DRN-3854637

The complaint

Mr D has appointed a claims management company ("the CMC") to bring a complaint on his behalf. In summary, the CMC says Mr D has suffered consumer detriment due to investing in an unsuitable Self-Invested Personal Pension (SIPP) and says Options UK Personal Pensions LLP ("Options"), (previously known as Options SIPP UK LLP, and trading as Carey Pensions UK LLP at the time of the relevant events) is responsible, because it accepted business from an overseas adviser, which advised Mr D to transfer guaranteed benefits to the SIPP. It says Mr D was misled by the overseas adviser - Caledonian International Associates ("Caledonian") - and Options allowed this to happen due to a total disregard of the FCA Principles for Businesses.

The CMC says Options failed to apply the FCA Principles for Businesses 1,2,3 and 6 and that Options' systems and controls which relate to monitoring, gathering and analysing information were weak and inadequate. It says if Options had applied these Principles and had in place the necessary procedures and controls Mr D would not be in the position he now is.

Background

I've set out the various parties involved in Mr D's pension transfer and subsequent investment in detail below.

Options

Options is a SIPP provider and administrator. At the time of the events in this complaint, Options was regulated by the Financial Services Authority ("FSA"), which later became 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.

Caledonian

Caledonian was a trading name of a business called MMG Associates, which was registered in the British Virgin Islands.

Caledonian was not authorised in the UK to undertake regulated activities and it does not (and did not at the time of the events subject to complaint here) appear on the FCA's Financial Services Register. There is no evidence it was authorised to carry out regulated activities (where there was any relevant legislation) in any other jurisdiction.

Friends Provident International

Friends Provident International (FPI) is registered in the Isle of Man. It provided a bond (i.e. life assurance) wrapper which allows investment in a number of funds with a number of fund providers. Mr D invested in a number of investments within a FPI bond and some of the funds are currently suspended.

Caledonian and Options

Options' relationship with Caledonian began in early 2012. Options has confirmed there were 509 introductions to it made by Caledonian between 27 April 2012 and 20 May 2013.

Options has said that it carried out due diligence checks on Caledonian and has provided evidence of the checks it made.

I have set out below a summary of what I consider to be the key events and/or actions during the relationship between Options and Caledonian, which I have observed from the available evidence (this includes evidence from Mr D's case file and submissions Options has made to us about its due diligence on, and its relationship with, Caledonian).

Summary

March 2012

A business profile was completed which recorded Options' first meeting with Mr Clark of Caledonian. This set out Caledonian's proposed business model as follows (redacted as appropriate):

"*Dave Clark detailed his business model*

He was preferred adviser for the Armed Forces occupational pension scheme for individuals who had left the armed forces and were taking up positions in close security work in places such as Iraq/Afghanistan/Iran etc... and also anti piracy positions.

The profile of the clients were described as: 30 to 50 year olds

Had been in the armed forces for between 6 to 10 years

Had left the armed forces and wanted to transfer their pension arrangements They had no expectation of long life expectancy

They were living today so wanted to access funds earlier then they could if their pension stayed in the armed forces pension scheme

They were generally still resident in UK but some were now living abroad in various countries such as Thailand, Germany, Spain etc.

They were now earning quite large salaries circa £70k plus

Dave Clark was provided referrals from the armed forces pensions contact he had and also he received enquiries as a result of his clients speaking to other ex-armed forces personnel.

He had been doing large volumes of QROPS business with a provider called [name of business] *but recognised the fact that a UK SIPP was probably more appropriate for the majority of his clients.*

He was currently putting them into an international Friends Provident Bond, the underlying investments were regulated.

Dave Clark himself was not a regulated adviser, he was a consultant to these clients and advised them on their armed forces transfers only, he was a qualified accountant and was a member of the Chartered Institute of Accountants.

His company was trading as Caledonian although the holding company was a BVI company called MMG Associates....

Dave Clark was looking at volume business in the region of 50 schemes a month."

16 March 2012

Mr Clark of Caledonian signed and dated Options' "Non-Regulated Introducer Profile". The form stated that its purpose was as follows:

"*As an FSA regulated pensions company we are required to carry out due diligence as best practice on unregulated introducer firms looking to introduce clients to us to gain some insight into the business they carry out*."

On the Non-Regulated Introducer Profile Caledonian responded to a number of questions posed by Options within the form.

Under the section headed "Company Information" it was recorded that Caledonian had branches in Chile, Peru, Columbia, Argentina, Brazil and Switzerland and had been trading since 1997.

Under the section headed "Product Information", in response to the question, "*what products does the firm promote/distribute?*" the answer noted was:

"*Offshore savings plans + investment bonds - Friends Provident International + Generali*"

Caledonian stated on the form that the products had been accepted by Options and other SIPP providers, and that they had not been declined by any pension scheme operators.

Under the section headed "*Sales and Marketing Approach*", in response to the question as to how Caledonian would obtain clients, the answer was:

"*Referral*"

In response to a request to describe the sales process adopted by Caledonian, it was set out:

"*Referral- Visit - Analysis - Visit*."

When asked to describe the average profile of the type of client Caledonian took on, the answer was:

"*Income £70,000, Age 36, Self employed in security industry*."

When Caledonian was asked as to how much business would be sold through pension arrangements the answer given was:

"*50/50 Pension Transfer/Regular Savings Plan*"

In response to a question about the typical commission structure the answer was: "*7% up front from bond - 0.5% Trail*."

Under the section headed, "*Training and Information*", in response to the question, "*What training is provided to the agents within the Firm?*" the answer was:

"*Ongoing product training and accompanied meetings*."

In response to a question about what specific pension training was delivered to its agent the answer was:

"*Visits to providers directly*."

In response to how the business produced by its agents was monitored, the answer was:

"*Full administrative structure - Caledonian, Careys - Compliance. FPI - Compliance*."

In response to a question about the kind of service it sought from a SIPP provider, the answer was:

"*Administration + Compliance*."

Under the section headed, " *Legal and Regulatory Information*" the following was recorded:

- Caledonian did not work with any FSA regulated company or adviser.
- It wasn't a member of any professional or trade body.
- It had no PI cover in place at the time.
- It hadn't been subject to any FSA supervisory visits, thematic reviews or other regulatory action in the last two years and it wasn't subject to any ongoing regulatory body review, action or censure.

In response to a question about what measures were in place to "*ensure the Firm engage legal advice on the activities it carries out to ensure regulated activities are not carried out?*" the following answer was given:

"*Majority of business carried out in unregulated jurisdictions but where regulations apply we are licensed to carry out our activities*."

In response to a question as to how Caledonian demonstrates that it treats its customers fairly, it said:

"*Compliance & Procedures in current alignment with FSA TCF*."

In response to a question about what Caledonian's objectives were for the coming 12 months it was noted that:

"*To continue to develop a fully compliant business of PT to HM Forces*"

With regard to member-directed pension scheme business, Caledonian stated that it was looking to achieve a "*Compliant business in a Regulated structure*."

<u>23 March 2012</u>

An email was sent from Options' compliance department to Mr Clark, requesting a copy of Caledonian's latest company accounts and a certified copy of each director's/principal's passport.

<u>3 April 2012</u>

Options' compliance department sent a chaser email to Caledonian for the documents it requested on 23 March 2012. A senior consultant at Caledonian replied on the same day

and provided a copy of Mr Clark's passport. The consultant said she would speak with Mr Clark when he returned from a trip, regarding the company accounts.

27 April 2012

Options started to receive introductions from Caledonian.

1 August 2012

An Options employee sent an internal email to another Options employee, who it seems was responsible for managing the relationship with Caledonian. The first employee said to the second employee that Options still required certified passports for the principals/directors and company accounts, and that compliance would raise it in the audit that was being completed on that day.

The second employee confirmed on the same day that they had spoken with Mr Clark. It was noted that Mr Clark had said that the company secretary was on holiday but that he would send an urgent request for the outstanding documentation.

4 September 2012

A "*Non-regulated Introducer Agreement Terms of Business*" document between Options and "*MMG Associates Ltd TIA Caledonian International Associates*" was signed and dated by Mr Clark. That agreement included the following undertaking:

"*The Business Introducer undertakes that they will not provide advice as defined by [the Financial Services and Markets Act 2000] in relation to the SIPP - for the avoidance of doubt this includes reference to advice on the selection of The SIPP Operator, contributions, transfer of benefits, taking benefits and HMRC rules*"

Options has said that these Terms of Business were actually received by Caledonian on 21 March 2012 - and so it seems there was a delay in Mr Clark signing and returning it.

1 November 2012

Options conducted a background check on Mr Clark and another Caledonian employee, using 'World Check' (a risk intelligence tool which allows subscribers to conduct background checks on businesses and individuals). This check did not reveal any issues.

Options' assessment of Caledonian - March 2013, exact date unknown

Options has also provided an undated document called the "Overseas Introducer Assessment Proforma". The document listed a number of criteria and labelled its assessment categories as 'low risk', 'medium risk' or 'high risk' with supporting notes on each.

This document isn't dated but I think it is likely to have been completed in March 2013 as it refers to Options recently having seen consumers introduced which fell outside the expected profile, which seems to refer to the 7 March 2013 email I summarise below.

I have set out below what I consider to be the key sections of this document recorded, and the level of risk that was noted:

Google Search and FCA

This section was assessed as "*low risk"*. The notes set out that there were no adverse

comments.

Regulatory

This section was assessed as "*high risk*". The notes said "*Cannot find any regulatory details from the information held*."

Company

This section had a mixture of assessments which were mainly medium risk. It was set out that Caledonian had:

"*No UK branch. Cannot see any EEA regulatory details."* And this was classed as *"high risk".* Caledonian's trading history was recorded as *"medium risk".* The notes state: *"Unknown company establishment time - cannot find any details from information received"* It was also noted, in relation to Caledonian's accounts, *"No accounts requested?*".

Articles of Association

This was noted as "*medium risk*" and the corresponding notes stated: "*No articles of association requested/received*"

Professional Qualification

This section was assessed as "*high risk*". The notes said: "*No qualifications documented other than meeting note from March 2012 where David Clark stated he was a qualified accountant and member of Chartered Institute of Accountants*."

