DRN-3871087

The complaint

Mrs G complains that Punter Southall SIPP Limited, which previously traded as 'PSFM SIPP' (PSFM), failed to carry out due diligence checks when accepting her application for a Self-Invested Personal Pension (SIPP). She says it didn't carry out appropriate checks on the adviser who recommended the transaction, or on the investments to be held in the SIPP.

Mrs G is being represented by a Claims Management Company (CMC). Any references to Mrs G will include information provided by the CMC.

What happened

The parties

PSFM

PSFM is a regulated SIPP provider and administrator. It's authorised in relation to SIPPs, to arrange (bring about) deals in investments, dealing in investments as principal, establish, operate or wind-up a pension scheme and make arrangements with a view to transactions in investments. It is not, and was not, at the time of events in this complaint authorised to give investment advice.

The adviser

Mrs G says she was originally introduced to the idea of transferring her personal pension, which she had with Aegon, by a man I will refer to as 'Mr H'. Mr H was registered with the Financial Services Authority (FSA or the 'regulator'), now the Financial Conduct Authority (FCA or the 'regulator'), as an approved person. An 'approved person' is a person the regulator has approved to do one or more activities which are called 'controlled functions', for an authorised firm.

The FCA register shows Mr H was registered to perform the controlled function CF21 Investment Adviser from 2005 to October 2007 and CF30 Customer from November 2007 to 22 July 2010. The register also shows that Mr H was approved to perform those functions at Openwork Limited which is an authorised firm - authorised, amongst other things, to advise on pensions and investments.

According to the FCA register Mr H was employed by a business called Henderson Stone & Co Ltd between 2006 and 22 July 2010. That business was registered with the FCA. And the FCA register shows it was recorded as an appointed representative of Openwork from 2005 to 16 August 2010. Henderson Stone was not itself authorised by the FCA, so it did not have any authority from the FCA as such.

In brief, only persons (which includes companies) authorised by the regulator, may give regulated investment advice. This is referred to as the 'General Prohibition'. An exception to this general rule is that an authorised person may appoint representatives to act for it and the authorised person must take responsibility for the activities it authorises the representative to carry out. In this relationship, the authorised person is called the 'principal'.

As I understand it, Openwork was the principal in this case and Mr H worked at Henderson Stone. And the latter business was an independent contractor pursuant to a franchise contract with Openwork. Openwork's franchise contract authorised an approved adviser at a franchisee firm such as Mr H, to act as an appointed representative of Openwork. So, it follows that Mr H was authorised by Openwork to carry on the activities it (Openwork) authorised him to carry out.

The investment

The Resort Group

The Resort Group (TRG) was founded in 2007. TRG owns a series of resorts in Cape Verde. TRG sold hotel rooms to UK consumers, either as whole entities or as fractional shares ownership in a company. TRG was not regulated by the FSA.

Mrs G's case involves a fractional investment into property at TRG's Dunas Beach Resort (the 'Dunas Beach investment'). The total agreed purchase price as shown in a 'reservation form' dated 24 November 2010 was 139,950 EUR. Mrs G agreed to pay 65% of the purchase price by way of deposit. She was then required to pay another 30% on completion - 5% of the purchase price was recorded as 'written off'.

On 15 December 2010, a transfer totalling £82,416.25 (sterling) was transferred from Aegon into Mrs G's PSFM SIPP. And on the same day, £74,710.55 was paid for the Dunas Beach investment. This meant Mrs G's pension funds bought her membership of a limited company with the company buying promissory contracts to buy a suite at the Dunas Beach Resort. Mr H's fees of £1,236.24 were paid on 16 December 2010 from the SIPP account.

Between 13 and 15 February 2013, Mrs G paid in a total of £22,250. And on 11 March 2013, she paid TRG £34,987.50. The SIPP statement recorded this as 'completion monies'. It should be noted that the SIPP statements show Mrs G reclaimed tax totalling £5,562.50 on 22 April 2013.

Since the purchase, there have been difficulties with the Dunas Beach Resort and legal completion has not taken place for some of the properties. So, at least some of the investments have turned out to be dormant companies with no assets. Mrs G paid what she was contractually obliged to do, so it's likely she completed the purchase of the Dunas Beach investment. However, it is unclear whether legal completion did, in fact, take place. In any event, her investment is now illiquid and no value can be realised for Mrs G's SIPP.

The relationship between Mr H and PSFM

PSFM has explained things as follows:

- Mr H (the adviser) used to visit the PSFM offices personally and drop off documentation which he had completed with the client. Mr H would provide copies of any investment literature directly to the client, so PSFM does not have any copies itself.

- It had an Introducer Agreement with Mr H, but it cannot now locate it. But said although it cannot find the actual agreement completed in 2009, it had a standard Introduction Agreement with financial advisers. And it provided a copy. The copy refers to the regulator as the FCA but it was still the FSA in 2009. So, the version that has been provided cannot be the exact correct version. However, I can say, on balance, it is the same in all material respects.

