DRN-4828296

The complaint

Mr B complains that in 2012, Options UK Personal Pensions LLP (‘Options’, trading as Carey Pensions UK LLP at the relevant time) didn’t carry out adequate due diligence before it allowed him to transfer his defined benefit (‘DB’) pension scheme benefits into a Self-Invested Personal Pension (‘SIPP’) and then use his SIPP monies to invest in Store First Limited (‘Store First’). And that he has suffered a financial loss and distress as a result.

Mr B is represented by a claims management company (‘CMC’), but for ease I’ll refer only to Mr B.

What happened

I've outlined the key parties involved in Mr B's complaint below.

Options

Options is a SIPP provider and administrator. At the time of these events, Options was regulated by the Financial Services Authority (‘FSA’), later becoming the Financial Conduct Authority (‘FCA’). Options was authorised in relation to SIPPs, to arrange (bring about) deals in investments, to deal in investments as principal, to establish, operate or wind-up a pension scheme, and to make arrangements with a view to transactions in investments.

Douglas Baillie Ltd/The Pension Specialist

The Pension Specialist (‘TPS’) was an appointed representative of Douglas Baillie Ltd from 24 May 2011 to 13 November 2013. At the time of TPS’s involvement, Douglas Baillie Ltd was an FCA regulated financial adviser.

In October 2013 Douglas Baillie Ltd suspended its pension switching business ‘The Pension Specialist’, following the FCAs concerns about the standard of the advice it was giving.

In 2016 Douglas Baillie Ltd went into Financial Services Compensation Scheme (‘FSCS’) default.

For ease, I’ll now refer to all actions of TPS as being that of Douglas Baillie Ltd, except where I’m referencing a direct quotation or where I think it’s appropriate to differentiate. Based on the available evidence, I’ve set out below a summary of what I consider to be the key events during the relationship between Options and Douglas Baillie Ltd:

- 20 October 2011 - An Introducer Profile and an Introducer Agreement between Options and Douglas Baillie Ltd was signed. This set out Options’ terms of business and the conduct it expected of Douglas Baillie Ltd.

- 12 December 2011 – Options received its first client from Douglas Baillie Ltd.

- 12 March 2012 – Douglas Baillie Ltd emailed Ms Hallett at Options to say, *“As you may be aware, we have started sending some transfer cases to your company.”* The email outlined a query on one of these cases and asked exactly how Options' process works. In particular, Douglas Baillie Ltd asked, *"I spoke to one of your colleagues last week to find out what we need to send to you along with the applications. She advised your need to see a copy of our advice letter and any TVAS. Please confirm this is the case."*

- <u>16 March 2012</u> – Ms Hallett at Options emailed Douglas Baillie Ltd to detail that her understanding of the agreed process was that:

  "The Pensions Specialists (TPS) are providing full advice on transfer of occupational pension schemes to a SIPP (with us), and will provide us copies of TVAS and advice letter.

  The Pensions Specialists are appointed as advisers for the purpose of the transfer of existing occupational arrangements and the establishment of the SIPP for which they will be paid from the transfer fund. TPS will get the adviser page of our application form completed and signed by each client.

  We will on receipt of the SIPP application log TPS as adviser for the purposes of the transfer and SIPP establishment and keep TPS informed of progress of the transfer and copy them in on correspondence to the client including the welcome letter.

  On receipt of the transfer of funds we will advise TPS as well as client

  TPS will invoice the scheme for the transfer advice which we will pay

  On receipt of the completion of the transaction TPS will send us a letter resigning as adviser which we will record on our systems."

- <u>18 May 2012</u> – Douglas Baillie Ltd emailed Ms Hallett at Options to say *"Thank you for taking the time out to see [TPS Director] & Co earlier today. [TPS Director] mentioned that there were a couple of accounts that you have refused business from, as I tend to be closer to the accounts, can you confirm who they are please. This way, I can ensure that [TPS office] are aware of any blacklisted firms and that we can avoid them as well."*

- <u>4 September 2012</u> – Ms Hallett at Options emailed Douglas Baillie Ltd to say *"We are currently considering our position going forward with regard to receiving business that is advised on transfer but not on-going and for investments and we may not continue with this line of business, however, it would be helpful for me to understand where you are currently getting the introductions from for the transfer work can you please provide me a list of introducers that you are currently doing transfer advice for to assist me to consider further."*

- <u>18 – 20 September 2012</u> – Ms Hallett and Douglas Baillie Ltd exchanged emails about a number of recent applications involving transfers from defined benefit occupational pension schemes. Ms Hallett explained that Options would no longer accept these where the advice was against transfer. Douglas Baillie Ltd asked Ms Hallett to *"please reconsider this stance and give us the opportunity to complete the cases that until today we had no reason to believe that you would not accept".* Ms Hallett agreed to accept several further applications.

- <u>4 October 2012</u> – Options accepted its last client from Douglas Baillie Ltd.

- <u>4 October 2012</u> – Douglas Baillie Ltd emailed Ms Hallett at Options to say, *"We are changing our process slightly so that we are advised (where possible) in advance of a SIPP transfer being made, the expected investment that is going to be made.*

  Whilst we don't intend to comment on this investment, our intention is to ensure that the selected SIPP provider will allow this in advance of the SIPP application being made.

  Can you provide me with a list of alternative investments that you are currently allowing?

  I am also hoping that we can convert some of our other introducers who don't currently use you to do so by us taking control of where the SIPP should be placed."

- <u>6 October 2012</u> - Ms Hallett at Options emailed Douglas Baillie Ltd to say, *"This is welcomed attached is a list of alternatives we have accepted.*

  Another point however, we need to know on the form who the introducer of the business is to you, I advised you that we had de-listed CLP and would not deal with them but we have some information from a member of your team who said in passing to a member of my team when we were asking about the investments they wanted to transact, that they would check with CLP. If you are sending us business that has been introduced by CLP please stop, we do not want to be associated with them as an introducing firm of business to us as we as I [sic] have said to you before that they offer incentives to the client for transacting the transfer and I understood that you too had concerns, is there any reason why you are still transacting business with them."

- <u>8 October 2012</u> – Douglas Baillie Ltd emailed Ms Hallett at Options to say, *"Thank you for the list, this will assist us going forward.*

  Like your own decision, we have also decided to stop accepting new business from CLP and are only processing cases that are already in the pipeline.

  As far as I am aware, we have not sent you any new cases other than the pipeline cases that were agreed when your original decision was made.

  Unfortunately due to the timescales involved in our process, the pipeline has taken some time to run down.

  I have two clients on my desk who have requested to transfer benefits into their existing [Options] SIPPs. These are [client name] and [client name]. Are you willing to accept these or not? We may or may not receive further requests from existing clients of yours to proceed with incremental transfers.

  I will ensure that no further CLP pipeline cases come your way.

  For your own information, we also took the step of writing to all CLP clients that were processed prior to your decision, asking them to confirm if they had been offered any form of incentive. We received no responses confirming this.

  Since then we added a disclaimer in our process and have now added a letter that each client must sign confirming that no incentives have been offered. This covers all new cases and not just any pipeline CLP cases.

  More than happy to provide you with the name of the introducing firm with each new application form as hopefully by working together on this we can eliminate any rogue introducers."

- <u>5 February 2013</u> – Douglas Baillie Ltd emailed Options to say *"Following the recent FSA alert regarding unregulated investments into SIPP's, we are reviewing our process to ensure that we are providing the best possible service to our clients, and we are also reviewing each provider's stance on different investments and the pension transfer process. With this in mind, I would be grateful if you could confirm the following:"* Douglas Baillie Ltd's email went on to list a series of questions concerning Options' position on the types of transfers and investments it was willing to accept.

- <u>6 February 2013</u> - Options' Head of Operations & Technical replied to Douglas Baillie Ltd saying, *"Further to your email, I have noted below your queries with clarification of our position in bold for ease of reference.*

  1. *Are you still willing to accept transfers on an insistent client basis where we have advised a client against a transfer, but we have a letter from them stating that they still wish to proceed anyway?* ***We do not accept final salary transfers on an insistent client basis and have not done so since last year. In line with the recent FSA Alert we would not accept insistent clients on the basis you describe.***

  2. *Are you willing to accept subsequent investment into unregulated investments where we have advised a client against it, but have a letter from them stating they still wish to proceed?* ***No – as the adviser you would need to advise the client on all aspects of their scheme including investments.***

  3. *Are you still willing to accept pension transfer business where the client is to be orphaned once the transfer is complete, prior to any investment being made?* ***No, this would not follow the recent FSA clarifications of their requirements and expectations in respect of advisers."***

  Regarding what investments Options would accept, Options said *"Store First Ltd – Not currently accepting new business as under review".*

CL&P

CL&P was an unregulated business based in Spain. At the time of the events here, one of the directors of CL&P was a Terence (Terry) Wright. On 15 October 2010, the following was published on the FSA website, in a section called *"Firms and individuals to avoid",* which was described as: *"a warning list of some unauthorised firms and individuals that we believe you should not deal with":*

"ALERT

The Financial Services Authority ("FSA") has today published this statement in order to warn investors against dealing with unauthorised firms.

The purpose of this statement is to advise members of the public that an individual

Terence (Terry) Wright

is not authorised under the Financial Services and Markets Act 2000 (FSMA) to carry on a regulated activity in the UK. Regulated activities include, amongst *other things, advising on investments. The FSA believes that the individual may be targeting UK customers via the firm Cash In Your Pension.*

Investors should be aware that the Financial Ombudsman Service and the Financial Services Compensation Scheme [FSCS] *are not available if you deal with an unauthorised company or individual.*

To find out whether a company or individual is authorised go to our Register of authorised firms and individuals at http://www.fsa.gov.uk/register/home.do*"*

In other complaints brought to our Service, Options has told us that it was first approached by CL&P in 2011 and that it entered into discussions about accepting introductions from it. And that Options began to accept introductions from CL&P on 15 August 2011 and ended its relationship with it on 25 May 2012.

Store First

The Store First investment took the form of one or more self-storage units, which were part of a larger storage facility in a UK location. Investors bought one or more units in the facility and were offered a guaranteed level of income for a set period of time. After that, they could either take whatever income the unit(s) provided, or sell them (assuming there was a market for them).

The Store First investment was marketed as offering a guaranteed 8% return in the first two years, an indicated return of 10% in the following two years, and 12% in the next two years. It was also marketed as offering a *"guaranteed"* buy back after five years.

In a separate complaint brought to our Service, Options told us that on 3 May 2011, Options was contacted by a promoter of Store First, Harley Scott, about a newly launched product – Store First. Options says it put this investment through its review process.

In its submissions to us, Options says this review process was established in accordance with its obligations and FSA recommendations at the time, which required it to conduct: *"...due diligence into the Store First investment to assess its suitability for holding within a SIPP."*

In the letter confirming its acceptance of the investment, Options noted:
- The investor purchases a 250-year lease of a storage unit within a storage facility. The unit is then sublet to the management company, Store First, subject to an initial six-year term with two-year break clauses.
- The investor's interest can be sold/assigned at any time. The break clauses allow the investor to rent out the units individually without the services of the management company (but it insisted they use the management company).
- There was no apparent established market for the investment.
- The investment was potentially illiquid in that it was a direct property investment which may take time to sell. However, it could be sold providing a willing buyer can be found and was assignable so could be transferred in specie to beneficiaries.
- It also said its acceptance was subject to a member declaration and indemnity being completed and signed by each member, and the appointment of a solicitor to act for the Trustees in respect of any purchase.

In May 2014, the Self Storage Association of the UK ('SSA UK') issued a press release (amended in January 2015), detailing the outcome of a review it had commissioned Deloitte

LLP to undertake of the marketing material made available to potential investors by Store First.

The release refers to a number of misleading and inaccurate statements made by Store First in its marketing material. It also makes the following observation:

> *"…a very serious question arises over how Store First is funding the guaranteed returns to existing investors, considering the absence of bank funding and the likely level of losses that require funding in each new store. It may yet prove to be the case that the rental returns being paid to investors are in fact being funded from the sale proceeds of new units, and not the operation of the self-storage business."*

Store First was the subject of a winding up petition issued by the Business Secretary. On 30 April 2019 the Court made an order to wind-up Store First and three associated companies in the public interest by consent between those four companies and the Secretary of State. The Official Receiver was appointed as liquidator and had responsibility for dealing with the assets and liabilities of the four companies.

Following this the freehold, associated assets and goodwill of 15 storage centres were sold by the Official Receiver to a company called Store First Freeholds Limited. As I understand it, the self-storage units continued to be rented to end users and a company called Pay Store now manages the storage sites trading as Store First. The Official Receiver and Store First Freeholds Limited agreed that the latter would accept any requests from investors to surrender their pods. Store First Freeholds Limited would cover its own costs of the surrender, but investors wouldn't receive any payment.

