DRN-4866219

The complaint

Mrs K had a self-invested personal pension (SIPP) with Carey Pensions UK LLP now Options UK Personal Pensions LLP ("Options"). Mrs K transferred her existing personal pensions to the SIPP to invest in a corporate bond.

Mrs K's complaint is that Options should not have accepted her application from the unregulated introducer in her case.

What happened

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

Carey, now Options

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

While Mrs K's complaint relates to events that happened before Carey became Options, her complaint was made to Options. For clarity I'll refer to Options throughout this decision.

Mrs K

Mrs K is the complainant in this case, and she is represented by a claims management company (CMC). I also refer in this complaint to Mrs K's husband, Mr K, although for the avoidance of doubt I am only dealing in this final decision with Mrs K's complaint. Mr K's similar complaint is being dealt with under a separate reference.

Mrs K applied for a SIPP with Options on 8 April 2013.

Mrs K's SIPP investment - Alpha Business Centres (ABC) Bond II

This was the second issue of an asset backed corporate bond. It was launched in January 2013 to raise capital for investment in a company, ABC Alpha Business Centres UK Limited, which operated in the overseas serviced office market. An initial bond issue had been launched in 2012.

The term of investment was to be between 3 and 4 years with interest paid at 8.32% a year. Additional interest would be paid for the fourth year of investment. The bond offered investors the ability to 'roll up' the accrued interest whereby the interest would be added to the principal amount, which would be paid out at the same time as the principal was repaid. Mrs K elected to take up this option.

The UK company ABC Alpha Business Centres UK Ltd went into administration in 2017. I understand that the administration is still in progress.

Cape Verde4 Life

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

Mrs K has also referred to Alternative Pension Investments Ltd (API) in her complaint. API was also a UK based company not authorised by the UK's financial services regulator. Mr C, who was a director of Cape Verde4 Life, was also associated with API and went on to become a director of API.

The documentation provided by Mrs K and Options names both API and Cape Verde4 Life. However, Options have confirmed that Cape Verde4 Life was the introducer in Mrs K's case.

The relationship between Cape Verde4 Life and Options

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

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

Due diligence carried out by Options on Cape Verde4 Life

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

Options says:

- Cape Verde4 Life first proposed to become an introducer of SIPP business for Options in April 2011. It was an introducer from late April 2011 until November 2013 when Options made a business decision to no longer accept introductions from unregulated introducers.
- Cape Verde4 Life was working with a FCA regulated adviser, 1Stop Financial Services, who were at the time authorised to advise on pension transfers, "if investors wished to take advice".
- Options did not pay any commission to Cape Verde4 Life for introducing business to it. It did not see the details of any payments made to Cape Verde4 Life by the underlying provider, but Cape Verde4 Life did disclose on its "Introducer Profile" that it would receive approximately 8%.
- Options did not request copies of any suitability reports.

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

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

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

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

Options entered into a terms of business agreement with Cape Verde4 Life in September 2012. It backdated that agreement to April 2011.
In September 2013 Carey conducted a "World Check" search on Mr C. The check did not reveal anything adverse.

Due diligence carried out by Options on the ABC Corporate Bond II

Options carried out checks on the ABC Bond in early 2013. Options had previously reviewed the first ABC Bond and found that it was eligible for investment in a pension scheme.

In respect of the initial ABC Bond, Options had noted that introducers would receive commission of between 3 and 10%. And that the investment is considered illiquid as there is no secondary or established market.

Options concluded that it would also accept the second investment. Options required each member to complete an Alternative Investment Member declaration and Indemnity. In addition, Options said that additional limitation of liability wording would need to be added to contracts and agreements.

I will refer to that Declaration again. But for now, it is enough to say that because of the checks undertaken on the investment, Options referred to it as a high risk, unregulated, alternative investment.

Mrs K's dealings with Options and Mr C

Mrs K says she was cold called by Mr C, who she understood represented API, and told that she should think about switching her pension. Mr C came to her home and showed her an illustration of the return she'd get by switching her pension. She said Mr C was plausible and convincing and she believed him to be an adviser who could get the 8% return the illustration showed. Mrs K says she had no interest in moving her pension before this – they (her and her husband) were fine where they were. Mr C later returned to her home with printed documents for her to sign.

Mrs K says she didn't receive any copy documentation from Mr C.

