DRN-3959411

The complaint

Mrs L complains that Options UK Personal Pensions LLP ("Options" – formerly Carey Pensions UK LLP) failed to conduct adequate due diligence when it accepted her application to open a self-invested personal pension ("SIPP") and invest in an overseas property investment.

What happened

Mrs L says she received a cold call from "Crown Investments" offering to meet her to discuss her pension. At the meeting, Mrs L says she was advised to invest in land in the Cayman Islands via a Options SIPP.

Mrs L lives in the UK. Her SIPP application form to Options is dated 31 January 2012. Mrs L's application form confirmed she would be transferring a personal pension into the SIPP, valued at around £144,000.

The application was submitted to Options by Crown Investments. But the application form listed her adviser as a firm that was regulated in Gibraltar and authorised to carry on certain regulated business in the UK by the then regulator, the Financial Services Authority ("FSA"), under a 'MiFID passport' arrangement as Mrs L's. This was a firm that was involved in a number of "execution only" introductions to Options for Crown Investments. The same firm was also listed as Mrs L's "execution only" investment manager.

I'll refer to this Gibraltar firm as the "introducer" in the remainder of this decision.

Shortly after, Mrs L signed an indemnity document headed:

> *"CROWN ACQUISITIONS WORLDWIDE*
> *ALTERNATIVE INVESTMENT MEMBER DECLARATION & INDEMNITY"*

A representative of the introducer – Mr W - was recorded as the adviser on the document. By signing the document, Mrs L instructed Options to purchase land in the Cayman Islands via Crown.

The document contained several declarations including that Mrs L:

- Was fully aware the investment was an alternative investment and therefore *"considered High Risk and / or Speculative."*
- Confirmed she had read and understood the documentation regarding the investment and had taken appropriate advice.
- Was fully aware that Options acted on an execution-only basis and hadn't provided any advice in respect of the investment.

- Confirmed the land would be sold prior to any residential development.

- Would indemnify Options against any liability arising from any aspect of the purchase.

In March 2012, Options received the proceeds from Mrs L's personal pension. Soon after, around £144,000 was sent from Mrs L's SIPP to Crown. This represented almost the entirety of the funds in Mrs L's newly opened SIPP.

Later in July 2012, Mrs L signed a further document to confirm that she had not and would not receive any form of inducement for making the investment.

The investment involved a plot of land in the Cayman Islands on which Crown had obtained planning permission to develop the property into a subdivision comprising various residential lots. Crown had arranged the preparation of plans for the construction of residential lots and agreed to obtain necessary approvals for those plans to develop the individual lots. Investors could buy individual lots and those bought via a SIPP were to be sold from the SIPP before any residential building work commenced.

In 2014, Mrs L says she wrote to Options to explain that her husband had undergone serious surgery and was no longer able to work, so she would need to sell her investment. Mrs L told our investigator that in July 2015 Options responded explaining she would need to pay 15 percent commission to sell the investment, which she agreed to.

Mrs L says that in October 2015 Options sent her the details of the cost for the completion of her land purchase, which was between £24,000-£28,000. Mrs L says she didn't understand why she paid £144,000 for the land when it had not been completed. Mrs L says she raised concerns to Options about this and that Options agreed to look into things. It's unclear what then happened as a result of that exchange.

As I understand it, there were then further problems with the Crown project – though I don't currently know the details. In May 2017, Options wrote to investors with a report from lawyers relating to the problems with the investment. It mentioned there was a court case being brought by a different SIPP operator against Crown. It suggested obtaining valuations for the property.

In March 2018, a financial firm (Mrs L's current representative) raised a complaint with Options on Mrs L's behalf. The complaint was that Options' failed to carry out sufficient due diligence on the Crown investment, that the investment wasn't suitable for her and Options had a duty to ensure the investment was genuine. It also raised issues about how Options had valued the Crown investment.

Options didn't uphold the complaint. It made a number of points in response, including:

- Options is an execution-only (i.e. non-advised) SIPP operator, as explained in the documentation provided to Mrs L when she opened her SIPP.

- Mrs L signed the indemnity which confirmed Options didn't provide advice and the investment was high risk and speculative.

- Options carried out due diligence on the investment to ensure it was suitable to be held in a UK registered pension scheme, such as a SIPP.

- Options wasn't permitted to advise on the suitability of the transfer or the investment

for Mrs L.

- Options had complied with the obligations placed upon it by the regulator.

The complaint was referred to the Financial Ombudsman Service and considered by one of our investigators. The investigator thought the complaint should be upheld. In summary, the investigator:

- Acknowledged that Options wasn't able to advise Mrs L on either the suitability of the pension transfer or the investment. Instead, what they were determining was if Options acted fairly and reasonably in accepting Mrs L's application from the introducer.

