DRN-5165967

The complaint

Mr H complains about Yorsipp Limited ('Yorsipp'). He says the Yorsipp Self-Invested Personal Pension ('SIPP') opened for him in 2013, and the investments in Investment C and Investment H that his SIPP monies were used to make, hadn't been suitable for him. He says he'd never met the high net worth or sophisticated investor criteria, and Yorsipp hadn't carried out sufficient due diligence on these investments or assessed his needs before allowing the investments. So Yorsipp had a responsibility for his financial loss.

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

What happened

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

Yorsipp

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

Douglas Baillie Ltd/The Pension Specialist

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

In October 2013 DBL suspended its pension switching business 'The Pension Specialist', following the FCA's concerns about the standard of the advice it was giving.

In 2016 DBL went into Financial Services Compensation Scheme ('FSCS') default.

For ease, I'll now refer to all actions of TPS as being that of DBL, except where I'm referencing a direct quotation or where I think it's appropriate to differentiate.

Based on the evidence provided to our Service, the key relevant events during the relationship between Yorsipp and DBL were as follows:

- October 2012 – A 'Professional Client Agreement' between Yorsipp and DBL was signed. This set out Yorsipp's terms of business and the conduct it expected of DBL.

- 1 February 2013 – Yorsipp received its first client from DBL – this was Mr H.

- 28 February 2013 – Yorsipp received its second, and final, client from DBL

‘Firm S’

Firm S is an unregulated business based in the UK. A person I’ll call ‘Mr S’ was appointed as a director of Firm S in August 2013. Yorsipp says Mr H retained Firm S to provide *“wealth administration services*”.

‘Firm Q’

Firm Q was an unregulated business based in the UK. Yorsipp says Mr H retained Firm Q to provide *“wealth administration services”.* Firm Q dissolved in December 2014.

‘Investment H’

It appears that Investment H was an unregulated investment in an overseas country that relied on the tourism industry in that country. It was an unregulated, illiquid and non-mainstream investment.

Yorsipp hasn’t provided any details or documentary evidence of the due diligence it carried out in relation to Investment H, except to say that it carried out due diligence on it and obtained good title to the assets.

‘Investment C’

It appears that this was a carbon investment, and was unregulated, illiquid and non-mainstream.

Yorsipp hasn’t provided any details or documentary evidence of the due diligence it carried out in relation to Investment C, except to say in this complaint that it carried out due diligence on it and obtained good title to the assets.

I note that in a separate complaint against Yorsipp where DBL was also the introducing adviser, Yorsipp says it carried out due diligence on Investment C, that Investment C was permitted under the SIPP trust deed, wasn’t prohibited from being held in the SIPP by HMRC or the FCA, and was verified as a UK limited company. And that Investment C was not a scam or pensions liberation.

Mr H’s dealings with Firm S, TPS, DBL and Yorsipp

Mr H had five existing personal pensions. Mr H says they were a combination of personal pensions, occupational pensions, and Section 32 buyout pensions, and that they had no guaranteed or additional benefits.

Mr H has provided evidence of these pensions. From this, it appears that most of them were defined contribution (‘DC’) personal pensions. However, I see that a letter sent by the ceding scheme to Mr H’s CMC regarding one of these (policy number ending 792, which I’ll call ‘Pension 792’) describes the ‘policy type’ as “*Tailor Made GMP plan UK Pre 92*”. Therefore, I’ve proceeded on the understanding that Pension 792 provided Mr H with a guaranteed minimum pension (‘GMP’), and that the rest of his previous pensions were DC pensions with no safeguarded benefits. And neither Mr H nor Yorsipp have disputed my understanding.

Mr H says that in 2012, he was approached by Mr S of Firm S and told he could make better returns than his current pensions by investing via a SIPP. Mr H says he had discussions and completed paperwork with Mr S, who then passed him to DBL

Mr H says DBL told him his pensions would have better growth by transferring to a Yorsipp SIPP. That he received communication from DBL confirming his SIPP would be arranged and his monies split between two different investments, and these investments were chosen for him by DBL. But he never met or spoke with DBL - all communication with it was completed via post and/or email.

I understand TPS (as an appointed representative of DBL) would have prepared a 'Pension Transfer Report' for Mr H. But I've not been provided with a copy of this report.

On 22 January 2013, Mr H signed what appears to be a pre-printed 'SIPP Disclaimer' letter which said, *"I can confirm that I have read and understood the SIPP Disclaimer in my Pension Transfer Report.*

I am happy with the risks involved with SIPP investments a [sic] *wish to proceed with the establishment of a SIPP.*

I am aware that the HMRC rules prevent me from receiving any inducements or incentives, such as commission sharing, from my pension plan or from the investments within the plan.

I can confirm that The Pension Specialist has not made such an offer, and that should I be made such an offer from a third party that I will advise you immediately."

Mr H signed a Yorsipp SIPP application form on 22 January 2013. It appears that the copy our Service has been provided is a partial copy, but based on this I can see it included 'Transfer In' forms which set out the details of Mr H's five transferring pensions. In a separate complaint against Yorsipp featuring DBL as the introducing adviser, I've seen that the SIPP application form included a 'Financial Adviser Details' section which recorded DBL's details and FSA number, and I think was likely the case in Mr H's application too as I note Yorsipp says Mr H's SIPP application recorded DBL as his financial adviser.

On 31 January 2013, DBL signed a 'Confirmation of Verification of Identity' form regarding Mr H, in which the 'Details of Introducing Firm' was recorded as DBL.

On 31 January 2013, TPS sent Mr H's SIPP application to Yorsipp, and included the ceding pension schemes discharge forms and a copy of the SIPP Disclaimer letter.

Mr H's Yorsipp SIPP was established in early February 2013 and pensions benefits from his five existing pensions, totalling over £158,000, were transferred around a week later.

A 'Statement for Certified High Net Worth Individual' was signed by Mr H on 25 February 2013. This recorded Mr H's personal details, including that he had a gross annual income of *"40k to 50k"*. And it went on to say,

> *"I declare that I am a certified high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.*
>
> *I understand that this means:*
>
> a) *I can receive financial promotions that may not have been approved by a person authorised by the Financial Service Authority;*
>
> b) *the content of such financial promotions may not conform to rules issued by the Financial Services Authority;*
>
> c) *by signing this statement I may lose significant rights;*

d) *I may have no right to complain to either of the following -*
   i. *the Financial Services Authority; or*
   ii. *the Financial Ombudsman Scheme;*

e) *I may have no right to seek compensation from the Financial Services Compensation Scheme*

I am a certified high net worth individual because at least one of the following applies –

a) *I had, during the financial year immediately preceding the date below, an annual income to the value of £100,000 or more;*

b) *I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more. Net assets for these purposes do not include -*
   i. *the property which is my primary residence or any loan secured on that residence;*
   ii. *any rights of mine under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (regulated Activities) Order 2001; or*
   iii. *any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled*

I accept that I can lose my property and other assets from making investment decisions based on financial promotions.

I am aware that it is open to me to seek advice from someone who specialises in advising on investments."

On the same day, Mr H signed a 'Statement for Self-Certified Sophisticated Investor'. This said,

"I declare that I am a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

I understand that this means:

a) *I can receive financial promotions that may not have been approved by a person authorised by the Financial Service Authority;*

b) *the content of such financial promotions may not conform to the rules issued by the Financial Services Authority;*

c) *by signing this statement I may lose significant rights;*

d) *I may have no right to complain to either of the following -*
   (i) the Financial Services Authority; or
   (ii) the Financial Ombudsman Scheme;

e) *I may have no right to seek compensation from the Financial Services Compensation Scheme*

I am a certified high net worth individual because at least one of the following applies –

a) *I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;*

b) *I have made more than one investment in an unlisted company in the two years prior to the date below;*

c) *I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;*

d) *I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.*

I accept that I can lose my property and other assets from making investment decisions based on financial promotions.

I am aware that it is open to me to seek advice from someone who specialises in advising on investments."

Mr H's Yorsipp monies were then invested – about £100,000 in Investment C in March 2013, and about £47,000 in Investment H in April 2013.

Over the years, Yorsipp sent Mr H SIPP annual statements and both parties have provided various copies of these. The SIPP annual statements set out information about the transactions within Mr H's SIPP. They show contributions were made to the SIPP by Mr H (or on his behalf) totalling £12,700, and that Mr H withdrew £22,015 of tax free cash in late 2014.

In addition, the SIPP annual statements set out the following values for Mr H's SIPP:

- <u>February 2014</u>
  Investment C: £100,001
  Investment H: £47,352
  SIPP bank account: £11,091
  Total value of all assets: £158,445

- <u>February 2015</u>
  Investment C: £100,001
  Investment H: £47,352
  SIPP bank account: £451
  Total value of all assets: £147,805

  This statement also said there were insufficient funds in Mr H's SIPP bank account to cover Yorsipp's annual administration fee and included a £680 invoice for this.

- <u>February 2016</u>
  Investment C: £100,001
  Investment H: £47,352
  SIPP bank account: £2,579
  Total value of all assets: £149,933

- <u>February 2017</u>
  Investment C: £0

Investment H: £47,352
SIPP bank account: £1,904
Total value of all assets: £49,256

- February 2018
  Investment C: £0
  Investment H: £46,752
  SIPP bank account: £173
  Total value of all assets: £46,925

  This statement also said there were insufficient funds in Mr H's SIPP bank account to cover Yorsipp's annual administration fee and included a £1,206 invoice for this.

- February 2019
  Investment H: £46,752
  SIPP bank account: £173
  Total value of all assets: £46,925

  This statement also said there were insufficient funds in Mr H's SIPP bank account to cover Yorsipp's annual administration fee and included a £1,206 invoice for this.

In addition to sending Mr H SIPP annual statements, Yorsipp says it also wrote to Mr H in October 2016 about its updated fee structure and the additional annual fee it had introduced to cover the increasing annual due diligence necessary to holding non-standard investments in its SIPPs.

In February 2019 Mr H emailed Yorsipp to ask for a statement showing all the transactions on his SIPP account. Yorsipp provided this in March 2019 with an explanation that it had always charged him an annual fee, which was currently £726, and that it had sent him a letter in October 2016 about its updated SIPP fees.