Mrs K applied to open a SIPP with Carey in April 2013. As part of that application process Mrs K applied to switch her existing personal pensions which had an estimated combined value of around £25,000. That application also said Mrs K had chosen to invest £22,000 in the ABC Bond. No details of any financial adviser were recorded.

I have seen a printed letter addressed to Options signed by Mrs K and dated 8 April 2013. Mrs K says she didn't write the letter herself, but it was provided to her by Mr C who asked her to sign it. The letter says:

> *"I [Mrs K] authorise and instruct Carey Pensions UK LLP as the Administrator of my Carey Pension Scheme and Carey Pension Trustees UK Ltd as the Trustee to provide Alternative Pension Investments, with any information whatsoever they may require in relation to my scheme's purchase of an investment into the ABC Bond"*

Options required that Mrs K complete a document headed:

> *"SIPP MEMBER INSTRUCTION AND DECLARATION*
> *ALTERNATIVE INVESTMENT – ABC CORPORATE BOND II"*

I will refer to this document as the declaration. It recorded the investment type as "Corporate Bond Making Loan to Alpha Business Centres LLC". The names of the adviser/introducer given on this document are Mr C *and* Cape Verde4 Life.
The declaration began:

> *"I [Mrs K] the SIPP Member, Beneficiary, as described above instruct Carey Pension Trustees UK Ltd to purchase an ABC Corporate Bond II for a consideration of £21,000 on my behalf for the above Scheme."*

The declaration then included a number of points including:

- Mrs K confirmed Options was acting on an execution only basis and had not given advice.
- Mrs K understood that the investment is "an Unregulated "Alternative Investment" and as such is considered High Risk and Speculative."
- Mrs K understood that the value of her investment could fall as well as rise and that the entire investment could be lost.
- Mrs K understood that the investment may prove difficult to value, sell / realise.
- Mrs K confirmed she had reviewed and understood the information provided by Alpha Business Centre.
- Mrs K confirmed that she had taken her own advice, including but not limited to, financial, investment and tax advice regarding the investment and its value, taxes, costs and fees.

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

Mrs K signed the declaration on 25 April 2013.

Mrs K was not asked to state or otherwise indicate or provide evidence to show that she was a high net worth individual or sophisticated investor in the declaration, or in her SIPP application or otherwise.

Options opened Mrs K's SIPP in April 2013. Mrs K was advised in writing and a 'Welcome Pack' was sent to her by post on 10 April 2013. Her two existing pensions were transferred to Options by 13 May 2013. Options forwarded Mrs K's application to invest £21,000 in the bond to ABC's corporate registrar the following day and the ABC Bond investment is shown on the transaction history as taking place on 16 May 2013.

The UK company ABC Alpha Business Centres UK Limited went into administration in January 2017. I understand that administration is ongoing and Mrs K's investment will have been recorded as having no value since 2017.

In April 2021, Mrs K contacted the Financial Ombudsman Service. She and her husband completed our complaint form saying that they wanted *'to take action against Carey Pensions for accepting my pension from an unauthorised introducer and claim compensation.'*

As it didn't appear that Mr and Mrs K had contacted Options about the complaint, we forwarded the complaint details to Options in May 2021.

Also in April 2021, a complaint was made to Options on behalf of Mrs K by a claims management company (CMC). This set out Mrs K's concern in more detail saying that Options failed to identify the risks involved in accepting the instruction and setting up a detrimental SIPP. And that Options was negligent and failed in its regulatory duties.

Options responded to both Mr and Mrs K's complaints on 14 July 2021. Options did not uphold their complaint. It made a number of points including:

- Options provides execution only SIPP administration services, as set out in the

documentation Mr and Mrs K received when they signed up to their pensions.