- The standard form agreement (in which PSFM is referred to as the 'Company') included the following:

    - *"The Introducer is either a Solicitor, Accountant, or is authorised and regulated by the Financial Conduct Authority, with registration number [ ].*
    - *"The Company wishes to appoint the Introducer to introduce Individuals to it who wish to enter into a Self-Invested Personal Pension operated by the Company."*
    - *"The Introducer wishes to accept the appointment and has agreed to introduce individuals to the Company to enable those individuals to enter into a PSFM SIPP."*
    - *"The Introducer accepts responsibility for the suitability of any advice provided to the Individual in respect of any Investments comprised within the PSFM SIPP in accordance with the requirements of the FCA's Handbook of rules and guidance."*
    - *"The Introducer accepts that the Company does not provide any activities that could be construed as either advising on investments…or managing investments…"*
    - *The Introducer warrants and undertakes to the Company that:*

        - *"It is, and for the duration of this Agreement will be, authorised and regulated by the FCA…"*
        - *"In respect of FCA authorised and regulated firms it has the appropriate FSMA* [the Financial Services and Markets Act] *Part 4A permissions to provide advice to, or manage a discretionary investment portfolio on behalf of, the Individuals…"*
        - *"It has full capacity and authority to perform its duties under the Introducer Agreement."*

- As noted above, PSFM paid Mr H - rather than Henderson Stone or Openwork - a fee of £1,236.24, which is referred to as "IFA Fees" followed by Mr H's name on the SIPP account statement.

- PSFM still had Mr H recorded as Mrs G's adviser on its file up until August 2012. At this point, it sent Mrs G her annual SIPP statement and Mr H was recorded as her adviser as at 29 May 2012. At the next review date on 9 August 2013, Mr H had been removed as Mrs G's adviser.

What happened – the events that led to the complaint

In terms of how she came into contact with Mr H, Mrs G explained he (Mr H) had previously been her and her husband's insurance consultant who had recently become a financial adviser.

In or around 2008, Mrs G was thinking about the possibilities of taking early retirement and started looking into how best to manage her finances in order to do this. Mrs G says that Mr H discussed with her transferring her pension to achieve a better return. She said he had a comprehensive idea of her pensions, investments, and net worth.

Mrs G said Mr H had introduced the idea of the Dunas Beach investment. She said Mr H had *"sold"* the Dunas Beach investment as a *"…low risk and regular income solution."* She also noted that: *"We were told we would have a regular income during the construction phase. This did happen as you can see from the small sample of statements sent – averaging around £370 per month. When the resort opened we were shocked to discover that after*

various expenses, taxes and Resort Group Fees that was reduced to an average of £800 per quarter." It should be noted that Mrs G refers to 'we' or 'us' meaning herself and her husband, but this decision only concerns Mrs G.

Mr H provided Mrs G with all the forms to be signed with regard to the SIPP application and a supplementary deed for the SIPP (which Mr H signed as a witness). He then took all the paperwork away and dealt with the implementation

The SIPP was established on 24 November 2010. On 29 November 2010, Mrs G signed a supplemental deed relating to the SIPP. Her signature was again witnessed by Mr H. He (Mr H) gave his occupation as *"Sales Advisor"* on this document. Neither Henderson Stone nor Openwork is referred to on any of the signed documents.

As noted above, Mrs G paid the first payment for the Dunas Beach investment on 15 December 2010 totalling £74,710.55 and Mr H's fees were paid the next day.

From 11 January 2011, Mrs G received 'Property Income' into the SIPP account. The first payment was £551.67. Thereafter, monthly payments of £363.87 were received into Mrs G's SIPP account recorded as 'Property Income' or 'Rental Income'. However, the last monthly payment was paid on 15 September 2014. After this point, property income payments continued but for different amounts and at varying intervals. The last of the property income payments' was received in March 2019.

On 28 November 2012, a TRG representative asked Mrs G if she would be able to have the completion monies available by the end of 2012. He said there was a discount rate and exchange incentive for early completion and that the total due if paid before 31 December 2012, would be £30,736. However, Mrs G did not pay the completion balance until 11 March 2013 and at this point, she was required to pay £34,987.50 to TRG for the Dunas Beach investment. As noted above, Mrs G paid in a further £22,500 into her SIPP in February 2013, in order to have sufficient funds to complete the £34,987.50 payment.

Mrs G's pension payments

On 21 September 2015, PSFM confirmed Mrs G was paid a Tax Free Cash payment (TFC) of £6,370.97 and this was shown in her SIPP statements as being paid on that day. PSFM's letter noted that following this payment, her SIPP values were split into two crystallised funds of £62,5709.23 and £19,112.91 respectively.

In Mrs G's application to drawdown her TFC dated 20 September 2015, she confirmed she had not taken financial advice from anyone about this but had consulted Pension Wise. Mrs G noted she was already in receipt of a pension of just over £20,000 and she considered the SIPP was 'supplementary' to that pension.

In January 2018, Mrs G contacted PSFM requesting a pension withdrawal of £11,000 gross from her SIPP. And on 29 January 2018, PSFM confirmed this would be paid. Mrs G's SIPP statements showed that on 16 February 2018, she received a net pension payment of £7,542.34 after paying income tax of £3,457.66.

