DRN-4605276

Financial Ombudsman Service

The complaint

Mr B has complained that Options UK Personal Pensions LLP ("Options") failed to carry out sufficient due diligence when it allowed his Self-Invested Personal Pension (SIPP) to invest in a non-mainstream investment.

This decision relates to the purchase of a Lion House Portfolio Ltd ("Lion House") loan note in December 2012 for £100,000.

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

Mr B held an existing SIPP with Options, which had been established following advice from Mac Financial Advice LLP ("MAC") in February 2010. MAC had two directors, Mr G and Mr M.

Mr B's SIPP already held a number of Lion House loan notes which had been arranged by MAC. In December 2012, MAC arranged for Mr B's SIPP to 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.

<u>Additional background information</u>

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 transfer of Mr B's existing pensions (including a DB arrangement) and the purchase of a Lion House loan note in July 2011 for £685,000; and, the purchase of a Lion House loan note in December 2012 for £100,000.

As explained above – this decision relates to the purchase of the Lion House loan note in December 2012 for £100,000.

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 shouldn't have allowed the SIPP to purchase the Lion House loan note in December 2012.

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.

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 its due diligence obligations were ongoing.

Options has said that each time it received an instruction it would recheck the FCA register to see if there had been any changes to an introducer's regulatory status. However, 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 Lion House investment instruction from MAC.

I think Options was aware of, or should reasonably have identified, potential risks of consumer detriment associated with some instructions MAC was proposing. And I consider these risks should have been identified before Options accepted Mr B's investment instruction in December 2012.

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 in December 2012. 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.

Mr B had already transferred his existing pensions to Options, and this included an in-specie transfer of two Lion House loan notes that had been arranged by MAC in 2008. MAC then went on to arrange another Lion House loan note in July 2011, before accepting this further instruction from MAC to invest £100,000 into Lion House loan notes in December 2012.

Options would've been aware, from undertaking basic checks on MAC, that one of its Directors – Mr M - was also a Director/the CEO of Lion House.

I note Options issued a letter, dated 4 December 2012, to MAC to confirm that following its investment instruction, it had sent the relevant funds to Lion House. This letter was sent C/o Mr G at MAC. However, Mr B has told us that Mr M was his financial adviser and had been for several years. 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 was recommending that clients invest their pension monies 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 of its relationship with MAC, or at least when it first received an instruction from it to invest in Lion House. So 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. However, 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.

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 accept the Lion House investment instruction from MAC. 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 Lion House investment instruction in 2012. 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 Options 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. 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 MAC's investment instruction in December 2012 for Mr B to invest 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 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.

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 Lion House investment in December 2012 wouldn't have gone ahead.

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 a declaration, 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. Options knew Mr B had signed a form 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 instruction. And, in my opinion, relying on the contents of this form when Options knew, or ought to have known, that accepting Mr B's December 2012 investment instruction from MAC would put him at significant risk, wasn't the fair and reasonable thing to do.

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

Options may say if it hadn't accepted Mr B's investment instruction, that 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 December 2012 Lion House investment instruction 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 investment instruction from MAC, the transaction complained about – the December 2012 investment in Lion House - wouldn't still have gone ahead.

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 December 2012 Lion House investment instruction 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 December 2012 Lion House investment instruction from MAC. I'm not making a finding on the initial purchase of the Lion House 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 transfer of Mr B's pensions to Options in 2011 and the purchase of Lion House loan notes at that time (July 2011) have 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 transaction proceeding by declining to accept Mr B's December 2012 Lion House investment instruction 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 December 2012 Lion House investment instruction and but for Options' failings, I'm satisfied that this transaction wouldn't have gone ahead.

Putting things right

I consider that Options failed to comply with its own regulatory obligations and didn't put a stop to the transaction that is 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 don't think the December 2012 investment in Lion House would have gone ahead.

As the parties will be aware, a final decision has also been issued on a linked complaint, which considered the establishment of the Options SIPP, the transfer of Mr B's pensions and the investment in Lion House that was made in July 2011. In that decision, I directed Options to complete a calculation, assuming that Mr B's Options SIPP hadn't been established and he had instead retained his existing SIPP, DB pension and AVC plan. I also said that if the amount produced by the calculation on the linked complaint is more than £160,000, I recommend that Options pays Mr B the balance.

If Options follows my recommendation, as set out in the linked complaint, then any loss Mr B has suffered in this complaint – relating to the December 2012 Lion House investment - will have been covered as Mr B will have been fully compensated. And so no further redress would be due.

However, if Options doesn't follow my recommendation and the amount produced by the calculation on the linked complaint is more than £160,000, than to put things right in this complaint, Options will need to undertake a further loss calculation.

Our investigator set out several ways for the redress to be calculated depending on where the funds invested in Lion House in December 2012 had originated from, these options included our DB redress methodology, our defined contribution redress methodology and a benchmark that could be used, if appropriate.

Fair compensation

My aim is that Mr B should be put as closely as possible into the position he would probably now if Options hadn't accepted his December 2012 Lion House investment instruction.

I take the view that Mr B would have invested differently. It's not possible to say *precisely* what he would have done differently. Having now fully considered this matter, I’m satisfied that what I have set out below is fair and reasonable Mr B's circumstances and objectives when he invested.

What must Options do?

To compensate Mr B fairly, Options must:

- Compare the performance of Mr B's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value there is a loss and compensation is payable.

- Options should also add any interest set out below to the compensation payable.

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

- If 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.

- Pay to Mr B £500 for the loss of a significant amount of his pension provision.

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

Investment name	Status	Benchmark	From (“start date”)	To (“end date”)	Additional interest
December 2012 Lion House loan note	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual value* of the investment. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. Options should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. The amount Options pays should be included in the actual value before compensation is calculated.

If Options is unable to purchase the investment, the *actual value* should be assumed to be nil for the purpose of calculation. Options may require that Mr B provides an undertaking to pay Options any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Options will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

The wrapper only exists because of illiquid investments. In order for the wrapper to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by Options taking over the investment, or this is something that Mr B can discuss with the wrapper provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. So 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.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr B wanted Capital growth and was willing to accept some investment risk.

- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr B's circumstances and risk attitude.

My final decision

For the reasons explained, I uphold this complaint. If Options doesn't follow my recommendation on linked complaint - which addressed the establishment of Mr B's SIPP and the transfer of his pensions to Options - and the amount produced by the calculation on the linked complaint is more than £160,000, then 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 28 April 2025.

Lorna Goulding
Ombudsman