- Options was unaware that Mr and Mrs K had received advice from a third party adviser. Options was only aware of the introduction from Cape Verde4 Life.
- The adviser section of the SIPP application forms weren't completed and no fees have been paid to any third party in relation to advice.
- Mr and Mrs K were always treated as direct clients of Options.
- Options was permitted to accept an introduction from an unregulated firm.
- Options wasn't qualified (and wasn't authorised) to provide Mr or Mrs K with any advice.
- Options would have been in breach of the regulator's rules if it had not executed Mr and Mrs K's instructions to make their investments.
- Options provided Member Declarations to Mr and Mrs K in respect of their investments. By having such a process in place, Options considered it was treating members fairly.
- The member declarations set out that that Options considered the investments being made by Mr and Mrs K were high risk and speculative. It is not fair for them to complain when they had previously confirmed they understood and accepted many of the points raised in that complaint.
- Options had acted appropriately as the SIPP trustee and administrator. Options had administered the SIPPs in line with their terms and conditions and acted on written instructions regarding the investments.
- It carried out appropriate due diligence on the investment by ensuring it was suitable to be held in a UK registered pension scheme and carrying out company background checks, reviewing the investment information and obtaining a report from a third-party compliance entity.
- It isn't responsible for the performance, income from or liquidity of the investments. Nor is it responsible if the investments don't meet Mr and Mrs K's expectations.
- Options was aware that CapeVerde4 Life was the introducer and was a non-regulated firm. It carried out due diligence on CapeVerde4 Life including an introducer profile and terms of business. There was nothing in the due diligence that indicated why it should not accept introductions from CapeVerde4 Life.
- It had conducted due diligence on both the introducer and the investment demonstrating that Options was conducting its business with "due skill, care and diligence".

The complaint to the Financial Ombudsman Service

In August 2021, a CMC contacted our service on Mrs K's behalf unhappy with the complaint response provided by Options.

A second CMC contacted us in respect of Mrs K's concerns about Options in 2022. It had contacted Options in February 2022 in respect of Mrs K's complaint and had received Options' response on 1 April 2022. Options said that it had already issued a final response letter to her complaint on 14 July 2021 and that it would be out of time for our service to consider because we aren't able to consider complaints referred here more than six months after the final response letter.

We asked Mrs K to confirm which, if any, CMC was to represent her in the complaint. Mrs K confirmed she wanted our service to liaise with her first representative.

We contacted Mr and Mrs K and Options to let them know that as Mr and Mrs K have individual pension arrangements, we would look at their complaints separately. The decision I am making on this complaint relates solely to Mrs K.

One of our investigators considered the complaint. She wrote to Options and Mrs K's representatives saying that although Mrs K's complaint had been made more than six years after the events she was complaining about, nothing had been provided to suggest Mrs K was, or ought to have been, aware that she had cause to make *this* complaint more than three years before she did.

So, the investigator went onto consider the merits of Mrs K's complaint and concluded that the complaint should be upheld. She made a number of points including:

- That she'd considered relevant legal decisions as well as the regulator's Principles for Businesses, and in particular Principles 2, 3 and 6 are relevant. The regulator has issued a number of publications which discussed the Principles and gave examples of good industry practice in relation to SIPP operators.
- Options was not responsible for giving Mrs K advice. Nor was it responsible for checking any advice was suitable for her individual circumstances and requirements.
- Options understood and accepted it had a responsibility to carry out due diligence on CapeVerde4 Life. And it took some steps to do so. But Options should have done more at the outset. And it didn't draw fair and reasonable conclusions from the information it had at the time of Mrs K's application. Options should not have accepted Mrs K's application from CapeVerde4 Life.
- CapeVerde4 Life said it was working with authorised financial advisers so Options may have concluded that any regulated activities were being undertaken by a party who was authorised to do so. However, Mrs K's application was made on the basis that she wasn't receiving advice.
- The investment Mrs K entered into is high-risk and the sort of investment that would not normally be considered suitable for most retail investors. It would be unusual for a large number of ordinary retail customers to decide to invest in such investments unless they'd received advice to do so.
- Further enquiries would have indicated that CapeVerde4 Life was undertaking regulated activities. And there was evidence that CapeVerde4 Life was doing more than simply introducing customers to Options. Options should have been reasonably aware that a regulated activity had been carried out by CapeVerde4 Life in the UK in breach of the general prohibition.
- Based on what it was seeing, Options should have carried out more due diligence on Cape Verde4 Life. And based on the checks it had carried out, Options hadn't drawn fair and reasonable conclusions.
- In all the circumstances Options should not have accepted Mrs K's application.

The investigator then set out how she thought Options should put things right.
Options did not respond to the investigator. As a result the complaint was passed to me for my decision. I issued a provisional decision to both parties setting out why I intended to uphold Mrs K's complaint and how I thought Options should settle it.

Options did not respond to the provisional decision. Mrs K said she accepted the provisional decision and confirmed that her SIPP remains open with Options.

What I've decided – and why

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

As the parties didn't make any further representations regarding the merits of Mrs K's complaint, I don't consider I need to revise the findings I reached in my provisional decision. I have set these out below and adopt them as my findings in this final decision.