Meeting

This section was assessed as "*medium risk*". The notes recorded: "*Meeting held at Carey Pensions UK office March 2012*."

Advice

This section was assessed as "*high risk*" and it was noted:

"*Unregulated- No details of how advice given. No regulatory bodies/permissions seen. Although suggested on email that advice given in Jordan?*"

"*Advice possibly given in Jordan, although not sure if true for UK based clients*".

Transfers/ Switching

This section was assessed as "*high risk*" and in particular it was noted that the funds for investment within the SIPP were to be generated from:

"*Transfers from Armed Forces Pension occupational scheme*"

Client Profile

This section was assessed as "*high risk*". The notes set out:

"*Client Profile: 30-50 years old. Part of armed forces 6-10 years. Generally still UK residents, some abroad. Now working in security earning c. £70k pa. HOWEVER, recently received business outside of profile*"

7 March 2013

An internal email was sent by an Options' manager to other Options employees, including its CEO, summarising a call Options had held with Mr Clark of Caledonian. In summary, this said:

- Options had noted that following recent FSA (now FCA) review and guidance all SIPP operators were being asked to look at the business received from their introducers against their expectations surrounding the type of profile.

- Options' understanding was that the introductions from Caledonian would be ex-military, aged approximately 36 years old and who were self-employed in the security industry with earnings of approximately £70,000. However, out of the seven new business cases that they reviewed on 6 March 2013, three of them had moved away from the expected profile.

- Options had asked Caledonian if its profile was changing/extending.

- Caledonian explained: predominantly the members were in the close protection industry which as at 5 years ago they all went into. Foreign operatives were now coming in in a more organised structure. Some were getting promoted into senior positions. Many were previously divers in the military and so going into diving elsewhere.

- Options had asked Caledonian to put together a note to update its file as to the business it would receive.

20 March 2013

Options sent Caledonian an email. Options noted that it was waiting for Caledonian to provide an update to the changes in its client profile (this appears to refer back to the 7 March 2013 call). Options also noted it had received further business that day for individuals who did not fit within the expected client profile.

26 and 30 April 2013

An Options Compliance Officer sent an email on 26 April 2013 to a number of Options employees, including its CEO. She raised concerns about Caledonian's business practices. She said:

"*We have a responsibility to proactively monitor our distribution channels to ensure our products do not end up with customers for whom it is not suitable. Based on recent correspondence with Caledonian I am increasingly concerned by their business practices and therefore believe we should review our relationship with them and the business they have introduced. I will arrange a meeting for next week to discuss. In the meantime we need to determine the answers to the questions below to help facilitate our discussions*."

The Compliance Officer asked the other employees for answers to a number of questions. The answers were provided on 30 April 2013. I've quoted the questions I consider to be key, and the answers given (in bold), below.

"*Overview of business*

Date relationship commenced: ***April/May 2012***

What is the agreed profile of clients introduced by Caledonian: ***Ex Armed Forces, Approx age 38, working in the Close protection industry (security), earnings of Approx £70k***

Number of clients introduced: ***497 (363 now invested, 134 ongoing) Value of investments held: £16m***

How many transfers were also accompanied by a TVAS? Who has provided the TVAS? ***37 - Only TVs over £100k (from Armed Forces Pension) or any amount no matter how small on other TVs. TVAS provided by [name of business]***

Overview of Caledonian:

What due diligence was undertaken on Caledonian prior to establishing the relationship? ***Unknown but AML was received.***

Location of head office: ***Geneva, Switzerland***

Do they have a business address in the UK? ***They confirm that they do not have a permanent place of business in the UK, however they have a business address for correspondence and David Clark is based in the UK.***

Where do they meet with clients, i.e. in the UK? ***Unknown.***

What is Caledonian's regulatory status, i.e. are they regulated in their home jurisdiction? ***David Clark - The Chartered Insurance Institute - [ID Number given]. David Clark certifies all ID and signs the investment Application Form.***

Are they regulated to provide advice in their home jurisdiction? ***Unknown***

They have confirmed that they provide advice in Jordan. How does this work? Do they have a place of business in Jordan? Do they need to be regulated in Jordan to provide advice? ***Unknown - Caledonian provide a Non Solicitation Letter which is sent to Friends Provident with the investment App. A copy of a Non Solicitation Letter is attached***

How did we establish Caledonian's knowledge of SIPPs and UK pension rules? ***Unknown***

Based on our contact with Caledonian and reviewing the illustrations they provide to clients, do we have concerns that Caledonian is providing poor advice/ information? ***Yes due to illustrations***

Do Caledonian provide advice on investments within the SIPP? ***Caledonian send to us the Friends Provident Investment Applications with the Application to set up the SIPP. The funds table in the investment App is pre-populated by Caledonian. The Member does see a copy of this document - which we send to them prior to investing their funds.***"

A further set of answers to some of the questions was sent by Options' CEO on the same day (answers again in bold):

"*Where do they meet with clients?* ***Generally abroad depending on where their next assignment is, they will also hold meetings in the UK***

Are they regulated to give advice in their home jurisdication (sic)*?* ***No because they are not regulated they are introducers of business***

They have confirmed they give advice in Jordan? ***When they mean advice they are talking***

***about consultancy they are not regulated in any jurisdication* (sic)**

How did we establish their knowledge of UK Pension and SIPP marketplace? ***By meeting with them twice and by running a workshop for them output from which is attached***

Based on our contact with Caledonian and reviewing the illustrations they provide to clients, do we have concerns that Caledonian is providing poor advice/ information? ***I am not sure it is our place to comment on this maybe on the information but not on advice, if we commented on whether we thought even our regulated advisers were providing poor advice I would probably think we would say yes. Think we need to be careful what questions we are looking to answer comfortable on the information piece but not on the advice piece***

Do Caledonian provide advice on investments within the SIPP? ***No they don't, they consult with the client on the feasibility of transferring their Armed Forces Pension Scheme into a SIPP and their partner to manage the investment is*** [this refers to the investment manager appointed to manage the investment in the FPI bond, once the transfer was completed, which is the same business referred to as providing “TVAS reports" - I'll refer to it as Business C from herein]”

10 May 2013

Options sent Caledonian an email requesting further information. The email confirmed Options was reviewing its terms of business in light of recent announcements from the FCA. Options said it was keen to continue to do business with Caledonian but that it must do so "*in a framework that is robust and compliant and will satisfy the regulators should they come in and review this area of our business, so we must start with ensuring we understand each stage of the process, to enable us to develop a robust and compliant process for this business moving forward*."

Within this email, Options asked Caledonian the following questions:

1. "*Can you provide your organisational structure and the jurisdiction in which each is registered and the regulation/regulator that each company operates within. If you are relying on any exemptions please state which exemptions and the reasons you believe you can operate within those exemptions*

2. *Are you giving advice and if so in what capacity and under what regulatory environment are you providing this advice.*

3. *What offices do you have and where, do the jurisdictions in which you have offices have a regulatory regime, if so can you provide details of the regulators in those jurisdictions.*

4. *On what basis are you providing illustrations and the reasons for this basis*

5. *Do you meet all your clients in Jordan, if not why do your Non Solicitation forms signed by yourself confirm the advice was given in Jordan*

6. *Please confirm the profile of your clients*

7. *Please confirm how you receive introductions to your clients*

8. *Can you update information about your team their background, expertise in dealing with pensions*

9. *On the Non Solicitation letters you note that Caledonian does not have a permanent place of business in the UK. However, you request correspondence to be sent to The Pensions Service Centre, Peterborough. Please can you clarify Caledonian's presence in the UK and the nature of the office in Peterborough*."

Options said that from 1 May 2013 it had implemented changes to its requirements, and that Caledonian must have a, "*UK FCA regulated adviser providing the TVAS and the sign off for the suitability of transfers from occupational schemes of any values*."

15 May 2013

Options sent an internal email which was a summary of a telephone conversation with Business C. The summary recorded that:

Business C confirmed that an FCA Regulated Adviser would be providing the TVAS reports on all Caledonian introduced clients. This adviser would be placed in their Milton Keynes office for a period of time and would produce TVAS reports on the back book of business with Caledonian.

On this understanding Options had agreed they would continue to process applications where the TVAS report was currently being issued by Business C.

20 May 2013

Options says this was the date of the last introduction made to it by Caledonian.

23 May 2013

A handwritten summary was made of a meeting between Caledonian, Business C and Options. This included the following:

Mr Clark said he was a consultant to armed forces and not an adviser in the FCA sense. Caledonian's Peterborough office was a postal address only and not a working office.

Mr Clark said he meets with clients in the UK. It was noted that the documents completed by Caledonian had said that he met them in Jordan. So a letter was needed about where advice was given.

The initial contact between Caledonian and their clients was abroad. The clients contact Caledonian if they want to transfer their pension.

Caledonian's website didn't mention that it would give advice. And its documents state that no advice is given and that clients should take advice from a regulated adviser.

Caledonian explained that the reason for lots of transfers was because of the market and its relationship with the providers.

The proposal going forward involved an appointed representative of a UK-based IFA being the "pension specialist" and the UK-based IFA dealing with business "moving forward".

Options agreed to allow Caledonian a four week window to put the changes in place.

The question about Caledonian providing a letter stating where advice was being given was irrelevant to Options as Caledonian didn't provide any advice.

Caledonian said its illustrations were provided "for clients to facilitate the business". Options

queried whether these constituted advice.

I have not seen evidence that any of the noted actions were completed. As noted, Options did not accept any further business from Caledonian after 20 May 2013.

May 2013, exact date unknown

Options decided to review its relationship with Caledonian. Options has provided a copy of its document headed, " *Caledonian Relationship Review 2013*". I have reviewed the document in full, but have only quoted below what I consider to be the key part:

"[. ..]*Following a detailed review of the process and documentation concerns were raised regarding whether the clients could be deemed to be receiving advice through an unregulated entity.*

Following a request for further clarification on these points we have not been able to satisfy ourselves that this is not the case.

We have insisted that they move to a model that all cases are fully advised by an FCA regulated firm/individual, which has been accepted.

