DRN-4605244

The complaint

Mr B has complained that Options UK Personal Pensions LLP ("Options") failed to carry out sufficient due diligence when accepting his application to open a Self-Invested Personal Pension (SIPP) and allowing the SIPP to purchase a number of investments.

This decision relates to the establishment of the SIPP, the transfer of Mr B's existing pensions (including a defined benefit ("DB") arrangement) and the purchase of the Lion House loan note in July 2011 for £685,000.

Mr B is being represented in his complaint but for ease I'll refer to all representations as being made by Mr B.

What happened

In early 2010, following advice from Mac Financial Advice LLP ("MAC"), Mr B signed an application form for an Options SIPP. This noted his Financial Adviser and Investment Manager as MAC. MAC had two directors, Mr G and Mr M. The application form notes that Mr G was Mr B's financial adviser and investment manager. It also confirmed that Mr B wished to transfer his existing SIPP to Options. The transfer included an in-specie transfer of investments held within an investment account, with a firm I'll refer to as Firm S. And it also included an in-specie transfer of two unsecured loan notes with Lion House Portfolio Ltd ("Lion House"), these were known as the LHP Berkeley Strategy ("Berkeley") – and had been purchased in 2008.

The SIPP was established in February 2010. In December 2011, Mr B's former SIPP provider wrote to confirm the transfer had completed. In this letter it said that it had been unable to value the Berkeley investment in a way it considered would meet regulatory requirements. So it was given a value of £0.01 at the time it was transferred to Options.

As well as the above mentioned SIPP, Mr B also transferred other pensions he held (a DB scheme and a linked additional voluntary contribution ("AVC") plan), to Options. In July 2011, Mr B's SIPP invested £685,000 in another unsecured loan note with Lion House. Mr B signed an Options '*Alternative Investment Member Declaration & Indemnity*' form on 25 July 2011.

In December 2012, Mr B's SIPP invested a further £100,000 in Lion House. MAC also arranged other investments at various times throughout its relationship with Mr B.

Options stopped receiving interest on the Lion House investments in February 2016. And in 2019 Lion House had entered liquidation and Berkeley had been dissolved.

Additional background information

The details below have been taken from information provided by Options on Mr B's complaint. And other complaints this Service is considering against Options, involving introductions from MAC.

Mr M – one of the Directors of MAC was also listed on Companies House records as a Director of Lion House. A draft prospectus for the Lion House loan note states that Mr M is the CEO.

When asked about the due diligence it completed on MAC, Options has told us that:

- An agreement was in place between Options and MAC between April 2010 and September 2014. It's also provided a copy of this agreement;
- The FCA register was checked to ensure MAC had the appropriate permissions and this was rechecked each time an instruction was received;
- Options expected MAC to provide clients with regulated financial advice in relation to the transactions it recommended.
- As an execution only SIPP provider, Options didn't have the permissions or experience to advise or comment on the suitability of the transaction,. And it didn't ask MAC for copies of the advice paperwork;
- 51 clients were introduced by MAC and around 80% of these went into non-mainstream investments.

When asked about the due diligence it completed on Lion House, Options has told us that:

- Following a number of system migrations, it has been unable to retrieve the searches it carried out when it conducted its due diligence. But it has confirmed the usual searches on an investment prior to acceptance for with its SIPPs included a search of Companies House including the directors and majority shareholders, complete internet searches of the company, the directors and majority shareholders, and a search of the FCA website to check whether there were any adverse publications, plus a check of the company's website, if applicable.

Mr B's complaint

Mr B submitted a claim to the Financial Services Compensation Scheme ("FSCS") against MAC. He received £50,000 compensation, which was the maximum award he could receive under the FSCS's award limits at that time.

The FSCS gave Mr B a reassignment of rights in which, amongst other things, the FSCS explained it was transferring back to Mr B any legal rights it held against Options.

Mr B complained to Options in June 2021. In his letter to Options, Mr B complained, amongst other things, that Options had failed in its duty by not completing due diligence on the investments within his SIPP.

