DRN-3813386

The complaint

Mr O's complaint concerns a transfer to a self-invested personal pension (SIPP) provided by Sovereign Pension Services (Sovereign), and the investments made following that transfer. Mr O is represented by a Claims Management Company (CMC). The CMC says neither the transfer to the SIPP nor the underlying investments were suitable for Mr O. It says Sovereign's regulatory obligations meant it should have recognised this and also meant Sovereign should have ensured Mr O understood the advice which was provided to him, and that he was aware of the higher fees which he would be subject to by transferring to a SIPP.

What happened

In 2017 Mr O held benefits in an occupational scheme which had accrued over a long period of employment. He was, at this time, living and working abroad. Mr O discussed his pension with an international advisory firm, based in Dubai. The international advisory firm, in turn, referred Mr O to a UK authorised Independent Financial Advisor (IFA) to give advice on the potential transfer of the benefits Mr O held in the occupational scheme to a SIPP.

Following advice from the international firm and the UK IFA (the latter focussing on the suitability of a transfer to the SIPP) Mr O decided to transfer the value of his occupational scheme benefits to a SIPP and appoint a Discretionary Fund Manager (DFM) to manage the investment of the transferred amount.

A Sovereign SIPP application was completed on 5 November 2017. The SIPP Mr O applied for was described as an "international SIPP" (it seems this was a product targeted at expats, like Mr O). The application confirms an advisor at the international firm was Mr O's investment advisor.

A letter sent to Sovereign on the date of application, signed by Mr O, confirmed that he had received independent financial advice on the transfer from his occupational scheme from a authorised (i.e. the Financial Conduct Authority - FCA) pension transfer specialist (the UK IFA). The letter confirmed Mr O understood that a transfer from his existing arrangement would mean giving up any safeguarded benefits, guarantees or protections granted to him under that scheme; and it confirmed Mr O wished to proceed with the transfer.

In December 2017 Sovereign received the value of Mr O's occupational scheme benefits, and this amount was credited to his SIPP. Mr O signed an application for the DFM to manage the investment of this money on 22 December 2017. This application included information about Mr O's objectives and attitude to investment risk. The money was subsequently invested by the DFM in a number of authorised collective investment schemes, Exchange Traded Funds and individual shares (which appear to have mostly been in blue chip companies).

On 24 October 2019 Mr O's investment advisor was changed to another international firm. It seems this was done because Mr O's advisor at the original international firm had moved to this firm. In 2021 the investment manager was changed to another DFM, and the money in Mr O's SIPP was moved to another investment platform to facilitate this. As I understand it this remains the position as of now.

The UK IFA went out of business in 2019 and Mr O subsequently made a claim to the Financial Service Compensation Scheme (FSCS) about the advice it had given him on the transfer of his occupational scheme benefits. The FSCS wrote to Mr O in March 2021 to say his claim had been accepted, and his loss had been assessed as more than the maximum amount it could pay, so it would pay him that maximum amount (£85,000).

In response to the complaint from the CMC Sovereign said, in summary:

- It undertook due diligence checks on both firms and both advisors. It ensured checks against the FCA Register had been completed for the Defined Benefit Pension Transfer Specialist at the UK IFA. In addition, it checked the UAE Insurance Authority for the international firm, to confirm appropriate permissions and qualifications were held prior to acceptance of the application.

- It refutes the allegations that it did not comply with the relevant FCA standards and rules.

- It is the responsibility of the financial adviser to check the suitability of the investment in line with their client's attitude to risk, and also to explain to the client the potential risks associated with all investments.

- The investment is held with a regulated provider and the investments are all standard investments as defined by the FCA.

- As the transfer was over £30,000 a Defined Benefit Pension Transfer Specialist provided the advice on the transfer. Mr O provided a signed letter confirming his insistence to proceed with the transfer contrary to the advice given, in line with its internal process.

- It is not regulated to provide investment advice or make recommendations; it is regulated to establish, administrate and wind-up pension schemes. It acts in a member's best interest based on the information provided.

- Its fees were disclosed in the SIPP application form Mr O signed – this disclosed the advisor and SIPP administration fees. Mr O's advisors also had a responsibility to disclose fees.

- There are a number of factual errors – relating to Mr O's income, attitude to risk, and transfer and valuation amounts – in the CMC's complaint

- Mr O transferred £764,124 into the SIPP and as of 6 January 2022 its value was £836,791.23.

Our investigator concluded the complaint should not be upheld. He said, in summary:

- Sovereign did not provide advice nor was it authorised to. However, it did need to pay due regard to the interests of Mr O and treat him fairly. In his view Sovereign had done this.

- Sovereign ensured that Mr O took financial advice before accepting the transfer.

- Sovereign did perform due diligence on the advisors involved. It confirmed that both advisors were regulated in their respective jurisdictions.

