DRN-4872166

The complaint

Mr M complains that Carey Pensions UK LLP ('Carey' - now called Options UK Personal Pensions LLP, but I'll mostly refer to Carey throughout for ease) failed to carry out sufficient due diligence on the investments made within his Self-Invested Personal Pension ('SIPP').

What happened

Mr M says he received a cold-call in 2012 from an adviser who worked for 'Firm S' to talk about his pensions. Mr M says he was told that if he transferred out of his existing pensions into a Carey SIPP and invested in Global Forestry, he'd receive substantially higher returns. Mr M says he was told his money would be safe and secure, he would receive higher returns and there would be no risks attached. He was also promised £2,000 as an incentive to transfer. He thought the adviser seemed professional and trusted him so he went ahead with it. He wasn't given any details about what the investment involved. Mr M says that after the telephone call, he was sent paperwork in the post to complete.

Firm S is based in Gibraltar. It is regulated by the Gibraltar Financial Services Commission and has also had passported permissions with the FCA since 8 January 2009. Firm S is primarily an asset management company, providing management services and investment advice.

Global Forestry was an investment in a leasehold plot of a Teak tree plantation in Brazil run by GFI Consultants Ltd ('GFI'). The investment aim was for a positive return generated through the development of Teak trees. Mr M's specific investment was the 'Belem Sky Plantation Project'.

An application form for a Carey SIPP was sent to Carey in May 2012. Mr M gave the details of two personal pensions held with the same provider to be transferred to the SIPP – the form asked Mr M whether he'd taken financial advice in respect of the transfer of these policies (and if so, from whom) but the fields were left blank. In the 'Investments' section, boxes were ticked to say that Mr M was appointing his financial adviser as his investment manager and that it would provide the investment instructions. Firm S's details and its FSA authorisation number were set out in the Financial Adviser Details section. A box was ticked waiving Mr M's right to cancel the SIPP within 30 days of it being established.

The declaration Mr M signed on 13 May 2012 confirmed, amongst other things, that:

- He wanted Carey to appoint the Investment Manager detailed in the application form.
- He agreed to indemnify Carey Pensions UK LLP 'The Administrator' and Carey Pension Trustees UK Ltd against any claim in respect of any decision made by himself/or his financial adviser/Investment Manager or any other professional adviser he chose to appoint from time to time;
- He understood that Carey Pensions UK LLP and Carey Pension Trustees UK Ltd were not in any way able to provide him with any advice;
- He was establishing the Carey Pension Scheme on an execution only basis.

On 25 May 2012 Carey wrote to Mr M confirming his SIPP had been established and provided him with the SIPP terms and conditions, key features and fee schedule.

On 11 June 2012, around £32,800 was received into Mr M's SIPP from his existing pension plans.

Mr M signed a Global Forestry SIPP investment agreement and a SIPP rental agreement, both dated 17 August 2012, which were sent on to GFI.

Mr M signed a SIPP Member Instruction and Investment 'Alternative Investment - Global Forestry' form on 27 August 2012. Mr M declared, amongst other things, that:

- He instructed Carey to purchase a leasehold plot of land through Global Forestry Investments for a consideration of £30,000.
- Carey hadn't provided any advice in respect of the SIPP or investment.
- He didn't consider any of the information provided to him by Carey to be advice or a recommendation.
- He was fully aware the investment was an unregulated 'Alternative Investment' and as such was high risk, speculative and that it could prove difficult to value or sell.
- He understood the value of investments could fall as well as rise and that his entire investment could be lost.
- He had reviewed and understood the information and documentation provided by Global Forestry investments, including but not limited to the Brochures, Application Forms, etc.
- He'd read and discussed the adviser notification letter with his financial adviser and wanted to proceed.
- He had taken his own advice, including but not limited to financial, investment and tax advice regarding the investment.
- He didn't hold Carey responsible for any exchange rate fluctuations that might adversely affect the value of the investment.
- Should the investment be subject to a tax charge within the scheme this would be paid directly from his fund or by him.
- He agreed to retain five years' worth of fees in the SIPP bank account.
- Neither he, nor any person connected to him, had or would receive any form of inducement, monetary or otherwise, by transacting the investment.
- He indemnified Carey against any and all liability arising from or in connection with the investment.

Carey invested Mr M's funds in Global Forestry on 5 September 2012, comprising an investment of £30,000 and a fee of £750.

On 21 September 2012 Mr M received a payment of £2,600 in return for making the investment.

On 21 November 2012 Carey confirmed the investment had completed and provided him with copies of the investment and SIPP rental agreements as well as the Certificate of Declaration of Trust.

On 14 August 2013, Carey wrote to Mr M about the income payment from the investment being delayed. In November 2013 Carey informed Mr M that it had been told the income payments due from the Global Forestry investment for 2013 and 2014 would be paid into his pension in January 2014 with a 2% bonus.

Carey wrote to Mr M on 14 April 2014 to tell him that the income he was expecting from the Global Forestry investment in 2013 and 2014 had not been paid. Carey wrote to Mr M again on 9 May 2014 saying this still hadn't been received but it would continue to chase it.

In 2014, Global Forestry investment went into administration. And, in 2015, the Serious Fraud Office ('SFO') announced it had opened an investigation into it. In 2019, the SFO said that former directors of GFI had been charged with offences relating to alleged fraud concerning Global Forestry between August 2010 to December 2015. But that it couldn't provide any further comment while the investigation continued. And, in 2022, the Directors were found guilty of conspiracy to defraud and misconduct in the course of winding up. The SFO noted an intricate web of money transfers, forged documents and investment identities used to scam pensioners and savers out of their money under the false pretence of environmental protection.

On 27 May 2015 Carey provided Mr M with his annual SIPP statement, which showed his Global Forestry investment had been valued at nil. In the covering letter it stated:

"Your holding in Global Forestry Investments has been valued at nil on your Annual Valuation as we have not received the income due for 2013 and 2014 and we have been unable to contact the company to verify the position of your holding. We will continue to monitor the situation and will keep you informed of any updates we receive."

Mr M's May 2016 annual SIPP statement showed the investment was still valued at nil. In the covering letter, Carey said:

"Please be aware that unfortunately we have valued your holding in Global Forestry Investments at nil for the purposes of your Annual Valuation. This is because the investment is currently in liquidation. The liquidator is in the process of verifying whether there are any assets that can be sold in order to be able to make a distribution to you as a creditor. The liquidator is required to provide an annual report to all creditors. The next report is due in May 2016 and we are not expecting to receive any further communication from them until then. We are unable to confirm how long the liquidation will take however, we will provide you with all information that is provided to us by the liquidator."

Mr M contacted a claims management company and in November 2020 it made a complaint to Options on Mr M's behalf. The representative said Carey had failed to carry out adequate due diligence on Firm S. It said Firm S hadn't carried out any assessment of Mr M's attitude to risk and had recommended he make an unsuitable investment, leading to the loss of his pension.

As Mr M's representative didn't receive a response it referred the complaint to the Financial Ombudsman Service.

In August 2022, Options issued a final response letter and provided its file. It said, in summary, that:

- It received a SIPP application form and instruction from Mr M to invest the proceeds of two personal pensions in Global Forestry.
- Mr M was informed in May 2015 that his investment in Global Forestry had been valued at nil. This was reiterated in the May 2016 valuation.
- Mr M was put on notice for raising a concern since being told his investment was valued at nil. Options didn't receive his complaint until January 2022, so he was therefore aware of the loss to his pension more than three years before he complained.

- As such, Options considered Mr M's complaint was time-barred under the FCA's Dispute Resolution ('DISP') rules and it didn't consent to the Financial Ombudsman Service considering the complaint.
- As it considered the complaint was time-barred it hadn't made any comments on the merits of it.

Our Investigator said Mr M's complaint had been made in time. She thought Mr M was likely aware of the problems with his pension in 2015, but he had no reason to believe that this was because Carey had failed in its responsibilities as his pension provider. The Investigator went on to uphold Mr M's complaint on the grounds that Carey didn't carry out sufficient due diligence checks on the investment in Global Forestry, in line with the Principles and industry guidance. Had it done so, the Investigator thought Carey would've identified a number of red flags in respect of the investment that posed a significant risk of consumer detriment. And it ought to have refused to permit the investment to be held in the SIPP. She said that having Mr M sign indemnity declarations wasn't effective for Carey to meet its obligations. It should have refused Mr M's business instead. And if it had done this and shared its concerns with Mr M then it's unlikely the investment would have gone ahead.

The Investigator also thought Carey didn't carry out sufficient due diligence on Firm S, which she noted didn't have permission to advise on pension transfers. She thought this was another reason why Carey ought to have refused to accept Mr M's SIPP business. The Investigator said Options should put this right by compensating Mr M for his loss based on him having remained in his existing pension plans. She also said that Options should pay Mr M £500 compensation for the distress and inconvenience the matter has caused him.

