DRN-3535190

The complaint

Ms P complains that in 2012, Options UK Personal Pensions LLP ('Options', trading as Carey Pensions UK LLP at the relevant time) didn't carry out adequate due diligence before it accepted her Self-Invested Personal Pension ('SIPP') application and allowed her to invest her SIPP monies in Store First Limited ('Store First') and GAS Verdant Australian Farmland ('GAS Verdant'). And that she has suffered a financial loss and distress as a result.

What happened

I've outlined the key parties involved in Ms P's complaint below.

Options

Options is a SIPP provider and administrator. At the time of these events, Options was regulated by the Financial Services Authority ('FSA'), later becoming the Financial Conduct Authority ('FCA'). Options was authorised in relation to SIPPs, to arrange (bring about) deals in investments, to deal in investments as principal, to establish, operate or wind-up a pension scheme, and to make arrangements with a view to transactions in investments.

Douglas Baillie Ltd/The Pension Specialist

The Pension Specialist ('TPS') was an appointed representative of Douglas Baillie Ltd from 24 May 2011 to 13 November 2013. At the time of TPS's involvement, Douglas Baillie Ltd was an FCA regulated financial adviser.

In October 2013 Douglas Baillie Ltd suspended its pension switching business 'The Pension Specialist', following the FCAs concerns about the standard of the advice it was giving.

In 2016 Douglas Baillie Ltd went into Financial Services Compensation Scheme ('FSCS') default.

For ease, I'll now refer to all actions of TPS as being that of Douglas Baillie Ltd, except where I'm referencing a direct quotation or where I think it's appropriate to differentiate. Based on the available evidence, I've set out below a summary of what I consider here to be the key relevant events during the relationship between Options and Douglas Baillie Ltd:

- 20 October 2011 - An Introducer Profile and an Introducer Agreement between Options and Douglas Baillie Ltd was signed. This set out Options' terms of business and the conduct it expected of Douglas Baillie Ltd.

- 12 December 2011 – Options received its first client from Douglas Baillie Ltd.

- 12 March 2012 – Douglas Baillie Ltd emailed Ms Hallett at Options to say, *"As you may be aware, we have started sending some transfer cases to your company."* The email outlined a query on one of these cases and asked exactly how Options' process works. In particular, Douglas Baillie Ltd asked, *"I spoke to one of your colleagues last week to*

find out what we need to send to you along with the applications. She advised your need to see a copy of our advice letter and any TVAS. Please confirm this is the case."

- 16 March 2012 – Ms Hallett at Options emailed Douglas Baillie Ltd to detail that her understanding of the agreed process was that:

  "The Pensions Specialists (TPS) are providing full advice on transfer of occupational pension schemes to a SIPP (with us), and will provide us copies of TVAS and advice letter.

  The Pensions Specialists are appointed as advisers for the purpose of the transfer of existing occupational arrangements and the establishment of the SIPP for which they will be paid from the transfer fund. TPS will get the adviser page of our application form completed and signed by each client.

  We will on receipt of the SIPP application log TPS as adviser for the purposes of the transfer and SIPP establishment and keep TPS informed of progress of the transfer and copy them in on correspondence to the client including the welcome letter.

  On receipt of the transfer of funds we will advise TPS as well as client

  TPS will invoice the scheme for the transfer advice which we will pay

  On receipt of the completion of the transaction TPS will send us a letter resigning as adviser which we will record on our systems."

- 18 May 2012 – Douglas Baillie Ltd emailed Ms Hallett at Options to say *"Thank you for taking the time out to see [TPS Director] & Co earlier today. [TPS Director] mentioned that there were a couple of accounts that you have refused business from, as I tend to be closer to the accounts, can you confirm who they are please. This way, I can ensure that [TPS office] are aware of any blacklisted firms and that we can avoid them as well."*

- 4 September 2012 – Ms Hallett at Options emailed Douglas Baillie Ltd to say *"We are currently considering our position going forward with regard to receiving business that is advised on transfer but not on-going and for investments and we may not continue with this line of business…".*

- 18 – 20 September 2012 – Ms Hallett and Douglas Baillie Ltd exchanged emails about a number of recent applications (including one for Ms P) involving transfers from defined benefit occupational pension schemes. Ms Hallett explained that Options would no longer accept applications such as these, where the advice was against transfer. Douglas Baillie Ltd asked Ms Hallett to *"please reconsider this stance and give us the opportunity to complete the cases that until today we had no reason to believe that you would not accept".* Ms Hallett agreed to accept several further applications, including the one for Ms P.

- 4 October 2012 – Options accepted its last client from Douglas Baillie Ltd.

- 4 October 2012 – Douglas Baillie Ltd emailed Ms Hallett at Options to say, *"We are changing our process slightly so that we are advised (where possible) in advance of a SIPP transfer being made, the expected investment that is going to be made.*

  Whilst we don't intend to comment on this investment, our intention is to ensure that the selected SIPP provider will allow this in advance of the SIPP application being made.

Can you provide me with a list of alternative investments that you are currently allowing?

I am also hoping that we can convert some of our other introducers who don't currently use you to do so by us taking control of where the SIPP should be placed."

- 6 October 2012 - Ms Hallett at Options emailed Douglas Baillie Ltd saying, *"This is welcomed attached is a list of alternatives we have accepted.*

  Another point however, we need to know on the form who the introducer of the business is to you…" and Ms Hallett went on to outline Options' concerns about a particular introducer Douglas Baillie Ltd was using.

- 8 October 2012 – Douglas Baillie Ltd emailed Ms Hallett at Options, saying, *"Thank you for the list, this will assist us going forward."* The email also said Douglas Baillie Ltd had decided to stop accepting new business from the introducer Options was concerned about and would only be processing cases that were already in the pipeline, and outlined the steps it had taken in relation to this introducer. The email went on to say Douglas Baillie Ltd was "*More than happy to provide you with the name of the introducing firm with each new application form as hopefully by working together on this we can eliminate any rogue introducers."*

- 5 February 2013 – Douglas Baillie Ltd emailed Options to say *"Following the recent FSA alert regarding unregulated investments into SIPP's, we are reviewing our process to ensure that we are providing the best possible service to our clients, and we are also reviewing each provider's stance on different investments and the pension transfer process. With this in mind, I would be grateful if you could confirm the following:"* Douglas Baillie Ltd's email went on to list a series of questions concerning Options' position on the types of transfers and investments it was willing to accept.

- 6 February 2013 - Options' Head of Operations & Technical replied to Douglas Baillie Ltd saying, *"Further to your email, I have noted below your queries with clarification of our position in bold for ease of reference.*

  1. *Are you still willing to accept transfers on an insistent client basis where we have advised a client against a transfer, but we have a letter from them stating that they still wish to proceed anyway?* ***We do not accept final salary transfers on an insistent client basis and have not done so since last year. In line with the recent FSA Alert we would not accept insistent clients on the basis you describe.***

  2. *Are you willing to accept subsequent investment into unregulated investments where we have advised a client against it, but have a letter from them stating they still wish to proceed?* ***No – as the adviser you would need to advise the client on all aspects of their scheme including investments.***

  3. *Are you still willing to accept pension transfer business where the client is to be orphaned once the transfer is complete, prior to any investment being made?* ***No, this would not follow the recent FSA clarifications of their requirements and expectations in respect of advisers."***

Regarding what investments Options would accept, Options said *"GAS Verdant Australian Farmland – Currently accepted but will be subject to a re-review process"* and *"Store First Ltd – Not currently accepting new business as under review".*

Store First

The Store First investment took the form of one or more self-storage units, which were part of a larger storage facility in a UK location. Investors bought one or more units in the facility and were offered a guaranteed level of income for a set period of time. After that, they could either take whatever income the unit(s) provided, or sell them (assuming there was a market for them).

The Store First investment was marketed as offering a guaranteed 8% return in the first two years, an indicated return of 10% in the following two years, and 12% in the next two years. It was also marketed as offering a *"guaranteed"* buy back after five years.

In a separate complaint brought to our Service, Options told us that on 3 May 2011, Options was contacted by a promoter of Store First, Harley Scott, about a newly launched product – Store First. Options says it put this investment through its review process.

In its submissions to us, Options says this review process was established in accordance with its obligations and FSA recommendations at the time, which required it to conduct: *"...due diligence into the Store First investment to assess its suitability for holding within a SIPP."*

In the letter confirming its acceptance of the investment, Options noted:

- The investor purchases a 250-year lease of a storage unit within a storage facility. The unit is then sublet to the management company, Store First, subject to an initial six-year term with two-year break clauses.
- The investor's interest can be sold/assigned at any time. The break clauses allow the investor to rent out the units individually without the services of the management company (but it insisted they use the management company).
- There was no apparent established market for the investment.
- The investment was potentially illiquid in that it was a direct property investment which may take time to sell. However, it could be sold providing a willing buyer can be found and was assignable so could be transferred in specie to beneficiaries.
- It also said its acceptance was subject to a member declaration and indemnity being completed and signed by each member, and the appointment of a solicitor to act for the Trustees in respect of any purchase.

In May 2014, the Self Storage Association of the UK ('SSA UK') issued a press release (amended in January 2015), detailing the outcome of a review it had commissioned Deloitte LLP to undertake of the marketing material made available to potential investors by Store First.

The release refers to a number of misleading and inaccurate statements made by Store First in its marketing material. It also makes the following observation:

> *"…a very serious question arises over how Store First is funding the guaranteed returns to existing investors, considering the absence of bank funding and the likely level of losses that require funding in each new store. It may yet prove to be the case that the rental returns being paid to investors are in fact being funded from the sale proceeds of new units, and not the operation of the self-storage business."*

Store First was the subject of a winding up petition issued by the Business Secretary. On 30 April 2019 the Court made an order to wind-up Store First and three associated companies in the public interest by consent between those four companies and the Secretary of State. The Official Receiver was appointed as liquidator and had responsibility for dealing with the assets and liabilities of the four companies.

Following this the freehold, associated assets and goodwill of 15 storage centres were sold by the Official Receiver to a company called Store First Freeholds Limited. As I understand it, the self-storage units continued to be rented to end users and a company called Pay Store now manages the storage sites trading as Store First. The Official Receiver and Store First Freeholds Limited agreed that the latter would accept any requests from investors to surrender their pods. Store First Freeholds Limited would cover its own costs of the surrender, but investors wouldn't receive any payment.

In the judgment in *Adams v Options SIPP UK LLP (formerly Options Pensions UK LLP) [2020]* EWHC 1299 (Ch) ('*Adams v Options'*), the judge found the value of Mr Adams' six pods, acquired for around £52,000 in July 2012, to be £15,000 as of January 2017. And in the judgement in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 it was stated that, in February 2020, Options had said it was valuing Storepods at £430 each following (then) recent sales of Store First storage units at auction and the Court used that value in assessing the redress due to Mr Adams.

GAS Verdant

The GAS Verdant Australian Farmland investment was unregulated and took the form of a 'land purchase contract' which involved a company based in Cyprus (GAS Global Agricultural Services Ltd), which leased plots of agricultural land in Australia to investors. Crops were to be planted on the plots, and the objective was to provide an income to investors through the sale of those crops and capital growth through the sale of the plot of land after eight years. The investor would then receive 80% of the net revenue from the yield of the land for eight years. After this, the land could be sold.

Options hasn't provided a detailed account of the due diligence it carried out in relation to the GAS Verdant investment. But in submissions in similar complaints, Options has said that it completed appropriate due diligence in respect of the investments by ensuring that GAS Verdant was suitable to be held in UK registered pension schemes. This included a review of the investment information, company background checks and also an independent report from an external third party compliance entity.

Options said that from its due diligence checks in relation to GAS Verdant, it was able to conclude this investment was suitable to be held within a SIPP.

Ms P's dealings with TPS, Douglas Baillie Ltd and Options

Ms P had a number of existing pensions. Ms P says that at the time of the events, she was called by an 'adviser' who said he was working on behalf of Options. Ms P says he arranged for all her pensions to be transferred into an Options SIPP and she was advised to invest in Store First and GAS Verdant.

Ms P's SIPP application form, which she signed on 19 and 20 April 2012, contained the following information:

- It started by saying Ms P was *"a client establishing a SIPP without advice. You have made this decision independently and are aware of the implications of this decision."*

- The ‘Transfers’ section set out the details of Ms P’s transferring pension schemes - it listed the following schemes and their estimated values:
  - ‘Pension A’ - £20,000. The ‘occupational scheme’ box was ticked, but it was not recorded whether this was a defined benefit (‘DB’) or defined contribution (‘DC’) pension, or whether it had any protected rights.
  - ‘Pension E’ - £10,000. The ‘occupational scheme’ box was ticked, but it was not recorded whether this was a DB or DC pension, or whether it had any protected rights.
  - ‘Pension L’ - £9,000. The ‘personal pension scheme’ box was ticked, but it was not recorded whether it had any protected rights.
  - ‘Pension S’ - £4,000. The ‘personal pension scheme’ box was ticked, but it was not recorded whether it had any protected rights.
  - ‘Pension U’ - £3,000. The ‘occupational scheme’ box was ticked, but it was not recorded whether this was a DB or DC pension, or whether it had any protected rights.
  - ‘Pension W’ - £1,000. The ‘personal pension scheme’ box was ticked, but it was not recorded whether it had any protected rights.

- The ‘Investments’ section said amongst other things, *“As you do not have a Financial Adviser, your investment choices are your sole responsibility.”* And it recorded that Ms P intended to invest £44,000 in Store First.

- The ‘Declaration’ section signed by Ms P said, amongst other things:
  - *“I hereby consent to Carey Pensions UK LLP requesting the transfer of my policies listed in the application form.”*
  - “*I understand that it is my sole responsibility to make decisions relating to the purchase, retention or sale of any investment held within the Carey Pension Scheme”*.
  - *“I agree to indemnify Carey Pensions UK LLP ’The Administrator’ and Carey Pension Trustees UK Ltd ‘The Trustee’ against any claim in respect of any decision made by myself or my Financial Adviser/Investment Manager or any other professional adviser I choose to appoint from time to time”.*
  - *“I confirm that I am establishing the Carey Pension Scheme on an execution only basis.”*

A Store First ‘Member Declaration & Indemnity’ form was signed by Ms P on 28 August 2012 and instructed Options to purchase this investment in the amount of £27,750. This included the following statements:

- *“I am fully aware that this investment is an Alternative Investment and as such is High Risk and / or Speculative.”*
- *“I am fully aware that both Carey Pensions UK LLP and Carey Pension Trustees UK Ltd act on an Execution Only Basis and confirm that neither Carey Pensions UK LLP nor Carey Pension Trustees UK Ltd have provided any advice whatsoever in respect of this investment.”*
- *“I confirm that I have read and understood the documentation regarding this investment and have taken my own advice including financial, investment and tax advice.”*
- *“I indemnify both Carey Pensions UK LLP and Carey Pension Trustees Ltd against any and all liability arising from this investment.”*

On 21 September 2012, TPS provided Ms P with an advice letter in relation to Pension U and Pension E. However, it appears TPS had already provided Ms P with an advice letter at some earlier point, because its September 2012 advice letter refers to TPS’s *“last report”* for her. However, I’ve not been provided with a copy of this earlier advice letter.