- Set out the considerations relevant to reaching their view on the merits of Mrs L's complaint, including the FCA's Principles for Businesses, publications issued by the FCA (and its predecessor, the FSA), and relevant case law.

- Said that refusing to accept business doesn't amount to advice.

- Noted the introducer had an EEA passport to provide certain services in the UK, including investment advice. But this didn't cover advice to transfer pensions which required additional permissions, not held by the introducer.

- Noted that Options had explained on other cases that the introducer didn't provide advice and acted only on an execution-only basis.

- Said Options was aware it was the introducer's intention to introduce non-advised clients to it in order to invest in the Crown investments which were esoteric and high risk.

- Thought Options should have identified that such investments were unlikely to be suitable for most retail investors. And that only relatively small investments were likely to be suitable for sophisticated investors.

- Considered the introducer's business model of introducing such investments for retail investors should have been a concern to Options and if it had acted fairly and reasonably it wouldn't have accepted Mrs L's application. And had it not done so, Mrs L wouldn't have suffered the losses she's experienced to her pension.

The investigator set out how Options should put things right, by calculating if Mrs L would have been better off remaining in the personal pension switched to the SIPP and paying her compensation. The investigator also said Options should pay Mrs L £500 for the distress caused to her by its failings.

Options didn't agree with the investigator. It made a number of points in response, including:

- The Ombudsman must take account of the legal and contractual context of the relationship between it and Mrs L. Options acts on a strictly execution-only/non-advised basis and is member directed throughout.

- Options doesn't give advice and the Ombudsman shouldn't come to a finding that places a legal duty on it that doesn't exist.

- The investigator's findings are based on duties that wouldn't be recognised by a

court, without explaining why that's appropriate.

- The complaint had been considered based on guidance which hadn't been published at the time of the events in this case.

- No evidence had been provided to demonstrate that the introducer carried on regulated activities.

- Even if the introducer gave advice, it held the necessary permissions to do so. There was no pension transfer, as defined in the rules, in this case. This was a switch from one personal pension to another.

- In any event, SIPP operators are permitted to accept introductions from non-regulated introducers.

- There was no breach of duty by Options.

- Against this background, it's unfair and unreasonable to place liability for the losses flowing from the investment on the execution-only SIPP operator. It's unfair to make a SIPP operator responsible for the member's poor investment choices.

- Options didn't cause Mrs L to suffer a loss. It's likely Mrs L was keen to proceed with the investment and would have done so even if Options hadn't accepted business from the introducer.

- Options request an oral hearing in order to properly determine Mrs L's complaint. It's procedurally unfair and inappropriate that a fact-sensitive matter such as this should be decided wholly on the papers.

Following these submissions, another investigator reviewed the case. The second investigator was also of the view that Mrs L's complaint should be upheld, and added additional commentary on why, in their view, section 27 of the Financial Services and Markets Act 2000 ("FSMA") offered a further and alternative basis by which to uphold the complaint.

As no agreement could be reached, the complaint was passed to me to decide.

I issued a provisional decision on 17 April 2024 upholding the complaint. I asked for any responses to be provided by 1 May 2024.

Mrs L agreed with my decision. Options did not respond.

As a result, my findings below remain the same, save for some minor changes in the section regarding the activities of the introducer to make it clearer that I think the introducer was involved in advising Mrs L.

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've considered all the points made by the parties. However, I've not responded to them all below, instead concentrating on what I consider to be the key issues.

Preliminary issue - Time limits

As a preliminary issue, I can't see that Options has consented to us considering the complaint if it was made outside the time limits that apply to referring a complaint to this service.

This part of my decision is about our jurisdiction and the application of our complaints rules to the facts. It does not involve an analysis of what is "fair and reasonable".

The rules about time limits and whether our Service can look into the merits of a complaint are set out in the DISP section of the FCA's Handbook. DISP 2.8.2R says:

> *"The ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*
>
> *…*
>
> *(2) more than:*
>
> *(a) six years after the event complained of; or (if later)*
>
> *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint*
>
> *unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;"*

Mrs L's SIPP application to Options in January 2012 was made more than six years before her complaint on 14 March 2018. It's not entirely clear when exactly her investment in Crown was completed, but I've seen a Sale and Purchase Agreement dated 15 March 2012. Mrs L's complaint centres on Options' acceptance of the Crown investment in her SIPP. So I think she has complained within six years of the acts being complained about (2(a) above).

If I'm wrong to approach the events in this way and I must look at the second limb of the time limits (2(b) above), I haven't seen anything that makes me think she knew, or ought reasonably to have known, of her cause for complaint against Options more than three years before she complained.