Options issued its final response to the complaint in August 2021, in which it said it was rejecting the complaint. Mr B wasn't happy with Options' response, so he referred the matter to this Service for consideration.

It was necessary for our Service to set up more than one case for Mr B's complaint as it related to separate events: the purchase of Mr B's existing investments that were transferred to Options; the establishment of the SIPP, transfer of Mr B's existing pensions (including a DB arrangement) and the purchase of the Lion House loan note in July 2011 for £685,000; and, the purchase of the Lion House loan note in December 2012 for £100,000.

As explained above – this decision relates to the transfer of Mr B's existing pensions (including a DB arrangement) and the purchase of the Lion House loan note in July 2011 for £685,000.

One of our Investigators issued an opinion upholding the complaint. In summary the Investigator didn't think Options had completed sufficient due diligence on MAC. And had it done so, the Investigator thought Options should have refused Mr B's SIPP application.

Options responded to the Investigator's view. It said that it didn't think Mr B had made this complaint in time under the rules that apply.

I issued a jurisdiction decision confirming why I thought the complaint had been made in time and so it was one that this Service could consider. Options was given the opportunity to provide any final submissions relating to the merits of the complaint. To date, nothing further has been received.

I am now in a position to reach a final decision on the merits of the complaint.

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 available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I uphold the complaint. I've explained my reasons for this below and I've set out what I think Novia needs to do to put things right.

Relevant considerations

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

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

- The Financial Services and Markets Act 2000 ("FSMA").
- Court decisions relating to SIPP operators, in particular Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541 (*"Options"*) and the case law referred to in it including:
    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474 ("*Adams"*)
    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service EWHC 2878 (*"Berkeley Burke"*)
    - Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The Financial Conduct Authority ("FCA") (previously Financial Services Authority) ("FSA") rules including the following:
    - PRIN Principles for Business
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to SIPP operators and good industry practice.

The legal background:

As highlighted in the High Court decision in *Adams* the factual context is the starting point for considering the obligations the parties were under. And in this case it is not disputed that the contractual relationship between Options and Mr B is a non-advisory relationship.
Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HM Revenue and Customs rules. Options was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

I have considered the obligations on Options within the context of the non-advisory relationship agreed between the parties.

The case law:

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

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

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

The Principles for Businesses:

The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non-advisory basis, in a way appropriate to that relationship.

Principles 2, 3 and 6 are of particular relevance here. They provide:

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

I am satisfied that I am required to take the Principles into account (see *Berkeley Burke*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

The regulatory publications and good industry practice:

The regulator issued a number of publications which reminded SIPP operators of their obligations, and which set out how they might achieve the outcomes envisaged by the Principles, namely:

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

The 2009 Report included:

> *"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…*
>
> *We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers."*

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

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However all of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account (as did the ombudsman whose decision was upheld by the court in the *Berkeley Burke* case).

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.
- The comments made in the publications apply to SIPP operators that provide a non-advisory service.
- Neither court in the *Adams* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.
- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

What did Options obligations mean in practice?

I'm satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business, Options was required to consider whether to accept or reject particular investments and/or referrals of business with the Principles in mind. I say this based on the overarching nature of the Principles (as is clear from the case law) and based on good industry practice.

I note that in practice this was also (broadly at least) Option's view since it did for example carry out some checks on MAC and the investments before deciding whether to accept MAC's business and allow the investments in its SIPP.

I am satisfied that a non-advisory SIPP operator could decide not to accept a referral of business or a request to make an investment without giving advice. And I am satisfied that in practice many non-advisory SIPP operators did refuse to accept business and/or refuse to make investments without giving advice.

I am satisfied that, in order to comply with its regulatory obligations, a non-advisory SIPP operator should have due diligence processes in place to check any firms introducing business to it and the investments it is asked to make on behalf of members or potential members. And Options should have used the knowledge it gained from its due diligence checks to decide whether to accept such business and/or allow a particular investment.

The Regulators' reports and guidance provided some examples of good practice observed by the FSA and FCA during its work with SIPP operators. This included being satisfied that a particular introducer is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.