The start of TPS's September 2012 advice letter said, *"Thank you for returning a copy of my letter confirming that you wish to proceed with the transfer of your benefits into an alternative arrangement."* It went on to say, *"It has been confirmed to me that you wish to transfer your benefits into your existing Carey SIPP rather than a fully insured plan as you wish to make an investment with your pension plan that would not be available via a fully insured plan."*

The advice letter set out the benefits and drawbacks to Ms P of transferring these existing pension scheme benefits to her Options SIPP. Regarding Pension U, it said that transferring meant she'd lose the guarantees provided by the scheme, and that the critical yield meant its advice was not to transfer Pension U into the SIPP, but if Ms P chose to proceed with this transfer, TPS would treat her as an 'insistent client'. Regarding Pension E, the advice letter said the projected value was now lower than the alternative used in TPS's last report so if Ms P proceeded with this transfer, it would be against TPS's advice and so TPS would treat this business as 'insistent client'.

The advice letter went on to say,

"Insistent Client Basis
I am also confirming that you are proceeding with the transfer of your plans on an insistent client basis. This simply means you have requested to transfer and we cannot be responsible should the benefits provided from the alternative plan provide you or your spouse with a lower benefit in future.

Please confirm your acceptance of this by signing and returning the enclosed insistent client letter"

"Limited advice and information
As we have not been asked to provide you with advice other than on your pension transfer, this business is being transacted on a limited advice basis.

As you have not provided us with a completed financial planning profiler, then we will treat this business as limited information. This means that we are unable to take responsibility for any advice given, where having knowledge on your personal circumstances would have changed our advice."

£27,750 of Ms P's Options SIPP funds were invested into Store First on 26 September 2012.

On 29 September 2012, Ms P signed what appears to be a pre-printed letter addressed to TPS which said, *"Please accept this letter as confirmation that I wish to proceed with the transfer of the benefits held in my [Pension U] and [Pension E] plans into my existing Carey SIPP.*

I can confirm that I have been advised that the critical yield was calculated at 11.2%.

I understand that I have been advised against this transfer and that I wish to proceed in any instance. I understand that you will process this on an "insistent client" basis and that I can't hold you responsible should the benefits provided by the scheme in the future provide me (or my spouse/partner) with a lower benefits than the scheme that I am transferring from may have done."

The same day, Ms P signed what appears to be a pre-printed letter addressed to Options which said *"I can confirm I have received advice from The Pension Specialist which I have read and understood and I wish to proceed with the transfer of the benefits held in the plans into my existing Carey Pensions SIPP [reference]".*

Also on the same day, Ms P signed a 'Financial Adviser Details' page, signed by Douglas Baillie Ltd a few days later. This set out Douglas Baillie Ltd's details and said *"Please note our fee is for advice on transfer only. No advice has been given by us on investment."* On 4 October 2012, TPS sent this signed page to Options, and included its letter of appointment as the servicing agent on Ms P's plan, confirmation of advice received, discharge forms for Pension E and Pension U, and copies of its advice letter and TVAS.

On 22 October 2012 Ms P signed a handwritten letter to Options that said, *"I can confirm that I have received advice from the Pension Specialist which I have read and understood and I wish to proceed with the transfer of the benefits held in the plans listed below, into my existing Carey Pensions SIPP [reference].*

[Pension E]

If you have any queries regarding this please contact the Pensions Specialist."

On 10 December 2012 Options told Ms P that the transfer from Pension U had been received into her Options SIPP, and it asked both Ms P and TPS what Ms P's investment instructions were. TPS told Options it wasn't involved in the investment, it had only given Ms P advice on the transfer, and was removing itself as the servicing agent on her SIPP.

On 14 December 2012, Options emailed Ms P to say Pension E had been received into her Options SIPP in November 2012, and that the total amount of all her transfers was over £50,000.

On 18 December 2012, Ms P told Options that she wished to invest the rest of her Options SIPP monies into GAS Verdant.

On 21 December 2012, Ms P signed a GAS Verdant 'Member Instruction and Declaration' form which instructed Options to purchase this investment. The form included the following statements:

- *"I understand that Carey Pensions UK LLP as the Administrator and Carey Pension Trustees UK Ltd as the Trustee of the Scheme act on an Execution Only Basis upon my instruction."*
- *"Neither Carey Pensions UK LLP nor Carey Pension Trustees UK Ltd have provided any advice, whatsoever, in respect of the SIPP or this investment, including but not limited to financial, investment, tax advice."*
- *"I understand this investment is an Unregulated "Alternative Investment" and as such is considered High Risk and Speculative and that it may prove difficult to value, sell / realise."*
- *"I am fully aware that both Carey Pensions UK LLP and Carey Pension Trustees UK Ltd act on an Execution Only Basis and confirm that neither Carey Pensions UK LLP nor Carey Pension Trustees UK Ltd have provided any advice whatsoever in respect of this investment."*
- *"I have reviewed and understand the information and documentation provided by GAS Verdant including their Website, Terms of Business, Contract / Purchase Agreement, either in hard copy or electronically."*
- *"I have taken my own advice, including but not limited to, financial, investment and tax advice regarding the investment and its value, taxes, costs and fees."*
- *"I have received and understand the Carey Pension Scheme Documentation including but not limited to the Fee Schedule, Key Features Document, Terms of Business and Application Form."*

- *"I indemnify both Carey Pensions UK LLP and Carey Pension Trustees UK Ltd against any and all claims, demands, actions, suits, losses, costs, charges, expenses, damages, and liabilities whatsoever which Carey Pension Trustees UK Limited and / or Carey Pensions UK LLP may pay, sustain, suffer or incur in connection with any aspect of this investment."*

On 9 January 2013, £15,000 of Ms P's Options SIPP funds were invested into GAS Verdant.

Some years later, Ms P submitted a claim to the FSCS regarding Douglas Baillie Ltd's advice, and Ms P says she was represented in this by a claims management company ('CMC'). In October 2018, the FSCS calculated Ms P's total loss as over £70,000 and paid her its maximum of £50,000 in compensation. Later, the FSCS provided Ms P with a reassignment of rights to enable her to pursue a complaint against Options.

In October 2018, Ms P complained to Options via our Service. Ms P represented herself throughout this complaint. In summary, Ms P complained that Options had allowed third parties to badly advise her. She thought Options was responsible for allowing unethical firms to advise her, when her understanding was that Options had vetted these firms. She wanted Options to compensate her for the financial loss of her pension and for the £18,000 fee she'd paid the CMC to represent her in her FSCS claim.

In December 2018, Options issued its final response to Ms P's complaint. Options said it received Ms P's SIPP application and established her SIPP on 25 April 2012, and that her investments were made on 26 September 2012 (Store First) and 9 January 2013 (GAS Verdant). Options thought Ms P's complaint had been raised too late under the relevant time limit rules. Because it was more than six years since the events complained of. And more than three years since Options thought Ms P ought reasonably to have been aware she had cause for complaint from its April 2015 SIPP annual valuation which informed Ms P that her Store First investment was valued at 50% of its original purchase price. Options said its April 2016 SIPP annual valuation had reiterated this to Ms P, which clearly made her concerned given that she made an FSCS claim. Options added that it wouldn't refund Ms P's £18,000 CMC fee, as it thought Ms P could herself have made an FSCS claim free of charge and it had been her choice to engage a CMC.

From October 2018, Options sent Ms P occasional letters in relation to her FSCS compensation and to her SIPP, and her options regarding these.

On 12 July 2022 Options wrote to her saying, *"We have written to you on previous occasions asking you to consider whether this Scheme is still appropriate for your requirements.*

The current value of your Scheme is currently £53.62 and our Annual Administration Fee is £300.00 plus VAT.

I refer also to the attached email sent to you 4 October 2018 regarding compensation paid to you by the FSCS and your decision to keep your SIPP open (email attached). Your SIPP holds no other assets. When you received compensation from the FSCS for Store First and Southern Agri fund, you assigned your rights to these assets to the FSCS.

As it has been some time since you received compensation and you provided your instruction to keep your SIPP open, do you still consider this to be most appropriate choice for you. You do have the option to close your SIPP. If you would like to take this option the remaining balance on your scheme bank account of £53.62 will be deducted towards the standard charge of closing your SIPP. The fee for closing a SIPP is usually £300 plus, however we will waive the additional amount that would have been due, as a gesture of goodwill."

In October 2023, Options told Ms P it had closed her SIPP as she'd not confirmed which option she wanted to take.

Submissions from Ms P

Ms P was unhappy with Options' final response to her complaint, so she asked our Service to investigate. Amongst other things, she told us that:

- At the time of events in 2012, she'd been called by an 'adviser' who said he was working on behalf of Options. That he arranged for all her pensions to be transferred into the SIPP and she was advised to invest in Store First and GAS Verdant. She'd trusted Options that it used regulated and reputable introducers and vetted their advice.
- She'd thought the Store First and GAS Verdant investments were very little risk.
- She'd taken out the Options SIPP on the understanding she could resell the Storepods to get her pension money back.
- She hadn't received any payment for transferring her pensions.
- It was a SIPP annual valuation that made her realise the SIPP was performing badly.
- By 2016, Options had put her SIPP into a distressed account. She'd tried to opt out of her Store First investment but she was locked into her investments. The GAS Verdant correspondence had said there were many issues. The investments had dwindled away so much her only option was to keep them as there was no way of getting her money out of the SIPP.
- When Options put her SIPP into a distressed account in 2016, she knew she'd been badly advised and contacted a CMC about this as she couldn't deal with the stress of it - she was very worried about her pension and was also studying at this time.
- The cash balance of her SIPP became very low by 2019 because Options was taking its fees. Options then tried to 'off-load' her to another SIPP provider.
- She was upset to think Options hadn't taken responsibility and that it sought to use the time limits to escape being held responsible for its malpractices.
- If we upheld her complaint, she intended to close her Options SIPP and move to another provider.

Submissions from Options

Options told us it stood by its original position that Ms P's complaint had been brought too late for our Service to be able to consider it. At this time, Options didn't provide our Service with any comments on the merits of Ms P's complaint. But in other similar complaints brought to our Service, Options made submissions which included the following points:

- The client chose to use TPS and provided Options with a letter of authority to this effect.

- Options satisfied itself that the letter of authority related to the same TPS it had carried out due diligence on. As TPS was FCA regulated at the time, Options had no reason to suspect or comment on its advice or communication with the client, which Options wasn't party to. And at that time, Options was not aware of any reason it should reject introductions from TPS.

- The client confirmed to Options that they understood the advice from TPS and wanted to proceed with the transfer. So their complaint should be directed to TPS, because if it hadn't provided regulated advice to the client, Options wouldn't have accepted the transfer and the client wouldn't have made the investments in question.

- Clients went on to invest on an execution-only (i.e. non-advised) basis and this was made very clear in communications with them, the documentation issued to them, and the paperwork they read, signed and agreed to.

- Options acts as the administrator only of the SIPP. The client provided Options with specific instructions, which it actioned.

- As an execution-only business, Options would have been in breach of COBS 11.2.19 had it not followed the signed instructions given to it by a client.

- Options had administered the SIPP appropriately and in line with its terms and conditions. And Options had complied with all the FCA's Principles for Businesses. In any event, a breach of the Principles didn't afford the client any actionable rights.

- The client signed to confirm they'd read and understood the documents provided to them, including documents that said their investment choices were their and/or their adviser's responsibility, that Options did not provide advice and that taken or had the opportunity to take advice regarding the suitability of the SIPP and the underlying investments for their own personal circumstances. The documents the client signed highlighted many of the issues they now sought to complain about.

- It was reasonable for Options to accept the client's signed confirmation. It wasn't for Options to 'look behind' their signature nor was there a reason for it to do so. If the client did not agree to or understand the documentation provided, they should not have signed the paperwork. Options cannot be held responsible for the client's decision to sign documents they knew to be inaccurate or failed to understand, in circumstances where there was no indication this was the case.

- Options provided the client with risk warnings regarding their chosen investments, including the warnings in the Member Declaration & Indemnity forms they signed. The purpose of these forms was to provide the client with necessary information about the investments, and they made clear what the investments were and that they were high risk, and made clear the requirement to instruct a regulated third party adviser should the client wish to be advised in respect of their investment choices. The client signed their confirmation of the Member Declaration & Indemnity forms.

- Options carried out an internal investment review and due diligence on the investments which included a review of the relevant investment information, company background checks and an independent report from an external third-party compliance entity. These checks were sufficient to conclude that these investments were suitable to be held within a UK pension scheme.

- Options didn't suggest or recommend the Store First or GAS Verdant investments to the client. It is not responsible for either the performance of the investments or the investments not meeting the client's expectations.

- Our Service retrospectively imposed new duties of due diligence on Options. These duties are inconsistent with the contract the client entered, and with the COBS rules. Options is being held liable because it is the only remaining regulated entity over which our Service has jurisdiction.

- The FSA visited Options and approved its due diligence procedures in September 2011.

- No wrongdoing can arise on the part of Options by simply establishing a SIPP. At the time of TPS's advice, the client had not instructed Options to request a transfer of their DB benefits from their ceding DB scheme. Up to that point, the client would not have suffered any loss. Options was therefore reasonably entitled to rely on the involvement of a professional regulated adviser.

- Our Service said it had not seen any detail of the due diligence Options carried out on the GAS Verdant investment. Options has resource challenges in addressing the volume of complaints currently before our Service, particularly now we are rapidly progressing them. Options cannot reasonably be expected to have prepared a response, and its right to justice has been inhibited.

- Our Service had concluded that Options shouldn't have allowed the GAS Verdant investment, simply because it was high risk and because it was an investment often made alongside Store First. But one investment has no bearing on the other.

- It's possible the client was not cold-called but instead provided their contact details in order to be contacted by a firm that could assist them with transferring their pension.

And in other similar complaints brought to our Service, Options submitted the following comments regarding its relationship with Douglas Baillie Ltd:

- An Introducer Profile and an Introducer Agreement between Options and Douglas Baillie Ltd was signed on 20 October 2011. This set out Options' terms of business and the conduct it expected of Douglas Baillie Ltd.

- Douglas Baillie Ltd introduced 59 clients to Options, between 12 December 2011 and 4 October 2012.

- Commission was agreed between the client and Douglas Baillie Ltd depending on transfer value, with the average commission being 2.11%.

- Douglas Baillie Ltd was FCA regulated at the relevant times. Had the client not first received regulated financial advice, Options would not have accepted the transfer and the client would not have made the investments in question.

- As Douglas Baillie Ltd was FCA regulated, Options had no reason to suspect or comment on any advice or communication between the client and Douglas Baillie Ltd, of which Options was not party to. And at the time of the client's SIPP application, Options was not aware of any reason it shouldn't accept introductions from Douglas Baillie Ltd.