In reaching this conclusion, I've noted that Mrs L was in contact with Options in 2014 about selling her investment and, she says, was then told in correspondence between July 2015 – October 2015 that she'd have to pay a large sum to make the sale and release funds – essentially a liquidity problem.

Irrespective of whether liquidity issues can be said to be knowledge of a loss or problem with the SIPP, Mrs L complained to Options in March 2018 which is within three years of the correspondence in 2015.

Options hasn't provided any earlier correspondence or evidence about problems with Mrs L's SIPP more than three years before she complained. But if any such evidence exists, it is also important to remember that to be aware of "cause for complaint" the complainant needs to be aware, or ought reasonably to have been aware, there is a problem, that she

has suffered (or may suffer) material loss and that the problem was or may have been caused by an act or omission by the respondent (in this complaint, Options).

I don't think the liquidity issues would, or ought reasonably, to have put her on notice that Options might be responsible for the problem. As I'll explain in more detail below, in 2009 and 2012 the regulator published reports on the results of two thematic reviews on SIPP operators. It also issued guidance for SIPP operators in 2013 and wrote to the CEOs of SIPP operators in 2014. A common theme of those communications is that the regulator considered SIPP operators had obligations in relation to their customers even where they do not give advice, and that many SIPP operators had a poor understanding of those obligations.

In the circumstances I do not consider Mrs L should have had an understanding of the obligations SIPP providers were under in 2014/2015. There is no evidence that she ought to have known, at that stage, that Option might have failed in its duties to carry out due diligence on the introducer or investment or that any wrongdoing or error on the part of Options might have played a causative role in her loss.

Mrs L complained to Options in March 2018. And, taking account of everything I've explained above, I've seen nothing to suggest she was aware, or ought reasonably to have been aware, she had cause to complain about Options more than three years earlier, i.e., before March 2015. So I think Mrs L has made her complaint within our time limits and I've gone on to consider the merits of the complaint. But first, I'll set out my thoughts on Options' request for an oral hearing.

Preliminary issue - Options' request for an oral hearing

Options says an oral hearing is necessary to explore issues such as how Mrs L came to hear about the investment, her understanding of it and the roles played by the parties, and her motivation for entering into the transaction.

The Financial Ombudsman Service provides a scheme under which certain disputes may be resolved quickly and with minimum formality (section 225 FSMA). DISP 3.5.5 R of the FCA's Dispute Resolution rules provides:

> *"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'm satisfied that it wouldn't normally 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 don't 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 3.5.8 R) 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'm 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're able to request this information from either party to the complaint, or even from a third party.

I've considered the submissions Options has made. However, I'm satisfied that I'm able to fairly determine this complaint without convening a hearing. In this case, I'm satisfied I have sufficient information to make a fair and reasonable decision. So, I don't consider a hearing is required. The key question is whether Options should have accepted Mrs L's application at all. Mrs L's understanding of matters is secondary to this.

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 Mrs L as a witness. Our hearings don't follow the same format as a Court. We're 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 wouldn't usually be allowed direct questioning or cross-examination of the other party to the complaint.

Relevant considerations

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable, I'm required to take 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.

With that in mind, I'll start by setting out what I have identified as the relevant considerations in deciding what is fair and reasonable in this case.

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 1.1.2 G). And I consider that the Principles relevant to this complaint include Principles 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 requirements they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."

And at paragraph 77 of BBA Ouseley J said:

"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."

In R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service [*2018] EWHC 2878* ('BBSAL'), Berkeley Burke brought a judicial review claim challenging the decision of an Ombudsman who 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 hadn't treated its client fairly.

Jacobs J, having set out some paragraphs of BBA including paragraph 162 set out above, said (at paragraph 104 of 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 s.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 and COBS 2.1.1 R

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 judgment.

I've considered whether these judgments mean 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 didn't consider the application of the Principles and they didn't 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 wasn't 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 weren't considered by the Court of Appeal. So, the *Adams* judgments say nothing about the application of the FCA's Principles to the Ombudsman's consideration of a complaint.

I acknowledge that COBS 2.1.1 R (*"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 2.1.1 R, a breach of which, he argued, was actionable pursuant to section 138(D) of FSMA ('the COBS claim'). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

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 was not a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but was rather an attempt to put forward an entirely new case.

I note that HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1 R. HHJ Dight said at paragraph 148:

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

The facts in Mrs L's case are different from those in *Adams*. There are also differences between the breaches of COBS 2.1.1 R alleged by Mr Adams and the issues in Mrs L'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 2.1.1 R that happened after the contract was entered into. In Mrs L's complaint, I'm considering whether Options ought to have identified that accepting business involving the introducer involved a risk of consumer detriment and, if so, whether it ought to have ceased accepting business involving the introducer prior to entering into a contract with Mrs L.