In my provisional decision I said:

"Relevant considerations

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

The Principles

The Principles for Businesses, which are set out in the FCA's handbook "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G). I consider that the Principles relevant to this complaint include Principles 2, 3 and 6 which say:

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

I have considered the relevant law and what this says about the application of the FCA's Principles. In R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) ("BBA") Ouseley J said at paragraph 162:

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

And at paragraph 77 of BBA Ouseley J said:

> *"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what*

would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."

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

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

"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."

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

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

The Adams court cases and COBS 2.1.1R

I confirm I have taken account of the judgment of the High Court in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch) and the Court of Appeal judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I note the Supreme Court refused Options permission to appeal the Court of Appeal judgment.

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

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

I acknowledge that COBS 2.1.1R (A firm must act honestly, fairly and professionally in accordance with the best interests of its client) overlaps with certain of the Principles and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of FSMA ("the COBS claim"). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

Although the Court of Appeal ultimately overturned HHJ Dight's judgment, it rejected that part of Mr Adams appeal that related to HHJ Dight's dismissal of the COBS claim on the basis that Mr Adams was trying to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal did not so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

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

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

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

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

I have proceeded on the understanding Options was not obliged – and not able – to give advice to Mrs K on the suitability of its SIPP or the ABC investment for her personally. But I am satisfied Options' obligations included deciding whether to accept particular investments into its SIPP and/or whether to accept introductions of business from particular businesses.

Regulatory publications

The FCA (and its predecessor, the FSA) has issued a number of publications which remind SIPP operators of their obligations and set out how they might achieve the outcomes envisaged by the Principles, namely:

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

The 2009 report included the following statement:

> *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its customers and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.*
>
> *It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.*
>
> *We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the member to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate the SIPPs that are unsuitable or detrimental to clients.*
>
> *Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their clients' interests in this respect, with reference to Principle 3 of the Principles for Business ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').*
>
> *The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:*
>
> - *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*
> - *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
> - *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment)*

and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*
- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*
- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*
- *Identifying instances of clients waiving their cancellation rights, and the reasons for this."*

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

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

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

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

It is also clear from the text of the 2009 and 2012 reports (and the "Dear CEO" letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.
I note that HHJ Dight in the Adams case did not consider the 2012 thematic review, 2013 SIPP operator guidance and 2014 "Dear CEO" letter to be of relevance to his consideration of Mr Adams' claim. But it does not follow that those publications are irrelevant to my consideration of what is fair and reasonable in the circumstances of this complaint. I am required to take into account good industry practice at the relevant time. And, as mentioned,

the publications indicate what I consider amounts to good industry practice at the relevant time.

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

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

What did Options' obligations mean in practice?

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

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

I am satisfied that, in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, Options should have carried out due diligence on Cape Verde4 Life. And in my opinion, Options should have used the knowledge it gained from its due diligence to decide whether to accept or reject a referral of business.

The due diligence carried out by Options on the investment

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

However, it is clear from the information Options have provided that they recognised the investment was high risk, unregulated and might be difficult to sell. And Options would require investors to complete a declaration, which I've set out in some detail above. This understanding of the investment formed part of the context in which, or was a relevant factor in, the checks made by Options on Cape Verde4 Life since it planned to introduce clients for the purpose of investing in alternative investments.

The due diligence carried out by Options on the introducer

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

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

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

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

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

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

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

The due diligence assessment proforma form seems to have been completed by Options using the information from the unregulated introducer profile which was signed in September 2012. As mentioned above all that information had been provided before Mrs K's application and could and should have been analysed by Options by the time of her application in April 2013.

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

The 2013 introducer assessment proforma

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

Whatever the reason I have considered the contents of the proforma and whether it was reasonable to continue to accept business from Cape Verde4 Life in the light of the assessment it should reasonably have made based on that proforma.