Later that day Mr H replied to say, *"I must explain that I had to have a cataract operation followed by a detached retina in late 2017 which meant my eyesight was not at it's* [sic] *best for the 2017 and 2018 invoices. It is only now that can I see clearly enough to review everything. It seems that in 2016 I paid £678.00 for administration of my SIPP during which time my investments all fitted in your definition of standard (whatever that might be!)*

In 2017 my investments seem to have arbitrarily been divided into two with one part being defined as standard and the other as a non-standard investment. There was no explanation as why this distinction was made. It seems the only reason was to create a greater income stream for yourselves. It is not at all clear if the increased fee for the [Investment H] *part of the investments is being used to look after that part of the SIPP, from my own research it looks like this part of the investment is in trouble, I have had no information about this from yourselves.*

I am not at all happy with this state of affairs and now need a full explanation of why some of the investment is standard and the rest is non-standard. With this lack of information I can not authorize [sic] *payment at this moment".*

Soon after, Yorsipp provided Mr H with further explanation about his SIPP and its fees, including that his SIPP had always included a non-standard asset, Investment H.

A few weeks later Yorsipp emailed Mr H again, saying, *"Further to my earlier e-mail I write to advise that I am looking to obtain further information regarding* [Investment H] *and will be back in touch once I have an update from the investment house.*

As requested regarding the introduction of the non-standard asset fee please note since 2016 the FCA have classed these investments as non-standard, and there are now additional costs involved in holding these, for example increased annual due diligence checks and regular reporting to the FCA. We introduced the fee in 2016 as a result of the additional work involved, and we notified customers at the time of the introduction of the new fee.

You will note from your annual reviews issued in the past that [Investment C] *no longer shows under your SIPP as we were informed this company is in liquidation."*

Mr H says that in February 2019 he contacted and then engaged his CMC. In March 2019, Mr H submitted a claim to the FSCS regarding DBL's advice and was represented in this by his CMC. In July 2019, the FSCS calculated Mr H's total loss as over £227,000 and paid him its maximum of £50,000 in compensation. And later, the FSCS provided Mr H with a reassignment of rights to enable him to pursue a complaint against Yorsipp.

At Mr H's request, Yorsipp closed his SIPP in November 2019.

In February 2021, Mr H complained to Yorsipp. In summary, Mr H said that a SIPP, Investment C and Investment H hadn't been suitable for him. That he'd never met the high net worth ('HNW') or sophisticated investor criteria. And Yorsipp hadn't carried out sufficient due diligence on Investment C or Investment H, or assessed his pension or investment needs before allowing the investments. So Yorsipp was also responsible for his financial loss, in addition to DBL.

In April 2021, Yorsipp issued its final response to Mr H's complaint. It didn't uphold it. It said Mr H was advised to effect the SIPP and its associated investments by regulated adviser DBL, and the FSA and the FCA alerts made clear that where a financial adviser is providing advice on the SIPP transfer, they must also consider the intended investments. And Mr H had signed a statement which said he was a sophisticated and HNW investor and that he accepted the risks the investments posed. Yorsipp had carried out due diligence on Investment C and Investment H and obtained good title to the assets, and there was no evidence they were scams – they were high risk and lived up to their nature by failing. And Mr H hadn't complained prior to closing his Yorsipp SIPP, which would have been a reasonable time to complain, but instead complained many months later.

Unhappy with Yorsipp's final response to his complaint, Mr H referred his complaint to our Service in August 2021. He provided us with some documents from the time of the events and told us, amongst other things, that:

- In 2012, he was approached by Mr S of Firm S who was promoting Investment C. He was told he could make better returns than his current pensions by investing 'directly into the funds' via a SIPP.

- He'd not considered changing his pensions prior to being contacted by Mr S. He believed Mr S was working in his interest, as he seemed very professional and knowledgeable, and he recommended the best option for better growth. So he was already convinced to complete the transactions prior to DBL's involvement.

- He'd considered Mr S a trusted friend, as Mr S had previously provided him with financial recommendations. At this point, he didn't understand Mr S wasn't FCA regulated.

- He had discussions and completed paperwork with Mr S. Mr S then passed him to DBL, who said his pensions would have better growth by transferring to a Yorsipp SIPP. He received communication from DBL confirming his SIPP would be arranged and his monies split between two different investments, and these investments were chosen for him by DBL. Mr H never met or spoke with DBL - all communication with it was completed via post and/or email.

- Mr H was totally reliant on the information he was given and had trust that it was given by an independent financial adviser ('IFA') and pension monies were being transferred to an FCA regulated pension provider.

- He was told he'd be taking a medium level risk with his pension monies which would be suitable for his needs. He was told that as he wasn't contributing to his existing pensions, they would no longer be managed properly so it would be to his benefit to move them.

- At the time of the events, he'd assumed the funds chosen for him were suitable for his level of risk since they were recommended by an IFA and available to purchase through a regulated SIPP provider – who were both acting on his behalf and charging fees. He'd had little understanding other than being told the SIPP and investments met his profile as a medium risk investor. He was not made aware that his funds would be placed at high risk and could lose value. He is still not fully aware of the scope of the investments, but has found out they were high risk and unregulated, which is not what he would have chosen to do himself – he has a low to medium attitude to risk.

- At the time of the events, he'd not known what a sophisticated or HNW client was and wasn't informed about this by DBL or Yorsipp. He'd never fallen into those categories as he'd only previously invested in standard personal pensions and ISA's. And he'd only signed those statements at DBL's request. He'd not had much understanding of the paperwork but proceeded because someone he trusted told him it was the best thing for him to do.

- Mr H was sent paperwork to complete – he was simply told what to complete and where to sign, and not to pay any relevance to the wording on these forms. He did as he was told, as he believed DBL and Yorsipp would be acting in his best interests and not doing anything untoward.

- He'd not received any payment when he transferred his pensions.

- He'd become concerned about his pension losses and engaged his CMC to recover his losses. He'd made an FSCS claim in relation to DBL's advice, and the FSCS paid him compensation. But he'd still been left with a significant financial loss, and at this point his CMC made him aware that Yorsipp should also be held accountable for its role in the transactions. So he complained to Yorsipp.

- He'd now retired, partially due to ill health, and had a very limited income due to his current circumstances and the failure of his pension. And Yorsipp's failings have caused him significant financial loss and distress.

- The terms of Mr H's FSCS reassignment of rights require him to return his FSCS compensation in the event his complaint against Yorsipp is successful. So any redress our Service awards him in this complaint should be increased by £50,000 so he can repay the FSCS and still be fully compensated for his losses.

Yorsipp provided our Service with some further comments regarding Mr H's complaint, in summary that:

- Mr H signed HNW and sophisticated investor 'Statements', in which he acknowledged the high risk nature of the investments and that he was a suitable investor.

- In signing these statements, Mr H also acknowledged there could be a total loss and waived his right to complain to our Service, which Yorsipp deemed as a contract/condition of it allowing him to make the investments.

- Mr H was advised on the SIPP and the investments by a fully regulated and authorised adviser, DBL. And as FCA alerts in 2013 and 2014 highlighted, the provision of suitable advice requires consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes.

- Mr H was a managing director of a company, and it wouldn't be unusual for a managing director to invest in such high risk assets.

- It reiterated that Mr H had closed his Yorsipp SIPP without complaining

One of our Investigators considered Mr H's complaint. She thought it had been brought in time and should be upheld. In summary, she said Yorsipp ought to have been concerned that DBL was only advising its clients on the transfers and not the underlying investment, as this risked consumer detriment. She thought that had Yorsipp acted fairly and reasonably, it should have decided not to accept Mr H's SIPP application in the first place. And given all this, it was fair and reasonable for Yorsipp to compensate Mr H for his financial loss and pay him an additional £500 compensation for the distress and inconvenience it had caused him.

Yorsipp disagreed with our Investigator's view. A solicitor representing Yorsipp provided further comments which were, in summary, that:

- It was concerned our Service's approach was that the SIPP provider was liable without proper consideration of the merits of the individual complaint.

- Given the FSCS found DBL liable, our Service should consider whether it's consistent to find Yorsipp responsible for Mr H's loss.

- Mr H's complaint against Yorsipp was essentially that a SIPP was an unsuitable type of pension for him. That complaint has no merit. And it's not the role of our Service to act as Mr H's adviser and consider other matters he might complain of but hasn't. If Mr H has other grounds of complaint, he should make those to Yorsipp so it can consider them under its complaint process.

- It may or may not be correct that Mr S advised Mr H to invest his money. Yorsipp did not know about this. And Yorsipp was not aware of Mr S being the initial introducer. Mr H's SIPP application form recorded the introducing firm as DBL, which suggests Mr H was prepared to sign a document he knew to be false and that he was very motivated to make the investment regardless of the controls Yorsipp put in place. In any event, Yorsipp couldn't reasonably have appreciated that Mr S advised Mr H to make the investments, if this was the case.

- Investment H produced returns for Mr H to start with, so it wasn't the case that it was non-existent or incapable of producing returns.

- Yorsipp's relationship with DBL began in 2011, though their 'Professional Client Agreement' was made in October 2012 and Yorsipp only started accepting its business in 2013. No pattern of professional behaviour with DBL had been established. And there were no reasons for concern and no FCA issues had arisen at this point.

- Yorsipp disagreed that it should've have been concerned about nature of the business it was receiving from DBL, that it should've obtained a copy of the suitability report, or that it should have been cognisant of COBS 19.1.6G which is directed at financial advisers. There was nothing in SIPP Disclaimer letter signed by Mr H to suggest he hadn't received advice on the underlying investment. The letter intended to make clear that Mr H was happy with the risks attached to the SIPP investments, and its real purpose was to highlight to Mr H that he wouldn't be receiving any inducements or incentives.

- It would have appeared to Yorsipp highly likely that DBL had advised on the investments, and there's no reason for it to assume otherwise. It's not reasonable to say a SIPP operator must second guess a client's declarations.

- It was correct to say that in Adams, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. But the Investigator's view ignored the factual context when it didn't favour the consumer.

- It was wrong to suggest that even without a red flag, Yorsipp should have asked for a copy of the suitability report. The 2009 Thematic Review suggested SIPP operators should request copies of suitability reports, but not the later publications – clearly because the FCA didn't think such an approach was good practice. And there's no reason to ask for the suitability report unless it's to review suitability – and that's not the SIPP operator's role.

- Even if not asking for a copy of the suitability report was a failure (which it wasn't), it isn't a failure that could've caused Mr H's loss. Because Mr H didn't tell Yorsipp the truth about the circumstances of his investment. If Yorsipp had asked Mr H for a copy of the suitability report, he would have said there wasn't one. And if that was the case then Mr H would simply have declared himself to be a self-directed execution-only client. And although Yorsipp and Mr H would have proceeded down a different route, Mr H would still have made the investments in a manner that was beyond criticism, aided behind the scenes by Mr S. A lack of suitability report would not have deterred Mr H.

- Mr H signed the Certified High Net Worth and Self-Certified Sophisticated Investor statements because he wanted to make the SIPP investment without undue probing from Yorsipp. These statements weren't sought as protection for Yorsipp, or claimed to be such. They were intended to warn the investor and give him pause for thought. It's telling that Mr H ignored the implicit warnings provided.

