DRN-3504428

The complaint

Mrs 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, 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. Mrs G's representative says that Carey showed no consideration for FSA Principles of business and did not treat her fairly. Mrs G's representative says Carey had a duty to carry out due diligence on CL&P before accepting business from it and, had it done so, it ought to have been aware of various reasons not to deal with CL&P.

It says the Store First investment was unregulated, high risk, highly speculative and unsuitable for Mrs G.

What happened

I issued a provisional decision on 13 April 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 13 April 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.

Mrs G's dealings with CL&P and Carey

Mrs G's representative says Mrs G was advised by CL&P to transfer her pension to a Carey SIPP and then invest in Store First.

Before being contacted by CL&P, Mrs G had an existing defined benefit occupational pension scheme (OPS). Following the contact by CL&P the cash value of this pension was transferred into a SIPP with Carey, and the majority of the money invested in Store First. My understanding is that the following key events took place during Mrs G's dealings with Carey:

- *Mrs G signs a Carey SIPP application form – 28 March 2012.*
- *Carey sends its welcome letter, confirming the establishment date of the SIPP – 3 April 2012.*
- *Carey receives a transfer from Mrs G's OPS of about £55,000 in July 2012.*
- *Mrs G signs Carey's member declaration and indemnity in respect of Store First (referred to as 'the indemnity' in the published decision, using the wording quoted in full there) – 19 September 2012.*

- *Investment in Store First is confirmed – 5 October 2012.*

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 Mrs G

We asked Mrs G if she could provide answers to the following questions. The answers are included in italics:

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

  I was happy with where my pension was and had no interest in moving it away. I didn't and don't really understand pensions and what persuaded me to move was when I was contacted by CL&P and they told me that my current pension was doing nothing where it was and if I moved it I would get guaranteed returns on my investment and be much better off.

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

  I thought they were a broker who worked alongside Careys.

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

  I was told about store first and that I would get guaranteed returns on the investment. I remember it being something like 10% return.

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

  I thought it was the first return on what I would make on my investment, like my pension money.

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

  The thought never crossed my mind because it wasn't sold to me in that way. I would've called the tax office to make enquiries.

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

  I would absolutely not have gone ahead with the transfer.

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

  I would've questioned it and wondered why this had happened. It would've raised alarm bells.

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

  What I didn't realise at the beginning was that it was brand new. The conversation was very casual and I was led to believe it was a well established investment. I was also told of the 10% guaranteed return in the first year or two which I thought was a really good yield.

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

  I don't understand what this means but I absolutely would not have gone into anything high risk if I was made aware of this. I have 4 children and for this reason and many others I would've never accepted any investment that was more than cautious. Store First was sold to me as safe.

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

  I thought it was a very low risk if a risk at all investment. I was led to believe this because of the guaranteed returns.

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

  I knew they were a pension provider as at the time I looked at them online once I knew I would be moving my pension to them. I saw they were an established company and this further lured me into a false sense of security.

- *Your SIPP was set up in April 2012 and your investment in Store First was made on 5 October 2012. Were you aware that you were still free to choose whether or not to invest in Store First after the SIPP had been set up?*

  No

- *On 19 September 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 can't remember reading it. I don't understand what the statement means.

Submissions made by Carey

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

The summary 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.

Carey also submitted in this case that Mrs G received advice from a business called The Pensions Specialist (TPS). It said that, when a defined benefit pension was to be transferred, it required the

consumer to take advice. Mrs G had received such advice and confirmed her intention to go ahead with the transfer.

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.*

    - *Whilst the wording on the alert may have changed between 2010 and 2013 this didn't materially affect his view that Carey should have been aware that Mr Wright was someone who appeared on the FSA's warning list. The aim was clearly to highlight that this was an individual whom parties should be wary of conducting regulated business with and that he was "targeting" UK customers. So, it would have been appropriate for Carey to question whether accepting business from a company associated with Terence Wright was the right thing to do.*

Had Carey completed the relevant checks before accepting business from CL&P it ought to have concluded that it shouldn't enter into a relationship with it.

