these two little known niche shares at around the same time. So I think a court would find that s27 applies, and Mr W can (subject to s.28), recover the monies he invested through his agreement with Templeton Securities when it accepted his instructions to purchase the shares and the investment losses he sustained.

I've therefore gone onto consider s28.

I think the overriding question is that set out in s.28(3); whether it would be *just and equitable in the circumstances of the case* to allow enforcement of the agreement or retention of the price paid. The significance of s.28(4) and (6) is to require the court to "have regard" to whether the firm knew the third party was breaching the general

prohibition. But as the Court of Appeal emphasised, *"…meeting the requirements of section 28(6) will not necessarily mean that relief should be granted". S*o whilst it has to be taken into account, it doesn't make that factor necessarily determinative.

Equally, the question of whether the firm should reasonably have known the general prohibition was being breached is something that it *"may be proper to take into account"*, but it is also not a determinative test, just a potentially relevant circumstance in some cases.

I think in deciding s28 (3) and what was *just and equitable* in Mr W's case, the court would, as it did in Adams v Options, look at all the circumstances in the round.

For the reasons I set out, I think Templeton Securities ignored several red flags that should have reasonably alerted it that there was a strong possibility that its clients were being systematically put in harm's way; being given the same seemingly irresponsible advice by a common, unknown source. As I have said, I don't think Templeton Securities acted reasonably when ignoring those signals of potential wrongdoing. And I think whilst the court would take into account it may not have had actual knowledge of the breach, I think, looking at the circumstances in the round, had it acted reasonably rather than ignore those clear warnings it would have discovered the breach on making reasonably enquiries around it.

Taking all this into account, I don't think a court would find it was just and equitable to allow Templeton Securities relief under s28. And therefore Mr W could recover his money under s27."

Accordingly, my provisional decision was that I thought it was fair and reasonable to uphold Mr W's complaint on either of the bases I had outlined; that is, that Templeton Securities had failed to meet its regulatory obligation under the Principles. And that it's likely that a court would decide that Mr W could recover his money under s27. I went on to set out how I thought Alexander David should calculate fair compensation and pay it to Mr W.

I asked Mr W and Alexander David to provide any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr W's representative said that Mr W accepted the provisional decision.

Alexander David Securities Limited responded to say, in summary that it thought the provisional decision missed fundamental issues and had failed to take fully into account:

- Conditions precedent regarding previous Financial Ombudsman Service rulings.

- That the FCA had conducted a thorough investigation into TS Capital in regard to Eligere and Emmit including a full review of all telephone calls and e-mails. The FCA had dropped the investigation as it decided it had no case to answer. No wrongdoing had been found.

- TS Capital had accepted and undertook the instruction for the transaction on an execution only basis. It hadn't agreed to provide advisory services as per clause 3.2 in its terms and conditions.

- The account was a trust account opened by a regulated SIPP provider. Mr W was the beneficiary with powers to undertake transactions. At the time of Mr W's instruction, it

wasn't unreasonable for TS Capital to accept the instruction and to conclude that it was an ordinary transaction(s) for investments listed on recognised exchanges.

- The terminology in the instruction wasn't necessarily technical for someone who had previously made any direct stock market investment. The nature of the instruction wasn't in itself, or in a series, necessarily unusual, given the account was opened with it by a regulated firm and clients could and did obtain and undertake investment research through a variety of mediums. This included web and internet forums, tip services etc. At the point of the transaction it was unaware of any issues with the investments.

- TS Capital wasn't aware of the payment of £2,472. It said this was a pension liberation attempt, and Mr W's version of events surrounding the payment wasn't consistent with the known facts surrounding this issue as highlighted by the FCA's alert in October 2014. It said the key trigger of the 'scam' was a promise of a cashback. It thought this was the motivation for Mr W to transfer and subsequently send specific instructions to buy the shares in question. It thought the ability to liberate some of his pension savings prior to the dates he was allowed to access his pension was the most likely reason for the investments.

- The facts in the court case Adams v Options UK Personal Pensions LLP (formerly Options Sipp UK LLP and Carey Pensions) were entirely distinguishable from the subject matter of Mr W's claim. Mr W had approached TS Capital directly, and TS Capital had no arrangement in place with any person who may have advised Mr W beforehand.

