DRN-4870064

The complaint

Mr C 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 when it accepted his Self-Invested Personal Pension ('SIPP') application and allowed him to invest in Store First Limited ('Store First') and GAS Verdant Australian Farmland ('GAS Verdant') investments. He says he has suffered a loss to his pension fund monies as a result of this.

Mr C wants to be put back into the position he would have been in had Options not accepted his SIPP application.

Mr C is represented by a claims management company ('CMC'), but I'll refer mainly to Mr C.

What happened – the parties

Given the various parties involved in Mr C's pension transfer and subsequent investments I've set out a summary of each below, along with a summary of some of the key events in their relationships.

Options

Options is a SIPP provider and administrator. At the time of the events in this complaint, Options was regulated by the Financial Services Authority ("FSA"), which later became 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. Ms H is, and was at the time of the relevant events, Options' CEO.

CL&P

Options, in response to this complaint, has not acknowledged that Mr C's SIPP application was introduced to it by CL&P. Instead, Options has said Mr C, "*used the financial services of The Pension Specialist who were FCA regulated at the time*" (I'll set out below who The Pension Specialist were). Because of this, Options hasn't, in relation to this complaint, provided any information about it's relationship with or the due diligence it carried out on CL&P. So, I've taken into account the information Options has provided in other complaints brought to this service where it has acknowledged the involvement of 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 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*** *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
..."

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. Options began to accept introductions from CL&P on 15 August 2011 and ended its relationship with it on 25 May 2012.

Options says it carried out some due diligence on CL&P. It says it reviewed CL&P's profile, conducted searches, reviewed CL&P's website and literature and had conversations with CL&P's representatives over the telephone.

I have set out below a summary, in chronological order, of what I consider to be the key events and/or actions during the relationship between Options and CL&P, which I have taken from the available evidence (largely the submissions Options has made to us on other case files about its due diligence on, and its relationship with, CL&P).

I have not seen any evidence to show Options carried out any due diligence on CL&P *before* it began accepting introductions from it. Rather, as I set out below, it began to accept introductions then carried out its due diligence whilst accepting business from CL&P.

Some of what I set out below includes events which post-date Options' acceptance of Mr C's SIPP application in December 2011. But, as I set out in my findings, some of what Options found out about CL&P during the course of its relationship with CL&P, and the action it took, is relevant in this complaint even where it does post-date Mr C's application.

15 August 2011 – Options began to accept introductions from CL&P.

20 September 2011 – Options conducted a World Check (a risk intelligence tool which allows subscribers to conduct background checks on businesses and individuals) on a Ms A and a Mr L. Ms A and Mr L were two of the people at CL&P Options initially had contact with. This check did not reveal any issues.

27 September 2011 – Options asked CL&P to complete a non-regulated introducer profile. The form itself explains its purpose as follows:

"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 out."

Furthermore, when making this request, by email, Options' Chief Executive, Ms H, explained, "... *we require for our Compliance process to perform due diligence on company's* (sic) *who we enter into a business and professional relationship with*".

29 September 2011 – The non-regulated introducer profile was completed by CL&P. It was completed and signed by Terence Wright, and confirmed the following:

- CL&P was a Spanish firm and was trading from a Spanish address.
- It used an "0845" telephone number.
- It had been trading for two years and had two directors – Terence Wright and Lesley Wright.
- It had eight agents, and promoted four investments – Verdant Wealth, Store First, and two other unregulated investments.
- It worked with four other SIPP operators.
- Its source of business was "*referrals and web enquiries*".
- Its sales process involved a call and follow up emails.
- It took 2-5% commission, and this was the source of its earnings.
- Its staff had been given training and it had worked with "*various compliance officers*".

The document makes no mention of Ms A or Mr L. After completing the document Mr Wright was asked to make the following declaration:

"I declare the above is a true and accurate reflection of [name of individual or Firm] *and that Options Pensions UK LLP can rely on this information.*

I/we fully indemnify Options Pensions UK LLP against any costs incurred as a result of any inaccuracies within this form.

I/we also acknowledge and accept that Options Pensions UK will undertake any enquiries about the firm and its Directors/Partners it feels appropriate."

9 December 2011 – Options had a conference call with representatives of CL&P. The call note records that the issue of transfers from final salary pension schemes was discussed. It was, "*agreed that in future cases of* [Final Salary] *Transfers would be referred to suitably qualified IFAs for relevant advice and copy of that advice would be provided to Careys for file records*."

Also during that call the issue was raised of consumers being offered cash incentives by CL&P to transfer or switch to a SIPP and make investments. The note of the call included the following:

"... [Options staff member] *also raised a concern that a potential member had asked when they would receive their money from their Store First Investment,* [CL&P representatives] *confirmed that no clients or connected parties referred by CL&P receive any form of inducement for either establishing the SIPP or making the Store First Investment and that CL&P policy does not include offering inducements.*

[Options staff member] *emphasised that it is completely against all rules that clients or connected parties receive any form of inducement for making particular investments*."

13 March 2012 – Options' Head of Service and Operation said in an email to CL&P:

"... On another matter, we need our Terms of Business for Non Regulated introducers in place between our two companies. So that our records are all straight from a Compliance aspect I attach the Terms of Business and have entered a commencement date of 15 August 2011 which is the date of your first case with us and would be grateful if you could agree and complete the terms and return ..."

The agreement was signed by CL&P on 20 March 2012. It was signed by Ms A.

23 March 2012 – Options' compliance support said in an email to CL&P:

"To comply with our in house compliance procedures could you please supply the following information relating to CLP Brokers:

A copy of the latest set of accounts

A certified copy passport for each of the main directors/principals/partners of the company"

29 March 2012 – a Team Leader at Options sent Ms H an email with the subject – "*03-29-2012 - Storefirst Investment Query re Cash Back* [reference removed]". That email forwarded an email sent by the Team Leader to a consumer, which included the following:

"*you mentioned in our conversation a cash back amount you are expecting in the sum of £1,800 from CL&P following completion of the Storefirst investment*"

And the text addressed to Ms H by the Team Leader said, "*this is the second member this week to ask when are they getting their money*".

3 April 2012 – Options' compliance support followed up on its 23 March 2012 email:

"It is now becoming urgent that we receive the outstanding documentation. You very kindly passed this on to your colleague and I would be very grateful if we could receive the documentation as a matter of urgency Thank you in anticipation of your assistance."

When asked, Options said it had no record of receiving the information from CL&P.

15 May 2012 – Options conducted a World Check on Terence Wright. The report included the following:

“... **THE FOLLOWING INFORMATION WAS REPORTED IN ONE OR MORE OF THE SOURCES BELOW:**

[FINANCIAL SERVICES WARNING]
Appears on the UK Financial Services Authority.

...

[REPORTS]
Appears on the FSA list of unauthorised firms and individuals.

...

INFORMATION SOURCES:
http://www.fsa.gov.uk/pages/Doing/Regulated/Law/Alerts/unauthorised.shtml - ARCHIVE
http://www.fsa.gov.uk/Pages/Doing/Regulated/Law/Alerts/Index.shtml - ARCHIVE

Entered: 2011/10/24 ...”

25 May 2012 – Options terminated its agreement with CL&P. Options’ Head of Service and Operation told CL&P of Options’ decision in an email to CL&P of that date:

“*Despite your assurances that no clients have been or will be offered inducements (monetary or otherwise) for making investments through their SIPPs with us, we have received enquiries as to when client can expect to receive their money and have today been informed by a new client that they are expecting circa £2,000 on completion of the Storefirst investment purchase, which they confirmed was offered by a member of your staff.*

We have advised this client that we will not proceed with this case.

In light of this, it is with regret that I have to notify you that we are terminating our Introducer Agreement with you, with immediate effect, and can no longer accept business from you.”

28 May 2012 – Ms H, in response to a question from CL&P about business already accepted, replied:

“*We will process them where we have already established the schemes ...*”

The Pension Specialist/Douglas Baillie Ltd

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 H 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. 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* [sic] *need to see a copy of our advice letter and any TVAS. Please confirm this is the case*."

16 March 2012 – Ms H 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*."

18 May 2012 – Douglas Baillie Ltd emailed Ms H 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*."

4 September 2012 – Ms H 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*."

18 – 20 September 2012 – Ms H and Douglas Baillie Ltd exchanged emails about a number of recent applications involving transfers from defined benefit occupational pension schemes. When Options explained that it would no longer accept these where the advice was against transfer, Douglas Baillie Ltd asked Ms H 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 H agreed to accept several further applications.

4 October 2012 – Options accepted its last client from Douglas Baillie Ltd.

4 October 2012 – Douglas Baillie Ltd emailed Ms H 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."

6 October 2012 – Ms H 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*."

8 October 2012 – Douglas Baillie Ltd emailed Ms H 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."

5 February 2013 – 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.

6 February 2013 – Options' Head of Operations and 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:

> "*GAS Verdant Australian Farmland – Currently accepted but will be subject to a re-review process" and "Store First Ltd – Not currently accepting new business as under review*".

GAS Verdant

The GAS Verdant Australian Farmland investment was unregulated and took the form of a 'land purchase contract' which involved a company based in Cyprus (GAS Global Agricultural Services Ltd), which leased plots of agricultural land in Australia to investors. Crops were to be planted on the plots, and the objective was to provide an income to investors through the sale of those crops and capital growth through the sale of the plot of land after eight years. The investor would then receive 80% of the net revenue from the yield of the land for eight years. After this, the land could be sold.

Options hasn't provided a detailed account of the due diligence it carried out in relation to the GAS Verdant investment. But in submissions on separate complaints, Options has said that it completed appropriate due diligence in respect of the investments by ensuring that GAS Verdant was suitable to be held in UK registered pension schemes. This included a review of the investment information, company background checks and also an independent report from an external third-party compliance entity. The third-party compliance entity reviewed the investment in January 2010, and again in January 2012.

Options said that from its due diligence checks in relation to GAS Verdant, it was able to conclude this investment was suitable to be held within a SIPP.

On **28 September 2012** Options invested £50,000 into GAS Verdant on Mr C's instructions.

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 ("pods") 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). Mr W was a Director of Store First Limited and Harley Scott Holdings Limited, the promoter of Store First.

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. But little of this materialised. It seems most investors received one- or two-years' income of 8%, but nothing beyond that. And investors have found it very difficult to sell, with those that have sold receiving a small fraction of the amount they paid for their pods.

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 judgment 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.

The available evidence shows the following actions were taken by Options in relation to the Store First investment at the dates mentioned. Some of these actions were taken before Options sent Mr C's money to Store First for investment in September 2012.