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

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

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

    - *He thought the complaint should be upheld and that Carey should undertake a calculation to determine if Mrs G had suffered a financial loss.*

Carey's response to the investigator's view

Carey did not accept the investigator's assessment. In summary:

    - *In assessing the complaint, we must take into account the overarching context of the relationship that Carey has with its customers, including Mrs 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 FCA.*

    - *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*

Mrs G of this, then it should not have accepted business from CL&P, or Mrs G would not have proceeded with the investment.

- *The amended warning to which the adjudicator refers was not published on 15 October 2010. This wording was in fact introduced subsequently and likely on or around 11 November 2013, almost 18 months after Carey had ceased to accept referrals from CL&P.*
- *There is a material difference between the amended a warning and the relevant waning that was published on 15 October 2010. The wording in the FSA'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.*
- *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, but did not make any similar comment in the earlier Notice indicates that at the time Carey accepted business from CL&P the FSA did not believe Mr Wright had been providing financial services or products without authorisation, nor had it expressed 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 Mrs G's specific instructions to make the investment.

The investigator considered the submission from Carey and issued a further assessment. In summary he said:

- *The FSA's/FCA's publications were relevant considerations here.*
- *The fact that the FSA warning about Mr Wright changed between 2010 and 2013 didn't affect his view – as the aim of the 2010 warning was to highlight Mr Wright was someone to be wary of dealing with and was targeting UK consumers.*
- *He was of the view that it would have been prudent for the agreement between CL&P and Carey to have been signed by the CL&P directors.*
- *The complaint would now be passed to an ombudsman for review.*

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 the FCA's Notice on Terence Wright, its obligations under COBS 11.2.19 and the issue as to why Mrs G was not being held responsible for any of the loss she 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 Mrs 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. Mrs 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 Mrs 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 Mrs 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 Mrs G on the suitability of its SIPP or the Store First investment for her personally. But I am satisfied Carey's obligations included deciding whether to accept a particular investment into its SIPP and/or whether to accept introductions of business from particular businesses. As the published decision sets out, this is consistent with Carey's own understanding of its obligations at the relevant time. 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.

I acknowledge Carey has applied to the Supreme Court for permission to appeal the Court of Appeal judgment. However my understanding is that appeal has now been rejected. In any event, the grounds of appeal are in respect of issues not directly relevant to my determination of this case. I am satisfied it is appropriate to determine this complaint now.

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

I am also satisfied that, as in the complaint subject to the published decision, the contract between Carey and Mrs 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 investment which ultimately led to Mrs G losing a significant part of her pension.

In this complaint, like the complaint subject to the published decision, Carey had obtained information many months before it facilitated Mrs G's investment which led it to reject any further referrals from CL&P and had concerns about the Store First investment before it facilitated Mrs 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 Mrs 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 Mrs G's SIPP from CL&P or the Store First investment.

Due diligence on CL&P

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

Mrs G's application was accepted on 3 April 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."

This contradicts what Carey has said in its submissions to this service in this case – in that there was no reason why it should not have accepted the introduction from CL&P and facilitated the investments in question.

In any event, I do not accept Carey's argument that the 2010 version of the FSA alert would not necessarily have led it to conclude that it should not enter into business with CL&P. For all the reasons given in the published decision, I am of the view that the October 2010 alert was a clear indication that the regulator had serious concerns about the way Mr Terence Wright conducted his business and therefore should have put Carey on notice that it should not accept business from Mr Terence Wright.

The National Archive of the FSA website shows the description of the list on the FSA's website in August 2011 (when Carey's relationship with CL&P began) was as follows:

"Firms and individuals to avoid

We have a warning list of some unauthorised firms and individuals that we believe you should not deal with."

The regulator therefore described those featuring on the list as "firms and individuals that we believe you should not deal with". I consider that this supports my view that Carey should have been particularly circumspect before it agreed to do business operated by an individual who featured on that list.

Although Carey has not confirmed the exact date, it would appear that Mrs G's money was sent to Store First after July 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.*

In addition, by the time Carey transferred Mrs G's cash to Store First, its concerns about CL&P's operation were such that it had terminated its relationship with it. But it did not advise Mrs G of this.

