DRN-4777701

The complaint

Mr E has a self-invested personal pension (SIPP) with Options UK Personal Pensions LLP (formerly Carey Pensions UK LLP) ("Options"). Mr E transferred his existing personal pension to the SIPP to invest in a property-based investment scheme in Cape Verde.

Mr E's complaint is that Options was negligent in accepting his application from an unregulated introducer.

What happened

I will first set out my understanding of the various parties involved and their roles in relation to the investment in this complaint.

Carey, now Options

Options is a SIPP provider and administrator, regulated by the Financial Conduct Authority (FCA). Options is authorised, in relation to SIPPs, to arrange (bring about) deals in investments, deal in investments as principal, establish, operate or wind up a pension scheme and make arrangements with a view to transactions in investments. Carey was not and Options is not authorised to advise on investments.

For clarity I have, where possible, referred to Options in this decision.

Mr E

Mr E is the complainant in this case, and he is represented by a claims management company.

Mr E applied for a SIPP with Options in April 2012. He first complained to Options about it in November 2020.

Cape Verde4 Life

Cape Verde4 Life was a UK based company. It was involved in overseas property investments. It was not regulated by the FCA. It was not therefore authorised to advise on investments covered by the Financial Services and Markets Act 2000 in the UK. One of the directors was a man I will call Mr C.

Cape Verde4 Life was an introducer of business to Options. It introduced Mr E's application to open a SIPP to Options.

Cape Verde4 Life was at the time of Mr E's investment described as an authorised representative of Oasis Atlántico.

Oasis Atlántico

Oasis Atlántico Imobiliaria SARL ("Oasis") is a company incorporated under the laws of Cape Verde. It owned land in Cape Verde on which it was to build a tourism resort named Salinas Sea. The development was split into units (in effect hotel rooms).

As I understand it there was more than one way to invest in the Salinas Sea project. I have seen a brochure promoting investment via two special purpose vehicles (companies) which were intended to be set up on a basis that could be invested in within a UK SIPP. This form of investment involved buying shares in the companies which in turn invested in units in Salinas Sea.

This form of investment had a minimum investment of £10,000. The brochure said it was intended for authorised financial advisers and gave the impression it was an investment for high-net-worth clients and/or sophisticated investors.

Alternatively, it was possible for the investor to buy a unit or part of a unit. Mr E invested in this way.

Buying a unit also involved entering into a Hotel Agreement under which the buyer/investor appointed the seller (Oasis) to operate the overall development (including the unit) as a hotel.

When the unit was completed, Oasis was to let the buyer know it was available for inspection and then the contract was to be completed.

The unit was to be part of the hotel and managed as a whole by the Manager, not by the individual investor.

During the first three years the investor was to be paid an annual income of at least 5% of the price paid. There was also provision for payment of income at the same level if the hotel was not completed and opened on time.

There was a formula for calculating the rental income payable to the investor which involved pooling the rental income of all units rather than based on the occupancy of the investor's individual unit. Investors would receive income on this basis during the first three years if greater than 5% and calculated on this basis after the first three years.

An investor could sell their unit on the open market, subject to the Hotel Agreement and there being an available buyer.

Mr E's investment

Mr E paid around £25,000 for 25% of a Salinas Sea unit. An initial deposit of £12,500 was paid to Oasis in May 2012. A second payment – also described as a deposit of about £4,000 was made in July 2012. Mr E has provided evidence of a mortgage held by Oasis in respect of his investment. It is unclear what the current status of that borrowing is.

Before making the investment, Mr E was provided with a Report on the Principal Terms of Documentation prepared by a firm of solicitors in London. And Mr E was required by Carey to sign a document headed SIPP Member Instruction and Declaration, Alternative Investment – Salinas Sea.

As I understand it, the resort was completed later in 2013 and Options (on behalf of Mr E) was invited to inspect it in December 2013. The formalities for completing the purchase were to take place soon after.

Looking at the documentation we've been provided, it appears Mr E incurred additional property expenses in 2016. In 2018 he received income from the property and made a repayment on his borrowing on the same day. No subsequent income or repayments are shown on the transaction history provided to this service.

The relationship between Cape Verde4 Life and Options

As I understand it, Options relationship with Cape Verde4 Life began in April 2011. Cape Verde4 Life was an introducer of business to Options and Options has said it received over 90 introductions between April 2011 and November 2013 when it ended its relationship with Cape Verde4 Life after it decided to stop accepting business from unregulated introducers.

Options says it acted properly in accepting introductions from CapeVerde4 Life. It was not prohibited from accepting introductions from unregulated introducers. It says it undertook due diligence checks on Cape Verde4 Life on a number of occasions and had no reason to believe it should not accept introductions from that business at the time of Mr E's introduction.

Due diligence carried out by Options on Cape Verde4 Life

Options has provided the Financial Ombudsman Service with information about the due diligence it carried out on Cape Verde4 Life.

Options says:

- Cape Verde4 Life first proposed to become an introducer of SIPP business for Options in April 2011. It was an introducer from late April 2011 until November 2013 when Options made a business decision to no longer accept introductions from unregulated introducers.
- Cape Verde4 Life was working with a FCA regulated adviser, 1Stop Financial Services, who were at the time authorised to advise on pension transfers, "if investors wished to take advice".
- Options did not pay any commission to Cape Verde4 Life for introducing business to it. It did not see the details of any payments made to Cape Verde4 Life by the underlying provider, but Cape Verde did disclose on its "Introducer Profile" that it would receive approximately 8%.
- Options did not request copies of any suitability reports.
- Options did not consider the Salinas Seas investment to be a non-mainstream pooled investment. It says it was an investment "into bricks and mortar property where they could be rented out with the rental returned to the pension scheme bank account."