On **3 May 2011** Options was contacted by a promoter of Store First, Harley Scott, about a newly launched product – Store First. Options agreed to put the 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 6 year term with 2 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.

The High Court *Adams* judgment refers to an internal Options email of **20 May 2012**, referring to a conversation between Options and Store First about the levels of commission that were generally paid to brokers. This said Store First had told Options it believed CL&P's commission to be 12%.

17 August 2012 – a member bulletin was sent to Options by an information service it subscribed to which included the following:

> "*Storefirst Limited*
>
> *We are aware of a web-based news article that mentions '*[Mr W's] *firm faces tax investigation' and goes on to reference notes made within the February 2011 accounts of Harley Scott Holdings.* [The information service] *has sought confirmation from* [Mr W] *on this and have been referred to* [Store First's auditors] *who* [the information service] *understands to be the Harley Scott accountants.* [Store First's auditors] *have supplied a letter to* [the information service] *to clarify the position regarding Store First, however as the letter is addressed to* [the information service] *we have been asked not to circulate the letter as* [Store First's auditors] *wish to control its distribution.* [Store First's auditors] *have agreed though to issue a similar letter addressed to individual SIPP operators/trustees upon request. We will leave it to our* [the information service] *clients to decide whether they require such a letter, however where a letter is required, the contact details for* [Store First's auditors] *are*

below and they are on notice they may receive requests from clients of [the information service]."

17 August 2012 – Options suspended its acceptance of the investment "*because of concerns about the administration and system and controls of the investment provider*."

20 August 2012 – Store First's auditors sent a letter to Options, which included the following:

> "*We confirm that the tax enquiry referred to in the Harley Scott group of companies accounts to 28 February 2011 do not include either Group First Limited nor Store First Limited and furthermore, neither Group First Limited nor Store First Limited are currently under tax enquiry.*"

27 September 2012 – Options lifted its suspension on accepting Store First. An internal Options email of that date from Ms H, sent to the Carey Group CEO and other senior members of staff, confirms this. The email from Ms H included the following:

> "*My view is we can start again? As long as we have put the requisite processes and controls in place to be on their case should we not receive what we are expecting, also do we need to make our member declarations clearer re what option the clients have selected eg guaranteed and non-guaranteed to ensure there is no come back on us at a later date that they did not realise*."

27 September 2012 – A reply to the above email from the CEO of the wider Carey Group, which simply said "*I agree*" (to the suggestion in Ms H's email).

9 October 2012 – Options invested £26,250 into Store First on Mr C's instructions.

5 April 2013 – Options' technical review committee decides it will accept no further Store First investments. The note of this meeting refers to an FSA letter dated 11 January 2012 raising concerns about outstanding loans from Store First to Mr W. In previous submissions to us, Options has said:

> "*CPUK* [Options] *took this decision because, by April 2013, it had received a number of queries and concerns from its customers and other sources which CPUK considered had not been satisfactorily resolved by Store First. CPUK wanted to act quickly to protect its customers and therefore ceased administering investments into Store First*.

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 referred to a number of misleading and inaccurate statements made by Store First in its marketing material. It also made 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 in 2017. On 30 April 2019 the courts made an order shutting down Store First and three of the related companies by consent between those four companies and the Secretary of State.

The Official Receiver was appointed as liquidator. At the time, the Chief Investigator for the Insolvency Service said:

> *"These four companies unscrupulously secured millions of pounds worth of investments using a variety of methods that misled investors, particularly those with pension savings.*
>
> *The court rightly recognised the sheer scale of the problem caused by Store First's sales of a flawed business model, based on misrepresentation and misleading information and has shut down these companies in recognition of the damage done to investors retirement plans."*

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.

What happened – Mr C's dealings with CL&P, Douglas Baillie Ltd and Options

Mr C has explained that in 2011 he had recently left a job and was concerned about the status and security of the occupational pension he'd left behind. He said he wasn't particularly interested in moving his pension from his former employer's scheme, but as he had "*very little understanding of pensions*" he sought some advice. He says he filled in a form online and later received a telephone call. He remembers that the caller told him he would be better off moving his pension to a low-risk investment.

Mr C recalls dealing with CL&P and says he understood they were "*advisers*" who would "*take care of everything and make* [his] *pension better*." He remembers being shown "*glossy brochures about the investments*", "*told his money would be invested in property and farmland*", and "*told the investments were low risk and high returns*".

Mr C signed a letter of authority addressed to Options giving his permission for them to "*liaise directly with CLP Brokers in respect of all matters regarding* [his] *pension arrangement*", and on 11 December 2011 he signed an application form for an Options SIPP. The application form was completed in typewriting, rather than handwritten. It detailed the occupational pension Mr C intended to transfer in to the SIPP, and detailed the intended investment as Store First. No mention was made on the form of the GAS Verdant investment. The page asking for Financial Adviser Details was left blank. The final page of the application form required the applicant to make a Declaration, which included, amongst other statements, the following:

"*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 understand that Carey Pensions UK LLP and Carey Pensions Trustees UK Ltd are not in anyway* [sic] *able to provide me with any advice.*"

"*I confirm that I am establishing the Carey Pension Scheme on an execution only basis*."

Mr C had not signed this page when the application form was sent to Options. This was later noticed by Options and returned to him to sign in January 2012.

Notwithstanding the absence of a signed Declaration, Mr C's SIPP was established on 13 December 2011 and a Welcome Pack was sent to him which included a letter of authority allowing Options to start the transfer process with his ceding scheme.

In March 2012 Options referred Mr C back to CL&P (indicating it was aware the application had been introduced by CL&P) explaining that because his ceding scheme pension was a defined benefit occupational (final salary) scheme, they'd be unable to proceed until he'd taken advice. CL&P then told Options they'd referred Mr C to Douglas Baillie Ltd, and Douglas Baillie Ltd became the "*agents and brokers*" for Mr C's SIPP.

As highlighted in the section above relating to Options' relationship with CL&P, on 25 May 2012 Options terminated its agreement with CL&P, although it agreed to process business where they'd already established the scheme.

Douglas Baillie Ltd prepared a letter for Mr C dated on 10 July 2012 explaining its understanding that Mr C wished to transfer to an Options SIPP and saying that Douglas Baillie Ltd had been asked to provide "*advice on a transfer into SIPP*". This letter (the 'advice letter') also, amongst other things:

- Said it had been confirmed that Mr C wished to transfer to his "*existing Carey SIPP*" with Options "*as you wish to make an investment with your pension plan that would not be available via a fully insured plan*."

- Said the transfer value from Mr C's ceding scheme was around £81,000 and that to provide a benefit equal to the ceding scheme an annual return of 8.6% (9.6% including SIPP fees) would be required.

- Said, "*This critical yield figure is higher than we would normally advise a client to transfer. 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*."

- Set out the five "*main advantages*" of a transfer, along with four disadvantages, and proceeded to a section which began, "*Why is this suitable? The recommendations are suitable for you for the following reasons …"* Four reasons were then given.

- Set out some additional risks applicable to Occupational Final Salary Pension Transfers, including losing any guarantees attached to the scheme.

- Said Mr C had already indicated he wished to proceed with the transfer.

- Set out some background information about Options and a section titled "*Why choose Carey Pension UK*".

- Confirmed that Mr C would be proceeding on an insistent client basis and explained, "*This simply means that 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 the future*".

- Explained that Douglas Baillie Ltd had not been asked to advise on the intended investment, and that the business was being transacted on a "*limited advice basis*".

- Said that it had not been provided with a "*financial planning profiler*" for Mr C so did not have knowledge on his personal circumstances.

- Detailed the documents that needed to be completed, signed and returned in order to proceed.

On 17 July 2012 Douglas Baillie Ltd sent Options the documents needed to proceed with the transfer, including a copy of its advice letter and Transfer Value Analysis Summary (TVAS). It urged prompt action on the part of Options as the ceding scheme transfer value was due to expire on 30 July 2012.

In mid-September 2012 the transfer funds were deposited into Mr C's SIPP, and he then signed two forms instructing Options to make his two investments. The first form, titled "*Alternative Investment – Store First Member Declaration & Indemnity*", read:

"*I,* [Mr C] *being the member of the above Scheme instruct Carey Pension Trustees UK Ltd to Purchase a Leasehold Storage Unit(s) in the Storefirst investment through Harley-Scott Holdings Ltd for a consideration of* £26,250, *on my behalf for the above Scheme.*

I am fully aware that this investment is an Alternative Investment and as such is High Risk and / or Speculative.

As the Member of the Pension Scheme, I confirm that neither I nor any person connected to me is receiving a monetary or other inducement for transacting this investment.

I confirm that I have read and understand the documentation regarding this investment and have taken my own advice, including financial, investment and tax advice.

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 my business /occupation is <u>not</u> renting out storage units.

Should any aspect of this investment be deemed by HMRC to provide Taxable Moveable Property and / or any tax charges be deemed by HMRC to apply in future these will be paid directly from the fund or by me as the member of the Scheme.

I also understand and agree that, in the event of my demise, if Carey Pension Trustees UK Ltd is unable to sell the asset within HMRC timescales that it may be transferred to my beneficiaries through my estate and accordingly may be subject to any Inheritance Tax.

I instruct Carey Pensions to appoint the following solicitor to act on behalf of the Scheme:

[details of solicitor]

I confirm that I agree to [name of solicitor] *fee of £400 + VAT for transacting this investment.*

I confirm I am fully aware that additional costs will be incurred in this transaction including, but not limited to:

£48 CHAPs Fee;

£8 Land Registry Search Fee;

Stamp Duty Land Tax – To be advised by Solicitor at completion;

Any other taxes – To be advised by Solicitor at completion;

I agree to Carey Pensions Fee of £500 + VAT, amounting for transacting this investment.

I agree that any and all fees and costs will be paid by my Scheme, or in the event of default, by me personally.

I agree to provide Carey Pension Trustees UK Ltd with any further information and/or documentation they may require prior to completing the purchase of this investment.

I indemnify both Carey Pensions UK LLP and Carey Pension Trustees Ltd against any and all liability arising from this investment."

The second form was titled "*Alternative Investment – GAS - VERDANT AUSTRALIAN FARMLAND Member Declaration & Indemnity*". This form included similar points to the Store First form. Mr C instructed Options to purchase 10 units of farmland for £50,000. The form described the investment as "*Alternative*" and "*High Risk and / or Speculative*", Mr C confirmed he'd not received "*a monetary or other inducement for transacting this investment*", confirmed his awareness that Options acted on an "*Execution Only Basis*" and hadn't provided advice, confirmed he'd taken his own advice "*in respect of this investment*", and indemnified Options "*against any and all liability arising from this investment*".

I'll call these forms the 'Member Declarations'.