[...]

Following a meeting in the Milton Keynes office with ourselves [list of Options' staff members present at the meeting] *where Dave Clark from Caledonian, and* [Business C] *explained their current process and documentation and described their future process, further discussions between* [initials of various staff members at the businesses] *it was decided that they had not satisfied us enough with their current processes for us to continue to allow taking on new business in the interim without the use of a UK regulated firm or individual who was suitably qualified.*

[Options' CEO] *has instructed the team of this decision so from week beginning 28th May any new business received will be rejected unless it comes through an FCA regulated firm....."*

It set out a detailed process, by which Caledonian proposed to move to a model where all clients would be fully advised by an FCA regulated firm/individual, and it highlighted the benefits of this new approach as being:

"all schemes are coming in on an advised basis; it brings the process and client into the UK regulated process; it brings the clients into the FSCS and FOS protections; and ensures all occupational schemes undergo analysis and advice"

I have not seen evidence that this approach was ever enacted - again, as noted, no further business introduced by Caledonian was accepted by Options after 20 May 2013.

Mr D's dealings with Options and Caledonian

Mr D's SIPP application was sent to Options by Caledonian on 23 August 2012. The covering letter from Caledonian gave an address in Geneva, Switzerland at its footer.

At the beginning of the application pack sent by Caledonian was a checklist, on Caledonian headed paper, which listed the following items to check:

Carey Application

[name of contact at the administrator of Mr D's existing scheme] *Letter*

PTV

Carey Instruction Letter

LOA for Caledonian

Transfer Letter

Signed Fee Structure

Passport

Utility/Bank Stat/Driving Lic

Advice

Trust Document

Castlestone Disclaimer

FP Illustration

TVA

All of these had been ticked on the checklist, except TVA which was marked " *N/A*"

The SIPP application form

The SIPP application form was headed: "*The Carey Pension Scheme Application Form For Direct Clients (SIPP to be established on execution only)*."

It also stated: "*This Form should be used if you are a client establishing a SIPP without advice. You have made this decision independently and are aware of the implications of this decision*."

Under the section headed "*Transfers*", beneath the heading "*Occupational Scheme Only*" it said:

"*Please Note, whilst we cannot give advice, we recommend that in these circumstances you seek appropriate advice and please provide us with a copy of any TVAs report*"

Under the section headed "*Declaration*" (which was signed and dated by Mr D on 21 August 2012), it is recorded that:

"*I hereby apply for membership as a direct client of the Carey Pension Scheme*"

[...]

"*I confirm that I am establishing the Carey Pension Scheme on an Execution Only basis;*

I confirm that I understand that the value of my pension scheme can go down as well as up depending on the investment performance of the investments chosen."

Some sections of the application form are completed in handwriting, others have been typed,

suggesting parts of the form may have been pre-populated.

The member declaration

Mr D signed and dated Options' member declaration form on 21 August 2012. This said:

"I *the above named write to instruct Carey Pensions UK LLP to establish a Self Invested Personal Pension (SIPP) and Carey Pension Trustees UK Ltd to proceed with the transfer of Occupational Pension Scheme benefits from The Armed Forces Pension to the Carey Pension Scheme.*

I confirm that I have received full and appropriate advice from Caledonian International and following this advice I wish to proceed with the transfer.

I am fully aware and understand that by giving an instruction to proceed with the transfer of my Occupational Scheme Benefits to the Carey Pension Scheme I may lose substantial benefits."

The declaration also said it was understood Options was not giving advice and that it would be indemnified against any and all liability arising from the transaction.

Letters of authority

Mr D signed a letter of authority on 21 August 2012, giving Options the authority to deal with Caledonian in relation to the transfer.

On the same date Mr D also signed a letter authorising the transfer of his existing pension. That letter included the following:

"*I would be grateful if you would accept this letter as confirmation that I wish to transfer (the cash equivalent of) my deferred benefits, as held in the Ceding Scheme, to the Private Pension Plan Careys Pension Scheme (The receiving scheme*)"

"*I acknowledge that neither the SIPP Company nor any other Pension Company has advised me in respect of my decision to transfer my cash equivalent transfer value, from the Ceding Scheme. I acknowledge that the SIPP company has recommended that I should seek independent financial advice, before reaching the decision to which this letter refers, and I acknowledge that the SIPP company will act upon my instructions on an 'execution only' basis*."

Other documents

I have also seen a copy of a letter sent to the administrator of Mr D's existing pension scheme, which says:

"*I wish to transfer my Armed Forces Pension and request that all discontinuance and discharge papers be sent directly to the administrators of my alternative pension scheme*"

On 1 October 2012 it was confirmed that Mr D's existing pension scheme had issued a payment of £95,705.61 to his Options SIPP. I understand a similar sum was then passed to FPI for investment in a bond.

Investment application documents

A FPI Trustee Application form was signed by Options (as trustee of the SIPP) on 18 October 2012. This form confirms:

- The financial adviser was Caledonian.
- The application was signed in the UK and advice was given in Jordan.
- It was agreed that a fee wouldn't be paid to the adviser (Caledonian).

In all of the other application documentation I have seen a Certificate of Non-Solicitation was also signed and dated by Mr Clark of Caledonian. This document was addressed to FPI and was on Caledonian headed paper. It confirmed that:

"*We have today submitted an application for a policy on behalf of the above named client, where the life assured is also resident in the UK. Since the life assured's address is / the client has signed the proposal form in the United Kingdom we understand that under the Rules of the Financial Services Authority you must treat the application as business regulated by the Financial Services and Markets Act.*

Accordingly you will send post-sale information and notice of the right to cancel the contract to the client following issue of the policy.

The company is not authorised to conduct investment business in the United Kingdom. We acknowledge that this means that you are only able to accept the introduction from us if we have not been carrying on investment business in the United Kingdom.

We therefore certify that:

We do not have a permanent place of business in the United Kingdom; and We did not approach the above named client.

The advice was given in Jordan.

The client approached us directly and requested to give him advice."

I have not seen a copy of this document in this case, but I think it reasonable to assume it was likely completed here.

On 26 October 2012 FPI wrote to Options to confirm it had:

"... *paid commission of 7.00%, which is equivalent to GBP6,549.27 to MMG Associates when your policy started*."

Mr D's recollections

We asked Mr D for his recollections of the transaction. I've copied the questions asked, and Mr D's answers, below.

How did Mr D come to do business with Caledonian International Associates?

"*Caledonian had emailed me in the past Ref my pension after leaving the Military*."

What were his considerations when making the pension transfer and investment? What other options was he considering? What were his goals?

" *After having a meeting with Dave Clark, he told me that I had around £98k and couldn't doing anything with it until I was 55, however if moved it over to invest with Caledonian it would be around £250k and if I waited until I was 65 it would be around £350k*"

Did he carry out any research of his own into the investment?

"*Yes as I understood it they would only make a percentage for the money that they made me.*"

What did he understand of the investment in Friends Provident International?

"*Didn't know anything about it, but only now know I have £23k suspended. When I've emailed and asked I get nothing back*."

What did he understand Caledonian's role to be?

"*To manage the investment*"

What did he understand of the risks of the investment?

"*Not really as I opted for low risk*"

Does he have any documentation from Caledonian which shows they provided him with advice, or which sets out his attitude to risk?

"*No I had nothing like that from them and it came across as they would be only making money for which they had made me and in his words I would be able to retire at 55*."

Why did he sign the two disclaimers attached to this email [this refers to the member declaration and the letter authorising the transfer of Mr D's existing pension]?

"*Until now when I've seen them, I wasn't aware I had. I believe this was signed when I signed the paper to give them permission to manage the pension. I wasn't aware I had signed any disclaimers*."

Mr D also told us he only ever had one meeting with Mr Clark of Caledonian International Associates and that was at his parents' house in the UK to sign documents.

Mr D's complaint to Options

Options didn't uphold Mr D's complaint. In summary it said:

- It provides an execution only service - that is a non-advised service - and it explained

this in all the documents provided to Mr D.

- It does not, and is not permitted to, provide advice to clients in relation to the establishment of SIPPs, transfers of pensions or the underlying investments.

- It recommended to Mr D in the application form that he obtain independent advice from a suitably qualified adviser.

- It acted properly in accepting the introduction and it undertook appropriate due diligence on Caledonian on a number of occasions. Caledonian agreed to Options' terms of business and at the time it accepted Mr D's business, it had no reason to not accept the introduction.

Our investigator's view

Mr D referred his complaint to this service and it was considered by an investigator. The

investigator thought the complaint should be upheld. In brief, he said that Options should have been aware, bearing in mind the information it was supplied with, and that which it could have discovered through a reasonable level of due diligence, that there was a significant risk of consumer detriment in accepting introductions from Caledonian. He thought that Options should have been aware that it was likely that financial advice was being given to Mr D by Caledonian in relation to the transferring of his pension to an Options SIPP. Or at least that, with a reasonable level of due diligence, it would have discovered that such financial advice was being given. Options nevertheless set up a SIPP for Mr D, facilitated a pension transfer to it and then invested the majority of the money when it was unclear about Caledonian's status or authority to give any financial advice - or in fact in which jurisdiction such advice had been provided.

Options' response to the investigator's view

Options did not accept the investigator's view. I have summarised below what I consider to be the key points, but have considered Options' response in its entirety:

- Options is not permitted to, and does not, provide advice or otherwise comment on the suitability of investments or any other aspect of a member's SIPP.

- The investigator states that they consider the SIPP reports produced by the FCA in 2009 and 2012 (based on the findings of the FCA's thematic reviews) (the "SIPP Reports"); the FCA's guidance published in October 2013 and the "Dear CEO" letter published in 2014 are all relevant to their consideration of the complaint. But only the SIPP report in 2009 was published prior to Options receiving Mr D's SIPP application form (which is dated 21 August 2012) and subsequent instructions to invest.

- It is not fair or reasonable to consider the complaint with the benefit of hindsight or in the context of guidance that was published after the events complained of.

- Options operated at all times on the basis that Caledonian was not providing advice to Mr D (or other members). Options' terms of business with Caledonian specifically prohibited Caledonian from providing advice. It was therefore reasonable for Options to operate on the basis that Caledonian would not be advising members.