- Mr H was advised and introduced to Yorsipp by DBL, an authorised firm Yorsipp had an established relationship with. That's the end of the matter. The SIPP application is designed to bring out the truth on these matters and Mr H avoided telling the truth.

- Around 25 March 2013, Mr H sent Yorsipp a letter stating Firm Q and Firm S would provide him with "*wealth administration services"*, a phrase intended to convey that neither Firm Q nor Firm S would provide investment advice.

- On 28 March 2013, Mr H signed a declaration that he'd sought professional advice from a *"qualified and authorised adviser regarding the suitability of the investment compared*

to my attitude to risk." There is nothing in this declaration to suggest any advice concerned only the SIPP, not the investment.

- Our Service hasn't investigated the relationship between Mr H and Mr S of Firm S. Given Mr S's influence with Mr H, Mr H wouldn't have responded to anything Yorsipp said or did.

- Either Mr H isn't telling the truth and he wasn't advised by Mr S. Or, Mr H is telling the truth and signed a document that contained false information. So Mr H was very determined to have a SIPP with his desired investments in it.

- If Mr H had identified Mr S as his introducer, Yorsipp wouldn't have accepted Mr H's business in line with its internal controls. Because neither Mr S or Firm S were authorised and Yorsipp had no existing relationship with them.

- Mr H was highly motivated. So if Yorsipp had rejected his SIPP application, Mr H would, perhaps in collusion with Mr S, have completed the SIPP application with different falsehoods and pushed the applications through, either with Yorsipp or with another SIPP provider.

- Indemnities were irrelevant because no indemnity caused the alleged, or any, loss.

- Yorsipp acted fairly towards Mr H and in his best interest, given the information he chose to disclose in his SIPP application. And even if Yorsipp hadn't acted fairly, if Mr H had told the truth then Yorsipp wouldn't have opened his SIPP and placed his investments.

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

At my request, Mr H provided further evidence, including copies of some of his SIPP annual statements and his 2019 email exchanges with Yorsipp. Mr H also provided further comments which can be summarised as:

- He'd met Mr S in 2013 after being introduced to him by a firm who'd sold Mr H some investments. Mr S visited him to discuss investments and investing via the SIPP.

- Towards the end of 2018, Mr H became concerned about a lack of information from Yorsipp. He mentioned this to Mr S, who investigated. In February 2019 Mr S recommended he contact a CMC. Mr H first contacted his CMC in February 2019.

- He'd closed his Yorsipp SIPP as Yorsipp gave him little information about how his SIPP was progressing. When he closed it, it appeared to be a painful drain on his pension fund, and it appeared that was going to be the long-term position.

- He has one other pension apart from those that are the subject of this complaint. It has a current transfer value of about £5,400 from contributions made up until 1990.

- He doesn't know what happened to his investments and any cash balance when his SIPP closed - he did not receive any payment from Yorsipp on closure.

- He hadn't spoken to any other financial advisers.

Also at my request, Yorsipp provided further comments and evidence. This included copies of some of Mr H's SIPP annual statements, the fee letter Yorsipp says it sent Mr H in

October 2016, and Mr H's email exchanges with Yorsipp across 2019 - Yorsipp said it hadn't treated these as a complaint.

In addition, I'm aware that in another complaint brought to our Service against Yorsipp involving DBL and Mr S of Firm S, Yorsipp has also provided submissions which included the following:

- In Adams, the Court of Appeal highlighted that an objective of financial services regulation is consumer protection even where that involves protecting consumers from the consequences of their bad investment decisions. But that principle had limits, and the Investigator's view went beyond them.

- Yorsipp had a very limited remit in its dealings with the client – the judgment in *Adams* doesn't extend to suggesting that a firm in any respect involved in a customer's activities effectively holds the customer harmless against any losses they might suffer as a result of their own decisions.

- When the client completed his SIPP application and his funds were transferred he was, as far as Yorsipp was concerned and the client had asserted, advised by DBL.

- If the client had told Yorsipp that his adviser and introducer was Mr S of Firm S, Yorsipp wouldn't have opened his SIPP or placed his investments.

- Yorsipp didn't know Mr S was breaching the general prohibition. And it had no reason to know this, as it believed the client's assertion that regulated firm DBL was his adviser.

- SIPP providers aren't barred from accepting introductions from unregulated introducers, but this isn't relevant as Mr S was not an introducer to Yorsipp.

- Unlike the position in *Adams*, there was at that time no reason for Yorsipp to have any doubts about the introducer here, DBL. Yorsipp had no way of knowing Mr S was giving the client advice, if indeed he was (which Yorsipp disputes).

- In *Adams*, Options was deserving of criticism (for allowing 'pipeline' cases). But that's not the case with Yorsipp. Yorsipp behaved properly in its dealing with the client. It wasn't aware of any commission/fee arrangements between the client and Mr S (assuming there were any) because it didn't know Mr S was an adviser and/or introducer (if indeed he was).

- Yorsipp carried out appropriate due diligence on the investments. It checked they were valid legal entities and appropriately registered at Companies House, and it established that the investments could lawfully be accepted into the Yorsipp SIPP.

- At the time, DBL was a regulated adviser and Yorsipp was not aware of any issues with it. Yorsipp followed industry best-practice at the time. DBL signed Yorsipp's 'Professional Client Agreement', and Yorsipp checked the FCA Register for its permissions and any other relevant information such as FCA disciplinaries. But there was no cause for concern.

- It carried out due diligence on the investments. They were not scams or pensions liberation – they were high risk investments. They were permitted under the SIPP trust deed, and weren't prohibited from being held in the SIPP by HMRC or the FCA. And

they were verified as UK limited companies. Yorsipp would only have rejected these investments if they were not capable of being held in the SIPP - i.e. they were prohibited by the FCA, or if holding them would result in HMRC tax penalties, or Yorsipp suspected the investments were fraudulent or non-existent.

- The investments were made as instructed by the client. He signed documentation to confirm he wanted to make the investments and that he'd sought advice on the suitability of the investment.

- Yorsipp was not involved in the advice or in assessing whether the SIPP or investments were suitable for the client. And it was not involved in the sourcing, promotion or selection of particular investments.

- To question the investments without concerns about their legitimacy could be seen as advising the client. And Yorsipp does not (and is not permitted to) provide financial advice. Yorsipp's role is as pension scheme administrator and trustee.

- Some of the client's investments have suffered losses, but Yorsipp aren't responsible for the performance of investments.

- Yorsipp carried out checks appropriate to its role and any losses can be attributed to the advice the client received and the decisions made by him. Not to any failing by Yorsipp.

- Yorsipp doesn't have a copy of the fact find or suitability report prepared regarding the client.

- Yorsipp provided copies of what it said were *"FCA directives that were sent to advisers which is where if they're advising on the pension transfer/switch they are by default giving advice on the assets the pension is to hold."*

- The client appeared to be complaining to Yorsipp about alleged failures by the adviser, which Yorsipp wasn't responsible for. Unfortunately the adviser is no longer trading, as otherwise this would be a complaint for the adviser *"under 1.7.1 of COBS".*

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

I issued a provisional decision in which I said I thought Mr H's complaint had been made in time as it had been brought within three years of when Mr H ought reasonably to have been aware there was a problem with his SIPP that had, or may have, caused him a loss for which Yorsipp may have a responsibility. Further, I thought Mr H's complaint should be upheld. In summary, I said Yorsipp hadn't carried out adequate due diligence and that if it had, it should have rejected introductions from DBL before it accepted Mr H's business. And that Mr H wouldn't have established the SIPP, transferred monies in from his existing pensions, or invested in Investment C and Investment H if it hadn't been for Yorsipp's failings. So I said Yorsipp should calculate Mr H's financial loss and compensate him for it, and also pay him a further £500 compensation for the distress it had caused him.

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

Yorsipp didn't accept the provisional decision and provided further comments. In summary, it said:

- Mr H's complaint was too late under the six-year and the three-year time limits. Mr H was (or ought to have been) aware before February 2018 that there was a problem

with both investments that had or may cause him a material loss, and that Yorsipp may be responsible because it permitted the investments to be held within his SIPP.

- It agreed Mr H ought to have been aware there was problem with Investment C in February 2017, and added that the FCA published a warning in August 2017 about carbon credit investments which would have been accessible to Mr H and alerted him to their risks.

- Investment H was tourism-based, and the country it was located had significant and widely reported political unrest and an attempted coup in 2016. So Mr H would've been aware of them and could've foreseen their detrimental effects on tourism and therefore on his Investment H holding.

- More broadly, part of Mr H's complaint was that he'd never met the HNW or sophisticated investor criteria. But he'd have been aware of this when he applied for a Yorsipp SIPP and the investments. These criteria were to warn and protect retail investors from unsuitable investments. So Mr H would have known that he was misrepresenting his position when completing these documents, and that by doing so he was putting himself in a position where he may suffer loss **due to Yorsipp's acceptance of his instructions** (Yorsipp's emphasis).

- In any case, Mr H's complaint shouldn't be upheld. Yorsipp always acted reasonably, responsibly and fairly towards Mr H.

- Mr H was the first of only two introductions from DBL. So there was no pattern of business or suspicious level of activity. And there was nothing about his application to warrant further enquiry beyond the adequate due diligence Yorsipp completed.

- Yorsipp's checks of the FCA Register showed the DBL adviser held the permissions needed to give the advice he was giving. So Yorsipp didn't understand the provisional decision's conclusion that *"Yorsipp should have known the investments that were being introduced by DBL-introduced clients"* and asked for clarification.

- Yorsipp questioned the accuracy of Mr H's recollection. It highlighted he'd said he'd never spoken with DBL and all communication with it was via post and/or email, yet his FSCS claim about DBL's advice was successful. The FSCS only pays compensation where it considers the firm liable, so it's difficult to understand why it compensated Mr H without DBL's substantive involvement. So Mr H should explain why his FSCS claim was successful, and Yorsipp should have the opportunity to consider his explanation and respond to it.

- Even if Yorsipp had contacted Mr H to ask him questions, he wouldn't have provided Yorsipp with any (or correct) investment details. So Yorsipp wouldn't have been able to conduct the level of due diligence suggested by the provisional decision.

- Mr H says he considered Mr S a *"trusted friend"* who'd *"previously provided him with financial recommendations."* So given his relationship with Mr S, it's more likely than not that if Yorsipp had rejected his application, Mr H would have proceeded with another SIPP provider willing to accept an application.