Complaint against PSFM

In June 2020, Mrs G complained to PSFM via the CMC. In brief, she said PSFM had failed to conduct sufficient due diligence on her proposed investment into TRG Dunas Beach Resort and it (PSFM) had accepted business from an unregulated introducer. That led her to conclude PSFM should not have accepted the introduction and she holds it responsible for her subsequent losses.

PSFM rejected Mrs G's complaint and, amongst other things, said:

- It is aware of the regulator's expectations on it as a SIPP provider. And the consistent theme from the FCA is that firms acting purely as SIPP operators are not responsible for the SIPP advice or the investment advice given. So, PSFM was under no obligation to check the suitability of the investment. But, it recognises, SIPP operators cannot absolve themselves from the responsibility of treating customers fairly, therefore, SIPP operators are responsible for the quality of business it administers.

- The FCA/ FSA expects SIPP operators to take reasonable steps to demonstrate adequate due diligence on the investments held by their members, to ensure the proposed underlying investments held within the SIPP are appropriate for pension and is a genuine asset that is not part of a fraud or scam. PSFM considers it met the expectations of the regulator in terms of due diligence checks to prevent holdings of non-permitted taxable investments and its checks showed the intended investment was genuine and not a scam.

- PSFM records shows that due diligence was completed on the fractional share purchase in Mrs G's Dunas Beach investment and these checks confirmed its authenticity as a genuine investment. PSFM pointed to several documents including the Building Licence and plot registration via the Registry and Notary Office. It also highlighted it checked the Promissory Contract for the purchase and a sale. And it checked Companies House to ensure the existence of the Dunas Beach apartment.

- The Dunas Beach investment was a HMRC permitted investment and therefore, eligible to be held in a SIPP. The Dunas Beach investment is not an Unregulated Collective Investment Scheme – it is a fractional share in physical commercial property which still exists.

- In 2010 Mr H was already known to PSFM and the initial due diligence to review his credentials was completed in 2009. In 2009 the initial checks established via the FSA public register showed he (Mr H) was employed by Henderson Stone & Co Limited which was an appointed representative of Openwork Limited. The initial check also showed Mr H was an FSA approved person (CF30) registered with Openwork. And that Openwork were authorised and regulated by the FSA and had appropriate permissions to give advice on investments and pension transfers.

- In its periodic review that it carried out in 2010, PSFM said it had established no change in Mr H's employment details. But at the time of Mrs G's advice PSFM cannot find evidence the due diligence checks were revisited to identify that with effect from 22 July 2010, Mr H's appointed representative status had changed. In any event, PSFM said it could find no prescribed duty that this due diligence needed to be conducted for every introduction. However, it said prior to Mrs G's application, Mr H's initial checks and subsequent periodic checks in 2010 didn't present any concerns regarding his regulatory status. Further, Mr H was not identified by the FSA warning notices and/ or was not on any FSA warning lists.

- Mr H was responsible for Mrs G investing in the Dunas Beach investment. PSFM offered no investment advice nor did it sell or promote the investment to her. It was Mr H who influenced Mrs G's view on the appropriate investment and pension transfer. So, he was the cause of the loss to Mrs G.

Our investigation

Mrs G referred her complaint to our service. Our investigator recommended upholding the complaint. Amongst other things, he said:

- He agreed that PSFM was not responsible for the suitability of the investment itself.

- That said, the investigator considered PSFM should have known an appointed representative such as Mr H, was only authorised if they acted within the authority given by their principal. And in relation to a restricted advice firm such as Openwork, PSFM should have known the authority given by the principal would be restricted and it should have understood that advising on its SIPP would not be something an Openwork appointed representative was authorised by it (Openwork) to do. Our investigator concluded PSFM should've understood that if Mr H did not have the authority of his principal to advise on its SIPPs, there was a real risk he would be breaching the General Prohibition if he (Mr H) was introducing SIPP business to PSFM and taking responsibility for its suitability.

- Our investigator considered these points should've been matters of serious concern for PSFM. He thought PSFM should've ensured it only accepted business from Mr H that was authorised by Openwork – or in other words, it should have entered into the introducer agreement with Openwork rather than Mr H, or no agreement at all.

- Further, given Mr H was no longer working for Openwork at the time of the advice to Mrs G, our investigator considered that if PSFM had checked with Openwork, it would've discovered Mr H was not authorised to do business with it (PSFM).

- In terms of whether PSFM caused loss to Mrs G, in our investigator's view there was nothing to indicate she (Mrs G) would have transferred from her previous pension if she had not been encouraged to do so by Mr H. And Mr H only acted in that way because PSFM agreed to accept the business he referred to it. So, our investigator said PSFM should compensate Mrs G for the losses she has suffered and went on to explain how he thought PSFM should do which included £500 for the distress and inconvenience it caused.

PSFM disagreed with the investigator's view. In addition to the points it had already made which have been set out above, it said:

- It did not think the investigator's 'criticisms' were well founded and it was not responsible for the loss of Mrs G's pension funds. PSFM said in line with good industry practice once the initial checks were conducted in terms of Mr H, it did check the FSA Register 'periodically'. And its initial checks were also in line with good industry practice.