- Options was not privy to the discussions between Mr D and Caledonian.

- The view concludes that Caledonian provided advice to Mr D without any exploration of the relevant law and application of the Regulated Activity Order.

- The regulatory regime has never prohibited unregulated introducers from connecting clients with SIPP providers, and neither the FSA nor the FCA have ever sought to prohibit SIPP providers from accepting business by this route.

- Against that background, it would be unfair and unreasonable to place the liability for losses flowing from such investments on the execution-only SIPP provider. That, however, is precisely what the investigator seeks to do, by retrospectively imposing new and unexpected duties of due diligence on introducers and investments. These duties are inconsistent with both the contract into which Mr D entered and with the general scheme of the COBS rules at the relevant time.

- Given the proper scope of Options' regulatory duties, as established in *Adams v Options UK Personal Pensions LLP [2021) EWCA Civ 474*, there can be no breach of those duties on Options' part as a result of its decision to accept customers introduced by Caledonian in the circumstances relevant to this case. In any event,

the criticisms made by the investigator of Options' due diligence on Caledonian are unfounded.

- The view suggests that Options had become aware that Caledonian was giving advice to Options' clients, and as a result decided to no longer accept business from Caledonian unless they provided regulated advice to members. This is incorrect. The decision to require that members had the protections of a regulated advisor being involved was a broader policy decision made by Options in February 2014.

- The decision to no longer accept business where members had not sought independent advice applied to all non-regulated introducers - it was not limited to members introduced by Caledonian, but was a company-wide decision, demonstrative of Options' ongoing commitment to improve its service for the benefit of its customers. Options did not at any point become aware that Caledonian were providing advice, nor has it, even to date, seen any evidence that advice was provided.

- As an execution-only SIPP provider, Options did not know Mr D's financial position or his attitude to risk and it was under no obligation to ascertain these details. Therefore, even if it was an unsuitable investment for Mr D, that was not manifest or obvious to Options.

- To hold that Options should not have accepted Mr D's business in the first place is to illegitimately impose upon Options regulator duties to which it was not subject.

- From the perspective of the execution-only SIPP provider, there is also a real unfairness if it is liable for the poor investment choices of consumers, since (i) its business is structured on the basis that it is not investigating the quality of the underlying investments; (ii) its business is structured on the basis that it is not warning or advising clients as to whether a SIPP or the underlying investment is suitable or appropriate for the client; and (iii) its fees and charges are based on the provision of execution-only services.

- Furthermore, where a consumer chooses an execution-only service, it would be unfair if the SIPP provider were not able to rely on express representations made by the consumer when signing the contractual documentation (such as the declaration in the indemnity signed by Mr D, "*I understand that Carey Pensions UK LLP and Carey Pension Trustees UK Ltd are not in anyway* [sic] *able to provide me with any advice...I confirm that I am establishing the Carey Pension Scheme on an Execution only basis*.").

- Options did not cause Mr D's loss. Mr D was determined to proceed with the FPI investment, and another SIPP provider could properly have accepted that investment. In those circumstances the outcome would have been the same as it was. Any compensation awarded, if at all, should therefore be limited to the commission and advisor fee which was paid to Caledonian.

- Mr D's request to transfer his defined benefit pension was sent on or around 23 August 2012. Once the transfer request was made, Options was obliged to complete the transfer and so the loss of defined benefits was assured from that point.

- At the very least, Mr D must bear a measure of responsibility for his own actions, and this should be reflected in the calculation of any compensation due. In all the circumstances, it would be unfair and unreasonable to hold Options responsible for Mr D's loss in full.

- The investigator says Mr D had no interest in moving his pension, but also suggests he was contacted by Caledonian via email and then met with a representative. If Mr D was not interested in dealing with his pension, he would not have agreed to meet a representative from Caledonian. Further, given that Caledonian emailed Mr D, on balance, it is likely that Mr D provided his contact details to enable Caledonian to contact them in the first place regarding his pension. It is evident that he wished to transfer his pension, whether through Options or another provider. In those circumstances Mr D would have suffered the same loss as he did.

- The calculation of loss has no regard for the fact that the investment in FPI was, as the view accepts, "no cause for concern". Options is concerned that the view relies excessively on hindsight and the performance of the investment. The investment performed within a range of outcomes which Mr D could have foreseen.

- In the event that the ombudsman disagrees with Options' position that it is not fair and reasonable to award compensation to Mr D, Options agrees that, in keeping with the Court of Appeal decision in Adams and the calculation of compensation set out in the view, Mr D should assist Options in the latter taking ownership of any investments held within the SIPP. However, the view suggests that, if the investments cannot be returned to Options then they should remain in the SIPP or otherwise with Mr D and there should be no adjustment in the compensation award. To allow Mr D to retain the investments, whether within the SIPP or otherwise, in circumstances where the compensation awarded to him has been calculated upon the assumption that they would be returned to Options, would give Mr D a windfall. This is not fair and reasonable. In the event that Mr D is unable to return the investments to Options, the compensation should be recalculated to reflect this.

- The investigator also considers that Options should pay Mr D £500 for the trouble and upset caused. The investigator has provided no evidence to support their claim that Mr D has suffered any degree of upset.

Options also requested an oral hearing. It said that three issues require especially careful exploration, namely:

- The extent of Caledonian's role in Mr D's decision to establish the SIPP; transfer his benefits into it; and make the investment.

- Mr D's understanding of his investment with FPI and of his and Options' respective roles. It cannot be fair or reasonable to accept without more that Mr D did not understand the true position in this regard when, as the claimant accepted in Adams under cross- examination, "the statements throughout the application form describing the role of the defendant as 'execution-only' who were not providing advice did not lack clarity", and the judge at first instance in Adams was only able to reach their conclusion as to the claimant's level of understanding after hearing oral evidence.

- Mr D's motivation for entering into the transaction with Options.

My provisional decision

I recently issued a provisional decision on this complaint. I concluded an oral hearing was not necessary. I also concluded Mr D's complaint should be upheld, as it was in my view fair and reasonable to say Options should not have accepted Mr D's application from Caledonian and I did not think Mr D would have proceeded with the transfer and investment, in those circumstances.

Options did not respond to the provisional decision, despite being given reminders and a considerable amount of additional time to make its response. The CMC responded only to say it accepted the provisional decision – it did not provide any further comments.

As I have not received any further submissions from either party, and have not been persuaded to depart from my provisional findings, I have repeated my provisional findings below – and have not therefore included any further detail of them in this background summary.

My findings

As noted above, having not received any further submissions from either party since issuing my provisional decision, I have not been persuaded to depart from my provisional finings, and have repeated those findings below, with a few minor changes, as my final decision.

Oral hearing request

Options says that an oral hearing is necessary to explore the extent of Caledonian's role, Mr D's understanding of the investment and the roles played by the parties, and Mr D's motivation for entering into the transaction.

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's Dispute Resolution rules provides 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 put some questions to Mr D, as set out above. And Mr D has provided the answers to the questions we put to him. Options has had the opportunity to consider, and comment, on these.

I have carefully considered the submissions Options has made. However, I am satisfied that I am 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 do not consider a hearing - or any further investigation by other means - is required. The key

question is whether Options should have accepted Mr D's application at all. Mr D's understanding of matters is secondary to this. And I am, in any event, able to test this to the extent I think necessary by asking questions of Mr D in writing.

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 Mr D as a witness. Our hearings do not follow the same format as a Court. We are inquisitorial in nature and not adversarial. And, 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 am satisfied it is not necessary for me to hold an oral hearing, I will now turn to considering the merits of Mr D's complaint.

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

In considering what is fair and reasonable in all the circumstances of this complaint, I have taken into account relevant law and regulations; regulators rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Relevant considerations

The Principles

In my view, the FCA's Principles for Businesses are of particular relevance to my decision. 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). And, I consider that the Principles relevant to this complaint include Principles 2, 3 and 6 (as set out in PRIN 2.1.1R) which say:

"*Principle 2 - Skill, care and diligence - A firm must conduct its business with due skill, care and diligence.*

Principle 3 - Management and control - A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems

Principle 6 - Customers' interests - A firm must pay due regard to the interests of its customers and treat them fairly."

I have 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 requirement they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules*."

And at paragraph 77 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 had 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 had not treated its client fairly.

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

"*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 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 have 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 is 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. So, the Principles are a relevant consideration here and I will consider them in the specific circumstances of this complaint.

The Adams Court cases

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

I've considered whether these judgments mean that the Principles should not be taken into account in deciding this case. And, I am of the view they do not. In the High Court case, HHJ Dight did not consider the application of the Principles and they did not form part of the pleadings submitted by Mr Adams. One of the main reasons why HHJ Dight found that the

judgment of Jacobs J in BBSAL was not of direct relevance to the case before him was because "*the specific regulatory provisions which the learned judge in Berkeley Burke was asked to consider are not those which have formed the basis of the claimant's case before me*." Likewise, the Principles were not considered by the Court of Appeal. So, the judgments say nothing about the application of the FCA's Principles to the ombudsman's consideration of a complaint.

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(0) of FSMA ("the COBS claim"). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

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

I note that, in the High Court case, 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 para 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*."

The facts in Mr D's case are very different from those in Adams. There are also significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and from the issues in Mr D'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. In Mr D's complaint, I am considering whether Options ought to have identified that the introductions from Caledonian involved a risk of consumer detriment and, if so, whether it ought to have ceased accepting introductions from Caledonian prior to entering into a contract with Mr D.

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

To be clear, I have proceeded on the understanding that Options was not obliged - and not able - to give advice to Mr D on the suitability of its SIPP or the FPI investment for him personally. But I am satisfied that Options' obligations included deciding whether to accept particular investments into its SIPP and/or whether to accept introductions of business from particular businesses. And this is consistent with Options' own understanding of its

obligations at the relevant time. As noted above, the introducer profile completed at the outset of Options' relationship with Caledonian said "*As an FSA regulated pensions company we are required to carry out due diligence as best practice on unregulated introducer firms looking to introduce clients to us to gain some insight into the business they carry out*."