Options received the signed Member Declarations on 24 September 2012, and on 28 September 2012 it made the GAS Verdant investment. The Store First investment was made shortly afterwards and completed on 16 October 2012. A few days later Douglas Baillie Ltd wrote to Options asking that it be removed as Mr C's financial adviser.

Mr C has told us he received £4,000 as part of the arrangement, which he thought was a "*standard offer*" for transferring the pension. He's explained he didn't tell Options about it as he assumed they were already aware.

In December 2015 Options wrote to Mr C informing him that both his investments were valued at 50% of the purchase price. The value of all assets was given as £38,225. Options' letter to him read:

"*Please note we have valued your investment in GAS Verdant at 50% of the purchase amount for the purposes of this valuation/benefit calculation. We believe this is a cautious value your holding at this level* [sic] *as the investment manager has not provided a current valuation for the land and we do not know what the current market conditions or demand are for farmland in Australia, and it takes into account that your pension scheme does hold a physical asset. We will continue to correspond with the investment manager and will notify you of any changes in the future.*

Also please note, as a matter of policy, Carey Pensions uses a conservative valuation estimate for Store First storage units, of 50% of the original purchase price … This is for a number of reasons, namely: Carey Pensions … is not an expert of the current market conditions for storage units; Carey Pensions does not arrange for an annual [qualified surveyor] *valuation to take place …; Carey Pensions recognises that you hold physical property and therefore a conservative estimate is more appropriate. As such, your SIPP annual report gives an indication only of the current value of your SIPP …*"

In February 2017 Options wrote to Mr C:

"*Please note that the Trustees have taken the decision to notionally value your Store First storage units at 20% of the original purchase price that your pension scheme paid. The reason for this decision is that this reflects the current market conditions and the sale prices that have been achieved from recent sales. The value of your units could be more or less than this value. Please note that Carey Pensions are not property valuation specialists, as such, we have assessed the information available to us as we are not allowed to over inflate investment values. Should you wish for a valuation of your property to be obtained from a property surveyor, you can instruct this however, they will charge for this.*

Please note that Gas Verdant have recently provided a valuation of your farm plot dated 25th July 2016 which was $31,521.50AUD. The XE Foreign Exchange Converter Tool provides a Sterling equivalent as 13th February 2017 of £19,273.06"

I'm aware from other cases involving Douglas Baillie Ltd and Options that in 2017 Options wrote to members letting them know that the FSCS had declared Douglas Baillie Ltd in default. Although I've not seen evidence that Options did that in Mr C's case, I think it's more likely than not this did happen given that Options has treated his SIPP application as introduced by Douglas Baillie Ltd.

The evidence I've seen indicates Mr C engaged his current representative shortly before September 2017 – that's when Options says it provided the CMC with a "*full member data print*", and a claim was subsequently submitted to the FSCS in respect of Douglas Baillie Ltd. The CMC has told us Mr C approached them "*due to concerns with the advice he received from Douglas Baillie Limited*".

In September 2018 the FSCS paid Mr C its maximum of £50,000 in compensation. The FSCS has since provided Mr C with a reassignment of rights to enable him to pursue this complaint against Options.

Mr C's complaint

In March 2020 Mr C complained to Options – Options says it received this complaint on 1 April 2020. In summary, he complained that:

- His pension funds had been invested in investments that were known to Options to be unregulated, high risk, highly speculative, and "*clearly unsuitable*".
- Options had failed to carry out appropriate due diligence – had it done so it would have been "*blatantly obvious*" that Options should have declined to do business with CL&P in order to protect consumers.
- Options had acted negligently and in breach of its statutory duty by accepting this non-advised instruction from CL&P Brokers, an unauthorised firm.
- CL&P advised him that the investments would provide him with "*a much better pension than he already had*" – CL&P were not authorised to provide such advice.
- The underlying investments were mis-sold to him, with the risks not clearly explained, so the 'Member Declarations' he signed should not be relied on in defense of Options.
- Options was aware of CL&P's involvement in his case.

Mr C explained that he was not an experienced or sophisticated investor, or a high net worth individual, and that he had been guided and influenced by CL&P and relied on their advice.

He said they'd provided plausible explanations for the documents he'd signed. He said he'd been misled, and that Options had allowed that to happen through its "*total disregard*" for the regulators' Principles.

Options responded to Mr C's complaint on 7 May 2020. It said Mr C had used the services of "*The Pension Specialist*". It went on to say that Mr C's complaint had been made too late because the events he complains about happened more than six years before he complained, and it had been more than three years since he knew, or ought reasonably to have known of his cause for complaint. Options explained that in 2015 the drop in the value of the investments had been communicated to Mr C; it said at this point he was put on notice to raise any concerns he had about the substantial loss of the value of his investments. Options declined to provide a substantive response to the complaint.

Unhappy with Options' response, Mr C brought his complaint to the Financial Ombudsman Service.

Options' submissions

Options provided us with its files for Mr C, some documents relating to the due diligence it undertook on Douglas Baillie Ltd, and it's due diligence files for the two investments involved here. Options also maintained that Mr C's complaint is time-barred.

As Options has not provided, in relation to Mr C's complaint, any information relating to CL&P, in considering this case I've also taken into account relevant submissions made to our service by Options in other, similar, complaints involving the same parties. In other cases Options has said:

- It does not (and is not permitted to) provide any advice to clients in relation to the establishment of a SIPP, transfers in or the underlying investments, nor does it comment in any way on the suitability of a SIPP, the transfers in and investments for an individual's circumstances.

- Options acts as an administrator only. The execution only (i.e. non-advised) basis of the relationship was made very clear in communications with members, the documentation issued to them, and the paperwork they read, signed and agreed to. 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 member.

- CL&P was a non-regulated introducer and as such, it was never suggested by Options that CL&P was a financial adviser or was authorised to provide advice.

- Options did not suggest or recommend the investments. It is not responsible for the performance or current market value of the investments.

- Options acted on members' instructions to establish a SIPP, request transfers in and specifically to make the investments, in the amounts instructed by members.

- Options undertook due diligence on CL&P and this due diligence did not reveal any reason why Options should not accept introductions from CL&P whilst it was accepting introductions from CL&P.

We asked Options to provide us with some further information about its relationship with CL&P. Its response included the following general points:

- 551 clients were introduced to Options via CL&P. 466 clients had been introduced by the time CL&P signed the Terms of Business with Options on 20 March 2012.

- Options first became aware of the issue of consumers being offered cash incentives by CL&P in late November 2011. This was following the AMPS committee issuing an alert that they had received reports from a number of pension providers about inducements being paid to scheme members without the knowledge of the pension provider, and the member being told to hide the payment. No details were given about the parties involved. With this in mind, and following a potential new member introduced by CL&P asking Options when they would receive their cash, Options held an urgent telephone conference with representatives from CL&P (the notes of this call are referred to above).

- Options thinks it is likely that the lack of response to its request for copies of the passports of the directors of CL&P and its accounts was a factor in Options' decision to terminate its relationship with CL&P.

- CL&P only introduced the clients to Options at inception, it was not an ongoing service agent and, as such, the relationship was always between Options and the members from establishment of the SIPPs, as its direct clients. It was the clients' decision to select CL&P as their introducer.

- There were numerous introducers in the market and regulated advisers who were introducing/advising clients regarding the Store First Investment and whose clients sought SIPP services from Options and other SIPP administrators. Options had no reason to suspect that because one of these - CL&P - had been offering cash inducements that there might be any particular issue or additional risks for clients in respect of the underlying Store First investment.

- The Member Declarations were very clear regarding what the investments were and, crucially, that they were high risk.

In relation to its due diligence on introducers Options highlights that it made changes following the regulator's Thematic Review in September 2009 and adherence to treating its customers fairly and has told us:

"*In the early days CPUK* [Options] *accepted execution only and advised business and there was no specific requirement for non regulated introducers. In late 2011 we reviewed our internal processes and as good practice implemented a combined Non Regulated Introducer Profile and Terms of Business. The due diligence process was improved, with company checks, accounts and affiliated companies also being reviewed and checks against sanctions lists.*

The non regulated introducer would sign the profile which confirmed that they had read and agreed to the Terms of Business. There is reference to this improvement in our process in the FSA letter dated 29 September 2011, following a visit to CPUK"

Our Investigator's view

Mr C's complaint was considered by one of our Investigators who concluded it had been referred to us within the time limits that apply to the Financial Ombudsman Service and should be upheld. In summary, the Investigator:

- Said he considered that Mr C had made his complaint in time – whilst the 2015 valuations meant he ought reasonably to have been aware there was a problem with his pension, there is no evidence that he knew, or ought reasonably to have known, Options could be responsible. Overall, he found no reason to say Mr C was aware, or should reasonably have been aware, of his cause for complaint against Options more than three years before he did complain in March 2020.

- Set out the considerations relevant to his opinion including the FCA's Principles for Businesses, sections 27 and 28 of FSMA, the regulator's rules including Rule 2.1.1 (The client's best interest rule) in the Conduct of Business Sourcebook (COBS), the regulator's publications from 2009 to 2014 reminding SIPP operators of their obligations, and relevant caselaw including *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474 and the related High Court judgment.

- Explained that Options had regulatory obligations to Mr C which included deciding whether to accept or reject particular referrals of business or investments.

- Acknowledged that Douglas Baillie Ltd were a regulated adviser but said this didn't diminish Options' failings – he noted Douglas Baillie Ltd had been bought into the process by CL&P and that Douglas Baillie Ltd did not advise Mr C on the investment. This ought to have alerted Options to the risk of consumer detriment.

- Concluded that Options ought to have declined to accept business from CL&P or, in any event, not proceeded with his investment instructions, because:

    - Options didn't complete its due diligence on CL&P before accepting Mr C's application – it didn't ask for CL&P's accounts until March 2012. If checks on CL&P's accounts had been attempted earlier, the fact that CL&P was unwilling to provide this information should have raised a red flag.

    - Options should have carried out checks – including checking the FSA's warning list – before accepting business from CL&P. Had it done so it would have discovered that CL&P's Director was Terence Wright and that he was on the FSA warning list.

    - Terence Wright's presence on the FSA warning list should have led Options to conclude it should not do business with CL&P.

    - Options should have reacted promptly on the issue of cash incentives – it would have discovered CL&P was acting "*against all rules*" and the only fair and reasonable thing to do would have been to decide to not accept any further business from CL&P or proceed with any further investments.

    - Options should have had significant cause for concern about the Store First investment, and had reason not to proceed with the investment – Options ought to have concluded there was an obvious risk of consumer detriment.

    - Options ought to have realised there was a high likelihood of unsuitability where a retail consumer such as Mr C was buying a high risk esoteric investment like GAS Verdant without individual advice about the investment.