- The majority of clients introduced by Douglas Baillie Ltd invested in either Store First and/or GAS Verdant, with the remainder investing in Central and South American forestry investments.

One of our Investigator's thought Ms P's complaint had been brought within the relevant time limit rules and that it should be upheld. He said Options should have been concerned that Douglas Baillie Ltd was only advising its clients on the transfer and not the underlying investment, as this risked consumer detriment, particularly where a DB transfer was involved. And, in light of the Store First investment marketing literature, Options should have been concerned that consumers were being misled about the returns and risks associated with the investment and that there was the risk of consumer detriment. Our Investigator thought that had Options acted fairly and reasonably, it should have decided not to accept Ms P's SIPP application in the first place. And given all this, it was fair and reasonable for

Options to compensate Ms P for the financial loss of her pension and to pay her an additional £500 compensation for the distress and inconvenience Options had caused her.

Ms P acknowledged our Investigator's view and explained that she'd experienced financial hardship, and her pension was all she had for her future.

Options disagreed with our Investigator's view, and made the following points:

- Options still thought all its previous comments were relevant.

- Options does not (and is not permitted to) provide any advice to clients in relation to the suitability of a SIPP or the underlying investments for a client, nor is it permitted to comment on the suitability of the introducer the client had chosen to use.

- The Investigator had failed to take account of relevant law and regulations as required by section 228(2) of FSMA and DISP 3.6.4R, or explain why he'd departed from the relevant law. In particular, he didn't state whether the due diligence duty he found to exist is one recognised by law (rather than some broader professional standards) and, if so, the legal foundation of the duty. The duties suggested would not be recognised in a Court and legal liability would not be established.

- The Investigator failed to approach this complaint impartially and was determined to conclude Options should be liable for Ms P's losses, to the extent he disregarded evidence including Ms P's decision to proceed with the transfer of her pension against Douglas Baillie Ltd's advice. And a typographical error by the Investigator suggested he'd taken a blanket approach across all complaints against Options.

- An earlier Investigator told Options that Ms P's complaint had been brought too late and could only be considered if there were exceptional circumstances But no such circumstances were identified and the present Investigator hadn't explained why they thought Ms P's complaint had been brought in time.

- In April 2015, Options wrote to Ms P to confirm the value of her investment then stood at 50% of the original purchase price. The possibility for returns on the Store First investment is one of the factors that the Investigator said Options' due diligence should have considered. Therefore, Options' alleged failure to comply with this due diligence is directly relevant to our Service's consideration of this complaint. Therefore, the April 2015 annual valuation provided Ms P with sufficient information to complain. The Investigator couldn't reasonably conclude that Options is liable in part because of the performance of the investment whilst also saying that the performance of this investment should not have triggered Ms P's awareness of cause for complaint.

- In any event, the test is when a complainant *ought reasonably* to have become aware they had cause for complaint. The performance of the investment put Ms P on notice of potential issues relevant to the complaint and on a train of enquiry which would have led any reasonable person to consider their position regarding the SIPP provider.

- It's not fair or reasonable to consider the complaint in light of guidance issued after the events complained of, or on the basis of what our Service considers good industry practice. The guidance went beyond reflecting what the industry was already doing; it introduced new expectations.

- Regulatory publications cannot found a claim for compensation in themselves and do not assist in construction of the Principles.

- Even if the 2009 Thematic Review Report had been statutory guidance (which it wasn't), the breach of such statutory guidance wouldn't give rise to a claim for damages under FSMA S.138D. And many of the matters it invites firms to "*consider*" are directed at firms providing advisory services, not firms providing execution-only services. The FCA's Enforcement Guide says *"Guidance is not binding on those to whom the FCA's rules apply. Nor are the variety of materials (such as case studies showing good or bad practice, FCA speeches and generic letters written by the FCA to Chief Executives in particular sectors) published to support the rules and guidance in the Handbook. Rather, such materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant rules."*

- Our Service is set on finding Options liable regardless of any fact pattern or the reality of the relevant circumstances. Ms P received advice from TPS, a regulated financial adviser at that time. The regulator had not raised any concerns about TPS, removed its permissions, or taken any regulatory action against it. Options undertook due diligence on TPS to establish that it held the necessary permissions – which it did – and put in place terms of business. Options is not a regulator – it is not for Options to 'look behind' the regulated status of the adviser or the permissions it holds.

- TPS clearly advised Ms P not to proceed with the transfer and that if she transferred, she would lose the guarantees associated with her DB pension, and that position would be immediate and irreversible. Ms P wrote and signed letters to say she wished to proceed anyway. TPS only proceeded on an 'insistent client' basis i.e., Ms P insisted on the transfer against TPS's clear and direct advice. If Ms P had followed TPS's advice, she never would have transferred or suffered the loss she has. So Options can't reasonably be said to have caused her loss.

- Options had very limited obligation to undertake due diligence on the investments. In Adams, the High Court refused to recognise a duty of due diligence such as that set out by our Service, instead concluding that the obligations are framed by reference to the context of the contractual relationship between the parties. Furthermore, the judge in Adams specifically said they would have concluded that adequate due diligence had been carried out by any reasonable measure (Adams [16], [155]) having regard to all the evidence. And these finding weren't disturbed by the Court of Appeal.

- Our Service suggests Options ought to have investigated Store First extensively and hasn't explained why we thought the Enhance Support Solutions ('ESS') report was inconsistent with Options' company searches. We were wrong to say Options should have been concerned by the marketing material and ought to have reached similar conclusions to those later reached by SSA UK and the insolvency service. And wrong to say Options should have been concerned by the limited risk warnings and lack of proven track record. This was a subjective analysis reached with the benefit of hindsight.

- Those findings amount to saying Options was obliged to undertake a qualitative assessment of the Store First investment and give its findings to the client – in effect, to have provided advice to them. That significantly overreaches the actual legal obligations on Options at the time, as found by the Court in Adams. Options didn't have the necessary permissions to advise, and doing so knowingly could have amounted to a criminal offence.

- Our Investigator suggests Options should have provided additional information to Ms P but fails to state what and how this should have been communication to her. They also

fail to explain why Ms P wouldn't still have proceeded with the investment, given she ignored TPS advice not to transfer and investment risk warnings.

- Ms P's testimony is unreliable and self-serving. Ms P saying she understood the investment to be guaranteed was either contrived years after the fact, or indicated she'd not read or paid attention to the clear and simple paperwork she'd signed. Options' warning that the investment was high-risk was self-explanatory and couldn't have been clearer.

- Ms P would still have proceeded with the investment, given she ignored TPS's advice not to transfer and investment risk warnings. It's likely Ms P was keen to proceed with the investment in order to release funds and receive an inducement payment, and would have found a way to invest even if Options had not been dealing with TPS or accepting Store First investments. And it was wrong for our Service to suggest that another SIPP provider couldn't legitimately have accepted the client's investment instruction.

- It's not fair and reasonable for the Investigator to have only provided excerpts of the questions asked of Ms P, and her answers. The questions our Investigator asked Ms P appear to fall short of those asked in Adams. So an oral hearing should be held to determine:
  - Whether Ms P's complaint is time barred.
  - Ms P's understanding of and motivation regarding the investment and transferring against TPS's advice.
  - Ms P's motivation for entering into the transaction with Options and what she would have done if given more information.
  - Her state of knowledge regarding her Store First investment and any inducement payment.
  - To what extent any award should be reduced to reflect her risk appetite, the extent to which she caused her own loss, and the extent to which she would have suffered a loss regardless of any steps Options took.
  - In addition, Options hadn't had the opportunity to contribute to the questions asked of Ms P or challenge her answers.

- In any event, it's likely Ms P would have proceeded with releasing money by transferring her pension, whether through Options or another provider. Once the transfer request was made, Ms P immediately lost the safeguarded benefits of her ceding pensions, regardless of whether or not she opened the Options SIPP and/or completed the onward investments. So Ms P would have suffered a loss regardless of what actions Options did or did not take.

- Our Service said Options shouldn't have accepted Ms P's business in the first place so is liable for all of her loss. But the contract between Ms P and Options relieved Options of any liability it might otherwise bear - concluding otherwise would render void and unenforceable a validly concluded contract. No other legally recognised duty (e.g. in tort or under COBS 2.1.1R) would justify the conclusion our Service reached. Neither could restitution under section 27 of FSMA be available in this case.

- Ms P's request to transfer her DB pension was sent on or around 29 April 2012. Once this request was made, Options was obliged to complete the transfer and so the loss of DB benefits was assured from that point, even if Options had asked Ms P if she wanted to proceed with the investments. So Ms P must bear the loss of these benefits, as her decision couldn't have been prevented if even Options had acted as our Investigator suggested.

- Ms P should bear some responsibility for her own actions here. She transferred against advice. Options told her the investments were high risk. And the Member Declaration forms she signed set out Options responsibilities to her. Therefore, this should be reflected in any redress calculation.

- The FSCS found TPS legally responsible for Ms P's losses and awarded compensation. Therefore, pursuant to the Civil Liability (Contribution) Act 1978, any claim against Options is a claim for contribution only and our Service must take account of the compensation already received by Ms P and reduce any award accordingly. Otherwise it would amount to a double recovery on the part of Ms P.

- But if the Ombudsman disagrees, then Options would accept that a fair and reasonable comparator would be the lower discount rates, as detailed in the FCA's Final Guidance FG17/9.

- Our Investigator had said Options should pay Ms P £500 compensation for distress and inconvenience but hadn't evidenced that she suffered any degree of distress.

- The compensation Ms P received from the FSCS must be deducted from any compensation payable by Options, as it wouldn't be fair and reasonable for Options to bear this cost.

- If our Service's conclusions stand, Options would be penalised for failing to act in a way which was inconsistent with the contractual and regulatory scheme, and which would in practice have involved it breaching its permissions.

- And there would also be serious wider consequences for consumers and for execution-only SIPP providers. Because if execution-only SIPP providers are made liable for the poor investment choices of consumers, the execution-only SIPP market will reduce, depriving consumers of a low-cost investment route. And SIPP providers structure their business and fees on not investigating the quality of the underlying investment (other than to ascertain they are capable of being held within a UK registered pension scheme) and on providing execution-only services. Further it would be unfair if SIPP providers weren't able to rely on the express representations made by clients when signing contractual documentation, such as the declarations signed by Ms P in this case.

- Ms P's alleged loss is within the realms of possible performance of an investment. The mere underperformance of an investment does not create a wrong or a liability.

As agreement couldn't be reached, this complaint was passed to me.

I asked Ms P whether she'd received any payment when she transferred her pension. She said she had not.

In addition, I asked Options to provide me with copies of the documentation it held from the time of the events in question, including the advice letters, and SIPP and investment application forms. Options provided me with some documentary evidence.

I issued a provisional decision in which I concluded that Ms P's complaint had been brought in time. I then concluded that her complaint should be upheld. In summary, I said Options shouldn't have accepted business from Douglas Baillie and/or accepted the Store First and GAS Verdant investments to be held in its SIPPs, before it had received Ms P's application. That if Options hadn't accepted Ms P's introduction from Douglas Baillie and/or the Store First and GAS Verdant investments to be held in its SIPPs, Ms P wouldn't have established

an Options SIPP, transferred her DB scheme monies into it or invested in Store First and GAS Verdant. I said it's fair and reasonable for Options to compensate Ms P for the full measure of the loss she's suffered as a result of Options accepting her business from Douglas Baillie and permitting her to invest her SIPP monies in Store First and GAS Verdant. So Options should undertake redress calculations for Ms P, and also pay her £500 compensation for her distress.

Ms P accepted the provisional decision. She also reiterated some of the points she'd previously made to our Service, and the distress she'd experienced. And she was unhappy with Options' suggestions that she was responsible for her financial loss and not Options.

Options didn't provide any response to the provisional decision, despite being provided with the opportunity to do so.

I'm now in a position to make my decision.

What I've decided – and why

Time limits

Firstly, I've thought about whether this is a complaint our Service can consider. Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the FCA's Handbook of Rules and Guidance. DISP 2.8.2R says:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service…

> *(2) more than:*
>
> > *(a) six years after the event complained of; or (if later)*
> >
> > *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*
> >
> > *unless the complainant referred the complaint to the respondent or the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*
> >
> > *unless:*
>
> *(3) in the view of the Ombudsman, the failure to comply with the time limits…was as a result of exceptional circumstances.*

Ms P's complaint against Options is that it didn't carry out adequate due diligence before it accepted her SIPP application and allowed her to invest her SIPP monies in Store First and GAS Verdant. Based on the evidence provided to me so far, Options accepted Ms P's SIPP application in April 2012, her Store First investment was made in September 2012 and her GAS Verdant investment was made in January 2013. Ms P raised this complaint to Options less than six years later, in October 2018. So Ms P's complaint point in relation to the GAS Verdant investment has been brought in time under the six-year part of the rule.

However, Options accepted Ms P's SIPP application and her Store First investment more than six years before Ms P complained to Options. So, Ms P's complaint points in relation to these events has been brought outside the six-year part of the rule. Therefore, I must consider whether these complaint points have been brought within the three-year part of the

rule. Under the three-year part of the rule, I need to consider when Ms P ought reasonably to have become aware she had cause for complaint.

The term 'complaint' is defined for the purposes of DISP in the FCA handbook as:

"any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service…which:

a) Alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
b) Relates to an activity of that respondent, or any other respondent with whom that respondent has some connection in marketing or providing financial services or products …which comes under the jurisdiction of the Financial Ombudsman Service."

And *respondent* means a regulated firm covered by the jurisdiction of the Financial Ombudsman Service.

So, the material points required for Ms P to have awareness of a cause for complaint include:

- awareness of a problem;
- awareness that the problem had or may have caused her material loss; and
- awareness that the problem was or may have been caused by an act or omission of Options (the respondent in this complaint).

Options says Ms P ought reasonably to have been aware she had cause for complaint when the April 2015 SIPP annual valuation informed her that her Store First investment was valued at 50% of its original purchase price. And I note Ms P says it was a SIPP annual valuation that made her realise the SIPP was performing badly.

I've not been provided with copies of the 2015 and 2016 SIPP annual valuations Options says it sent to Ms P. But regardless, I'm not satisfied that these communications, as described by Options, ought reasonably to have made Ms P aware that the problem with her SIPP investments was or may have been caused by an act or omission of Options.

I think it's more likely than not that Ms P had been introduced to the SIPP and to the Store First and GAS Verdant investments by Douglas Baillie Ltd, and made the investments after Douglas Baillie Ltd advised her regarding transferring her pensions – and I'll return to this point. Given this, I think it's reasonable to conclude that Ms P's first thoughts would have been that Douglas Baillie Ltd was responsible for the problem with her SIPP investments. Ms P says she engaged a CMC in 2016. She went on to make an FSCS claim in relation to Douglas Baillie Ltd's advice, and was compensated by the FSCS in October 2018.