S27/28 FSMA

The Court of Appeal overturned the High Court judgment on the basis of the claim pursuant to s27 FSMA.

S27 FSMA provides that an agreement between an authorised person and another party, which is otherwise properly made in the course of the authorised person's regulated activity, is unenforceable as against that other party if it is made "*in consequence of something said or done by another person "the third party" in the course of a regulated activity carried on by the third party in contravention of the general prohibition*".

S27(2) provides that the other party is entitled to recover:

"(a) any money or other property paid or transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with it."

s28(3) FSMA provides that " If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow-

- *(a) the agreement to be enforced; or*
- *(b) money and property paid or transferred under the agreement to be retained*."

The General Prohibition is set out in s19 FSMA. It stipulates that:

"*No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is -*

- *(a) an authorised person; or*
- *(b) an exempt person*."

In Adams, the Court of Appeal concluded that the unauthorised introducer of the SIPP had carried out activities in contravention of the General Prohibition, and so s27 FSMA applied. It further concluded that it would not be just and equitable to nonetheless allow the agreement to be enforced (or the money retained) under the discretion afforded to it by s28(3) FSMA.

At paragraph 115 of the judgment the Court set out five reasons for reaching this conclusion. The first two of these were:

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

ii) While SIPP providers were not barred from accepting introductions from unregulated sources, section 27 of FSMA was designed to throw risks associated with doing so onto the providers. Authorised persons are at risk of being unable to enforce agreements and being

required to return money and other property and to pay compensation regardless of whether they had had knowledge of third parties' contraventions of the general prohibition;"

The other three reasons, in summary, were:

- The volume and nature of business being introduced by the introducer was such as to put Options on notice of the danger that the introducer was recommending clients to invest in the investments and set up Options SIPPs to that end. There was thus reason for Options to be concerned about the possibility of the introducer advising on investments within the meaning of article 53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the RAO").

- Options was aware that: contrary to what the introducer had previously said, it was receiving high commission from the investment provider, there were indications that the introducer was offering consumers "cashback" and one of those running the introducer was subject to a FCA warning notice.

- The investment did not proceed until after the time by which Options had reasons for concern and so it was open to Options to decline the investment, or at least explore the position with Mr Adams, but it did not do so.

The regulatory publications

The FCA (and its predecessor, the FSA) has issued a number of publications which remind 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 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 member 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 the 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 clients' interests in this respect, with reference to Principle 3 of the Principles for Business ('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*."

The later publications

In the October 2013 finalised SIPP operator guidance , the FCA states:

"*This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.*

All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a "client" for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's

responsibility to assess its business with reference to our six TCF consumer outcomes."

The October 2013 finalised SIPP operator guidance also set out the following:

"***Relationships between firms that advise and introduce prospective members and SIPP operators***

Examples of good practice we observed during our work with SIPP operators include the following:

- *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un-authorised business warnings.*

- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*

- *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.*

- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*

- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers.

Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*

- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non- regulated introducers*"

In relation to due diligence the October 2013 finalised SIPP operator guidance said:

"**Due diligence**

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain

appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*

- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme having checks which may include, but are not limited to:*

    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*

    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*

- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*

- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*

- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax-relievable investments and non-standard investments that have not been approved by the firm*"

The July 2014 "Dear CEO" letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The "Dear CEO" letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *Correctly establishing and understanding the nature of an investment*

- *Ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation*

- *Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)*

- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently*

- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc)*

Although I've referred to selected parts of the publications, to illustrate their relevance, I have

considered them in their entirety.

I acknowledge that the 2009 and 2012 reports and the "Dear CEO" letter are not formal "guidance" (whereas the 2013 finalised guidance is). However, the fact that the reports and "Dear CEO" letter did not constitute formal guidance does not 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 goes some way to indicate what I consider amounts to good industry practice and I am, therefore, satisfied it is appropriate to take them into account.

It is relevant that when deciding what amounted to have been 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.

Like the ombudsman in the BBSAL case, I do not think the fact the publications, (other than the 2009 Thematic Review Report), post-date the events that took place in relation to Mr D's complaint, mean that the examples of good practice they provide were not 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 is also clear from the text of the 2009 and 2012 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 is clear the standards themselves had not changed.

I note that HHJ Dight in the Adams case did not consider the 2012 thematic review, 2013 SIPP operator guidance and 2014 "Dear CEO" letter to be of relevance to his consideration of Mr Adams' claim. But it does not follow that those publications are irrelevant to my consideration of what is fair and reasonable in the circumstances of this complaint. I am 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 is fair and reasonable, I will only consider Options' actions with these documents in mind. The reports, Dear CEO letter and guidance gave non-exhaustive examples of good industry practice. They did not 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.

To be clear, I do not say the Principles or the publications obliged Options to ensure the pension transfer was suitable for Mr D. It is accepted Options was not required to give advice to Mr D, and could not give advice. And I accept the publications do not alter the meaning of, or the scope of, the Principles. But they are 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.

What did Options obligations mean in practice?

In this case, the business Options was conducting was its operation of SIPPs. I am satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject particular investments and/or referrals of business. The regulatory publications provided some examples of good industry practice observed by the FSA and FCA during their work with SIPP operators including being satisfied that a particular introducer is appropriate to deal with.

As noted above, it is clear from Options' non-regulated introducer profile, that it understood and accepted its obligations meant that it had a responsibility to carry out due diligence on Caledonian.

I am satisfied that, to meet its regulatory obligations, when conducting its business, Options was required to consider whether to accept or reject particular referrals of business, with the Principles in mind. This seems consistent with Options' own understanding - as Options Compliance Officer noted in their email of 26 April 2013 "*We have a responsibility to proactively monitor our distribution channels to ensure our products do not end up with customers for whom it is not suitable*". And I note in submissions on other complaints Options has told us that "*adherence to TCF*" is something it had in mind when considering its approach to introducer due diligence i.e. the question of whether it should accept business from a particular introducer.

All in all I am satisfied that, in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, Options should have carried out due diligence on Caledonian which was consistent with good industry practice and its regulatory obligations at the time. And in my opinion, Options should have used the knowledge it gained from its due diligence to decide whether to accept or reject a referral of business or particular investment.

Summary of my decision

As set out above, the 2009 Thematic Review Report deals specifically with the relationships between SIPP operators and introducers or "intermediaries". And it gives non exhaustive examples of good practice. In my view, to meet these standards, and its regulatory obligations, set by the Principles, Options ought to have identified a significant risk of consumer detriment arising from the business model Caledonian described to it at the outset. And so, Options ought to have ensured it thought very carefully about accepting applications from Caledonian.

I acknowledge Options did take some steps - initially and on an ongoing basis - which did amount to good practice consistent with its regulatory obligations. But I think, acting fairly and reasonably to meet its regulatory obligations and good industry practice, Options had reason at the outset - and certainly by the time of Mr D's application - to have significant concerns about the business Caledonian would be introducing. And it ought to have taken the sort of action it took in April and May 2013 - which effectively ended its relationship with Caledonian - before the relationship with Caledonian began.

Acting fairly and reasonably, Options should have:

- Been aware - or at least concluded there was a significant risk - at the outset of its relationship with Caledonian, that Caledonian was giving advice on the transfer out of consumers' existing defined benefit schemes to the SIPP and the investment in the FPI bond.

- Been aware that Caledonian was arranging the transfer out of consumers' existing defined benefit schemes to the SIPP and the investment in the FPI bond too.

- Sought clarification on where these activities were taking place.

- Concluded Caledonian was, in at least some instances (such as Mr D's application), carrying out regulated activities in the UK.

Further, Options should have recognised, and promptly reacted to, the following risks of consumer detriment:

- Caledonian's staff did not have the qualifications - and therefore expertise - to give advice on defined benefit pension transfers.

- There was no evidence to show a proper advice process had been followed and consumers such as Mr D were therefore unable to make fully informed decisions about the transfer to the SIPP and investment in the FPI bond.

- The high volume of business being proposed/brought about by Caledonian.

- The high level of commission Caledonian was taking.

- That Caledonian had failed to provide its company accounts, despite repeated requests for copies of them by Options.

I think these points - individually and cumulatively - should have led Options, acting fairly and reasonably, to have concluded at the outset - and certainly by the time of Mr D's application - that it should not accept business from Caledonian. And so Mr D's application should not have proceeded.

It follows that it is fair and reasonable to uphold Mr D's complaint.

Finally, I am also satisfied that s27 FSMA applies here, as regulated activities were undertaken by Caledonian, in breach of the General Prohibition. So Mr D is entitled to recover any money or other property paid or transferred by him under the agreement (i.e. the SIPP), as well as compensation for any loss suffered. I am also satisfied that in the circumstances a court would not exercise its discretion to allow the agreement to be enforced; or money paid or transferred under the agreement to be retained.

This is a further basis on which I consider it to be fair and reasonable to uphold Mr D's complaint.

I have set out my view in more detail below.

What activities did Caledonian undertake?

Advice

I note that in its response to the investigator's view Options says it "*did not at any point become aware that Caledonian were providing advice*". This is a surprising assertion, given Options recorded in March 2013, when assessing Caledonian, under the heading "Advice":

"*No details of how advice given. No regulatory bodies/permissions seen. Although suggested on email that advice given in Jordan?*"

"*Advice possibly given in Jordan, although not sure if true for UK based clients*".

And so it seems Options understood at this point that advice was being given. To ask

questions about how and where advice was being given, the conclusion must first have been reached that advice was being given. There is nothing to suggest this was a view it had recently reached - rather it seems that it was an existing understanding which was being flagged as an issue for the first time.

When further action on this point was eventually taken by Options its CEO said, on 30 April 2013 "*No they* [Caledonian] *don't* [give advice], *they consult with the client on the feasibility of transferring their Armed Forces Pension Scheme into a SIPP*"

This seems to be an effort to back-track on the earlier answers given to the questions in the 26 April 2013 email, which appear to accept Caledonian was giving advice, although much else was "*unknown*". But, to my mind, describing Caledonian's role as consulting on the feasibility of doing something is simply another way of describing an advisory role. It would also have been clear to Options that Caledonian's role was not limited to advice on the transfer out of the consumer's existing scheme - it was declared on the FPI applications that Caledonian was giving advice on the bond too, and so any "consulting" was not solely limited to the transfer out from the existing scheme. This was clearly not viewed by Options as a satisfactory answer to this point in any event as its enquiries continued and, on 10 May 2013, Options asked Caledonian:

Are you giving advice and if so in what capacity and under what regulatory environment are you providing this advice.