- It fully understood the nature of the principal/ agent relationship. And that as the investigator correctly identified, Mr H appeared in the FSA Register as an appointed representative of Openwork until 22 July 2010. Thereafter, and on 24 November 2010 (the date of Mrs G's SIPP application), Mr H could not lawfully provide regulated investment advice and Openwork was no longer responsible for the acts/ omissions of Mr H in scope of their previous agreement. PSFM said given this, Mr H had breached the General Prohibition. And this wasn't something it was aware of at the time.

- Openwork refusing to accept liability for Mrs G's loss is *"…entirely predictable on both legal and commercial grounds."* PSFM noted Openwork could not be liable in any event as Mr H was no longer its appointed representative at the time of Mrs G's SIPP application. Therefore, PSFM says the person who should be liable is Mr H as he acted in breach of the General Prohibition.

- Whilst it was true that Mr H no longer appeared in the FSA Register as able to lawfully conduct regulated financial services activities, treating an introduction for the purposes of opening a SIPP in isolation, registration is not even necessary. So, opening the SIPP, in itself, means there are no grounds for finding PSFM did anything wrong.

- It appears the opening of the account was treated as part of a *"braided stream of advice."* But as a SIPP operator, as it has said several times, it is not responsible for the suitability of the investment or the advice given. As the investigator concedes the suitability of the investment is not a determination that PSFM should have, or was entitled to, make.

- PSFM provides an execution-only service and Mrs G was aware of these restrictions when signing up to its terms of business. PSFM thinks this issue, in particular, speaks directly to the question of what caused Mrs G's loss. It argues it becomes very difficult to show the act of allowing the SIPP to be opened, in itself, caused Mrs G loss. This is because the SIPP, taken in isolation, is just an empty wrapper; it is only when that wrapper is seeded with invested capital that profits or losses become possible. PSFM says it is very clear, having treated the opening of the SIPP as an isolated matter, that this did not cause losses to Mrs G - those losses were caused by the intervening act of Mr H's advice to Mrs G, which, PSFM says breaks any chain of causation between it accepting Mrs G's SIPP application and the losses she suffered.

Mrs G accepted the investigator's view but she (via the CMC) pointed out that she had made a sizeable additional payment in order to complete the purchase of the Dunas Beach investment. I've outlined these amounts above. In his view letter the investigator said PSFM should refund, with 8% interest, any fees or charges Mrs G had paid from money other than the money originally transferred in from her personal pension. Mrs G asked if the additional payment to complete the investment should be treated in the same way.

The investigator asked where these funds had been drawn from to make the additional payment. Mrs G explained the money came from a building society account. In the circumstances the investigator thought this money would not have been paid into the SIPP by Mrs G had it not been for PSFM's failure to carry out adequate due diligence, allowing the original investment. So, he concluded it would be fair if this part of Mrs G's loss was put right using an interest rate more applicable to a savings account rate as that was the type of return the money had previously been earning.

In respect of the additional monies paid in by Mrs G, PSFM said:

"We note that Mrs G made further payments totalling £22,250.00 into her SIPP account between 13 and 15 February 2013 and we can see why you might take the view that further those payments might be taken into account when calculating redress. That said, this later investment was made two and a half years after the SIPP application form was signed and we think it far from obvious that it has anything to do with the adequacy or not of the due diligence checks made by PSFM on [Mr H]*. Might we suggest that you ask what if any*

dealings Mrs G had with [Mr H] *in the period between her application and the transfers she made between 13 and 15 February.*

As no agreement could be reached, the matter has been passed to me for a final decision.

What I've decided – and why

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

I have carefully noted all the representations made by both parties and their respective representatives. But I won't be addressing every single point they've raised. I've instead concentrated on the issues I think are central to the outcome of Mrs G's complaint. Further, in considering what's fair and reasonable in all the circumstances of this complaint, I've taken into account relevant law and regulations; regulators rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the relevant time.

I'll also mention at this stage that where there's a dispute about what happened I've based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

Relevant considerations

The Principles

I consider 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 Principle 2, 3 and 6 which say:

> *"Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*
>
> *Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*
>
> *Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.*

I've carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) (BBA) Ouseley J said at paragraph 162:

> *"The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular 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* [the Financial Ombudsman Service] *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 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 the BBA judgment 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 of 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 applicable time as relevant considerations that were required to be taken into account.

I've considered the High Court decision in *Adams v Options SIPP*. Since that decision the Court of Appeal has handed down its judgment following its consideration of Mr Adams' appeal. I've taken both judgments into account when making this decision.

I've considered whether the judgments mean the Principles should not be taken into account in deciding this case and I find that they don't. In the High Court judgment, *Adams v Options SIPP*, HHJ Dight did not consider the application of the Principles and they didn't form part of the pleadings submitted by Mr Adams. The Court of Appeal judgment gave no consideration to the application of the Principles either. So, *Adams v Options SIPP* says nothing about the application of the FCA's Principles to the ombudsman's consideration of a complaint.