- The provisional decision suggested DBL had a new advice model and Yorsipp should have asked about this. But presumably this advice model would need to have been registered with the FCA. So if the FCA considered the advice model to be high risk to consumers, it wouldn't have given DBL the required regulatory approvals. This was

the first referral Yorsipp received from DBL, so Yorsipp couldn't have seen DBL's model had changed (if that's right). In any event, if the FCA didn't deem DBL's advice model to be a risk, our Service can't reasonably conclude that any questions Yorsipp would've asked would have led it to identify DBL's model as high risk.

- Regarding COB 1.7.1, Yorsipp's point is that our Service is required to follow the law or explain why we haven't. Notwithstanding any previous COB provisions, the Civil Liability (Contribution) Act 1978 says that where more than one party is responsible for a loss, a contributory claim can be brought against another party. So our Service should consider the role of DBL. The FSCS has already found DBL at fault, so it's not open to our Service to find Yorsipp wholly responsible for the loss. Instead, the FSCS compensation Mr H received should be deducted from any redress calculation, together with any return on that money, on the basis it's DBL's contribution to Mr H's loss. Further, the FSCS compensation was paid directly to Mr H so the £50,000 should be grossed up to account for tax. This means that in fact Mr H has already received approximately £58,820 and it's this figure plus a return that should be deducted from total redress if the complaint is upheld.

- Mr H has already received £50,000 from the FSCS. If our Service upholds this complaint and awards redress, then he'll have received £50,000 more than his total loss until he repays the FSCS. So Mr H's request for our Service to award him £50,000 on top of his losses is incorrect as it will overcompensate him.

- Investment C and Investment H's current status is that they both have a nil value and have been written off by Yorsipp, and Mr H closed his Yorsipp SIPP. Given Mr H has received FSCS compensation, Yorsipp expects that in the unlikely event either investment produces a return, those returns would be payable to the FSCS.

- Overall, Yorsipp thought there were various outstanding points which Mr H should provide answers to, and that Yorsipp should have the opportunity to consider and respond to his answers, before a final decision is issued. These issues were material to the complaint, so it wouldn't be fair and reasonable for a final decision to be issued yet.

- Yorsipp reserved the right to comment further if required, and reserved the right to respond in respect of quantum once a final decision was provided.

As both parties have had the opportunity to respond to my provisional decision, I'm now in a position to make my final decision.

What I've decided – and why

Time limits

Firstly, I've thought again whether Mr H's complaint is one our Service can consider. For the avoidance of doubt, I've considered this point on the basis of the applicable rules and law and not on the basis of what is fair and reasonable in all the circumstances.

Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the FCA's Handbook of Rules and Guidance. DISP 2.8.2R says that unless a business consents to the Ombudsman considering the complaint:

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

> *(2) more than:*
>
> > *(a) six years after the event complained of; or (if later)*
> >
> > *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*
> >
> > *unless the complainant referred the complaint to the respondent or the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*
> >
> > *unless:*
>
> *(3) in the view of the Ombudsman, the failure to comply with the time limits…was as a result of exceptional circumstances.*

Yorsipp has not consented to our Service considering Mr H's complaint. His complaint concerns events around the establishment of his SIPP, the transfer of his existing pensions, and his investment in Investment C and Investment H. Yorsipp accepted Mr H's SIPP application, his pension transfers, and his investment instructions in 2013. This is more than six years before Mr H raised a complaint with Yorsipp in February 2021, so Mr H's complaint has been brought outside the six-year part of the rule.

Therefore, I must consider whether this complaint point has been brought within the three-year part of the rule.

I appreciate Mr H suggests he first became concerned about his SIPP in 2018, as he says that towards the end of 2018 he became concerned about a lack of information from Yorsipp, that he closed his Yorsipp SIPP (in November 2019) because of this lack of information and at that time it was a drain on his pension fund. Mr H also says he'd become concerned about his pension losses, but it's not clear to me when this was.

However, under the three-year part of the rule, I need to consider not only when Mr H did become aware he had cause for complaint, but also when he *ought reasonably to have become aware* he had cause for complaint.

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

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

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

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

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

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

The SIPP annual valuation Yorsipp sent Mr H in February 2017 showed that the value of his Investment C holding had fallen to £0 (from the £100,001 shown in the February 2016 SIPP annual valuation) and that the total value of his SIPP had fallen to £49,256 (from the £149,933 shown in the February 2016 SIPP annual valuation).

I'm mindful that in early February 2019 Mr H told Yorsipp that *"…I had to have a cataract operation followed by a detached retina in late 2017 which meant my eyesight was not at it's* [sic] *best for the 2017 and 2018 invoices. It is only now that can I see clearly enough to review everything."* But I note the eyesight issues outlined here by Mr H would have taken place least six months after the February 2017 SIPP annual statement was sent to him. And I think the value of his Investment C holding and his SIPP in total were clearly set out in that statement. So, I'm satisfied Mr H ought reasonably to have been aware from February 2017 that there was a problem with his SIPP investment which had, or may have, caused him a financial loss.

Yorsipp agrees Mr H ought to have been aware in February 2017 that there was a problem with Investment C that may have caused him a financial loss. But it also says Mr H should've known in 2016 that there was a problem with Investment H given widely-reported political unrest in the country it was based in. But I'm not persuaded by this, as Mr H's Yorsipp SIPP statements from February 2014 up to February 2019 consistently showed the value of his Investment H holding as remaining at £47,352, about what he'd originally paid for it.

Yorsipp also argues Mr H ought to have been aware much earlier that Yorsipp may have a responsibility for problems with his SIPP, because it permitted the investments to be held. And because Mr H would've known he didn't meet the HNW or sophisticated investor criteria when he applied for a Yorsipp SIPP and the investments. And the information and warnings in those statements mean Mr H would've known he was misrepresenting himself as a sophisticated or HNW investor and putting himself at risk of loss due to Yorsipp accepting his instructions.

I've carefully considered Yorsipp's arguments here. But I'm still not persuaded Mr H ought reasonably to have linked any act or omission of Yorsipp to the problem by February 2017. In my view, consumers at that time generally didn't have a good understanding of the rules and guidance applying to SIPP operators, or the responsibilities flowing from them. Further, the argument Yorsipp's put forth suggests (albeit unintentionally) Mr H may have blamed himself, as it says he knew he misrepresented himself as a HNW or sophisticated investor. Taking everything into account, I don't think there was anything that ought reasonably to have made Mr H think by February 2017 that Yorsipp might be responsible for the problem with his SIPP.

Mr H opened a Yorsipp SIPP, transferred his pensions and made the investments after TPS (as an appointed representative of DBL) provided him with regulated advice. Given this, I think it's reasonable to conclude that Mr H's first thoughts may have been that DBL was responsible for the problem with his SIPP investments. And after engaging his CMC, Mr H went on to make an FSCS claim in relation to the advice he'd received from DBL and was compensated by the FSCS in July 2019.

Mr H says that at that point, when he'd still been left with a significant financial loss even after being compensated by the FSCS, his CMC made him aware that Yorsipp should also be held accountable for its role in the transactions.

I've not been provided with any evidence to suggest that Mr H had any information prior to discussions with his CMC that ought reasonably to have made him aware he had cause for complaint about the due diligence Yorsipp carried out when it accepted his SIPP application and his investment applications in 2013.

So in the circumstances of this particular complaint, even if the earliest point at which Mr H became aware he had cause for complaint against Yorsipp was when he first contacted his CMC in February 2019, I don't consider that he ought reasonably to have been aware any earlier that there was a problem with his SIPP that had caused him a loss for which Yorsipp might also bear a responsibility. Mr H complained to Yorsipp within three years of this, in February 2021. Therefore, I still think Mr H's complaint about Yorsipp has been brought in time under the three-year part of the rules and so is a complaint our Service can consider.

Given this, I've gone on to consider the merits of Mr H's complaint.

The merits of Mr H's complaint

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

I'd like to start by addressing Yorsipp's argument that there are various outstanding material points which Mr H should answer and that Yorsipp should have the opportunity to consider and respond to his answers before a final decision is issued. Yorsipp also says it reserves the right to comment further later and to respond regarding quantum once a final decision is issued.

I must be clear that it's for me to decide what information and evidence I think is required in order to make a fair and reasonable decision in the particular circumstances of Mr H's complaint. And I don't think I require any further comments or evidence in order to do that. Further, I've previously shared my thoughts with both parties by issuing a provisional decision and they have both had the opportunity to provide any further comments or evidence they'd like me to consider. And as I made clear in my provisional decision, it isn't possible to amend my understanding or the redress I've set out after a final decision has been made - a final decision is the end of our investigation process and if accepted by Mr H, becomes legally binding on Yorsipp.

I note Yorsipp appears to be concerned that our Service has looked beyond the specific complaint points Mr H has made to Yorsipp - Yorsipp says these were essentially that a SIPP was an unsuitable type of pension for him, that it's not our Service's role to act as Mr H's adviser and consider other matters he might complain of but hasn't, and that if Mr H has other grounds of complaint, he should make those to Yorsipp so it can consider them under its complaint process.

But it appears from the content of Yorsipp final response letter to Mr H in April 2021 that Yorsipp understood Mr H's complaint to encompass the adequacy of checks it undertook as a SIPP provider when accepting his business and on investments made after it had accepted his business. I say that because, in responding to Mr H's complaint, Yorsipp explained that the due diligence it undertook on Investment C and Investment H didn't highlight any concerns.

The Financial Ombudsman Service is an informal dispute resolution forum. A complaint made to us need not be, and rarely is, made out with the clarity of formal legal pleadings. Our Service deals with complaints, not causes of action.

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 Yorsipp took reasonable care, acted with due diligence and treated Mr H 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 H's complaint is whether it was fair and reasonable for Yorsipp to have accepted his SIPP application and Investment C and Investment H applications in the first place. So, I need to consider whether Yorsipp carried out appropriate due diligence checks on DBL before deciding to accept Mr H's SIPP business from it.

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.

Relevant considerations

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

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

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

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

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

And at paragraph 77 of BBA Ouseley J said:

> *"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty*

without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."

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

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

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

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

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

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

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

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

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

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

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

I note that there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr H's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened *after* the contract was entered into. And he wasn't asked to consider the question of due diligence *before* Options SIPP agreed to accept the Storepods investment into its SIPP.

In Mr H's complaint, amongst other things, I'm considering whether Yorsipp ought to have identified that accepting introductions of business from DBL involved a significant risk of consumer detriment and, if so, whether it ought to have declined to accept introductions of business from DBL *before* it received Mr H's application. And the same applied to Yorsipp deciding whether to accept applications to invest in Investment C and Investment H.

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

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

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

I also want to emphasise that I don't say that Yorsipp was under any obligation to advise Mr H on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr H on the merits of the SIPP and/or the underlying investments. But I am satisfied Yorsipp's obligations included deciding whether to accept an introduction from a firm and 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.