This shows Options was clearly of the view at this point that, at the very least, Caledonian *may* be giving advice as there is no other basis on which it could have sought clarification from Caledonian as to whether advice was being given.

It seems this was a view Options maintained. As set out above, it later noted:

"*Following a detailed review of the process and documentation concerns were raised regarding whether the clients could be deemed to be receiving advice through an unregulated entity.*

Following a request for further clarification on these points we have not been able to satisfy ourselves that this is not the case"

And it ultimately concluded all business should come to it through a UK IFA with permissions to give pension transfer advice - an unusual step to take if it did not remain of the view there was at least a risk Caledonian was giving advice.

The above suggests to me that Options knew - or suspected - advice was being given from the outset but took a reactive, piecemeal approach to addressing this obvious risk.

Furthermore, from the information available to Options at the very outset of its relationship with Caledonian there was a clear identifiable risk that advice was being given by Caledonian. Caledonian said, at the outset, it was:

"*preferred adviser for the Armed Forces occupational pension scheme*"

"*a consultant to these clients and advised them on their armed forces transfers only"*

"currently putting them into an international Friends Provident Bond"

And Caledonian's sales process was described as:

"*Referral - Visit - Analysis – Visit*"

Finally, as mentioned, each of the FPI applications I have seen confirm Caledonian was giving advice (in Jordan - a point I'll turn to below) and Options would have been privy to many of these forms from an early stage in its relationship with Caledonian.

I note it was recorded that Caledonian advised on the transfer *only* but it was also recorded that it was selecting the investment vehicle (the FPI bond). And it is also very difficult to see how advice on a transfer out did not encompass advice on where to transfer to (i.e. the SIPP) - particularly when it was clearly anticipated that all consumers would be transferring to an Options SIPP. It is not clear how this could happen without those consumers being advised to take this course of action.

Furthermore, the "*Referral - Visit- Analysis – Visit*" process Caledonian describes is a typical advice process involving an initial meeting, information gathering and analysis, and a further meeting.

Options should also have been aware that it is not usual for pension transfers to happen without the consumer receiving advice or a recommendation - and very unusual for this to happen at a rate of 50 a month, which Caledonian was proposing. Options should have concluded that it was simply implausible that such a large volume of consumers were deciding to transfer out of their existing schemes, open a SIPP with Options, and make the same FPI investments within the SIPP without being advised to do so.

I note Options' terms of business with Caledonian, signed September 2012 (but, Options says, in place since March 2012) said:

"*The Business Introducer undertakes that they will not provide advice as defined by the Act in relation to the SIPP - for the avoidance of doubt this includes reference to advice on the selection of The SIPP Operator, contributions, transfer of benefits, taking benefits and HMRC rules*"

I also note the SIPP application form which was signed and dated by Mr D said:

"*This Form should be used if you are a client establishing a SIPP without advice. You have made this decision independently and are aware of the implications of this decision*".

And:

"*As you do not have a Financial Adviser, your investment choices are your sole responsibility. You will instruct us and we will act on those instructions as long as it is an accepted investment in the Carey Pension Scheme*."

But Options member's declaration included the following:

"*I confirm that I have received full and appropriate advice from Caledonian International and following this advice I wish to proceed with the transfer*."

And, as already mentioned, the FPI application documents confirmed advice had been given.

So, I do not think the application documents in this case gave Options any basis to conclude advice had not been given - particularly given what I say above. They present a confused, inconsistent, picture.

Taking account of the available evidence I consider that, in this case, Caledonian did provide advice to Mr D on the merits of transferring his pension to the SIPP and investing in the FPI bond. Caledonian proactively contacted Mr D to suggest that he consider transferring his occupational pension. Mr D says he was contacted by email by Caledonian (which is consistent with what I have seen on other cases involving Caledonian) and met with Mr Clark who:

"*told me that I had around £98k and couldn't doing anything with it until I was 55, however if moved it over to invest with Caledonian it would be around £250k and if I waited until I was 65 it would be around £350k"*

So I am satisfied advice was given to Mr D by Caledonian in this case, and that, from the outset of its relationship with Caledonian, Options was (or at the very least ought to have been) aware, generally, that Caledonian was offering advice to consumers, or there was a significant risk it might be doing so.

Arranging

It is also clear from what Options was told by Caledonian at the outset - and from the available evidence in this complaint and others - that Caledonian was heavily involved in the arrangement of the transfer out of Mr D's existing pension scheme to the SIPP and the investment of the cash transferred to the SIPP in the FPI bond. It clearly was not simply introducing Mr D to Options and leaving it to him to proceed with the application. It was involved in arranging the transfer out of Mr D's existing pension to the SIPP, the setting up of the SIPP and in arranging the FPI bond and associated investments. It was involved in gathering all the information and documents needed for things to proceed - that is clear from the checklist included with the paperwork sent to Options. And it seems it partly completed the SIPP application form for Mr D, and sent all the required information, forms, documents etc to all the parties involved, and dealt with any queries arising from these.

I think Options ought to have been aware of this. The extent of Caledonian's involvement was clear from the application documentation Caledonian sent to Options.

Where activities were taking place

I have not seen any evidence that, prior to May 2013, Options established where Caledonian was carrying out its activities in relation to each application - including Mr D's.

As set out above, Caledonian told Options at the outset that "*They* [the consumers] *were generally still resident in UK but some were now living abroad in various countries such as Thailand, Germany, Spain etc*". It was also recorded that Caledonian had branches in Chile, Peru, Columbia, Argentina, Brazil and Switzerland. And, as Options later noted, Caledonian also used a UK address.

Caledonian also told Options at the outset the "*Majority of business carried out in unregulated jurisdictions but where regulations apply we are licensed to carry out our activities*."

And, as mentioned, the sales process adopted by Caledonian was set out as "*Referral - Visit - Analysis – Visit*". So it was clear Caledonian was meeting consumers in person.

Furthermore, the Certificate of Non-Solicitation signed by Caledonian for FPI - to which Options was privy - said in each instance (as far as I'm aware) "*The advice was given in Jordan*".

Caledonian therefore gave what appears to be conflicting information. But Options ought to have been aware, from what was said by Caledonian, that it was possible Caledonian might be dealing with a UK resident consumer in the UK, or dealing with a consumer in any one of a number of different countries, all of which might have different financial services regulatory regimes (or no such regime).

It is fair to say the picture was far from clear - and Options should have been aware it was unlikely all of the information provided by Caledonian could be correct. It is not, for example, clear how the advice in every instance could have been given in Jordan when, by Caledonian's own account, it had a number of offices around the world (none of which were in Jordan), was dealing with consumers who " were generally still resident in UK" or "living abroad in various countries" and said elsewhere that it was carrying out business in various jurisdictions.

Options did not however check any of this at the outset. It was therefore in no position to know what, if any, regulatory regimes applied, and whether Caledonian required any authorisations to conduct the activities it did. Caledonian itself appears to have suggested it needed "licenses" in some jurisdictions, but I have seen no evidence of it having given details of any such "licenses".

I think Options should have been particularly concerned - given that, as mentioned, Caledonian told Options the consumers it dealt with " were generally still resident in UK" - about whether advice was being given (or any other regulated activity carried on) in the UK as Caledonian was not authorised by the FSA nor, later, the FCA.

Despite this, I have seen no evidence to show Options identified this risk until March 2013 when, as set out above, it was noted:

"*No details of how advice given. No regulatory bodies I permissions seen. Although suggested on email that advice given in Jordan?*"

"*Advice possibly given in Jordan, although not sure if true for UK based clients*".

Then no further action appears to have been taken until 26 April 2013 when, in a further internal email exchange at Options, the following questions were asked, and answers were received on 30 April 2013 (the below, in bold, are the first set of answers provided on this date):

Do they have a business address in the UK? ***They confirm that they do not have a permanent place of business in the UK, however they have a business address for correspondence and David Clark is based in the UK.***

Where do they meet with clients, i.e. in the UK? ***Unknown.***

What is Caledonian's regulatory status, i.e. are they regulated in their home jurisdiction? ***David Clark - The Chartered Insurance Institute - [ID Number provided]. David Clark certifies all ID and signs the investment Application Form.***

Are they regulated to provide advice in their home jurisdiction? ***Unknown***

They have confirmed that they provide advice in Jordan. How does this work? Do they have a place of business in Jordan? Do they need to be regulated in Jordan to provide advice? ***Unknown - Caledonian provide a Non Solicitation Letter which is sent to Friends Provident with the investment App. A copy of a Non Solicitation Letter is attached***

Despite this continuing uncertainty, I've seen no evidence Options took any further action until May 2013, when it challenged Caledonian on this point (amongst others):

"*Can you provide your organisational structure and the jurisdiction in which each is registered and the regulation/regulator that each company operates within. If you are relying on any exemptions please state which exemptions and the reasons you believe you can operate within those exemptions*

What offices do you have and where, do the jurisdictions in which you have offices have a regulatory regime, if so can you provide details of the regulators in those jurisdictions.

Do you meet all your clients in Jordan, if not why do your Non Solicitation forms signed by yourself confirm the advice was given in Jordan

On the Non Solicitation letters you note that Caledonian does not have a permanent place of business in the UK. However, you request correspondence to be sent to The Pensions Service Centre, Peterborough. Please can you clarify Caledonian's presence in the UK and the nature of the office in Peterborough."

Given what I say above, acting fairly and reasonably, Options should have made these enquiries at the outset. And as set out in the background, these enquiries (along with the other points of query put to Caledonian and then discussed with it) led to Options quickly concluding it should not accept further applications from Caledonian unless they came through a UK IFA with permissions to give pension transfer advice - a restriction which it seems had the effect of no further business being introduced by Caledonian. I think it fair to say that Options would have reached the same conclusion had it taken this action at the outset of its relationship with Caledonian. And it certainly should have done so, to act fairly and reasonably to meet its regulatory obligations and standards of good practice.