In the judgment in *Adams v Options SIPP UK LLP (formerly Options Pensions UK LLP) [2020]* EWHC 1299 (Ch) ('*Adams v Options*'), the judge found the value of Mr Adams' six pods, acquired for around £52,000 in July 2012, to be £15,000 as of January 2017. And in the judgement in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 it was stated that, in February 2020, Options had said it was valuing Storepods at £430 each following (then) recent sales of Store First storage units at auction and the Court used that value in assessing the redress due to Mr Adams.

Mr B's dealings with CL&P, Douglas Baillie Ltd and Options

Mr B had an occupational DB pension. He says he was 'cold called' by CL&P and it told him his pension was 'frozen' but it offered an opportunity for better returns in a guaranteed investment, plus a cash payment for transferring. Following its discussions with Mr B, CL&P passed him to Douglas Baillie Ltd for regulated advice - CL&P wrote to Mr B to say *"you need a transfer value analysis report from a Financial Adviser before you can proceed with the transfer of your [DB pension]. We have submitted your details to thepensionspecialist [sic] who require the enclosed authority letter to be signed and posted to them".*

CL&P updated Mr B with a letter that said, *"We will be acting as your introductory agent to the SIPP and the investment product, therefore, at any point during the transfer and investment process should you have any questions or queries please contact us directly on [CL&P's contact details].*

It is part of our service to liaise directly with the Pension Company and Investment Company on your behalf; … We can confirm that The Pension Specialist has now received your Letter of Authority. The Pension Specialist will produce a Transfer Value Analysis Report for your final salary pension. You will be receiving a letter form them outlining the process and they will be in touch with you once the first report has been issued. Once this process has been *completed we will then be able to assist you in setting up a SIPP and in making your chosen investment."*

On 15 June 2012, TPS provided Mr B with an advice letter in relation to his DB pension. This said, *"It has been confirmed to me that you wish to transfer your benefits into a SIPP rather than a fully insured plan as you wish to make an investment with your pension plan that would not be available via a fully insured plan."*

The advice letter set out the benefits and drawbacks to Mr B of transferring his DB scheme benefits to his new Options SIPP W. The letter went on to say, *"Our advice is therefore not to transfer into this plan as the critical yield is now higher than advisable. If you elect to proceed with the transfer as requested, then I will have to treat this as an "insistent client" basis (please see below)."*

The advice letter also said,
"As we have not been asked to advise you on the investment of the funds held within your SIPP, we will simply arrange for the funds to be transferred into the trustee bank account."
…

"Insistent Client Basis
I am also confirming that you are proceeding with the transfer of your plan on an insistent client basis. This simply means you have requested to transfer and we cannot be responsible should the benefits provided from the alternative plan provide you or your spouse with a lower benefit in future."

"Limited advice and information
As we have not been asked to provide you with advice other than on your pension transfer, this business is being transacted on a limited advice basis.

As you have not provided us with a completed financial planning profiler, then we will treat this business as limited information. This means that we are unable to take responsibility for any advice given, where having knowledge on your personal circumstances would have changed our advice."

Mr B's SIPP application form contained the following information:

- The 'Transfers' section set out the details of Mr B's transferring scheme. It also contained a ticked box which read *"Please tick the box to indicate that you have received advice on the transfer of this policy"* and confirmed that Douglas Baillie Ltd had provided Mr B *"…with advice in respect of this transfer."*
- The 'Investments' section asked for details of what Mr B's SIPP would be invested in, amongst other things. No information was recorded in this section.
- The 'Financial Adviser Details' section, signed by Mr B and Douglas Baillie Ltd, again set out Douglas Baillie Ltd's details and said *"Please note our fee is for advice on transfer only. No advice has been given by us on investment."*
- The 'Declaration' section signed by Mr B said, amongst other things:
    - "*I understand that it is my sole responsibility to make decisions relating to the purchase, retention or sale of any investment held within the Carey Pension Scheme"*.
    - *"I agree to indemnify Carey Pensions UK LLP 'The Administrator' and Carey Pension Trustees UK Ltd 'The Trustee' against any claim in respect of any decision made by myself or my Financial Adviser/Investment Manager or any other professional adviser I choose to appoint from time to time".*
    - *"I confirm that I am establishing the Carey Pension Scheme on an execution only basis."*

Options received Mr B's SIPP application form on 3 July. In Mr B's complaint, I've not been provided with a copy of the covering letter. But in other similar complaints brought to our Service about Options where Douglas Baillie Ltd was the advising introducer, I've seen that the covering letter for the SIPP application was sent to Options by TPS and made clear that also enclosed was confirmation of advice received, the ceding DB scheme discharge forms, and copies of the advice letter and TVAS.

Mr B's SIPP was established in July 2012 and his transferred DB pension benefit of just under £30,000 was received into it in August 2012.

CL&P wrote to Mr B asking him to sign a 'Member Declaration & Indemnity' form and return it to Options. I've not been provided with a copy of this form in Mr B's case. But in other similar complaints brought to our Service about Options where Douglas Baillie Ltd is the advising introducer, I've seen that the 'Member Declaration & Indemnity' forms for the Store First investment at around this time instructed Options to purchase the client's investment in Store First and included the following statements:

- *"I am fully aware that this investment is "Alternative" and is therefore considered High Risk and / or Speculative."*
- *"I am fully aware that both Carey Pensions UK LLP and Carey Pension Trustees UK Ltd act on an Execution Only Basis and confirm that neither Carey Pensions UK LLP nor Carey Pension Trustees UK Ltd have provided any advice whatsoever in respect of this investment."*
- *"I confirm that I have read and understood the documentation regarding this investment and have taken my own advice including financial, investment and tax advice."*
- *"I indemnify both Carey Pensions UK LLP and Carey Pension Trustees Ltd against any and all liability arising from this investment."*

In November 2012, it appears that the majority of Mr B's SIPP funds were invested into Store First.

In around 2017, Mr B submitted a claim to the FSCS regarding Douglas Baillie Ltd's advice. In December 2017, the FSCS told Mr B and his CMC that he had a valid claim and it would pay him interim compensation of about £48,000 (less than the FSCS's maximum award limit at that time) to him, because the value of his SIPP wasn't yet certain and so it wasn't clear what his final losses would be.

Around this time, the FSCS calculated Mr B's total financial loss to be about £73,000. In February 2018, the FSCS told Mr B it had received further information and so it would pay him an additional and final amount of compensation, to take the compensation it had paid up to its £50,000 limit. Soon after, the FSCS provided Mr B with a reassignment of rights to enable him to pursue a complaint against Options.

In August 2020, Mr B complained to Options that it didn't carry out sufficient due diligence on the business being introduced by Douglas Baillie Ltd and on the Store First investment. And as a result, Options had caused him financial loss and distress it should compensate him for.

In September 2020, Options issued its final response to Mr B's complaint. It thought his complaint had been raised too late under the relevant time limit rules. Because it was more than six years since the events complained of. And it was more than three years since Options thought Mr B ought reasonably to have been aware he had cause for complaint, given that the July 2015 SIPP annual valuation informed Mr B that his Store First investment was valued at 50% of the original purchase price, and given that in June 2017 Options had provided the information requested by Mr B's CMC in its subject access request ('SAR') for Mr B. Options added that Mr B's FSCS claim in relation to Douglas Baillie Ltd's advice meant he was likely to receive his whole investment sum back, as it was under the FSCS's £50,000 compensation limit.

Submissions from Mr B

Mr B was unhappy with Options final response to his complaint, so he referred his complaint to our Service in September 2020.

Mr B also provided some documentary evidence from the time of the events complained about. And he told us, amongst other things, that at the time of the 2012 events, he'd never thought about transferring his DB pension. But CL&P had cold called him and told him his DB pension was 'frozen' and offered an opportunity for him to make more money in a guaranteed investment, with a cash payment for doing so.

Mr B says CL&P provided him with investment advice, and he'd relied on that advice as he was not an experienced or sophisticated investor. That CL&P seemed very knowledgeable and the investment offered a high guaranteed return of 10% minimum and a £2,415 payment at a time when he needed money – he'd received the £2,415 in December 2012 and spent it on a car for his wife. Mr B says that his understanding at that time was that his pension would be used to purchase storage pods, that this was a low risk standard investment, and that it was normal to be offered a payment to transfer. And that after receiving the £2,415, he was told not to disclose any information to Options.

When we asked Mr B what he would have done if Options had refused to allow him to make the investments, he said it hadn't crossed his mind that it could be refused as it was portrayed as an everyday occurrence and a standard investment.

Mr B says Options hadn't made him aware that the July 2015 SIPP annual valuation was a formal notice. That Options should have made it clear it was putting him on notice and why, and invited him to complain at that point. And Options would have said it didn't provide advice and pointed Mr B to the adviser or the investment. So Mr B didn't know Options might have had a responsibility here.

But Mr B says now understands that CL&P are not a UK registered or regulated firm, and that in October 2010 the FSA published a warning notice regarding a director of CL&P. And Options knew that CL&P were involved in the introduction and investment choice and that Douglas Baillie Ltd was not providing advice on the underlying investment. So Options should have rejected Mr B's business and told him why. If it had done so, Mr B would have had no trust in CL&P and would have been alerted that the advice on transferring his DB pension and that investing in Store First were not in his best interests. But he only became aware Options might have a responsibility when his CMC informed him of this in July 2018 – his CMC carried out an investigation after his successful FSCS claim against Douglas Baillie Ltd showed losses above the FSCS's maximum limit.

Submissions from Options

It appears that Options hasn't provided our Service with its file regarding Mr B's complaint, or any comments on the merits of Mr B's complaint. However, I'm aware that Options has made submissions in other complaints brought to our Service where Douglas Baillie Ltd is the advising introducer. These submissions include the following points:

- It wasn't correct to say CL&P had introduced the client to Options. To Options' knowledge, the client never had any communication with CL&P, and Options had many documents to suggest TPS was the sole introducer and adviser for the client. And the client making a claim to the FSCS indicated the client was aware that only TPS was involved in introducing them to Options, not CL&P.

- The client chose to use TPS and provided Options with a letter of authority to this effect.

- Options satisfied itself that the letter of authority related to the same TPS it had carried out due diligence on. As TPS was FCA regulated at the time, Options had no reason to suspect or comment on its advice or communication with the client, which Options wasn't party to. And at that time, Options was not aware of any reason it should reject introductions from TPS.

- The client confirmed to Options that they understood the advice from TPS and wanted to proceed with the transfer. So their complaint should be directed to TPS, because if it hadn't provided regulated advice to the client, Options wouldn't have accepted the transfer and the client wouldn't have made their Store First investment.

- Clients went on to invest on an execution-only (i.e. non-advised) basis and this was made very clear in communications with them, the documentation issued to them, and the paperwork they read, signed and agreed to.

- Options acts as the administrator only of the SIPP. The client provided Options with specific instructions, which it actioned.

- As an execution-only business, Options would have been in breach of COBS 11.2.19 had it not followed the signed instructions given to it by a client.

- Options had administered the SIPP appropriately and in line with its terms and conditions. And Options had complied with all the FCA's Principles for Businesses. In any event, a breach of the Principles didn't afford the client any actionable rights.

- Options does not (and is not permitted to) provide any advice to clients in relation to the suitability of a SIPP or the underlying investments for a client, nor is it permitted to comment on the suitability of the introducer the client had chosen to use.

- The client signed to confirm they'd read and understood the documents provided to them, including documents that said their investment choices were their and/or their adviser's responsibility, that Options did not provide advice and that they'd taken or had the opportunity to take advice regarding the suitability of the SIPP and the underlying investments for their own personal circumstances. The documents the client signed highlighted many of the issues they now sought to complain about.

- It was reasonable for Options to accept the client's signed confirmation. It wasn't for Options to 'look behind' their signature nor was there a reason for it to do so. If the client did not agree to or understand the documentation provided, they should not have signed the paperwork. Options cannot be held responsible for the client's decision to sign documents they knew to be inaccurate or failed to understand, in circumstances where there was no indication this was the case.

- Options provided the client with risk warnings regarding their chosen investments, including the warnings in the Member Declaration & Indemnity forms they signed. The purpose of these forms was to provide the client with necessary information about the investments, and they made clear what the investments were and that they were high risk, and made clear the requirement to instruct a regulated third party adviser should the client wish to be advised in respect of their investment choices. The client signed their confirmation of the Member Declaration & Indemnity forms.

- Options carried out an internal investment review and due diligence on the investments which included a review of the relevant investment information, company background checks and an independent report from an external third-party compliance entity. These checks were sufficient to conclude that these investments were suitable to be held within a UK pension scheme.

- Options didn't suggest or recommend the Store First investment to the client. It is not responsible for either the performance of the investment or the investment not meeting the client's expectations.