Mr M accepted the Investigator's opinion, but Options didn't agree. It said, amongst other things, that:

- Mr M's complaint was time-barred. Options didn't receive the complaint letter of 24 November 2020 until it was sent to it by the Financial Ombudsman Service in January 2022.
- Mr M had been aware of the loss to his pension since at least May 2014, when it had told him the income due from the investment hadn't been paid and it had recommended he seek legal advice.
- Mr M's complaint letter was received more than three years after he was aware of his cause for complaint. The DISP rules are silent as to any requirement for the complainant to know who is responsible for their cause to complaint – the Investigator had created requirements that don't exist in DISP.
- Our Service has failed to take account of relevant law and regulations, as required by DISP or to set out whether and (if so) the basis upon which it is appropriate to depart from the relevant law. The duties suggested would not be recognised in a court and legal liability would not be established.
- Only the SIPP guidance published prior to receiving Mr M's SIPP application and subsequent investment instructions is relevant. Otherwise our Service would be considering Mr M's complaint with the benefit of hindsight, which no reasonable court would do. The later guidance introduced new expectations and reflected more than what the industry was already doing.
- Reference to the Reviews contravene the decisions in *Adams v Options SIPP* [2020] EWHC 1229 (Ch) and *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474 on the basis these:
  - have no bearing on the construction of the Principles as the contents of the documents cannot found a claim for compensation in themselves;
  - cannot alter the meaning of, or the scope of the obligations imposed by, the Principles;

- do not provide "*guidance*" and even if they were considered statutory guidance made under Financial Services and Markets Act ('FSMA') s.139A, any breach would not give rise to a claim for damages under FSMA s.138D.

- The FCA's Enforcement Guide says that "*Guidance is not binding on those to whom the FCA's rules apply. Nor are the variety of materials (such as case studies showing good or bad practice, FCA speeches and generic letters written by the FCA to Chief Executives in particular sectors) published to support the rules and guidance in the Handbook. Rather, such materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant rules.*"
- Carey had a very limited legal obligation to undertake due diligence in respect of the investments. The judge in *Adams* refused to recognise a due diligence duty, instead concluding that obligations are framed by reference to the context of the contractual relationship.
- Our Service is imposing an obligation on it to undertake a qualitative assessment of the investments and to pass this on, effectively amounting to a recommendation to Mr M not to proceed, which overreaches its legal obligations and goes further than published regulatory material.
- It was made clear to Mr M in the application that the investment was "high risk and speculative".
- The fact an investment is speculative doesn't preclude it from being held within a SIPP. The extent to which an investment may be speculative might impact on the suitability for the investor. But Options wasn't permitted to advise, or even comment, on that.
- Expecting Carey to refuse the business and share with Mr M why would have required it to provide advice to Mr M.
- Carey would not have been able to identify that Global Forestry was a scam based on the evidence available to it at the time.
- The details the Investigator provided from the Global Forestry investment brochure were from the key facts document, which Carey hadn't seen at the time of the investment. Instead it reviewed the full brochure which clearly explains the basis of the investment returns.
- There is no prohibition on the acceptance of high-risk investments into a SIPP – the very purpose of a SIPP is to provide greater investment control and flexibility, which is often deliberately exercised by members in order to gain access to higher-risk investments.
- Firm S didn't give Mr M pension transfer advice – he switched personal pensions to the SIPP so this was not a pension transfer (which is the terminology used to describe transferring out of a defined-benefit occupational pension scheme).
- Firm S had the appropriate permissions to advise on personal pensions but there isn't sufficient evidence to demonstrate that it gave Mr M advice in any event.
- It didn't cause Mr M's loss. It's likely he was extremely keen to proceed with the investment and would've found a way to invest regardless.
- Our Service has effectively said that no SIPP provider complying with its obligations could properly have accepted the investments, even if the customer had been sophisticated and fully informed, despite the investment presenting as legitimate. But that isn't logical and isn't supported by the evidence. Mr M could have asked it or another SIPP provider to proceed in any case.
- Carey's contract with Mr M relieves it of liability. To conclude otherwise would render it void and unenforceable.
- It isn't fair or reasonable for it to have to bear the loss where the investment simply didn't perform as hoped or expected or when it transpired to be a scam in circumstances it couldn't have predicted or reasonably foreseen.
- It would be manifestly unfair to hold Options responsible for the loss given Mr M accepted the risks of making the investment. Mr M must bear some responsibility for

his decision to invest.

- A fair and reasonable comparator for redress would be the lower discount rates, as per used in a previous final decision (DRN 2670669). Our Service uses a low discount rate for calculating redress for some complaints and using a higher index for others. This prejudices it when it's being asked to use the higher index.
- Mr M should assist Options to take ownership of the investment. But in the event that Options cannot take ownership of the investment, the compensation should be recalculated to reflect this using a presumptive value (as in *Adams*).
- Our Service recommended £500 compensation for distress and inconvenience but provided no evidence to support that Mr M has suffered any degree of upset – it said it should be provided with any evidence to that effect to allow it to comment on that.
- The execution only SIPP market provides autonomy, and if it is to be held liable for poor investment choices this will severely impact the market, depriving customers of the low-cost route.
- There is real unfairness if an execution-only SIPP provider is liable for poor investment choices of consumers or investments that turn out to be scams given its business is structured on the basis that it isn't investigating the quality of the investment and its fees and charges are based on that approach.
- It requests an oral hearing to properly determine whether the complaint is time-barred, to establish Mr M's understanding of and approach to the investment, as well as his motivation for entering the transaction.

Additional background information

I'm aware that in submissions on other cases with our Service involving SIPP due diligence Options has also said, amongst other things, that:

- Carey 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. It did not advise, nor purport to advise the customer.
- As an execution only business, Carey would have been in breach of the Conduct of Business Sourcebook ('COBS') 11.2.19 had it not followed the signed instructions given to it. COBS 11.2.19R, which deals with execution only business and was in force at the relevant time, stated as follows:

  "*Whenever there is a specific instruction from the client, the firm must execute the order following the specific instruction.*

  A firm satisfies its obligation under this section to take all reasonable steps to obtain the best possible result for a client to the extent that it executes an order, or a specific aspect of an order, following specific instructions from the client relating to the order or the specific aspect of the order."

- Carey did not suggest or recommend the investments. It is not responsible for the performance or current market value of these. The mere underperformance of an investment does not create a wrong or liability.
- Our Service is holding it to a standard which is unclear and is on any view much more demanding than is fair or reasonable.
- We haven't set out where we have departed from the law, and why we have taken that approach.
- Our Service has failed to apply the settled legal principles of causation and contributory negligence in circumstances where it is clear that a customer was determined to proceed with the investment regardless of whether or not Carey

accepted the applications.

- Our Service is seeking to impose on Carey a duty of due diligence, in particular a duty to decide whether to accept or reject particular investments and/or referrals of business. However, our construction of the Principles is flawed, it is neither fair nor reasonable to determine the complaint by reference to the regulatory publications mentioned, and Carey was not under the duty of due diligence that we seek to impose.
- As made clear in *Adams*, reports, guidance and correspondence issued after the events at issue cannot be applied to Carey's conduct at the time. In any event, the regulatory publications of the type referred to cannot found a claim for compensation in themselves and do not assist in construction of the Principles.
- It would be neither fair nor reasonable for me to determine the complaint by reference to the FCA publications and to do so would only exacerbate the problem referred to in *R (on the application of Aviva Life and Pensions (UK) Ltd) v Financial Ombudsman Service* [2017].
- Contrary to COBS, the Financial Ombudsman Service seeks to impose on Carey a duty of due diligence that it does not in fact owe. It seeks, in effect, to override COBS' careful allocation of duties between different types of firms conducting different types of business, and to impose duties on Carey in addition to those provided for under COBS, by means of a generalised appeal to the Principles.
- If under the Principles Carey really had the obligations of due diligence we have set out, and had acted in accordance with them, it would have been required to engage in the activity of advising on investments, and so place itself in contravention of its regulatory permissions. Hence the importance of the contractual documentation governing the arrangements between the parties considered below.
- The relationships are the same as in *Adams* which held that:

    - To identify the extent of the regulatory duties imposed on Carey, "*one has to identify the relevant factual context*" and that "*the key fact… in the context is the agreement into which the parties entered, which defined their roles in the transaction*"
    - "*there is a very plain inconsistency between the contract which was entered into between it and the claimant and the duties* [under COBS 2.1.1R] *which the claimant now suggests that the defendant owed to him*";
    - "*there was*… [no] *duty on* [Carey]… *to consider the suitability of appropriateness of a SIPP or the underlying investment. The contract between* [the parties] *makes that clear*"; and
    - "*a duty to act honestly, fairly and professionally in the best interests of the client, who is to take responsibility for his own decisions, cannot be construed… as meaning that the terms of the contract should be overlooked, that the client is not to be treated as able to reach and take responsibility for his own decisions and that his instructions are not to be followed*".

- The Financial Ombudsman Service has ignored, or placed insufficient weight on, the fundamental fact of the parties' contractual arrangements, and on the clear demarcation of roles and responsibilities thereunder, and consequently to have constructed due diligence obligations for Carey to which it was not in fact subject.
- Our Service only acknowledges our divergence from *Adams* in passing, and the brief justifications for it are misconceived.
- The judge's conclusion in *Adams* is avoided through the finding that, regardless of the relevant contractual arrangements, Carey should have concluded that the investment was inappropriate and refused to accept the application. Again, however, this is to misapprehend the relationship between the Principles and Carey's contractual arrangements. The latter, as set out in *Adams*, reflect the legal basis

upon which Carey – like other similar firms – conducted its business: the concept of execution-only services is well known in the financial services context, as is reflected in the case law, one of the reasons clients seek the services of execution-only SIPP providers being that they do not wish to pay the higher charges of advisory pension providers. To seek to use the Principles, notwithstanding this factual context, to impose on Carey the duties of due diligence set out in the decision, is both artificial and illegitimate.