In addition to the above I note Cape Verde4 Life completed a non-regulated introducer profile" with Options. It was sent to Cape Verde4 Life in March 2012 when Options said:

> *"As you, Cape Verde4 Life, introduce business to Carey Pensions then for compliance records and for the sake of good order we need to put in place Non Regulated Introducer Information and Terms of Business between our companies.*
>
> *I attach an Introducer Profile and terms of Business and would be grateful if you could agree and complete these and return to me.*
>
> *I have used a commencement date of 28 April 2011 for the Terms which is the date of your first case with us…"*

The profile document was signed by Cape Verde4 Life in September 2012. The form recorded a number of points in relation to Cape Verde4 Life including:

- It had been operating for five years, that its principal address was in the UK and that it had a branch in Cape Verde.
- It promoted Salinas Seas and intended to distribute future resorts from Oasis.
- The Salinas Sea investment was accepted by a number of other named SIPP operators.
- Cape Verde4 Life and/or its agents obtain clients from a "UK distribution network" (without further elaboration).
- The sales process adopted by Cape Verde4 Life and/or its agents was noted as "Mainly pension review/non reg" (without further elaboration).
- The average client was described as aged 45 plus, employed and self-employed with an income of £20-50K.
- Typical commission structure was noted as "master agent commission circa 8%"
- Its objective for the coming 12 months was noted as "sell out Salinas Seas/launch new Oasis resorts".
- Training was provided by an IFA and a compliance partner on SIPPs, and FSA and HMRC rules.
- The business produced by agents is monitored by Mr C reviewing all completed sales before submitting the application to the SIPP provider.
- Cape Verde4 Life worked with "1SFS IFA" and "TFPP IFA". I understand those firms to be 1Stop Financial Services and The Financial Planning Partnership.
- Cape Verde4 Life used a third-party compliance business to ensure no regulated activities were carried out by it.
- It had not been subject to any regulatory action or complaints.

Options entered into a terms of business agreement with Cape Verde4 Life in September 2012. It backdated that agreement to April 2011.

In September 2013, Carey conducted a "World Check" search on Mr C. The check did not reveal anything adverse.

Due diligence carried out by Options on Salinas Seas

As I understand it, Options carried out checks on the Salinas Sea investment in 2010. It concluded it was eligible for investment in a pension scheme. It also decided as a result of that review that all investors in its SIPPs should complete its Alternative Member Declaration and Indemnity.

I have seen a review of the Special Purpose Vehicle version of the investment carried out by a third party in April 2012 (ie around the time of Mr E's application) which was provided to Options. It includes a suggestion that SIPP operators obtain an acknowledgement from scheme members of the high risk, illiquid nature of the investment. And *"where the member is not investing through an FSA authorised investor, the SIPP operator may wish to obtain a copy of the high net worth/sophisticated investor certificate."*

I will refer to that Declaration again below. It is enough to say here that because of its checks upon the Salinas Sea investment Options referred to the investment as an unregulated alternative investment considered high risk and speculative.

Mr E's dealings with Carey and Cape Verde4 Life

Mr E applied to open a SIPP with Carey in April 2012. As part of that application process Mr E applied to switch his existing personal pensions with an estimated value of around £28,000. That application also said Mr E had chosen to take benefits from his pension immediately.

The application form, signed by Mr E and dated 9 April 2012, included a page for the details of the applicant's financial adviser which was left blank. No details of the investment to be held within the SIPP were included.

Mr E's Options SIPP was set up on 12 April 2012. Mr E was notified in writing, and he was asked to complete a transfer authority letter for his existing personal pensions.

Mr E's existing pension was transferred to Options in May 2012 and the initial deposit was made in respect of Salinas Sea a few days later. Mr E withdrew about £7,000 as a tax-free cash sum also in May 2012. A further deposit in respect of Salinas Sea was made in July 2012.

Mr E says he did not advise himself. He says he was put in touch with Cape Verde4 Life by a relative. Cape Verde4 Life recommended he transfer his pension to Options and invest in Salinas Sea – described as an '*up and coming tourist resort*'. Mr E says he understood that he was being advised by someone who was knowledgeable and was a pensions / investment professional. He didn't understand the importance or relevance of dealing with unauthorised firms.

Neither Mr E nor Options have provided copies of documents recording the advice Mr E says he was given by Cape Verde4 Life.

I have seen a copy of Mr E's SIPP application form which was accompanied by a printed letter addressed to Options signed by Mr E. It says:

> *"I [Mr E] authorise and instruct Carey pensions UK LLP as the Administrator of my Carey Pension Scheme and Carey Pension Trustees UK Ltd as the Trustee to provide Cape Verde4 Life, the authorized representative of Oasis Atlántico, with any information whatsoever they may require in relation to my scheme's purchase of an investment into the Salinas Sea investment."*

After the SIPP was set up Options sent a document to Mr E to complete headed:

> *"SIPP MEMBER INSTRUCTION AND DECLARATION ALTERNATIVE INVESTMENT – SALINAS SEA"*

I will refer to this document as the declaration. It recorded the investment type as "Hotel Room – Aparthotel on Sal (Cape Verde Islands)".

The declaration began:

> *"I [Mr E] being a member of the above scheme write to instruct Carey Pensions UK Ltd to purchase a Hotel Room with borrowing from the developer with Salinas Sea on the island of Sal in the Cape Verde Islands, managed on "hotel room basis", through*

Oasis Atlantico, for a consideration of [number given] on my behalf for the above Scheme."

The declaration then included a number of points including:

- Mr E confirmed Options was acting on an execution only basis and had not given advice.
- Mr E understood that the investment is the purchase of a hotel room that is "an Unregulated "Alternative Investment" and as such is considered High Risk and Speculative."
- Mr E acknowledged and confirmed his understanding that the investment may prove difficult to value and/or sell / realise.
- Mr E confirmed he had reviewed and understood the information provided by Salinas Sea.
- Mr E confirmed that he had taken his own advice, including but not limited to, financial advice, investment and tax advice regarding the investment and its value, taxes, costs and fees.