- The Financial Ombudsman Service had failed to take account of relevant law and regulations as required by section 228(2) of FSMA and DISP 3.6.4R, or explain why we had departed from the relevant law. In particular, we didn't state whether the due diligence duty we found to exist is one recognised by law (rather than some broader professional standards) and, if so, the legal foundation of the duty. The duties suggested would not be recognised in a Court and legal liability would not be established.

- Our Service retrospectively imposed new duties of due diligence on Options. These duties are inconsistent with the contract the client entered, and with the COBS rules. Options is being held liable because it is the only remaining regulated entity over which our Service has jurisdiction.

- The FSA visited Options and approved its due diligence procedures in September 2011.

- Our Service suggested that if the storage pods can't be returned to Options, they should remain in the SIPP or otherwise with the consumer with no adjustment in the redress. This would give the consumer an unfair windfall. If the consumer is unable to return the storage pods to Options, the redress should be recalculated to reflect this (just as in Adams, where a presumptive value (of £2,580) was ascribed to the storage pods).

- It's not fair or reasonable to consider the complaint in light of guidance issued after the events complained of, or on the basis of what our Service considers good industry practice. The guidance went beyond reflecting what the industry was already doing; it introduced new expectations.

- Even if the 2009 Thematic Review Report had been statutory guidance (which it wasn't), the breach of such statutory guidance wouldn't give rise to a claim for damages under FSMA S.138D. And many of the matters it invites firms to "*consider*" are directed at firms providing advisory services, not firms providing execution-only services. The FCA's Enforcement Guide says *"Guidance is not binding on those to whom the FCA's rules apply. Nor are the variety of materials (such as case studies showing good or bad practice, FCA speeches and generic letters written by the FCA to Chief Executives in particular sectors) published to support the rules and guidance in the Handbook. Rather, such materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant rules."*

- Regulatory publications cannot found a claim for compensation in themselves and do not assist in construction of the Principles.

- Our Service is set on finding Options liable regardless of any fact pattern or the reality of the relevant circumstances. The client received advice from TPS, a regulated financial adviser. The regulator had not raised any concerns about TPS, removed its permissions, or taken any regulatory action against it. Options undertook due diligence on TPS to establish that it held the necessary permissions – which it did – and put in place terms of business. Options is not a regulator – it is not for Options to 'look behind' the regulated status of the adviser or the permissions it holds.

- TPS clearly advised the client not to proceed with the transfer and that if they transferred, they would lose the guarantees associated with their DB pension. TPS only proceeded on an 'insistent client' basis i.e., the client insisted on the transfer against TPS's clear and direct advice.

- No wrongdoing can arise on the part of Options by simply establishing a SIPP. At the time of TPS's advice, the client had not instructed Options to request a transfer of their DB benefits from their ceding DB scheme. Up to that point, the client would not have suffered any loss. Options was therefore reasonably entitled to rely on the involvement of a professional regulated adviser.

- In any event, it's likely the client would have proceeded with releasing money by transferring their pension, whether through Options or another provider. Once the transfer request was made, the loss of the client's safeguarded DB benefits was assured from that point, regardless of whether or not they opened the SIPP and/or completed the onward investments. So the client would have suffered a loss regardless of what actions Options did or did not take.

- Options had very limited obligation to undertake due diligence on the Store First investment. In Adams, the High Court refused to recognise a duty of due diligence such as that set out by our Service, instead concluding that the obligations are framed by reference to the context of the contractual relationship between the parties. Furthermore, the judge in Adams specifically said they would have concluded that adequate due diligence had been carried out by any reasonable measure (Adams [16], [155]) having regard to all the evidence. And these finding weren't disturbed by the Court of Appeal.

- Our Service suggests Options ought to have investigated Store First extensively, and hasn't explained why we thought the Enhance Support Solutions ('ESS') report was inconsistent with Options' company searches. We were wrong to say Options should have been concerned by the marketing material and ought to have reached similar conclusions to those later reached by SSA UK and the insolvency service. And wrong to say Options should have been concerned by the limited risk warnings and lack of proven track record. This was a subjective analysis reached with the benefit of hindsight.

- Those findings amount to saying Options was obliged to undertake a qualitative assessment of the Store First investment and give its findings to the client – in effect, to have provided advice to them. That significantly overreaches the actual legal obligations on Options at the time, as found by the Court in Adams. Options didn't have the necessary permissions to advise, and doing so knowingly could have amounted to a criminal offence.

- The client would still have proceeded with the investment, given they ignored TPS's advice not to transfer and investment risk warnings. It's likely the client was keen to proceed with the investment in order to release funds, and would have found a way to invest even if Options had not been dealing with TPS or accepting Store First investments. And it was wrong for our Service to suggest that another SIPP provider couldn't legitimately have accepted the client's investment instruction.

- Our Service said Options shouldn't have accepted the client business in the first place so is liable for all of their loss. But the contract between the client and Options relieved Options of any liability it might otherwise bear - concluding otherwise would render void and unenforceable a validly concluded contract. No other legally recognised duty (e.g. in tort or under COBS 2.1.1R) would justify the conclusion our Service reached.

- It's possible the client was not cold-called by CL&P but instead provided their contact details in order to be contacted by a firm like CL&P.

- The client should bear some responsibility for their own actions here. They transferred against advice. Options told them the investments were high risk. They actively concealed an inducement payment from Options. And the Member Declaration & Indemnity forms they signed set out Options responsibilities to them. Therefore, this should be reflected in any redress calculation.

- The FSCS found TPS legally responsible for the client's losses and awarded compensation. Therefore, pursuant to the Civil Liability (Contribution) Act 1978, any claim against Options is a claim for contribution only and our Service must take account of the compensation already received by the client and reduce any award accordingly. Otherwise it would amount to a double recovery on the part of the client.

- Our Service said Options should pay the client £500 compensation for distress and inconvenience but hadn't evidenced that the client suffered any distress.

- If our Service's conclusions stand, Options would be penalised for failing to act in a way which was inconsistent with the contractual and regulatory scheme, and which would in practice have involved it breaching its permissions.

- And there would also be serious wider consequences for consumers and for execution-only SIPP providers. Because if execution-only SIPP providers are made liable for the poor investment choices of consumers, the execution-only SIPP market will reduce, depriving consumers of a low-cost investment route.

And in other complaints brought to our Service, Options has provided the following comments regarding its relationship with Douglas Baillie Ltd:

- An Introducer Profile and an Introducer Agreement between Options and Douglas Baillie Ltd was signed on 20 October 2011. This set out Options' terms of business and the conduct it expected of Douglas Baillie Ltd.

- Douglas Baillie Ltd introduced 59 clients to Options, between 12 December 2011 and 4 October 2012.

- Commission was agreed between the client and Douglas Baillie Ltd depending on transfer value, with the average commission being 2.11%.

- Douglas Baillie Ltd was FCA regulated at the relevant times. Had the client not first received regulated financial advice, Options would not have accepted the transfer and the client would not have made the investments in question.

- As Douglas Baillie Ltd was FCA regulated, Options had no reason to suspect or comment on any advice or communication between the client and Douglas Baillie Ltd, of which Options was not party to. And at the time of the client's SIPP application, Options was not aware of any reason it shouldn't accept introductions from Douglas Baillie Ltd.

- The majority of clients introduced by Douglas Baillie Ltd invested in either Store First and/or GAS Verdant (an unregulated Australian farmland investment), with the remainder investing in Central and South American forestry investments.

In other complaints, Options has also provided the following comments regarding its relationship with CL&P:

- Options carried out due diligence on CL&P. An Introducer Profile was completed and an Introducer Agreement was signed, setting out Options' terms of business and the conduct it expected of CL&P. Options was aware CL&P was not FCA authorised, but the FCA did not prohibit Options from dealing with unregulated introducers.

- Any reasonable client should have been aware that being offered a cash incentive payment to make an investment was suspect. The client chose to accept a cash incentive and not disclose it to Options, thereby contributing to the loss they suffered. If the client had disclosed this incentive payment to Options, Options would have refused to accept the investment instructions.

- At the time of the transaction, there was nothing in the DISP rules preventing SIPP providers accepting business from unregulated introducers, execution-only customers or high-risk business. Instead, the FSA regarded Options' approach to accepting such business as entirely acceptable. These points were made clear in the Adams first instance judgment.

- The FSA Notice regarding Mr Wright wasn't entered onto World Check until after Options had carried out its checks on CL&P and started accepting its business. So, even if Options had searched World Check when its relationship with CL&P began, it wouldn't have seen this notice. Options didn't routinely check the FSA's list of unauthorised firms and individuals, and wasn't obliged to do so.

- The FSA Notice published in 2010, before Options began its relationship with CL&P, stated only that Mr Wright was not regulated by the FSA and referred only to a business named 'Cash In Your Pension' targeting UK investors. There was nothing in the FSA Notice which described any criminal or civil wrongdoing and there was no contradiction between the FSA Notice and any statement provided by Mr Wright that they were not subject to any FSA action or censure. So even if Options' searches had revealed the FSA Notice, it shouldn't necessarily have led Options to conclude it shouldn't accept introductions from CL&P.

- If the FSA had significant concerns about Mr Wright or expected regulated firms not to deal with him or CL&P, the FSA Notice would have explicitly said so. But it did not. Given this, it wasn't fair or reasonable to say Options should have had such concerns or refused to deal with CL&P.

- Had Options refused to process the client's application for any reason, the consumer would have likely made the same investment via a different SIPP provider in order to secure the incentive payment. And so the consumer would have suffered the same loss.

One of our Investigator's thought Mr B's complaint had been brought within the relevant time limit rules. Because Mr B was complaining about the obligations and duties Options owed to him before accepting his business, and they didn't think the July 2015 SIPP annual valuation or the loss of the investment ought reasonably to have made Mr B aware that Options' due diligence may have contributed to his losses. And they'd not seen any evidence that Mr B ought to have realised he had cause to complain more than three years before he complained to Options.

Our Investigator also thought Mr B's complaint should be upheld. They thought Options should have been concerned that Douglas Baillie Ltd was only advising its clients on the transfer and not the underlying investment, as this risked consumer detriment. And, in light of the Store First investment marketing literature, Options should have been concerned that consumers were being misled about the returns and risks associated with the investment and that there was the risk of consumer detriment. Our Investigator thought that had Options acted fairly and reasonably, it should have decided not to accept Mr B's SIPP application in the first place. And given all this, it was fair and reasonable for Options to compensate Mr B for his financial loss and to pay him an additional £500 compensation for the distress and inconvenience Options had caused him.

Mr B's CMC confirmed receipt of our Investigator's view but didn't provide any further comments or evidence for consideration.

Options told us it intended to respond to our Investigator's view with a full submission. But Options didn't provide any such response.

As agreement couldn't be reached, this complaint was passed to me.

I issued a provisional decision in which I concluded that Mr B's complaint had been brought in time under the relevant time limit rules. I also concluded that Mr B's complaint should be upheld. In summary, I said Options shouldn't have accepted business from Douglas Baillie and/or accepted the Store First investment to be held in its SIPPs, before it had received Mr B's application. That if Options hadn't accepted Mr B's introduction from Douglas Baillie and/or the Store First investment to be held in its SIPPs, Mr B wouldn't have established an Options SIPP, transferred his DB scheme monies into it or invested in Store First. I said it's fair and reasonable for Options to compensate Mr B for the full measure of the loss he's suffered as a result of Options accepting his business from Douglas Baillie and permitting him to invest his SIPP monies in Store First. So Options should undertake a redress calculation for Mr B, and also pay him £500 compensation for his distress.

Mr B accepted the provisional decision and said he had nothing further to add.

Options didn't provide any response to the provisional decision, despite being provided with the opportunity to do so.

I'm now in a position to make my decision.

What I've decided – and why

<u>Time limits</u>

Firstly, I've thought about whether this is a complaint our Service can consider. Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the FCA's Handbook of Rules and Guidance. DISP 2.8.2R says:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service…

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits…was as a result of exceptional circumstances.

Mr B's complaint against Options is that it didn't carry out sufficient due diligence in 2012 before it allowed him to transfer his DB pension scheme benefits into a SIPP and then use his SIPP monies to invest in Store First. Mr B raised this complaint with Options in August 2020, which is clearly more than six years later. So I'm satisfied Mr B's complaint has been brought outside the six-year part of the rule.

Therefore, I must consider the three-year part of the rule. Under this, I need to consider when Mr B ought reasonably to have become aware he had cause for complaint.

The term 'complaint' is defined for the purposes of DISP in the FCA handbook as:

"any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service…which:

a) Alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
b) Relates to an activity of that respondent, or any other respondent with whom that respondent has some connection in marketing or providing financial services or products …which comes under the jurisdiction of the Financial Ombudsman Service."

And *respondent* means a regulated firm covered by the jurisdiction of the Financial Ombudsman Service.