- Carey's duties extended no further than those owed to the claimant in *Adams* and, accordingly, it is neither reasonable nor fair for Carey to pay compensation.
- In *Adams* the judge held that, in construing Carey's regulatory obligations, regard should be had to the consumer protection objective in FSMA s.5(2)(d) that the general principle that consumers should take responsibility for their decisions. And that those decisions, as between the claimant and the defendant, are set out in the documents which comprise the contract between them.
- The FCA did not disagree with this approach. The Principles reflect the statutory objective. And those statutory objectives include the consumer protection objective: see *Kerrigan v Elevate Credit International Limited*.
- Our Service has failed to have regard to FSMA s.5(2)(d), and to the authority of *Adams* and *Kerrigan* in this respect.

As no agreement could be reached. The case was passed to me for a decision.

I issued a provisional decision on 10 June 2024. I said I thought Mr M's complaint had been made in time and upheld it on the grounds that Carey had failed to carry out adequate due diligence on the Global Forestry investment. I thought if Carey had done so, it should've refused to permit the investment to be held in the SIPP. And it was fair and reasonable to conclude that if Carey had refused to permit the Global Forestry investment in its SIPPs then Mr M would've retained his existing pensions and wouldn't have switched them to a SIPP or subsequently made the investment that he did. So I recommended that Options should put Mr M back in the position he would have been in if he hadn't transferred his pensions to the Carey SIPP. I also recommended that it pay him £500 for the distress and inconvenience caused by the loss of his pension.

Mr M accepted my provisional decision. Options didn't respond to my provisional decision by the deadline I gave. So, I'm now proceeding with my final decision.

What I've decided – and why

<u>Preliminary point – Options' request for an oral hearing</u>

Although Options hasn't responded to my provisional decision, I've reconsidered its request for a hearing. Options has said an oral hearing is necessary to properly determine whether the complaint is time-barred and to explore, for example, Mr M's understanding, motivations for entering the transactions and the roles played by the parties.

The Financial Ombudsman Service provides a scheme under which certain disputes may be resolved quickly and with minimum formality (s.225 of FSMA). The FCA's Dispute Resolution: Complaints Sourcebook (DISP) 3.5.5R provides the following:

"If the Ombudsman considers that the complaint can be fairly determined without convening a hearing, he will determine the complaint. If not, he will invite the parties to take part in a hearing. A hearing may be held by any means which the Ombudsman considers appropriate in the circumstances, including by telephone. No hearing will be held after the Ombudsman has determined the complaint."

Given my statutory duty under FSMA to resolve complaints quickly and with minimum formality, I'm satisfied that it wouldn't normally be necessary for me to hold a hearing in most cases (see the Court of Appeal's decision *in R (Heather Moor & Edgecomb Ltd) v Financial Ombudsman Service* [2008] EWCA Civ 642).

So, the key question for me to consider when deciding whether a hearing should be held is whether or not: "…*the complaint can be fairly determined without convening a hearing*". We do not operate in the same way as the Courts. Unlike a Court, we have the power to carry out our own investigation. And the rules (DISP 3.5.8R) mean I, as the Ombudsman determining this complaint, am able to decide the issues on which evidence is required and how that evidence should be presented. I am not restricted to oral cross-examination to further explore or test points.

If I decide particular information is required to decide a complaint fairly, in most circumstances we are able to request this information from either party to the complaint, or even from a third party. Furthermore, in this case, Carey has had the opportunity to consider and comment on our Investigator's view and has had the chance to respond to my provisional decision.

I have considered the submissions Options has made. However, I am satisfied that I am able to determine whether the complaint is within our jurisdiction without convening a hearing. I'm also satisfied I am able to fairly make a decision on the merits of this complaint without convening a hearing. In this case, I am satisfied I have sufficient information to make a fair and reasonable decision. So, I do not consider a hearing – or any further investigation by other means – is required. The key question is whether Carey should have accepted Mr M's application at all. Mr M's understanding of matters are secondary to this.

In any event – and I make this point only for completeness – even if I were to invite the parties to participate in a hearing, that would not be an opportunity for Options to cross-examine Mr M as a witness. Our hearings do not follow the same format as a Court. We are inquisitorial in nature and not adversarial. The purpose of any hearing would be solely for the Ombudsman to obtain further information from the parties that they require in order to fairly determine the complaint. The parties would not usually be allowed direct questioning or cross-examination of the other party to the complaint.

As I am satisfied it is not necessary for me to hold an oral hearing, I will now turn to Mr M's complaint.

<u>Jurisdiction</u>

Although Options hasn't responded to my provisional decision, I've reconsidered all the available evidence and arguments to decide whether we can consider Mr M's complaint.

The rules I must follow in determining whether we can consider this complaint are set out in the DISP rules, published as part of the FCA's Handbook.

DISP 2.8.2R says that, unless Options consents, we can't look into this complaint if it's been brought:

- more than six years after the event complained of;
- or, if later, more than three years after Mr M was aware – or ought reasonably to have become aware – he had cause for complaint;
    - unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; or

- unless, in the view of the Ombudsman, the failure to comply with the time limits was as a result of exceptional circumstances.

Mr M's representatives say they referred this complaint to Options in 2020 as per the letter of complaint dated 24 November 2020. However, I haven't seen any evidence to persuade me that this complaint letter was received by Options at the time. Mr M's representative hasn't provided us with evidence of any acknowledgment it received from Options in response to this letter or anything else showing this letter had been received. So, it seems to me that the first time the complaint was referred was on 11 October 2021, when Mr M's representative sent the Financial Ombudsman Service Mr M's complaint form and a copy of the November 2020 complaint letter.

The complaint was that Carey shouldn't have accepted Mr M's SIPP and investment application from Firm S because it hadn't carried out any due diligence checks on this business and neither the SIPP nor the investment in Global Forestry was suitable for Mr M. Carey accepted the SIPP application in May 2012, which was more than six years before Mr M referred his complaint to the Financial Ombudsman Service on 11 October 2021. So, I have to consider when Mr M ought reasonably to have been aware of his cause for complaint. And having established that date, whether Mr M complained to Options within three years of it.

This means if Mr M ought reasonably to have been aware of his cause for complaint before 11 October 2018, he made his complaint to Options too late under the Regulator's rules. And when I say here cause for complaint, I mean cause to make this complaint about this respondent firm, Options, not just knowledge of cause to complain about anyone at all. This appears to be contrary to Options' understanding of the matter so I'll explain this further below.

In thinking about when Mr M was aware, or ought reasonably to have been aware, that he had cause for complaint, I've considered how 'cause for complaint' should be interpreted in the context of the FCA Handbook.

The Handbook includes the following rule (GEN 2.2.1R):

"Every provision in the Handbook must be interpreted in the light of its purpose."

And guidance in the same section says the purpose of any provision in the Handbook is to be gathered first and foremost from the text of the provision in question and its context amongst other relevant provisions (GEN 2.2.2(G)).

The Handbook also says (GEN 2.2.7(R)):

"In the Handbook …

1) *an expression in italics which is defined in the Glossary has the meaning given there; and*
2) *an expression in italics which relates to an expression defined in the Glossary must be interpreted accordingly.*'

The term 'cause for complaint' is not defined in the FCA's glossary. But where DISP says the Ombudsman cannot consider a complaint if it is out of time, the word 'complaint' is in italics. So it is a defined term in the FCA Glossary and must be treated accordingly.

And where the Handbook says it sets out how complaints are to be dealt with by respondents, 'complaint' is again in italics. So again it is a defined term.

So although the term 'cause for complaint' isn't in italics in the FCA Handbook, it appears as part of the rule that sets out what 'complaints' (in italics) the Ombudsman cannot consider. And it's reasonable to infer in light of the above rules and guidance on interpreting the Handbook that the Handbook's definition of the word 'complaint' was intended to apply to that phrase.

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

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

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

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

So the Glossary definition of 'complaint' requires that the act or omission complained of must relate to an activity of '**that** respondent' or firm (my emphasis).

Accordingly the material points required for Mr M to have awareness of a cause for complaint include:

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

It's therefore my view that it's necessary for Mr M to have had an awareness (within the meaning of the rule) that related to Options, not just awareness of a problem that had caused a loss. Knowledge of a loss alone is not enough. It can't be assumed that upon obtaining knowledge of a loss a consumer had knowledge of its cause. And I don't accept that the three year time limit necessarily means knowledge of a loss means the consumer has three years to make enquiries to discover all parties who might be responsible, failing which they run out of time to make a complaint.

There are a number of points that I think are relevant to this discussion:

- The Regulator published reports on the results of two thematic reviews on SIPP operators in 2009 and 2012, issued guidance for SIPP operators in 2013 and wrote to the CEOs of SIPP operators in 2014. A common theme of those communications is that the Regulator considered that SIPP operators had obligations in relation to their customers even where they don't give advice, and that many SIPP operators had a poor understanding of those obligations.

- Mr M transferred just under £32,800 into his SIPP in June 2012 and £30,000 was invested into Global Forestry in September 2012.

- Mr M thought he was making an investment which would generate high returns without risk.

- Carey wrote to Mr M on 14 April 2014 and 9 May 2014 to tell him that the income he was expecting from the Global Forestry investment in 2013 and 2014 had not been paid.

- In May 2015 Mr M received his annual valuation showing the investment value had been reduced to nil.

- In May 2016 Carey sent Mr M his annual valuation which still showed the investment was valued at nil. The covering letter said the investment was in liquidation and the liquidator was in the process of verifying whether there were any assets that could be sold in order to be able to make a distribution to him as a creditor. It said the liquidator was required to provide an annual report to all creditors and the next one was due in 2016.

- I'm satisfied that the contents of some of the correspondence I've referred to above evidence that Mr M was aware, or ought reasonably to have become aware, more than three years before he complained to us, that there was a problem with his pension that had caused him some loss or damage. Mr M says he had been told by the introducer that the investment was without risk and would generate high returns. He says he knew there was a problem with the investment once he saw the value of it had been reduced to nil – he was first notified of this in May 2015. But I'm not satisfied that Mr M would have, or ought to have, been aware that Carey had any responsibility for the position he was in at this time.