The declaration also included an agreement by Mr E to indemnify Options against any claims etc in connection with the investment.

Mr E signed the declaration in May 2012.

Mr E was not asked to state or otherwise indicate or provide evidence to show that he was a high net worth individual or sophisticated investor in the declaration, or in his SIPP application or otherwise.

Also dated May 2012, Mr E was provided with a document from a UK law firm headed Report on Principal Terms of Documentation Salinas Sea Cape Verde. Mr E appears to have signed each page of this document.

This showed Mr E was paying £25,000 for a 25% share in a unit in the Salinas Sea development.

It set out that Mr E was to pay £12,500 when the contract was signed, a further £3,750 on 30 June 2012 and £8,750 when the deed of purchase and sale was completed. It was expected construction would be completed by the end of October 2012.

A Hotel Agreement was entered into at the same time relating to the management of the hotel room as part of the overall development. Income from the unit was to be pooled with other units. Income was guaranteed at a certain level for the first three years.
The unit could be sold on the open market subject to the Hotel Agreement which had a 25-year term.

Later in 2013 Oasis Atlántico announced the completion of the resort, and Options, on behalf of Mr E, was invited to inspect his unit following which completion of the purchase was to take place.

Mr E's complaint to Options

In November 2020, Mr E complained to Options with the help of a claims management company (CMC). It said Options should not have accepted any business from Cape Verde4

Life or allowed Mr E's investment in Salinas Sea. The CMC claimed compensation to restore Mr E to the position he would have been in if he had not switched his pension to Options.

The complaint to the Financial Ombudsman Service

Mr E referred his complaint to the Financial Ombudsman Service in June 2021. The complaint form he completed for our service indicated that Options hadn't responded to Mr E's complaint at that point.

Since the complaint was brought to our service, Options issued a final response letter to Mr E. Options did not uphold Mr E's complaint. It made a number of points including:

- It received Mr E's application form in April 2012. The application form didn't have details of any financial adviser and confirmed Mr E had chosen to invest 100% of his funds into the Salinas Sea investment.
- Options provides execution only SIPP administration services. And this was set out in the documentation he completed when he applied for the SIPP and the documentation he was sent once the SIPP was set up
- As an execution only SIPP provider, Options isn't permitted to provide advice or comment on the suitability of the SIPP, the investments or the introducer selected
- It had carried out Mr E's instructions regarding the selected investment. Options would have been in breach of the regulator's rules had it not executed his instructions.
- Cape Verde4 Life acted as an introducer to Options. Options were aware that Cape Verde4 Life was not FCA authorised and it was treated as such. Options undertook due diligence checks on Cape Verde4 Life. Options had no reason to believe that it should not accept introductions from Cape Verde4 Life.
- Options had no involvement with Cape Verde4 Life other than it introducing business to it. All communications took place between Mr E and Options
- Cape Verde4 Life are not known to Options as advisers and Options isn't aware that they held themselves out to be advisers .
- It carried out relevant due diligence checks on the investment to ensure it was suitable for holding in a UK pension scheme.

One of our investigators considered the complaint. The investigator said that Options hadn't commented on whether the complaint had been brought out of time for our service to consider. She said that the SIPP had been taken out more than six years before the complaint was made but that there wasn't anything to suggest Mr E knew, or ought to have known, of a cause for complaint more than three years before he did complain.

Thus, she went on to consider the complaint itself. She thought the complaint should be upheld. She made a number of points including:

- The Principles for Businesses, and in particular Principles 2, 3 and 6, are relevant.
- The regulator has issued a number of publications which discussed the Principles and gave examples of good industry practice in relation to SIPP operators.
- Options was not responsible for giving Mr E advice. Nor was it responsible for checking any advice to him was suitable for his individual circumstances and requirements.

- Options was obliged to safeguard consumers against facilitating SIPPs that are unsuitable or detrimental to them.
- Options should have concluded it should not have accepted Mr E's application from CapeVerde4 Life
- Options had not provided any information to show that it took steps to ensure Cape Verde4 Life was not providing advice to the clients it introduced to Options. In Mr E's case there was no evidence that he had been dealing with a regulated adviser.
- Options should have been concerned about a lack of regulated advice in the circumstances.
- It appears that Cape Verde4 Life were arranging Mr E's SIPP and onward investment in the UK. And that would involve regulated activities when Cape Verde4 Life was not authorised to undertake such activities.
- Cape Verde4 Life was taking a high level of commission; was promoting the investment that Mr E would be investing in within his SIPP and that investment was high risk and esoteric.
- She considered section 27 of the Financial Services and Markets Act 2000 (FSMA) applied and that a court would not find it just and equitable to enforce the contract under s28 FSMA.
- In all the circumstances it was not fair and reasonable for Options to accept Mr E's application.

The investigator then set out how she thought Options should put things right.

Options did not respond to the investigator. As a result, the complaint was passed to me to consider.

I issued a provisional decision to both parties setting out why I intended to uphold Mr E's complaint and how I thought Options should resolve it.

Mr E's representative said they had nothing further to add. Options did not respond.

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.

As neither party made any further representations, I don't consider I need to revise the findings I reached in my provisional decision. I have set these out below and adopt them as my findings in this final decision.

In my provisional decision I said:

"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 am 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.

The Principles

The Principles for Businesses, which are set out in the FCA's handbook "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G). 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 have considered the relevant law and what this says about the application of the FCA's Principles. In R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) ("BBA") Ouseley J said at paragraph 162:

> *"The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirement they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."*

And at paragraph 77 of BBA Ouseley J said:

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

In R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service [2018] EWHC 2878) ("BBSAL"), Berkeley Burke brought a judicial review claim challenging the decision of an ombudsman who had upheld a consumer's complaint against it. The ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment.

The ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and had not treated its client fairly. Jacobs J, having set out some paragraphs of BBA including paragraph 162 set out above, said (at paragraph 104 of BBSAL):

> *"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the*

Principles based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."

The BBSAL judgment also considers section 228 FSMA and the approach an ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the ombudsman in that complaint, which I have described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

As outlined above, Ouseley J in the BBA case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what is fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in BBSAL. So, the Principles are a relevant consideration here and I will consider them in the specific circumstances of this complaint.

The Adams court cases and COBS 2.1.1R

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 that the Principles should not be taken into account in deciding this case. And I am of the view they do not. In the High Court case, HHJ Dight did not consider the application of the Principles and they did not form part of the pleadings submitted by Mr Adams. One of the main reasons why HHJ Dight found that the judgment of Jacobs J in BBSAL was not of direct relevance to the case before him was because *"the specific regulatory provisions which the learned judge in Berkeley Burke was asked to consider are not those which have formed the basis of the claimant's case before me."*

Likewise, the Principles were not considered by the Court of Appeal. So, the Adams judgments say nothing about the application of the FCA's Principles to the ombudsman's consideration of a complaint.

I acknowledge that COBS 2.1.1R (A firm must act honestly, fairly and professionally in accordance with the best interests of its client) overlaps with certain of the Principles and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(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 trying to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal did not so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

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

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

The facts in Mr E's case are different from those in Adams. There are also differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr E's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened after the contract was entered into. In Mr E's complaint, I am considering whether Options ought to have identified that the introductions from Cape Verde4 Life and/or the investment in Salinas Seas involved a risk of consumer detriment and, if so, whether it ought to have ceased accepting such introductions and/or making such investments prior to entering into a contract with Mr E.

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

I have proceeded on the understanding Options was not obliged – and not able – to give advice to Mr E on the suitability of its SIPP or the FPI investment for him personally. But I am 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 clients' interests in this respect, with reference to Principle 3 of the Principles for Business ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*
- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*
- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*
- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*
- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*
- *Identifying instances of clients waiving their cancellation rights, and the reasons for this."*

Although I've only referred to one of the above publications in detail, I have considered all of them in their entirety.

I acknowledge that the 2009 and 2012 reports and the "Dear CEO" letter are not formal "guidance" (whereas the 2013 finalised guidance is). However, the fact that the reports and "Dear CEO" letter did not constitute formal guidance does not mean their importance should be underestimated. They provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect the publications, which set out the regulators expectations of what SIPP operators should be doing, also goes some way to indicate what I consider amounts to good industry practice and I am, therefore, satisfied it is appropriate to take them into account.

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

Like the Ombudsman in the BBSAL case, I do not think the fact the publications, (other than the 2009 and 2012 Thematic Review Reports), post-date the events that took place in relation to Mr E's complaint, mean that the examples of good practice they provide were not good practice at the time of the relevant events. Although the later publications were published after the events subject to this complaint, the Principles that underpin them existed throughout, as did the obligation to act in accordance with the Principles.

It is also clear from the text of the 2009 and 2012 reports (and the "Dear CEO" letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

I note that HHJ Dight in the Adams case did not consider the 2012 thematic review, 2013 SIPP operator guidance and 2014 "Dear CEO" letter to be of relevance to his consideration of Mr Adams' claim. But it does not follow that those publications are irrelevant to my consideration of what is fair and reasonable in the circumstances of this complaint. I am required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

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

To be clear, I do not say the Principles or the publications obliged Options to ensure the pension was suitable for Mr E. It is accepted Options was not required to give advice to Mr E, and could not give advice. And I accept the publications do not alter the meaning of, or the scope of, the Principles. But they are evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles.

What did Options' obligations mean in practice?

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

It is clear from Options' non-regulated introducer profile in this case, that by early 2012 if not before, it understood and accepted that as a non-advisory SIPP operator its obligations meant it had a responsibility to carry out due diligence on Cape Verde4 Life and that it could and should decide not to do business with an introducer if it thought that was appropriate.

I am satisfied that, in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, Options should have carried out due diligence on Cape Verde4 Life. 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.

The due diligence carried out by Options on the investment

Because of what I say below about the introducer I do not need to refer to the due diligence carried out by Options of the Salinas Sea investment in detail.

Options has recently told us that the investment was not considered a nonmainstream pooled investment. It says it was a bricks and mortar property to be rented out with the rental income paid to the SIPP.

In my view this is an oversimplification. Mr E was not making a straightforward purchase of, say, a holiday apartment or villa that he could occupy or rent out as he saw fit and freely sell on the open property market. He was buying a part share in a hotel room in a development that was not yet complete, where the property would form part of hotel. Mr E is in principle free to sell the investment if he wants to, but he must sell subject to the hotel agreement so the ability to sell, in practice, depends on there being a market for part shares in hotel room investments.

These points were or were largely understood by Options at the time of Mr E's investment when it categorised the investment as an unregulated alternative investment that was high risk and speculative which might be difficult to sell/realise. And this understanding of the investment formed part of the context in which, or was a relevant factor in, the checks made by Options on Cape Verde4 Life since it planned to introduce clients for the purpose of investing in Salinas Sea.

The due diligence carried out by Options on the introducer

Options was permitted to accept business from unregulated introducers. It was not therefore at fault simply because it accepted business introduced from Cape Verde4 Life.

I note that Options' non-regulated introducer profile form which it completed with Cape Verde4 Life began with the following words:

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

So there is no dispute that Options took steps to make checks on Cape Verde4 Life and understand its business model. It seems to have sent the form to Cape Verde4 Life to complete in March 2012. The completed form was signed in September 2012. The first date is before Mr E's application to Options.

Although Options asked Cape Verde4 Life to complete the non-regulated introducer profile in 2012, in my view it should have completed a due diligence assessment on Cape Verde before it first agreed to accept any business from Cape Verde4 Life in 2011.