- Considered that sections 27 and 28 FSMA would offer Mr C relief here because CL&P acted in breach of the General Prohibition (gave advice and made arrangements), Mr C entered into an agreement with Options in consequence of CL&P's actions, and it would not be just and equitable to enforce the agreement in any event because Options ought to have been aware of several red flags / anomolies giving rise to a risk of consumer detriment. He said the investment did not proceed until long after all these things were known to Options and so it was open to it to decline the investment, or at least explore the position with the consumer.

The Investigator set out how Options should put things right by putting Mr C as far as possible, into the position he would now be in but for it accepting his SIPP application and proceeding with it. They considered that if Options had acted appropriately, it's more likely than not that Mr C would've remained a member of his previous, defined benefit occupational, pension scheme. They set out how Options should calculate his losses and compensate him. Our Investigator also recommended Options pay Mr C £500 for the distress caused by Options' failings.

Options didn't take the opportunity to respond to the view, nor to provide any further information it wanted me to consider.

As no agreement could be reached, the complaint was passed to me to decide.

My provisional findings

I recently issued a provisional decision on this complaint. I concluded it is not time barred and should be upheld.

Options didn't respond to the provisional decision. Mr C responded, through his representative, to say he accepted the provisional decision.

As I have not received any further submissions from either party about the merits of Mr C's complaint and have not been persuaded to depart from my provisional findings, I have repeated my provisional findings below, as my final decision, and have not therefore included any further detail of them in this background summary.

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 noted above, I haven't received any further submissions from either party since issuing my provisional decision and haven't been persuaded to depart from my provisional findings. So, I've repeated those findings below, with a few minor changes, as my final decision.

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.

With that in mind, I'll start by setting out what I have identified as the relevant considerations to deciding what is fair and reasonable in this case.

Relevant considerations

The Principles

In my view, the FCA's Principles for Businesses are of particular relevance to my decision. 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 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 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. I'm therefore satisfied that the Principles are a relevant consideration and I will consider them in the specific circumstances of this complaint.

The *Adams* court cases and COBS 2.1.1R

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 C's case. I note the Supreme Court refused Options permission to appeal the Court of Appeal judgment.

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 C'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 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 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 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.*"

I note that there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr C'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 C's complaint, amongst other things, I'm considering whether Options ought to have identified that the Store First investment and the GAS Verdant 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 and GAS Verdant *before* it received Mr C's application. And the same applied to Options deciding whether to accept introductions from CL&P.

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

So, I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr C'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 C on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr C 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 C'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.

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.

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.

<u>*The 2009 Thematic Review Report*</u>

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 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.*”

<u>*The later publications*</u>

In the October 2013 finalised SIPP operator guidance, the FCA states:

> “*This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.*
>
> *All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a “client” for SIPP operators and so is a customer under Principle 6. It is a SIPP operator’s responsibility to assess its business with reference to our six TCF consumer outcomes: …*”

The October 2013 finalised SIPP operator guidance also set out the following:

“***Relationships between firms that advise and introduce prospective members and SIPP operators***

Examples of good practice we observed during our work with SIPP operators include the following:

- *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for unauthorised business warnings.*

- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*

- *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.*

- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*

- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

- *Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers.*

Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*

- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*

- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from nonregulated introducers*"

In relation to due diligence the October 2013 finalised SIPP operator guidance said:

"***Due diligence***

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*

- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*

- *having checks which may include, but are not limited to:*

    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*

    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*

- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*

- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*

- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax relievable investments and non-standard investments that have not been approved by the firm*"

The July 2014 "Dear CEO" letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The "Dear CEO" letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- Correctly establishing and understanding the nature of an investment

- Ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation

- Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)

- Ensuring that an investment can be independently valued, both at point of purchase and subsequently

- Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc)

Although I've referred to selected parts of the publications, to illustrate their relevance, I have considered 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 regulator's 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 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 has argued 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 do not think the fact that some of the publications post-date the events that took place in relation to Mr C's complaint, means 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 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 regulator's 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 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 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.

The 2013 alert

The regulator also issued an alert in January 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). 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 …*
>
> *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 came after 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.

What did Options' obligations mean in practice?

To be clear, I do not say the Principles or the publications obliged Options to ensure the transactions were suitable for Mr C. It is accepted Options was not required to give advice to Mr C, and could not give advice. And I accept the publications do not 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 has noted 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 has previously argued 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 C'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 C's application to establish a SIPP and to invest in Store First and GAS Verdant, 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 CL&P and Douglas Baillie Ltd/the business CL&P and Douglas Baillie Ltd were introducing and the Store First and GAS Verdant investments *before* deciding to accept Mr C's application and proceeding with his transfer and investment instructions.

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 C 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 C's complaint is whether it was fair and reasonable for Options to have accepted his SIPP application and his investment applications in the first place. So, I need to consider whether Options carried out appropriate due diligence checks on CL&P and Douglas Baillie Ltd, and on the Store First and GAS Verdant investments, before deciding to accept Mr C's application and invest his pension monies in this way.

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 CL&P and Douglas Baillie Ltd and/or investing in Store First and GAS Verdant were being put at significant risk of detriment. And, if so, whether Options should therefore not have accepted Mr C's application for the Options SIPP and/or the investments.

The contract between Options and Mr C

Options has previously made submissions about its contracts with consumers like Mr C 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 C or otherwise have ensured the suitability of the SIPP or the investments for him. I accept that Options made it clear to Mr C 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, which it appears Mr C 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 C'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 C on the suitability of the SIPP or on the investments.

Options' due diligence on CL&P and its decision to accept Mr C's application from CL&P

The due diligence on CL&P

The actions Options took – which were carried out after its relationship with CL&P began in August 2011, rather than before it accepted business from CL&P – are set out in detail in the background sections above. So, I will not repeat them here. However, I would note at this point that the actions Options took, in addition to being taken after Options began accepting business from CL&P, appear to have been taken on a reactive, piecemeal, basis.

In addition, the available evidence shows Options did not meet its own standards when carrying out due diligence on CL&P. From late 2011, in accordance with its own standards (as submitted to us), it should have carried out company checks on CL&P, reviewed CL&P's accounts, and checked "*sanctions lists*". As I set out above, these standards appear to be consistent with good industry practice and Options' regulatory obligations at the relevant time (although it is not clear what a check of "*sanctions lists*" would encompass). However, Options did not - in practice - act in a way which was consistent with good industry practice and its regulatory obligations at the relevant time. I explain this in more detail below.

The FSA warning list

At the relevant time, the FSA list featured warnings ("alerts") about unauthorised individuals and businesses. If Options had acted in accordance with its regulatory obligations and good industry practice at the relevant time it ought to have undertaken sufficient enquiries on CL&P to understand who its directors were, and checked the FSA's warning list as part of its due diligence on CL&P. Had it carried out these checks before accepting business from CL&P it would have discovered that CL&P's director Terence Wright was on the FSA warning list.

As part of its due diligence process, Options required CL&P to fill out a "non-regulated introducer profile" questionnaire. CL&P completed the questionnaire on 29 September 2011. The profile named the two directors of CL&P, one of which was Mr Wright. So, at this point, Options was aware Mr Wright was one of the directors of CL&P.

I note that the profile CL&P completed asked the question: "*Are you and/or the Firm subject to any on-going FSA or other regulatory body review, action or censure*." And, Mr Wright answered "*No*" to this question. However, it was not sufficient, in my view, to simply ask the introducer a general question. Rather I think Options, acting fairly, with due regard to Mr C's interests, should have carried out its own check on Mr Wright. And that appears to have been Options' view too. Its comments suggest it understood it was good practice, consistent with its regulatory obligations, to make its own independent checks. So, it ought to have undertaken a check on Mr Wright before it began accepting introductions from CL&P.

In the event Options did not check the FSA's list. It used the World Check service. And it did not check Mr Wright until 15 May 2012. It only ran checks on a Ms A and a Mr L, around a month into its relationship with CL&P (on 20 September 2011). I understand that these individuals were only employees of CL&P and neither controlled nor managed CL&P.

I note that, in submissions on other complaints, in relation to the warning, Options says the FSA notice relating to Mr Wright was not entered onto World Check (the checking service it used) until 24 October 2011 - after it had carried out its checks on Ms A and Mr L and after it had started accepting business from CL&P. And so, if it had run a check on Mr Wright at the outset, this would not have revealed his entry on the FSA's warning list. In the same submissions Options says that it was under no obligation to check the FSA's list itself.

CL&P was an unregulated business, based in Spain, and was proposing to deal with the pensions of UK consumers. Options ought to have known the FSA kept a list of alerts, relating to unregulated businesses, which were often based overseas. Options has not explained what a search/check of "*sanctions lists*" entailed. But I think a check of such lists should have included the FSA's list of alerts. In any event, as a SIPP operator considering accepting business from an unregulated overseas firm, it should have been mindful of the FSA's list of alerts, and in compliance with its regulatory obligations, checking the warnings posted on the FSA's website is something that Options should have done as a matter of course. I consider this amounts to good industry practice and, in my view, it would have been fair and reasonable, and in accordance with its regulatory obligations, for such a check to take place before it entered into a relationship with CL&P.

So, if I accept that use of the World Check service to check Mr Wright at the outset would not have revealed his entry on the list, this does not change my view. Options should have checked the FSA's list. The fact that Options chose to use a tool and the tool may have missed something doesn't mean it shouldn't be held responsible - for the reasons given, it should have checked the list itself. To my mind, the fact that Options decided to delegate responsibility for undertaking the necessary checks to the World Check tool and the relevant FSA warning had not been entered onto that tool until some considerable time after the warning appeared on the FSA list and therefore even if it had entered the right name (which it didn't), it would not have picked up the warning in any event, is irrelevant to my finding that Options failed to undertake sufficient due diligence on CL&P and missed the fact that Mr Wright was subject to an FSA alert.

Had Options ascertained who the directors of CL&P were at the outset of the relationship with CL&P and checked the FSA's list then (or at least at the point it did become aware Mr Wright was a director of CL&P), it would have discovered that Mr Wright was the subject of the FSA alert I've reproduced above.

So, I find that if Options had acted in accordance with its regulatory obligations and good industry practice at the relevant time it ought to have undertaken sufficient enquiries on CL&P to understand who its directors were, and checked the FSA's warning list as part of its due diligence on CL&P. Had it carried out these checks before accepting business from CL&P it would have discovered that CL&P's director Terence Wright was on the FSA warning list.