As outlined above, Ouseley J in the BBA case held 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. I am therefore satisfied the

FCA's Principles are a relevant consideration that I must take into account when deciding this complaint.

Conduct of Business Sourcebook (COBS) 2.1.1R

The rule says:

> "*A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*"

I acknowledge COBS 2.1.1R overlaps with certain parts of the Principles, and that this rule was considered by HHJ Dight in the *Adams v Options* SIPP case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of FSMA (the 'COBS claim'). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of the *Adams* case.

The Court of Appeal rejected Mr Adams' appeal against HHJ Dight's dismissal of the COBS claim on the basis that Mr Adams was seeking to advance a case which was radically different to that found in his initial pleadings. The Court found this part of Mr Adam's 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.

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

I note there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and from the issues in Mrs G's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, as HHJ Dight noted, he was not asked to consider the question of due diligence before Options SIPP agreed to accept the store pods investment into its SIPP. The facts of the case were also different.

So, I've considered COBS 2.1.1R, alongside the remainder of the relevant considerations, and within the factual context of Mrs G's case, including PSFM's role in the transaction.

I think it is 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, as I've said above, I'm required to take into account relevant considerations which include: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This is a clear and relevant point of difference between this complaint and the judgments in *Adams v Options SIPP*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

The regulatory publications

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

- The 2009 and 2012 Thematic Review reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 'Dear CEO' letter.

I have considered those publications but will only refer to the 2009 Thematic Review in detail. 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 customers 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* [Treating Customers Fairly] *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.*

- *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.)"*

How this applies in Mrs G's case

I acknowledge the 2009 and 2012 Thematic Review reports and the 'Dear CEO' letter are not formal 'guidance', whereas the 2013 finalised guidance is. However, the fact the reports and Dear CEO letter didn't constitute formal guidance doesn't mean their importance should be underestimated. They provide a *reminder* that the Principles for Businesses apply and are an indication for 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 regulator's expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice at the time, and I'm therefore satisfied it is appropriate to take them into account.

Like the ombudsman in the BBSAL case, I don't think the fact the publications (other than the 2009 Thematic Review report) post-date the events that are the subject of this complaint, mean the examples of good industry practice they provide were not good practice at the time of the events. The later publications were published after the events subject to this complaint, but the Principles that underpin them existed throughout, as did the obligation to act in accordance with those Principles.

It is also clear from the text of the 2009 and 2012 reports (and the Dear CEO letter published in 2014), that the regulator expected SIPP operators to have incorporated the recommended good industry practices into the conduct of their business already. So, whilst the regulator's

comments suggest some industry participants' *understanding* of how the standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

It is important to bear in mind that the reports, the 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.

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

Overall, in determining this complaint I need to consider whether PSFM complied with its regulatory obligations as set out by the Principles to act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regards to the interests of its customers (in this case Mrs G), to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the Principles and the publications listed above to provide an indication of what PSFM could have done to comply with its regulatory obligations and duties.

The role of Mr H

PSFM says it had processes in place for checking the investments it was prepared to allow in its SIPP and the introducers it was willing to accept business from. It's explained it had processes in place before the 2009 Thematic Review report was published and it's referred to the points made in that report to explain why it thinks it acted reasonably at the time.

PSFM says part of the report focuses on the relationship with introducers and that it undertook the checks referred to – checking that advisers who introduce clients to it were FSA authorised and had appropriate permissions. Mr H was an approved person and the firm for which Mr H acted as an approved person, Openwork, had the relevant permissions to provide investment advice. PSFM says it carried out its checks periodically and on an ongoing basis.

PSFM is a regulated business. It is an execution only SIPP operator. And it was under a regulatory obligation to conduct its business, in that limited non-advisory capacity, with due skill, care and diligence, manage its affairs responsibly with adequate risk management and effectively, and pay due regard to its customers interests and treat them fairly.

PSFM entered into an introducer agreement with Mr H and, though it cannot find the original, PSFM says the agreement included the following:

> *[The Introducer] is, and for the duration of this Agreement will be, authorised and regulated by the FCA…"*
>
> *"In respect of FCA authorised and regulated firms it has the appropriate FSMA Part 4A permissions to provide advice to, or manage a discretionary investment portfolio on behalf of, the Individuals…"*
>
> *"It has full capacity and authority to perform its duties under the Introducer Agreement."*

As set out above, in 2009 the FSA gave examples of good industry practice, including:

- *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.*

And PSFM says it has met those standards. But I can see that Mr H ceased to be an appointed representative in 2010. The FSA Register was updated to show this from 22 July 2010. And at no point has PSFM said it became aware of Mr H's changed status and terminated its Introducer Agreement with him before Mrs G's application at the end of November 2010. In fact, PSFM accepts it did not know Mr H was no longer authorised by the FSA at this point.

On the issue of checks, PSFM has said it only checked the FCA/ FSA register when Mr H first became and introducer and thereafter from time to time. It says this was in line with best practice at that time and there was certainly no need to check Mr H's status for each application.