So for the same reasons set out in the published decision, it is my finding that if Carey had carried out sufficient due diligence on CL&P or acted on the information it subsequently received in a timely manner, it should not have accepted Mrs 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 Mrs 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. Given that Mrs G did not sign Carey's Store First indemnity until September 2012 and the investment was not confirmed until October 2012, it would seem that her investment post-dated that decision.

It therefore seems clear from the available evidence that by the date on which Carey sent cash from Mrs G's SIPP to Store First, Carey had the concerns that led to the suspension of the acceptance of new investments in Store First and had taken the step of suspending such investments. Carey has not said why it allowed Mrs 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 investment was being sold by an unregulated business, which was clearly targeting pension investors. I think it is fair and reasonable to find that Carey ought to have concluded there was an obvious risk of consumer

detriment here.

So, given the circumstances at the time of Mrs 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 Mrs G's application to invest in Store First. In my opinion, it ought to have concluded that it would not be consistent with its regulatory obligations, or best practice, to do so.

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. Mrs G received a TPS recommendation report dated 1 June 2012, after she had made her SIPP application and that application had been accepted by Carey. Carey has said that TPS was appointed after Carey had told Mrs G that it required her to seek advice about her intention to transfer her OPS to the SIPP. Carey has said that it received confirmation in 2012 that Mrs G had received advice from TPS as to the intended transfer and a Transfer Value Analysis Summary's (TVAS).

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 Mrs G's SIPP application and set up her SIPP by the time of TPS's involvement, something it should not have done given what it should have known about CL&P. Furthermore, Mrs 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 Mrs 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 scheme. 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 Mrs 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 Mrs G's application from CL&P in the first place. So, Mrs 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.*
- *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 Mrs G's application and executing her investment instructions, Carey knew things that Mrs 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 have stopped Mrs G from proceeding any further with the Store First investment.*
- *I therefore do not believe Mrs G's intentions affect the outcome of the complaint. But for completeness, as set out above, Mrs G has told us that had she been made aware that Mr Wright was on an FSA warning list then she would not have proceeded with the transfer. I do think it unlikely in this situation that Mrs G would continue to have confidence dealing with CL&P. And Mrs G has told us she was not aware that there was any appreciable risk with the Store First investment and would not have proceeded with had she been aware.*

Is it fair to ask Carey to compensate Mrs 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 Mrs G signed the indemnity means that she 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 Mrs G's application to open a SIPP introduced from CL&P. That should have been the end of the matter – it should have told Mrs G that it could not accept the business. So if that had happened, the arrangement for Mrs G would not have come about in the first place, and the loss she suffered could have been avoided. That is the primary point.*
- *For completeness, had Carey explained to Mrs G why it would not accept the application from CL&P or was terminating the transaction, I find it very unlikely that Mrs G would have tried to find another SIPP operator to accept the business.*
- *And, in any event, I don't think it's fair and reasonable to say that Carey should not compensate Mrs G for her loss on the basis of any 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 Mrs G's actions mean she should bear the loss arising as a result of Carey's failings. I acknowledge Mrs G was warned of the high-risk nature of Store First and declared she understood that warning. But Carey failed to act on significant warning signs. Carey should simply not have accepted Mrs G's application at all and she should never have got to the point of signing the indemnity.*

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 Mrs 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 Mrs G for the loss she has suffered to her 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 Mrs G suffering a significant loss to her pension. And my aim is therefore to return Mrs G to the pension position she 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 Mrs G would be in if she had not transferred from her existing pension. In summary, Carey should:

1. *Calculate the loss Mrs G has suffered as a result of making the transfer.*
2. *Take ownership of the Store First investment if possible.*
3. *Pay compensation for the loss into Mrs G's pension. If that is not possible pay compensation for the loss to Mrs 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 Mrs G has suffered as a result of making the transfer*

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.

Should my Final Decision remain the same, this calculation should be carried out as at the date

of that decision, and using the most recent financial assumptions at the date of that decision.

The Store First investment should be assumed to have no value.

Account should be taken of the cash back payment paid out to Mrs G. This can be taken into account in the calculation on the basis of it having been paid at the outset i.e. the same approach can be taken as was taken by the Court of Appeal in its supplementary judgement.

2. *Take ownership of the Store First investment*

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

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

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

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

Since the loss Mrs G has suffered is within her pension it is right that I try to restore the value of her 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 Mrs G could claim. The notional allowance should be calculated using Mrs G's marginal rate of tax.