Options did eventually discover the alert in May 2012. I note that this was before Options had received the documents it needed to proceed with Mr C's application from Douglas Baillie Ltd (in July 2012), before it requested Mr C's transfer from the ceding scheme and before it proceeded with his investments (in September and October 2012). So, I think, having accepted Mr C's application in December 2011, Options missed a further clear opportunity to avoid the risk of consumer detriment here. By the time his investments went ahead, Options' concerns about CL&P's conduct were so serious that it had terminated its agreement with CL&P without notice. However, it didn't warn Mr C about this. Instead it went ahead with making his investments.

Cash incentives

In November 2011, before it received Mr C's application, and many months before it sent his money for investment in GAS Verdant and Store First, Options became aware that "*a potential member had asked when they would receive their money from their Store First Investment"*. And it says the general risk of introducers offering cash incentives had been flagged to it by a trade body. Such payments are against the rules covering pensions and can attract a substantial tax charge from HMRC.

Options spoke to CL&P in a conference call on 9 December 2011, a few days before it received Mr C's SIPP application. Options has told us that in that call CL&P:

> *"…confirmed that no clients or connected parties referred by CL&P receive any form of inducement for either establishing the SIPP or making the Store First Investment and that CL&P policy does not include offering inducements."*

And an Options staff member:

> *"emphasised that it is completely against all rules that clients or connected parties receive any form of inducement for making particular investments*."

I am not persuaded it was reasonable for Options to rely on what CL&P said when it clearly had information to show the position was contrary to that being set out to it by CL&P during the call. Options was aware cash incentives *had* been offered – discussing this was the purpose of the call with CL&P. In the circumstances I do not think it was fair and reasonable for Options to proceed, based solely on a denial of this by CL&P. It should, at the very least, have taken independent steps to check things for itself – it could, for example, have contacted the consumers it had received applications for before the date of the call, to ask them about cash incentives.

Transfers from defined benefit (final salary) schemes

I note that alongside the issue of cash incentives Options also discussed with CL&P on 9 December 2011 the subject of transfers from final salary pension schemes. It was, "*agreed* *that in future cases of* [Final Salary] *Transfers would be referred to suitably qualified IFAs for relevant advice and copy of that advice would be provided to Careys for file records*."

Whilst Mr C's ceding scheme was a defined benefit (final salary) occupational scheme, there is no evidence that he received advice on the transfer before Options accepted his application and opened his SIPP on 13 December 2011, just a few days after its discussion with CL&P. It seems Mr C didn't receive any regulated advice, and then only limited advice, until July 2012 – I'll say more about that below. So, whilst Mr C's application indicated he'd be transferring an occupational pension to the SIPP, it also indicated he hadn't received the transfer advice which Options itself thought was important. I think this was another reason why Options ought not to have so readily accepted his SIPP application and established his SIPP in December 2011.

Accounts

Based on the available evidence, it appears a request for CL&P's accounts was not made by Options until 23 March 2012. It's not clear why the request was made at this time. But it seems CL&P did not respond as the request was repeated, as urgent, on 3 April 2012.

CL&P replied to Options to say the information would be in the post the next day. However, when asked, Options has told us it has no record of receiving the information and that this was another likely factor in its eventual decision to end its relationship with CL&P.

In my opinion, it is fair and reasonable that Options should have met its own standards, set in late 2011, and should have checked CL&P's accounts at the outset before accepting any business from it. This is a step it should reasonably have taken, to meet its regulatory obligations.

Taking all of the above into consideration – individually and cumulatively – I think in the circumstances it is fair and reasonable for me to conclude that Options failed to conduct sufficient due diligence on CL&P before accepting business from it. And, in light of the Principles and FSA/FCA regulatory publications I have quoted above, this means Options did not comply with its regulatory obligations or with good industry practice at the relevant time.

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

I think Mr Wright's appearance on the FSA's list ought to have highlighted to Options that the regulator was concerned enough about Mr Wright's activities to warn consumers about him. And I think in the circumstances it is fair and reasonable to conclude that the warning was aimed at protecting consumers from detriment in their dealings with him.

With this in mind, I think the warning should have acted as a significant reason for Options to be concerned about any business Mr Wright was involved in – not just "Cash In Your Pension". The warning mentioned that Mr Wright was involved in the area of pensions – which is the same business area that CL&P was active in. And the warning said that Mr Wright was not authorised and may be "*targeting UK customers*" in connection with investment business conducted through an unregulated company, Cash In Your Pension.

I also think the presence of Mr Wright on the list, after he had answered "no" to a question asking him if he was subject to any FSA action or censure, should immediately have raised a red flag to Options – it should have given rise to significant concern about Mr Wright's conduct and integrity.

I note that Options ended its relationship with CL&P shortly after completing the check on

Mr Wright. I'm satisfied that this check was a factor in its decision to end the relationship.

Options has told us that the wording of a 2013 warning about Mr Wright, if it had been published at the time of it accepting business from CL&P, would have been sufficient to stop it doing business with Mr Wright/CL&P. It said:

> *'The fact that the FCA updated their notice in 2013 to a clear warning including an express comment that Mr Wright was an individual to avoid, a warning that would have put Options Pensions on notice to stop accepting business from Mr Wright.'* (my emphasis)

Options says, in its representations on other complaints relating to the FSA's list, that the 2010 warning would not have led it to the same conclusion. It says:

> *'…the Notice* (the alert) *amounts simply to a notification that Mr Wright is not authorised to carry on regulated activities, a fact of which Options was well aware and upon which basis it accepted referrals from CL&P.'*

This seems to be at odds with the action it took in 2012, based on the 2010 warning. And I note Options' Chief Executive, Ms H, gave evidence to the court during the High Court *Adams v Options* hearing, which is summarised at Paragraph 60 of the judgment as follows:

> *"It was also brought to my attention that from October 2010 the FCA had published warnings about dealing with another director, Mr Terence Wright, who was not authorised under FSMA to carry out regulated activity.* [Ms H] *accepted in cross examination that no check was made to see whether his name appeared on a regulatory warning notice on the FCA's website until May 2012. The relationship between the defendant and CLP was severed on 25 May 2012. She accepted that had she been aware of such a warning in 2010 the defendant would not have dealt with CLP".*

This, in my view, is inconsistent with Options' representations to us.

In any event, although in its representations Options has said it believes the 2010 alert was less significant than the 2013 one, by comparing the wording of the two alerts, I think the October 2010 alert was a clear indication that the regulator had serious concerns about the way Mr Wright conducted his business and therefore should have put Options on notice that it should not accept business from Mr Wright.

Options says that the 2010 alert does not detail any concern by the regulator about Mr Wright. I accept that the 2013 alert provides strong advice to only deal with financial firms authorised by the FCA. However, I do not agree with Options' characterisation of the 2010 alert and I'm surprised that Options suggests that the regulator does not detail any concern about Mr Wright in the 2010 alert.

A publication headed "ALERT" in bold is clearly not routine and unimportant. It's clear from the wording itself that the FSA was *warning* investors against dealing with unauthorised firms and specifically named Mr Wright. He was involved in "*targeting*" (to use the FSA's phrase) UK based pension investors – which should have been of particular concern to a SIPP operator considering accepting business from him. The alert also provided links to:

- A list of unauthorised firms

- A press release about unauthorised firms targeting UK investors

- A document telling investors about the tactics adopted by unauthorised firms targeting UK investors.

- A document explaining share scams.

In my opinion, it is fair and reasonable to conclude that the warning was more than a mere statement of fact that an unauthorised firm could not carry out regulated activities. It was a clear warning – an *alert* – relating specifically to Mr Wright, providing links to guidance on consumer protection and warnings about scams.

So, in my opinion, CL&P's director Terence Wright's presence on the FSA warning list should have led Options to conclude it should not do business with CL&P. That is my view and I note it is a view which was held by Ms H when she gave evidence to the court during the *Adams v Options* hearing. Ms H told the court that if she had been aware of the warning in 2010 Options would not have dealt with CL&P. Such a conclusion was the proper one it ought to have reached bearing in mind Options' responsibilities under the Principles.

In addition, as I set out above, on the issue of cash incentives, I do not think it was fair and reasonable for Options to simply rely on a denial by CL&P in circumstances where it seems it was aware cash incentives were being offered. I think Options should have taken steps to independently check the position, and it is fair and reasonable to conclude that prompt action would have inevitably led Options to discover that cash incentive payments were being widely offered by CL&P at that time, and that what CL&P had told Options was not correct.

It follows that Options ought to have concluded – as it belatedly did when the issue of cash incentives came to light again in 2012 – that it could not rely on what CL&P was telling it and it would not be consistent with its regulatory obligations to deal with any further business from CL&P.

If Options had acted with a reasonable amount of diligence it would have discovered that CL&P was acting in a way which was, to use its own words, "*completely against all rules".* And it would have known that CL&P was acting without integrity – it had not told it the truth when asked about cash incentives. In my view, the only fair and reasonable thing it could do would have been to decide not to accept any further business from CL&P and not to proceed with any applications which had not completed (that is to say the investment had not been made).

So Options should have taken action on the issue of cash incentives – which would ultimately have led to it ending it relationship with CL&P – long before it sent Mr C's money for investment in GAS Verdant and Store First in September and October 2012.

Finally, I think if checks on CL&P's accounts had been attempted earlier, the fact that CL&P were unwilling to provide this information should have raised a red flag, as it apparently eventually did. This reluctance to provide basic information should have been a further factor which ought to have led Options to question whether it should enter into or continue a relationship with CL&P. And, it would have meant Options should never have entered into a relationship with CL&P at all.

Taking all of the above into consideration – individually and cumulatively – I think in the circumstances it is fair and reasonable for me to conclude that Options ought reasonably to have concluded, had it complied with its regulatory obligations which required it to conduct sufficient due diligence on CL&P before accepting business from it, that it should *not* accept business from CL&P. If Options had carried out proper introducer due diligence it ought to have concluded that it should not accept business from CL&P. I therefore conclude that it is fair and reasonable in the circumstances to say that Options should not have accepted Mr C's application from CL&P in December 2011.

Furthermore, had Options complied with its regulatory obligations – which required it to consider and act on information received about the conduct of CL&P before continuing to accept business from it – it should, in any event, have concluded it should not proceed with Mr C's application.

Options' due diligence on Douglas Baillie Ltd and its decision to proceed with Mr C's application with the involvement of Douglas Baillie Ltd

As I've said, I'm of the view that Options should *not* have accepted Mr C's application from CL&P at the outset, in December 2011. And, in any event, Options should not have proceeded with it when, first, it became aware of CL&P's payment of cash incentives and, secondly, it discovered the FSA alert about Mr Wright and ended its relationship with CL&P. However, for completeness, I've also considered whether the later involvement of Douglas Baillie Ltd in Mr C's application lessened or negated the risk of consumer detriment which I consider Options ought to have identified as existing because of CL&P's involvement.