Options due diligence on MAC and what it should have concluded

Options' due diligence on MAC before accepting introductions from it consisted of, amongst other things, Options asking MAC to agree to its terms of business by signing the 'Introducing Business to Carey Pensions – Role and Responsibilities' document. The FSA Register was also checked to ensure MAC was appropriately authorised (which it was). An introducer profile was also completed and signed by MAC. This noted that MAC had two financial advisers and that Mr M was responsible for setting and monitoring the compliance procedures. It also asked MAC a number of questions about its processes for monitoring SIPP sales and pension transfers/switches, along with some questions about MAC's client profile and business objectives.

It's clear from the above that Options understood that it needed to carry out some due diligence on MAC but I don't think these checks went far enough. And given the circumstances involved here, I don't think Options took appropriate steps or drew reasonable conclusions from the information that was available to it before accepting Mr B's business.

I think Options was aware of, or should reasonably have identified, potential risks of consumer detriment associated with the business MAC was proposing to introduce. And I consider these risks should have been identified before Options accepted Mr B's application.

I'm not aware of how many introductions Options received from MAC before Mr B's. However, given what I do know, I think Options ought to have been aware that MAC was introducing ordinary retail clients to Options, where in many cases, and certainly in the case of Mr B, they were investing the majority of their SIPP funds in Lion House unsecured loan notes.

Lion House was a high risk and non-mainstream investment. And it wouldn't generally be considered suitable for the vast majority of retail clients, certainly not in the proportions that MAC was recommending. I think Options understood this as it did ask Mr B to sign an 'Alternative Investment Member Declaration & Indemnity' form. This asked Mr B to confirm, amongst other things, that he was aware of the risks associated with the investment and that he indemnified Options against all liabilities arising from it.

In the case of Mr B, he transferred an existing SIPP he held to Options, and this included an in-specie transfer of two Lion House loan notes that had been arranged by MAC. At the time of the transfer, Mr B's former SIPP provider said that it had been unable to value the loan note in a way it considered would meet regulatory requirements so it had given it a value of £nil. On the advice of MAC, Mr B also transferred almost £700,000 from his DB and AVC pensions to the Options SIPP. He then went on to invest £685,000 in Lion House unsecured loan notes. So, based on these circumstances alone, I think Options ought to have been aware of the risk of consumer detriment associated with such an investment.

But I also think Options would've been aware, from undertaking basic checks on MAC, that one of its Directors was also a Director/the CEO of Lion House. I don't think there were sufficient systems and controls put in place to manage this clear conflict of interest between MAC and the investment it was introducing to clients.

I note Mr B's SIPP application notes the contact at MAC as Mr G. However, Mr B has told us that Mr M was his financial adviser and had been for several years prior to the Options SIPP being established. I'm persuaded by Mr B's testimony here. So I'm satisfied that Mr M was a director of MAC and Mr B's financial adviser. Even if Mr G was the adviser, I still think Mr M's involvement in MAC ought to have been a concern where the Lion House investment was being recommended. MAC were recommending that clients transfer their pensions to an Options SIPP and invest in unsecured loan notes in a company that Mr M was the CEO/Director of. Options ought to have been aware of this set up from the outset. And it ought to have had real concerns about this from the start. This is particularly so given that the investment was in the form of unsecured loan notes, which are difficult to value and to sell, and as I've said above, are a form of investment that is not suitable for most retail investors even where there is no connection between the adviser and the investment.

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

Options could simply have concluded that, given the potential risks of consumer detriment from the investment being recommended by MAC – which I think should have been clear and obvious at the time – it should not continue to accept applications or investment instructions from MAC where the intended investment was Lion House. That would have been a fair and reasonable step to take, in the circumstances. Alternatively, Options could have taken fair and reasonable steps to address the potential risks of consumer detriment, such as those I've set out below.

Requesting information directly from MAC and making independent checks

Given the potential risk of consumer detriment to Mr B here, I think that Options ought to have found out more about how MAC was operating before it accepted Mr B's SIPP application and permitted the Lion House investment in Mr B's SIPP. And, mindful of the type of introductions and instructions I think that it's more likely than not that Options was receiving from MAC from the outset (Options has told us that 80% of client introduced by MAC invested in Non-mainstream investments), I think it's fair and reasonable to expect Options, in line with its regulatory obligations, to have made some specific enquiries and carried out independent checks.