- There's nothing I've seen that was sent to Mr M more than three years before his complaint was referred to the Financial Ombudsman Service that would have caused Mr M, or a reasonable retail investor in his position, to link Options to the problem he'd experienced with the pension investment. I think it's worth highlighting that Mr M wasn't advised by Carey about setting up the SIPP or the suitability of investments. And I think the obvious first thought when problems arose would have been that the introducer that recommended the investment to him, Firm S, might have misled him or that the people who ran the Global Forestry investment might have caused the issue.

- I'm not aware of anything Carey said or did at the outset of its relationship with Mr M that would have caused him to think it might be responsible if such a problem occurred. Nor am I aware of anything Carey said or did that ought to have caused Mr M to think it was responsible once the problem had occurred.

- I don't think Mr M would need to have understood the details of Carey's obligations to have been aware (or in a position whereby he ought reasonably to have been aware) of his cause for complaint. But I think Mr M would have needed to have actual or constructive awareness that an act or omission by Carey had a causative role in the problem causing him loss or damage. So, I've thought about whether there was anything else that ought to have prompted Mr M, or a reasonable investor in his position, to have attributed his problem to acts or omissions by Carey more than three years before he complained to Options.

- When the unsuccessful judicial review challenge in R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service [2018] EWHC 2878) ('BBSAL') was published on 30 October 2018, there was a lot of publicity surrounding it. And it could be seen from this that much of the industry's position that SIPP provider's obligations were very limited did not seem to be correct. It could also be seen that the

Regulator's view, and the Financial Ombudsman Service's view, were different, and that an Ombudsman had decided that a SIPP operator was responsible for the losses a consumer suffered in some circumstances and the court had rejected the SIPP operator's challenge to that decision.

- Mr M was facing a significant loss – his investment of £30,000 had been reduced to nil and it was unclear whether he'd be able to recover any of the amount he'd invested. So, after allowing time to notice the change in the landscape following the *BBSAL* judgment and work out the implications for him (either through his own research or by appointing an expert) I think Mr M ought reasonably to have been aware of his cause for complaint by the start of 2019. And this would've given him until the start of 2022 to complain to Options about its role in the transactions he's complained about here.

- It's evident that Mr M appointed a representative to help him with his complaint in 2020 and the representative made a complaint on his behalf to Options in November 2020. But as I've said above, I don't think this letter was likely received by Options. However, Mr M's representative referred the complaint to the Financial Ombudsman Service in October 2021. So, I think the complaint was made within three years of Mr M becoming aware, or at the point he ought reasonably to have been aware, he had cause for complaint about Options.

I've carefully considered all the evidence we've been provided and, on balance, I don't think that Mr M was aware (or ought reasonably to have become aware) that he had cause for complaint against Options more than three years before his complaint was referred to us. So, I'm satisfied this complaint's been brought in time and that it's one we can consider. As such, I've gone on to consider the merits of this complaint below.

<u>Merits of the complaint</u>

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

Given that Mr M accepted my provisional decision and Options didn't provide a response, I see no reason to depart from my provisional findings. As such, I've decided to uphold Mr M's complaint and I've largely repeated my findings, as per my provisional decision, below.

When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, Regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

In deciding what's fair and reasonable in the circumstances, it's appropriate to take an inquisitorial approach. And, ultimately, what I'll be looking at here is whether Carey took reasonable care, acted with due diligence and treated Mr M 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 M's complaint is whether it was fair and reasonable for Carey to have accepted Mr M's SIPP business in the first place.

<u>Relevant considerations</u>

I think the FCA's Principles for Businesses – which are set out in the FCA's Handbook – are of particular relevance. These "*are a general statement of the fundamental obligations of* *firms under the regulatory system*" (PRIN 1.1.2G – at the relevant date). And Principles 2, 3 and 6 provide:

"*Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*

Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly."

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

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

And at paragraph 77 of BBA Ouseley J said:

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

In *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 hadn't treated its client fairly.

Jacobs J, having set out some paragraphs of *BBA* including paragraph 162 set out above, said (at paragraph 104 of *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 s.228 of the FSMA and the approach an Ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the Ombudsman in that complaint, which I've described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

As outlined above, Ouseley J in the *BBA* case held that it would be a breach of statutory duty if I were to reach a decision on a complaint without taking the Principles into account in deciding what's fair and reasonable in all the circumstances of a case. And Jacobs J adopted a similar approach to the application of the Principles in *BBSAL*. I'm therefore satisfied that the Principles are a relevant consideration that I must take into account when deciding this complaint.

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

The Court of Appeal rejected Mr Adams' appeal against HHJ Dight's dismissal of the COBS claim, on the basis he was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal didn't so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

I note that in *Adams v Options SIPP*, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at paragraph 148:

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

I note there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams (summarised in paragraph 120 of the Court of Appeal judgment) and the issues in Mr M's complaint. 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 investment into its SIPP.

In Mr M's complaint, amongst other things, I'm considering whether Carey ought to have identified that the Global Forestry investment involved a significant risk of consumer detriment. And, if so, whether it ought to have declined to accept Mr M's application.

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

So, 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 M's case.

However, it's important to emphasise that I must determine this complaint by reference to what I think is 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; Regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. There 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 Carey was under any obligation to advise Mr M on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr M on the merits of the SIPP and/or the underlying investments. But I am satisfied Carey's obligations included deciding whether to accept particular investments into its SIPP. And I don't accept that it couldn't make such an assessment without straying into giving the member advice.

<u>The regulatory publications</u>

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

- The 2009 and 2012 Thematic Review reports.
- The October 2013 Finalised SIPP Operator Guidance.
- The July 2014 "*Dear CEO*" letter.

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

The 2009 Thematic Review Report

The 2009 report included the following statement:

"*We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.*

It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.
…

We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to clients.

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their customers' interests in this respect, with reference to Principle 3 of the Principles for Businesses ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

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

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*

- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*

- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*

- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*

- *Identifying instances of clients waiving their cancellation rights, and the reasons for this".*

The later publications

In the October 2013 Finalised SIPP Operator Guidance, the FCA stated:

"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, and
- 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.)

I acknowledge that the 2009 and 2012 reports and the "*Dear CEO*" letter aren't formal guidance (whereas the 2013 Finalised Guidance is). However, the fact that the reports and "*Dear CEO*" letter didn't constitute formal guidance doesn't mean the importance of these should be underestimated. These 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's treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the Regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take these into account.

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

At its introduction the 2009 Thematic Review Report says:

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

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

So, I'm satisfied that the 2009 Report is a reminder that the Principles apply and it gives an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. The Report set out the Regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So I remain satisfied it's relevant and therefore appropriate to take it into account.

In Options' submissions on other cases with our Service involving SIPP due diligence, including when making its points about regulatory publications, it has referenced the *R. (on the application of Aviva Life and Pensions (UK) Ltd) v Financial Ombudsman Service* [2017] EWHC 352 (Admin) case. While the judge in that case made some observations about the application of our statutory remit, that remit remains unchanged. And, as noted above, in considering what's fair and reasonable in all the circumstances of a case, I'm required to take into account (where appropriate) what I consider to have been good industry practice at the relevant time.

I think the Report is also directed at firms like Carey acting purely as SIPP operators, rather than just those providing advisory services. 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 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.

I've carefully considered what Options has said about publications published after Mr M's SIPP was set up. But, like the Ombudsman in the *BBSAL* case, I don't think the fact that some of the publications post-date the events that took place in relation to Mr M's complaint, mean that the examples of good practice they provide weren't good practice at the time of the relevant events. Although the later publications were published after the events subject to this complaint, the Principles that underpin these existed throughout, as did the obligation to act in accordance with the Principles.

It's also clear from the text of the 2009 and 2012 Thematic Review Reports (and the "*Dear CEO"* letter in 2014) that the Regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the Regulators' comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it's clear the standards themselves hadn't changed.

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

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

To be clear, I don't say the Principles or the publications obliged Carey to ensure the transactions were suitable for Mr M. It's accepted Carey wasn't required to give advice to Mr M, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But as I've said above these are evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles. And, as per 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*". So it's fair and reasonable for me to take them into account when deciding this complaint.

I'd also add that, even if I agreed with Options 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 (which I don't), 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 Carey could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting Mr M's applications.

It's also 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 M's application to establish a SIPP and to invest in Global Forestry, Carey 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 Carey should have done to comply with its regulatory obligations and duties.

Submissions have been made about breaches of the Principles not giving rise to any cause of action at law, and breaches of guidance not giving rise to a claim for damages under FSMA. I've carefully considered these but, to be clear, it's not my role to determine whether something that's taken place gives rise to a right to take legal action. I'm deciding what's fair and reasonable in the circumstances of this complaint – and for all the reasons I've set out above I'm satisfied that the Principles and the publications listed above are relevant considerations to that decision.

Furthermore, taking account of the factual context of this case, I think that in order for Carey to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into the investments *before* deciding to accept Mr M's applications.

Ultimately, what I'll be looking at here is whether Carey took reasonable care, acted with due diligence and treated Mr M 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 M's complaint is whether it was fair and reasonable for Carey to have accepted his applications in the first place. So, I need to consider whether Carey carried out appropriate due diligence checks on the Global Forestry investment before deciding to do so.

And the questions I need to consider include whether Carey ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers investing in Global Forestry were being put at significant risk of detriment. And, if so, whether Carey should therefore not have accepted Mr M's applications.