So I think it's fair to say that by late 2016, Ms P had taken reasonable steps to resolve the problem with her SIPP. Because she had appointed an expert in the form of her CMC, and I think it's more likely than not that at some point afterwards, Ms P's CMC mentioned to Ms P the possibility that Options, as her SIPP provider, could have a responsibility for the problem with her SIPP that had caused her a loss.

Further, I've not been provided with any evidence to suggest that Ms P had any information prior to this that ought reasonably to have made her aware she had cause for complaint about the due diligence Options carried out when it accepted her SIPP application and her Store First investment application in 2012.

So in the circumstances of this particular complaint, even if the earliest point at which Ms P became aware she had cause for complaint against Options was when she consulted her CMC in 2016, I do not consider that she ought reasonably to have been aware any earlier that there was a problem with her SIPP that had caused her a loss for which Options might also bear a responsibility, in addition to Douglas Baillie Ltd. Ms P complained to Options within three years of this, in October 2018. Therefore, I'm satisfied Ms P's complaint points in relation to Options accepting her SIPP application and her Store First investment application has been brought in time under the three-year part of the rules and so is a complaint our Service can consider.

Given this, I've gone on to consider the merits of Ms P's complaint. But first, I'll address Options' request for an oral hearing.

Oral hearing request

Options says that an oral hearing is necessary to determine when Ms P was aware, or ought reasonably to have been aware, she had cause for complaint. And to determine her motivations and state of knowledge including about the Store First investment and any inducement payment, transferring against TPS's advice, and entering into the transaction with Options and what she would have done if given more information. And to determine to what extent any award should be reduced. As Options hasn't had the opportunity to contribute to the questions asked of Ms P or challenge her answers.

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

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

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

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

We do not operate in the same way as the Courts. Unlike a Court, we have the power to carry out our own investigation. And the rules (DISP 3.5.8R) mean I, as the Ombudsman determining this complaint, am able to decide the issues on which evidence is required and how that evidence should be presented. I am not restricted to oral cross-examination to further explore or test points.

If I decide particular information is required to decide a complaint fairly, in most circumstances we are able to request this information from either party to the complaint, or even from a third party. In this case, we have undertaken an investigation and asked for the evidence that we needed to complete that. Options has had the opportunity to consider and comment on our Investigator's view and on my provisional decision.

I have carefully considered the submissions Options has made. And I am satisfied that I'm able to fairly determine this complaint without convening a hearing. In this case, I am

satisfied I have sufficient information to make a fair and reasonable decision. So, I don't consider a hearing – or any further investigation by other means – is required.

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

As I'm satisfied it isn't necessary for me to hold an oral hearing, I'll now turn to considering the merits of Ms P's complaint.

The merits of Ms P's complaint

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

Relevant considerations

I've carefully taken account of the relevant considerations to decide what's fair and reasonable in the circumstances of this complaint.

Before I set out the reasoning for my decision, it's important for me to say that 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.

In my view, the FCA's Principles for Businesses are of particular relevance. The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (PRIN 1.1.2G – at the relevant date). Principles 2, 3 and 6 provide:

> *"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've carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ('BBA') Ouseley J 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 requirements 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 of BBA Ouseley J said:

> *"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 *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ('BBSAL'), Berkeley Burke brought a judicial review claim challenging the decision of an Ombudsman who'd upheld a consumer's complaint against it. The Ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The Ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and hadn't treated its client fairly.

Jacobs J, having set out some paragraphs of *BBA* including paragraph 162 set out above, said (at paragraph 104 of *BBSA*L):

> *"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles-based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."*

The *BBSAL* judgment also considers section 228 of the FSMA and the approach an Ombudsman is to take when deciding a complaint. The judgment of Jacobs J in *BBSAL* upheld the lawfulness of the approach taken by the Ombudsman in that complaint, which I've described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

As outlined above, Ouseley J in the *BBA* case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what's fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in *BBSAL*. I'm therefore satisfied that the Principles are a relevant consideration that I must take into account when deciding this complaint.

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both these judgments and the judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 when making this decision on Ms P's case.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case. I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight didn't consider the

application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither of the judgments say anything about how the Principles apply to an Ombudsman's consideration of a complaint. But, to be clear, I don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of the *Adams* judgments when making this decision on Ms P's case.

I acknowledge that COBS 2.1.1R (*A firm must act honestly, fairly and professionally in accordance with the best interests of its client)* overlaps with certain of the Principles, and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of the 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 didn't 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 in *Adams v Options SIPP*, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at paragraph 148:

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

I note that there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Ms P's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened *after* the contract was entered into. And he wasn't asked to consider the question of due diligence *before* Options SIPP agreed to accept the Storepods investment into its SIPP.

In Ms P's complaint, amongst other things, I'm considering whether Options ought to have identified that the Store First and GAS Verdant investments involved a significant risk of consumer detriment and, if so, whether it ought to have declined to accept applications to invest in Store First and GAS Verdant *before* it received Ms P's application. And the same applied to Options deciding whether to accept introductions from Douglas Baillie Ltd.

The facts of Mr Adams' and Ms P's cases are also different. I make that point to highlight that there are factual differences between *Adams v Options SIPP* and Ms P's case. And I need to construe the duties Options owed to Ms P under COBS 2.1.1R in light of the specific facts of Ms P's case.

So I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Ms P's case, including Options role in the transaction.

However, I think it's 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'm required to take into account relevant considerations which include: 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. 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 also want to emphasise that I don't say that Options was under any obligation to advise Ms P on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Ms P on the merits of the SIPP and/or the underlying investments.

Overall, I'm satisfied that COBS 2.1.1R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of Ms P's case.

Options has pointed out that a contravention of the Principles cannot in itself give rise to any cause of action at law. That may be true. However, I am dealing with a complaint, not a cause of action, and what I am seeking to identify here is what is relevant to my consideration of what is fair and reasonable in the circumstances of this case. And I'm satisfied that the FCA's Principles are a relevant consideration that I must take into account when deciding this complaint.

The regulatory publications

The FCA (and its predecessor, the FSA) issued a number of publications which reminded SIPP operators of their obligations and which set out how they might achieve the outcomes envisaged by the Principles, namely:

- The 2009 and 2012 Thematic Review Reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 *"Dear CEO"* letter.

I've considered the relevance of these publications. And I've set out material parts of the publications here, although I've considered them in their entirety.

The 2009 Thematic Review Report

The 2009 Report included the following statement:

"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.

It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.
…
We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by

contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to clients.

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their customers' interests in this respect, with reference to Principle 3 of the Principles for Businesses ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*

- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*

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

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

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

Although I've referred to selected parts of the publications, to illustrate their relevance, I've considered them in their entirety.

I acknowledge that the 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However, the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't mean their importance should be underestimated. They provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to

ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account.

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

At its introduction the 2009 Thematic Review Report says:

> *"In this report, we describe the findings of this thematic review, and make clear what we expect of SIPP operator firms in the areas we reviewed. It also provides examples of good practices we found."*

And, as referenced above, the report goes on to provide "…*examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms."*

So, I'm satisfied that the 2009 Report is a *reminder* that the Principles apply and it gives an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So I'm satisfied it's relevant and therefore appropriate to take it into account.

Options argues that many of the matters which the Report invites firms to consider are directed at firms providing advisory services. But, to be clear, I think the Report is also directed at firms like Options acting purely as SIPP operators. The Report says that *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses…"* And it's noted prior to the good practice examples quoted above that *"We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs."*

The remainder of the publications also provide a *reminder* that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I therefore remain satisfied it's appropriate to take them into account too.

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

It's also clear from the text of the 2009 and 2012 Thematic Review Reports (and the *"Dear CEO"* letter in 2014) that the regulator expected SIPP operators to have incorporated the

recommended good practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it's clear the standards themselves hadn't changed.

I note the judge in the *Adams* case didn't consider the 2012 Thematic Review Report, 2013 SIPP operator guidance and 2014 *"Dear CEO"* letter to be of relevance to his consideration of Mr Adams' claim. But it doesn't follow that those publications are irrelevant to my consideration of what's fair and reasonable in the circumstances of this complaint. I'm required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

That doesn't mean that in considering what's fair and reasonable, I'll only consider Options actions with these documents in mind. The reports, *"Dear CEO"* letter and guidance gave non-exhaustive examples of good practice. They didn't say the suggestions given were the limit of what a SIPP operator should do. As the annex to the *"Dear CEO"* letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

The regulator also issued an alert in 2013 about advisers giving advice to consumers on SIPPs without consideration of the underlying investment to be held in the SIPP. The alert *("Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP"*) set out that this type of restricted advice didn't meet regulatory requirements. It said:

> *"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes).*
> *…*
> *Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.*
>
> *The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes."*

The alert post-dates the events in this complaint – but, again, it didn't set new standards. It highlighted that advisers using the restricted advice model discussed in the alert generally weren't meeting *existing* regulatory requirements and set out the regulator's concerns about industry practices at the time.

To be clear, I don't say the Principles or the publications obliged Options to ensure the transactions were suitable for Ms P. It's accepted Options wasn't required to give advice to Ms P, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But as I've said above they're evidence of what I consider to have been good industry practice at the relevant time, which would bring about the

outcomes envisaged by the Principles. As Options notes from the FCA's Enforcement Guide, publications of this type *"illustrate ways (but not the only ways) in which a person can comply with the relevant rules".* And so it's fair and reasonable for me to take them into account when deciding this complaint.

Options argues that any publications or guidance that post-dated the events subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time. But that doesn't alter my view on what I consider to have been good industry practice at the time. That's because I find that the 2009 Report together with the Principles provide a very clear indication of what Options could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting Ms P's application.

It's important to keep in mind the judge in *Adams v Options* didn't consider the regulatory publications in the context of considering what's fair and reasonable in all the circumstances bearing in mind various matters including the Principles (as part of the regulator's rules) or good industry practice.

And in determining this complaint, I need to consider whether, in accepting Ms P's application to establish a SIPP and transfer her DB pension scheme benefits and other pensions into it and to invest in Store First and GAS Verdant, Options complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Options should have done to comply with its regulatory obligations and duties.

Taking account of the factual context of this case, it's my view that in order for Options to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into Douglas Baillie Ltd/the business Douglas Baillie Ltd was introducing and the Store First and/or GAS Verdant investments *before* deciding to accept Ms P's applications.

Options says it is being held liable because it is the only remaining regulated entity over which the Financial Ombudsman Service has jurisdiction. But, ultimately, what I'll be looking at here is whether Options took reasonable care, acted with due diligence and treated Ms P fairly, in accordance with her best interests. And what I think is fair and reasonable in light of that. And I think the key issue in Ms P's complaint is whether it was fair and reasonable for Options to have accepted her SIPP application and Store First and GAS Verdant investment applications in the first place. So, I need to consider whether Options carried out appropriate due diligence checks on Douglas Baillie Ltd and the Store First and GAS Verdant investments before deciding to accept Ms P's applications.

And the questions I need to consider include whether Options ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by Douglas Baillie Ltd and/or investing in Store First and GAS Verdant were being put at significant risk of detriment. And, if so, whether Options should therefore not have accepted Ms P's application for the Options SIPP and/or Store First and GAS Verdant investments.

The contract between Options and Ms P

Options has made submissions about its contract with Ms P, and other clients introduced by Douglas Baillie Ltd, and I've carefully considered everything Options has said about this.

For clarity, my decision is made on the understanding that Options acted purely as a SIPP operator. I don't say Options should (or could) have given advice to Ms P or otherwise have ensured the suitability of the SIPP or the Store First and GAS Verdant investments for her. I accept that Options made it clear to Ms P that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in her SIPP investments. And that forms it appears Ms P signed confirmed, amongst other things, that losses arising as a result of Options acting on her instructions were her responsibility.

I've not overlooked or discounted the basis on which Options was appointed. And my decision on what's fair and reasonable in the circumstances of Ms P's case is made with all of this in mind. So, I've proceeded on the understanding that Options wasn't obliged – and wasn't able – to give advice to Ms P on the suitability of the SIPP or Store First and GAS Verdant investments.

Options' due diligence on introducing adviser Douglas Baillie Ltd

As a preliminary point, I must make clear that I think it's more likely than not that Ms P was introduced to the Options SIPP and to the Store First and GAS Verdant investments by Douglas Baillie Ltd, and that she made the investments after Douglas Baillie Ltd advised her regarding transferring her pensions. I'll explain why.

I acknowledge the April 2012 Options SIPP application form for Ms P recorded that she was a direct client and didn't have a financial adviser. But I note Ms P's testimony that she was called by someone saying they were an 'adviser' working on behalf of Options, who arranged for all her pensions to be transferred into the Options SIPP and that she was advised to invest in Store First and GAS Verdant. And based on other similar complaints brought to our Service that feature Douglas Baillie Ltd as the advising introducer, I'm aware that Douglas Baillie Ltd was reaching out to potential clients, either itself or through other firms.

Douglas Baillie Ltd was certainly involved with Ms P by 21 September 2012, as TPS (as an appointed representative of Douglas Baillie Ltd) provided an advice letter for Ms P on that date. And this advice letter makes clear TPS had already given Ms P advice at some unknown point prior to this, as it referred to TPS's *"last report"* and thanked Ms P for returning a copy of its letter confirming that she wished to proceed with the transfer of her benefits into an alternative arrangement.

In addition, I've not seen any evidence to suggest that Ms P had any relevant pensions experience or knowledge. So I think it's unlikely that Ms P, as a lay person, independently decided to transfer all her pensions with the intention of investing in a high risk, non-standard investment like Store First (as the April 2012 Options SIPP application recorded she intended to do, albeit Ms P also later invested in GAS Verdant) without any input from another party. And given the evidence in this case and Douglas Baillie Ltd's business model, I think it's more likely than not that party was Douglas Baillie Ltd.

So on balance, I think Ms P was introduced to the Options SIPP and to the Store First and GAS Verdant investments by Douglas Baillie Ltd, and that she made the investments after Douglas Baillie Ltd advised her regarding transferring her pensions.

Options had a duty to conduct due diligence and give thought to whether to accept introductions from TPS as an appointed representative of Douglas Baillie Ltd.

Options says clients were introduced to Options by Douglas Baillie Ltd, an FCA regulated adviser at the relevant time. And Options provided us with a print out from the FCA Register dated 28 December 2011 showing *"Basic details"* for *"The Pension Specialist LLP"*. This said

its current status was *"Appointed Representative"* effective from 24 May 2011. This print out also showed a list of four individuals involved with *"The Pension Specialist LLP"*. Options has not provided any evidence of the FCA Register searches it completed in relation to Douglas Baillie Ltd or what permissions Douglas Baillie Ltd held.

Options has also told us that clients had opted to use Douglas Baillie Ltd as the introducer and Options received a letter of authority to this effect, alongside the SIPP application. That Options satisfied itself that the letter of authority related to the same Douglas Baillie Ltd it had carried out due diligence on. And had the client not first received regulated financial advice, Options would not have accepted the transfer and the client would not have made the Store First and GAS Verdant investments.