On this point, I think it's 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'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 both *Adams* cases. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

To be clear, I've proceeded on the understanding Options was not obliged – and not able – to give advice to Mrs L on the suitability of its SIPP or the Crown investment for her personally. But I'm satisfied Options' obligations included deciding whether to accept particular investments into its SIPP and/or whether to accept introductions of business from particular businesses.

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, namely:

- The 2009 and 2012 thematic review reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 *"Dear CEO"* letter.

The 2009 report included 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 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 customers' 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 introducer, if it is concerned about the suitability of what was recommended.*

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

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

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

Although I've quoted from the 2009 review, I've considered all of the publications I referred to above in their entirety.

I acknowledge that the 2009 and 2012 reports and the *"Dear CEO"* letter aren't formal 'guidance' (whereas the 2013 finalised guidance is). However, the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't mean their importance should be underestimated. They provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it's treating its customers fairly and producing 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 and I'm therefore satisfied it's appropriate to take them into account.

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

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 took place in relation to Mrs L's complaint, mean that the examples of good practice they provide weren't good practice at the time of the relevant events. Although the later publications were published after the events subject to this complaint, the Principles that underpin them existed throughout, as did the obligation to act in accordance with the Principles.

It's also clear from the text of the 2009 and 2012 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, while the regulator's comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it's clear the standards themselves hadn't changed.

I note that HHJ Dight in the *Adams* case didn't 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 doesn't follow that those publications are irrelevant to my consideration of what's fair and reasonable in the circumstances of this complaint. I'm required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

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

To be clear, I don't say the Principles, or the publications, obliged Options to ensure the SIPP application, pension transfer and SIPP investment were suitable for Mrs L. It's accepted Options wasn't required to give advice to Mrs L, and couldn't give advice. And I accept the publications don't 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 on a non-advisory basis. I'm 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.

It's clear from Options' *"Independent Financial Adviser Introducer Profile"* that it understood and accepted its obligations meant that it had a responsibility to carry out due diligence on the introducer. The introductory paragraph at the head of the form says the following:

> *"As an FSA regulated pensions company we are required to carry out due diligence on independent financial adviser firms looking to put business with us and gain some insight into the business they carry out. We therefore request that you, or the appropriate individual in your firm complete and sign this Profile questionnaire and our Terms of Business agreement as part of our compliance requirements.*
>
> *Thank you for taking the time to complete these documents to ensure the FSA requirements are met."*

I'm 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. 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'm 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 the introducer and the investment 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.

Options' position in broad terms:

In very broad terms, Options' position is:

- It carried out due diligence to a degree that was appropriate for its role as non-advisory SIPP operator.
- COBS 11.2.19 said "Whenever there is a specific instruction from the client, the firm must execute the order following the specific instruction. A firm satisfies its obligation under this section to take all reasonable steps to obtain the best possible result for a client to the extent that it executes an order, or a specific aspect of an order, following specific instructions from the client relating to the order or the specific aspect of the order." So Options was obliged to execute Mr's L's instructions.
- There is no evidence the introducer gave advice to Mrs L.
- Even if the introducer did advise Mrs L, it had the regulatory permissions to do so.
- It's unfair to hold Options responsible for Mrs L's losses.

Due diligence carried out by Options on the introducer:

Options did carry out some due diligence on the introducer. Amongst other things, it carried out an assessment of the introducer using a questionnaire it called an *"Introducer Profile"*. This was completed in October 2011. That questionnaire recorded a number of points relating to the introducer including the following:

- It was regulated in Gibraltar.
- It had no pensions advisers and no pensions specialists.
- It essentially carried on no pensions business.
- It had recently *"employed a new appointed rep specialising in SIPPs business but all on an execution only basis".*
- Its typical clients were *"HNW clients"* – meaning high net worth.
- It was intending to use SIPPs to hold investments with Crown.

Options doesn't seem to have asked about the new *"appointed rep"* who specialised in SIPPs despite that person being the source of the new business that would be referred to it. It didn't seem to ask about, or at least record on that form, expected levels of business or how that business would be sourced by the *"appointed rep"*.

Options was satisfied from the checks it made that the introducer was regulated in Gibraltar and had permission to carry on regulated activities in the UK as result of an EEA passport.

Due diligence carried out on the investment:

This investment involved buying a lot(s) on a larger parcel of land all of which was to be developed.

I'm satisfied that Options knew enough about the investment to understand that, from the point of view of a UK based pensions investor, the investment should be regarded as high risk and esoteric. It was likely to be difficult to value and illiquid. I note that Options largely referred to the investment in these terms on the indemnity it required Mrs L to sign as part of the application process.