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

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

The regulatory publications

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

- The 2009 and 2012 Thematic Review Reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 *"Dear CEO"* letter.

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

The 2009 Thematic Review Report

The 2009 Report included the following statement:

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

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

reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to clients.

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

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

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

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

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

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

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

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

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

Although I've referred to selected parts of the publications, to illustrate their relevance, I've considered them in their entirety.

I acknowledge that the 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However, the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't mean their importance should be underestimated. They provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what

SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account.

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

At its introduction the 2009 Thematic Review Report says:

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

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

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

Yorsipp suggests that many of the matters which the Report invites firms to consider are directed at firms providing advisory services. But, to be clear, I think the Report is also directed at firms like Yorsipp acting purely as SIPP operators. The Report says that *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses…"* And it's noted prior to the good practice examples quoted above that *"We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs."*

The remainder of the publications also provide a *reminder* that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I therefore remain satisfied it's appropriate to take them into account too.

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

It's also clear from the text of the 2009 and 2012 Thematic Review Reports (and the *"Dear CEO"* letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' understanding of how the good

practice standards shaped what was expected of SIPP operators changed over time, it's clear the standards themselves hadn't changed.

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

That doesn't mean that in considering what's fair and reasonable, I'll only consider Yorsipp'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. And so I disagree with Yorsipp's view that the FCA's later publications meant it no longer thought it was good practice for SIPP operators to request copies of suitability reports.

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

> *"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes).*
> *…*
> *Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.*
>
> *The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes."*

Again, the alert didn't set new standards. It highlighted that advisers using the restricted advice model discussed in the alert generally weren't meeting *existing* regulatory requirements and set out the regulator's concerns about industry practices at the time.

To be clear, I don't say the Principles or the publications obliged Yorsipp to ensure the transactions were suitable for Mr H. It's accepted Yorsipp wasn't required to give advice to Mr H, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But as I've said above they're evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles. As the FCA's Enforcement Guide says, publications

of this type *"illustrate ways (but not the only ways) in which a person can comply with the relevant rules".* And so it's fair and reasonable for me to take them into account when deciding this complaint.

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

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

And in determining this complaint, I need to consider whether, in accepting Mr H's applications to establish a SIPP and transfer his pension scheme benefits into it, and to invest in Investment C and Investment H, Yorsipp 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 Yorsipp should have done to comply with its regulatory obligations and duties.

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

Yorsipp is concerned our Service's approach is to hold the SIPP provider liable without proper consideration of the merits of the individual complaint. But ultimately, what I'll be looking at here is whether Yorsipp took reasonable care, acted with due diligence and treated Mr H 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 H's complaint is whether it was fair and reasonable for Yorsipp to have accepted his SIPP application and Investment C and Investment H applications in the first place. So, I need to consider whether Yorsipp carried out appropriate due diligence checks on DBL and/or on these investments before deciding to accept Mr H's applications.

And the questions I need to consider include whether Yorsipp ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by DBL and/or investing in Investment C and Investment H were being put at significant risk of detriment. And, if so, whether Yorsipp should therefore not have accepted Mr H's application for the Yorsipp SIPP and/or these investments.

The contract between Yorsipp and Mr H

For clarity, my decision is made on the understanding that Yorsipp acted purely as a SIPP operator. I don't say Yorsipp should (or could) have given advice to Mr H or otherwise have ensured the suitability of the SIPP or Investment C and Investment H for him. I accept that Yorsipp made it clear to Mr H that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that forms it appears Mr H

signed confirmed, amongst other things, that he indemnified Yorsipp against liability arising from his investment.

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

What did Yorsipp's obligations mean in practice?

In this case, the business Yorsipp was conducting was its operation of SIPPs. I'm satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject particular investments and/or referrals of business. The regulators' 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/investment is appropriate to deal with/accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.

Yorsipp says it carried out checks on DBL, including FCA Register and Companies House searches. In addition, a 'Professional Client Agreement' was signed. So Yorsipp did take some steps towards meeting its regulatory obligations and good industry practice.

However, I don't think those steps that we've seen evidence of went far enough, or were sufficient, to meet Yorsipp's regulatory obligations and good industry practice. As set out earlier, to comply with the Principles, Yorsipp 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 H) 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 Yorsipp understood this at the time too, as it did more than just check the FCA Register and Companies House. It also entered into a Professional Client Agreement with DBL. And it's apparent that Yorsipp had access to some information about the two introductions it received from DBL, as it's been able to provide us with information about these when requested.

So, and well before the time of Mr H's application in 2013, I think that Yorsipp ought to have understood that its obligations meant that it had a responsibility to carry out appropriate checks on DBL to ensure the quality of the business it was introducing.

What due diligence did Yorsipp carry out on DBL?

I acknowledge that Mr H says he was approached by Mr S of Firm S who was promoting Investment C and was told he could make better returns than his current pensions by investing 'directly into the funds' via a SIPP. And that Mr S recommended the best option for better growth, so he was already convinced to complete the transactions prior to DBL's involvement. Based on Mr H's testimony, I'm satisfied it's likely Firm S was involved from the start here, and I'll return to this point.

But for clarity, I'm satisfied that it was DBL who introduced Mr H's SIPP business to Yorsipp. As I've explained, I think it's more likely than not that DBL was recorded as Mr H's 'Financial

Adviser' on his SIPP application. Also, DBL was recorded as the 'Introducing Firm' on Mr H's 'Identity Verification Certificate'. Further, it was DBL that sent Mr H's SIPP application and other documents to Yorsipp. And I note Yorsipp itself says Mr H's business was introduced to it by DBL.

Yorsipp had a duty to conduct due diligence and give thought to whether to accept introductions from DBL.

Yorsipp says it followed industry best-practice at the time. That it signed a 'Professional Client Agreement' with DBL, and searched Companies House and the FCA Register for its permissions and any other relevant information such as FCA disciplinaries. But it found no cause for concern.

Yorsipp has not provided our Service with any evidence of the FCA Register or Companies House searches it says it completed in relation to DBL. But Yorsipp has provided our Service with a copy of the 'Professional Client Agreement' signed between Yorsipp and DBL in October 2012.

Amongst other things, the Professional Client Agreement says:

- DBL is *"…authorised to enter into and advise on investment business under the FSMA Act 2000…"*
- Yorsipp *"…shall refuse Business from* [DBL] *if it ceases to be authorised, and reserves the right to cease to accept Business from, or to refuse any particular business proposed by* [DBL] *without giving reason."*

Was this sufficient due diligence in the circumstances?

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

I think Yorsipp was aware of, or should have identified potential risks of, consumer detriment associated with business introduced by DBL, including the following, before it accepted Mr H's application:

- The SIPP business introduced by DBL had anomalous features – it appears to have been high risk business, where monies were ending up invested in unregulated and esoteric investments post-transfer.

- How DBL was able to meet its regulatory standards, particularly given that it was a small IFA firm who was a new introducer for Yorsipp.

- The risk that DBL wasn't offering or providing the consumers it was introducing to Yorsipp (like Mr H) full regulated advice on the suitability of the high risk, non-standard and unregulated investments that their Yorsipp SIPPs were being established in order to effect.

- The risk of a business that wasn't authorised by the FCA to give pension transfer or investment advice being involved in the transfer and investment process.

Yorsipp knew all of this, or else ought to have known it from the information available, but it didn't then make further appropriate checks of DBL's business model.

Yorsipp should have taken steps to address these risks (or, given these risks, have simply declined to deal further with DBL). Such steps should have involved getting a full understanding of DBL's business model – through requesting information from DBL and through independent checks. Such understanding would have revealed there *was* a significant risk of consumer detriment associated with introductions of business from DBL.

In the alternative, DBL may not have been willing to provide the required information, or fully answer the questions about its business model. In either event Yorsipp should have concluded it shouldn't accept introductions from DBL.

I've set out below some more detail on the potential risks of consumer detriment I think Yorsipp either knew about or ought to have known about *before* it accepted Mr H's SIPP application. These points overlap, to a degree, and should have been considered by Yorsipp cumulatively.

The nature of the business introduced by DBL

Based on the evidence provided, I've not seen that Yorsipp asked DBL any questions about its business model, either at the start of the relationship or on an ongoing basis. I don't think this was in line with the expectations set out in the 2009 Thematic Review Report, which made clear that "*It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.",* and that SIPP operators were expected *"… to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs."*

And given that this was a new relationship, I think it's reasonable to expect that Yorsipp should have been particularly cautious and asked DBL questions about its business model, including about the kind of clients it would be introducing to Yorsipp, the expected nature of those clients' business, and how the quality and suitability of the advice it gave would be ensured.

Yorsipp says it couldn't advise Mr H, that to question the investments without concerns about their legitimacy could be seen as advising Mr H, and Yorsipp does not (and is not permitted to) provide financial advice. That it didn't have a copy of the suitability report and that there's no reason to ask for it unless it's to review suitability, and that's not the SIPP operator's role.

Pension transfers are complex transactions. They also involve many risks, and potentially the loss of guaranteed benefits – as was the case with Mr H's Pension 792. For this reason, advice on such transactions is regulated in the UK and there are standards of good practice that those giving the advice are expected to follow. This means several steps need to be taken as part of the advice process, and documentation such as fact-finds and suitability reports generally feature in the advice process. The purpose is to ensure any advice given takes into account all relevant factors, is suitable, and the recipient of the advice is in a fully informed position, where they understand the benefits they are giving up and the risks associated with the transfer.

I think Yorsipp, acting fairly and reasonably, should have satisfied itself that a similar process was being followed here by DBL. There was a clear risk of consumer detriment if consumers were not in a fully informed position and therefore not able to understand the risks associated with such transfers.

Yorsipp may argue that DBL's introductions represented only a small percentage of Yorsipp's total business at that time. That may be the case, but this didn't absolve Yorsipp

from needing to meet the expectations set out in the regulatory publications, or from taking steps to understand the nature of the business DBL was introducing.

Yorsipp says the provisional decision suggested DBL had a new advice model and Yorsipp should have raised questions about this, but presumably its advice model would need to have been registered with the FCA and if the FCA considered the advice model to be of high risk to consumers, it wouldn't have given DBL the required regulatory approvals. Yorsipp also says Mr H was DBL's first referral so Yorsipp wouldn't have known DBL's advice model had changed. But in any event, if the FCA didn't deem DBL's advice model to be a risk, our Service can't reasonably conclude that Yorsipp, if it had asked questions about DBL's model, would have identified the model as high risk.