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

The form has three sections:

- company personnel and advice
- client profile
- investment

And at the end of the form it says:

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

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

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

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

- Detail whether clients are UK or non-UK residents. The following alternative answers were given:
    - Green/Low Risk: Non-UK Residents / UK Residents and Company has relevant permissions
    - Amber/medium risk: UK residents through another entity (Need to carry out DD on this other entity)
    - Red/High Risk: UK Residents but there is no evidence of any entity having relevant permissions.
- Detail average value of typical clients [sic] pension: the following alternative answers were given:
    - Green/low risk: £25K & above to regulated investments
    - Amber/medium risk: £25K & above to mix of regulated and non-regulated investments
    - £25K & above to non-regulated investments Less than £25K to full SIPP/ non-regulated investment SIPP

- Detail client profile as described by company. The following alternative answers were given:
    - Green/low risk: Fully advised
    - Amber/medium risk: Execution only-high net worth/sophisticated
    - Red/high risk: Execution only client Not high net worth [or] Sophisticated investor

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

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

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

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

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

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

> *Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP*
>
> *It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk often highly illiquid unregulated investments (some of which may be Unregulated Collective Investment Schemes). Examples of the unregulated investments are diamonds, overseas property developments, storepods, forestry and film schemes, among other non-mainstream propositions.*
>
> *The cases we have seen tend to operate under a similar advice model. An introducer will pass customer details to an unregulated firm, which markets an unregulated*

investment (eg an overseas property development). When the customer expresses an interest in the unregulated investment, the customer is introduced to a regulated financial adviser to provide advice on the unregulated investment. The financial adviser does not give advice on the unregulated investments and says it is only providing advice on a SIPP capable of holding the unregulated investment…

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

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

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

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

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

Mrs K's SIPP application was completed and submitted in April 2013. This was after the above alert had been issued and Options ought to have been aware of that alert by the time of Mrs K's application. But even if it was not, it should as I have said been aware of 1 Stop Financial Services' business model and the implications it had for its SIPP members. It meant their members were apparently choosing to invest in unregulated high risk speculative investments with the very considerable risk of suffering significant detriment, without the benefit of regulated financial advice in relation to the investment.

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

I also note that 1 Stop Financial Services voluntarily varied its permissions with the regulator so that with effect from 10 November 2012 it was no longer permitted to carry on any regulated activities. Accordingly this information was not available (since it had not yet taken place) when Options first agreed to accept business from Cape Verde4 Life or if had carried out an assessment in September 2012 when the introducer profile was signed. But it was available by the time of Mrs K's application in April 2013. (And in any event 1 Stop Financial Services had been operating its business model since before Cape Verde4 Life first became an introducer and that business model had therefore been discoverable if Options had carried out checks on that firm in 2011.)

The other IFA firm Cape Verde4 Life said it worked with was The Financial Planning Partnership. As I understand it, The Financial Planning Partnership was a trading name used by another business that I'll call Business F. According to the FCA register, Business F was using the trading name The Financial Planning Partnership from 2009.

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

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

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

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

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

- Are investments generally used regulated or unregulated – all unregulated (red answer)
- Which countries are investments generally based in Other overseas [ie not UK or EEA] (red answer)
- Does company promote unregulated investments, state which investments are promoted. Answer yes, (red answer)
- Detail investment type most often used – red answer was "Non EEA Commercial Property, Non-Regulated Investments, Unquoted Shares, Loans." (red answer)

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

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

What Options ought to have decided

In my view Options gathered information on which it could and should reasonably have made an assessment in 2012 and should have come to the conclusion not to accept introductions from Cape Verde4 Life before it received Mrs K's application in April 2013.

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

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

By the time of Mrs K's application Options had carried out due diligence checks in relation to Cape Verde4 Life and the ABC investment which meant it knew Cape Verde4 Life:

- became an introducer to Options in order to introduce clients to invest in property investments from business O. A file note records that Cape Verde4 Life's clients would be splitting their pension fund between a property investment and the ABC Bond. Options considered the ABC investment to be an unregulated high risk and speculative alternative investment.
- was not authorised to give regulated investment advice.
- apparently worked with regulated IFAs in some circumstances but not in all cases and that it would make direct introductions to Options on the basis that the client was acting on an execution only basis.
- had mostly clients that could not reasonably be classified as high net worth or as sophisticated investors.
- was receiving commission of around 8%.

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

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

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

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

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

Was it fair and reasonable to proceed with Mrs K's instructions?

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

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

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

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

Is it fair to require Options to compensate Mrs K?

For completeness, I've also considered a point I'm aware Options has raised on similar cases - that it did not cause members losses because it is very likely they were keen to proceed with the investments and would have found a way to invest even if Options had not been dealing with Cape Verde4 Life. I don't agree.

I have seen no evidence to show Mrs K would have proceeded even if Options had rejected her application.