I also consider that good industry practice was to carry out further checks on introducers from time to time and not just on a one-off basis. So even if a reasonable initial assessment had been made to accept business in 2011, that decision could be reversed if Options thought it appropriate to do so. And in this case I note that Options decided to reverse its decision to accept business from Cape Verde4 Life (and all other unregulated introducers) in November 2013.

In this case Options gathered information to carry out a due diligence assessment in 2012 using the unregulated introducer profile form referred to above. The due diligence assessment used a form headed UK introducer assessment proforma. The version of this form I have seen is not dated but I note the regulator is referred to on the form as FCA rather than FSA. The FSA was replaced by the FCA in April 2013 so the form, and therefore the due diligence assessment, would seem to have been completed after April 2013.

The due diligence assessment proforma form seems to have been completed by Options using the information from the unregulated introducer profile which was signed in September 2012. This information was provided after Mr E's application but could and should have been obtained and analysed by Options by the time of his application earlier in 2012.

It is also my view that essentially this same analysis should have been carried out in 2011 before agreeing to accept business from Cape Verde4 Life.

The 2013 introducer assessment proforma

Options has said it chose to stop accepting business from Cape Verde4 Life as a result of a business decision to stop accepting introductions from unregulated introducers. It must follow that the decision was not made as a result of the assessment that had been based on the proforma. I conclude from this that Options either decided to continue to accept business based on that assessment or it failed to complete its due diligence assessment and so just continued to accept business from Cape Verde4 Life by default until it made its business decision relating to all unregulated introducers.
Whatever the reason I have considered the contents of the proforma and whether it was reasonable to continue to accept business from Cape Verde4 Life in the light of the assessment it should reasonably have made based on that proforma.

The introducer assessment proforma form uses a red, amber, green system for grading the information provided by a potential (or in the case of Cape Verde4 Life, an actual) introducer. Green equates to what Options called low risk, amber to medium risk and red to high risk.

The form has three sections:

- company personnel and advice
- client profile
- investment

And at the end of the form it says:

"Accept:	*Low risk*
	All green
Queries to raise:	*Medium Risk*
	Mixture of Green and Amber
	Raise with TRC before proceeding
Decline:	*High Risk*
	All Red
	Or
	Mixture of red and Amber
	Issue standard letter/email and decline."

So to pause there for a moment, by the time Options was using this form it was satisfied that in its role as a non-advisory SIPP operator it could make checks on an introducer and choose not to accept business from the introducer if it thought that was the appropriate thing to do.

The form has around 20 cells that can be completed in a column headed "Results from Introducer Enquiry". On the completed form I have seen one is rated red. One shows in amber and two more have amber written in them by hand. Three are green. The rest have not been completed. Some have information written in them with no colour code applied. Most are left blank.

In the client profile section three cells have not been graded. The cells related to the following:

- Detail whether clients are UK or non-UK residents. The following alternative answers were given:
    - Green/Low Risk:

      Non-UK Residents

      UK Residents and Company has relevant permissions
    - Amber/medium risk:

      UK residents through another entity (Need to carry out DD on this other entity)
    - Red/High Risk UK Residents but there is no evidence of any entity having relevant permissions.
- Detail average value of typical clients [sic] pension: the following alternative answers were given:
    - Green/low risk: £25K & above to regulated investments

    - Amber/medium risk: £25K & above to mix of regulated and non-regulated investments
    - £25K & above to non-regulated investments Less than £25K to full SIPP/ non-regulated investment SIPP
- Detail client profile as described by company. The following alternative answers were given:
    - Green/low risk

      Fully advised
    - Amber/medium risk

      Execution only-high net worth/sophisticated
    - Red/high risk

      Execution only client

      Not high net worth [or]

      Sophisticated investor

The answer to the first question should have been amber since Cape Verde4 Life was dealing with UK clients but apparently involving a UK IFA. According to the proforma this meant Options should also have carried out "DD" – due diligence – on the IFA(s). I note that reference has been made to working with 1 Stop Financial Services and The Financial Planning Partnership.

I do not know if Options carried out due diligence on these firms.

I note that in 2014 two partners in 1 Stop Financial Services were subject to disciplinary sanction by the FCA. The regulator had taken action in relation to that firm's business model between October 2010 and November 2012. The two partners were fined and banned from performing any significant influence function in relation to any regulated activity. According to the FCA 1 Stop Financial Services had advised customers to switch their pensions to SIPPs which enabled them to invest in unregulated and often high-risk products regardless of whether those products were suitable for the customers.

1 Stop Financial Services business model involved receiving introductions from unregulated introducers who typically promoted investments such as overseas property investments. 1 Stop Financial Services would then give advice on the suitability of switching an existing pension to a SIPP to make that investment. It did not give advice on the suitability of the investment.

I do not say that Options ought to have been aware of action taken by the regulator against the 1 Stop Financial Services partners before its decision was published. But I do consider that Option could and should have found out about 1 Stop Financial Services' business model.

In relation to that business model, on 18 January 2013 the FSA issued an alert which included the following:

> *Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP*

It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk often highly illiquid unregulated investments (some of which may be Unregulated Collective Investment Schemes). Examples of the unregulated investments are diamonds, overseas property developments, storepods, forestry and film schemes, among other non-mainstream propositions.

The cases we have seen tend to operate under a similar advice model. An introducer will pass customer details to an unregulated firm, which markets an unregulated investment (eg an overseas property development). When the customer expresses an interest in the unregulated investment, the customer is introduced to a regulated financial adviser to provide advice on the unregulated investment. The financial adviser does not give advice on the unregulated investments and says it is only providing advice on a SIPP capable of holding the unregulated investment…

The FSA is investigating a number of firms and has secured a variation of their Part IV permission so that they are unable to continue operating in that way. The FSA is also considering taking enforcement action against these firms.