For clarity, I am not saying DBL had a new advice model. I am saying DBL was a new introducer to Yorsipp. And Yorsipp seems to be suggesting it can rely on the regulatory status of other regulated firms and doesn't have to understand how they fulfil their regulatory obligations – in other words, it didn't need to understand DBL's business model because DBL was an FCA regulated financial adviser.

At the relevant date, COBS 2.4.6R (2) provided a general rule about reliance on others:

> "*A firm will be taken to be in compliance with any rule in this sourcebook that requires it to obtain information to the extent it can show it was reasonable for it to rely on information provided to it in writing by another person*."

And COBS 2.4.8G says:

> "*It will generally be reasonable (in accordance with COBS 2.4.6R (2)) for a firm to rely on information provided to it in writing by an unconnected authorised person or a professional firm, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information*."

So, it would generally be reasonable for Yorsipp to rely on information provided to it in writing by DBL, unless Yorsipp was aware or ought reasonably to have been aware of any fact that would give reasonable grounds to question the accuracy of the information.

However, while DBL's regulatory status and its acceptance of Yorsipp's Professional Client Agreement go some way towards meeting Yorsipp's regulatory obligations and good industry practice, I think Yorsipp needed to do more in order to satisfy itself that it was fair and reasonable to accept introductions from DBL.

It's not reasonable to take so much comfort from a firm's regulated status that it's thought that no monitoring is called for because, for example, the firm is under a regulatory duty to treat its customers fairly. There had been, prior to the events in this case, examples of regulated firms fined for various forms of poor conduct where the regulated firms failed to act in their clients' best interest.

And it's an obvious point that rules alone are not enough. Relevant behaviour must be observed or monitored to ensure that only permitted behaviour occurs. I'm satisfied this can only be done through effective monitoring. And I'm satisfied this is the case even if the party being monitored is a regulated firm.

I'm satisfied that had it undertaken adequate due diligence Yorsipp ought reasonably to have been aware of facts that should have caused it to decline to accept business from DBL before it accepted Mr H's business. In other words, I'm satisfied that if Yorsipp had

undertaken adequate due diligence on DBL it ought to have identified risks associated with DBL and the business it was introducing, which I'll come on to, before it accepted Mr H's SIPP application. And, in failing to take this step, I think it's fair and reasonable to conclude that Yorsipp didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr H fairly.

Taking everything into account, I'm not satisfied Yorsipp took sufficient steps to understand the nature of the business being introduced to it by DBL. I think Yorsipp should have been concerned about how DBL was able to meet its regulatory standards, particularly given that DBL was a small firm who was a new introducer for Yorsipp. I think this was a clear and obvious potential risk of consumer detriment.

The type of investments being made by DBL-introduced consumers

Yorsipp says Mr H was its first of only two introductions from DBL, so there was no pattern of business or suspicious level of activity. That there were no reasons for concern and no FCA issues had arisen at this point. And that there was nothing about Mr H's application to warrant further enquiry beyond the adequate due diligence Yorsipp completed.

I'm aware that both these clients (of which Mr H was one) have brought their complaints about Yorsipp to our Service. Based on the evidence I've seen in both these complaints, I'm satisfied the two clients introduced to Yorsipp by DBL ended up with most of their SIPP monies invested in high risk non-standard assets like Investment C and Investment H.

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

From the two complaints about Yorsipp brought to our Service which feature DBL as the advising introducer, I've not seen that the client SIPP application forms sent to Yorsipp, including for Mr H, included any details about the intended investment(s). And I note Yorsipp has told us that it acts as the administrator only of the SIPP. So, Yorsipp may argue it didn't know what Mr H and the other DBL-introduced client intended to invest in - Yorsipp says its checks of the FCA Register showed the DBL adviser held the permissions needed to give the advice he was giving, so Yorsipp didn't understand the provisional decision's conclusion that it should have known what investments were being made by DBL-introduced clients.

To clarify, the 2009 Thematic Review Report made clear that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. But it also made clear that *"SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs."*

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

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

> *"**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."* (my emphasis).

Mr H's SIPP application form didn't record his intended investments. But the 2009 Thematic Review Report means Yorsipp should have taken steps to know what investments were being made by DBL-introduced clients. So even though the investments weren't recorded on Mr H's SIPP application form, Yorsipp ought to have known what investments were being made by DBL-introduced clients.

The availability of advice

Yorsipp may argue that when Mr H completed his SIPP application and his funds were transferred he was, as far as Yorsipp was concerned and Mr H had asserted, advised by DBL, which was appropriately authorised to both advise and to enter into arrangements that might result in investments being put into a SIPP. And Yorsipp says it didn't have a copy of the suitability report and there's no reason to ask for it unless it's to review suitability, and that's not the SIPP operator's role. Also, that Yorsipp would have thought it highly likely that DBL had advised on the investments, and there's no reason for it to assume otherwise - it's not reasonable to say a SIPP operator must second guess a client's declarations.

I acknowledge that the SIPP Disclaimer Mr H signed on 22 January 2013 included the pre-printed line, "*I am happy with the risks involved with SIPP investments a* [sic] *wish to proceed with the establishment of a SIPP."* And that the HNW and Sophisticated Investor Statements he signed on 25 February 2013 both included the pre-printed line *"I am aware that it is open to me to seek advice from someone who specialises in advising on investments."*

But in my view, the first is a vague statement about being happy with the risks involved with SIPP investments/the establishment of a SIPP, and the second is about being aware he could choose to seek specialist advice on the investments. Given this, I don't think Yorsipp could reasonably have taken Mr H's agreement to these statements as confirmation that he had received advice on Investment C and Investment H from a regulated and authorised adviser. And I've seen nothing else in the documentary evidence provided to make me think Yorsipp could have reasonably concluded this.

Yorsipp says that on 28 March 2013, Mr H signed a declaration that he'd sought professional advice from a *"qualified and authorised adviser regarding the suitability of the investment compared to my attitude to risk."*, and that there is nothing in this declaration to suggest any advice concerned only the SIPP, not the investment. But our Service has not been provided with a copy of this declaration in relation to Mr H, despite my request for Yorsipp to do so alongside its response to the provisional decision.

I also note Yorsipp says that around 25 March 2013, Mr H sent Yorsipp a letter stating Firm Q and Firm S would provide him with "*wealth administration services".* Again, our Service hasn't been provided with a copy of this letter and I've not seen anything else to suggest Firm Q was involved in Mr H's case. But in any case, I note Yorsipp itself argues that "*wealth administration services"* is a phrase intended to convey that neither Firm Q nor Firm S would provide Mr H with investment advice.

Yorsipp suggests it didn't obtain a copy of TPS's suitability report for Mr H, and says it's wrong to suggest it should have asked for this. But as I've already explained, the 2009 Thematic Review Report set out examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms, and this included SIPP operators *"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."* And as I've also already explained, I disagree with Yorsipp's view that the FCA's later publications meant it no longer thought it was good practice for SIPP operators to request copies of suitability reports.

Yorsipp itself has highlighted the 2013 alert about advisers giving advice to consumers on SIPPs without consideration of the underlying investment to be held in the SIPP, setting out that this type of restricted advice didn't meet regulatory requirements. So Yorsipp acknowledges that it was aware advisers should advise on the overall proposition. But I've not seen any evidence that Yorsipp checked whether this was in fact what DBL was doing within the business it introduced to Yorsipp.

Taking everything into account, I'm not satisfied Yorsipp took sufficient steps to determine what advice DBL was offering to the clients it was introducing to Yorsipp, or whether DBL's advice model was in fact operating in line with Yorsipp's assumptions. And I'm not persuaded the clients DBL was introducing to Yorsipp, like Mr H, were ever offered or given full regulated advice - that is, advice on the transfer to the SIPP, the establishment of the SIPP *and* the intended investment(s). The possibility that full regulated advice had not been given or made available to the consumers like Mr H that DBL was introducing to Yorsipp, and that advice was instead being restricted, was a clear and obvious potential risk of consumer detriment. Especially since Mr H was transferring about £158,000 from five existing pension schemes.

Yorsipp says DBL was an FCA regulated business and at the time of the client's SIPP application, Yorsipp wasn't aware of any reason it shouldn't accept its introductions. Yorsipp essentially says it carried out appropriate due diligence on DBL and there was no cause for concern or red flags. But I think that from very early on Yorsipp was aware, or ought to have been aware, that DBL wasn't a firm that was doing things in a conventional way.

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

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

Having carefully considered the available evidence, including in this and the other complaint brought to our Service against Yorsipp where DBL was the introducing adviser, I'm satisfied both of Yorsipp's DBL-introduced consumers were doing the same thing. By which I mean that application forms to establish a Yorsipp SIPP were being submitted for them, that pension monies were then being transferred into the newly established Yorsipp SIPPs for

them, and, subsequently, their SIPP monies were being invested in Investment C and other high risk non-standard investments.

Given what Yorsipp ought reasonably to have identified about the business it was receiving from DBL had it undertaken adequate due diligence, I think this should have been a significant cause for concern for Yorsipp and caused it to consider the business it was receiving from DBL very carefully. Particularly where this was a new business relationship, as was the case between Yorsipp and DBL.

I do not say Yorsipp should have checked any advice that was given – but it should have taken steps to ascertain if a reasonable process was in place and consumers were taking these steps on an informed basis. And I think if it had undertaken such steps and carried out even a cursory investigation of the business being introduced to it, then it would have become aware no reasonable process was in place and consumers were not fully informed of the risks, which I'll come to.

The risk of an unregulated business being involved

I note Yorsipp says SIPP providers are not barred from accepting business from unregulated introducers. But as I'll explain, while I think it's likely Firm S was involved from the start here and that Yorsipp was, or ought to have been, aware of this, the due diligence Yorsipp may or may not have carried out on Firm S isn't the basis on which I'm upholding Mr H's complaint, or something I've relied on in reaching my conclusions.

Yorsipp says Mr H's business was introduced to it by DBL, who was recorded on his SIPP application as his financial adviser. And Yorsipp has made various submissions to the effect that Mr H should have told Yorsipp that Mr S was the initial introducer and/or advising Mr H (if indeed Mr S was), that Yorsipp itself had no way of knowing these things, and that if it had known these things then it would have rejected Mr H's SIPP business.

As I've said, I'm satisfied both of Yorsipp's DBL-introduced consumers were doing the same thing. And I don't think it's credible that they were independently determining to transfer their pensions to a Yorsipp SIPP and to invest their SIPP monies in Investment C and other high risk non-standard investments without any input from a third party. Based on the evidence provided, Mr H wasn't a HNW investor or a sophisticated investor. He was a normal retail investor. And it's difficult to see why such a retail investor would in the first place choose to move the vast majority of his pensions to a SIPP (a fairly specialist pension arrangement) to invest in high risk, non-standard investments which are only suitable for a small number of clients and while understanding the implications of this, without the input of a third party.