Also, Options has provided our Service with a copy of the Introducer Profile and Introducer Agreement between Options and *"The Pension Specialist LLP"* as an appointed representative of Douglas Baillie Ltd*,* signed on 10 October 2011.

Amongst other things, the Introducer Agreement says TPS is responsible for the following:

- Under the *"Providing Advice"* section:
  - *"To evaluate your client's financial circumstances and based on this assess their suitability for what, if any, of the [Options] Pension range is appropriate;"*
  - *"Where a transfer is recommended, all options considered and the advice provided to the client in line with regulatory requirements;"*

- Under the *"Scheme Investments"* section:
  - *"Where your client seeks advice, to provide fully documented advice to your client on the suitability of the Scheme investments, taking account of their financial objectives and attitude to investment risk;"*
  - *"To ensure you have the correct FSA authorisation to provide the investment advice;"*

In other complaints, Options has also provided evidence of some of the discussions it had with TPS, as an appointed representative of Douglas Baillie Ltd, about the client process and the business it was referring.

From the information that Options has provided about its relationship with TPS, I'm satisfied Options did take *some* steps towards meeting its regulatory obligations and good industry practice. However, I don't think those steps our Service has seen evidence of went far enough or were sufficient to meet Options' regulatory obligations and good industry practice.

I think Options was aware of, or should have identified potential risks of, consumer detriment associated with business introduced by Douglas Baillie Ltd, including the following, before it accepted Ms P's application:

- The SIPP business introduced by Douglas Baillie Ltd had anomalous features – it appears to have been high risk business, including many DB scheme transfers where monies were ending up invested in unregulated and esoteric investments post-transfer.

- Neither TPS nor any other regulated party was offering the consumers being introduced full regulated advice (that is advice on the transfer or switch to the SIPP, the establishment of the SIPP *and* the intended investment(s)). Instead, advice was being restricted and advice was not being offered on the suitability of the intended investment(s).

I've set out below some more detail on anomalous features of the business Douglas Baillie Ltd was introducing to Options, and on potential risks of consumer detriment that I think

Options either knew about, or ought to have known about, *before* it accepted Ms P's SIPP application. These points overlap, to a degree, and should have been considered by Options cumulatively.

Anomalous features

The type of investments being made by Douglas Baillie Ltd-introduced consumers

Options has told us Douglas Baillie Ltd had introduced 59 clients to Options. And that the majority of clients introduced by Douglas Baillie Ltd invested in either Store First and/or GAS Verdant, with the remainder invested in Central and South American forestry investments.

Given this, and based on the evidence I've seen to date, I think it's more likely than not that either all, or the vast majority of, clients introduced to Options by Douglas Baillie Ltd ended up with SIPP monies invested in higher risk non-standard assets like the Store First and GAS Verdant investments.

I think it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of people investing for their pension. And I think Options either was aware, or ought reasonably to have been aware, that the type of business Douglas Baillie Ltd was introducing was high risk and therefore carried a potential risk of consumer detriment.

From similar complaints about Options brought to our Service which feature Douglas Baillie Ltd as the advising introducer, I've seen that many of the client SIPP application forms Douglas Baillie Ltd sent to Options didn't include any details about the intended investment(s), although Ms P's SIPP application wasn't one such – it recorded that she intended to invest in Store First. And I note Options has told us that it acts as the administrator only of the SIPP. So, Options may argue it didn't know any or all of the investments Ms P and other Douglas Baillie Ltd-introduced clients intended to make.

But while the 2009 Thematic Review Report made clear that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs, it also made clear that *"SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs."*

And the 2009 Thematic Review Report went on to give the following as examples of measures that SIPP operators could consider, taken from examples of good practice that the regulator had observed and suggestions it had made to firms:

> *"Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified."*
>
> *"Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended."*

So even if the investments weren't recorded on the application form, Options knew or should have known the investments that were typically being made by Douglas Baillie Ltd-introduced clients.

Volume and nature of business introduced

As I say, an example of good practice identified in the FSA's 2009 Thematic Review Report was:

> *"Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified."*

Options has told us that Douglas Baillie Ltd made its first introduction to Options on 12 December 2011 and the last on 4 October 2012. That Douglas Baillie Ltd introduced a total of 59 clients to Options, and the number of those that were introduced before one particular client. That Options recorded all commission paid to Douglas Baillie Ltd, and that commission was based on the transfer value with the average commission being 2.11%. And that the majority of clients introduced by Douglas Baillie Ltd invested in either Store First and/or GAS Verdant, with the remainder invested in Central and South American forestry investments. Based on this, I'm satisfied Options had access to information about the number and type of introductions that Douglas Baillie Ltd made.

I'm also satisfied Options was aware that Douglas Baillie Ltd was only advising on the transfer, and not the investments. I say this because on 16 March 2012, Ms Hallett at Options emailed Douglas Baillie Ltd to detail that her understanding of the agreed process included that TPS would only advise on the transfer, as follows:

> *"The Pensions Specialists (TPS) are providing full advice on transfer of occupational pension schemes to a SIPP (with us), and will provide us copies of TVAS and advice letter.*
>
> *The Pensions Specialists are appointed as advisers for the purpose of the transfer of existing occupational arrangements and the establishment of the SIPP for which they will be paid from the transfer fund. TPS will get the adviser page of our application form completed and signed by each client.*
>
> *We will on receipt of the SIPP application log TPS as adviser for the purposes of the transfer and SIPP establishment and keep TPS informed of progress of the transfer and copy them in on correspondence to the client including the welcome letter.*
>
> *On receipt of the transfer of funds we will advise TPS as well as client*
>
> *TPS will invoice the scheme for the transfer advice which we will pay*
>
> *On receipt of the completion of the transaction TPS will send us a letter resigning as adviser which we will record on our systems."*

The April 2012 Options SIPP application form for Ms P recorded that she was a direct client and didn't have a financial adviser.

The September 2012 'Financial Adviser Details' page set out Douglas Baillie Ltd's details and said *"Please note our fee is for advice on transfer only. No advice has been given by us on investment."* TPS sent this signed page to Options on 4 October 2012, and included

confirmation of advice received, discharge forms for Pension E and Pension U, and copies of its advice letter and TVAS.

And in similar complaints brought to our Service where Douglas Baillie Ltd is the advising introducer, I've seen that 'Transfers' section of the Options SIPP application form contained a ticked box which read *"Please tick the box to indicate that you have received advice on the transfer of this policy"* and also confirmed that *"Douglas Baillie Ltd"* had provided the client *"…with advice in respect of this transfer."* And that the 'Financial Adviser Details' section of these SIPP application forms again set out Douglas Baillie Ltd's details and said *"Please note our fee is for advice on transfer only. No advice has been given by us on investment."*

Based on all this, I think Options was on notice from the point in time it first started receiving SIPP application forms from Douglas Baillie Ltd-introduced consumers that Douglas Baillie Ltd had not given consumers *any* advice on Store First, GAS Verdant and other higher risk non-standard asset investments.

Options says Douglas Baillie Ltd was an FCA regulated business and at the time of the client's SIPP application, Options was not aware of any reason it shouldn't accept introductions from Douglas Baillie Ltd and it wasn't for Options to 'look behind' its regulated status or permissions. But I think that from very early on Options was aware, or ought to have been aware, that TPS (as an appointed representative of Douglas Baillie Ltd) wasn't a firm that was doing things in a conventional way.

It's unusual for regulated advice firms to be involved in transactions involving pension transfers to invest in high risk esoteric investments, such as the Store First and GAS Verdant investments, where no advice is being given by that firm on the esoteric investments. That's because the risks involved in such investments are unlikely to be fully understood by most people, without obtaining regulated advice. I think it's fair to say that most advice firms decline to be involved in such transactions.

I think this ought to have been a red flag for Options in its dealings with Douglas Baillie Ltd. And I think Options ought to have recognised there was a risk that Douglas Baillie Ltd might be *choosing* to introduce consumers without their having been offered regulated advice by Douglas Baillie Ltd on the unregulated investments that their transfers to Options were being effected to make. I think Options ought to have viewed this as a serious cause for concern – this was a clear and obvious potential risk of consumer detriment in this case.

Having carefully considered the available evidence, including the SIPP application forms I've seen in other complaints against Options where Douglas Baillie Ltd was the introducing adviser, I think it's more likely than not that most Douglas Baillie Ltd-introduced Options consumers were doing the same thing. By which I mean that application forms to establish an Options SIPP were being submitted for Douglas Baillie Ltd-introduced Options consumers recording that advice had been given by Douglas Baillie Ltd on the transfer but not on the investments, that pension monies were then being transferred into the newly established Options SIPPs for those consumers, and, subsequently, the consumers SIPP monies were being invested in Store First, GAS Verdant and other high risk non-standard investments.

As I say, from the point in time it first started receiving SIPP application forms from Douglas Baillie Ltd-introduced consumers, I think Options was on notice that Douglas Baillie Ltd had not given consumers any advice on the intended investments. I don't think it's credible that most, or all, of these Douglas Baillie Ltd-introduced consumers were independently determining to invest their pension monies in Store First, GAS Verdant and other high risk non-standard investments without any input from another party. I think that Options ought to have been alive to the risk that Douglas Baillie Ltd might have promoted to consumers the

idea of transferring pension monies so as to invest in Store First, GAS Verdant and other high risk, non-standard and unregulated investments, before providing them with any regulated advice, and that consumers, like Ms P, were not receiving any regulated advice from Douglas Baillie Ltd on the investments.

Given what Options ought reasonably to have identified about the business it was receiving from Douglas Baillie Ltd had it undertaken adequate due diligence, I think this should have been a significant cause for concern for Options and caused it to consider the business it was receiving from Douglas Baillie Ltd very carefully.

Finally, I think Options ought to have been concerned that many of Douglas Baillie Ltd's clients were proceeding on an apparently 'insistent client' basis, including Ms P. I think there was reason for Options to be concerned that the advice letter prepared by Douglas Baillie Ltd had been presented by Douglas Baillie Ltd as a formality or as a 'paper exercise' in the process, with the 'insistent client' wording downplayed so that clients given that label remained persuaded that the recommendation overall was to transfer out of their existing scheme.

The 'advice letters' I've seen, which are substantially similar in content, all suggested the client had already indicated a wish to proceed and included instructions on how to proceed with the application to Options and the transfer out. They read as though Douglas Baillie Ltd was working on the premise that their advice was going to be disregarded. Indeed, I note there is evidence that Options was concerned about these where they involved DB transfer and that Douglas Baillie Ltd was nonetheless keen for these applications from 'insistent clients' to go ahead – when in September 2012 Ms Hallett told Douglas Baillie Ltd *"given the heightened risk with Final Salary Occupational transfers and the volume that seem to be coming through we are not prepared to take them on where the advice is not to do it"*, Douglas Baillie Ltd's response was to convince Ms Hallett to make some concessions, including a transfer application for Ms P.

Alongside the volume of such applicants, I think Options ought to have identified that the tone of the advice letters was inconsistent, and they ought to have been alive to the possibility that the 'insistent client' wording had been included by Douglas Baillie Ltd only in order to limit its responsibility, and not because Ms P, a retail client, was genuinely insistent. Options ought to have questioned whether Douglas Baillie Ltd, who would only receive commission if the transfer went ahead, was putting its own interests ahead of those of its clients.

I think these concerns ought to have been even greater in a case like Ms P's where a DB scheme was involved. At the relevant date COBS 19.1.6G stated:

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

While I acknowledge this aims to define the expectation of a regulated financial adviser when determining the suitability of a pension transfer, it emphasises the regulator's concern about the potential detriment such a transaction could expose a consumer to. Given the nature of its business and regulatory status, I'd expect Options to have been familiar with the guidance contained in COBS – even if it didn't apply directly to it. This was a further clear and obvious potential risk of consumer detriment.

What fair and reasonable steps should Options have taken, in the circumstances?

Options could simply have concluded that given the potential risks of consumer detriment – which I think were clear and obvious at the time – it should not accept applications from Douglas Baillie Ltd. That would have been a fair and reasonable step to take, in the circumstances. Alternatively, Options could have taken fair and reasonable steps to address the potential risks of consumer detriment.

Requesting information directly from Douglas Baillie Ltd

Given the significant potential risk of consumer detriment I think that, as part of its due diligence on Douglas Baillie Ltd, Options ought to have found out more about how Douglas Baillie Ltd was operating and *before* it accepted Ms P's application. Mindful of the type of introductions I think it was receiving from Douglas Baillie Ltd, and that the clients introduced were not receiving advice on the intended investments, I think it's fair and reasonable to expect Options, in line with its regulatory obligations, to have made some very specific enquiries and obtained information about Douglas Baillie Ltd's business model.

As set out above, the 2009 Thematic Review Report explained that the regulator would expect SIPP operators to have procedures and controls, and for management information to be gathered and analysed, so as to enable the identification of, amongst other things, *"consumer detriment such as unsuitable SIPPs".* Further, that this could then be addressed in an appropriate way *"…for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification."*

The October 2013 finalised SIPP operator guidance gave an example of good practice as:

> *"Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with."*

I think that Options, and *before* it received Ms P's application from Douglas Baillie Ltd, should have checked with Douglas Baillie Ltd about: how it came into contact with potential clients, what agreements it had in place with its clients, whether all of the clients it was introducing were being offered full advice, how and why retail clients were interested in making higher risk non-standard investments, whether it was aware of anyone else providing information to clients, how it was able to meet with or speak with all its clients, and what material was being provided to clients by it.

I think obtaining this *type* of information from Douglas Baillie Ltd was a fair and reasonable step for Options to take, in the circumstances, to meet its regulatory obligations and good industry practice.

It is possible that, if Options *had* checked with Douglas Baillie Ltd and asked the *type* of questions I've mentioned above, Douglas Baillie Ltd would have provided the information sought. But if Options had been unable to obtain the information sought from Douglas Baillie Ltd, then I think it's fair and reasonable to say that Options should have then concluded that it was unsafe to proceed with accepting business from Douglas Baillie Ltd in those circumstances. In my opinion, it wasn't reasonable, and it wasn't in-line with Options' regulatory obligations, for it to proceed with accepting business from Douglas Baillie Ltd if the position wasn't clear.

Making independent checks

I think, in light of what I've said above, it would also have been fair and reasonable for Options, to meet its regulatory obligations and good industry practice, to have taken independent steps to enhance its understanding of the business it was receiving.

The 2009 Thematic Review Report said that:

> *"…we would expect* (SIPP operators) *to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way,* ***for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification****."* (bold my emphasis)

So I think it would have been fair and reasonable for Options to speak to some applicants, like Ms P, directly.

I accept Options couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view such steps included addressing a potential risk of consumer detriment by speaking to applicants, as this could have provided Options with further insight. This would have been a fair and reasonable step to take in reaction to the clear and obvious risks of consumer detriment I've mentioned.