So, the material points required for Mr B to have awareness of a cause for complaint include:

- awareness of a problem;
- awareness that the problem had or may have caused him material loss; and
- awareness that the problem was or may have been caused by an act or omission of Options (the respondent in this complaint).

In its final response letter, Options said Mr B ought reasonably to have been aware he had cause for complaint when the July 2015 SIPP annual valuation informed him that his Store First investment was valued at 50% of the original purchase price, and when in June 2017 Options provided the information requested in the SAR for Mr B.

Options hasn't supported this argument by providing our Service with any documentary evidence of these communications. But regardless, I'm not satisfied the communications Options has described here ought reasonably to have made Mr B aware that a failing by Options could have been responsible for the problem with his SIPP investment.

Mr B had been introduced to his investment by CL&P, and he made the investment after Douglas Baillie Ltd advised him on transferring his pension. So I think it's reasonable to conclude that Mr B's first thoughts would have been that CL&P and/or Douglas Baillie Ltd were responsible for the problem with his SIPP investments.

Mr B's initial investment was no more than £30,000. In December 2017, the FSCS said Mr B had a valid claim and it would pay him interim compensation of about £48,000 – less than the FSCS limit at that time - because the value of his SIPP wasn't yet certain and so it wasn't clear what his final losses would be. So I think it's fair to say that, at that time, Mr B had taken reasonable steps to resolve the problem with his SIPP. Because he had appointed an expert in the form of his CMC and was recovering his financial loss through the FSCS. And the compensation the FSCS had so far paid him was still under its limit.

But by February 2018, the FSCS had carried out further calculations and told Mr B that it would pay him an additional and final amount of compensation. This took the compensation Mr B had received in relation to his SIPP up to the FSCS's limit of £50,000. So in my view, this was the earliest point at which Mr B became aware that the problem with his SIPP had caused him a financial loss for which he hadn't been fully compensated. This is supported by Mr B's testimony that his CMC prompted his awareness about making a complaint against Options - that his CMC investigated this when his successful FSCS claim against Douglas Baillie Ltd showed losses above the FSCS's maximum limit.

I've not been provided with any evidence that makes me think that, prior to this, Mr B had any other information that ought reasonably to have made him aware he had cause for complaint about the due diligence Options carried out when it accepted his transfer and investment applications in 2012.

So in the circumstances of this particular complaint, even if the earliest point at which Mr B became aware he had cause for complaint against Options was when he first had uncompensated losses in February 2018, I do not consider that he ought reasonably to have been aware any earlier that there was a problem with his SIPP that had caused him a loss for which Options might also bear a responsibility, in addition to Douglas Baillie Ltd. Mr B complained to Options within three years of this date.

Therefore, I think this complaint has been brought in time under the three-year part of the rules and so is a complaint our Service can consider. Given this, I've gone on to consider the merits of Mr B's complaint.

<u>The merits of Mr B's complaint</u>

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

Relevant considerations

I've carefully taken account of the relevant considerations to decide what's fair and reasonable in the circumstances of this complaint.

Before I set out the reasoning for my decision, it's important for me to say that in considering what is fair and reasonable in all the circumstances of this complaint, I have taken 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.

In my view, the FCA's Principles for Businesses are of particular relevance. 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 – at the relevant date). Principles 2, 3 and 6 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've carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ('BBA') Ouseley J said at paragraph 162:

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

And at paragraph 77 of BBA Ouseley J said:

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

In *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ('BBSAL'), Berkeley Burke brought a judicial review claim challenging the decision of an Ombudsman who'd upheld a consumer's complaint against it. The Ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The Ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and hadn't treated its client fairly.

Jacobs J, having set out some paragraphs of *BBA* including paragraph 162 set out above, said (at paragraph 104 of *BBSA*L):

> *"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new*

or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles-based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."

The *BBSAL* judgment also considers section 228 of the 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've 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's fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in *BBSAL*. I'm therefore satisfied that the Principles are a relevant consideration that I must take into account when deciding this complaint.

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both these judgments and the judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 when making this decision on Mr B's case.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case. I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight didn't consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither of the judgments say anything about how the Principles apply to an Ombudsman's consideration of a complaint. But, to be clear, I don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of the *Adams* judgments when making this decision on Mr B's case.

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 the 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.

The Court of Appeal rejected Mr Adams' appeal against HHJ Dight's dismissal of the COBS claim, on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal didn't 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 in *Adams v Options SIPP*, 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 paragraph 148:

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

I note that there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr B'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. And he wasn't asked to consider the question of due diligence *before* Options SIPP agreed to accept the Storepods investment into its SIPP.

In Mr B's complaint, amongst other things, I'm considering whether Options ought to have identified that the Store First investment involved a significant risk of consumer detriment and, if so, whether it ought to have declined to accept applications to invest in Store First *before* it received Mr B's application. And the same applied to Options deciding whether to accept introductions from Douglas Baillie Ltd.

The facts of Mr Adams' and Mr B's cases are also different. I make that point to highlight that there are factual differences between *Adams v Options SIPP* and Mr B's case. And I need to construe the duties Options owed to Mr B under COBS 2.1.1R in light of the specific facts of Mr B's case.

So I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr B's case, including Options role in the transaction.

However, I think it's important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And, in doing that, I'm required to take into account relevant considerations which include: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This is a clear and relevant point of difference between this complaint and the judgments in *Adams v Options SIPP*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I also want to emphasise that I don't say that Options was under any obligation to advise Mr B on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr B on the merits of the SIPP and/or the underlying investments.

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

Options has pointed out that a contravention of the Principles cannot in itself give rise to any cause of action at law. That may be true. However, I am dealing with a complaint, not a cause of action, and what I am seeking to identify here is what is relevant to my consideration of what is fair and reasonable in the circumstances of this case. And I'm satisfied that the FCA's Principles are a relevant consideration that I must take into account when deciding this complaint.

The regulatory publications

The FCA (and its predecessor, the FSA) 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.

I've considered the relevance of these publications. And I've set out material parts of the publications here, although I've considered them in their entirety.

The 2009 Thematic Review Report

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 clients 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 members 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 SIPPs that are unsuitable or detrimental to clients.

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their customers' interests in this respect, with reference to Principle 3 of the Principles for Businesses ('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 referred to selected parts of the publications, to illustrate their relevance, I've considered them in their entirety.

I acknowledge that the 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However, the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't mean their importance should be underestimated. They provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it 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.

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

At its introduction the 2009 Thematic Review Report says:

> *"In this report, we describe the findings of this thematic review, and make clear what we expect of SIPP operator firms in the areas we reviewed. It also provides examples of good practices we found."*

And, as referenced above, the report goes on to provide "…*examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms."*

So, I'm satisfied that the 2009 Report is a *reminder* that the Principles apply and it gives 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. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So I'm satisfied it's relevant and therefore appropriate to take it into account.

Options argues that many of the matters which the Report invites firms to consider are directed at firms providing advisory services. But, to be clear, I think the Report is also directed at firms like Options acting purely as SIPP operators. The Report says that *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses…"* And it's noted prior to the good practice examples quoted above that *"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."*

The remainder of the publications also 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 to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I therefore remain satisfied it's appropriate to take them into account too.

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

It's also clear from the text of the 2009 and 2012 Thematic Review 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's clear the standards themselves hadn't changed.

I note the judge in the *Adams* case didn't consider the 2012 Thematic Review Report, 2013 SIPP operator guidance and 2014 *"Dear CEO"* letter to be of relevance to his consideration of Mr Adams' claim. But it doesn't follow that those publications are irrelevant to my consideration of what's fair and reasonable in the circumstances of this complaint. I'm required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

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

The regulator also issued an alert in 2013 about advisers giving advice to consumers on SIPPs without consideration of the underlying investment to be held in the SIPP. The alert *("Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP"*) set out that this type of restricted advice didn't meet regulatory requirements. It said:

"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 which may be in Unregulated Collective Investment Schemes).
…
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 other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes."

The alert post-dates the events in this complaint – but, again, it didn't set new standards. It highlighted that advisers using the restricted advice model discussed in the alert generally weren't meeting *existing* regulatory requirements and set out the regulator's concerns about industry practices at the time.

To be clear, I don't say the Principles or the publications obliged Options to ensure the transactions were suitable for Mr B. It's accepted Options wasn't required to give advice to Mr B, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But as I've said above they're 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. As Options notes from the FCA's Enforcement Guide, publications of this type *"illustrate ways (but not the only ways) in which a person can comply with the relevant rules".* And so it's fair and reasonable for me to take them into account when deciding this complaint.

Options argues that any publications or guidance that post-dated the events subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time. But that doesn't alter my view on what I consider to have been good industry practice at the time. That's because I find that the 2009 Report together with the Principles provide a very clear indication of what Options could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting Mr B's application.

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

And in determining this complaint, I need to consider whether, in accepting Mr B's application to establish a SIPP and transfer his DB scheme benefits into it and to invest in Store First, Options complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Options should have done to comply with its regulatory obligations and duties.

Taking account of the factual context of this case, it's my view that in order for Options to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into Douglas Baillie Ltd/the business Douglas Baillie Ltd was introducing and the Store First investment *before* deciding to accept Mr B's applications.

Options says it is being held liable because it is the only remaining regulated entity over which the Financial Ombudsman Service has jurisdiction. But, ultimately, what I'll be looking at here is whether Options took reasonable care, acted with due diligence and treated Mr B fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issue in Mr B's complaint is whether it was fair and reasonable for Options to have accepted his SIPP application and Store First investment applications in the first place. So, I need to consider whether Options carried out appropriate due diligence checks on Douglas Baillie Ltd and the Store First investment before deciding to accept Mr B's applications.

And the questions I need to consider include whether Options ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by Douglas Baillie Ltd and/or investing in Store First were being put at significant risk of detriment. And, if so, whether Options should therefore not have accepted Mr B's application for the Options SIPP and/or Store First investment.

The contract between Options and Mr B

Options has made submissions about its contract with the clients introduced by Douglas Baillie Ltd and I've carefully considered everything Options has said about this.

I acknowledge that Options says that, at the time of the transaction, there was nothing in the DISP rules preventing SIPP providers accepting business from execution-only customers or high-risk business.

For clarity, my decision is made on the understanding that Options acted purely as a SIPP operator. I don't say Options should (or could) have given advice to Mr B or otherwise have ensured the suitability of the SIPP or the Store First investment for him. I accept that Options made it clear to Mr B that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that forms it appears Mr B signed confirmed, amongst other things, that losses arising as a result of Options acting on his instructions were his responsibility.

I've not overlooked or discounted the basis on which Options was appointed. And my decision on what's fair and reasonable in the circumstances of Mr B's case is made with all of this in mind. So, I've proceeded on the understanding that Options wasn't obliged – and wasn't able – to give advice to Mr B on the suitability of the SIPP or Store First investment.

Options' due diligence on introducing adviser Douglas Baillie Ltd

Options had a duty to conduct due diligence and give thought to whether to accept introductions from TPS as an appointed representative of Douglas Baillie Ltd.

In other complaints, Options said clients were introduced to Options by Douglas Baillie Ltd, an FCA regulated adviser at the relevant time. And Options provided us with a print out from the FCA Register dated 28 December 2011 showing *"Basic details"* for *"The Pension Specialist LLP"*. This said its current status was *"Appointed Representative"* effective from 24

May 2011. This print out also showed a list of four individuals involved with *"The Pension Specialist LLP"*. Options has not provided any evidence of the FCA Register searches it completed in relation to Douglas Baillie Ltd or what permissions Douglas Baillie Ltd held.

Options has also told us that clients had opted to use Douglas Baillie Ltd as the introducer and Options received a letter of authority to this effect, alongside the SIPP application. That Options satisfied itself that the letter of authority related to the same Douglas Baillie Ltd it had carried out due diligence on. That as far as Options was aware, the client never had any communication with CL&P, and Options had documents to suggest Douglas Baillie Ltd was the sole introducer and adviser. And had the client not first received regulated financial advice, Options would not have accepted the transfer and the client would not have made the investments.

Also, in other complaints Options has provided our Service with a copy of the Introducer Profile and Introducer Agreement between Options and *"The Pension Specialist LLP"* as an appointed representative of Douglas Baillie Ltd, signed on 10 October 2011.

Amongst other things, the Introducer Agreement says TPS is responsible for the following:
- Under the *"Providing Advice"* section:
    - *"To evaluate your client's financial circumstances and based on this assess their suitability for what, if any, of the [Options] Pension range is appropriate;"*
    - *"Where a transfer is recommended, all options considered and the advice provided to the client in line with regulatory requirements;"*

- Under the *"Scheme Investments"* section:
    - *"Where your client seeks advice, to provide fully documented advice to your client on the suitability of the Scheme investments, taking account of their financial objectives and attitude to investment risk;"*
    - *"To ensure you have the correct FSA authorisation to provide the investment advice;"*

In other complaints, Options has also provided evidence of some of the discussions it had with TPS, as an appointed representative of Douglas Baillie Ltd, about the client process and the business it was referring.