I think Yorsipp ought to have been alive to the risk that an unregulated third party might have been involved in promoting the transfer to a SIPP and the investments to investors, like Mr H, and that consumers were not receiving any regulated advice from DBL on the investments.

Given what Yorsipp ought reasonably to have identified about the business it was receiving from DBL had it undertaken adequate due diligence, I think this should have been a significant cause for concern for Yorsipp and caused it to consider the business it was receiving from DBL very carefully.

What fair and reasonable steps should Yorsipp have taken, in the circumstances?

Yorsipp could simply have concluded that given the potential risks of consumer detriment – which I think were clear and obvious at the time – it should not accept applications from DBL. That would have been a fair and reasonable step to take, in the circumstances. And it

was clearly a step Yorsipp was aware it could take, given that the Professional Client Agreement reserved Yorsipp's right to stop accepting business from DBL, or to refuse any particular business it proposed, without giving reason.

Alternatively, Yorsipp could have taken fair and reasonable steps to address the potential risks of consumer detriment. I've set these out below.

Requesting information directly from DBL

Given the significant potential risk of consumer detriment I think that, as part of its due diligence on DBL, Yorsipp ought to have found out more about how DBL was operating and *before* it accepted Mr H's application. Mindful of the type of introductions I think it was receiving from DBL, and that it ought to have been concerned about whether the clients introduced were in fact receiving regulated advice on the intended investments, I think it's fair and reasonable to expect Yorsipp, in line with its regulatory obligations, to have made some very specific enquiries and obtained information about DBL's business model.

As set out above, the 2009 Thematic Review Report explained that the regulator would expect SIPP operators to have procedures and controls, and for management information to be gathered and analysed, so as to enable the identification of, amongst other things, *"consumer detriment such as unsuitable SIPPs".* Further, that this could then be addressed in an appropriate way *"…for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification."*

The October 2013 finalised SIPP operator guidance gave an example of good practice as:

> *"Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with."*

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

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

It is possible that, if Yorsipp *had* checked with DBL and asked the *type* of questions I've mentioned above, DBL would have provided the information sought. But if Yorsipp had been unable to obtain the information sought from DBL, then I think it's fair and reasonable to say that Yorsipp should have then concluded that it was unsafe to proceed with accepting business from DBL in those circumstances. In my opinion, it wasn't reasonable, and it wasn't in-line with Yorsipp's regulatory obligations, for it to proceed with accepting business from DBL if the position wasn't clear.

Making independent checks

I think, in light of what I've said above, it would also have been fair and reasonable for Yorsipp, to meet its regulatory obligations and good industry practice, to have taken

independent steps to enhance its understanding of the introductions it was receiving from DBL. For example, it could have asked for copies of correspondence relating to the transfer advice.

The 2009 Thematic Review Report said that:

> *"…we would expect* (SIPP operators) *to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way,* ***for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification****."* (my emphasis)

So I think it would have been fair and reasonable for Yorsipp to speak to applicants, like Mr H, directly.

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

Yorsipp says that even if it had contacted Mr H, he wouldn't have provided it with any, or the correct, investment details so Yorsipp wouldn't have been able to conduct the level of due diligence the provisional decision suggested was necessary.

But, on balance, I still think it's more likely than not that if Yorsipp *had* contacted Mr H to 'confirm the position', Mr H would have told Yorsipp that Mr S of Firm S was promoting Investment C and had approached him and told him he could make better returns than his current pensions by investing 'directly into the funds' via a SIPP. That he'd not considered changing his pensions prior to his contact with Mr S, and Mr S recommended the best option for better growth, so he was already convinced to complete the transactions prior to DBL's involvement. That he was told he'd be taking a medium level risk with his pension monies which would be suitable for his needs, and that as he wasn't contributing to his existing pensions, they would no longer be managed properly so it would be to his benefit to move them. And that he was sent paperwork to complete – he was simply told what to complete and where to sign, and not to pay any relevance to the wording on these forms.

In other words, I think Mr H would have told Yorsipp that Mr S was his adviser and had introduced him to a SIPP and to at least one of the investments, Investment C. And I note Yorsipp says that if Mr H had told Yorsipp that his adviser and introducer was Mr S of Firm S, Yorsipp wouldn't have opened his SIPP or placed his investments.

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

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

- The SIPP business introduced by DBL had anomalous features – it appears to have been high risk business, where monies were ending up invested in unregulated and esoteric investments post-transfer.

- Concerns about how DBL was able to meet its regulatory standards,

particularly given that it was a small IFA firm who was a new introducer for Yorsipp.

- The risk that DBL wasn't offering or providing the consumers it was introducing to Yorsipp (like Mr H) full regulated advice on the suitability of the high risk, non-standard and unregulated investments that their Yorsipp SIPPs were being established in order to effect.

- The risk of a business that wasn't authorised by the FCA to give pension transfer or investment advice being involved in the transfer and investment process.

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

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

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

Due diligence on the underlying investments

Yorsipp had a duty to conduct due diligence and give thought to whether an investment itself is acceptable for inclusion into a SIPP. That's consistent with the Principles and the regulators' publications as set out earlier in this decision. It's also consistent with HMRC rules that govern what investments can be held in a SIPP.

Given what I've said about Yorsipp's due diligence on DBL and my conclusion that it failed to comply with its regulatory obligations and good industry practice at the relevant time, I don't think it's necessary for me to also consider Yorsipp's due diligence on the investments at this stage. I'm satisfied that Yorsipp wasn't treating Mr H fairly or reasonably when it accepted his SIPP application from DBL, so I've not gone on to consider the due diligence it may have carried out on the investments and whether this was sufficient to meet its regulatory obligations. And I make no findings about this issue.

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

For the reasons given above, I think Yorsipp shouldn't have accepted Mr H's business from DBL. So things shouldn't have got beyond that.

In its submissions to our Service, Yorsipp has referred to forms that Mr H signed and suggests these indemnify Yorsipp. For completeness, in my view it's fair and reasonable to say that just having Mr H sign indemnity or waiver declarations wasn't an effective way for Yorsipp to meet its regulatory obligations to treat him fairly, given the concerns Yorsipp ought to have had about his introduction.

Yorsipp knew that Mr H had signed forms intended to indemnify it against losses that arose from acting on his instructions. And, in my opinion, relying on such indemnities when Yorsipp knew, or ought to have known, Mr H's dealings with DBL were putting him at significant risk wasn't the fair and reasonable thing to do. Having identified the risks I've mentioned above, it's my view that the fair and reasonable thing to do would have been to refuse to accept Mr H's application.

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

COBS 11.2.19R

Yorsipp may argue that the investments were made as instructed by Mr H, that he signed documentation to confirm he wanted to make the investments, and that COBS 11.2.19R obliged it to execute investment instructions. For completeness, I've considered these points. But I think it is important for me to reiterate that it was not fair and reasonable for Yorsipp to have accepted Mr H's SIPP application from DBL in the first place. So in my opinion, Mr H's SIPP should not have been established and the opportunity to execute investment instructions or proceed on an insistent client basis or in reliance on an indemnity should not have arisen at all.

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

"The heading to COBS 11.2.1R shows that it is concerned with the manner in which orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2 as a whole, namely: "Best execution". The text of COBS 11.2.1R is to the same effect. The expression "when executing orders" indicates that it is looking at the moment when the firm comes to execute the order, and the way in which the firm must then conduct itself. It is concerned with the "mechanics" of execution; a conclusion reached, albeit in a different context, in Bailey & Anr v Barclays Bank [2014] EWHC 2882 (QB), paras [34] – [35]. It is not addressing an anterior question, namely whether a particular order should be executed at all. I agree with the FCA's submission that COBS 11.2 is a section of the Handbook concerned with the method of execution of client orders, and is designed to achieve a high quality of execution. It presupposes that there is an order being executed, and refers to the factors that must be taken into account when deciding how best to execute the order. It has nothing to do with the question of whether or not the order should be accepted in the first place."

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

I'm satisfied that Mr H's SIPP shouldn't have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity shouldn't have arisen at all. And I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for Yorsipp to proceed with Mr H's application.

Is it fair to ask Yorsipp to pay Mr H compensation in the circumstances?

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

In this decision I'm considering Mr H's complaint about Yorsipp. But I accept other parties were involved in the transactions complained about, including DBL.

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

Yorsipp has questioned the accuracy of Mr H's recollection, as it says Mr H said he'd never spoken with DBL and all communication with it was via post and/or email yet he was able to make a successful FSCS claim about DBL's advice. And the FSCS' approach is to only pay compensation where it considers the firm liable for the complaint, so Yorsipp can't understand why the FSCS agreed to compensate Mr H without DBL's substantive involvement, so Mr H should explain why he was able to make a successful FSCS claim about DBL. And Yorsipp says it should have the opportunity to consider Mr H's explanation and respond to it.

But I don't think what Mr H has told us about his recollections is at odds with his FSCS claim against DBL being successful. He made clear he did have communication with DBL, as he's said all his communication with DBL was via post and/or email, that it asked him to sign the sophisticated or HNW statements, and that it sent him paperwork and told him what to complete and where to sign. I accept Mr H has said that he never met or spoke with DBL, but this is not the same as not having involvement with DBL.

Yorsipp may argue that DBL is really responsible for Mr H's losses, as it suggests Mr H is complaining to Yorsipp about alleged failures by DBL, and it's said in a separate complaint brought to our Service featuring DBL as the advising introducer that unfortunately the adviser is no longer trading, as otherwise this would be a complaint for the adviser *"under 1.7.1 of COBS"* – Yorsipp says the point it's making here is that our Service is required to follow the law and where it does not, provide reasons for why. And the Civil Liability (Contribution) Act 1978 says that where more than one party is responsible for a loss, a contributory claim can be brought against another party. So Yorsipp says I should also consider DBL's role - that the FSCS has already found DBL at fault and so it's not open to our Service to find Yorsipp wholly responsible for the loss.

But the Financial Ombudsman Service won't look at complaints against DBL as it's been dissolved and no longer exists as a regulated business.

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

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

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

I accept that other parties, including DBL, might have some responsibility for initiating the course of action that led to Mr H's loss. However, I'm satisfied that it's also the case that if Yorsipp had complied with its own distinct regulatory obligations as a SIPP operator, the

arrangement for Mr H wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

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

To be clear, I'm not making a finding that Yorsipp should've assessed the suitability of the SIPP or the investments for Mr H. I accept that Yorsipp wasn't obligated, and indeed was not authorised to give advice to Mr H, or otherwise to ensure the suitability of the pension wrapper or investments for him. Rather, I'm looking at Yorsipp's separate role and responsibilities – and for the reasons I've explained, I think it failed in meeting those responsibilities.