- The DFM was confirmed as being authorised as an investment firm by the relevant authority (the Jersey Financial Services Commission) and could hold and control client money. Sovereign instructed the DFM to ensure the funds remained liquid and diversified, and compliant with any investment restrictions imposed by the FCA.

- Sovereign also gave instructions to the DFM on what investments were permissible and impermissible in the SIPP. He had not seen any evidence to suggest the investments subsequently made were anything but standard assets and therefore in keeping with the instructions given by Sovereign.

- The Fee Schedule was provided to Mr O when completing the SIPP application and he signed the fees page within the application to confirm he had read and understood this.

The CMC said it did not accept this view. It did not explain why.

What I've decided – and why

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

Relevant considerations

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

I have taken into account a number of considerations including, but not limited to:

- The agreement between the parties.

- The Financial Services and Markets Act 2000 ("FSMA").

- Court decisions relating to SIPP operators, in particular Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541 and the case law referred to in it including:

    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474

    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service EWHC 2878

    - Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch)

- The FSA and FCA rules including the following:

    - PRIN Principles for Business

    - COBS Conduct of Business Sourcebook

- Various regulatory publications relating to SIPP operators, and good industry practice.

The legal background:

As highlighted in the High Court decision in *Adams* the factual context is the starting point for considering the obligations the parties were under. In this case I am satisfied the contractual relationship between Sovereign and Mr O is a non-advisory, or execution only, relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. Sovereign was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

The case law:

I'm required to determine this complaint by reference to what is in my opinion fair and reasonable in all the circumstances. I am not required to determine the complaint in the same way as a court. A court considers a claim as defined in the formal pleadings and they will be based on legal causes of action. The Financial Ombudsman Service was set up with a wider scope which means complaints might be upheld, and compensation awarded, in circumstances where a court would not do the same.

The approach taken by the Financial Ombudsman Service in two similar (but not identical) complaints was challenged in judicial review proceedings in the *Berkeley Burke* and the *Options* cases. In both cases the approach taken by the ombudsman concerned was endorsed by the court. A number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved.

It is not necessary for me to quote extensively here from the various court decisions.

The FCA rules

PRIN

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"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non-advisory basis, in a way appropriate to that relationship.

Principles 2, 3 and 6 are of particular relevance here. They 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 am satisfied that I am required to take the Principles into account (see *Berkley Burke*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

COBS

When making the complaint on Mr O's behalf the CMC has referred to a number of rules in

COBS 9 and 10, which relate to suitability and appropriateness. In my view these rules are not relevant considerations here. As mentioned, Sovereign was not engaged to provide Mr O with advice – that was the duty of Mr O's advisors. Nor have I seen any evidence to show Sovereign was required to carry out an appropriateness test – Mr O was investing in standard assets through an authorised DFM.

I do however 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 is a relevant consideration here. However, the extent of the duty this imposes depends on the factual context. So, I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr O's case, including Dentons role in the transactions.

The regulatory publications and good industry practice:

The regulator 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.

The 2009 Report included:

"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…

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."

The Report also included:

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."*

I have considered all of the above publications in their entirety. It is not necessary for me to quote more fully from the publications here.

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter are not formal guidance (whereas the 2013 finalised guidance is). However all of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and 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 (as did the ombudsman whose decision was upheld by the court in the *Berkeley Burke* case).

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.

- The comments made in the publications apply to SIPP operators that provide a non-advisory service.

- Neither court in the *Adams* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.

- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

Having carefully considered the above, I have reached the same view as the investigator, for broadly similar reasons. I do not think it would be fair and reasonable to uphold Mr O's complaint. I have set out my findings below. Although, as set out above, there are a significant amount of relevant considerations the issues in this case are, in my view, relatively straightforward. I have accordingly kept my findings brief.

As I mention above, Sovereign was not acting in an advisory capacity. It was acting in an execution only capacity, as the administrator of Mr O's SIPP. Sovereign did not therefore have any obligation to ensure the suitability of the transfer to the SIPP and investments

made in it. But, considering the relevant regulatory obligations and standards of good practice set out above, Sovereign should have carried out due diligence on the businesses involved which was consistent with those obligations and standards.

Sovereign's due diligence on the advisors

Sovereign says it checked the international firm was authorised by the relevant authority in the UAE, and confirmed it was. I am satisfied that was an appropriate check for Sovereign to carry out, to meet its regulatory obligations. But, given the overseas location of the advisor, and the fact the business related to a UK pension scheme, Sovereign should have carried out some further checks to make sure there was not a risk of consumer detriment involved with accepting business from the international firm.

I do not know if Sovereign carried out any further due diligence on the international firm. But I am not persuaded that any further due diligence – done to an extent which would reasonably meet Sovereign's regulatory obligations and standards of good practice - would have given Sovereign any reasonable basis to conclude it should not accept business from the international firm.