<u>The contract between Carey and Mr M</u>

Options made some submissions about its contract with Mr M and I've carefully considered what it has said about this.

My decision is made on the understanding that Carey acted purely as a SIPP operator. I don't say Carey should (or could) have given advice to Mr M or otherwise have ensured the suitability of the SIPP or investments for him. I accept that Carey made it clear to Mr M 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 Mr M signed confirmed, amongst other things, that losses arising as a result of Carey acting on his instructions were his responsibility.

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

<u>What did Carey's obligations mean in practice?</u>

In this case, the business Carey was conducting was its operation of SIPPs. And I'm satisfied that, to meet its regulatory obligations, when conducting its operation of SIPPs business, Carey had to decide whether to accept or reject particular investments and/or referrals of business with the Principles in mind.

The Regulator's reports and guidance provided some examples of good practice observed by the FSA and FCA during its work with SIPP operators. This included being satisfied that a particular introducer is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.

As set out above, to comply with the Principles, Carey needed to conduct its business with due skill, care and diligence; organise and control its affairs responsibly and effectively; and pay due regard to the interests of its clients (including Mr M) and treat them fairly. Its obligations and duties in this respect weren't prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

And I think that Carey understood this to some degree at the time too, as it sought out and reviewed information about the Global Forestry investment, including brochures and various reports, before accepting it into its SIPPs. I'm also aware that it entered into an Introducer Agreement with Firm S in October 2011.

So, and well before the time of Mr M's application, I think that Carey ought to have understood that its obligations meant that it had a responsibility to carry out appropriate checks on Firm S to ensure the quality of the business it was introducing. And I think Carey also ought to have understood that its obligations meant that it had a responsibility to carry out appropriate due diligence on investments before accepting them into a SIPP. I think Carey's submissions on the fact it did undertake some due diligence prior to allowing the Global Forestry holding within its SIPPs reflect this. So, I'm satisfied that, to meet its regulatory obligations when conducting its business, Carey was also required to consider whether to accept or reject a particular investment (here Global Forestry), with the Principles in mind.

<u>The due diligence carried out by Carey on the Global Forestry investment – and what it should have concluded</u>

I should first say that the Member Declaration Carey required Mr M to sign asked him to confirm he had taken his own financial advice, discussed the Global Forestry investment with his financial adviser, and that he wished to proceed. Given that Carey recognised (as per the Member Declaration) that this was an alternative, high-risk and speculative investment that could prove difficult to sell or value, I think requiring investors to take financial advice before investing would've gone some way to meeting the requirements under the Principles and to protect consumers from detriment.

However, Options has said that there was no evidence to show Mr M received advice from Firm S. And that's consistent with the SIPP application form, as it asked whether Mr M had received advice on the pensions he was switching to the SIPP and this section was left blank. Mr M's SIPP application form did not include the details of the investment he intended to make with his pension funds. The instruction to invest in Global Forestry came later, seemingly direct from Mr M, and there was no documentation received by Carey that would suggest Firm S was involved in arranging this. So, I think Carey ought to have known that Mr M hadn't taken advice from Firm S on the switch of his pensions in order to make the Global Forestry investment. And this alone ought to have given Carey grounds for refusing to permit Mr M's investment in Global Forestry.

Nevertheless, even if Carey had grounds to believe Mr M had taken financial advice on the investment, I still think if it had carried out appropriate checks, it ought to have declined to permit the Global Forestry investment to be held in its SIPPs.

Options has said that it carried out due diligence checks on this investment, to the extent it was required to under the Principles. But I think Carey's obligations went beyond checking that the Global Forestry investment existed and would not result in tax charges. And I think Carey understood that at the time because it has provided some documents that it considered before accepting the investment as being appropriate to be held in Carey SIPPs. The evidence it's provided shows that Carey:

- Carried out a check through 'World Check' in respect of GFI, its Directors and the Trustee appointed by GFI.
- Received project summaries, legal opinion and information in respect of the title, environmental statements, ownership and the nature of the investment from the Trustee.
- Received sample copies of the rental agreements that would be put in place in respect of the plots of land invested in.
- Reviewed three Global Forestry investment brochures.

In another complaint being considered by this Service, Options summarised its understanding of the investment and its view on why it was acceptable to be held in the SIPP. And I've taken account of what it said about this:

"The investment was an investment into overseas leasehold forestry where plots containing 8 year old teak trees can be purchased subject to a 49 year lease. The investor then has control over the plot to either 'do their own thing', harvest the plot themselves or most probably, rent the plot subject to a sub-lease to a harvest manager to maintain and harvest the trees. The investment objective was assuming the plot is sub-let to a harvest manager tenant, returns are predicated on a fixed rental of £500 p.a, per 0.1 hectare plus up to 2% of any harvest proceeds dependent on which harvest manager is selected. (Carey) was satisfied that the land could be fairly valued by appointing a qualified surveyor/land valuer experienced in valuing the type of land in question in that jurisdiction to obtain a current market value, though (Carey) could not arrange this without the express permission of the member purchasing the land as the cost of such a valuation would be at the cost of the member's pension scheme, and (Carey) do not have permission to order such a valuation as it is an execution only provider who does not have permission to provide advice or act in such a discretionary manner."

So, while Carey did undertake some due diligence checks before permitting the investment to be held in its SIPPs, I think it needed to do more to satisfy its obligations under the Principles.

In order to correctly understand the nature of the investment, I think Carey should have also reviewed how Global Forestry was marketed to investors. And given Options has provided copies of a 15-page and a 22-page Global Forestry brochure aimed at potential investors, it clearly thought it was important to look at this material at the time too. But I think Carey ought to have had serious concerns about some of the information within these brochures and drawn different conclusions about the appropriateness of the investment to be held in its SIPPs. Furthermore, other information I think it should have obtained, ought to have given Carey real cause for concern about the risk of consumer detriment associated with this.

Overall, in light of the evidence I've seen, I think Carey failed to draw a reasonable conclusion on accepting Mr M's application to invest in Global Forestry, for the reasons set out below.

I think the checks Carey performed ought to have gone beyond looking at the brochures produced by GFI. Carey ought to have carried out its own research, which would include making internet searches about the investment company and the individuals involved with it.

I accept Carey carried out World Checks on GFI and its Directors, which didn't identify any concerns. So I don't think Carey could've reasonably had concerns about the individuals involved with GFI at the time.

I've used an internet archive to look at how the investment was being marketed online to potential investors through GFI's website. This isn't a complete archive however, so some of the information I've referred to below is from 'snapshots' on different dates, as close as possible to the time Mr M made his investment.

The online marketing material I've seen on GFI's website in October 2012, said that its tropical hardwood investments in Brazil were a "*certified, competitive, low risk*" investment. In the Timber Investments section, on the '"Why invest in Timber?' page it said:

"Teak is a durable, appreciating physical asset that grows steadily and safely with little maintenance, putting you in control of your asset. Your Teak trees will grow substantially in value every year regardless of instability in global financial markets…

…The great news about timber is that it is the only commodity that has had a steadily rising price over 200 years, 100 years, 50 years, 10 years.

Timber is a very reliable lowly correlated asset class. This is because timber owners can withhold the forest. If they find the price of lumber low, they just don't harvest. There is no cost of storage and the tree continues to grow and increase in value."

So, the website essentially said that investing in Teak was without risk as it would increase in value regardless of the market.

On the 'Investment Opportunities' page, the Belem Sky Plantation was described as having a minimum 10% return on investment per year with an early buy back option available.

The 'financial returns of teak' page from September 2012 said:

"Timber has consistently proven to be a profitable investment. Over the years it has out performed many of the traditional investments but rarely appears on the investment radar for

the small investor. This may be because it has often been necessary to make large investments or because ***the returns don't suffer from the fluctuations of typical investments like shares or metals****. Our projections mean that* ***you can expect a 10% return per annum on your investment*** *in the Belem Sky Plantation Project, this will be based on Rental Returns.* (my emphasis).

And in the 'IFAs' section, on a page entitled 'What we do?' the website stated:

"Investors within the Belem Sky Opportunity have benefited from the following investment features:

- *10% contractual annual return on investment*
- *Investment uncorrelated to other asset classes"*

The 22-page Global Forestry brochure which Options has provided a copy of (and was also available to view online as a slideshow, dated 17 May 2010), also said that tropical forestry investments provided a "*non-volatile market with high long-term returns, and a low risk-to return ratio*". And that forestry investments offer *"stable long term return projections*" with "*more dependable less volatile returns*".

It also said it offered "*Flexible exit return dates…great exit strategy flexibility*", as well as "*Early Returns*", a "*Minimum 10% ROI PA*". And that there was "*Early buy back option available*", which it went on to say was being offered by GFI "*to directly purchase your plots any time after 3 years with a return of 5%*".

In the FAQs under "*How do the projected returns compare with leaving my money in a bank?*" it said that a £5,000 investment over 25 years would produce a "*projected return of £56,849 (over 12% ROI)"* compared to an assumed average bank interest rate of 5% giving a return of £16,932.

In my view, Carey should have been concerned about how the projected returns were set out in the marketing material. I can see in the 15-page brochure that it explained returns were generated from contractual agreements between the investor and the timber management company ('TMC'). It said the TMC would provide a contractual rental income to the investor for the management of the leasehold title and retain any income generated from the anticipated thinning and/or felling of the Teak trees. And rental income would be a minimum 10% contractual annual return with additional returns from the harvest/thinning proceeds of between 2% and 5% for each investor.