- It didn't accept that relief should not be provided under s28 (3). It said the introduction(s) all came directly from a regulated pension provider, they were technically the account holder and Mr W a beneficiary. It didn't believe that it was unreasonable to undertake and accept the specific execution only instructions from Mr W or the other clients at that time. Or for TS Capital to be unaware that an unregulated entity was contravening the general prohibition at the point the instruction was received and the investment was made.

- It became aware of general market concerns raised about Emmit transactions and in September 2014, acting reasonably, it sent a letter to Mr W to raise awareness as to the potential suitability of the transaction. It thought this letter should have caused Mr W to question the investment at around this time. It said Mr W was obliged to have mitigated his position and sell the shares prior to their suspension. It thought this was the date that any fair and reasonable award should be calculated at.

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 seen no reason to depart from my provisional decision to uphold Mr W's complaint.

In respect of the further evidence and arguments made by the firm:

- The response to the provisional decision referred to TS Capital. The firm was trading as Templeton Securities Limited at the time of the event that the complaint is about.

I've taken the references to TS Capital as appropriately referring to Templeton Securities Limited at the relevant time.

- It said my provisional decision didn't take into account previous Financial Ombudsman Service rulings. It didn't say which 'rulings', but I'm aware that on other cases it has referred to assessments issued by our adjudicators. Those cases were resolved at an informal stage in our process by our adjudicators and on the facts as they understood them. They weren't decided by a final decision issued by an Ombudsman. I've made my decision on Mr W's case on the basis of what I consider are all the relevant circumstances to decide what I consider be fair and reasonable given all the evidence and arguments available.

- As I noted in my provisional decision, we've previously been told about the FCA investigation into Templeton Securities with regard to Emmit. I said I'd seen a copy of a letter sent by the FCA to Alexander David about that investigation, but on the face of it I didn't think the FCA were investigating the same matter. We have asked for fuller details of the FCA's investigation in other cases and no further detail has been provided. And no further information has been provided in response to this provisional decision. Given I have seen no further details, I'm not persuaded it changes my findings as set out above. I'm considering if Templeton Securities/Alexander David met its obligations to Mr W in its dealing with him. For the reasons I've set out, I don't think it did.

- As I explained in my provisional decision, I accept that Templeton Securities undertook the instruction for the transaction on an execution only basis. However I don't think Templeton Securities' wider obligations were diluted because the regulated SIPP Provider was technically the account owner; this wasn't unusual, and the instruction to invest came directly from Mr W. I've seen no evidence to suggest that the SIPP provider was involved in the instructions to invest.

- I accept that the terminology in the instruction may not necessarily have been technical for someone who had previously made direct stock market investment. And that investors can obtain tips/do their own research from the variety of mediums mentioned by Templeton. So it might receive a number of orders for a particular investment at around the same time. But the situation here was that a series of e-mails were all sent to the same specific person, with near identical technical wording, giving very specific instructions *to invest* in particular niche shares. I think this suggested there was likely to be a single source behind the instructions. And that its clients were being systematically advised by a third party to buy these shares, and on how to go about it. For the reasons I set out in my provisional decision, I think the series of e-mails should have alerted Templeton Securities that something unusual might be going on, and ought to have been a trigger for it to intervene in the normal processing of Mr W's instruction and take a closer look behind it. And having done so it would have identified the role of the unregulated firm(s).

- Templeton Securities' letter to Mr W in September 2014 wasn't related to Mr W's investment in Eligere. And for the reasons I set out in my provisional decision, I don't think the content of the letter was such that Mr W ought to have sold the shares (in Emmit or Eligere), or that he acted unreasonably by not selling them. So I'm not persuaded it would be fair to say that compensation should be calculated on the basis that Mr W should have sold his shares following receipt of that letter.

- I accept the payment of £2,472 may not have been known to Templeton Securities when it processed the instruction. I don't think this was a pension liberation attempt

as such, but as I said in my provisional decision, I recognise that the unregulated firms were driving the transaction, and the cash sum of £2,472 would have been a motivating factor for Mr W. However I think irrespective of the motivation behind it, if Templeton Securities had intervened in the processing, and said it wouldn't process Mr W's instruction, Mr W would have had to re-assess his options. And for the reasons I set out in my provisional decision, I don't think he would have gone on to invest in Emmit or Eligere.