The "about us" section of the international firm's website at the time of Mr O's application said it was:

"*a firm of independent financial advisers serving expatriates globally. We provide personal financial planning and wealth management services to thousands of high net worth individuals across all continents.*

By taking a holistic approach to financial planning, we help our clients to reduce their taxes and increase their wealth. Our experienced independent financial advisers will take time to fully understand your circumstances and work alongside you to meticulously devise a plan to achieve your financial goals.

Our main areas of financial expertise include advising on British pensions, overseas pension transfers, lifetime allowance tax planning, inheritance tax planning and wealth management."

Mr O met the profile of client described – he was, as mentioned, an expat and, based on the information available to Sovereign (which said Mr O had significant assets and a high income), could reasonably have been considered high net worth. The international firm was also described as having expertise in advising on UK (British) pensions. So, I am not persuaded that a closer look at the international firm would reasonably have given Sovereign concern about accepting Mr O's application.

Sovereign could have taken further comfort from the involvement of the UK IFA. Sovereign says it checked the UK IFA was authorised by the FCA and the advisor was a pension transfer specialist. Sovereign says it confirmed the IFA was authorised and it and the advisor had the correct permissions. As with the international firm check, I am satisfied that was an appropriate check for Sovereign to carry out, to meet its regulatory obligations. And, given the status of the UK IFA, even if there were questions about the international firm's expertise to advise on UK pensions, the involvement of the UK IFA would, in my view, have been reasonably sufficient to allay any concerns.

I have not seen any evidence to show that any other further reasonable enquiries should reasonably have led to the conclusion Sovereign should not deal with either the UK IFA or the international firm. And, for the reasons I set out below, I think Sovereign could have taken further comfort from the nature of the proposed investment and the reasonable, prudent steps it took to ensure investment was made in a way which appropriate for a

pension scheme, to limit the risks of consumer detriment.

Sovereign's due diligence on the DFM

Mr O's application involved the money being transferred into the SIPP going on to an investment platform, to be managed by a DFM. In this case, the platform and DFM were based offshore, in Jersey. But I do not think Sovereign should reasonably have identified that as being anomalous, given Mr O was an expat. Or that there was a risk of consumer detriment otherwise. The DFM and platform provider was a large, well known, long-established investment manager, with the required authorisation and permissions with the relevant regulator. Sovereign says it checked the DFM had the necessary authorisation/permissions, and was satisfied it did. As with the advisors, I am satisfied that was an appropriate check for Sovereign to carry out, to meet its regulatory obligations.

Sovereign also gave clear instructions to the DFM to ensure investments were made in standard assets (i.e. a standard asset as per IPRU-INV 5.9.1 R, which required the asset to fall into a defined category and be readily realisable within 30 days), in a way which was appropriate for a pension scheme. I have not seen any evidence to show was not subsequently invested in a way which was consistent with that – the transaction history for the SIPP shows it was invested in range of authorised collective investment schemes, Exchange Traded Funds and blue chip shares.

In the circumstances I do not think it would be fair and reasonable to say Sovereign should have taken any further steps in relation to the DFM; I am satisfied, in the circumstances, the steps it took were consistent with its regulatory obligations and standards of good practice at the time. And I should emphasise that the circumstances – in particular that the SIPP money was being invested in conventional, mainstream investments by an authorised business which was large and long-established – are key here. This is not a case where money was being invested in unusual or esoteric assets provided by unauthorised parties with limited track records. It would not therefore be reasonable to say Sovereign should have identified a risk of consumer detriment.

For completeness, I should say - although it has not been specifically mentioned – that these findings in my view apply equally to the change of DFM and platform in 2021. That change was to another large, well known, long established investment manager with required authorisation/permissions, and I have not seen any evidence to show this is not something Sovereign should reasonably have facilitated.

Fees, and understanding of advice

The CMC says Sovereign failed to take sufficient steps to ensure Mr O was aware of the costs associated with the arrangements. I do not agree. The available evidence shows the SIPP fees were clearly disclosed to Mr O; and he signed to confirm he had read and understood this disclosure. I have not seen any evidence to show Sovereign should reasonably have concluded fees had not been disclosed to Mr O otherwise.

The CMC has also referred to an obligation on Sovereign to ensure Mr O understood the advice he had been given. I think that was an obligation which sat primarily with the international firm and the UK IFA. But, I have not in any event, seen any evidence to suggest Sovereign should reasonably have formed concerns that Mr O did not understand the advice he had been given. Sovereign received confirmation from the UK IFA that advice, as required by the relevant rules, had been given. And Mr O signed a declaration to say he had received and understood that advice.

Overall, given my findings above, it would not in my view be fair and reasonable in the

circumstances to find that Sovereign should ultimately have acted differently in relation to Mr O's application. I do not think there is sufficient reason to say the application should not have been accepted, or that Sovereign should have taken different or additional steps when dealing with the application which would have changed the course of events and therefore have potentially left Mr O in a better position than he is now.

My final decision

For the reasons given, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 29 November 2024.

John Pattinson
Ombudsman