Mrs K was contacted by Mr C, she was not looking for such investments. There is nothing to indicate Mrs K was highly motivated to make the investment or that she was being paid any kind of incentive payment to do so. I have not seen anything that makes me think Mrs K would have sought out another SIPP provider if Options had declined the application, or terminated the application, and explained why. In any event, I think any SIPP provider acting fairly and reasonably should have reached the conclusion it should not deal with Cape

Verde4 Life. I do not think it would be fair to say Mrs K should not be compensated based on speculation that another SIPP operator might have made the same mistakes as Options did.

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

I'm upholding Mrs K's complaint on the basis that Options should not have accepted her introduction. I therefore don't consider it necessary to consider whether Mrs K's introducer carried out any regulated activities in breach of the general prohibition that Options ought to have been aware of. Or whether Options should have allowed the ABC Bond into Mrs K's SIPP. And I make no findings about the appropriateness of the ABC Bond as an investment within Mrs K's SIPP."

Putting things right

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

Fair compensation

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

Had it done so, I think Mrs K's pensions would have remained with her previous providers, however I cannot be certain that values will be obtainable for what the previous policies would have been worth.

Mrs K has confirmed her Options SIPP remains open.

In summary, I intend to require that Options should:

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

- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).

- Undertake a loss calculation and pay any redress owing in line with the steps set out below. This payment should take account of any available tax relief and the effect of charges. Options should add interest to this payment if it is not made within 28 days of the acceptance of my final decision.

- If the Options SIPP needs to be kept open only because of illiquid investment/s and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

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

- Pay Mrs K £500 to compensate her for the distress and inconvenience she's been

caused by Options' failings.

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

Treatment of any illiquid assets held within the SIPP

I think it would be best if any illiquid assets held could be removed from the SIPP. Mrs K would then be able to close the SIPP, if she wishes. That would then allow her to stop paying the fees for the SIPP. The valuation of any illiquid investment may prove difficult, as there is no market for it. For calculating compensation, Options should establish an amount it's willing to accept for the investment/s as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investment/s.

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

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

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

Options should first contact the providers of the plans which were transferred into the SIPP and ask them to provide a notional value for the policies as at the date of the acceptance of my final decision. For the purposes of the notional calculation the providers should be told to assume no monies would have been transferred away from the plans, and the monies would have remained invested in an identical manner to that which existed prior to the actual transfer.

If there are any difficulties in obtaining a notional valuation from the previous provider, then Options should instead arrive at a notional valuation by assuming the monies would have enjoyed a return in line with the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, this was called the FTSE WMA Stock Market Income Total Return Index). That is a reasonable proxy for the type of return that could have been achieved over the period in question.

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

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

Mrs K's loss, if any, is the notional value of the previous plans transfer values (or, if required, as established in line with the index set out above) less the current value of her SIPP/existing arrangement (also as at the date of acceptance of my final decision).

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

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

Pay an amount into Mrs K's pension so that the transfer value is increased by the loss calculated above

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs K as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid.

Under current legislation, Mrs K will be entitled to a tax-free lump sum of 25% of the value of her pension with the remainder being taxed as income. This means of any loss calculated, 25% would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

Options should also provide details of all of its calculations to Mrs K in a form that should be understandable to her.

SIPP fees

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

Fees and charges paid outside the SIPP

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

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

Mrs K transferred her existing pension(s) to a SIPP and has suffered the loss of use of the majority of those funds since.

I think it's fair to say this would have caused Mrs K some distress and inconvenience. She will clearly have been worried over a period of several years that her retirement provision will

have been reduced. So, I consider that a payment of £500 is appropriate to compensate for that upset.

Assignment of rights

If Options believes other parties to be wholly or partly responsible for the loss, it is free to pursue those other parties. So, compensation payable to Mrs K should be contingent on the assignment by her to Options of any rights of action she may have against other parties in relation to her transfer to the SIPP and the investment, if Options is to request this. The assignment should be given in terms that ensure any amount recovered by Options up to the balance due to Mrs K is paid to her. Options should only benefit from the assignment once Mrs K has been fully compensated for her loss (to include any amount due to her above our award limit). Options should cover the reasonable cost of drawing up, and Mrs K's taking advice on and approving, any assignment required.

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

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

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

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

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or

reject my decision before 19 July 2024.

Claire Poyntz
Ombudsman