But the other marketing material I've seen, such as the 22-page brochure, doesn't set out any such involvement by rental/management companies. The 22-page brochure seems to suggest that the investment income is derived directly from thinning and harvesting the trees, as opposed to rental income. So the marketing information provided to customers wasn't always transparent as to the structure of the investment and who was responsible for payment of the returns.

Furthermore, I can't see that any consideration or warning was given as to the ongoing availability of such rental agreements over the long-term in any of the brochures. And, having seen a copy of the 'Belem Sky Plantation Opportunity' leaflet, I think this was a clear risk that wasn't adequately highlighted to investors. This again referred to a minimum 10% return on investment and the early buy back option. However, it also included a legal disclaimer which seemed to suggest that there were no guarantees in respect of income after the first year of investment, i.e. no guarantee of rental agreements being in place over the long-term. So, this seemed to contradict what the other promotional materials stated about the minimum contractual return on the investment given it was being marketed as a mid to long-term investment, suitable for an investor who could commit to more than three years. I think this information ought to have given Carey cause for concern about how the investment was being marketed. I also don't know whether a customer like Mr M would've had sight of this prior to investing, so it isn't clear whether he would've understood the return was only guaranteed for one year.

I've reviewed the sample rental agreements with the TMCs provided by Options, and I note that only one of the three allowed for an additional 2% return from harvesting proceeds on top of a fixed annual return. So, this information conflicted with what was said in the brochure. I accept that the rental agreement Mr M signed did provide for the extra 2% return on his investment. And that the agreement stated that it could not be terminated by the TMC until a minimum period of three years had passed. So, this did offer Mr M a degree of protection, but I don't think it guaranteed him long-term returns, which is what I think he'd most likely be expecting based on the way the investment was marketed.

I also recognise that a report – dated 29 March 2012 and prepared by the GFI appointed trustee in respect of the investment – said that the management companies had undertaken to pay it the rent for the first year, as well as that due for the next two to three years to be held in escrow until the rent was due to be distributed to safeguard returns between thinning. And that GFI said on page nine of the 15-page brochure that the management companies had gone through extensive due diligence before it selected these. So, this would appear to offer a three year guarantee of income payments to investors. But, other than seemingly being provided with a short paragraph as to the background of the management companies and their costs for years one to four, I can't see that Carey was provided with, or requested, any further information to understand the strength of the guarantees and undertakings being given in respect of these or that it sought to independently verify the information.

Furthermore, in the pack of information Options has provided from September 2011, the TMC described as 'preferred' (and which Mr M entered into a rental agreement with) had no track record of tree plantation management. The document said this was an area it was 'seeking to expand into'. As such, any estimates of its costs for years one to four were not based on any experience and it had no track record of it delivering profit from tree plantation management. This compared with the other two TMCs, who had extensive experience in tree plantation management, but whose running costs were higher.

The 15-page brochure presented the TMC Mr M entered into a rental agreement with as having experience of land management, which I think a prospective investor would've considered extended to experience in tree plantation management. I think this was another issue that ought to have been flagged as being a risk that affected the promised returns. While the 10% return was described as 'guaranteed' to investors in all the materials I've seen, GFI failed to clearly state that the payment of rental income, whilst a contractual right, was still dependent on the TMC generating enough profit to fulfil the guarantees being given to investors. And that this was an inherent and significant risk of the investment, particularly given the chosen TMC, which investors were likely unaware of.

Furthermore, neither the brochures nor the website detailed how GFI planned to fund the early buy back option with a 5% return that it was responsible for. And there appears to be some inconsistency in terms of how the 5% return was described. In the 22-page brochure, it stated, *"GFI offers to directly purchase your plots any time after 3 years with a return of 5%"*. In the 15-page brochure it says, *"GFI will redeem the original investment plus 5%*". And at various times the website has set out that GFI offered to directly purchase investors plots any time after three years with a return of 5%.

But in the investment agreement Mr M signed, it states:

"After having held the Lease for a minimum of three years, the Investor shall be entitled to exercise an option, to surrender it to GFI in consideration for the payment by GFI of the original Price plus 5%"

This suggests that Mr M could redeem the investment for the original price plus 5%, so having invested £30,000, he would receive £31,500. But this is a different offering to the marketing material which suggested a 5% return on the investment, which over three years, would equate to £34,728. This is quite a significant difference, and I'm not persuaded the marketing material I think investors would've likely seen made that clear.

Neither the website nor brochure gave alternative projections in different market conditions or highlighted the risk factors associated with unregulated investments such as this. So there wasn't sufficient explanation about the factors that the anticipated high returns were likely based on, other than the investment provider's own confidence in its business model and marketplace. I recognise that the 15-page GFI brochure showed the average timber returns over a 14-year period against global equity markets and it included a comparison in respect of projected annual returns between GFI timber and other markets, such as the FTSE 100. But it also said that this information was put together by GFI's research team. And I can see that the comparison was done on the basis that GFI would always provide a guaranteed minimum return of 10% per annum, which as I've said above, wasn't guaranteed over the long-term.

Carey should have also been concerned that neither the marketing material nor the website clearly reflected the risks. Carey clearly recognised that Global Forestry is an alternative investment and may be high risk and/or speculative in light of the Member Declaration. The Global Forestry investment was certainly not "*low risk*" or secure on any reasonable analysis. Despite this, it appears to have been marketed as such to pension investors.

In the IFAs section of the website, there was a page entitled 'Suitability' which appears to have been an attempt to set out which type of investors the investment might be suitable for. In September 2012 it stated:

"The GFI timber investment will be suitable for investors who:

- *Wish to receive a fixed annual investment return of 10% but with considerably less uncertainty than traditional stock markets*
- *Are looking to diversify their existing portfolio away from mainstream asset classes*

However, the GFI timber investment may not be suitable for investors who:

- *Do not wish to take any risk with their capital*
- *Do not wish to invest in Brazil*
- *Have a time horizon of less than three years"*

But I don't think this provided any real clarity. In fact, the implication was that the investment would be suitable for anyone who wanted to take a degree of risk (i.e. more than zero risk) and was able to commit to invest for more than three years. To my mind, this would include most investors, however inexperienced or risk averse. Furthermore, it again highlighted the guaranteed 10% return and said this came without the uncertainty of traditional stock markets – the investment was presented as more or less 'a sure bet'.

I recognise the brochures provided some warnings. For example, the 22-page brochure said that past growth rates aren't a guarantee of those in the future and should be viewed realistically. But it immediately tempered this by saying market values have realistically risen over the years. And while it said at the end of the brochure that there are no guarantees teak will go up, it again immediately tempered this by saying that it had risen every year for the past 20, that it was a very safe commodity and an excellent investment, but with no evidential basis given for these statements. The 15-page brochure similarly said that the market value of teak had steadily increased over the last 20 years.

The Global Forestry website doesn't provide any explanation behind the investor securities it said it offered or the government backing and regulation it referred to having in the brochures. The website also failed to explain that GFI didn't have any protection or regulatory status in the UK, despite offering its view on which type of investors the investment might be suitable for. I note that the legal disclaimer of the Belem Sky Plantation Opportunity leaflet explained GFI wasn't regulated and the investment wasn't regulated, meaning investors had no recourse to the Financial Ombudsman Service or the Financial Services Compensation Scheme. But as I've said above, I'm not sure whether investors would've seen this document. And I think that this warning ought to have been given in all of the marketing materials and on the website rather than being hidden at the back of one leaflet.

I also think it's unclear what investors ownership rights were. For example, the 22-page brochure said that all investors would receive "*A Lease/License for the land their trees occupy*", suggesting they'd have rights over the land too. But the other marketing materials spoke of investors having a beneficial interest in the property. On the Investment Process page on the GFI website from September 2012, it said investors would receive a Certificate of Declaration of Trust from the Trustee, evidencing their beneficial rights to their trees and plot. And in the FAQs section on the website, it said as the plot owner, the investor owned the trees for the duration of the Certificate of Declaration of Trust. And I think this means that Carey's belief that it could accurately value the investment by appointing a surveyor to value the land was misguided, because it appears the value of the investment was in the trees rather than the land itself.

Overall, I think that what I've highlighted above is supported by the liquidator's comments that GFI operated, or was allowed to operate, with a lack of commercial probity and that, in particular, it misled investors in relation to the security of their investment, the fixed returns, the flexible exit strategy and the environmental and social benefits.

Looking at all of the above, I think there were significant warning signs and risks associated with the Global Forestry investment, namely:

- There was no investor protection associated with this investment. It was illiquid, subject to currency fluctuations and there could be no market for it.
- There were other risks involved such as disease or drought that could've destroyed the trees allocated to investors.
- It was being targeted for investment by pension investors and was described as low risk. But it was in fact a speculative overseas based investment with inherent high risks that made it very obviously unsuitable for all but a small category of investors and even then, only a small part of such an investor's portfolio.
- The high projected returns and guarantees set out should have been questioned. I don't expect Carey to have been able to say the investment would or wouldn't have been successful. But such high projected returns and guarantees without any mention of the risks should have given Carey cause to question its credibility.
- The marketing material either didn't contain, or was unclear, as to the risks associated with the investment. So, Carey should have been concerned that

consumers may have been misled or did not properly understand the investment they intended to make.

- Investor ownership rights were unclear.
- It seemingly misled investors in relation to the security of their investment, the fixed returns, the flexible exit strategy and the environmental and social benefits.
- The investment was based overseas and would be subject to the domestic laws and regulations that apply to the ownership of land and matters governing investments. That created additional risk.