Whilst I take on board what PSFM says - that it was only required to make checks from time to time - by the time of Mrs G's application in November 2010, Mr H had not been an appointed representative of Openwork for almost four months. Whilst there is no specific amount of time for such checks, PSFM has not been able to say when it last checked the register. It says it would check it 'periodically' but hasn't said what timeframe was at the time of Mrs G's application.

I also note that in 2012, Mr H was still recorded on PSFM's records as the adviser to Mrs G. This is evident from its annual review in that year. So, as I've said, it's unclear to me what periodic checks PSFM were actually making.

Mr H hadn't been registered since the end of July 2010 but in my view, this doesn't mean PSFM had checked it at that time. It's unclear to me how often these periodic reviews were being carried out by PSFM as it has been unable to say itself despite saying it had systems in place to carry out appropriate checks. I think if it had followed Principle 3 it would have taken *"reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."* Just over four months had passed by and it hadn't thought to check the register. Given the nature of its work, and what these Principles are meant to achieve, I consider just over four months was an unreasonable amount of time not to have checked to see what Mr H's status was at that time.

PSFM say that in any event, even though Mr H was not registered with the FSA at the time, it is permitted for unregulated introducers to introduce business to SIPP providers. But that is not what PSFM understood its relationship with Mr H to be. It thought he was regulated and would be giving regulated investment advice about the suitability of its SIPPs for its potential customers.

But regardless of his status at the time of the advice, as the investigator pointed out, PSFM should not have entered into an Introducer Agreement with Mr H. Instead it should have entered into an agreement with his principal, who at that time, was Openwork. If PSFM had not entered into an agreement with Mr H directly, it would not have accepted Mrs G's application introduced by Mr H in 2010.

When PSFM first considered accepting business from Mr H, it should have had a reasonable understanding of the need for those giving regulated advice to be regulated. It should

reasonably have understood the appointed representative/principal relationship. Further, PSFM should've understood the appointed representative's regulated status relies entirely on its principal – the appointed representative is not free to do whatever it wants to do independently. And PSFM should reasonably have understood the principal's business model when considering doing business with an appointed representative.

It was PSFM's understanding Mr H would be giving regulated investment advice to clients he introduced to it. It was content about this because it understood Mr H was an approved person and was an appointed representative of Openwork which was authorised to give investment advice. And so PSFM entered into the Introducer Agreement with Mr H personally and accepted the business he referred to it including Mrs G's application for a SIPP, to transfer her existing pension to it and invest in the Dunas Beach investment.

As an appointed representative Mr H was not an authorised person in his own right. He was only approved by the FSA to give advice on behalf of Openwork. Mr H's authority to give advice came from Openwork. He was only authorised to do the things Openwork authorised him to do. Openwork is a restricted product range firm, not a whole of market adviser. PSFM should also have known it had no arrangement with Openwork – that it was not on Openwork's panel of approved providers it did business with. Put another way, it should have known Openwork, and therefore its advisers, did not do business with it.

Despite not being authorised at the time of the advice, Mrs G says Mr H still advised her to open the SIPP with PSFM. And recommended transferring her existing personal pension to it. Mrs G has said she was prompted to do this to specifically invest in the Dunas Beach investment. I think it is more likely than not that Mrs G was recommended to open the SIPP specifically to invest in the Dunas Beach investment. It is what Mrs G says happened and it is plausible. It is unlikely she would have opened a SIPP and transferred her pension to it without such advice.

So, as a general point, PSFM should have known an appointed representative is only authorised if it acts within the authority given by its principal. And in relation to a restricted advice firm, such as Openwork, PSFM should have known the authority given by the principal would be restricted. And it should have understood that advising on its SIPP would not be something an Openwork appointed representative was authorised by Openwork to do. Further, PSFM should've understood that if Mr H did not have the authority of his principal to advise on its SIPPs, there was a real risk he would be breaching the General Prohibition if he was introducing SIPP business and taking responsibility for the suitability.

This leads to the point, assuming PSFM were acting under the belief that Mr H was still an appointed representative of Openwork, that if he (Mr H) was acting beyond his authority with his principal he might not be dealing with it in an open and appropriate way. Why, for example, was Mr H trying to do business with a SIPP provider that was not Openwork's approved provider? Was he trying to do business he was deliberately not reporting to his principal? Or did he just not understand the obligations he was under? These points raise questions about Mr H's character and/or competence and whether Mr H was an appropriate person to be doing SIPP business with, and whether it was in PFSM's customers best interests to do business with him.

These points should have been matters of serious concern for PSFM which should have meant it ensured it only accepted business from Mr H that was authorised by Openwork – or in other words it should have entered into the Introducer Agreement with Openwork not Mr H, or no agreement at all.

If PSFM had checked with Openwork, it would have discovered that Mr H was not authorised to do business with it. And in turn it would not have entered into an Introducer Agreement

with Mr H in 2009 and it should have refused to accept any business from him. It follows that PSFM could, and should have, refused Mrs G's application without going beyond its normal contractual role and regulatory permissions and without giving her advice on the suitability of the investment for her.