In other words, I've thought about whether Options should have accepted the, in effect, re-introduction of Mr C's application from Douglas Baillie Ltd and whether the involvement of Douglas Baillie Ltd in Mr C's application, justified Options' decision to proceed with his application in July 2012.

Options' due diligence on 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 complaints in which Options said clients were introduced to Options by Douglas Baillie Ltd, an FCA regulated adviser at the relevant time, Options has provided us with a printout 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 printout 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 2011/12 in relation to Douglas Baillie Ltd or what permissions Douglas Baillie Ltd held.

Options also provided the Financial Ombudsman 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;”*

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 the Financial Ombudsman has seen evidence of went far enough or were sufficient to meet Options’ regulatory obligations and standards of good industry practice.

I think Options was aware of, or should have identified potential risks of, consumer detriment associated with business introduced by or involving Douglas Baillie Ltd, including the following, before it proceeded with Mr C’s application in July 2012:

- The SIPP business introduced by Douglas Baillie Ltd had anomalous features – it appears to have been high risk business, including many defined benefit 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 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 proceeded with Mr C’s SIPP application when it was effectively re-introduced to Options in July 2012 (having been first introduced by CL&P in December 2011). These points overlap, to a degree, and should have been considered by Options cumulatively.

The type of investments involved

Options has told us that Douglas Baillie Ltd 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 Australian Farmland.

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.

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 involved with introducing was high risk and therefore carried a potential risk of consumer detriment.

Options may argue it didn't know what Mr C and other Douglas Baillie Ltd clients were investing in at the time it accepted their applications (or in this case, the re-introduced application). But, having reviewed the application submitted via CL&P in December 2011, I think it was clear that Mr C was intending to invest in Store First, even if it wasn't, at that stage, apparent that he'd also invest some of his fund in GAS Verdant.

I acknowledge that 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. But 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 both the investments Mr C's monies were intended for weren't recorded on the application form received via CL&P, Options knew or should have known the investments that were typically being made by clients where CL&P and/or Douglas Baillie Ltd were involved in the application process.

Volume and nature of business introduced

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."*

Options has 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 H at Options emailed Douglas Baillie Ltd to detail that her understanding of the agreed process included that TPS would only advise on the transfer (I've reproduced the relevant parts of this email above). I note that this was *before* CL&P told Options, on 3 April 2012, that they'd referred Mr C to Douglas Baillie Ltd. So, it appears Options understood then that Mr C would only receive limited advice.

Further, the advice letter that Douglas Baillie Ltd prepared in relation to Mr C, and which was sent to Options in July 2012, made it clear Douglas Baillie Ltd was only advising on the transfer, and not the investments. The letter said, "*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* [SIPP]".

So, Mr C's advice letter made clear that advice had only been given in relation to the transfer and not in relation to any intended investments. And I've seen that this was also the case in other complaints about Options brought to the Financial Ombudsman which feature Douglas Baillie Ltd as the advising introducer.

Based on all this, I think Options was on notice, from very early on in its relationship with them, that Douglas Baillie Ltd was not giving consumers *any* advice on Store First, GAS Verdant and other higher risk non-standard asset investments.

Options says Douglas Baillie Ltd was an FCA regulated business and, at the time it became involved in Mr C's SIPP, Options was not aware of any reason it should be concerned about introductions from Douglas Baillie Ltd. 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 and GAS Verdant investments, 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 them having been offered regulated advice by Douglas Baillie Ltd on the unregulated investments that their transfers to Options were intended for. 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 C's where a defined benefit ('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 C made clear it had not been provided with a "*financial planning profiler*" for Mr C 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 Options received a copy of alongside other documents necessary for the application and transfer process to proceed, made it clear this hadn't happened in Mr C's case.

Finally, I think Options ought to have been concerned that so many of Douglas Baillie Ltd's clients were proceeding on an apparently 'insistent' client basis, including Mr C. 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 and/or CL&P as a formality or as a 'paper exercise' in the process, with the 'insistent client' wording downplayed so that clients given that moniker 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 H 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 H to make some concessions.

Alongside the volume of such applicants, I think Options ought to have identified that the tone of these 'advice letters' was inconsistent, and they ought to have been alive to the possibility that the 'insistent client' wording had been included, not because Mr C, a retail client, was genuinely insistent, but in an attempt by Douglas Baillie Ltd to limit its responsibility. Options ought to have questioned whether Douglas Baillie Ltd was putting its own interests ahead of those of its client.

The involvement of an unregulated business

Options has not acknowledged in its response to Mr C's complaint the fact that CL&P was involved in Mr C's introduction and the establishment of his SIPP in December 2011; it has said only that Mr C "*used the financial services of The Pension Specialist".* However, CL&P was an introducer of business to Options, and Options has made submissions to us in relation to the checks it made on World Check and the FSA notice regarding Mr Wright. Because there is clear evidence in this case that Options' relationship with Mr C began because of CL&P's introduction, I've considered these submissions – and others it's made about the due diligence it carried out on CL&P before accepting introductions from it – above, in relation to Options' initial acceptance of Mr C's application from CL&P in December 2011.

But turning back to whether Options ought to have proceeded with the, in effect, re-introduction of Mr C's application by Douglas Baillie Ltd in July 2012, I think the involvement of CL&P, an unregulated business, in the background, remained something which ought to have caused Options to act differently.

As I've mentioned above, from very early on in its dealings with Douglas Baillie Ltd, I think Options was on notice that Douglas Baillie Ltd had not given consumers any advice on the intended investments. And having seen many 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 the documentation (i.e., application forms and advice letters) recorded 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 an Options SIPP for those consumers, and, subsequently, the consumers' SIPP monies were being invested in Store First, GAS Verdant 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, GAS Verdant 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 C, and that consumers were not receiving any regulated advice from Douglas Baillie Ltd on the investments.

I acknowledge that Options says there was nothing in the DISP rules preventing SIPP providers from accepting business from unregulated introducers. But by 25 May 2012, *before* Mr C's application was effectively re-introduced to Options by Douglas Baillie Ltd in July 2012, and long before his transfer was initiated and his monies invested in GAS Verdant and Store First, 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 – 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, a firm it had decided its concerns about were too great for Options to continue accepting introductions from, was still actively involved in, and driving, Mr C's decisions despite the veneer of Douglas Baillie Ltd's latter adoption of the role of "*agents and brokers*" for Mr C's SIPP.

And it ought to have been concerned that CL&P had promoted the Store First investment, and possibly also the GAS Verdant investment, to Mr C, or even advised him on the investments. I note that Mr C himself confirmed on both the Member Declarations that he had taken his own advice including "*investment and tax advice*" and advice "*in respect of this* *investment*". Given Douglas Baillie Ltd weren't advising on the investment, this suggests the involvement of someone other than Douglas Baillie Ltd.

Taking all of the above into consideration – individually and cumulatively – I think in the circumstances it is fair and reasonable for me to conclude that Options failed to conduct sufficient due diligence on Douglas Baillie Ltd before accepting business from it. And, in light of the Principles and FSA/FCA regulatory publications I have quoted above, this means Options did not comply with its regulatory obligations or with good industry practice at the relevant time.

What fair and reasonable steps should Options have taken in the circumstances, and what ought it reasonably to have concluded?

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, including this, in effect, re-introduction of an application from Mr C. 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 proceeded with Mr C'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 regulated 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* Douglas Baillie Ltd became the "*agents and brokers*" for Mr C's SIPP 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 the Financial Ombudsman, 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 (although I think it already knew how Mr C had come into contact with Douglas Baillie Ltd). 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, some months after Options had accepted the re-introduction of Mr C's application from Douglas Baillie Ltd, 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 proceeded with Mr C's application in July 2012 having accepted Douglas Baillie Ltd as his "*agents and brokers*", should have decided not to accept business from Douglas Baillie Ltd, given that Options had decided not to accept new business from CL&P.

<u>Making independent checks</u>

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)

On balance, I think if Options had contacted Mr C to 'confirm the position, either in December 2011 when his application was initially introduced by CL&P or in July 2012 when his application was effectively re-introduced by Douglas Baillie Ltd, Mr C would have told Options that it was CL&P who had introduced him to the intended investments and 'sold' to him the idea of transferring his existing pension to a SIPP in order to do this. I think it's likely Options would also have become aware that Mr C didn't understand the investments and thought they were both "*low risk and high returns*" (I'll say more about what I think about Mr C's understanding of the risks below).

And as I've said, by the time Douglas Baillie Ltd became "*agents and brokers*" for Mr C's SIPP and re-introduced his application to transfer monies to an Options SIPP, and invest in these investments, CL&P was a business that Options had already terminated its introducer agreement with over concerns about how CL&P operated. So, if it had asked Mr C how and why he was interested in transferring out of his existing pension and making these higher risk non-standard investments, I think it would have become aware, if it wasn't already aware, of the extent of CL&P's involvement, and Options would or should have declined to proceed.

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.

If Options had undertaken these steps I think it ought to have identified, amongst others, the following risks before it proceeded with Mr C's application and investment instructions:

- 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 C) advice on the suitability of the high risk, non-standard and unregulated investments that their Options SIPPs were being (or, in this case, had recently been) 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/or 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 C fairly by proceeding with his application once Douglas Baillie Ltd was involved in July 2012. And it was an application which, for the reasons I've already set out above, I don't think should ever have been accepted when it was initially introduced by CL&P in December 2011. To my mind, Options didn't meet its regulatory obligations or good industry practice at the relevant time and allowed Mr C to be put at significant risk of detriment as a result. Options should have concluded, and *before* it proceeded with Mr C's business, that it shouldn't accept introductions from CL&P or Douglas Baillie Ltd. I therefore conclude that it's fair and reasonable in the circumstances to say that Options shouldn't have accepted or proceeded with the re-introduction of Mr C'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 GAS Verdant, and had acted appropriately in permitting these investments into its SIPPs (which, as I'll explain below, I don't), I'd still consider it fair and reasonable to uphold Mr C's complaint on the basis of what I've already set out above – first, that Options shouldn't have initially accepted Mr C's introduction from CL&P or proceeded with it (and, for the avoidance of doubt, I consider that my findings about that initial acceptance would be sufficient on their own to uphold Mr C's complaint), and secondly, that Options missed a further opportunity to avoid consumer detriment when it accepted Douglas Baillie Ltd as "*agents and brokers*" for Mr C's SIPP and proceeded with the, in effect, re-introduction of his application from Douglas Baillie Ltd, his transfer, and investments.