In this case I am satisfied Caledonian carried out the activities in the UK. Mr D was a UK resident and says he was visited at his parents' house in the UK. Had Options sought clarification from Mr D, which would have been a reasonable course of action in the circumstances, I think Mr D would likely have confirmed that was the case. And, for all the reasons I have mentioned, Options should have concluded it was possible Caledonian was carrying out activities in the UK long before it received Mr D's application, in any event.

Regulated activities in the UK

Under Article 53 of the RAO (as set out in the version that was current at the relevant time) the following are regulated activities:

Advising a person is a specified kind of activity if the advice is-

(a)given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and

(b)advice on the merits of his doing any of the following (whether as principal or agent)-

(i)buying, selling, subscribing for or underwriting a particular investment which is a security or a relevant investment, or

(ii)exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

Under Article 25 of the RAO (as set out in the version that was current at the relevant time)

the following are regulated activities:

(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is-

(a) a security,

(b) a relevant investment, or

(c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article, is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity

There is an exclusion under Article 26 of "*arrangements which do not or would not bring about the transaction to which the arrangements relate*".

Rights under a personal pension scheme are a security.

The investments made within the FPI bond - which Caledonian itself described as "regulated" - were also a security or relevant investments.

Finally, the FPI bond was a contract of insurance, and rights under a contract of insurance were also a relevant investment.

As set out above, I am satisfied Caledonian gave advice and made arrangements. The activities it undertook clearly meet the above definitions. The arrangements it made brought about the transactions (the transfer out of Mr D's existing pension into the SIPP, the opening of the FPI bond within the SIPP and the making of investments within that bond). The arrangements had that direct effect. And advice was given on the merits of transferring out of Mr D's existing scheme to the SIPP in order to invest in the FPI bond - Mr D was told this was a good idea as he'd make more money through doing this than he would by keeping his existing scheme.

So I am satisfied the activities undertaken by Caledonian in the UK in this case were regulated activities. Caledonian therefore carried out regulated activities without authorisation.

Pausing here for a moment, as I note above when summarising my findings, these points about the activities Caledonian was undertaking, where it was undertaking them, and its authorisation to undertake them, are ones Options should have considered individually and cumulatively. And, to be clear, I think the fact Caledonian was carrying out regulated activities without authorisation was enough reason, in itself, for Options to have concluded, that it should not accept applications from Caledonian.

This was a significant "red flag". The fact Caledonian was carrying out regulated activities without authorisation calls into question its integrity, motivation and competency. I think the only fair and reasonable conclusion Options could reach in these circumstances was that it should not accept business from Caledonian. And I think this alone is sufficient reason to conclude it is fair and reasonable to uphold Mr D's complaint. But I have nonetheless gone on to consider the further risks of consumer detriment I have summarised above.

Caledonian's expertise

Caledonian's proposed business model involved former members of the armed forces who, it said, worked in security related jobs in dangerous areas. The business model was not one involving, say, former financial advisers or other finance professionals.

There was therefore no reason to think that the typical client Caledonian was proposing to introduce to Options had a good level of understanding of pensions or was in a position to work out for themselves if a pension transfer was in their best interests. They would be reliant on Caledonian's advice.

The introductions involved transfers out of a defined benefit pension scheme into a UK SIPP for investment in several investments within an FPI bond. Transfers out of defined benefit (final salary) pensions are usually not in the customers' best interests, are complex and present a variety of consequences and matters which the ordinary individual would be hard pressed to understand without professional financial advice. Those giving such advice in the UK are required by the FCA to pass specialist exams, reflecting the risks and complexities involved. Options, as a provider of SIPPs, would or ought to have been aware of this.

Not only did Caledonian's advisors not have the qualifications required by the FCA (or FSA as it then was) to give advice on pension transfers, there is no evidence they had any relevant qualifications. The only qualification of any kind which is mentioned is that Mr Clark of Caledonian is a qualified accountant.

I have seen no evidence to show Options noted this obvious risk until March 2013 when it reviewed its relationship with Caledonian and "*Professional Qualification*" was assessed as "*high risk*". The reason for this assessment was "*No qualifications documented other than meeting note from March 2012 where David Clark stated he was a qualified accountant and member of Chartered Institute of Accountants*."

And, despite this "*high risk*" flag, I have seen no evidence Options took any action until 26 April 2013 when it was asked "*How did we establish Caledonian's knowledge of SIPPs and UK pension rules?*". The answer to this was initially recorded on 30 April as "Unknown". The later answer on 30 April was "*By meeting with them twice and by running a workshop for them output from which is attached".* But I do not think this is enough to show Options had sufficiently addressed this risk – it does nothing to show Caledonian's staff had adequate professional qualifications.

Again, this (along with the other points of query raised at the time) was a point which led to Options quickly concluding it should not accept further applications from Caledonian unless they came through a UK IFA with permissions to give pension transfer advice - a restriction which had the effect of no further business being introduced by Caledonian. And I think it fair to say Options would have reached the same conclusion had it taken this action at the outset of its relationship with Caledonian. And it certainly should have done so to meet its regulatory obligations and standards of good practice.

The transfer process

As mentioned above, a defined benefit transfer is a complex transaction. It also involves many risks, and potentially the loss of significant guaranteed benefits. For this reason, advice on such transactions is tightly regulated in the UK and there are standards of good practice that those giving the advice are expected to follow. This means several steps need to be taken as part of the advice process and documentation such as fact-finds, suitability reports, transfer analysis reports (TVAS), and illustrations generally feature in the advice process. The purpose is to ensure any advice given takes into account all relevant factors, is suitable, and the recipient of the advice is in a fully informed position, where they understand the benefits they are giving up and the risks associated with the transfer.

I have seen no evidence to show Caledonian followed such a process. In my opinion it would have been fair and reasonable for Options to have identified this as a clear risk of consumer detriment - particularly given that Caledonian's starting point appears to have been that the consumers it dealt with would be transferring out of the defined benefit scheme (i.e. it seems to have taken the view a transfer was suitable for all).

Had Options taken steps to ascertain if a reasonable process was in place it would have become aware no such process was in place, and consumers were not therefore fully informed before agreeing to make the transfer to the SIPP and the associated FPI bond investments.

Options' reference to "Illustrations" in the list of questions in the 26 April 2013 and the initial answers to those questions appears to be an acknowledgement of this risk:

"Based on our contact with Caledonian and reviewing the illustrations they provide to clients, do we have concerns that Caledonian is providing poor advice/ information? ***Yes due to illustrations****"*

Again, this (along with the other points of query raised at the time) appears to be a point which led to Options quickly concluding it should not accept further applications from Caledonian unless they came through a UK IFA with permissions to give pension transfer advice - a restriction which had the effect of no further business being introduced by Caledonian. And I think it fair to say Options would have reached the same conclusion had it taken this action at the outset of its relationship with Caledonian. And it certainly should have done so, on a fair and reasonable basis to meet its regulatory obligations and standards of good practice.

Volume of business

At the outset of the relationship between Options and Caledonian, Options was told that Caledonian would be introducing about 50 applications a month (and I note a similar volume was introduced, once the relationship began).

I think, on a fair and reasonable basis, Options should have been concerned that Caledonian intended to (and did) make such a high volume of introductions, relating only to occupational pension schemes. In my view this was a further reason for Options to conclude there was a significant risk of consumer detriment - particularly when considered alongside the other points I have set out here.

Firstly, it is not clear how Caledonian would be, or was, bringing about such a high volume of applications without giving advice. It was simply implausible it could bring about this amount of applications without influencing consumers' actions through a positive recommendation.

Options also ought to have considered Caledonian's competence to deal with this volume of transfers - there is no evidence to show it had the significant resources this would require. Further, Options should have been aware of the very low likelihood the transfers would all be suitable. At the outset of Options' relationship with Caledonian (and the time of Mr D's application) COBS 19.1.6 G said:

"*When advising a retail client who is, or 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 (my emphasis). 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 interest*."

I accept this aims to define the expectation of a regulated financial adviser when determining suitability of a pension transfer but I'd expect Options, as a pensions provider, to have been aware of this and taken account of it.

Finally, Options had cause to question the motivations of Caledonian, if it were bringing about such a high volume of applications. There was a clear risk that Caledonian was putting its own interests above those of consumers, including Mr D.

Commission

I also think the level of commission that was being paid to Caledonian should have given Options cause for concern.

It appears Caledonian was typically taking around 7% of the transfer amount in commission, and Options was told this was the case at the outset of its relationship. As noted earlier in my findings, there is no evidence to show Caledonian carried out any of the usual work associated with a defined benefit transfer that would justify such a fee. Nor have I seen any other evidence to show there was any justification for such a high level of commission in the circumstances. I think this level of commission ought to have been another cause for Options to be concerned that Caledonian was putting its own interests ahead of the interests of consumers, including Mr D. And of course it was further reason to consider Caledonian might be giving advice, as commission at this level would have been very likely to motivate it to encourage consumers to proceed, through a positive recommendation.

Overall, when considered alongside the high volumes of near identical introductions of business being made by Caledonian I think this level of commission raises questions about the motives and role of Caledonian.

Caledonian's Accounts

I note that Options made repeated requests for Caledonian's accounts. It sent several emails to Caledonian between March and August 2012. Options also explained in its email of 23 March 2012 that in order to comply with its own compliance procedures this was needed.

Nevertheless, on 27 April 2012 Options started accepting introductions from Caledonian having not received the accounts - seemingly in breach of its own procedures. Acting fairly and reasonably, Options should have met its own standards and should have checked Caledonian's accounts at the outset before accepting any business from it. And, based on Caledonian's conduct, it seems very unlikely accounts would ever have been forthcoming.

Caledonian's reluctance to provide basic information should also have been a further factor which ought to have led Options to question whether it should enter into or continue a relationship with Caledonian. This again calls into question the competence and motivations of Caledonian and it also calls into question the ability of Caledonian to organise its affairs. It also meant Options was missing information which might be critical to the decision as to whether to enter into business with Caledonian.