From its assessment of the investment, Options ought to have understood it was unlikely to be suitable for most retail investors, and even for high net worth investors and/or sophisticated investors it was unlikely to be suitable for more than a small proportion of their pension.

I don't say Options was under any obligation to assess the suitability of the investment for individual members. But it should have been aware that there was a considerable risk of consumer detriment if this investment was sold to investors for which it wasn't suitable.

Options also ought to have been sceptical about the likelihood of investors choosing to invest their pensions in such an investment without being advised or possibly unfairly encouraged to do so.

In my view, Options should have been concerned about the introducer's new business model which involved a new *"appointed rep"* who apparently specialised in SIPP business, but only on an execution-only basis, where the SIPPs were being set up in order to invest in Crown investments.

Did the introducer or anyone else give advice or make arrangements in this case?

Chapter 12 of the then FSA's, now FCA's, Perimeter Guidance Manual ("PERG") provided guidance to firms, such as Options, running personal pension schemes. The guidance at the time of Mrs L's application included:

> ***"Q2. What is a personal pension scheme for the purposes of this regulated activity?***
>
> *The term is defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the Regulated Activities Order) as any scheme other than an occupational pension scheme (OPS) or a stakeholder pension scheme that is to provide benefits for people:*
>
> - *on retirement; or*
> - *on reaching a particular age; or*
> - *on termination of service in an employment.*
>
> *…This will include self-invested personal pension schemes ('SIPPs') as well as personal pensions provided to consumers by product companies such as insurers, unit trust managers or deposit takers (including free-standing voluntary contribution schemes)."*

So, under the Regulated Activities Order ("RAO"), Mrs L's Options SIPP comes within the definition of a personal pension. And Article 82 of the RAO provides that rights under a personal pension are a specified investment.

Advising a person in her capacity as an investor or potential investor to buy or sell such an investment is a regulated activity under Article 53 RAO.

And making arrangements for another person to buy or sell such an investment is a regulated activity under Article 25 RAO. So too is making arrangements with a view to a person who participates in the arrangements buying or selling such an investment.

As explained by Andrews LJ in the Court of Appeal in the *Adams* case, the question of whether there has been advice under Article 53 should be approached by standing back and looking at what the consumer was told in a realistic and common sense manner. And Newey LJ said:

> *'"advice on the merits" need not include or be accompanied by information about the relevant transaction. A communication to the effect that the recipient ought, say, to buy a specific investment can amount to "advice on the merits" without elaboration on the features or advantages of the investment."*

And the court said a holistic assessment of the behaviour should be made when considering whether there has been making of arrangements under Article 25.

Mrs L says that during a cold call she received, a free pension review was arranged with "Crown Investments". This in turn led to Mrs L agreeing to transfer her pension to an Options SIPP, in order to invest with Crown. The SIPP application form was sent to Options by Crown rather than the introducer.

I've considered the fact that Mrs L hasn't named the introducer in her complaint. So the introducer may not have been the firm in contact with Mrs L and given advice to switch her pension.

But based on the evidence I've seen and our experience of similar cases, I think it's likely that it was the introducer that called Mrs L – not someone directly from Crown. I say this because, the introducer was named on the SIPP application form as the financial adviser and investment manager for the SIPP – in a pre-populated section. Mr W of the introducer was named as the adviser on the investment indemnity form. And Mr W is also recorded on the SIPP application form as the "introducer" who verified Mrs L's identity as part of the application process. This is the same pattern as we've seen in other cases involving this introducer.

There is therefore evidence that Mr W of the introducer firm was involved in Mrs L's SIPP application and investment – and I think most likely it was the introducer who spoke to Mrs L.

I've noted that the introducer was named as the Financial Adviser on the SIPP application form. Strictly speaking this meant the introducer was to act as the Financial Adviser in relation to the SIPP and does not in and of itself establish that the introducer gave advice that led to the SIPP. However that is a fine distinction which is not especially clear from the form and the appointment of the introducer as the Financial Adviser would seem to be consistent with how Mrs L understood the introducer's role (albeit she may have been, or become over time, confused about who exactly was performing which role).

Mrs L wasn't a high net worth investor. Nor was she a sophisticated investor. She was a normal retail investor. And it's difficult to see why such a retail investor would choose to move her pension to a SIPP – which is a fairly specialist pension arrangement – to invest in a property-based investment in the Cayman Islands unless she was advised to do so. It's not plausible that such a retail investor would choose to act in that way without advice and would instruct a firm, based in Gibraltar, to arrange that for her on an execution-only basis.