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

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 Ltd and one of its directors, Mr W, were the subject of national press reports, an online petition 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 on the investments. 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 Enhance Support Solutions. 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 Enhance Support Solutions 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 [sic] *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 Enhance Support Solution 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 C'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 C'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 C's application to invest in Store First, it allowed Mr C'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 C invested in it. And it's the failure of Options' due diligence that's resulted in Mr C 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 C 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 C. I accept Options had no obligation to give advice to Mr C, 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 C wasn't a candidate for high risk investments or that an investment in Store First was unsuitable for Mr C. 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 C fairly by accepting the Store First investment into his SIPP.

Acting fairly and reasonably to investors (including Mr C), 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 C's pension monies were only transferred to Options so as to enable 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 C's pension monies wouldn't have been transferred to Options. And further, that Mr C wouldn't then have suffered the losses he's suffered as a result of transferring to Options and investing in Store First.

Options due diligence the GAS Verdant investment

As I've said, 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.

Options says our Service has concluded that Options shouldn't have allowed the GAS Verdant investment, simply because it was high risk and because it was an investment often made alongside Store First. To be clear, those are not my reasons for concluding that Options shouldn't have allowed the GAS Verdant investment into its SIPPs. My reasons are as follows.

I think it's fair and reasonable to expect Options to have looked carefully at the GAS Verdant investment *before* permitting it into its SIPPs. To be clear, for Options to accept the GAS Verdant 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.

GAS Verdant was an unregulated, esoteric, high risk investment. It took the form of 'land purchase contracts' which involved a company and land based abroad. Crops were to be planted on the plots, and the objective was to provide an income to investors through the sale of those crops and capital growth through the sale of the plot of land. This type of investment involved significant risks and a lack of protections.

To date, Options has provided little information about what checks it carried out on the GAS Verdant investment, other than to say it reviewed investment information, company background checks and also an independent report dated 7 October 2010 from Enhance Support Solutions. In this case it's also provided a copy of a report completed by the same individual as the 2010 report, dated 6 January 2012 (which appears to have been 'downloaded' by Options, presumably for consideration, in July 2012).

Options makes no reference to what conclusions it drew from this information, other than to say these checks were sufficient to conclude that this investment was suitable to be held within a UK pension scheme.

In my view, the 2010 report was brief and based on some of the material Options already had regard to in relation to GAS Verdant. That said, I'm satisfied Options should have been concerned by some of the information the report highlighted. In particular, the report said (with my emphasis):

> *"Description of investment*
>
> *Beneficial ownership of Australian farmland, purchased in seven hectare plots."*
>
> *"Is there a market for buying or selling the investment?*
>
> ***There is no established market for buying or selling the beneficial ownership**, although the land can be sold or assigned at any time subject to a buyer being found."*
>
> *"How liquid is the investment and in any event, could the investment be liquidated within two years?*
>
> *The investment is predicted to have an eight year lifespan at which point it is anticipated the farmland will be sold and the proceeds, less fees, will be distributed to investors. **Therefore the investment should be viewed as illiquid** subject to the comments above."*
>
> *"Does the proposed investment offer any form of investor protection?*
>
> ***The investment is unregulated so no investor protection will apply."***
>
> *"Based on the information available, is the proposed investment cleared to be held in a member-directed pension?*
>
> *Yes."*
>
> *"Disclaimer*
>
> *… The process undertaken by Enhance Support Solutions Limited seeks to identify whether the investment is likely to be acceptable based on HMRC rules as set by the Finance Act 2004 and subsequent amendments …"*

The 2012 report, which was similarly brief, contained an almost identical disclaimer, again said that as an unregulated investment there would be no investor protection, and included the following:

> "*Exit strategy*
>
> *At the end of the term (anticipated to be 2017) the land will be sold on the open market with proceeds, less costs, distributed to investors. **There is no guarantee as to what the final sale price will be**."*
>
> *"Parties involved*
>
> *… Web searches have revealed no adverse history on these parties however it should be noted that GAS Global are Cyprus based and therefore **limited information available**."*

"Disposal of the investment

The land can be disposed of at any time subject to a buyer being found which of course cannot be guaranteed.*"*

"Valuation

No initial valuation of the land has been supplied *however it is assumed that the initial investment for the beneficial interest is predicated more on the income stream and incorporates an allowance for ongoing upkeep costs rather than purely on the underlying value of the land. Annual accounts will be supplied by the farm manager showing the harvest revenue and distribution however* ***this will not show the underlying value of the capital****, which is anticipated to comprise a mixture of income stream and underlying land value. Any such valuation would need to be procured by the SIPP operator and no doubt a cost would be involved".*

"Any other comments

Where used by the SIPP/SSAS operator/trustees, a scheme member 'high risk/illiquid' disclaimer could be considered."

So, the reports only sought to identify whether the investment was likely to be acceptable based on HMRC rules – they did not seek to identify risk of consumer detriment. This is likely why they were brief. Nonetheless, Options ought to have seen from the reports that there was a significant risk of consumer detriment due to the illiquid and unregulated nature of the investment, and there being no established market for buying and selling the investment. Therefore, I don't think Options should have taken any comfort from either report.

As the FCA has noted, it is difficult to complete due diligence for non-standard overseas investment schemes where firms do not always have access to local qualified legal professionals or accountants. Consistent with its regulatory obligations, Options should not only have obtained adequate material in order to make a properly informed decision about whether to permit the GAS Verdant investment into its SIPPs, but it should also have given careful consideration to that material. And I've seen no evidence to suggest Options went beyond basic checks with the GAS Verdant investment.

Options says it provided the client with numerous risk warnings regarding their chosen investments, including the warnings in the Member Declaration & Indemnity forms they signed. That these forms were very clear regarding what the investments were and, crucially, that they were high risk.

But there is no reasoning given as to why Options thought such an unusual and high risk venture was appropriate to hold in its SIPPs. As I said above, Options should not only have carried out the searches on the investment but also given careful consideration to what they revealed so that it could be satisfied the investment was real and secure and operated as claimed and could be independently valued.

And in any case, I don't think it would be fair and reasonable to conclude that including warnings in a Member Declaration & Indemnity meant Options could simply ignore its own regulatory obligations and all red flags to proceed with permitting the investment into its SIPPs – and I'll return to this point.

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

I've seen a copy of the GAS Verdant marketing brochure I understand CL&P provided to consumers in 2011/2012. The brochure itself is undated, but the data it contains runs up to

2010 and it's reasonable to think that an investment being considered for acceptance within SIPPs would have associated marketing material. So, on balance, I'm satisfied that this marketing brochure, or information very similar to that which it contained, was more likely than not available to Options at the time it was considering whether to permit the GAS Verdant investment into its SIPPs.

In my view there were a number of things about the marketing material which ought to have given Options significant cause for concern. Namely, that there was a significant risk that potential investors were being misled.

I think, as it had regard to this brochure, Options could not overlook the fact that GAS Verdant appeared to be presenting the investment as one that was assured to provide high and rising returns, 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, as the reports to Options had stated, the investment was illiquid and unregulated, and there was no established market for buying and selling the investment.

Further, the GAS Verdant marketing brochure says GAS "*is one of the first companies to create dynamic products relating to modern agronomy … "* I think this indicates GAS Verdant didn't have a proven track record for retail investors, and so Options couldn't be certain that the investment operated for them as claimed.

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 brochure, 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 in the GAS Verdant marketing brochure published *before* Mr C's Options monies were invested with it gave rise to a significant risk that potential investors were being misled by GAS Verdant. And I think Options ought to have identified this *before* permitting the GAS Verdant investment into its SIPPs. This is a clear point of concern, which I think Options ought reasonably to have identified *before* it accepted Mr C's application to invest in GAS Verdant.

In my opinion, the issues I've identified above should have, when considered objectively, put Options on notice 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 GAS Verdant investment.

In my opinion it's fair and reasonable to say that Options ought to have concluded there was an obvious risk of consumer detriment here. All in all, I am satisfied that Options ought to have had significant concerns about the GAS Verdant investment from the beginning. And I think such concerns ought to have been a red flag for Options when it was considering whether to accept the GAS Verdant investments into its SIPPs. Such concerns emphasise the importance of sufficient due diligence being undertaken *before* investments are accepted and *before* SIPP investors monies are invested.

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 GAS Verdant investment into its SIPPs and that the GAS Verdant 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 GAS Verdant investment *before* it accepted that investment into its SIPPs. I don't think Options met its regulatory obligations and, in accepting Mr C's application to invest in GAS Verdant, it allowed Mr C's funds to be put at significant risk.

To reiterate, 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 that Options wasn't expected to, nor was it able to, give advice to Mr C on the suitability of the SIPP and/or GAS Verdant investment for him personally. To be clear, I'm not making a finding that Options should have assessed the suitability of the GAS Verdant investment for Mr C. I accept Options had no obligation to give advice to Mr C, or to ensure otherwise the suitability of an investment for him.

And I'm also not saying that Options shouldn't have allowed the GAS Verdant investment into its SIPPs because it was high risk. My finding isn't that Options should have concluded that Mr C wasn't a candidate for high risk investments or that an investment in GAS Verdant was unsuitable for Mr C. Instead, it's my fair and reasonable opinion that there were things Options knew or ought to have known about the GAS Verdant 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 C fairly by accepting the GAS Verdant investments into his SIPP.

I think the fair and reasonable conclusion based on the evidence available is that Options shouldn't have accepted Mr C's application to invest in GAS Verdant. In my opinion, it ought to have concluded that it would not be consistent with its obligations to do so. To my mind, Options didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr C to be put at significant risk of detriment as a result.

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

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

Options has said in similar cases that 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, in other cases, 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 C's SIPP application from CL&P in the first place. Nor was it fair and reasonable, for all the reasons I've set out above, for Options to proceed with Mr C's applications when Douglas Baillie Ltd became involved. So, in my opinion, Mr C'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 C's application?

For the reasons given above, I think Options shouldn't have accepted Mr C's business from CL&P (or, later, Douglas Baillie Ltd) and I also think it shouldn't have accepted the Store First and GAS Verdant investments 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 CL&P and Douglas Baillie Ltd, and acted appropriately in accepting Mr C's business initially from CL&P and, later, from Douglas Baillie Ltd (which, as I've explained, I don't), I'd still consider it fair and reasonable to uphold Mr C'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 C fairly, by accepting the Store First and GAS Verdant investments into his SIPP.

I make this point here to emphasise that while I've concluded *both* that Options shouldn't have accepted Mr C's business from the introducers *and* also that it shouldn't have accepted his applications to invest in Store First and GAS Verdant, 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 C fairly by accepting his business from CL&P or 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 C fairly, by accepting the Store First and GAS Verdant investments 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 C 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 C 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 CL&P and Douglas Baillie Ltd, and about the Store First and GAS Verdant investments.