We have seen cases where, as a result of these advisory strategies involving unauthorised firms, customers have transferred out of more traditional pension schemes and invested their retirement savings wholly in unregulated assets via SIPPs, taking very high and often entirely unsuitable levels of risk despite receiving advice on the pension transfer from regulated firms.

…Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.

The FSA's view is that the provision of suitable advice generally requires consideration of the investment held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as a SIPP and other wrappers), consideration of the suitability of the overall proposition, that is the wrapper and the expected underlying investments in unregulated schemes….

For example, where a financial adviser recommends a SIPP knowing that the customer will transfer out of a current pension arrangement to release funds to invest in an overseas property investment under a SIPP, then the suitability of the overseas property investment must form part of the advice about whether the customer should transfer into the SIPP…

Mr E's SIPP application was dated 9 April 2012. This was before the above alert had been issued and Options could not have been aware of that alert by the time of Mr E's application. But even so, it should as I have said been aware of 1 Stop Financial Services' business model and the implications it had for its SIPP members. It meant their members were apparently choosing to invest in unregulated high risk speculative investments with the very considerable risk of suffering significant detriment, without the benefit of regulated financial advice in relation to the investment.

Clearly Options could not have known before Mr E's application that the owners of 1 Stop Financial Services would, in 2014, be fined and banned for their work in relation to SIPPs. But what it could and should have known was that the IFA Cape Verde4 Life said it was involved with was giving no advice on the suitability of the unregulated investment for Cape Verde4 Life's clients. This meant that the involvement of a regulated IFA should not have provided the comfort to Options that it might otherwise have done. It meant that Options potential new clients from Cape Verde4 Life were not getting advice from an authorised and regulated financial adviser on the suitability of their investing potentially all of their pension in an unregulated investment that Options considered to be high risk and speculative. So, it knew or should have known that the business model Cape Verde4 Life was involved in lacked the safeguard of effective independent regulated advice. So the involvement of the IFA with its business model ought to have been a red flag item that should have given Options concerns.

I also note that 1 Stop Financial Services voluntarily varied its permissions with the regulator so that with effect from 10 November 2012 it was no longer permitted to carry on any regulated activities. Accordingly, this information was not available (since it had not yet taken place) when Options first agreed to accept business from Cape Verde4 Life or if had carried out an assessment in September 2012 when the introducer profile was signed. (And in any event 1 Stop Financial Services had been operating its business model since before Cape Verde4 Life first became an introducer and that business model had therefore been discoverable if Options had carried out checks on that firm in 2011.)

The other IFA firm Cape Verde said it worked with was The Financial Planning Partnership. As I understand it the Financial Planning Partnership was a trading name also used by [another business] from 2010 to 21 December 2012. According to the FCA register [that other business] was not using the trading name The Financial Planning Partnership after 2009.

And as I understand it, The Financial Planning Partnership/[the other business] also operated a business model with an unregulated introducer … of the type highlighted by the FSA in its alert. So again, if Options had made checks on that firm before it stopped trading it is likely it would also have given cause for concern rather than comfort.

The above points relating to the two IFA firms Cape Verde4 Life said it worked with also mean that the following question in the company personnel and advice section of the proforma that was rated amber should have been reconsidered:

- Does the company hold FCA or Equivalent permissions for investment advice?
- No but this is provided by FCA regulated professional. Need to complete further DD in respect of this adviser

Returning to the proforma assessment, Cape Verde4 Life was only introducing clients to invest in unregulated investments and their clients were not high net worth or sophisticated investors, so the next two questions should have been rated as red.

In the investment section of the proforma there is an amber and a green cell. The rest are not completed. The answers to the questions which have not been completed should have been graded as red:

- Are investments generally used regulated or unregulated – all unregulated (red answer)
- Which countries are investments generally based in Other overseas [ie not UK or

EEA] (red answer)

- Does company promote unregulated investments, state which investments are promoted. Answer yes, Salinas Sea. (red answer)
- Detail investment type most often used – red answer was “Non EEA Commercial Property, Non-Regulated Investments, Unquoted Shares, Loans.” (red answer)

Having considered the proforma, it is my view that in 2012/2013, Options carried out an incomplete assessment. Had it completed its assessment, based on its own process, it would have come out with an assessment showing considerably more red than the incomplete assessment it carried out.

In my view, based on its own processes, Options should have concluded that as the form showed, or should have shown, mostly red and amber assessments it should have declined to do further business with Cape Verde4 Life.

What Options ought to have decided

In my view, Options gathered information on which it could and should reasonably have made an assessment in 2012 and should have come to the conclusion not to accept introductions from Cape Verde4 Life.

In my view, Options should have carried out its proforma based assessment, or an essentially similar assessment, before it first agreed to accept introductions from Cape Verde4 Life. If it had done so it would have rejected Cape Verde4 Life’s request to act as an introducer. Alternatively, if it carried out such an exercise within a short time of allowing introductions, without first carrying out the assessment in full it should have decided not to continue to accept business from Cape Verde4 Life.

In either event it is my view that if Options had acted reasonably, in a way that was consistent with its role as a non-advisory SIPP operator, and in a way that was consistent with its obligations in that role under the Principles and with good industry practice, it would not have accepted business from Cape Verde4 Life by the time of Mr E’s application and it would not have accepted his application.

By the time of Mr E’s application, Options had carried out due diligence checks in relation to Salinas Sea and had requested information from Cape Verde4 Life to do the same. However, it had been accepting business from Cape Verde4 Life since 2011 and should have known that Cape Verde4 Life:

- was involved in promoting the Salinas Sea investment.
- became an introducer to Options in order to introduce clients to invest in Salinas Sea within their pensions while Options considered Salinas Sea an unregulated high risk and speculative alternative investment.
- was not authorised to give regulated investment advice.
- apparently worked with regulated IFAs in some circumstances but not in all cases and that it would make direct introductions to Options on the basis that the client was acting on an execution only basis.
- had mostly clients that could not reasonably be classified as high net worth or as sophisticated investors.
- was receiving commission of around 8%.