On balance it is my finding that it is more likely than not that Mr W acting for the introducer advised Mrs L that she would be better off investing her pension in the Crown investment than in her existing personal pension. And that he advised Mrs L to open a SIPP with Options, close her existing pension and switch the funds to Options to make the Crown investment and that this was all one single piece of advice.

And of course, this wasn't a one-off. The introducer entered into an introducer arrangement with Options in order to introduce members who were going to invest in Crown's property-based investments. This first began in March 2011. We've seen a number of cases where there is evidence that the introducer was involved in giving advice and making arrangements for Options SIPPs for investment in Crown. The reality was that it was the introducer's intention to act as an introducer of business to Crown. Or put another way, it had a business interest in encouraging people to invest in Crown investments via the Options SIPP.

It's my view that, in the overall circumstances, Options should, have realised there was a real risk that the introducer would give advice when introducing consumers to it to take out SIPPs in order to invest in Crown investments. And it should have realised this before it accepted Mrs L's application.

The regulatory status of the introducer:

The Introducer Profile didn't identify where the introducer was intending to carry on the execution-only business that would lead to referrals of business to Options, but it would need

to be authorised in the UK for any regulated activity it carried on in the UK. And Options says it satisfied itself that the introducer was authorised in the UK. It had an EEA passport under the MiFID Directive to carry on certain activities in the UK including *"investment advice"* relating to certain investments.

At the time of Mrs L's SIPP application (and at the time the Introducer Profile was completed) SUP App 3 in the regulator's handbook set out guidance on passporting issues including a table at SUP App 3.9.5 G which included the following setting out the investments and activities covered by MiFID/a MiFID passport:

> *"**Services set out in Annex I to MiFID***
>
> ***SUP App 3.9.5 G***

Table 2: MiFID investment services and activities		*Part II RAO Investments*	*Part III RAO Investments*
	A MiFID investment services and activities		
1.	*Reception and transmission of orders in relation to one or more financial instruments*	*Article 25*	*Article 76-81, 83-85, 89*
5.	*Investment advice*	*Article 53*	*Article 76-81, 83-85, 89"*

Accordingly, arranging deals in investments under Article 25 and advising on investments under Article 53 RAO aren't covered by a MiFID passport if the activity relates to Article 82 investments i.e. rights under a personal pension.

And guidance at SUP 13A.1.2 G of the handbook, in existence at the time of Mrs L's application and when the Introducer Profile was completed, made clear that an EEA firm that wanted to carry on activities in the UK outside the scope of its EEA rights would require a *"top-up permission"*.

If the introducer gave advice on the merits of taking out the SIPP or making the investment this would amount to advising on investments. And if it carried on arrangements in the UK, it would be undertaking a further regulated activity.

Accordingly, the introducer would need the relevant top-up permission if it carried on either one or both of those activities in the UK. And carrying on either one or both of those activities was a realistic possibility in the circumstances of the introducer arrangement between the introducer and Options. Although Options thought the introducer was regulated to carry on those activities in the UK, it didn't have the necessary top-up permissions to carry on those activities in the UK in relation to the rights under personal pensions.

My view so far:

In summary, it's my view that Options should have:

- Had serious concerns about the business model of the introducer.

- Considered there was a real risk that the introducer, despite saying it would only act on an execution-only basis, would very likely stray into giving advice to take out the Crown investments and advising consumers to set up a SIPP with Options and to transfer their existing pensions to it in order to make the Crown investments.

- Understood that the introducer didn't have the necessary top-up permissions to advise on or arrange deals in relation to rights in personal pensions.

- Considered that it was exposing its customers to an unacceptable level of risk of unsuitable SIPPs, and the real risk of considerable detriment which might include serious, possibly complete, loss of their pension.

The court decision in the BBSAL case referred to above makes it clear that the COBS rule 11.2.19 about the execution of orders only applies once the decision to execute an order is made. And that a SIPP operator is able to decide not to carry out the member's instructions if it thinks it's appropriate not to do so.

In all the circumstances, it's my view that Options should have decided not to accept business involving the introducer. And it shouldn't have therefore accepted Mrs L's application for a SIPP or her instruction to request the transfer of her existing pension to it or her instruction to invest in the Crown investment.

Is it fair to ask Options to compensate Mrs L?

In deciding whether Options is responsible for any losses that Mrs L has suffered on the Crown investment, I need to look at what would have happened if Options had done what it should have done i.e. hadn't accepted Mrs L's SIPP application in the first place.

When considering this I've taken into account the Court of Appeal's supplementary judgment in *Adams*, insofar as that judgment deals with restitution/compensation. But ultimately, it's for me to decide what's fair and reasonable in the circumstances.