The information that was available to Carey, and which would have come to light had it undertaken adequate checks, ought to have led Carey to the following conclusions:

- There was a risk the investment might be fraudulent – it wasn't clear how such high returns or guarantees could be offered.
- The land leases, if they existed, might have been difficult to independently value, both at point of purchase and subsequently. It was also possible that there might be no market for them. So an investor might not have been able to take benefits from their pension, or make changes to it, if they wanted to.
- The investment in Global Forestry would allow Carey's clients' SIPPs to become a vehicle for a high-risk and speculative investment that wasn't a secure asset and could have been a scam.

Knowing all this, I don't think it was fair or reasonable for Carey to have accepted the Global Forestry investment into Mr M's SIPP. Following the due diligence Carey says it conducted, it should have concluded that there was a very clear and obvious 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 Carey shouldn't have accepted the Global Forestry investment into Mr M's SIPP.

To my mind, Carey didn't meet its regulatory obligations or good industry practice at the relevant time. So, I think it's fair and reasonable to conclude that Carey didn't act with due skill, care and diligence, and it didn't treat Mr M fairly, by accepting the Global Forestry investment in his SIPP.

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 Carey wasn't expected to, nor was it able to, give advice to Mr M on the suitability of the SIPP and/or Global Forestry investment for him personally. To be clear, I'm not making a finding that Carey should have assessed the suitability of the investment for Mr M. I accept Carey had no obligation to give advice to Mr M or to ensure otherwise the suitability of an investment for him. So my finding isn't that Carey should have concluded that Mr M wasn't a suitable candidate for high-risk investments. It's that Carey should have concluded the Global Forestry investment wasn't acceptable for its SIPPs and it thereby failed to treat Mr M fairly or act with due skill, care and diligence when it accepted the investment into his SIPP.

I think it's important I emphasise here that I'm not saying that Carey should necessarily have discovered everything that later became known (following the SFO's investigation) had it undertaken sufficient due diligence before accepting the Global Forestry investment into its SIPP. But I do think that appropriate checks would have revealed some fundamental issues which were, in and of themselves, sufficient basis for Carey to have declined to accept the Global Forestry investment in its SIPPs altogether.

Carey's due diligence on the introducer

Mr M says that a representative of Firm S advised him to transfer out of his existing pensions to a Carey SIPP in order to invest in Global Forestry. Options says that Firm S had the appropriate permissions to advise on personal pensions, but there isn't sufficient evidence to demonstrate that it gave Mr M advice in any event. While the SIPP application form included Firm S's details as the financial adviser and investment manager, it asked whether Mr M had received advice to switch his pensions but this section was left blank.

Based on what I've seen, I think it's more likely than not that Firm S introduced the SIPP and investment to Mr M. Mr M's testimony supports this, Carey already had an existing relationship with Firm S and its details were given in Mr M's SIPP application form. So, whether Firm S gave Mr M advice or not, I think Carey needed to carry out checks on the introducer, in line with the Principles and Regulator's guidance, to ensure the quality of the business it was introducing.

Options has provided evidence of the due diligence checks it carried out on Firm S, in connection with another complaint considered by the Financial Ombudsman Service and I've reviewed this. Options answered a series of questions about its relationship with Firm S, and provided an Introducer Profile, Introducer Agreement and Investment Agreement completed by Firm S in October 2011.

But I think Carey ought to have done more on receipt of Mr M's SIPP application form. Although Carey asked Firm M to complete its Introducer Profile, I don't think any of the questions it asked were geared towards understanding the types of investments Firm S would make for its customers. And I think that is the sort of information Carey ought to have sought out if complying with the Principles and the Regulator's guidance. In particular, this would be consistent with the 2009 Thematic Review, where the Regulator said SIPP operators should be reviewing the types of investments so it can identify potentially unsuitable SIPPs. The Regulator also said SIPP operators should be able to identify *"anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares."*

The investment section of Mr M's SIPP application form simply said that Mr M was appointing Firm S as the investment manager and gave no details of the investment it would be making for him. And as I've said above, I don't think Carey had any understanding of the nature of the investments Firm S would be recommending for its clients. As such, on receipt of Mr M's SIPP application, and before proceeding with any instruction to transfer Mr M's existing pension funds to it, I think Carey ought to have asked Firm S more questions about the investment it would be making for Mr M. It could've also asked Mr M further questions to gain an understanding of the investment that he was expecting to make. This is something the 2009 Thematic Review stated could be an appropriate way to identify instances of unsuitable SIPPs.

If Carey had asked these questions of Firm S, I think it would've mostly likely found that Firm S was intending to invest virtually all of Mr M's funds in Global Forestry. And had it spoken to Mr M, it would've found that he had been advised to switch his pensions by Firm S and that he'd only been told he would be getting higher returns without any risk. And I think that ought to have given Carey additional cause for concern, given Firm S said in the Introducer Profile that it didn't offer its clients any advice on their pensions. And any promise of higher returns without risk ought to have been seriously questioned.

I therefore don't think that I need to address Carey's due diligence checks on Firm S any further because I'm satisfied the transfer of Mr M's existing pensions to a SIPP was most likely arranged purely for the purpose of investing in Global Forestry. And had Carey asked appropriate questions of Firm S about the investments it would make for its clients before accepting it as an Introducer of business, or queried the investment Firm S proposed for Mr M on receipt of his SIPP application form, it would've found that Firm S intended to invest virtually all of Mr M's pension funds in Global Forestry.

As such, I don't think it is necessary for me to consider what additional due diligence checks Carey ought to have carried out on Firm S and what it ought to have determined from those checks had it carried them out in detail. That's because I think Carey failed to comply with its regulatory obligations and good industry practice at the relevant time when it accepted Mr M's application to invest in Global Forestry through his SIPP. And I'm satisfied it ought to have declined to accept Mr M's SIPP application, on the basis of him investing his pension funds in Global Forestry, in the first place.

<u>Did Carey act fairly and reasonably in proceeding with Mr M's instructions?</u>

Options has said that it was reasonable for it to proceed in the light of the indemnity, and that it was obliged to proceed in accordance with COBS 11.2.19R.

COBS 11.2.19R

Options has said 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.

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.'

I therefore don't think that Options' argument on this point is relevant to its obligations under the Principles to decide whether or not to execute the instruction to make the Global Forestry investment i.e. to proceed with the application.

The indemnity

In my view, for the reasons given, Carey should've refused to allow Mr M's investment in Global Forestry and his application to open the SIPP on the basis of that proposed investment. So, things shouldn't have progressed beyond that. Had Carey acted in accordance with its regulatory obligations and best practice, it is fair and reasonable in my view to conclude that it shouldn't have permitted the investment.

Further, in my view it's fair and reasonable to say that just having Mr M sign declarations, wasn't an effective way for Carey to meet its regulatory obligations to treat him fairly, given the concerns Carey ought to have had about the investment.

Carey knew that Mr M had signed forms intended, amongst other things, to indemnify it against losses that arose from acting on his instructions. And, in my opinion, relying on the contents of such forms when Carey knew, or ought to have known, allowing the Global Forestry investment to be held within its SIPPs would put investors at significant risk wasn't the fair and reasonable thing to do. The fair and reasonable thing to do would have been to refuse to accept the Global Forestry investment in its SIPPs at all.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr M signed meant that Carey could ignore its duty to treat him fairly. To be clear, I'm satisfied that indemnities contained within the contractual documents don't absolve Carey of its regulatory obligations to treat customers fairly when deciding whether to accept or reject investments.

Ultimately I'm satisfied that Mr M's investment in Global Forestry shouldn't have been permitted and so the opportunity to proceed in reliance on an indemnity shouldn't have arisen at all.

Is it fair to ask Options to compensate Mr M?

The involvement of other parties

In this decision I'm considering Mr M's complaint about Options. However, I accept that it's possible other parties were involved in the transaction complained about, including GFI and Firm S.

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).

As I set out above, in my opinion it's fair and reasonable in the circumstances of this case to hold Carey accountable for its own failure to comply with the regulatory obligations, good industry practice and to treat Mr M fairly. And the starting point, therefore, is that it would be fair to require Options to pay Mr M compensation for the loss he's suffered as a result of Carey's failings.

But I've carefully considered if there's any reason why it wouldn't be fair to ask Options to compensate Mr M for his loss, including whether it would be fair to hold another party liable in full or in part. Whilst I accept that it may be the case that another party might have some responsibility for initiating the course of action that led to Mr M's loss, I'm satisfied that it's also the case that if Carey had complied with its own distinct regulatory obligations as a SIPP operator, the investment in Global Forestry wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

So it is my view that it's appropriate and fair in the circumstances for Options to compensate Mr M to the full extent of the financial losses he's suffered due to Carey's failings. And, taking into account the combination of factors I've set out above, I'm not persuaded that it would be appropriate or fair in the circumstances to reduce the compensation amount that Options is liable to pay to Mr M.

Mr M taking responsibility for his own investment decisions

Options has said that customers ought to bear some responsibility for their own actions and the losses that followed. And in *Adams*, the judge held that in construing the SIPP operator's regulatory obligations, regard should be had to 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. But having done so I am satisfied that it wouldn't be fair or reasonable to say Mr M's actions mean he should bear the loss arising as a result of Carey's failings.

Mr M used the services of a regulated personal pension provider in Carey. And, in my view, if Carey had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Global Forestry investments into its SIPPs at all. That should have been the end of the matter – if that had happened, I'm satisfied Mr M's investment in Global Forestry wouldn't have been made in the first place.

I've carefully considered what Options has said about Mr M being made aware that the investment was high risk. But I'm not satisfied that Mr M understood the risks of the Global Forestry investment. Indeed, in his submission to our Service, Mr M said he was just promised higher returns and he wasn't told of any risks. That's also consistent with the marketing material I've referred to in this decision.