In addition to these points, Options knew or should reasonably have known the investment was likely to be highly illiquid. It knew, or should have known, the investment was likely to be difficult to value and that it might well be difficult to sell when the member wanted to take benefits from their pension.

Options knew or should have known that it is unlikely that an ordinary retail investor client would choose to transfer their personal pension to a SIPP without advice. And Options knew or should have known that it did not have a good understanding of the way Cape Verde4 Life operated and in particular how it found its clients. For example on the introducer profile Cape Verde4 Life said it obtained its clients from a "UK Distributions Network" without any recorded explanation of what that meant in practice. And the sales process was described as "mainly pension review/non reg" again without any recorded explanation of what that meant.

Options also knew that investing in an unregulated alternative investment that is high risk and speculative is unsuitable for most retail investors and that it is only likely to be suitable for high net worth or sophisticated investors on the basis that such an investment makes up only a small proportion of their portfolio.

When Options agreed to accept business from Cape Verde4 Life it did not impose conditions on it such as for example only accepting such business where regulated advice had been given and/or only business involving high net worth or sophisticated investors, and/or only allowing a limited proportion of the SIPP fund to be invested in Salinas Sea.

Taking all these points into account, Options knew or should have known when agreeing to accept introductions from Cape Verde4 Life there was a real risk of customer detriment. Options response to this was to require potential clients to sign the declaration I referred to above. In my view that was not a fair and reasonable approach bearing in mind the Principles for Businesses and good industry practice. In my view the fair and reasonable approach would have been to decline to accept business from Cape Verde4 Life as Options' own process on its own proforma assessment form provided for or as any reasonable essentially similar process would have required.

Was it fair and reasonable to proceed with Mr E's instructions?

In my view, for the reasons given, Options should have refused to accept Mr E's application. So, things should not have got beyond that.

Mr E was asked to sign the declaration. The declaration gives warnings about the high-risk speculative nature of the Salinas Sea investment. And it included a declaration that Mr E wouldn't hold Options responsible for any losses resulting from the investment. However, I do not think this document demonstrates Options acted fairly and reasonably in proceeding with Mr E's instructions.

Asking Mr E to sign the declaration and indemnity absolving Options of all its responsibilities when it ought to have known that Mr E's dealings with Cape Verde4 Life were putting him at significant risk of detriment was not the fair and reasonable thing to do. And it was not an effective way for Options to meet its regulatory obligations in the circumstances. It was not fair and reasonable to proceed on that basis.

Further I do not consider it fair and reasonable for Options to avoid responsibility now on the basis of the indemnity Mr E signed. Had Options acted appropriately in the circumstances Mr E should not have been able to proceed with his application. And, as mentioned, he should not have got to the stage of signing the declaration.

Is it fair to require Options to compensate Mr E?

Options may say it did not cause Mr E's loss because it is very likely he was keen to proceed with the investment and would have found a way to invest even if Options had not been dealing with Cape Verde4 Life. I don't agree.

I have seen no evidence to show Mr E would have proceeded even if Options had rejected his application. Mr E was contacted by Cape Verde4 Life, he was not looking for such investments. There is nothing to indicate Mr E was highly motivated to make the investment or that he was being paid any kind of incentive payment to do so. I have not seen anything that makes me think Mr E would have sought out another SIPP provider to make this specific investment if Options had declined the application, or terminated the application, and explained why. In any event, I think any SIPP provider acting fairly and reasonably should have reached the conclusion it should not deal with Cape Verde4 Life. I do not think it would be fair to say Mr E should not be compensated based on speculation that another SIPP operator might have made the same mistakes as Options did.

I think it's fair and reasonable instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted the application, or would have terminated the transaction before completion."

Putting things right

My aim in awarding fair compensation is to put Mr E back into the position he would likely have been in had it not been for Options' failings.

Fair compensation

I consider that Options failed to comply with its regulatory obligations and good industry practice and did not reject, as it should have done, Mr E's application to open a SIPP in order to invest in Salinas Sea.

In this case Mr E elected to withdraw his tax-free cash entitlement from his Options SIPP in 2012. I do not believe he has made any further withdrawals. However, I think it would be fair to take any withdrawals he has made into account.

In the absence of compelling argument otherwise, I've found that in this case it's more likely than not that Mr E would have started to use income drawdown, rather than remain in his existing pension arrangement because he chose to take a tax-free lump sum on transfer of his pension(s). It isn't possible to say for certain what investment decisions would have been made for Mr E at the time, or since. What I've set out below is therefore based on what I think is a fair and reasonable basis on which to calculate Mr E's losses (if any).

In summary, Options should:

- Obtain the actual transfer value of Mr E's SIPP, including any outstanding charges as of the date of the acceptance of my final decision.

- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value) and take on any liabilities linked to the SIPP.

- Undertake a loss calculation and pay any redress owing in line with the steps set out below. This payment should take account of any available tax relief and the effect of

charges. Options should add interest to this payment if it is not made within 28 days of the acceptance of my final decision.

- If the Options SIPP needs to be kept open only because of 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.

- If Mr E has paid any fees or charges from funds outside of his pension arrangements, Options should also refund these to Mr E. Interest at a rate of 8% simple per year from the date of payment to the date of refund should be added to this.

- Pay to Mr E £500 to compensate him for the distress and inconvenience he's been caused by Options' failings.

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

Treatment of the illiquid assets held within the SIPP (Salinas Sea)

As provided at the outset of this section of my decision and outlined in the investigator's assessment of this complaint, our aim in putting things rights is to *put* Mr E into the position he would likely have been in had it not been for Options' failings. The outcome of this should be that, in so far as is possible, finality is brought to the matter about which Mr E complains for both parties to the complaint. Had Options acted appropriately, I think it's *more likely than not* that Mr E would not have invested in Salinas Seas and would not have entered into any loan arrangement that might have been needed to finance part of the purchase of the investment.