I'm required to make the decision I consider to be fair and reasonable in all the circumstances of the case and I don't consider the fact that Mrs L signed an indemnity means she shouldn't be compensated if it's fair and reasonable to do so.

Had Options acted fairly and reasonably it should have concluded that it shouldn't accept Mrs L's application to open a SIPP. That should have been the end of the matter – it should have told Mrs L that it couldn't accept the business. And I'm satisfied, that had that happened, the arrangement for Mrs L wouldn't have come about in the first place, and the loss she's suffered could have been avoided. The financial loss has flowed from Mrs L transferring out of her existing pension and into a SIPP. For the reasons I set out below I'm satisfied that, had the SIPP application not been accepted, the loss would not have been suffered.

Had Options explained to Mrs L why it wouldn't accept the application from the introducer or was terminating the transaction, I find it very unlikely that Mrs L would have tried to find another SIPP operator to accept the business.

So I'm satisfied that Mrs L wouldn't have continued with the SIPP, had it not been for Options' failings, and would have remained in her existing pension. And, while Options may not be responsible for initiating the course of action that has led to her loss, I consider that Options failed unreasonably to put a stop to that course of action when it had the opportunity and obligation to do so.

I've considered paragraph 154 of the *Adams* High Court judgment, which says:

> *"The investment here was acknowledged by the claimant to be high risk and/or speculative. He accepted responsibility for evaluating that risk and for deciding to proceed in knowledge of the risk. A duty to act honestly, fairly and professionally in the best interests of the client, who is to take responsibility for his own decisions, cannot be construed in my judgment as meaning that the terms of the contract should be overlooked, that the client is not to be treated as able to reach and take responsibility for his own decisions and that his instructions are not to be followed."*

For all the reasons I've set out, I'm satisfied that it wouldn't be fair to say Mrs L's actions mean she should bear the loss arising as a result of Options' failings. I don't say Options shouldn't have accepted the application because the investment was high risk. I acknowledge Mrs L was warned of the high risk and declared she understood that warning. But Options didn't share significant warning signs with her so that she could make an informed decision about whether to proceed or not. In any event, Options shouldn't have asked her to sign the indemnity (or shouldn't have considered and accepted it) as the SIPP application should never have been accepted or alternatively the transaction should have been terminated at a much earlier stage in the process.

So I'm satisfied in the circumstances, for all the reasons given, that it's fair and reasonable to conclude that Options should compensate Mrs L for the loss she's suffered.

I'm not asking Options to account for loss that *goes beyond* the consequences of its failings. I'm satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for *that same loss* is a distinct matter, which I'm not able to determine. However, that fact shouldn't impact on Mrs L's right to fair compensation from Options for the full amount of her loss.

Putting things right

A fair and reasonable outcome would be for Options to put Mrs L**,** as far as possible, into the position she would now be in but for Options' failings. I consider Mrs L would have most likely remained in the previous personal pension scheme.

We haven't received anything to suggest Mrs L's previous pension plan was anything other than a defined contribution plan without any guarantees attached

I've noted that Mrs L consulted her representative and made a complaint some years ago now and first looked to take pension benefits in around 2014/2015 when she was 60. Accordingly it is my finding that but for the error made by Options Mrs L would have taken benefits from her original pension at the age of 60. And that she would have taken benefits by taking the maximum available tax-free cash and would then have bought a single life annuity without guarantee with the remaining fund using the open market option available to her.

It is not possible to be certain about precisely what would have happened and when, but some certainty is needed in order to carry out the relevant calculations and so the calculations should be carried out as at one calendar month after the date of Mrs L's 60th birthday – "the calculation date".

In relation to financial loss or damage Mrs L will have suffered both a past loss and a loss of future benefits. Options should therefore obtain from Mrs L's original pension provider the

notional value of Mrs L's pension (taking into account any additional payments into or withdrawal from the pension so a reasonable like for like comparison is made) had it remained with the original pension provider up to the calculation date. Options should obtain details of the tax-free cash that would have been paid as at the calculation date and the value of the remaining fund which would have been used to buy an annuity.

If there are any difficulties in obtaining a notional valuation from the previous provider then the FTSE UK Private Investors Income Total Return index should be used to calculate the value. That is likely to be a reasonable proxy for the type of return that could have been achieved.

The illiquid assets in Mrs L's SIPP should now be removed so that she can close the SIPP. That would then allow her to stop paying the fees for the SIPP. The valuation of the illiquid investment may prove difficult, as there is no market for it. For calculating compensation, Options should establish an amount it's willing to accept for the investment/s as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investment/s.

If Options is able to purchase the illiquid investment the price paid to purchase the holding will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding).