- As I explained in my provisional decision, in deciding what is, in my opinion, fair and reasonable in the circumstances, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account, amongst other things, relevant law and regulations. Although the facts of Adams v Options UK Personal Pensions LLP might be different, I've considered the court's findings in the context of the facts of this case, and I think they are relevant. For the reasons I set out above and in my provisional decision, I think Templeton Securities ought to have been alerted there was something unusual going on, and made further enquiries about the investment instructions. And on doing so it would have identified it was likely an unregulated firm was breaching the general prohibition. For the reasons I set out in my provisional decision, I don't think a court would find it was just and equitable to allow Templeton Securities relief under s28 of the Financial Services and Markets Act 2000. And find that Mr W could recover his money under s27.

So for the reasons I have set out above, I think Mr W's complaint should be upheld.

Putting things right

fair compensation

In assessing what would be fair compensation, my aim is to put Mr W as close as possible to the position he would probably now be in if Templeton Securities had not agreed to purchase the shares for Mr W's account.

If it had done so I think Mr W, having already completed the switch of his pension to the SIPP, would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr W's circumstances and objectives when he invested.

what should Alexander David Securities Limited do?

To compensate Mr W fairly Alexander David Securities Limited should:

- Compare the performance of Mr W's investments with that of the benchmark shown below. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value* no compensation is payable.

It should also pay any interest set out below.

If there is a loss, Alexander David Securities Limited should pay into Mr W's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Alexander David Securities Limited shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
If Alexander David Securities Limited is unable to pay the compensation into Mr W's pension plan, it should pay that amount direct to him. But had it been possible to pay into

the plan, it would have provided a taxable income. Therefore the compensation 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 actual or expected marginal rate of tax at his selected retirement age.

I think Mr W is likely to be a basic rate taxpayer at his selected retirement age. So the reduction should equal the current basic rate of tax. However, if Mr W would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

investment	benchmark	from ("start date")	to ("end date")	additional interest
The amounts invested in Eligere (£19,556) and Emmit (£19,806) – including charges, less a deduction of £2,472 – divided equally - so £1,236 from each.	FTSE UK Private Investors Income Total Return Index;	The date of purchase of each share	Date of a final decision	8% simple a year from date of a final decision to date of settlement if settlement isn't made within 28 days of Alexander David being notified of Mr W's acceptance of that decision

The deduction of £2,472 reflects the payment that was made to Mr W and which he has had use of.

In addition, Alexander David Securities Limited should:

- Pay Mr W £300 for the distress and inconvenience I'm satisfied the matter has caused him.
- Provide details of the calculation to Mr W in a clear, simple format.
- Income tax may be payable on any interest paid. If Alexander David Securities Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it has taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

actual value

This means the actual amount payable from the investment at the end date.

If, at the end date, the investment is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the investment. So, the actual value should be assumed to be nil to arrive at fair compensation. Alexander David Securities Limited should take ownership of the illiquid investment by paying a

commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as above.

If Alexander David Securities Limited is unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. Alexander David Securities Limited may wish to require that Mr W provides an undertaking to pay it any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Alexander David Securities Limited will need to meet any costs in drawing up the undertaking.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Alexander David Securities Ltd should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

why is this remedy suitable?

I don't know exactly how Mr W would have invested. Mr W had indicated he was willing to take a medium/high to high degree of risk. But it appears this was largely driven by the unregulated firm. And Mr W has subsequently said he wanted no more than low risk. Mr W had already switched his money to the pension. I think if Templeton Securities had refused to accept Mr W's instructions he could have sought suitable advice from it on how to invest his pension. Given his particular circumstances, I think he was in a position to take some risk – albeit he may have wanted to limit that risk.

I currently think the index I have outlined above is an appropriate benchmark and is a reasonable proxy for the degree of risk I think it's likely that Mr W would have been recommended and he would have agreed to take. However both parties can provide further submissions about this in responding to this provisional decision.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

I consider that Mr W's risk profile was in between, in the sense that he was only prepared to take a limited risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr W into that position. It doesn't mean that Mr W would have invested 50% in some kind of index tracker investment. Rather I consider this is a reasonable compromise that broadly reflects the sort of return Mr W could have obtained from investments suited to his objectives and risk attitude.

My final decision

My final decision is that I uphold Mr W's complaint.

I order Alexander David Securities Limited to calculate and pay compensation to Mr W as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 June 2022.

David Ashley
Ombudsman