PSFM has argued the principal of an appointed representative maybe responsible for advice composed of multiple strands if it is responsible for one of the strands, for example, the advice to sell an existing pension. But as mentioned, Openwork had an approved SIPP provider on its list. If PSFM had checked with Openwork it would have found out that Openwork did not authorise Mr H to advise on PSFM's SIPP because it was not its listed SIPP provider. That should have been enough for PSFM to refuse to enter into an Introducer Agreement with Mr H or otherwise accept business from him.

I can't see PSFM would have carried on in the belief that Openwork was wrong about the authority it gives its appointed representatives. And think that in some limited circumstances the appointed representative would be authorised and it would therefore do business with Mr H despite what Openwork would have said.

Also, despite what it says about the adequacy of its initial checks, doing business with Mr H without first checking with Openwork, exposed clients such as Mrs G to the risk - which PSFM has referred to as entirely predictable - that Openwork would refuse to accept responsibility for the advice given by Mr H.

This also means the client was exposed to the risk of receiving advice in breach of the General Prohibition which was not subject to the usual supervision a regulated adviser is subject to and thus at greater risk of advice that was not in the client's best interest. And/ or in relation to which the usual regulatory safeguards of access to the Financial Services Compensation Scheme and the Financial Ombudsman Service would not be available. In short, the risks of consumer detriment from dealing with an adviser who was not authorised to give the advice he was giving were considerable.

Did PSFM's failings cause Mrs G's loss?

For the reasons set out above, I consider PSFM should not have accepted business introduced by Mr H. If PSFM had not entered into an Introducer Agreement with Mr H, I think it's more likely than not that Mrs G would not have taken out a PSFM SIPP and invested in the Dunas Beach investment. So, I think PSFM caused loss to Mrs G.

I can't see there is any evidence that Mrs G was motivated to open her SIPP and invest in PSFM because of, for example, an incentive payment as in the *Adams v Options SIPP* case. I note Mrs G had followed advice from Mr H previously about other matters. In my view, there is nothing to indicate that Mrs G would have moved her personal pension if she had not been encouraged to do so by Mr H. And Mr H only acted in that way because PSFM agreed to accept the business he referred to it.

Mrs G had a relatively modest pension pot to transfer and at the time of the advice from Mr H was no longer an appointed representative at all. I do not consider it likely that she would have been advised to move her pension and invest in Dunas Beach investment if PSFM had not agreed to accept business introduced by Mr H. Nor do I consider that any regulated financial adviser acting reasonably would have advised Mrs G that investing her pension (SIPP) monies in the Dunas Beach Resort investment was suitable for her. It is a higher risk, esoteric investment that is unsuitable for a pension investment for most retail investors. I, therefore, consider it unlikely that Mrs G would have suffered the same loss if PSFM had refused to accept her application.

I would also like to add in some reasoning about why I think it is fair and reasonable to compensate Mrs G for the loss she suffered following further payments into the account in February 2013. As noted above, these were made to fund the completion of the Dunas Beach investment. I've set out what PSFM has said about this but disagree with its reasoning.

As our investigator highlighted, it was only as a consequence of the initial investment that Mrs G went on to add additional funds to her SIPP in order to pay for the completion of the Dunas Beach investment. Therefore, I think if PSFM had carried out proper due diligence checks on Mr H from the outset, this loss could have been avoided. Part of the agreement with the Dunas Beach Resort was that further payments were to be made for the completion of the investment. PSFM was fully aware of this and was included in the emails between Mrs G and TRG about the payment of the completion monies.

So, I consider it was reasonably foreseeable that additional funds could be used via the SIPP to complete the purchase. It is clear that PSFM knew this to be the case as it contacted Mrs G on 4 February 2013 to request she contact it about the completion payment *"…as a matter of urgency".* And as I said, it also was copied into some of the emails between Mrs G and the TRG representative where this further payment was discussed.

In terms of the compensation for this part of Mrs G's complaint, I think the fair and reasonable course of action is for the £22,500 to be treated separately when calculating redress. This is because she had taken these funds from a savings account, so I think the benchmark recommended by the investigator correctly puts Mrs G, as far as possible, back into the position she would have been had she not deposited the funds into her SIPP. However, I consider that given the monies were paid into the SIPP, and Mrs G received tax rebates for the funds paid in, this payment should be treated as a payment to the SIPP when calculating redress.

Conclusion

In the light of what PSFM knew, or ought to have reasonably known about Mr H and his principal Openwork before it received Mrs G's SIPP application, it didn't comply with good industry practice, act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mrs G fairly by accepting her application. And I think that, in not doing so, it allowed her to be put at significant risk of detriment. It did not act in its customer's best interest as required in its role as an execution only SIPP provider.

For the avoidance of doubt, I'm not saying that PSFM should have assessed the suitability of the investment or the SIPP for Mrs G. I accept that PSFM had no obligation to give advice to Mrs G, or otherwise ensure the suitability of a pension product or investment for her. My findings are not that PSFM should have concluded the investment or SIPP was not suitable for Mrs G. Rather it is that PSFM did not meet its regulatory obligations, or treat Mrs G fairly, by accepting her application for a SIPP introduced by Mr H.