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

Mrs G has been caused some distress and inconvenience by the loss of her pension benefits. Mrs G had significant benefits retained in a defined benefit local government scheme. The loss of these benefits has undoubtedly caused her 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 Mrs G has suffered.

***determination and money award**: my provisional decision is that Carey pay Mrs 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 Mrs G within 90 days of the date Carey receives notification of her 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 Mrs 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 Mrs 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 Mrs G from the date it receives notification of her acceptance of the decision, as set out above.*

If my final decision remains the same and Mrs G accepts that 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 Mrs G can accept my determination and go to court to ask for the balance of any compensation owing to her after the money award has been paid. Mrs 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 Mrs G's complaint. Options UK Personal Pensions LLP should calculate and pay compensation as set out above."

Submissions received in response to my provisional decision

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

Mrs G accepted the provisional decision and did not make any further submissions.

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.

I would reiterate what I set out in my provisional decision about the involvement of TPS. Carey should not have accepted Mrs G's SIPP application and set up her SIPP in the first place. So it should never have got to the point that Carey requested that Mrs G seek advice from a third party. For completeness, Mrs G has told us that had she been made aware that Mr Wright was on an FSA warning list then she would not have proceeded with the transfer. I do think it unlikely in this situation that Mrs G would continue to have confidence dealing with CL&P and, given it was the principal party she was dealing with and it had introduced her to the matter of transferring her pension and making the Store First investment, I do not think that the involvement of TPS would have given her any comfort. And Mrs G has told us she was not aware that there was any appreciable risk with the Store First investment and would not have proceeded with had she been aware.

Furthermore, as also discussed in my provisional decision, by the time Carey sent Mrs G's money to Store First it had both terminated its introducer agreement with CL&P (for the reasons set out in my provisional decision) and taken the decision to not accept applications for new investments in Store First because of its concerns with that investment. It was not appropriate in these circumstances for Carey to arrange Mrs G's investment in Store First and it clearly should have been aware this was not in Mrs G's best interests.

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 Mrs G suffering a significant loss to her pension. And my aim is therefore to return Mrs G to the pension position she 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.

As set out in the provisional decision, Carey should calculate fair compensation by comparing the current position to the position Mrs G would be in if she had not transferred from her existing pension. In summary, Carey should:

1. Calculate the loss Mrs G has suffered as a result of making the transfer.
2. Take ownership of the Store First investment if possible.
3. Pay compensation for the loss into Mrs G's pension. If that is not possible pay compensation for the loss to Mrs 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 Mrs G has suffered as a result of making the transfer

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.

This calculation should be carried out as at the date of that decision, and using the most recent financial assumptions at the date of that decision.

The Store First investment should be assumed to have no value.

Account should be taken of any cash back payment paid out to Mrs G. This can be taken into account in the calculation on the basis of it having been paid at the outset i.e. the same approach can be taken as was taken by the Court of Appeal in its supplementary judgement.

2. Take ownership of the Store First investment

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

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

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

3. Pay compensation to Mrs G for loss she has suffered calculated in (1).

Since the loss Mrs G has suffered is within her pension it is right that I try to restore the value of her 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 Mrs G could claim. The notional allowance should be calculated using Mrs G's marginal rate of tax.

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

Mrs G has been caused some distress and inconvenience by the loss of her pension benefits. Mrs G had significant benefits retained in a defined benefit local government scheme. The loss of these benefits has undoubtedly caused her 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 Mrs G has suffered.

determination and money award: my decision is that Carey pay Mrs 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 Mrs G within 90 days of the date Carey receives notification of her 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 Mrs 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 Mrs 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 Mrs G from the date it receives notification of her acceptance of the decision, as set out above.

If Mrs G accepts my final decison, 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 Mrs G can accept my determination and go to court to ask for the balance of any compensation owing to her after the money award has been paid. Mrs G may want to consider getting independent legal advice before deciding whether to accept my final decision.

My final decision

For the reasons set out in this decision and my provisional decision, my final decision is that I uphold Mrs G's complaint. Options UK Personal Pensions LLP should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 14 July 2022.
David Bird
Ombudsman