If Options is unable, or if there are any difficulties in buying Mrs L's illiquid investment, it should give the holding a nil value for the purposes of calculating compensation. In this instance Options may ask Mrs L to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the relevant holding. That undertaking should only take effect once Mrs L has been compensated in full, to include any loss above our award limit, and should allow for the effect of any tax and charges on the amount Mrs L may receive from the investment/s and any eventual sums she would be able to access from the SIPP. Options will have to meet the cost of drawing up any such undertaking.

If the SIPP cannot be closed because of the need to continue to hold the illiquid asset, Options is to waive all future SIPP fees since Mrs L wants to take the benefits from her pension and would now close it (and not incur any future SIPP fees) but for the error made by Options.

I accept that Mrs L has been caused distress and inconvenience in relation to her SIPP and Crown investment generally and I note that she consulted her representative and made a complaint some years ago now and first looked to take pension benefits in around 2014/2015 when she was 60. I accept that in particular not being free to take her pension benefits at a time of her choosing because of the illiquidity of the investment will have caused worry, upset and financial strain to Mrs L over and above her financial loss.

With regards to the tax-free cash, Options should:

> A) pay Mrs L a sum equal to the tax free cash lump sum she would have received at the calculation date.
>
> B) Mrs L has not had the use and benefit of that money since the calculation date and so it is right that Options also pay interest on that sum. Interest is to be paid at the rate of 8% simple interest per year from the calculation date to the date of my final decision.

With regard to past loss income, Options should:

C) Establish the level of income that Mrs L would have been able to purchase on the open market as at the calculation date, assuming Mrs L would have purchased the highest available annuity on a single life basis with no guarantees or increases paying monthly. Options should then calculate the total of all the notional payments which Mrs L should have received from this annuity, net of her marginal rate of tax (presumed to be basic rate), from the calculation date to the date of my final decision with interest added to each payment at 8% simple interest per year from the date each payment was due to be paid to the date of my final decision.

D) Options should also calculate all of the actual payments Mrs L has received from her SIPP, if any, net of Mrs L's marginal rate of tax, from the calculation date to the date of my final decision with interest added to each payment at 8% simple interest per year from the date each payment was paid to the date of my final decision.

E) Past loss of income is C minus D. This should be paid direct to Mrs L.

With regard to Mrs L's future loss of income, Options should:

F) Establish the current capital cost of purchasing income on the open market at the level and on the same terms that Mrs L would have had as in C) above.

G) Establish the current transfer value of Mrs L's SIPP taking into account any outstanding charges. Any illiquid assets should be treated as set out above.

H) The capital value of the future loss of pension is F minus G.

I) If there is a loss at H above Options should pay compensation to make good that loss. Since the loss Mrs L has suffered is within her pension it is right that I try to restore the value of her pension provision to the value at H) above if that is possible. So if possible the compensation for the loss should be paid into the pension. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance. Payment into the pension should allow for the effect of charges and any available tax relief.

On the other hand, Mrs L may not be able to pay the compensation into a pension. If so compensation for the loss at H) above should be paid to Mrs L direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income. Therefore, the compensation for the loss paid to Mrs L should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mrs L's marginal rate of tax in retirement. For example, if Mrs L 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.

With regard to distress and inconvenience, Options should:

J) Pay compensation to Mrs L for the substantial distress and inconvenience she has suffered as result of losing a sizeable proportion of her overall pension provision and in not being able to take an income from this part of her pension since the calculation date – a period of around 10 years. This was also a time when Mrs L's husband has suffered health issues and so the loss of pension income will have caused her significant financial strain. I think a payment of the sum of £2,000 should be paid to reflect this.

With regard to interest:

> K) Options is to pay compensation calculated above promptly. If Options does not pay the compensation within 28 days of being notified of Mrs L's acceptance of my final decision, Options is to pay 8% simple interest per year on the compensation from the date of this decision until the date of payment. Options should also provide details of all of its calculations to Mrs L in a form that should be understandable to her.

My final decision

For the reasons given above I uphold Mrs L's complaint against Options UK Personal Pensions LLP.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend that Options UK Personal Pensions LLP pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as shown above. My decision is that Options UK Personal Pensions LLP should pay Mrs L the amount produced by that calculation – up to a maximum of £150,000 (including the £2,000 to compensate for the distress and inconvenience Options' actions caused but excluding costs) plus interest on that amount as set out in K) above if applicable.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I recommend that Options pays Mrs L the balance, plus any interest on the balance as set out above.

This recommendation is not part of my determination or award. Options doesn't have to do what I recommend. It's unlikely that Mrs L can accept my decision and go to court to ask for the balance. Mrs L may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 4 June 2024.

Abdul Hafez
Ombudsman