But even if Mr M *had* received an explanation of the risks involved with the investment, for the reasons I've already given, I'm satisfied that if Carey had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted the investment into his SIPP. So, the loss he's suffered could have been avoided in any event.

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 M for the loss he's suffered. I don't think it would be fair to say in the circumstances that Mr M should suffer the loss because he ultimately instructed the transaction to be effected.

Had Carey declined to accept Mr M's investment in Global Forestry, would the transaction complained about still have been effected elsewhere?

Options has said that if it had refused to permit the investment in Global Forestry, the investment would still have been effected with a different SIPP provider. But I don't think it's fair and reasonable to say that Options shouldn't compensate Mr M for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found Carey 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 M's application to hold the Global Forestry investment in its SIPP.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if Carey had refused to permit its members to invest in Global Forestry, Mr M's monies wouldn't still have been transferred into the Carey SIPP. I say this because from the evidence provided to me, I think it's more likely than not that Mr M's pension monies were transferred to Carey specifically so as to invest in Global Forestry. Mr M hadn't sought out pensions advice or thought about making changes to his pension arrangements until he was introduced to Firm S. So, if the selected investment couldn't be made, I don't think it's likely he'd have continued and transferred out of his existing pension.

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."

I have considered this point carefully, as Mr M has told us he was paid a sum of £2,600 to transfer his pensions. But I'm not satisfied that Mr M proceeded knowing that the investment he was making was high risk, and that he was determined to move forward with the transaction in order to take advantage of the cash incentive. There is nothing to show Mr M genuinely understood the risks involved. And he says he wouldn't have gotten involved at all if he'd had any idea of the risks attached to the investment.

I also can't see that the 'commission' offered on completion of the investment purchase meant Mr M would have proceeded regardless. I haven't seen anything to suggest that Mr M's circumstances meant that obtaining this sum of money was important to him, such that it overrode any concern he might have for his pension, which formed a large part of his overall retirement provisions. So I think therefore, it cannot be said he was *incentivised* to enter into the transaction in this way.

On balance, I'm satisfied that Mr M, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this case is very different from that of Mr Adams. And having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that if Carey had refused to accept Mr M's application to invest in Global Forestry, the transaction this complaint concerns wouldn't still have gone ahead.

So, overall, I do think it's fair and reasonable to direct Options to pay Mr M compensation in the circumstances. While I accept that GFI and Firm S might have some responsibility for initiating the course of action that's led to Mr M's loss, I consider that Carey failed to comply with its own regulatory obligations when it didn't put a stop to the transactions proceeding. It ought to have declined Mr M's application to open a SIPP to invest in Global Forestry when it had the opportunity to do so.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr M. 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 M for the full measure of his loss. But for Carey's failings, I'm satisfied that the transaction this complaint concerns wouldn't have occurred in the first place.

As such, I'm not asking Options to account for loss that goes *beyond* the consequences of its failings. I'm satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for that same loss is a distinct matter, which I'm not able to determine. However, that fact shouldn't impact on Mr M's right to fair compensation from Options for the full amount of his loss.

<u>Conclusion</u>

Having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that if Carey had refused to permit the Global Forestry investment in its SIPPs then Mr M would've retained his existing pension and wouldn't have switched it to a SIPP or subsequently made the investment that he did. So Options should put him back in the position he would have been in.

Overall, I think it's fair and reasonable to direct Options to pay Mr M 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 M's loss, I consider that Carey failed to comply with its own obligations and didn't put a stop to the transactions proceeding by declining to accept Mr M's applications when it had the opportunity to do so. As such, I'm not asking Options to account for loss that goes beyond the consequences of its failings. I'm satisfied those failings have caused the full extent of the loss in question. As such, I'm of the opinion that it's appropriate and fair in the circumstances for Options to compensate Mr M to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by other firms involved in the transactions.

As set out above, I'm satisfied that Carey should've put a stop to the transaction and that any subsequent investments wouldn't have gone ahead if it had treated Mr M fairly and reasonably. I've carefully considered causation, contributory negligence, apportionment of damages and DISP 3.6.4. But in the circumstances here, I'm still satisfied it's fair for Options to compensate Mr M for his full loss.

Putting things right

My aim is to return Mr M to the position he would now be in but for Carey's failure to carry out appropriate due diligence checks.

As I've already mentioned above – if Carey had refused to permit Mr M to invest in Global Forestry through its SIPP, I'm satisfied the investment would not have gone ahead and Mr M would've retained his existing pension plans.

In light of the above, Options should calculate fair compensation by comparing the current position to the position Mr M would be in if he hadn't transferred his existing pension plans to the Carey SIPP. In summary, Carey should:

1) Obtain the current notional values, as at the date of this decision, of Mr M's previous pension plans, if they hadn't been transferred to the SIPP.

2) Obtain the actual current value of Mr M's SIPP, as at the date of this decision, less any outstanding charges.

3) Deduct the sum arrived at in step 2) from the sum arrived at in step 1).

4) Pay a commercial value to buy Mr M's share in any investments that cannot currently be redeemed.

5) Pay an amount into Mr M's SIPP, so that the transfer value of the SIPP is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.

6) Pay Mr M £500 for the distress and inconvenience the problems with his pension have caused him.

I've explained how Options should carry out the calculation, set out in steps 1 - 6 above, in further detail below:

1) Obtain the current notional value, as at the date of this decision, of Mr M's previous pension plan, if it hadn't been transferred to the SIPP.

Options should ask the operator of Mr M's previous pension plans to calculate the current notional values of Mr M's plans, as at the date of this decision, had he not transferred them into the SIPP. Options must also ask the same operator to make a notional allowance in the calculations, so as to allow for any additional sums Mr M has contributed to, or withdrawn from, his Carey SIPP since the outset. To be clear this doesn't include SIPP charges or fees paid to third parties like an advisor.

Any notional contributions or notional withdrawals to be allowed for in the calculations should be deemed to have occurred on the date on which monies were actually credited to, or withdrawn from, the Carey SIPP by Mr M. This should include the £2,600 Mr M received as a result of the investment, which should be treated as a withdrawal.

If there are any difficulties in obtaining a notional valuation from the operator of Mr M's previous pension plans, Options should instead calculate a notional valuation by ascertaining what the monies transferred away from the plans would now be worth, as at the date of this decision, had they achieved a return from the date of transfer equivalent to the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index).

I'm satisfied that's a reasonable proxy for the type of return that could have been achieved over the period in question. And, again, there should be a notional allowance in this calculation for any additional sums Mr M has contributed to, or withdrawn from, his Carey SIPP since the outset.

2) Obtain the actual current value of Mr M's SIPP, as at the date of this decision, less any outstanding charges.

This should be the current value as at the date of this decision.

3) Deduct the sum arrived at in step 2) from the sum arrived at in step 1).

The total sum calculated in step 1) minus the sum arrived at in step 2), is the loss to Mr M's pension provisions.

4) Pay a commercial value to buy Mr M's share in any investments that cannot currently be redeemed.

It appears that Mr M's investment in Global Forestry has been closed down and removed from the SIPP. However, it isn't clear if the SIPP remains open.

But if Mr M's Carey SIPP still exists, and the Global Forestry investment remains open, I'm satisfied the SIPP only exists because of the illiquid investments that are held within it. And that but for this investment Mr M's remaining monies could have been transferred away from Carey. In order for the SIPP to be closed and further SIPP fees to be prevented, any remaining investments need to be removed from the SIPP.

To do this Options should reach an amount it's willing to accept as a commercial value for the investments, and pay this sum into the SIPP and take ownership of the relevant investments.

If Options is unwilling or unable to purchase the investments, then the actual value of any 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 M's SIPP in step 2).

If Options doesn't purchase the investments, it may ask Mr M to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from these investments. That undertaking should allow for the effect of any tax and charges on the amount Mr M may receive from the investments, and any eventual sums he would be able to access from the SIPP. Options will need to meet any costs in drawing up the undertaking.

5) *Pay an amount into Mr M's SIPP, so that the transfer value of the SIPP is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.*

The amount paid should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into a pension plan if it would conflict with any existing protections or allowances.

If Options is unable to pay the compensation into Mr M's SIPP, or if doing so would give rise to protection or allowance issues, it should instead pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr M's actual or expected marginal rate of tax in retirement at his selected retirement age.

It's reasonable to assume that Mr M is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%. However, if Mr M 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%.

6) *Pay Mr M £500 for the distress and inconvenience the problems with his pension have caused him.*

In addition to the financial loss that Mr M has suffered as a result of the problems with his pension, I think that the loss suffered has caused him distress. And I think that it's fair for Options to compensate him for this as well. I think £500 is a reasonable sum given that Carey's actions led to a total loss to Mr M's pension, which will have been a significant source of worry for him as he approaches retirement.

SIPP fees

If the investment can't be removed from the SIPP, and because of this it can't be closed after compensation has been paid, then it wouldn't be fair for Mr M to have to pay annual SIPP fees to keep the SIPP open. So, if the SIPP needs to be kept open only because of the illiquid investment and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

Interest

The compensation resulting from this loss assessment must be paid to Mr M or into his SIPP within 28 days of the date Options receives notification of Mr M's acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation isn't paid within 28 days.

My final decision

For the reasons given above, I'm upholding this complaint.

I require Options UK Personal Pensions LLP (which I have also referred to as Carey throughout this decision) to calculate and pay fair compensation to Mr M, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 July 2024.

Hannah Wise
Ombudsman