From the information that Options has provided about its relationship with TPS, I'm satisfied Options did take *some* steps towards meeting its regulatory obligations and good industry practice. However, I don't think those steps our Service has seen evidence of went far enough or were sufficient to meet Options' regulatory obligations and good industry practice.

I think Options was aware of, or should have identified potential risks of, consumer detriment associated with business introduced by Douglas Baillie Ltd, including the following, before it accepted Mr B's application:

- The SIPP business introduced by Douglas Baillie Ltd had anomalous features – it appears to have been high risk business, including many DB scheme transfers where monies were ending up invested in unregulated and esoteric investments post-transfer.

- Neither TPS nor any other regulated party was offering the consumers being introduced full regulated advice (that is advice on the transfer or switch to the SIPP, the establishment of the SIPP *and* the intended investment(s)). Instead, advice was being restricted and advice was not being offered on the suitability of the intended investment(s).

- The risk of an unregulated business being involved in the transfer and investment process.

I've set out below some more detail on anomalous features of the business Douglas Baillie Ltd was introducing to Options, and on potential risks of consumer detriment that I think Options either knew about, or ought to have known about, *before* it accepted Mr B's SIPP application. These points overlap, to a degree, and should have been considered by Options cumulatively.

Anomalous features

<u>The type of investments being made by Douglas Baillie Ltd-introduced consumers</u>

In a separate complaint, Options told us Douglas Baillie Ltd had introduced 59 clients to Options. And that the majority of clients introduced by Douglas Baillie Ltd invested in either Store First and/or GAS Verdant, with the remainder invested in Central and South American forestry investments.

Given this, and based on the evidence I've seen to date, I think it's more likely than not that either all, or the vast majority of, clients introduced to Options by Douglas Baillie Ltd ended up with SIPP monies invested in higher risk non-standard assets like the Store First investment.

I think it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of people investing for their pension. And I think Options either was aware, or ought reasonably to have been aware, that the type of business Douglas Baillie Ltd was introducing was high risk and therefore carried a potential risk of consumer detriment.

From similar complaints about Options brought to our Service which feature Douglas Baillie Ltd as the advising introducer, I've seen that many of the client SIPP application forms Douglas Baillie Ltd sent to Options didn't include any details about the intended investment(s). Mr B's SIPP application was one such. And I note Options has told us that it acts as the administrator only of the SIPP. So, Options may argue it didn't know what Mr B and other Douglas Baillie Ltd-introduced clients were investing in.

But while the 2009 Thematic Review Report made clear that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs, it also made 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."*

And the 2009 Thematic Review Report went on to give the following as examples of measures that SIPP operators could consider, taken from examples of good practice that the regulator had observed and suggestions it had made to firms:

> *"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."

So even if the investments weren't recorded on the application form, Options knew or should have known the investments that were typically being made by Douglas Baillie Ltd-introduced clients.

<u>Volume and nature of business introduced</u>

As I say, an example of good practice identified in the FSA's 2009 Thematic Review Report was:

> *"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."*

In other complaints, Options told us that Douglas Baillie Ltd made its first introduction to Options on 12 December 2011 and the last on 4 October 2012. That Douglas Baillie Ltd introduced a total of 59 clients to Options, and the number of those that were introduced before one particular client. That Options recorded all commission paid to Douglas Baillie Ltd, and that commission was based on the transfer value with the average commission being 2.11%. And that the majority of clients introduced by Douglas Baillie Ltd invested in either Store First and/or GAS Verdant, with the remainder invested in Central and South American forestry investments. Based on this, I'm satisfied Options had access to information about the number and type of introductions that Douglas Baillie Ltd made.

I'm also satisfied Options was aware that Douglas Baillie Ltd was only advising on the transfer, and not the investments. I say this because on 16 March 2012, Ms Hallett at Options emailed Douglas Baillie Ltd to detail that her understanding of the agreed process included that TPS would only advise on the transfer, as follows:

> *"The Pensions Specialists (TPS) are providing full advice on transfer of occupational pension schemes to a SIPP (with us), and will provide us copies of TVAS and advice letter.*
>
> *The Pensions Specialists are appointed as advisers for the purpose of the transfer of existing occupational arrangements and the establishment of the SIPP for which they will be paid from the transfer fund. TPS will get the adviser page of our application form completed and signed by each client.*
>
> *We will on receipt of the SIPP application log TPS as adviser for the purposes of the transfer and SIPP establishment and keep TPS informed of progress of the transfer and copy them in on correspondence to the client including the welcome letter.*
>
> *On receipt of the transfer of funds we will advise TPS as well as client*
>
> *TPS will invoice the scheme for the transfer advice which we will pay*
>
> *On receipt of the completion of the transaction TPS will send us a letter resigning as adviser which we will record on our systems."*

In addition, the advice letter TPS prepared for Mr B made clear that advice had only been given on the transfer and not the investment, because it said *"As we have not been asked to provide you with advice other than on your pension transfer, this business is being transacted on a limited advice basis."* And I think it's likely that TPS provided a copy of Mr B's advice letter to Options, based on what Ms Hallett said about her understanding of the process in her 16 March 2012 email to Douglas Baillie Ltd, and on what I have seen in other similar complaints.

Further, I have also been provided with a copy of Mr B's SIPP application form. The 'Transfers' section of the SIPP application contained a ticked box which read *"Please tick the box to indicate that you have received advice on the transfer of this policy"* and confirmed that *"Douglas Baillie Ltd"* had provided Mr B *"…with advice in respect of this transfer."* And the later 'Financial Adviser Details' section of the SIPP application form again sets out Douglas Baillie Ltd's details and says *"Please note our fee is for advice on transfer only. No advice has been given by us on investment."*

So in this case, the SIPP application form made clear that advice had only been given to Mr B in relation to the transfer and not in relation to any intended investments. And I've seen that this was also the case with the SIPP application forms in other similar complaints about Options brought to our Service which feature Douglas Baillie Ltd as the advising introducer.

Based on all this, I think Options was on notice from the point in time it first started receiving SIPP application forms from Douglas Baillie Ltd-introduced consumers that Douglas Baillie Ltd had not given consumers *any* advice on Store First and other higher risk non-standard asset investments.

Options says Douglas Baillie Ltd was an FCA regulated business and at the time of the client's SIPP application, Options was not aware of any reason it shouldn't accept introductions from Douglas Baillie Ltd and it wasn't for Options to 'look behind' its regulated status or permissions. But I think that from very early on Options was aware, or ought to have been aware, that TPS (as an appointed representative of Douglas Baillie Ltd) wasn't a firm that was doing things in a conventional way.

It's unusual for regulated advice firms to be involved in transactions involving pension transfers to invest in high risk esoteric investments, such as the Store First investment, where no advice is being given by that firm on the esoteric investments. That's because the risks involved in such investments are unlikely to be fully understood by most people, without obtaining regulated advice. I think it's fair to say that most advice firms decline to be involved in such transactions.

I think this ought to have been a red flag for Options in its dealings with Douglas Baillie Ltd. And I think Options ought to have recognised there was a risk that Douglas Baillie Ltd might be *choosing* to introduce consumers without their having been offered regulated advice by Douglas Baillie Ltd on the unregulated investments that their transfers to Options were being effected to make. I think Options ought to have viewed this as a serious cause for concern – this was a clear and obvious potential risk of consumer detriment in this case.

And I think this concern ought to have been even greater in a case like Mr B's where a DB scheme was involved. At the relevant date COBS 19.1.6G stated:

> *"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interests".*

While I acknowledge this aims to define the expectation of a regulated financial adviser when determining the suitability of a pension transfer, it emphasises the regulator's concern about the potential detriment such a transaction could expose a consumer to. Given the nature of its business and regulatory status, I'd expect Options to have been familiar with the guidance contained in COBS – even if it didn't apply directly to it. This was a further clear and obvious potential risk of consumer detriment.

Further, the advice letter Douglas Baillie Ltd prepared for Mr B made clear it had not been provided with a *"financial planning profiler"* for Mr B so did not have knowledge on his personal circumstances. This, I think, is something Options ought to have been concerned by, not least because the terms of business between Douglas Baillie Ltd and Options expected TPS to *"evaluate [the] client's financial circumstances"* as part of the advice process. I think the advice letter, which I'm satisfied Options received a copy of alongside the application, made it clear this hadn't happened in Mr B's case.

Finally, I think Options ought to have been concerned that many of Douglas Baillie Ltd's clients were proceeding on an apparently 'insistent client' basis, including Mr B. I think there was reason for Options to be concerned that the advice letter prepared by Douglas Baillie Ltd had been presented by Douglas Baillie Ltd as a formality or as a 'paper exercise' in the process, with the 'insistent client' wording downplayed so that clients given that label remained persuaded that the recommendation overall was to transfer out of their existing scheme.

The 'advice letters' I've seen, which are substantially similar in content, all suggested the client had already indicated a wish to proceed and included instructions on how to proceed with the application to Options and the transfer out. They read as though Douglas Baillie Ltd was working on the premise that their advice was going to be disregarded. Indeed, I note there is evidence that Douglas Baillie Ltd was keen for these applications from 'insistent clients' to go ahead – when in September 2012 Ms Hallett told Douglas Baillie Ltd *"given the heightened risk with Final Salary Occupational transfers and the volume that seem to be coming through we are not prepared to take them on where the advice is not to do it"*, Douglas Baillie Ltd's response was to convince Ms Hallett to make some concessions.

Alongside the volume of such applicants, I think Options ought to have identified that the tone of the advice letters was inconsistent, and they ought to have been alive to the possibility that the 'insistent client' wording had been included by Douglas Baillie Ltd only in order to limit its responsibility, and not because Mr B, a retail client, was genuinely insistent. Options ought to have questioned whether Douglas Baillie Ltd, who would only receive commission if the transfer went ahead, was putting its own interests ahead of those of its clients.

<u>The risk of an unregulated business being involved</u>

Both Mr B and Options have made submissions in relation to the checks Options made on World Check and the FSA Notice regarding Mr Wright. I've considered all this carefully, but I see no need to address these submissions. Because the due diligence Options may or may not have carried out on CL&P before accepting introductions from CL&P isn't the basis on which I'm upholding Mr B's complaint, or something I've relied on in reaching my conclusions.

As I've mentioned above, from the point in time it first started receiving SIPP application forms from Douglas Baillie Ltd-introduced consumers, I think Options was on notice that Douglas Baillie Ltd had not given consumers any advice on the intended investments.

Having carefully considered the available evidence, including the SIPP application forms I've seen in this and other complaints against Options where Douglas Baillie Ltd was the introducing adviser, I think it's more likely than not that most, if not all, Douglas Baillie Ltd-introduced Options consumers were doing the same thing. By which I mean that application forms to establish an Options SIPP were being submitted for Douglas Baillie Ltd-introduced Options consumers recording that advice had been given by Douglas Baillie Ltd on the transfer but not on the investments, that pension monies were then being transferred into the newly established Options SIPPs for those consumers, and, subsequently, the consumers SIPP monies were being invested in Store First and other high risk non-standard investments.

To be clear, I don't think it's credible that most, or all, of these Douglas Baillie Ltd-introduced consumers were independently determining to invest their pension monies in Store First and other high risk non-standard investments without any input from a third party. Given what Options ought reasonably to have identified about the business it was receiving from Douglas Baillie Ltd had it undertaken adequate due diligence, I think this should have been a significant cause for concern for Options and caused it to consider the business it was receiving from Douglas Baillie Ltd very carefully.

I think that Options ought to have been alive to the risk that an unregulated third party might have been involved in promoting the investments to investors, like Mr B, and that consumers were not receiving any regulated advice from Douglas Baillie Ltd on the investments. And based on Mr B's testimony and on the evidence I've seen in this and other complaints where Douglas Baillie Ltd was the advising introducer, I think it's more likely than not that CL&P was involved in promoting the transfer, the SIPP and the investment to Mr B.

Options says there was nothing in the DISP rules preventing SIPP providers from accepting business from unregulated introducers. But in May 2012, prior to Mr B being introduced to Options, Options had itself chosen to terminate the introducer agreement it had with CL&P, over the concerns Options had about how CL&P operated. Yet two months later, CL&P was in direct contact with Options regarding Douglas Baillie Ltd-introduced clients – I've seen that in another similar complaint, CL&P emailed Options directly on 25 July 2012 to say that TPS (as an appointed representative of Douglas Baillie Ltd) was preparing a TVAS for a client and to ask Options to send the client's discharge papers to TPS. The same day, a Pensions Administrator at Options replied to CL&P to confirm Options had done this.