And, on balance, I think it's more likely than not that if Options had contacted Ms P to 'confirm the position' when it received her April 2012 SIPP application, Ms P would have told Options that she'd been called by an 'adviser' who said he was working on behalf of Options, that she was advised to invest in Store First and GAS Verdant, and that she thought these investments were very little risk and she could resell the Storepods to get her pension money back.

Had it taken these fair and reasonable steps, what should Options have concluded?

If Options had undertaken these steps I think it ought to have identified, amongst others, the following risks before it accepted Ms P's application:

- Douglas Baillie Ltd wasn't offering the consumers it was introducing to Options (like Ms P) regulated advice on the suitability of the high risk, non-standard and unregulated investments that their Options SIPPs were being established in order to effect.

- Douglas Baillie Ltd might have 'sold' to consumers the idea of transferring pension monies so as to invest in Store First, GAS Verdant and other high risk, non-standard and unregulated investments, before providing any regulated advice.

- The anomalous features I've mentioned above carried a significant risk of consumer detriment.

Each of these in isolation is significant, but cumulatively I think they demonstrate that there *was* a significant risk of consumer detriment associated with the introductions Options received from Douglas Baillie Ltd. I think that Options ought to have had real concerns that Douglas Baillie Ltd wasn't acting in customers' best interests and wasn't meeting its regulatory obligations.

Options didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Ms P fairly by accepting her application from Douglas Baillie Ltd. To my mind, Options didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Ms P to be put at significant risk of detriment as a result. Options should have concluded, and *before* it accepted Ms P's business from Douglas Baillie Ltd, that it shouldn't accept introductions from Douglas Baillie Ltd. I therefore conclude that it's fair and reasonable in the circumstances to say that Options shouldn't have accepted Ms P's application from Douglas Baillie Ltd at all.

And, to be clear, even if I thought Options had undertaken adequate due diligence on Store First and GAS Verdant, and had acted appropriately in permitting those investments into its SIPPs (which, as I'll explain below, I don't), I'd still consider it fair and reasonable to uphold Ms P's complaint on the basis of what I've already set out above – that Options shouldn't have accepted Ms P's SIPP application in the first place.

But for completeness, I've gone on to consider the due diligence that Options carried out on the Store First and GAS Verdant investments.

Options due diligence on the Store First investment

I'm satisfied that, to meet its regulatory obligations when conducting its business, Options was required to consider whether to accept or reject a particular investment, with the Principles in mind.

I think that it's fair and reasonable to expect Options to have looked carefully at the Store First investment *before* permitting it into its SIPPs. To be clear, for Options to accept the Store First investment without carrying out a level of due diligence that was consistent with its regulatory obligations, while asking its customer to accept warnings absolving it of the consequences, wouldn't in my view be fair and reasonable or sufficient. And if Options didn't look at the investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure or might be fraudulent, it wouldn't in my view be fair or reasonable to say Options had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

The actions Options took in considering whether to permit the Store First investment into its SIPPs are set out in detail in the background section above, so I won't repeat them here.

In respect of the searches, these were carried out on the promoter of Store First, Harley Scott Holdings Ltd, not Store First itself – perhaps because at that point Store First was just being established. The result of the searches reported that Harley Scott Holdings Ltd had a website address *"dylanharvey.com"*, and had changed its name three times having previously been called Dylan Harvey Group Ltd, Dylan Harvey Ltd and Grangemate Ltd. The report also said County Court Judgments ('CCJs') were recorded against the business and that auditors had made adverse comments in the previous three reporting years.

It's not clear what consideration Options gave to this report, after it obtained it. But, in my view, it would have been fair and reasonable for it to have conducted some further basic searches, given there were factors in the report which ought to have been of concern – namely the adverse comments for the previous three years, the CCJs, and the fact the business had recently changed its name.

Had such further basic searches been completed I think it likely they would've revealed that, at the time, Dylan Harvey and one of its directors, Toby Whittaker, were the subject of national press reports, online petitions and proposed legal action, as a result of a failed property investment. It was reported that hundreds of investors had invested in a scheme to

develop flats, but the flats hadn't been built and the investors had been unable to recover their money. Those investors were behind the online petitions and proposed legal action.

Options says it obtained copies of Store First's marketing material. It has provided us with copies of this. Again, I accept that potentially this was good practice. In order to correctly understand the nature of the investment, I think it's fair and reasonable to say Options should have reviewed how Store First was marketed to investors – particularly as it was proceeding on the basis that these investments were being made by consumers without regulated advice being provided. Clearly Options thought it was important to look at this material at the time too.

Consistent with its regulatory obligations, Options should not only have obtained the material but should also have given careful consideration to it. The marketing material obtained by Options at the relevant time included the following prominent statements:

"You will receive guaranteed returns from a 6 year lease already in place upon completion, making this a high yielding, hassle-free investment which has been specifically designed to meet the needs of todays (sic) astute investor."

"You will receive a 6 year lease in place upon completion. The lease produces an excellent return of 8% (guaranteed for the first 2 years) rising to over 12% in years 5 and 6. The lease contains upward-only rental reviews and break clauses for both parties every two years."

"Guaranteed exit route option."

It then goes on to set out in a table the returns payable in years 1&2, 3&4 and 5&6 at 8%, 10% and 12%. In the question and answer section the following is included:

"What rental income can I expect?

Storepod rental starts at £17 per Sq/Ft per annum. The 6 year tenancy/lease in place on your Storepod has fixed upwards only rental reviews and break clauses (for both parties) every 2 years. This produces an 8% yield on your investment within the first two years, this then is predicted to rise to over 10% return in years 3&4 and then surpass 12% return in years 5&6.

Can I easily re-sell my Storepod?

Yes. You can re-sell your Storepod at any time and selling your Storepod couldn't be simpler. Store First Ltd can market your Storepod upon your request. We believe that because Storepods are so competitively priced when new, they will make a very attractive sale proposition in the future. We also expect that many tenants will wish to purchase the Storepod they are using. For example, other self storage PLCs usually achieve rent of between £20.00 - £25.00 per square foot. Our Storepods are costed at a rent of only £17.00 per square foot; once higher rents are achieved the capital value of the Storepod will increase.

Guaranteed exit route?

In year 5, investors have the option to enter the guaranteed buy-back scheme. In this scheme, Store First Management Ltd will guarantee to buy the Storepod back off the investor for the original price paid within the next 5 years. This is a unique offer in the market place and we are happy to be able to offer this exit route to our investors. Most investors are driven to keep the property investment they have purchased and carry on receiving the rental yield produced for years to come, this means only a very limited number of Storepods

per centre will ever come onto the resale market, this creates a high sale value and demand for the future".

The material says the *"figures shown are for illustration purposes".* But it doesn't 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.

I note Options considered a report by ESS. In my view this was of limited value. It was brief and based only on some of the material Options had regard to i.e. the marketing material and lease documents. As a result, I think Options should have found it difficult to reconcile the view reached by ESS with the information available to Options. The report said:

"The following parties are involved in this investment: Seller of the sub-lease: Store First Limited UK Promoter: Harley Scott Holdings Limited No adverse history has been found affecting these parties. A CCJ was issued against the promoter of the scheme however we understand this arose from a disputed invoice which is in the course of being settled. This is any event does not directly impact on the investment".

This conclusion is inconsistent with the result of Options' own company searches, which reported the adverse comments for the previous three years, the CCJs, and that the business had recently changed its name. The report also makes no comment on the obvious issues with the marketing material. So, I don't think Options should have taken any comfort from the ESS report or attached any significant weight to it.

If Options had completed sufficient due diligence on Store First, what ought it reasonably to have concluded?

The failure of the previous scheme which Dylan Harley/Harley Scott Holdings had been involved in may have been entirely down to market forces. But I think the fact that the company which had approached Options about Store First – and on which Options had conducted searches – had recently been involved in a property investment scheme which had failed, had recently changed its name, and had been subject to a number of adverse comments in succession, following audit, ought to have given Options significant cause for concern. Particularly when it considered the marketing material for Store First.

In my view there were a number of things about the marketing material which ought to have given Options significant cause for concern and led it to have drawn similar conclusions to those later drawn by SSA UK (on the basis of a report by Deloitte LLP) and the Insolvency Service. Namely, that there was a significant risk that potential investors were being misled.

I think, as it had regard to this material, Options could not overlook the fact that 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 Options' own words, there was no apparent established market for the investment and the investment was potentially illiquid.

Store First had no proven track record for investors and so Options couldn't be certain that the investment operated as claimed. Options should also have been concerned about a guarantee offered by a new business with no track record (and promoted by a business with a questionable one).

I think, in light of this, Options should have been concerned that consumers may have been misled or did not properly understand the investment they intended to make. Consumers

could easily have been given the impression, from the marketing material, that they were assured of high returns with little or no risk and would easily be able to sell their investment when they wished to. Such an impression was clearly misleading.

From the evidence I've seen I think the information Store First was publishing *before* Ms P's Options monies were invested with it, including marketing material available through its website, gave rise to a significant risk that potential investors were being misled by Store First. And I think Options ought to have identified this *before* permitting the Store First investment into its SIPPs. This is a clear point of concern, which I think Options ought reasonably to have identified *before* it accepted Ms P's application to invest in Store First.

In my opinion, the issues I've identified above should have, when considered objectively, put Options on notice from the beginning that there was a significant risk of consumer detriment. And, without more evidence to ensure the investment was an appropriate one to permit within its SIPPs, I'm satisfied that Options shouldn't have accepted the Store First investment.

Had Options done what it ought to have done, and drawn reasonable conclusions from what it knew or ought to have known, I think that it ought to have concluded there was a significant risk of consumer detriment if it accepted the Store First investment into its SIPPs and that the Store First investment wasn't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think Options undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the Store First investment *before* it accepted that investment into its SIPPs. I don't think Options met its regulatory obligations and, in accepting Ms P's application to invest in Store First, it allowed Ms P's funds to be put at significant risk.

To be clear, I don't say Options should have identified all the issues the SSA UK press release set out or to have foreseen the issues which later came to light with Store First. I only say that, based on the information available to Options at the relevant time, it should have drawn a similar overall conclusion – that there was a significant risk that potential investors were being misled. I'm satisfied, on a fair and reasonable basis, that a significant risk of consumer detriment ought to have been apparent from the information available to Options at the time. And I do think that appropriate checks would have revealed issues which were, in and of themselves, sufficient basis for Options to have declined to accept the Store First investment in its SIPPs *before* Ms P invested in it. And it's the failure of Options' due diligence that's resulted in Ms P being treated unfairly and unreasonably.

There's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. I accept Options wasn't expected to, nor was it able to, give advice to Ms P on the suitability of the SIPP and/or Store First investment for her personally. To be clear, I'm not making a finding that Options should have assessed the suitability of the Store First investment for Ms P. I accept Options had no obligation to give advice to Ms P, or to ensure otherwise the suitability of an investment for her.

And I'm also not saying that Options shouldn't have allowed the Store First investment into its SIPPs because it was high risk. My finding isn't that Options should have concluded that Ms P wasn't a candidate for high risk investments or that an investment in Store First was unsuitable for Ms P. Instead, it's my fair and reasonable opinion that there were things Options knew or ought to have known about the Store First investment and how it was being marketed which ought to have led Options to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that Options failed to act

with due skill, organise and control its affairs responsibly, or treat Ms P fairly by accepting the Store First investments into her SIPP.

Acting fairly and reasonably to investors (including Ms P), Options should have concluded that it wouldn't permit the Store First investment to be held in its SIPPs *at all*. And I'm satisfied that it's more likely than not that Ms P's pension monies were only transferred to Options so as to effect the Store First and GAS Verdant investments. So, I think it's likely that if Options hadn't permitted the Store First investment to be held in its SIPPs at all, Ms P's pension monies wouldn't have been transferred to Options. And further, that Ms P wouldn't then have suffered the losses she's suffered as a result of transferring to Options and investing in Store First and GAS Verdant.

Options due diligence on the GAS Verdant investment

As I've said, I'm satisfied that, to meet its regulatory obligations when conducting its business, Options was required to consider whether to accept or reject a particular investment, with the Principles in mind.

Options says our Service has concluded that Options shouldn't have allowed the GAS Verdant investment, simply because it was high risk and because it was an investment often made alongside Store First. To be clear, those are not my reasons for concluding that Options shouldn't have allowed the GAS Verdant investment into its SIPPs. I'll explain my reasons.

I think it's fair and reasonable to expect Options to have looked carefully at the GAS Verdant investment *before* permitting it into its SIPPs. To be clear, for Options to accept the GAS Verdant investment without carrying out a level of due diligence that was consistent with its regulatory obligations, while asking its customer to accept warnings absolving it of the consequences, wouldn't in my view be fair and reasonable or sufficient. And if Options didn't look at the investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure or might be fraudulent, it wouldn't in my view be fair or reasonable to say Options had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

GAS Verdant was an unregulated, esoteric, high risk investment. It took the form of 'land purchase contracts' which involved a company and land based abroad. Crops were to be planted on the plots, and the objective was to provide an income to investors through the sale of those crops and capital growth through the sale of the plot of land. This type of investment involved significant risks and a lack of protections.

To date, Options has provided little information about what checks it carried out on the GAS Verdant investment, other than to say it reviewed investment information, company background checks and also an independent report dated 7 October 2010 from ESS. Options makes no reference to what conclusions it drew from this information, other than to say these checks were sufficient to conclude that this investment was suitable to be held within a UK pension scheme.

In my view, the report by ESS was brief and based on some of the material Options already had regard to in relation to GAS Verdant. That said, I'm satisfied Options should have been concerned by some of the information the report highlighted. In particular, the report said (with my emphasis):

- *"Description of investment*
  Beneficial ownership of Australian farmland, purchased in seven hectare plots."

- *"Is there a market for buying or selling the investment?*
  ***There is no established market for buying or selling the beneficial ownership**, although the land can be sold or assigned at any time subject to a buyer being found."*

- *"How liquid is the investment and in any event, could the investment be liquidated within two years?*
  The investment is predicted to have an eight year lifespan at which point it is anticipated the farmland will be sold and the proceeds, less fees, will be distributed to investors.
  ***Therefore the investment should be viewed as illiquid** subject to the comments above."*

- *"Does the proposed investment offer any form of investor protection?*
  The investment is unregulated so no investor protection will apply."

- *"Based on the information available, is the proposed investment cleared to be held in a member-directed pension?*
  Yes."

- *"Disclaimer*
  …
  The process undertaken by Enhance Support Solutions Limited seeks to identify whether the investment is likely to be acceptable based on HMRC rules as set by the Finance Act 2004 and subsequent amendments."

So, the report only sought to identify whether the investment was likely to be acceptable based on HMRC rules – it did not seek to identify risk of consumer detriment. This is likely why it was brief. Nonetheless, Options ought to have seen from the report that there was a significant risk of consumer detriment due to the illiquid and unregulated nature of the investment, and there being no established market for buying and selling the investment. Therefore, I don't think Options should have taken any comfort from the report.