Putting things right

My aim is that Mrs G should be put as closely as possible into the position she would reasonably be in if things had not gone wrong.

The compensation in respect of the additional payments made into the SIPP by Mrs G in 2013 has to be treated as part of the pension notwithstanding the point that she would not have made that payment but for PSFM's error. It was treated as a pension payment which is clear from the reclaims she made in income tax. So, it is only fair and reasonable that it is now treated as part of the SIPP funds.

However, as noted above, I think the redress benchmark should be more in line with what Mrs G would have received if the funds had remained in her savings account. So, this means that the redress will need to be dealt with in two parts as follows:

- The transferred funds from Mrs G's pension to be redressed by comparing her SIPP with what she would have received from her previous pension provider if she had not transferred. If this is not possible, then the benchmark I have set out below should be used.
- The money for the completion drawn from her savings account will be the benchmark set out below which is more comparable to Mrs G's savings account.

But it should be borne in mind that it is only the comparisons that are different. As I've said, the overall treatment of the redress – that it should be paid into the SIPP – should remain the same. So, Punter Southall SIPP Limited should calculate the redress as follows:

In terms of the pension transfer payment made in 2010, Punter Southall SIPP Limited should calculate fair compensation by comparing the value of Mrs G's pension if she had not transferred, with the current value of her SIPP. And in terms of the £22,500 total payments made in February 2013 (the 'February 2013 investment') to complete the purchase of the Dunas Beach Resort Investment, Punter Southall SIPP Limited make a comparison to an alternative savings rate benchmark. So, in summary, Punter Southall SIPP Limited should:

1. Obtain the notional transfer value of Mrs G's previous pension plan, if it had not been transferred to the SIPP.

2. If there are any difficulties in obtaining a notional valuation of the previous pension, then the FTSE WMA Stock Market Income Total Return Index should be used instead. That is a reasonable proxy for the type of return that could have been achieved over the period in question.

3. From the date it was paid in, compare the performance of Mrs G's February 2013 investment with that of the benchmark average rate from fixed rate bonds. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value, there is a loss and compensation is payable.

4. To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Punter Southall SIPP Limited should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

5. Obtain the actual transfer value of Mrs G's SIPP, including any outstanding charges and compare this to the combined value of the calculation of the combined notional value as above.

6. Pay a commercial value to buy the Dunas Beach Resort investment (or treat it as having a zero value in the compensation calculations). If Punter Southall SIPP Limited is unwilling or unable to purchase the investment the *actual value* should be assumed to be nil for the purposes of the above calculation. And Punter Southall SIPP Limited may ask Mrs G to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the investment. That undertaking should allow for the effect of any tax and charges on the amount Mrs G may receive from the investments and any eventual sums she would be able to access from the

SIPP. Punter Southall SIPP Limited will need to meet any costs in drawing up the undertaking.

7. Pay an amount into Mrs G's SIPP so that the transfer value is increased to equal the value calculated above. This payment should take account of any available tax relief and the effect of charges. It should also take account of interest as set out below.

8. If the SIPP needs to be kept open only as a result of the Dunas Beach Resort investment and used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

9. Pay Mrs G £500 for the distress and inconvenience the avoidable problems with her pension will have caused her. Difficulties with a pension are naturally very worrying especially when all or most of the value seems to have been lost. This is even more distressing when the consumer wants to take their pension and are unable to do so.

Any withdrawals made by Mrs G from the SIPP should be deducted from the actual value calculation at the point it was actually paid to her so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Punter Southall SIPP Limited totals all those payments and deducts that figure at the end to determine the actual value instead of deducting periodically.

Punter Southall SIPP Limited should add any interest set out below to the compensation payable.

Punter Southall SIPP Limited should pay into Mrs G's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Punter Southall SIPP Limited is unable to pay the total amount payable for of the redress calculations into Mrs G's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs G won't be able to reclaim any of the reduction after compensation is paid. Punter Southall SIPP Limited should take account of any tax actually paid by Mrs G for any withdrawals she's made. And should not make deductions for tax already paid.

In terms of the pension payment calculation, the notional allowance should be calculated using Mrs G's marginal rate of tax at retirement. For example, if Mrs G is 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. But if Mrs G would have been able to take a tax-free lump sum, the notional allowance should be applied to 75% of the total amount. However, Mrs G has already taken a tax-free allowance, so this is unlikely to be applicable to Mrs G's case. But if she has any tax-free allowance remaining, this should be taken into account when applying the notional allowance.

Income tax may be payable on any interest paid. If Punter Southall SIPP Limited deducts income tax from the interest it should tell Mrs G how much has been taken off. Punter Southall SIPP Limited should give Mrs G a tax deduction certificate in respect of interest if Mrs G asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

The compensation resulting from this loss assessment must be paid to Mrs G or into her SIPP within 28 days of the date Punter Southall SIPP Limited receives notification of her acceptance of this final decision. 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 if the compensation is not paid within 28 days.

My final decision

My decision is that I uphold Mrs G's complaint and that Punter Southall SIPP Limited should pay fair compensation and interest as set out above under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 19 January 2023.

Yolande Mcleod
Ombudsman