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

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

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

And I think that Option should have checked with MAC and asked about things like: how it came into contact with potential clients, what agreements it had in place with its clients, how and why some of the retail clients it was introducing were interested in investing large proportions of their pension monies in high risk, non-mainstream investments and how it managed the conflict of interest between itself and Lion House in respect of the loan note investments.

Options might say that it didn't have to obtain this information from MAC. But I think this was a fair and reasonable step to take, in the circumstances, to meet its regulatory obligations as an execution only SIPP operator and good industry practice. However, I'm mindful that MAC may not have been willing to answer the questions posed to it, or been truthful if it responded, specifically in relation to how it managed the conflict of interest between itself and Lion House.

But I think the risk of unsuitable advice given the conflict of interest, only emphasised the need for independent checks. And I think Options ought to have questioned before accepting Mr B's SIPP application and the investment whether he was likely to have been a suitable candidate to invest nearly his whole pension fund in this way. I think Options ought to have asked the types of questions I've set out above, given the real risk of consumer detriment resulting from MAC's approach. And I don't think it's likely that MAC would have been able to give answers that Options would've reasonably found plausible and acceptable, such that Options would've been convinced that all was in order and that the concerns it should reasonably have had were baseless. For this reason, I think it would've been reasonable to contact Mr B, and any other customers who had been advised by MAC to invest in the Lion House loan notes, directly.

Options may say that it couldn't have been expected to contact customers, as well as MAC. But I'm considering what steps would've been reasonable for Options to take in order to meet its obligations under the Principles and in accordance with good industry practice before Options accepted Mr B's SIPP application and allowed him to invest nearly all his SIPP funds in Lion House. And I think this would've been a reasonable step to take in the circumstances.

The 2009 Thematic Review Report said that:

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

Given the potential risks of consumer detriment from the investment business being placed by MAC – which I think should have been clear and obvious at the time – I think it would have been fair and reasonable for Options, to meet its regulatory obligations and good industry practice, to have taken independent steps to enhance its understanding of the

business it was receiving from MAC. And, given the significant conflict of interest in MAC recommending customers invest in Lion House loan notes, I think it would have been fair and reasonable for to speak to some applicants, like Mr B, directly. And I think it's more likely than not that if Options had done this, Mr B would have told Options that MAC, in particular Mr M, had told him that Lion House loan notes were low risk.

I think Options should have realised that it was unlikely that MAC was acting in the best interests of its clients when Options was first made aware it intended to recommend its clients invest in Lion House. Options may say that it didn't realise Lion House was the intended investment as this wasn't arranged until after the SIPP had been established. But MAC also arranged for Mr B to transfer his existing SIPP to Options. This included an In-specie transfer of two Lion House loan notes. So Options ought to have been aware of the start that it was intended that Lion House would be held in the SIPP.

In my view, Options should have concluded, given the potential risks of consumer detriment from the business being introduced to it by MAC – which I think should have been clear and obvious at the time – that it should not accept applications from MAC, where the intended investment was in Lion House. That would have been the fair and reasonable step to take, in the circumstances.

Is it fair to ask Options to pay Mr B compensation in the circumstances?

I accept that MAC had some responsibility for initiating the course of action that led to Mr B's loss. However, I'm satisfied that it's also the case that if Options had complied with its own distinct regulatory obligations as a non-advisory SIPP operator, the arrangement for Mr B wouldn't have come about in the first place.

Options' failure to act in accordance with its regulatory obligations and good industry practice has caused Mr B to suffer financial loss in his pension and to suffer distress and inconvenience. I consider the substantial loss of Mr B's pension provision – will inevitably have caused him considerable worry and upset.