As I've said, Options was obliged to conduct its business with due skill, care and diligence, and to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. And I'm mindful that the regulator's 2009 Thematic Review Report said that "*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."* Given all this, I think Options should have been aware and concerned that CL&P was still actively involved in a new transfer for a client that Douglas Baillie Ltd had introduced to Options, after Options itself had decided its concerns about how CL&P operated were too great for Options to continue accepting introductions from CL&P.

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 – which I think were clear and obvious at the time – it should not accept applications from Douglas Baillie Ltd. 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.

<u>Requesting information directly from Douglas Baillie Ltd</u>

Given the significant potential risk of consumer detriment I think that, as part of its due diligence on Douglas Baillie Ltd, Options ought to have found out more about how Douglas Baillie Ltd was operating and *before* it accepted Mr B's application. Mindful of the type of introductions I think it was receiving from Douglas Baillie Ltd, and that the clients introduced were not receiving advice on the intended investments, I think it's fair and reasonable to expect Options, in line with its regulatory obligations, to have made some very specific enquiries and obtained information about Douglas Baillie Ltd's business model.

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 way *"…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 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."*

I think that Options, and *before* it received Mr B's application from Douglas Baillie Ltd, should have checked with Douglas Baillie Ltd about: how it came into contact with potential clients, what agreements it had in place with its clients, whether all of the clients it was introducing were being offered full advice, what its arrangements with any unregulated businesses were, how and why retail clients were interested in making higher risk non-standard investments, whether it was aware of anyone else providing information to clients, how it was able to meet with or speak with all its clients, and what material was being provided to clients by it.

I think obtaining this *type* of information from Douglas Baillie Ltd was a fair and reasonable step for Options to take, in the circumstances, to meet its regulatory obligations and good industry practice.

And, on balance, I think it's more likely than not that if Options *had* checked with Douglas Baillie Ltd and asked the *type* of questions I've mentioned above that Douglas Baillie Ltd would have provided the information sought.

I say this because Douglas Baillie Ltd's email to Options on 18 May 2012 shows that Douglas Baillie Ltd and Options had some discussion in relation to firms Options had refused business from, and Douglas Baillie Ltd was willing to discuss that further - Douglas Baillie Ltd said, *"[TPS Director] mentioned that there were a couple of accounts that you have refused business from, as I tend to be closer to the accounts, can you confirm who they are please. This way, I can ensure that [TPS office] are aware of any blacklisted firms and that we can avoid them as well."*

But based on the evidence provided to our Service, it wasn't until almost a year after an Introducer Profile and an Introducer Agreement between Options and Douglas Baillie Ltd was signed that Options asked Douglas Baillie Ltd about how it came into contact with potential clients. Because on 4 September 2012, Options emailed Douglas Baillie Ltd to say *"…it would be helpful for me to understand where you are currently getting the introductions from for the transfer work can you please provide me a list of introducers that you are currently doing transfer advice for to assist me to consider further."*

Then on 6 October 2012, after Options had accepted Mr B's SIPP application, Options emailed Douglas Baillie Ltd to say, *"…we need to know on the form who the introducer of the business is to you, I advised you that we had de-listed CLP and would not deal with them but we have some information from a member of your team who said in passing to a member of my team when we were asking about the investments they wanted to transact, that they would check with CLP. If you are sending us business that has been introduced by CLP please stop, we do not want to be associated with them as an introducing firm of business to us as we as I [sic] have said to you before that they offer incentives to the client for transacting the transfer and I understood that you too had concerns, is there any reason why you are still transacting business with them."*

So Options, and *before* it received Mr B's application from Douglas Baillie Ltd, should have decided not to accept business from Douglas Baillie Ltd, given that Options had decided not to accept new business from CL&P.

Making independent checks

I think, in light of what I've said above, it would also 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 introductions it was receiving from Douglas Baillie Ltd. For example, it could have asked for copies of correspondence relating to the transfer advice.

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, or by contacting the firm giving advice and asking for clarification****."* (bold my emphasis)

So I think it would have been fair and reasonable for Options to speak to some applicants, like Mr B, directly.

I accept Options couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view such steps included addressing a potential risk of consumer detriment by speaking to applicants, as this could have provided Options with further insight into Douglas Baillie Ltd's business model. This would have been a fair and reasonable step to take in reaction to the clear and obvious risks of consumer detriment I've mentioned.

I acknowledge Mr B says he was told not to disclose any information to Options. But Mr B also says he was told this *after* he received the £2,415 payment in December 2012, and all the transactions had taken place by then. So, on balance, I think it's more likely than not that if Options *had* contacted Mr B to 'confirm the position' when it received his SIPP application in July 2012, Mr B would have told Options that it was CL&P who had promoted the transfer to him and introduced him to the intended investments and to Douglas Baillie Ltd. And as I've said, CL&P was a business that Options had already terminated its introducer agreement with over concerns about how CL&P operated.

Had it taken these fair and reasonable steps, what should Options have concluded?

If Options had undertaken these steps I think it ought to have identified, amongst others, the following risks before it accepted Mr B's application:

- Douglas Baillie Ltd was having business referred to it by introducers, like CL&P, and it was then introducing business to Options.

- Douglas Baillie Ltd wasn't offering the consumers it was introducing to Options (like Mr B) advice on the suitability of the high risk, non-standard and unregulated investments that their Options SIPPs were being established in order to effect.

- A third party might have 'sold' to consumers the idea of transferring pension monies so as to invest in Store First and other high risk, non-standard and unregulated investments, before the involvement of any regulated parties.

- The anomalous features I've mentioned above carried a significant risk of consumer detriment.

Each of these in isolation is significant, but cumulatively I think they demonstrate that there *was* a significant risk of consumer detriment associated with the introductions Options received from Douglas Baillie Ltd. I think that Options ought to have had real concerns that Douglas Baillie Ltd wasn't acting in customers' best interests and wasn't meeting its regulatory obligations.

Options didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly by accepting his application from Douglas Baillie Ltd. To my mind, Options didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr B to be put at significant risk of detriment as a result. Options should have concluded, and *before* it accepted Mr B's business from Douglas Baillie Ltd, that it shouldn't accept introductions from Douglas Baillie Ltd. I therefore conclude that it's fair and reasonable in the circumstances to say that Options shouldn't have accepted Mr B's application from Douglas Baillie Ltd at all.

And, to be clear, even if I thought Options had undertaken adequate due diligence on Store First and had acted appropriately in permitting that investment into its SIPPs (which, as I'll explain below, I don't), I'd still consider it fair and reasonable to uphold Mr B's complaint on the basis of what I've already set out above – that Options shouldn't have accepted Mr B's introduction from Douglas Baillie Ltd in the first place.

But for completeness, I've gone on to consider the due diligence that Options carried out on the Store First investment.

Options due diligence the Store First investment

I'm satisfied that, to meet its regulatory obligations when conducting its business, Options was required to consider whether to accept or reject a particular investment, with the Principles in mind.

I think that it's fair and reasonable to expect Options to have looked carefully at the Store First investment *before* permitting it into its SIPPs. To be clear, for Options to accept the Store First investment without carrying out a level of due diligence that was consistent with its regulatory obligations, while asking its customer to accept warnings absolving it of the consequences, wouldn't in my view be fair and reasonable or sufficient. And if Options didn't look at the investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure or might be fraudulent, it wouldn't in my view be fair or reasonable to say Options had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

The actions Options took in considering whether to permit the Store First investment into its SIPPs are set out in detail in the background section above, so I won't repeat them here.

In respect of the searches, these were carried out on the promoter of Store First, Harley Scott Holdings Ltd, not Store First itself – perhaps because at that point Store First was just being established. The result of the searches reported that Harley Scott Holdings Ltd had a website address *"dylanharvey.com"*, and had changed its name three times having previously been called Dylan Harvey Group Ltd, Dylan Harvey Ltd and Grangemate Ltd. The report also said County Court Judgments ('CCJs') were recorded against the business and that auditors had made adverse comments in the previous three reporting years.

It's not clear what consideration Options gave to this report, after it obtained it. But, in my view, it would have been fair and reasonable for it to have conducted some further basic searches, given there were factors in the report which ought to have been of concern – namely the adverse comments for the previous three years, the CCJs, and the fact the business had recently changed its name.

Had such further basic searches been completed I think it likely they would've revealed that, at the time, Dylan Harvey and one of its directors, Toby Whittaker, were the subject of national press reports, online petitions and proposed legal action, as a result of a failed property investment. It was reported that hundreds of investors had invested in a scheme to develop flats, but the flats hadn't been built and the investors had been unable to recover their money. Those investors were behind the online petitions and proposed legal action.

Options says it obtained copies of Store First's marketing material. It has provided us with copies of this. Again, I accept that potentially this was good practice. In order to correctly understand the nature of the investment, I think it's fair and reasonable to say Options should have reviewed how Store First was marketed to investors – particularly as it was proceeding on the basis that these investments were being made by consumers without regulated advice being provided. Clearly Options thought it was important to look at this material at the time too.

Consistent with its regulatory obligations, Options should not only have obtained the material but should also have given careful consideration to it. The marketing material obtained by Options at the relevant time included the following prominent statements:

"You will receive guaranteed returns from a 6 year lease already in place upon completion, making this a high yielding, hassle-free investment which has been specifically designed to meet the needs of todays (sic) astute investor."

"You will receive a 6 year lease in place upon completion. The lease produces an excellent return of 8% (guaranteed for the first 2 years) rising to over 12% in years 5 and 6. The lease contains upward-only rental reviews and break clauses for both parties every two years."

"Guaranteed exit route option."

It then goes on to set out in a table the returns payable in years 1&2, 3&4 and 5&6 at 8%, 10% and 12%. In the question and answer section the following is included:

"What rental income can I expect?

Storepod rental starts at £17 per Sq/Ft per annum. The 6 year tenancy/lease in place on your Storepod has fixed upwards only rental reviews and break clauses (for both parties) every 2 years. This produces an 8% yield on your investment within the first two years, this then is predicted to rise to over 10% return in years 3&4 and then surpass 12% return in years 5&6.

Can I easily re-sell my Storepod?

Yes. You can re-sell your Storepod at any time and selling your Storepod couldn't be simpler. Store First Ltd can market your Storepod upon your request. We believe that because Storepods are so competitively priced when new, they will make a very attractive sale proposition in the future. We also expect that many tenants will wish to purchase the Storepod they are using. For example, other self storage PLCs usually achieve rent of between £20.00 - £25.00 per square foot. Our Storepods are costed at a rent of only £17.00 per square foot; once higher rents are achieved the capital value of the Storepod will increase.

Guaranteed exit route?

In year 5, investors have the option to enter the guaranteed buy-back scheme. In this scheme, Store First Management Ltd will guarantee to buy the Storepod back off the investor for the original price paid within the next 5 years. This is a unique offer in the market place and we are happy to be able to offer this exit route to our investors. Most investors are driven to keep the property investment they have purchased and carry on receiving the rental yield produced for years to come, this means only a very limited number of Storepods per centre will ever come onto the resale market, this creates a high sale value and demand for the future".

The material says the *"figures shown are for illustration purposes".* But it doesn't contain any type of risk warning, or illustrations of any other returns. No explanation of the guarantees was offered, or the basis of the projected returns – other than Store First's own confidence in its business model and the self-storage marketplace.

I note Options considered a report by ESS. In my view this was of limited value. It was brief and based only on some of the material Options had regard to i.e. the marketing material and lease documents. As a result, I think Options should have found it difficult to reconcile the view reached by ESS with the information available to Options. The report said:

"The following parties are involved in this investment: Seller of the sub-lease: Store First Limited UK Promoter: Harley Scott Holdings Limited No adverse history has been found affecting these parties. A CCJ was issued against the promoter of the scheme however we understand this arose from a disputed invoice which is in the course of being settled. This is any event does not directly impact on the investment".

This conclusion is inconsistent with the result of Options' own company searches, which reported the adverse comments for the previous three years, the CCJs, and that the business had recently changed its name. The report also makes no comment on the obvious issues with the marketing material. So, I don't think Options should have taken any comfort from the ESS report or attached any significant weight to it.

If Options had completed sufficient due diligence on Store First, what ought it reasonably to have concluded?

The failure of the previous scheme which Dylan Harley/Harley Scott Holdings had been involved in may have been entirely down to market forces. But I think the fact that the company which had approached Options about Store First – and on which Options had conducted searches – had recently been involved in a property investment scheme which had failed, had recently changed its name, and had been subject to a number of adverse comments in succession, following audit, ought to have given Options significant cause for concern. Particularly when it considered the marketing material for Store First.

In my view there were a number of things about the marketing material which ought to have given Options significant cause for concern and led it to have drawn similar conclusions to those later drawn by SSA UK (on the basis of a report by Deloitte LLP) and the Insolvency Service. Namely, that there was a significant risk that potential investors were being misled.