My understanding is that Oasis (Oasis Atlántico Imobiliaria S.A.R.L) offered financing for up to 35% of the purchase price (under the terms of the investment the interest on the lending is set at Euribor 6 (six) month rate plus 5.8%), which would be repaid by way of the rental payments from the investment. If Mr E utilised this financing and has an outstanding balance then Options must settle this with Oasis. How it goes about doing this is a matter for Options and Oasis but the outcome of this must be that this isn't an ongoing concern for Mr E and that there is no risk of him having to pay anything in connection with this. To be clear, this should be the resulting position whether or not the asset is removed from the SIPP (as per the below).

I think any illiquid assets held should be removed from the SIPP. Mr E 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 them. For calculating compensation, Options should establish an amount it's willing to accept for the investment/s as a commercial value. Given that both the investment provider and the underlying investment are ongoing concerns, I expect this to be achievable. It should then pay the sum agreed plus any costs and take ownership of the investment/s and ensure that in doing so it takes on or otherwise removes all liability Mr E may have for any financing taken out to part fund the purchase 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 holding/s).

If Options is unable, or if there are any difficulties in buying Mr E's illiquid investment/s, it should give the holding/s a nil value for the purposes of calculating compensation. In this instance Options must still take on or otherwise remove all liability Mr E may have for any financing taken out to part fund the purchase of the investment/s. If the total calculated

redress in this complaint is less than £160,000**,** Options may ask Mr E 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 E 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 and Mr E's reasonable costs for taking advice in relation to it.

If the total calculated redress in this complaint is greater than £160,000 and Options doesn't pay the recommended amount (set out below), Mr E should retain the rights to any future return from the investment(s) until such time as any future benefit that he receives from the investments(s) together with the compensation paid to Mr E by Options (excluding any interest) equates to the total calculated redress amount in this complaint. Options may ask Mr E to provide an undertaking to account to it for the net amount of any further payment the SIPP may receive from these investments thereafter. That undertaking should allow for the effect of any tax and charges on the amount Mr E may receive from the investments from that point, and any eventual sums he would be able to access from the SIPP. As above, Options will need to meet any costs in drawing up the undertaking and the reasonable costs for Mr E to take advice on it.

If the total calculated redress in this complaint is greater than £160,000, Options must in the first instance take on or otherwise remove all liability Mr E may have for any financing taken out to part fund the purchase of the investment/s so as to ensure that Mr E is left unencumbered by this.

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

Options should arrive at a notional valuation by assuming his original pension transfer values would have enjoyed a return in line with the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, this was called the FTSE WMA Stock Market Income Total Return Index) to the date of Mr E's acceptance of my final decision. That is a reasonable proxy for the type of return that could have been achieved over the period in question.

Any payments into the SIPP or withdrawals Mr E has made (such as his tax-free lump sum) will need to be taken into account.

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 payments 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.

Mr E's loss, if any, is the notional value of the previous plan's transfer values (established in line with the index set out above) less the current value of his SIPP (also as at the date of acceptance of my final decision).

Compensation should be paid as calculated above promptly. If Options does not pay the compensation within 28 days of being notified of Mr E's acceptance of my final decision, Options is to pay 8% simple interest per year on the compensation from the date of this final decision until the date of payment.

I will also add here that income tax may be payable on any interest paid pursuant to this award. If Options deducts income tax from the interest, it should tell Mr E how much has been taken off. Options should give Mr E a tax deduction certificate for any interest if Mr E asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Pay an amount into Mr E'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 demonstrates a loss, the compensation should if possible be paid into Mr E'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 E as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. It's reasonable to assume that Mr E is likely to be a basic rate taxpayer in retirement, so the reduction would equal 20%.

I understand Mr E has already taken a tax-free lump sum from his existing pension. However, if Mr E would have been able to take a further tax-free lump sum, the reduction should only be applied to that portion of the compensation that couldn't have been taken as a tax-free lump sum. For example, if Mr E would have been able to take a tax-free lump sum of 25%, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Options should also provide details of all of its calculations to Mr E in a form that should be understandable to him.

SIPP fees

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

Fees and charges paid outside the SIPP

If Mr E has paid any fees or charges from funds outside of his pension arrangements, Options should also refund these to Mr E. Interest at a rate of 8% simple per year from the date of payment to the date of refund should be added to this.

Pay Mr E £500 for the distress and inconvenience caused by Options' failure to act fairly and reasonably

Mr E transferred his existing pension(s) to a SIPP and has suffered the loss of use of the majority of those funds since.

I think it's fair to say this would have caused Mr E some distress and inconvenience. He will clearly have been worried that his retirement provision will have been reduced at the point it is likely he would have wanted to use it. So, I consider that a payment of £500 is appropriate to compensate for that upset.

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.

I do not know what award the above calculation might produce. So, whilst I acknowledge that the value of Mr E's original investment was within our award limit, for completeness I have included information below about what ought to happen if fair compensation amounted to more than our award limit.

Determination and money award: I uphold this complaint. Fair compensation should be calculated as shown above. It's my final decision that Options UK Personal Pensions LLP should pay Mr E the amount produced by that calculation – up to a maximum of £160,000 (including the £500 to compensate for the distress and inconvenience Options' actions caused) plus any interest and costs.

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

If Mr E accepts this final decision, the money award and the requirements of the decision will be binding on Options. My recommendation won't be binding on Options.

Further. it's unlikely that Mr E can accept my final decision and go to court to ask for the balance of any compensation owing to him after the award has been paid. Mr E may want to consider getting independent legal advice before deciding whether to accept this final decision.

My final decision

My final decision is that I uphold this complaint. I require that Options UK Personal Pensions LLP calculate and pay the award, and take the actions, set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 30 May 2024.

Claire Poyntz
Ombudsman