Options didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr B to be put at significant risk of detriment as a result. Further, in my view it's fair and reasonable to say that just having Mr B sign declarations, wasn't an effective way for Options to meet its regulatory obligations to treat him fairly, given the concerns Options ought to have had about the business MAC was introducing and the proportion of Mr B's fund that was invested in Lion House loan notes. Options knew Mr B had signed forms intended to acknowledge, amongst other things, his awareness of some of the risks involved with investing in Lion House and to indemnify Options against losses that arose from acting on his instructions. And, in my opinion, relying on the contents of such forms when Options knew, or ought to have known, that accepting Mr B's business from MAC would put him, and other investors in similar circumstances, at significant risk, wasn't the fair and reasonable thing to do.

Had Options declined Mr B's investment instruction from MAC, would the transaction complained about still have been effected elsewhere?

Based on the evidence I've seen, I don't think Mr B's pension monies would've been transferred to Options. Mr B has told us that he wasn't looking to make any changes to his DB pension before MAC suggested it and it seems the reason for the transfer was to invest in Lion House.

Options may say if it hadn't accepted Mr B's business from MAC, that he would still have transferred his pensions and the investment in Lion House would still have been effected with a different SIPP provider. But I don't think it's fair and reasonable to say that Options shouldn't compensate Mr B for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found it did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr B's business from MAC.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if Options had declined to accept Mr B's business from MAC, the transaction complained about wouldn't still have gone ahead and Mr B would have retained his existing pension arrangements, including DB pension.

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

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

But I don't think these circumstances apply to Mr B. Mr B was not provided with an incentive to invest I'm not satisfied that Mr B understood the risks involved in the transactions; indeed, he says Lion House loan notes were described to him as low risk.

On balance, I'm satisfied that Mr B, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this case is very different from that of Mr Adams. And having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that if Options had refused to accept Mr B's business from MAC, the transactions this complaint concerns wouldn't still have gone ahead.

I should highlight here that in this decision I've considered the establishment of the SIPP, the transfer of Mr B's existing SIPP and DB pension arrangement, and the purchase of the Lion House loans notes in July 2011 for £685,000. I'm not making a finding on the the initial purchase of the Lion House/Berkeley loans notes that Mr B made in 2008, before his previous SIPP was transferred to Options; this was dealt with by our Service as a separate complaint. And the later purchase of Lion House loan notes that Mr B made in December 2012 has also been dealt with as a separate matter.

Summary

Overall, I think it's fair and reasonable to direct Options to pay Mr B compensation in the circumstances. While I accept that MAC might have some responsibility for initiating the course of action that's led to Mr B's loss, I consider that Options failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining to accept Mr B's business from MAC when it had the opportunity to do so. I say this having given careful consideration to the *Adams v Options SIPP* judgments but also bearing in mind that my role is to reach a decision that's fair and reasonable in the circumstances of the case having taken account of all relevant considerations.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr B. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against Options that requires it to compensate Mr B for the full measure of his loss. Options accepted Mr B's business form MAC and, but for Options' failings, I'm satisfied that Mr B's pensions wouldn't have been transferred.

Putting things right

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

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

In light of the above, Options should:

- Obtain the actual transfer value of Mr B's SIPP, including any outstanding charges.
- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).
- Undertake loss calculations as set out below in respect of each of the schemes from which monies were transferred into the SIPP and pay any redress owing in line with the steps set out below.
- If the SIPP needs to be kept open only because of the illiquid investments and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.
- If Mr B has paid any fees or charges from funds outside of his pension arrangements, Options should also refund these to Mr B. Interest at a rate of 8% simple per year from date of payment to date of refund should be added to this.
- Pay to Mr B £700 to compensate him for the distress and inconvenience he's been caused.

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

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

If Options wishes to make such an allowance, it must first calculate the proportion of the total FSCS' payment(s) Mr B received that it's fair and reasonable to apportion to each individual transfer into the SIPP – this *must* be proportionate to the value of the actual sums transferred in. The total FSCS payment(s) allowed for *must* be no more than the total FSCS payment(s) Mr B actually received. Having done this, Options can then make the allowance by following the steps set out in the sections below.

Treatment of the illiquid assets held within the SIPP

I think it would be best if any illiquid assets held could be removed from the SIPP. Mr B would then be able to close the SIPP, if he wishes. That would then allow him to stop paying the fees for the SIPP. The valuation of the illiquid investment/s 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/s then the price paid to purchase the holding/s will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holdings).