Options knew Mr C 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 CL&P and Douglas Baillie Ltd and allowing the Store First and GAS Verdant investments 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 C's business from CL&P (and to decline to proceed with his application and investment instructions when Douglas Baillie Ltd became involved) and to refuse to accept the Store First and GAS Verdant investments in his SIPP.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr C 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 C's Options SIPP shouldn't have been established and his SIPP monies shouldn't have been invested in the Store First and GAS Verdant holdings. And that the opportunity for Options to execute investment instructions to invest Mr C's monies in Store First and GAS Verdant or to proceed in reliance on an indemnity and/or risk disclaimers shouldn't have arisen at all.

I'm of the view that it wasn't fair and reasonable in all the circumstances for Options to accept Mr C's business from CL&P (or from Douglas Baillie Ltd) or for it to accept his applications to invest in Store First and GAS Verdant.

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

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

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

Mr C pursued an FSCS claim against Douglas Baillie Ltd. The FSCS upheld Mr C's claim, calculated his losses to be in excess of £80,000 and paid him its limit of £50,000 compensation. Following this, the FSCS provided Mr C 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 and good industry practice, and to treat Mr C fairly.

The starting point, therefore, is that it would be fair to require Options to pay Mr C 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 C for his loss.

I accept that other parties, including CL&P and Douglas Baillie Ltd, might have some responsibility for initiating the course of action that led to Mr C'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 C 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 C 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 C.

Mr C taking responsibility for his own investment decisions

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 C'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 C's business from CL&P and Douglas Baillie Ltd or accepted his applications to invest in Store First and GAS Verdant 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 C 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 CL&P and Douglas Baillie Ltd and on the Store First and GAS Verdant investments and reach the right conclusions. I think it failed to do this. And just having Mr C sign forms containing declarations and indemnities wasn't an effective way of Options meeting its obligations, or of escaping liability where it failed to meet its obligations.

I've carefully considered what Options has said about clients being aware of the risks – that they signed documents confirming the investments were high risk, and that in some cases, such as Mr C's, the client was 'insistent' on the transfer. And that the client chose to accept a cash incentive and not disclose it to Options, thereby contributing to the loss they suffered. 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 C understood the Store First and GAS Verdant investments were high risk. But, in any eventuality, this is a secondary point 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 C 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 C for the loss he's suffered. I don't think it would be fair to say in the circumstances that Mr C should suffer the loss because he ultimately instructed the transactions to be executed.

Had Options declined Mr C's business from Douglas Baillie Ltd, would the transactions complained about still have been effected elsewhere?

Options has argued in similar cases that it did not cause the client's loss because it is very likely that they were extremely keen to proceed with the investment to release funds and would have found a way to invest even if Options had not been dealing with CL&P and Douglas Baillie Ltd or if it had not been accepting Store First and GAS Verdant investments. It says that if it had refused to process applications like Mr C's for any reason, the client would've likely made the same investments via a different SIPP provider. So, would have suffered the same loss.

However, Options has provided no evidence to support an argument that Mr C wanted to open a SIPP and invest his SIPP monies in Store First and GAS Verdant no matter what.

I've thought carefully about what Mr C would likely have done if Options had told him it was rejecting his business.

From what Mr C has said, I think that his pension monies were transferred to Options principally in order to make the Store First and GAS Verdant investments. That's supported by the advice letter Douglas Baillie Ltd prepared for Mr C and provided to Options. That letter contained the following wording:

> *"It has been confirmed to me that you wish to transfer your benefits into* [the Options 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."*

It doesn't appear that Mr C has accessed any benefits from his pension or made any contributions to it. This is supported by the FSCS calculation summary. 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 or GAS Verdant, 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 C 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 C's business from CL&P and Douglas Baillie Ltd or permitted the Store First and GAS Verdant investments into its SIPPs.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if Options had refused to accept Mr C's application from CL&P and/or hadn't proceeded with the re-introduction of his application from Douglas Baillie Ltd and/or hadn't permitted the Store First and GAS Verdant investments in its SIPPs, the transactions wouldn't still have gone ahead, and Mr C would have retained his monies in his DB scheme.

And had Options explained to Mr C why it refused to accept his application from CL&P and/or Douglas Baillie Ltd and/or hadn't permitted the Store First and GAS Verdant investments in its SIPPs, I think it very unlikely Mr C 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."*

Options says clients understood the investments were high risk. But Mr C has explained he understood the investments carried little risk and would provide him with a much better pension than he already had. He feels the investments were mis-sold with the associated risks not clearly explained to him by CL&P or Douglas Baillie Ltd.

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 Declarations 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 C likely received at the start regarding the Store First and GAS Verdant investments presented the investments, in detail, as providing high returns with little to no risk. I'm also mindful that the Member Declarations were not given to Mr C until September 2012, a long while after he'd been 'sold' the investments by CL&P in or around December 2011.

Overall, I don't agree the contents of the forms support the contention that Mr C understood the investments were high risk. I'm not persuaded that Mr C, an individual with no investment experience, who was not particularly interested in moving his pension from his former employer unless doing so would improve his pension provision, proceeded to invest a defined benefit pension, in the knowledge that the investments he was making were high risk.

I'm also not persuaded that Mr C was determined to move forward with the transaction in order to take advantage of a cash incentive. Whilst Mr C has explained that he received £4,000 as part of the arrangement, I've not seen any evidence to suggest Mr C had an overriding need for the cash which would have outweighed other considerations – such as the tax implications or the potential impact on his pension of taking this sum. On balance, I'm satisfied that Mr C wasn't so eager to complete the transaction for the cash incentive that he'd have gone ahead if Options had declined the application.

Having carefully considered all the circumstances, I'm satisfied it's fair and reasonable to conclude that if Options had refused to accept Mr C's application from CL&P and Douglas Baillie Ltd and/or to permit Store First and GAS Verdant investments in its SIPPs, the transactions this complaint concerns wouldn't still have gone ahead.

In conclusion

In another, similar, complaint, Options has said it shouldn't be upheld because the FCA visited Options and approved its due diligence procedures in September 2011, shortly before Options accepted Mr C's SIPP application. However, Options hasn't provided 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 C 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 CL&P and Douglas Baillie Ltd and/or to accept the Store First and GAS Verdant investments to be held in its SIPPs *before* it had received Mr C's application from CL&P. I conclude that if Options hadn't accepted Mr C's introduction from CL&P (or proceeded with it once Douglas Baillie Ltd became involved) and/or the Store First and GAS Verdant investments to be held in its SIPPs, Mr C wouldn't have established an Options SIPP, transferred his DB Scheme monies into it or invested in Store First and GAS Verdant.

For the reasons I've set out, I also think it's fair and reasonable to direct Options to compensate Mr C for the loss he's suffered as a result of Options accepting his business from CL&P and Douglas Baillie Ltd and permitting him to invest his SIPP monies in Store First and GAS Verdant. 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 C 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 C'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 C's applications when it had opportunities to do so. And I'm satisfied that Mr C wouldn't have established the Options SIPP, transferred monies in from his DB scheme, or invested in Store First and GAS Verdant 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 C for the full measure of his loss.

I've seen nothing to suggest Mr C has previously sold any of his Store First or GAS Verdant holdings. But whether or not Mr C has previously managed to sell any of his Store First or GAS Verdant holdings doesn't alter my opinion that, but for Options' failings, Mr C's pension monies wouldn't have been transferred to Options and invested in Store First and GAS Verdant. Further, and from a redress perspective, I'm satisfied that Options will need to check whether there are still any investments held in Mr C'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 C 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 C's business from CL&P and then from Douglas Baillie Ltd, and before permitting Mr C to invest his Options monies in Store First and GAS Verdant.

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

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

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

Take ownership of the Store First and GAS Verdant investments if possible

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

If Options is unable to purchase the Store First and GAS Verdant investments, the actual value of any Store First and GAS Verdant investments 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 C's SIPP.

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

In the event the Store First investment remains in the SIPP, as Options is unable to purchase it and Mr C decides not to transfer it to the freeholder, Mr C should be aware that he will be liable for all future costs associated with this 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 investments remain in Mr C's SIPP or otherwise with Mr C with no adjustment in the redress, this would give Mr C an unfair windfall. Though I think it's unlikely, it is possible that the Store First and GAS Verdant investments may have some realisable value in the future. So, in this instance, for any investments assumed to be nil value Options may ask Mr C to provide an undertaking to account to it for a sum equivalent to the net amount of any payment the SIPP may receive from those investment(s) in the future. That undertaking should allow for the effect of any tax and charges on the amount Mr C may receive from the investment(s) and any eventual sums he would be able to access. Options should meet any costs in drawing up the undertaking. Options should only benefit from the undertaking once Mr C has been fully compensated for his loss (to be clear, this includes any loss that's in excess of our award limit).

Calculate and pay compensation for the loss Mr C'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 C, as far as possible, into the position he'd now be in if it hadn't accepted his application from CL&P or Douglas Baillie Ltd. As explained above, had this occurred I consider it's more likely than not Mr C would have remained in his DB Scheme.

Options says the correct basis for calculating redress in similar cases is as set out in the Court of Appeal judgment in Adams. But ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer. And I see no reason to depart from this in the circumstances of this complaint.

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

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 C's acceptance of the decision.

Account should also be taken of the £4,000 payment paid out to Mr C. 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 C redress as a cash lump sum payment,
- explain to Mr C 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 C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts Options' offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr C 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 C's end of year tax position.

I acknowledge that Mr C 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 C'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 C received from the FSCS. And it will be for Mr C 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 C 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 C 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 C 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 C received from the FSCS.

Redress paid to Mr C 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 C would otherwise pay on income from his pension. It's reasonable to assume that Mr C is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%. However, if Mr C 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%.

Fees and charges paid outside the SIPP

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

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

Pay Mr C £500 for the distress he's suffered

In addition to the financial loss that Mr C 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 C distress. So I think that it's fair for Options to compensate him for this as well.

Award limit

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.

Until the calculations are carried out, I don't know how much the compensation will be, and it may be nowhere near the award limit, but £160,000 is the maximum sum that I'm able to award in Mr C's complaint. So, I'll also make a recommendation below in the event that the compensation is to exceed this sum, although I can't require that Options pays this.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. 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 pays Mr C 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 C could accept a decision and go to court to ask for the balance. Mr C may want to get independent legal advice before deciding whether to accept this, my final decision.

My final decision

For the reasons given, my decision is that I uphold this complaint. To put things right I require that Options UK Personal Pensions LLP must calculate and pay Mr C the award set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 July 2024.

Beth Wilcox
Ombudsman