As the FCA has noted, it is difficult to complete due diligence for non-standard overseas investment schemes where firms do not always have access to local qualified legal professionals or accountants. Consistent with its regulatory obligations, Options should not only have obtained adequate material in order to make a properly informed decision about whether to permit the GAS Verdant investment into its SIPPs, but it should also have given careful consideration to that material. And I've seen no evidence to suggest Options went beyond basic checks with the GAS Verdant investment.

Options says it provided the client with numerous risk warnings regarding their chosen investments, including the warnings in the Member Declaration forms they signed. That these forms were very clear regarding what the investments were and, crucially, that they were high risk.

But there is no reasoning given as to why Options thought such an unusual and high risk venture was appropriate to hold in its SIPPs. As I said above, Options should not only have carried out the searches on the investment but also given careful consideration to what they revealed so that it could be satisfied the investment was real and secure and operated as claimed and could be independently valued.

And in any case, I don't think it would be fair and reasonable to conclude that including warnings in a Member Declaration meant Options could simply ignore its own regulatory obligations and all red flags to proceed with permitting the investment into its SIPPs – and I'll return to this point.

If Options had completed sufficient due diligence on GAS Verdant, what ought it reasonably to have concluded?

In a separate complaint, a consumer has provided a copy of the GAS Verdant marketing brochure he says an unregulated introducer (the one used by Douglas Baillie Ltd as discussed in the 2012 emails with Options outlined earlier) provided to him in 2012. The brochure itself is undated, but the data it contains runs up to October 2010 and it's reasonable to think that an investment being considered for acceptance within SIPPs would have associated marketing material. So on balance, I'm satisfied that this marketing brochure, or information very similar to that which it contained, was more likely than not available to Options at the time it was considering whether to permit the GAS Verdant investment into its SIPPs. And it was certainly available to Options at the time Ms P was applying to invest her Options SIPP monies into GAS Verdant.

In my view there were a number of things about this marketing material which ought to have given Options significant cause for concern. Namely, that there was a significant risk that potential investors were being misled.

I think, as it had regard to this marketing material, Options could not overlook the fact that the GAS Verdant investment appeared to be presented as one that was assured to provide high and rising returns, 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, as ESS's report to Options had stated, the investment was illiquid and unregulated, and there was no established market for buying and selling the investment.

Further, the GAS Verdant marketing brochure says GAS *"…is one of the first companies to specialise in modern agronomy investments for a wider public…"* Based on this, I'm satisfied GAS Verdant didn't have a proven track record for retail investors, and so Options couldn't be certain that the investment operated for them as claimed.

In light of this, Options should have been concerned that consumers may have been misled or did not properly understand the investment they intended to make. Consumers could easily have been given the impression, from the marketing material, that they were assured of high returns with little or no risk and would easily be able to sell their investment when they wished to. Such an impression was clearly misleading.

From the evidence I've seen, I think the information in the GAS Verdant marketing brochure published *before* Ms P's Options monies were invested with it gave rise to a significant risk that potential investors were being misled by GAS Verdant. And I think Options ought to have identified this *before* permitting the GAS Verdant investment into its SIPPs. This is a clear point of concern, which I think Options ought reasonably to have identified *before* it accepted Ms P's application to invest in GAS Verdant.

In my opinion, the issues I've identified above should have, when considered objectively, put Options on notice that there was a significant risk of consumer detriment. And, without more evidence to ensure the investment was an appropriate one to permit within its SIPPs, I'm satisfied that Options shouldn't have accepted the GAS Verdant investment.

In my opinion it's fair and reasonable to say that Options ought to have concluded there was an obvious risk of consumer detriment here. All in all, I am satisfied that Options ought to have had significant concerns about the GAS Verdant investment from the beginning. And I think such concerns ought to have been a red flag for Options when it was considering whether to accept the GAS Verdant investments into its SIPPs. Such concerns emphasise

the importance of sufficient due diligence being undertaken *before* investments are accepted and *before* SIPP investors monies are invested.

Had Options done what it ought to have done, and drawn reasonable conclusions from what it knew or ought to have known, I think that it ought to have concluded there was a significant risk of consumer detriment if it accepted the GAS Verdant investment into its SIPPs and that the GAS Verdant investment wasn't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think Options undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the GAS Verdant investment *before* it accepted that investment into its SIPPs. I don't think Options met its regulatory obligations and, in accepting Ms P's application to invest in GAS Verdant, it allowed Ms P's funds to be put at significant risk.

To reiterate, there's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. I accept that Options wasn't expected to, nor was it able to, give advice to Ms P on the suitability of the SIPP and/or GAS Verdant investment for her personally. To be clear, I'm not making a finding that Options should have assessed the suitability of the GAS Verdant investment for Ms P. I accept Options had no obligation to give advice to Ms P, or to ensure otherwise the suitability of an investment for her.

And I'm also not saying that Options shouldn't have allowed the GAS Verdant investment into its SIPPs because it was high risk. My finding isn't that Options should have concluded that Ms P wasn't a candidate for high risk investments or that an investment in GAS Verdant was unsuitable for Ms P. Instead, it's my fair and reasonable opinion that there were things Options knew or ought to have known about the GAS Verdant investment and how it was being marketed which ought to have led Options to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that Options failed to act with due skill, organise and control its affairs responsibly, or treat Ms P fairly by accepting the GAS Verdant investments into her SIPP.

I think the fair and reasonable conclusion based on the evidence available is that Options shouldn't have accepted Ms P's application to invest in GAS Verdant. In my opinion, it ought to have concluded that it would not be consistent with its obligations to do so. To my mind, Options didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Ms P to be put at significant risk of detriment as a result.

Acting fairly and reasonably to investors (including Ms P), Options should have concluded that it wouldn't permit the GAS Verdant investment to be held in its SIPPs *at all*. And I'm satisfied that it's more likely than not that Ms P's pension monies were only transferred to Options so as to bring about the Store First and/or GAS Verdant investments. So, I think it's more likely than not that if Options hadn't permitted the GAS Verdant investment to be held in its SIPPs at all that Ms P's pension monies wouldn't have been transferred to Options. Further, that Ms P wouldn't then have suffered the losses she's suffered as a result of transferring to Options and investing in GAS Verdant.

Did Options act fairly and reasonably in proceeding with Ms P's instructions?

Options says it was the client's decision to proceed on an execution-only basis and Options made this clear to them. Options has also made the point that COBS 11.2.19R obliged it to execute investment instructions. It effectively says that once the SIPP has been established, it is required to execute the specific instructions of its client. Before considering this point, I think it is important for me to reiterate that it was not fair and reasonable for Options to have

accepted Ms P's SIPP application from Douglas Baillie Ltd in the first place. So in my opinion, Ms P'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.

In any event, Options' argument about having to execute the transaction as a result of COBS 11.2.19R was considered and rejected by the judge in BBSAL. In that case Jacobs J said:

"The heading to COBS 11.2.1R shows that it is concerned with the manner in which orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2 as a whole, namely: "Best execution". The text of COBS 11.2.1R is to the same effect. The expression "when executing orders" indicates that it is looking at the moment when the firm comes to execute the order, and the way in which the firm must then conduct itself. It is concerned with the "mechanics" of execution; a conclusion reached, albeit in a different context, in Bailey & Anr v Barclays Bank [2014] EWHC 2882 (QB), paras [34] – [35]. It is not addressing an anterior question, namely whether a particular order should be executed at all. I agree with the FCA's submission that COBS 11.2 is a section of the Handbook concerned with the method of execution of client orders, and is designed to achieve a high quality of execution. It presupposes that there is an order being executed, and refers to the factors that must be taken into account when deciding how best to execute the order. It has nothing to do with the question of whether or not the order should be accepted in the first place."

Therefore, I don't think Options' argument on this point is relevant to its obligations under the Principles to decide whether or not to accept an application to open a SIPP in the first place or to execute the instruction to make the investments i.e. to proceed with the application.

Was it fair and reasonable in all the circumstances for Options to proceed with Ms P's application?

For the reasons given above, I think Options shouldn't have accepted Ms P's business from Douglas Baillie Ltd and I also think it shouldn't have accepted the Store First or the GAS Verdant investments into her SIPP. So things shouldn't have got beyond that.

And, to be clear, even if I thought Options had undertaken adequate due diligence on Douglas Baillie Ltd and acted appropriately in accepting Ms P's SIPP application and business from Douglas Baillie Ltd (which, as I've explained, I don't), I'd still consider it fair and reasonable to uphold Ms P's complaint on the basis that Options didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Ms P fairly, by accepting the Store First or the GAS Verdant investments into her SIPP.

I make this point here to emphasise that while I've concluded *both* that Options shouldn't have accepted Ms P's business from Douglas Baillie Ltd and also that it shouldn't have accepted her applications to invest in Store First and/or GAS Verdant, if I had only reached the conclusions I've set out above on one of those aspects and not also gone on to reach findings on the other aspect for completeness, I'd still consider it fair and reasonable in all the circumstances to uphold this complaint. That's because Options didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Ms P fairly by accepting her business from Douglas Baillie Ltd. And because, separately, Options also didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Ms P fairly, by accepting the Store First investment and/or the GAS Verdant investment into her SIPP. And to my mind, Options didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Ms P to be put at significant risk of detriment as a result.

Further, in my view it's fair and reasonable to say that just having Ms P sign declarations,

wasn't an effective way for Options to meet its regulatory obligations to treat her fairly, given the concerns Options ought to have had about the business being introduced by Douglas Baillie Ltd and the Store First and GAS Verdant investments.

Options knew Ms P had signed forms intended to acknowledge, amongst other things, her awareness of some of the risks involved with investing and to indemnify Options against losses that arose from acting on her instructions. And, in my opinion, relying on the contents of such forms when Options knew, or ought to have known, that both the type of business it was receiving from Douglas Baillie Ltd and allowing the Store First and GAS Verdant investments to be held within its SIPPs would put investors at significant risk, wasn't the fair and reasonable thing to do. Having identified the risks I've mentioned above, I think the fair and reasonable thing for Options to do would have been to decline to accept Ms P's business from Douglas Baillie Ltd and to refuse to accept the Store First and GAS Verdant investments in her SIPP.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Ms P signed meant that Options could ignore its duty to treat her fairly. To be clear, I'm satisfied that indemnities contained within the contractual documents don't absolve, nor do they attempt to absolve, Options of its regulatory obligations to treat customers fairly when deciding whether to accept or reject investments or business.

So, I'm satisfied that Ms P's Options SIPP shouldn't have been established and her Options monies shouldn't have been invested in the Store First or the GAS Verdant holdings. And that the opportunity for Options to execute investment instructions to invest Ms P's monies in Store First or GAS Verdant, or to proceed in reliance on an indemnity and/or risk disclaimers shouldn't have arisen at all. I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for Options to accept Ms P's business from Douglas Baillie Ltd or for it to accept her applications to invest in Store First and GAS Verdant.

Is it fair to ask Options to pay Ms P compensation in the circumstances?

The involvement of other parties

In this decision I'm considering Ms P's complaint about Options. But I accept other parties were involved in the transactions complained about, including Douglas Baillie Ltd.

Ms P pursued an FSCS claim against Douglas Baillie Ltd. The FSCS upheld Ms P's claim, calculated her losses to be in excess of £50,000 and paid her its limit of £50,000 compensation. Following this the FSCS provided Ms P with a reassignment of rights.

The DISP rules set out that when an Ombudsman's determination includes a money award, then that money award may be such amount as the Ombudsman considers to be fair compensation for financial loss, whether or not a Court would award compensation (DISP 3.7.2R).

In my opinion it's fair and reasonable in the circumstances of this case to hold Options accountable for its own failure to comply with its regulatory obligations, good industry practice and to treat Ms P fairly.

The starting point therefore, is that it would be fair to require Options to pay Ms P compensation for the loss she's suffered as a result of its failings. I've carefully considered if there's any reason why it wouldn't be fair to ask Options to compensate Ms P for her loss.

I accept that other parties, including Douglas Baillie Ltd, might have some responsibility for initiating the course of action that led to Ms P's loss. However, I'm satisfied that it's also the

case that if Options had complied with its own distinct regulatory obligations as a SIPP operator, the arrangement for Ms P wouldn't have come about in the first place, and the loss she's suffered could have been avoided.

I want to make clear that I've taken everything Options has said into consideration. And it's my view that it's appropriate and fair in the circumstances for Options to compensate Ms P to the full extent of the financial losses she's suffered due to Options' failings. And, having carefully considered everything, I don't think that it would be appropriate or fair in the circumstances to reduce the compensation amount that Options is liable to pay to Ms P.

Ms P taking responsibility for her own investment decisions

In reaching my conclusions in this case I've thought about section 5(2)(d) of the FSMA (now section 1C). This section requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the general principle that consumers should take responsibility for their own investment decisions.

I've considered this point carefully and I'm satisfied that it wouldn't be fair or reasonable to say Ms P's actions mean she should bear the loss arising as a result of Options' failings.

In my view, if Options had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Ms P's business from Douglas Baillie Ltd or accepted her applications to invest in Store First or GAS Verdant at all. That should have been the end of the matter – if either of those things had happened, I'm satisfied the arrangement for Ms P wouldn't have come about in the first place, and the loss she's suffered could have been avoided.

As I've made clear, Options needed to carry out appropriate initial and ongoing due diligence on Douglas Baillie Ltd and the Store First and GAS Verdant investments, and reach the right conclusions. I think it failed to do this. And just having Ms P sign forms containing declarations wasn't an effective way of Options meeting its obligations, or of escaping liability where it failed to meet its obligations.

Douglas Baillie Ltd was a regulated firm who had advised Ms P on her pension transfer. I'm satisfied that Ms P trusted Douglas Baillie Ltd to act in her best interests. Ms P also used the services of a regulated personal pension provider, Options.

I've carefully considered what Options has said about clients being aware of the risks - that they signed documents confirming the Store First and GAS Verdant investments were high risk. I've also carefully considered what Options has said about clients being advised by TPS not to transfer and that a transfer would mean they'd lose the guarantees associated with their DB pension, and that TPS only proceeded on an insistent client basis.

I've already explained why I think Options ought to have been concerned about Ms P proceeding on an insistent client basis. And as I explain below, I don't agree that the evidence we've seen to date supports the contention that it's more likely than not that Ms P understood the Store First and the GAS Verdant investments were high risk. But, in any eventuality, these are secondary points because, as mentioned above, if Options had acted in accordance with its regulatory obligations and good industry practice I'm satisfied the arrangement for Ms P wouldn't have come about in the first place.

So, overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair and reasonable to say Options should compensate Ms P for the loss she's suffered. I don't think it would be fair to say in the circumstances that Ms P should suffer the loss because she ultimately instructed the transactions to be effected.

Had Options declined Ms P's business from Douglas Baillie Ltd, would the transactions complained about still have been effected elsewhere?

Options has said it's possible the client wasn't cold-called by the introducer but instead provided their contact details in order to be contacted. However, Options has provided no evidence to support such an argument in this case. And even if Ms P had provided her details as Options suggests, it wouldn't automatically follow that she wanted to open a SIPP and invest her SIPP monies in Store First and GAS Verdant no matter what.