I think, as it had regard to this material, Options could not overlook the fact that Store First appeared to be presenting the investment as one that was assured to provide high and rising returns, was underwritten by guarantees, and offered a high level of liquidity together with a strong prospect of a capital return - despite the fact that there was no investor protection associated with the investment and that, in Options' own words, there was no apparent established market for the investment and the investment was potentially illiquid.

Store First had no proven track record for investors and so Options couldn't be certain that the investment operated as claimed. Options should also have been concerned about a guarantee offered by a new business with no track record (and promoted by a business with a questionable one).

I think, in light of this, Options should have been concerned that consumers may have been misled or did not properly understand the investment they intended to make. Consumers could easily have been given the impression, from the marketing material, that they were assured of high returns with little or no risk and would easily be able to sell their investment when they wished to. Such an impression was clearly misleading.

From the evidence I've seen I think the information Store First was publishing *before* Mr B's Options monies were invested with it, including marketing material available through its website, gave rise to a significant risk that potential investors were being misled by Store First. And I think Options ought to have identified this *before* permitting the Store First investment into its SIPPs. This is a clear point of concern, which I think Options ought reasonably to have identified *before* it accepted Mr B's application to invest in Store First.

In my opinion, the issues I've identified above should have, when considered objectively, put Options on notice from the beginning that there was a significant risk of consumer detriment. And, without more evidence to ensure the investment was an appropriate one to permit within its SIPPs, I'm satisfied that Options shouldn't have accepted the Store First investment.

Had Options done what it ought to have done, and drawn reasonable conclusions from what it knew or ought to have known, I think that it ought to have concluded there was a significant risk of consumer detriment if it accepted the Store First investment into its SIPPs and that the Store First investment wasn't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think Options undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the Store First investment *before* it accepted that investment into its SIPPs. I don't think Options met its regulatory obligations and, in accepting Mr B's application to invest in Store First, it allowed Mr B's funds to be put at significant risk.

To be clear, I don't say Options should have identified all the issues the SSA UK press release set out or to have foreseen the issues which later came to light with Store First. I only say that, based on the information available to Options at the relevant time, it should have drawn a similar overall conclusion – that there was a significant risk that potential investors were being misled. I'm satisfied, on a fair and reasonable basis, that a significant risk of consumer detriment ought to have been apparent from the information available to Options at the time. And I do think that appropriate checks would have revealed issues which were, in and of themselves, sufficient basis for Options to have declined to accept the Store First investment in its SIPPs *before* Mr B invested in it. And it's the failure of Options' due diligence that's resulted in Mr B being treated unfairly and unreasonably.

There's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. I accept Options wasn't expected to, nor was it able to, give advice to Mr B on the suitability of the SIPP and/or Store First investment for him personally. To be clear, I'm not making a finding that Options should have assessed the suitability of the Store First investment for Mr B. I accept Options had no obligation to give advice to Mr B, or to ensure otherwise the suitability of an investment for him.

And I'm also not saying that Options shouldn't have allowed the Store First investment into its SIPPs because it was high risk. My finding isn't that Options should have concluded that Mr B wasn't a candidate for high risk investments or that an investment in Store First was unsuitable for Mr B. Instead, it's my fair and reasonable opinion that there were things Options knew or ought to have known about the Store First investment and how it was being marketed which ought to have led Options to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that Options failed to act with due skill, organise and control its affairs responsibly, or treat Mr B fairly by accepting the Store First investments into his SIPP.

Acting fairly and reasonably to investors (including Mr B), Options should have concluded that it wouldn't permit the Store First investment to be held in its SIPPs *at all*. And I'm satisfied that it's more likely than not that Mr B's pension monies were only transferred to Options so as to effect the Store First investment. So, I think it's likely that if Options hadn't permitted the Store First investment to be held in its SIPPs at all, Mr B's pension monies wouldn't have been transferred to Options. And further, that Mr B wouldn't then have suffered the losses he's suffered as a result of transferring to Options and investing in Store First.

Did Options act fairly and reasonably in proceeding with Mr B's instructions?

Options says it was the client's decision to proceed on an execution-only basis and Options made this clear to them. Options has also made the point that COBS 11.2.19R obliged it to execute investment instructions. It effectively says that once the SIPP has been established, it is required to execute the specific instructions of its client. Before considering this point, I think it is important for me to reiterate that it was not fair and reasonable for Options to have accepted Mr B's SIPP application from Douglas Baillie Ltd in the first place. So in my opinion, Mr B's SIPP should not have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity should not have arisen at all.

In any event, Options' argument about having to execute the transaction as a result of COBS 11.2.19R was considered and rejected by the judge in BBSAL. In that case Jacobs J said:

"The heading to COBS 11.2.1R shows that it is concerned with the manner in which orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2 as a whole, namely: "Best execution". The text of COBS 11.2.1R is to

the same effect. The expression "when executing orders" indicates that it is looking at the moment when the firm comes to execute the order, and the way in which the firm must then conduct itself. It is concerned with the "mechanics" of execution; a conclusion reached, albeit in a different context, in Bailey & Anr v Barclays Bank [2014] EWHC 2882 (QB), paras [34] – [35]. It is not addressing an anterior question, namely whether a particular order should be executed at all. I agree with the FCA's submission that COBS 11.2 is a section of the Handbook concerned with the method of execution of client orders, and is designed to achieve a high quality of execution. It presupposes that there is an order being executed, and refers to the factors that must be taken into account when deciding how best to execute the order. It has nothing to do with the question of whether or not the order should be accepted in the first place."

Therefore, I don't think Options' argument on this point is relevant to its obligations under the Principles to decide whether or not to accept an application to open a SIPP in the first place or to execute the instruction to make the investments i.e. to proceed with the application.

Was it fair and reasonable in all the circumstances for Options to proceed with Mr B's application?

For the reasons given above, I think Options shouldn't have accepted Mr B's business from Douglas Baillie Ltd and I also think it shouldn't have accepted the Store First investment into his SIPP. So things shouldn't have got beyond that.

And, to be clear, even if I thought Options had undertaken adequate due diligence on Douglas Baillie Ltd and acted appropriately in accepting Mr B's business from Douglas Baillie Ltd (which, as I've explained, I don't), I'd still consider it fair and reasonable to uphold Mr B's complaint on the basis that Options didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly, by accepting the Store First investment into his SIPP.

I make this point here to emphasise that while I've concluded *both* that Options shouldn't have accepted Mr B's business from Douglas Baillie Ltd and also that it shouldn't have accepted his applications to invest in Store First, if I had only reached the conclusions I've set out above on one of those aspects and not also gone on to reach findings on the other aspect for completeness, I'd still consider it fair and reasonable in all the circumstances to uphold this complaint. That's because Options didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly by accepting his business from Douglas Baillie Ltd. And because, separately, Options also didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly, by accepting the Store First investment into his SIPP. And to my mind, Options didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr B to be put at significant risk of detriment as a result.

Further, in my view it's fair and reasonable to say that just having Mr B sign declarations, wasn't an effective way for Options to meet its regulatory obligations to treat him fairly, given the concerns Options ought to have had about the business being introduced by Douglas Baillie Ltd and the Store First investment.

Options knew Mr B had signed forms intended to acknowledge, amongst other things, his awareness of some of the risks involved with investing and to indemnify Options against losses that arose from acting on his instructions. And, in my opinion, relying on the contents of such forms when Options knew, or ought to have known, that both the type of business it was receiving from Douglas Baillie Ltd and allowing the Store First investment to be held within its SIPPs would put investors at significant risk, wasn't the fair and reasonable thing to do. Having identified the risks I've mentioned above, I think the fair and reasonable thing for

Options to do would have been to decline to accept Mr B's business from Douglas Baillie Ltd and to refuse to accept the Store First investment in his SIPP.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr B signed meant that Options could ignore its duty to treat him fairly. To be clear, I'm satisfied that indemnities contained within the contractual documents don't absolve, nor do they attempt to absolve, Options of its regulatory obligations to treat customers fairly when deciding whether to accept or reject investments or business.

So, I'm satisfied that Mr B's Options SIPP shouldn't have been established and his Options monies shouldn't have been invested in the Store First holding. And that the opportunity for Options to execute investment instructions to invest Mr B's monies in Store First or to proceed in reliance on an indemnity and/or risk disclaimers shouldn't have arisen at all. I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for Options to accept Mr B's business from Douglas Baillie Ltd or for it to accept his applications to invest in Store First.

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

<u>The involvement of other parties</u>

In this decision I'm considering Mr B's complaint about Options. But I accept other parties were involved in the transactions complained about, including Douglas Baillie Ltd and CL&P.

Mr B pursued an FSCS claim against Douglas Baillie Ltd. The FSCS upheld Mr B's claim, calculated his losses to be in excess of £50,000 and paid him its limit of £50,000 compensation. Following this the FSCS provided Mr B with a reassignment of rights.

The DISP rules set out that when an Ombudsman's determination includes a money award, then that money award may be such amount as the Ombudsman considers to be fair compensation for financial loss, whether or not a Court would award compensation (DISP 3.7.2R).

In my opinion it's fair and reasonable in the circumstances of this case to hold Options accountable for its own failure to comply with its regulatory obligations, good industry practice and to treat Mr B fairly.

The starting point therefore, is that it would be fair to require Options to pay Mr B compensation for the loss he's suffered as a result of its failings. I've carefully considered if there's any reason why it wouldn't be fair to ask Options to compensate Mr B for his loss.

I accept that other parties, including Douglas Baillie Ltd and/or CL&P, might have 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 SIPP operator, the arrangement for Mr B wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

I want to make clear that I've taken everything Options has said into consideration. And it's my view that it's appropriate and fair in the circumstances for Options to compensate Mr B to the full extent of the financial losses he's suffered due to Options' failings. And, having carefully considered everything, I don't think that it would be appropriate or fair in the circumstances to reduce the compensation amount that Options is liable to pay to Mr B.

<u>Mr B taking responsibility for his own investment decisions</u>

In reaching my conclusions in this case I've thought about section 5(2)(d) of the FSMA (now section 1C). This section requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the general principle that consumers should take responsibility for their own investment decisions.

I've considered this point carefully and I'm satisfied that it wouldn't be fair or reasonable to say Mr B's actions mean he should bear the loss arising as a result of Options' failings.

In my view, if Options had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr B's business from Douglas Baillie Ltd or accepted his applications to invest in Store First at all. That should have been the end of the matter – if either of those things had happened, I'm satisfied the arrangement for Mr B wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

As I've made clear, Options needed to carry out appropriate initial and ongoing due diligence on Douglas Baillie Ltd and the Store First investment, and reach the right conclusions. I think it failed to do this. And just having Mr B sign forms containing declarations wasn't an effective way of Options meeting its obligations, or of escaping liability where it failed to meet its obligations.

Douglas Baillie Ltd was a regulated firm who had advised Mr B on his pension transfer. I'm satisfied that Mr B trusted Douglas Baillie Ltd to act in his best interests. Mr B also then used the services of a regulated personal pension provider, Options.

I've carefully considered what Options has said about clients being aware of the risks - that they signed documents confirming the Store First investment was high risk. I've also carefully considered what Options has said about clients being advised by TPS not to transfer and that a transfer would mean they'd lose the guarantees associated with their DB pension, and that TPS only proceeded on an insistent client basis. And also what Options has said about clients choosing to accept an inducement payment and not disclose it to Options, thereby contributing to the loss they suffered.

I've already explained why I think Options ought to have been concerned about Mr B proceeding on an insistent client basis. And as I explain below, I don't agree that the evidence we've seen to date supports the contention that it's more likely than not that Mr B understood the Store First investment was high risk. But, in any eventuality, these are secondary points because, as mentioned above, if Options had acted in accordance with its regulatory obligations and good industry practice I'm satisfied the arrangement for Mr B wouldn't have come about in the first place.

So, overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair and reasonable to say Options should compensate Mr B for the loss he's suffered. I don't think it would be fair to say in the circumstances that Mr B should suffer the loss because he ultimately instructed the transactions to be effected.

<u>Had Options declined Mr B's business from Douglas Baillie Ltd, would the transactions complained about still have been effected elsewhere?</u>

In another complaint, Options has said it's possible the client wasn't cold-called by CL&P but instead provided their contact details in order to be contacted by a firm like CL&P. However, Options has provided no evidence to support such an argument in Mr B's case. And even if Mr B had provided his details as Options suggests, it wouldn't automatically follow that he wanted to open a SIPP and invest his SIPP monies in Store First no matter what.

In any case, I've thought carefully about what Mr B would likely have done if Options had told him it was rejecting his business.