In conclusion

Taking all of the above into consideration - individually and cumulatively - I think in the circumstances it is fair and reasonable for me to conclude that Options ought reasonably to have concluded, had it complied with its regulatory obligations which required it to conduct sufficient due diligence on Caledonian and draw fair and reasonable conclusions from what it discovered, that it should not accept business from Caledonian, including Mr D's application. I therefore conclude that it is fair and reasonable in the circumstances to say that Options

should not have accepted Mr D's application from Caledonian.

Did Options act fairly and reasonably in proceeding with Mr D's instructions?

In my view, for the reasons given, Options simply should have refused to accept Mr D's application. So, things should not have got beyond that. However, for completeness, I have considered whether it was fair and reasonable for Options to proceed with Mr D's application.

I acknowledge Mr D was asked to sign an Options member's declaration on 21 August 2012. I note this document does give warnings about the loss of benefits that would result in the transfer to the SIPP. And the indemnities sought to confirm that Mr D would not hold Options responsible for any liability resulting from the investments. However, I don't think this document demonstrates Options acted fairly and reasonably by proceeding with Mr D's instructions.

Asking Mr D to sign a declaration absolving Options of all its responsibilities when it ought to have known that Mr D's dealings with Caledonian were putting him at significant risk was not the fair and reasonable thing to do. I also note that the declaration was based on Mr D having "*received full and appropriate advice from Caledonian International*" where, for the reasons I have given, Options ought to have been aware Caledonian did not have the regulatory authorisation or competency to give such advice and there were questions about its motivations and integrity.

Asking Mr D to sign declarations was not an effective way for Options to meet its regulatory obligations, given the concerns Options ought to have identified about his introduction. So, it was not fair and reasonable to proceed, on the basis of these. I make this point only for completeness - the primary point is Mr D should simply not have been able to proceed, as his application should simply not have been accepted.

Furthermore, as set out above (and I detail below), I am satisfied s27 FSMA offers a further and alternative basis on which it would be fair and reasonable to conclude Mr D's complaint should be upheld.

s27 and s28 FSMA

I have set out the key sections of s27 and s28 above and have considered them carefully, in full. In my view I need to apply a four-stage test to determine whether s27 applies and whether a court would exercise its discretion under s28, as follows:

1. Whether an unauthorised third-party was involved;

2. whether there is evidence that the third-party acted in breach of the General Prohibition in relation to the particular transaction and, if so;

3. whether the customer entered into an agreement with an authorised firm in consequence of something said or done by the unauthorised third-party in the course of its actions that contravened the General Prohibition; and

4. whether it is just and equitable for the agreement between the customer and the authorised firm to be enforced in any event.

Test 1 is clearly satisfied here - Caledonian was an unauthorised third party. Test 2 is also satisfied - for the reasons I have set out above, I am satisfied Caledonian carried out activities in breach of the General Prohibition - and any one regulated activity is sufficient for

these purposes so this test would be met if Caledonian had *only* undertaken arranging (which, for the reasons I have set out, I do not think is the case). Test 3 is satisfied too - the SIPP was opened in consequence of the advice given, and arrangements made, by Caledonian. That brings me to the final test, 4.

Having carefully considered this, I am satisfied a court would not conclude it is just and equitable for the agreement between Mr D and Options to be enforced in any event. I think very similar reasons to those mentioned by the Court of Appeal in the Adams case apply here:

- A key aim of FSMA is consumer protection. It proceeds on the basis that, while consumers can to an extent be expected to bear responsibility for their own decisions, there is a need for regulation, among other things to safeguard consumers from their own folly.

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

- For all the reasons set out above, Options should have concluded Caledonian was giving advice or have suspected it was (and it seems it did belatedly draw this conclusion); and giving advice to consumers who were not necessarily financially sophisticated.

- As set out above, Options was aware, or ought to have been aware that:

    - Caledonian's staff did not have the qualifications - and therefore expertise - to give advice on defined benefit pension transfers.

    - There was no evidence to show a proper advice process had been followed and consumers such as Mr D were therefore unable to make a fully informed decision about the transfer to the SIPP and investment.

    - The high volume of business being proposed/brought about by Caledonian.

    - The high level of commission Caledonian was taking, which may not have been disclosed.

    - That Caledonian had failed to provide its company accounts, despite repeated requests for copies of them by Options.

- The investment did not proceed until long after all these things were known to Options and so it was open to it to decline the investment, or at least explore the position with the consumer.

I have therefore gone on to consider the question of fair compensation.

Fair compensation

I note Options says, in its response to the investigator's view, it is evident that Mr D wished to transfer his pension, whether through Options or another provider and would therefore have suffered the same loss as he did even if it had rejected his application.

I have seen no evidence to show that Mr D would have proceeded even if Options had rejected his application. He was contacted by Caledonian - which was consistent with its business model of contacting ex-servicemen and encouraging them to consider transferring out of their pensions - and I've seen nothing to suggest he was looking to make a transfer prior to that contact.

I have not, in any event, seen any evidence that any other SIPP operator dealt with Caledonian. And any operator acting fairly and reasonably should have reached the conclusion it should not deal with Caledonian. I do not think it would be fair to say Mr D should not be compensated based on speculation that another SIPP operator might have made the same mistakes as Options.

For similar reasons, I am not persuaded Mr D should not be compensated by Options, or his compensation should be reduced, because I have not made the finding that the FPI bond investment, in itself, was not something Options should have accepted. Or because the benefits from Mr D's existing pension were lost once the transfer request was made. If Options had acted fairly and reasonably to meet its regulatory obligations and good industry practice, the application would not have proceeded at all. So no transfer request or FPI bond investment would have been made.

So I am satisfied that Options' failure to comply with its regulatory obligations and industry best practice at the relevant time have led to Mr D suffering a significant loss to his pension. And my aim is therefore to return Mr D to the pension position he would now be in but for Options' failings.

When considering this I have taken into account the Court of Appeal's supplementary judgment in Adams ([2021] EWCA Civ 1188), insofar as that judgment deals with restitution/compensation.

In light of my above findings, in my view Options should calculate fair compensation by comparing the current position to the position Mr D would be in if he had not transferred from his existing pension. In summary, Options should:

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

2. Take ownership of any investments which can't be surrendered, if possible.

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

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

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

Calculate the loss Mr D has suffered as a result of making the transfer ("the loss calculation")

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice.

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable

defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

In my provisional decision I asked Mr D whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect.

The CMC did not make a choice, so as set out previously I have assumed in this case Mr D does not want to wait for the new guidance to come into effect.

I am satisfied that a loss calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr D.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Options to carry out a calculation in line with the updated rules and/or guidance in any event.

Take ownership of any investments held within the SIPP which cannot be surrendered

In order for the SIPP to be closed and further SIPP fees to be prevented, the investment(s) need(s) to be removed from the SIPP. To do this, Options should calculate an amount it is willing to accept as a commercial value for any investments that cannot be surrendered and pay that sum into the SIPP and take ownership of the relevant investments. This amount should be taken into account for the loss calculation.

If Options is unwilling or unable to purchase the investment(s) the value of them should be assumed to be nil for the purposes of the loss calculation if the investments are not readily realisable (or for any portion of the investments which is not readily realisable).

I appreciate such investments may have a realisable value in the future. So, for any investments assumed to be nil value Options may ask Mr D to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from those investment(s) in the future. That undertaking should allow for the effect of any tax and charges on the amount Mr D may receive from the investment(s) and any eventual sums he would be able to access. Options should meet any costs in drawing up the undertaking.

If Options does not take ownership of the investment(s), and it/they continue to be held in Mr D's SIPP, there will be ongoing fees in relation to the administration of that SIPP. Mr D would not be responsible for those fees if Options had not accepted the transfer of his personal pension into the SIPP. So, I think it is fair and reasonable for Options to waive any SIPP fees until such a time as Mr D can dispose of the investment(s) and close the SIPP.

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

Since the loss Mr D has suffered is within his pension it is right that I try to restore the value of his pension provision if that is possible. So, if possible, the compensation for the loss

should be paid into his SIPP. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance. Payment into the pension should allow for the effect of charges and any available tax relief. This may mean the compensation should be increased to cover the charges and reduced to notionally allow for the income tax relief Mr D could claim. The notional allowance should be calculated using Mr D's marginal rate of tax.

On the other hand, Options may not be able to pay the compensation into the SIPP. If so compensation for the loss should be paid to Mr D direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income.

Therefore, the compensation for the loss paid to Mr D should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr D's marginal rate of tax in retirement. For example, if Mr D is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr D would have been able to take a tax-free lump sum, the notional allowance should be applied to 75% of the total amount.

Pay Mr D £500 for the trouble and upset caused

Mr D transferred his pension away from a valuable defined benefits pension to a SIPP and had to suffer the loss of those benefits.

I think it's fair to say this would have caused Mr D some trouble and upset. So, I consider that a payment of £500 is appropriate to compensate for that upset.

The compensation resulting from the loss assessment must where possible be paid to Mr D within 90 days of the date Options receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Options to pay Mr D this compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Reassignment of rights

If Options believes other parties to be wholly or partly responsible for the loss, it should be free to pursue those other parties. So compensation payable to Mr D should be contingent on the assignment by him to Options of any rights of action he may have against other parties in relation to his transfer to the SIPP and the investments. It is likely in this case that compensation will be in excess of our money award limit of £160,000. If Options does not pay compensation above that limit the assignment should account for that. So the assignment should be given in terms that ensure any amount recovered by Options up to the balance due to Mr D is paid to Mr D. Options should only benefit from the assignment once Mr D has been fully compensated for his loss.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000 (to be clear, this is the applicable limit in this case, not the £150,000 mentioned in my provisional decision, as Mr D’s complaint was referred to us after

1 April 2019 and concerns an act or omission which took place before that date), plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Options UK Personal Pensions LLP 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 £160,000 plus any interest on that amount as set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Options UK Personal Pensions LLP pays Mr D the balance plus any interest on the balance as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 January 2023.

John Pattinson
Ombudsman