If Options is unable, or if there are any difficulties in buying Mr B's illiquid investment/s, it should give the holdings a nil value for the purposes of calculating compensation. In this instance Options may ask Mr B to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the relevant holding/s. That undertaking should allow for the effect of any tax and charges on the amount Mr B may receive from the investment/s and any eventual sums he would be able to access from the SIPP. Options will have to meet the cost of drawing up any such undertaking.

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

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

For clarity, Mr B has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

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

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

- always calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts Options' offer to calculate how much of their redress could be

augmented, request the necessary information and not charge Mr B for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

For the purposes of the calculation that's being carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4, if it wishes, Options *may* notionally, for the period from the point of their payment through until the valuation date (as per the DISP App 4 definition of that term), allow for that proportion of the payment(s) Mr B received from the FSCS following the claim about MAC, that it's fair and reasonable to apportion to monies transferred in from the defined benefit schemes and in accordance with what's stated earlier in this decision, as a notional deduction. Where such an allowance is made then Options must also, at the end of the calculation, allow for a corresponding notional addition to the overall calculated loss that's equivalent to the relevant notional deduction(s) allowed for. The effect of this notional addition will be to increase the overall loss calculated using the most recent financial assumptions in line with PS22/13 and DISP App 4, by a sum that's equivalent to the proportion of the payment(s) Mr B received from the FSCS accounted for in this part of the calculation.

Redress paid directly to Mr B as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Options may make a notional deduction to allow for income tax that would otherwise have been paid. Mr B's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

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

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

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

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

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

If it wishes, Options *may* make an allowance in the form of a notional deduction equivalent to that proportion of the payment(s) Mr B received from the FSCS following the claim about MAC, that it's fair and reasonable to apportion to monies transferred in from the defined contribution schemes in accordance with what's stated earlier in this decision, and on the date the payment(s) was actually paid to Mr B. Where such a deduction is made there must

also be a corresponding notional addition, at the date of my final decision equivalent to the total relevant notional deduction(s) accounted for in this part of the calculation.

To do this, Options should ask the operators of Mr B's previous defined contribution pension plan(s) to allow for the relevant deduction(s) in the manner specified above. Options must also then allow for a corresponding notional addition as at the date of my final decision**,** equivalent to the accumulated FSCS payment(s) notionally deducted by the operators of Mr B's previous defined contribution pension plan(s).

Where there are any difficulties in obtaining notional valuations from the previous operators, Options can instead allow for both the notional deduction(s) and addition(s) in the notional calculation it performs, provided it does so in accordance with the approach set out above.

The notional value of Mr B's existing plan if monies hadn't been transferred (established in line with the above) less the proportion of current value of the SIPP being used for this aspect of the calculation (as at date of calculation) is Mr B's loss.

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

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

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

If either party disagrees with the presumed income tax rate, they'll need to let us know as soon as possible and, if agreement can't be reached at this stage, certainly before a final decision is issued after which the redress can't be amended.

SIPP fees

If the illiquid investments can't be removed from the SIPP, and because of this it can't be closed after compensation has been paid, then it wouldn't be fair for Mr B to have to continue to pay annual SIPP fees to keep the SIPP open. So, if the SIPP needs to be kept open only because of the illiquid investment/s and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

Distress & inconvenience

I think the loss of the pension provision that is the subject of this complaint caused Mr B significant distress, and Options should pay him £700 to compensate him for this.

My final decision

For the reasons explained, I uphold this complaint and I direct Options UK Personal Pensions LLP to calculate redress as set out above.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out above. My decision is that Options UK Personal Pensions LLP should pay Mr B the amount produced by that calculation – up to a maximum of £160,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Options UK Personal Pensions LLP pays Mr B the balance.

This recommendation is not part of my determination or award. Options UK Personal Pensions LLP doesn't have to do what I recommend. It's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B 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 Mr B to accept or reject my decision before 25 April 2025.
Lorna Goulding
Ombudsman