From Mr B's testimony, I think that his pension monies were transferred to Options in order to make the Store First investments. And that's supported by a letter CL&P sent to Mr B which said, *"We will be acting as your introductory agent to the SIPP and the investment product, therefore, at any point during the transfer and investment process should you have any questions or queries please contact us directly on [CL&P's contact details].*

It's also supported by the emails I've seen that CL&P sent to a consumer in another complaint where CL&P was in contact with consumers and passed them to Douglas Baillie Ltd for regulated advice, and where Douglas Baillie Ltd then introduced the consumer to Options. The emails CL&P sent to the consumer soon after initial contact said:

- *"We can introduce you to the investment product and to the SIPP Company if you are using your pension to invest."*
- "*We spoke a little while ago in relation to your pension and the possibility of moving it into a SIPP (Self Invested Personal Pension) with a commercial property investment and an extra guaranteed return available.*
- *"Our clients keep the full value of the funds in an FSA regulated Self Invested Personal Pension or SIPP for short."*
- *"They continue growing this by approximately 10% per year, in an HMRC & Pensions Authority approved and regulated environment."*
- *"They also have a guaranteed return of 8% for the first year which comes at the start of the investment, this is in approximately 16 weeks when the process of transfer and investment has been completed and not at the end of the first year as your [sic] would typically expect."*

Further, it's supported by the advice letter TPS prepared for Mr B, and the advice letters I've seen that TPS prepared for other consumers who have brought similar complaints to our Service. TPS sent copies of these advice letters to Options alongside the SIPP application form, and they all contain the following wording:

> *"It has been confirmed to me that you wish to transfer your benefits into a SIPP rather than a fully insured plan as you wish to make an investment with your pension that would not be available via a fully insured plan."*

Options may argue that Mr B's request to transfer out of his DB scheme was a point of no return, as it has said in another complaint that once this transfer request was made, the loss of the client's safeguarded DB benefits was assured from that point, regardless of whether or not they opened the SIPP and/or completed the onward investments - so the client would have suffered a loss regardless of what actions Options did or did not take.

But I don't agree. Mr B's completed SIPP application form included a number of statements in the 'Declarations' section Mr B signed, one of which said *"I hereby consent to Carey Pensions UK LLP requesting the transfer of my policies listed in the application form."* – the policy listed in the application form was his DB pension. Also, I've seen that Options wrote to Mr B's DB scheme on 12 July 2012 to provide the transfer forms and to say that *"I trust that this is now sufficient information for you to proceed with the transfer. Please transfer cash funds to the following: [Options' account]"*. Given all this, I'm satisfied that when Options received Mr B's SIPP application form, Mr B's pension benefits were still within his DB scheme and would only be transferred when Options set up his new SIPP.

Options also says that if it had refused to process the client's application for any reason, they would've likely made the same investment via a different SIPP provider in order to either secure the incentive payment from CL&P or release funds. So they would have suffered the same loss.

I've not seen that Mr B released any funds or accessed any benefit from his pension. So I'm satisfied a transfer wouldn't have been effected elsewhere at the time, and with monies not being withdrawn being invested in holdings that weren't Store First, just so as to access a pension commencement lump sum and/or pension income.

And 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 Options did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr B's business from Douglas Baillie Ltd or permitted the Store First investment into its SIPPs.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if Options had refused to accept Mr B's application from Douglas Baillie Ltd and/or hadn't permitted the Store First investment in its SIPPs, the transactions wouldn't still have gone ahead and Mr B would have retained his monies in his DB scheme.

And had Options explained to Mr B why it refused to accept his application from Douglas Baillie Ltd and/or hadn't permitted the Store First investment in its SIPPs, I think it very unlikely Mr B would've tried to find another SIPP operator to accept the business.

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."*

In other complaints, Options has argued that the client understood the investments were high risk. Whereas Mr B says he understood his pension monies were being moved into a pension arrangement for better returns and that this was a standard and low risk investment.

I've carefully considered what Options has said about clients being aware of the risks – that Options provided the client with numerous risk warnings regarding their chosen investments, including the warnings in the Member Declaration & Indemnity forms they signed, and these forms were very clear regarding what the investments were and that they were high risk.

But I think the information Mr B more likely than not received from CL&P at the start regarding the Store First investment presented it, in detail, as providing high returns with little to no risk. And I'm mindful that, while I've not been provided with a copy of the Member Declaration & Indemnity form given to Mr B, I'm aware that other such forms provided to our Service in other similar complaints against Option read *"I am fully aware that this investment is an Alternative Investment and as such is High Risk and / or Speculative."* These forms appear to be generic, by which I mean they appear to be forms that could be used for a number of investments and it doesn't appear to be a form that's bespoke to the Store First investment. So I can see why the term *"and / or"* might have been used. But I don't agree the contents of the forms support the contention that Mr B understood the Store First investment was high risk. So in this case, I'm not persuaded that Mr B proceeded in the knowledge that the investment he was making was high risk.

I'm also not persuaded that Mr B was determined to move forward with the transaction in order to take advantage of a cash incentive. I acknowledge that Mr B says he was offered a £2,415 cash payment at a time when he needed money, and that he spent it on a car for his wife. But I'm not persuaded that this was a pressing need. And I'm mindful that Mr B also says CL&P encouraged him to transfer and make the investment for guaranteed better returns, and that if he'd known why Options shouldn't have accepted CL&P's business, he'd have known that transferring his DB pension and the Store First investment were not in his best interests.

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.

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 application from Douglas Baillie Ltd and/or to permit the Store First investment in its SIPPs, the transactions this complaint concerns wouldn't still have gone ahead.

In conclusion

Options may suggest this complaint shouldn't be upheld because the FCA visited Options in September 2011 and approved its due diligence procedures. This was less than a year before Options accepted Mr B's SIPP application. However, Options hasn't provided our Service with any evidence to support this argument. And ultimately, what I've looked at here is whether Options took reasonable care, acted with due diligence and treated Mr B fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that.

And taking everything into consideration, I think that in the circumstances of this case it's fair and reasonable for me to conclude that Options should have decided not to accept business from Douglas Baillie Ltd and/or to accept the Store First investment to be held in its SIPPs *before* it had received Mr B's application from Douglas Baillie Ltd. I conclude that if Options hadn't accepted Mr B's introduction from Douglas Baillie Ltd and/or the Store First investment to be held in its SIPPs, Mr B wouldn't have established an Options SIPP, transferred his DB Scheme monies into it or invested in Store First.

For the reasons I've set out, I also think it's fair and reasonable to direct Options to compensate Mr B for the loss he's suffered as a result of Options accepting his business from Douglas Baillie Ltd and permitting him to invest his Options monies in Store First. I say this having given careful consideration to the *Adams v Options* 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.

Overall, I think it's fair and reasonable to direct Options to pay Mr B compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to Mr B's loss, I consider that Options failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining to accept Mr B's applications when it had the opportunity to do so. And I'm satisfied that Mr B wouldn't have established the Options SIPP, transferred monies in from his DB scheme, or invested in Store First if it hadn't been for Options' failings.

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.

I've seen nothing to suggest Mr B has previously sold any of his Store First holdings. But whether or not Mr B has previously managed to sell any of his Store First holdings doesn't alter my opinion that, but for Options' failings, Mr B's pension monies wouldn't have been transferred to Options and invested in Store First. Further, and from a redress perspective, I'm satisfied that Options will need to check whether there are still any Store First investments held in Mr B's SIPP when it's performing the first step of the redress calculation I've set out below.

Putting things right

My aim is to return Mr B to the position he'd now be in but for what I consider to be Options' failure to carry out adequate due diligence checks before accepting Mr B's business from Douglas Baillie Ltd and before permitting Mr B to invest his Options monies in Store First.

Options should calculate fair compensation by comparing the current position to the position Mr B would be in if he'd not transferred from his DB scheme. In summary, Options should:

1. Take ownership of the Store First investment if possible.
2. Calculate and pay compensation for the loss Mr B's pension provisions have suffered as a result of Options accepting his applications.
3. Pay Mr B £500 for the distress and inconvenience he's suffered.

I explain how Options should carry out these steps in further detail below.

1. Take ownership of the Store First investment if possible.

   In order for the SIPP to be closed and further SIPP fees to be prevented, any remaining Store First investment need to be removed from Mr B's SIPP. To do this, Options should calculate an amount it's willing to accept for Mr B's Store First investment and pay that sum into Mr B's SIPP and take ownership of the Store First investment. Any sums paid into the SIPP to purchase the Store First investment will then make up part of the current actual value of the SIPP.

   If Options is unable to purchase the Store First investment, the actual value of any Store First investment it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include their being given a nil value for the purposes of ascertaining the current value of Mr B's SIPP.

   I think this is fair because I think it's unlikely the Store First investment will have any significant realisable value in the future. Further, I understand Mr B has the option of returning his Store First investment to the freeholder for nil consideration. And that should assist Mr B to close his SIPP if Options is unable to take ownership of his Store First investment.

   In the event the Store First investment remains in the SIPP, as Options is unable to purchase it and Mr B decides not to transfer it to the freeholder, Mr B should be aware that he will be liable for all future costs associated with the investment such as the ongoing SIPP fees, business rates, ground rent and any other charges. He should also be aware it's unlikely he will be able to make a further complaint about these costs.

   Options argues that if the Store First investment remains in Mr B's SIPP or otherwise with Mr B with no adjustment in the redress, this would give Mr B an unfair windfall. Though I think it's unlikely, it is possible that the Store First investment may have some realisable value in the future. So, in this instance, for any investments assumed to be nil value Options may ask Mr B to provide an undertaking to account to it for a sum equivalent to the net amount of any payment the SIPP may receive from that investment in the future. That undertaking should allow for the effect of any tax and charges on the amount Mr B may receive from the investment and any eventual sums he would be able to access. Options should meet any costs in drawing up the undertaking.

2. Calculate and pay compensation for the loss Mr B's pension provisions have suffered as a result of Options accepting his applications.

   A fair and reasonable outcome would be for Options to put Mr B, as far as possible, into the position he'd now be in if it hadn't accepted his application from Douglas Baillie Ltd. As explained above, had this occurred I consider it's more likely than not Mr B would have remained in his DB Scheme.

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

   It's my understanding that Mr B has not yet retired but plans to retire at age 65. Neither Mr B or Options have disputed my understanding. So, compensation should be based on Mr B taking benefits at this age.

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

   Account should also be taken of the £2,415 payment paid out to Mr B. This can be taken into account in the calculation by way of treating it as an income withdrawal payment paid at the outset.

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

   - always calculate and offer Mr B redress as a cash lump sum payment,
   - explain to Mr B before starting the redress calculation that:
     - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
     - a straightforward way to invest his redress prudently is to use it to augment his defined contribution pension
   - offer to calculate how much of any redress Mr B receives could be augmented rather than receiving it all as a cash lump sum,
   - if Mr B accepts Options' offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr B for the calculation, even if he ultimately decides not to have any of his redress augmented, and
   - take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

   I acknowledge that Mr B has received a sum of compensation from the FSCS, and that he has had the use of the monies received from the FSCS. The terms of Mr

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

As such, for the purposes of the calculation that’s being carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4, if it wishes, Options *may* notionally, for the period from the point of their payment through until the valuation date (as per the DISP App 4 definition of that term), allow for the payment(s) Mr B received from the FSCS following the claim about Douglas Baillie Ltd, as an income withdrawal payment. Where such an allowance is made then Options must also, at the end of the calculation, allow for a notional addition to the overall calculated loss that’s equivalent to the payment(s) Mr B received from the FSCS following the claim about Douglas Baillie Ltd. The effect of this notional addition will be to increase the overall loss calculated using the most recent financial assumptions in line with PS22/13 and DISP App 4, by a sum that’s equivalent to the payment(s) Mr B received from the FSCS.

Redress paid to Mr B as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Options may make a notional deduction to cash lump sum payments to take account of tax that Mr B would otherwise pay on income from his pension. Based on the evidence provided, at the time of the transfer Mr B was in his late forties and his pension provision was worth just under £30,000. So it's reasonable to assume Mr B is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%. However, if Mr B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

3. Pay Mr B £500 for the distress he’s suffered.

   In addition to the financial loss that Mr B has suffered as a result of the problems with his pension, I think it’s fair and reasonable to say that the loss of a significant portion, if not all, of his pension provision has caused Mr B distress. So I think that it’s fair for Options to compensate him for this as well.

My final decision

For the reasons given, it’s my decision that Mr B’s complaint should be upheld and that Options UK Personal Pensions LLP must pay fair redress as set out above.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Options UK Personal Pensions LLP should pay the amount produced by that calculation up to the maximum of £160,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend Options UK Personal Pensions LLP pay Mr B the balance plus any interest on the balance as set out above.

The recommendation isn't 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 could accept a decision and go to court to ask for the balance and Mr B may want to get independent legal advice before deciding whether to accept a decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 June 2024.

Ailsa Wiltshire
Ombudsman