In any case, I've thought carefully about what Ms P would likely have done if Options had told her it was rejecting her business.

From Ms P's testimony, I think that her pension monies were transferred to Options in order to make the Store First and the GAS Verdant investments. And that's supported by the contents of the September 2012 advice letter TPS prepared for Ms P, and on the copies of the TPS advice letters I've seen in other similar complaints brought to our Service. TPS sent copies of its September 2012 advice letters for Ms P to Options, and it contained the following wording:

> *"It has been confirmed to me that you wish to transfer your benefits into your existing Carey SIPP rather than a fully insured plan as you wish to make an investment with your pension plan that would not be available via a fully insured plan."*

Options argues that Ms P's request to transfer out of her DB scheme was a point of no return and that once this transfer request was made, the loss of her safeguarded DB benefits was assured from that point, regardless of whether or not she opened the SIPP and/or completed the onward investments - so she would have suffered a loss regardless of what actions Options did or did not take.

But I don't agree. Ms P's SIPP application included a number of statements in the 'Declarations' section that she signed, including, *"I hereby consent to Carey Pensions UK LLP requesting the transfer of my policies listed in the application form."* – the policies listed in the application form included three occupational pensions, at least one of which is likely to have been a DB scheme, and two of these (Pension E and Pension U) weren't transferred until October 2012 at the earliest. So on balance, I'm satisfied that when Options received Ms P's SIPP application form in April 2012, Ms P's DB pension benefits were still within her DB schemes and would only be transferred when Options set up her new SIPP.

Options also says that if it had refused to process Ms P's application for any reason, she would've likely made the same investment via a different SIPP provider in order to either secure an incentive payment or release funds. So she would have suffered the same loss.

I've not seen that Ms P released any funds or accessed any benefit from her pension. So I'm satisfied a transfer wouldn't have been effected elsewhere at the time, and with monies not being withdrawn being invested in holdings that weren't Store First or GAS Verdant, just so as to access a pension commencement lump sum and/or pension income.

And I don't think it's fair and reasonable to say that Options shouldn't compensate Ms P for her loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found Options 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 Ms P's SIPP application and business from Douglas Baillie Ltd or permitted the Store First or GAS Verdant investments into its SIPPs.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if Options had refused to accept Ms P's application and business from Douglas Baillie Ltd and/or hadn't permitted the Store First and GAS Verdant investments in its SIPPs, the transactions wouldn't still have gone ahead and Ms P would have retained her monies in her existing pension schemes.

And had Options explained to Ms P why it refused to accept her application and/or hadn't permitted the Store First and GAS Verdant investments in its SIPPs, I think it very unlikely Ms P would've tried to find another SIPP operator to accept the business.

In Adams v Options SIPP, the judge found that Mr Adams would have proceeded with the transaction regardless. HHJ Dight says (at paragraph 32):

> *"The Claimant knew that it was a high risk and speculative investment but nevertheless decided to proceed with it, because of the cash incentive."*

Options argues that Ms P understood the investments were high risk. Whereas Ms P says she thought the Store First and GAS Verdant investments were very little risk and that she could resell the Storepods to get her pension money back.

I've carefully considered what Options has said about clients being aware of the risks – that Options provided the client with numerous risk warnings regarding their chosen investments, including the warnings in the Member Declaration forms they signed, and these forms were very clear regarding what the investments were and that they were high risk.

But I think the information Ms P more likely than not received from Douglas Baillie Ltd at the start regarding the Store First and the GAS Verdant investments presented them, in detail, as providing high returns with little to no risk. And I'm mindful that the Member Declaration forms given to Ms P some months later including wording to the effect that *"I am fully aware that this investment is an Alternative Investment and as such is High Risk and / or Speculative."* These forms appears to be generic, by which I mean they appear to be forms that could be used for a number of investments and they don't appear to be forms that are bespoke to the Store First or GAS Verdant investments. Overall, I don't agree the contents of the forms support the contention that Ms P understood the Store First and the GAS Verdant investment were high risk. So in this case, I'm not persuaded that Ms P proceeded in the knowledge that the investment she was making was high risk.

I'm also not persuaded that Ms P was determined to move forward with the transactions in order to take advantage of a cash incentive. Other than Options suggestion, I've seen no evidence to suggest that Ms P was offered or paid such an incentive, and Ms P says she didn't receive any such payment. So on balance, I'm satisfied that Ms P, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for herself.

Having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that if Options had refused to accept Ms P's application and business from Douglas Baillie Ltd and/or to permit the Store First and the GAS Verdant investments in its SIPPs, the transactions this complaint concerns wouldn't still have gone ahead.

In conclusion

Options may suggest this complaint shouldn't be upheld because the FCA visited Options in September 2011 and approved its due diligence procedures. This was less than a year before Options accepted Ms P's SIPP application. However, Options hasn't provided our Service with any evidence to support this argument. And ultimately, what I've looked at here is whether Options took reasonable care, acted with due diligence and treated Ms P fairly, in accordance with her best interests. And what I think is fair and reasonable in light of that.

And taking everything into consideration, I think that in the circumstances of this case it's fair and reasonable for me to conclude that Options should have decided not to accept business from Douglas Baillie Ltd and/or to accept the Store First and the GAS Verdant investments to be held in its SIPPs *before* it had received Ms P's application from Douglas Baillie Ltd. I conclude that if Options hadn't accepted Ms P's introduction from Douglas Baillie Ltd and/or the Store First and the GAS Verdant investments to be held in its SIPPs, Ms P wouldn't have established an Options SIPP, transferred her DB scheme and other pension monies into it or invested in Store First and GAS Verdant.

For the reasons I've set out, I also think it's fair and reasonable to direct Options to compensate Ms P for the loss she's suffered as a result of Options accepting her business from Douglas Baillie Ltd and permitting her to invest her Options monies in Store First and GAS Verdant. I say this having given careful consideration to the *Adams v Options* judgments but also bearing in mind that my role is to reach a decision that's fair and reasonable in the circumstances of the case having taken account of all relevant considerations.

Overall, I think it's fair and reasonable to direct Options to pay Ms P compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to Ms P's loss, I consider that Options failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining to accept Ms P's applications when it had the opportunity to do so. And I'm satisfied that Ms P wouldn't have established the Options SIPP, transferred monies in from her DB scheme and other pensions, or invested in Store First and GAS Verdant if it hadn't been for Options' failings.

In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against Options that requires it to compensate Ms P for the full measure of her loss.

I've seen nothing to suggest Ms P has previously sold any of her Store First or GAS Verdant holdings. But whether or not Ms P has previously managed to sell any of her Store First or GAS Verdant holdings doesn't alter my opinion that, but for Options' failings, Ms P's pension monies wouldn't have been transferred to Options and invested in Store First and GAS Verdant. Further, and from a redress perspective, I'm satisfied that Options will need to check whether there are still any Store First and GAS Verdant investments held by, or on behalf of, Ms P when it's performing the first step of the redress calculation I've set out below.

Putting things right

I consider that Options failed to comply with its own regulatory obligations and didn't put a stop to the transactions that are the subject of this complaint. My aim in awarding fair compensation is to put Ms P back into the position she would likely have been in had it not been for Options' failings. Had Options acted appropriately, I think it's more likely than not

that Ms P would have remained a member of the pension schemes she transferred into the SIPP.

Ms P transferred monies from a number of different pension schemes into the SIPP, including monies from both defined contribution and defined benefit schemes. To put things right Options will need to undertake different types of loss calculations, one in relation to the monies that originated from defined benefit schemes and another in relation to monies that originated from defined contribution schemes. As part of doing this Options will need to calculate the portion of Ms P's current SIPP value that's attributable to each of the respective transfers/switches and apply them to the relevant calculations.

In light of the above, Options should:

- Obtain the actual transfer value of Ms P's SIPP for the purposes of the redress calculation, including any outstanding charges.

- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).

- Undertake loss calculations as set out below in respect of each of the schemes from which monies were transferred into the SIPP and pay any redress owing in line with the steps set out below.

- If Ms P has paid any fees or charges from funds outside of her pension arrangements, Options should also refund these to Ms P. Interest at a rate of 8% simple per year from date of payment to date of refund should be added to this.

- Pay to Ms P £500 to compensate her for the distress and inconvenience she's been caused.

I've set out how Options should go about calculating compensation in more detail below.

But first, I must be clear that I'm not asking Options to reimburse Ms P for the £18,000 fee she says she paid to her CMC for representing her in her FSCS claim. I appreciate Ms P says she felt very worried and stressed at that time but nonetheless I think it was her choice to use a CMC – I'm not persuaded that Ms P had no alternative but to use a CMC, and she could instead have contacted the FSCS herself at no cost. So I don't think it would be fair to ask Options to compensate Ms P for that choice.

Treatment of the illiquid assets

It's clear that Options closed Ms P SIPP in October 2023, but it's not clear what has happened with ownership of the Store First or the GAS Verdant investments - whether they've been forfeited for nil value, or transferred into Ms P's name, or whether they're still held by Options for Ms P, or some other arrangement. And as I'm not sure what, if any, future value these investments might have and as Ms P wouldn't have purchased these investments but for Options' failings, I still think it's appropriate for Options to take ownership of these investments if they still exist and are held by, or on behalf of, Ms P.

To do this, Options should calculate an amount it's willing to accept for Ms P's Store First and GAS Verdant investments and pay that sum plus any costs and take ownership of the Store First and GAS Verdant investments. Any sums paid to purchase the Store First and

GAS Verdant investments will then make up part of the current actual value of the SIPP for the purposes of the redress calculation.

If Options is unable to purchase the Store First and GAS Verdant investments, the actual value of any Store First and GAS Verdant investments it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include their being given a nil value for the purposes of ascertaining the current value of Ms P's SIPP.

I think this is fair because I think it's unlikely the Store First and GAS Verdant investments will have any significant realisable value in the future. Further, I understand Ms P has the option of returning her Store First investment to the freeholder for nil consideration.

Though I think it's unlikely, it is possible that the Store First and GAS Verdant investments may have some realisable value in the future. So, in this instance, for any investments assumed to be nil value Options may ask Ms P to provide an undertaking to account to it for a sum equivalent to the net amount of any payment she may receive from those investments in the future. That undertaking should allow for the effect of any tax and charges on the amount Ms P may receive from the investments and any eventual sums she would be able to access. Options should meet any costs in drawing up the undertaking.

Calculate the loss Ms P has suffered as a result of making the transfer in relation to monies originating from defined benefit schemes

Options must undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

For clarity, it is my understanding that Ms P has not yet retired, and she has no plans to do so at present. And neither Ms P nor Options have disputed my understanding. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Ms P's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Options should:

- always calculate and offer Ms P redress as a cash lump sum payment,
- explain to Ms P before starting the redress calculation that:
    - her redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest her redress prudently is to use it to augment her DC pension
- offer to calculate how much of any redress Ms P receives could be augmented rather than receiving it all as a cash lump sum,
- if Ms P accepts Options' offer to calculate how much of her redress could be augmented, request the necessary information and not charge Ms P for the calculation, even if she ultimately decides not to have any of her redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Ms P's end of year tax position.

I acknowledge that Ms P has received a sum of compensation from the FSCS, and that she has had the use of the monies received from the FSCS. The terms of Ms P's reassignment of rights require her to return compensation paid by the FSCS in the event this complaint is successful, and I understand that the FSCS will ordinarily enforce the terms of the assignment if required. So, I think it's fair and reasonable to make no permanent deduction in the redress calculation for the compensation Ms P received from the FSCS. And it will be for Ms P to make the arrangements to make any repayments she needs to make to the FSCS. However, I do think it's fair and reasonable for some allowance to be made for the sum(s) Ms P actually received from the FSCS and has had the use of for a period of the time covered by the calculation.

As such, for the purposes of the calculation that's being carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4, if it wishes, Options may notionally, for the period from the point of their payment through until the valuation date (as per the DISP App 4 definition of that term), allow for the payment(s) Ms P received from the FSCS following the claim about Douglas Baillie Ltd, as an income withdrawal payment. Where such an allowance is made then Options must also, at the end of the calculation, allow for a notional addition to the overall calculated loss that's equivalent to the payment(s) Ms P received from the FSCS following the claim about Douglas Baillie Ltd. The effect of this notional addition will be to increase the overall loss calculated using the most recent financial assumptions in line with PS22/13 and DISP App 4, by a sum that's equivalent to the payment(s) Ms P received from the FSCS.

Redress paid to Ms P as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Options may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Ms P's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this. And neither Options nor Ms P have disputed that this is a reasonable assumption.

Calculate the loss Ms P has suffered as a result of making the transfer in relation to monies originating from defined contribution schemes

Options should first contact the provider of the plans which were transferred into the SIPP and ask them to provide a notional value for the policy as at the date of calculation. For the purposes of the notional calculation the provider should be told to assume no monies would have been transferred away from the plan, and the monies in the policy would have remained invested in an identical manner to that which existed prior to the actual transfer.

Any contributions or withdrawals Ms P has made from the SIPP will need to be taken into account whether the notional value is established by the ceding provider or calculated as set out below.

Any withdrawal out of the SIPP should be deducted at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. The same applies for any contributions made, these should be added to the notional calculation from the date they were actually paid, so any growth they would have enjoyed is allowed for.

If there are any difficulties in obtaining a notional valuation from the previous provider, then Options should instead arrive at a notional valuation by assuming the monies would have enjoyed a return in line with the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return index). That is a reasonable proxy for the type of return that could have been achieved over the period in question.

The notional value of Ms P's existing plan(s) if monies hadn't been transferred (established in line with the above) less the proportion of the current value of the SIPP that's attributable to monies transferred in from the same existing plan(s) (as at the date of calculation) is Ms P's loss.

Pay an amount into Ms P's SIPP so that the transfer value is increased by the loss calculated above in relation to monies originating from defined contribution schemes

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Ms P's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Ms P as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Distress & inconvenience

I think the loss of the pension provision that is the subject of this complaint caused Ms P significant distress, as this is clear from her submissions to this service – Ms P has told us that her pension is all she has for her future and that she has been very worried and distressed over this matter. So Options should pay her £500 to compensate her for this.

My final decision

For the reasons given, it's my decision that Ms P's complaint should be upheld and that Options UK Personal Pensions LLP must pay fair redress as set out above.

Where I uphold a complaint, I can award fair compensation of up to £150,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £150,000, I may recommend that the business pays the balance.

determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Options UK Personal Pensions LLP should pay the amount produced by that calculation up to the maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend Options UK Personal Pensions LLP pay Ms P the balance plus any interest on the balance as set out above.

The recommendation isn't part of my determination or award. Options UK Personal Pensions LLP doesn't have to do what I recommend. It's unlikely that Ms P could accept a decision

and go to court to ask for the balance and Ms P may want to get independent legal advice before deciding whether to accept a decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 25 July 2024.

Ailsa Wiltshire
Ombudsman