Mr H taking responsibility for his own investment decisions

Yorsipp says the principle (as highlighted by the Court of Appeal in *Adams*) of consumer protection, even where that involves protecting consumers from the consequences of their bad investment decisions, has limits. And that the judgment in *Adams* doesn't extend to suggesting that a firm in any way involved in a customer's activities effectively holds the customer harmless against any losses they might suffer as a result of their own decisions.

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

Having carefully considered all this, I'm satisfied that it wouldn't be fair or reasonable to say Mr H's actions mean he should bear the loss arising as a result of Yorsipp's failings.

In my view, if Yorsipp had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr H's business from DBL at all. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr H wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

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

I wouldn't consider it fair or reasonable for Yorsipp to have concluded that Mr H had received an accurate explanation of the risks involved, given what Yorsipp knew, or ought to have known, about DBL's business model when it received Mr H's SIPP application.

And I'm satisfied that Mr H trusted the firms he was dealing with to act in his best interests. Mr H says he trusted Mr S was working in his interest. That he was totally reliant on the information he was given and trusted it was given by an IFA and that his pension monies were being transferred to an FCA regulated SIPP provider – both of whom were acting on his behalf and charging fees.

In addition, DBL was a regulated firm who provided Mr H with advice on his pension transfer. Mr H also then used the services of a regulated personal pension provider, Yorsipp.

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

Had Yorsipp declined Mr H's business from DBL, would the transactions complained about still have been effected elsewhere?

Yorsipp has made a number of arguments to the effect that Mr H would likely have proceeded with the transfer and investments regardless of the actions Yorsipp took, as he was motivated to make the investment regardless of the controls Yorsipp put in place and that he was prepared to sign a SIPP application form that he knew to be false. And Yorsipp has argued that it's contradictory to say that if Mr H had sought advice, then that advice would have been to not transfer his pensions and Mr H would have followed that advice. Because Mr H says he considered Mr S a *"trusted friend"* who had *"previously provided him with financial recommendations"* So given Mr H's relationship with Mr S, Yorsipp says it's more likely than not that if it had rejected his application, Mr H would have proceeded with another SIPP provider willing to accept an application.

I'd like to be clear that I've considered all of Yorsipp's arguments on this point. And I've thought carefully about what Mr H would likely have done if Yorsipp had told him it was rejecting his business.

I'm mindful that Mr H was a retail investor and that he says he trusted Mr S and DBL – he has told us that he was totally reliant on the information he was given and had trust that it was given by an IFA, that he'd not had much understanding of the paperwork but proceeded because someone he trusted told him it was the best thing for him to do, and that he did as he was told because he believed DBL and Yorsipp would be acting in his best interests and not doing anything untoward.

If Yorsipp had told Mr H it was rejecting his SIPP business and why, I think Mr H would have doubted the trust he'd placed in Mr S and DBL and given this, it's unlikely that Mr H would have chosen to go ahead regardless. Instead, it's more likely than not that Mr H would have sought advice from a different regulated and appropriately authorised adviser and that the advice would have been not to transfer his pensions into a SIPP and not to invest in Investment C and Investment H. I say this because I understand that these five pensions were most of Mr H's pension provision (apart from any state pension he'd be entitled to and the other pension with a current value of £5,400 he's told us about) and Investment C and Investment H were high risk, non-standard investments. And based on the evidence provided, Mr H was not a HNW individual such that he had this capacity for loss.

Given all this, I think it's more likely than not that Mr H would have acted in accordance with advice not to transfer these five pensions into a SIPP and not to invest in Investment C and Investment H. Alternatively, if Yorsipp hadn't accepted his business from DBL, Mr H might have simply decided not to seek pensions advice elsewhere from a different adviser and still then retained his existing pensions.

Yorsipp also argues that another SIPP operator would've accepted Mr H's application had Yorsipp declined it. But I don't think it's fair and reasonable to say that Yorsipp shouldn't compensate Mr H for his loss on the basis of speculation that another SIPP operator would've made the same mistakes that I've found Yorsipp 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 H's application from DBL.

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."*

But, in this case, I'm not satisfied that Mr H proceeded knowing that the investment he was making was high risk and speculative, and that he was determined to move forward with the transactions in order to take advantage of a cash incentive.

It appears Mr H understood that his pension monies were being moved into medium risk investments which would out-perform his existing pensions. I've also not seen any evidence that Mr H was paid a cash incentive. It therefore cannot be said he was incentivised to enter into the transaction. And, on balance, I'm satisfied that Mr H, 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 Yorsipp had refused to accept Mr H's application from DBL, the transactions this complaint concerns would not have still gone ahead.

In conclusion

So, overall, I do think it's fair and reasonable to direct Yorsipp to pay Mr H compensation in the circumstances. While I accept that other firms might have some responsibility for initiating the course of action that's led to Mr H's loss, I consider that Yorsipp failed to comply with its own regulatory obligations and didn't, when it had the opportunity to do so, put a stop to the transactions proceeding by declining Mr H's application from DBL. And I'm satisfied that Mr H wouldn't have established the SIPP, transferred monies in from his existing pensions, or invested in Investment C and Investment H if it hadn't been for Yorsipp's failings.

Yorsipp didn't have to carry out an assessment of Mr H's needs and circumstances in order to meet its regulatory requirements, but it did have to treat Mr H fairly under the Principles. I'm satisfied that in the circumstances, and for all the reasons given, it's fair and reasonable to conclude that Yorsipp should compensate Mr H for the loss he's suffered.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr H. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against Yorsipp that requires it to compensate Mr H for the full measure of his loss. DBL was reliant on Yorsipp to facilitate access to Mr H's pensions. But for Yorsipp's failings, Mr H's pension transfers wouldn't have occurred in the first place.

As such, I'm not asking Yorsipp 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 H's right to fair compensation from Yorsipp for the full amount of his loss.

Taking all of the above into consideration, I think that in the circumstances of this case it's fair and reasonable for me to conclude that Yorsipp shouldn't have accepted Mr H's SIPP

application. For the reasons I've set out, I also think it's fair to ask Yorsipp to compensate Mr H for the loss he's suffered.

I say this having given careful consideration to the *Adams v Options* judgment, but also whilst bearing in mind that my role is to reach a decision that's fair and reasonable in the circumstances of the case, having taken account of all relevant considerations.

Putting things right

I consider that Yorsipp failed to comply with its own regulatory obligations and didn't put a stop to the transactions that are the subject of this complaint. My aim in awarding fair compensation is to put Mr H back into the position he would likely have been in had it not been for Yorsipp's failings. Had Yorsipp acted appropriately, I think it's *more likely than not* that Mr H would have remained a member of the pension schemes he transferred into the SIPP.

Mr H transferred monies from a number of different pension schemes into the SIPP, including monies from both defined contribution schemes and a scheme with a GMP. To put things right Yorsipp will need to undertake different types of loss calculations, one in relation to the monies that originated from defined contribution schemes and another in relation to monies that originated from the GMP scheme. As part of doing this Yorsipp will need to calculate the portion of Mr H's SIPP value attributable to each of the respective transfers/switches and apply them to the relevant calculations.

In light of the above, Yorsipp should:

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

- Undertake loss calculations as set out below in respect of each of the schemes from which monies were transferred into the SIPP and pay any redress owing in line with the steps set out below.

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

- Pay to Mr H £500 to compensate him for the distress and inconvenience he's been caused.

Mr H says the terms of his FSCS reassignment of rights require him to return his FSCS compensation if his complaint against Yorsipp is successful, so any redress our Service awards him should be increased by £50,000 so he can repay the FSCS and still be fully compensated for his losses.

For its part, Yorsipp says this request of Mr H's is incorrect, as it will overcompensate him. That the FSCS compensation he received should be deducted in full from any redress calculation together with any return on that money, on the basis that it's DBL's contribution to Mr H's loss. Yorsipp has also made comments on the amount it believes would be fair to notionally deduct to reflect the correct position, bearing in mind that if making a withdrawal from a pension, Mr H would usually pay tax.

As I've already explained, I'm satisfied Yorsipp's failings have caused the full extent of the loss in question. And I've considered both sides' comments but overall, I remain of the view

that it is fair and reasonable to use the sum Mr H actually received from the FSCS in the calculation.

I acknowledge Mr H has received a sum of compensation from the FSCS, and that he has had the use of the monies received from the FSCS. The terms of Mr H's reassignment of rights require him to return compensation paid by the FSCS in the event this complaint is successful, and I understand that the FSCS will ordinarily enforce the terms of the assignment if required. So, I think it's fair and reasonable to make no *permanent* deduction in the redress calculation for the compensation Mr H received from the FSCS. And it will be for Mr H to make the arrangements to make any repayments he needs to make to the FSCS.

However, I do think it's fair and reasonable for some allowance to be made for the sum Mr H actually received from the FSCS and has had the use of for a period of the time covered by the calculation. I say this bearing in mind that this is not in fact a pension withdrawal and contribution, it is simply a means of acknowledging that Mr H has had the use of some money from the FSCS during the period of time that Yorsipp is being asked to compensate him for. The notional deduction and addition reflects this position and ensures that Mr H isn't compensated for lost growth on that sum during the time that he had enjoyment of those monies.

If Yorsipp wishes to make such an allowance, it must first calculate the proportion of the total FSCS' payment Mr H received that it's fair and reasonable to apportion to each individual transfer into the SIPP – this *must* be proportionate to the value of the actual sums transferred in. The total FSCS payment allowed for *must* be no more than the total FSCS payment Mr H actually received. Having done this, Yorsipp can then make the allowance by following the steps set out in the sections below.

Treatment of the illiquid assets held within the SIPP

It's clear Yorsipp closed Mr H's SIPP in November 2019. And while I note Yorsipp says Investment C and Investment H's current status was that they both have a nil value and have been written off by Yorsipp, it's still not quite clear what has happened with the ownership of Mr H's Investment C or Investment H holdings - whether they've been forfeited for nil value, or transferred into Mr H's name, or whether they're still held by Yorsipp for Mr H, or some other arrangement. And as I'm not sure what, if any, future value these investments might have and as Mr H wouldn't have purchased these investments but for Yorsipp's failings, I still think it's appropriate for Yorsipp to take ownership of these investments if they still exist and are held by, or on behalf of, Mr H.

To do this, Yorsipp should calculate an amount it's willing to accept for Mr H's Investment C and Investment H holdings and pay that sum plus any costs and take ownership of those investments. Any sums paid to purchase those investments will then make up part of the current actual value of the SIPP for the purposes of the redress calculation.

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

If Yorsipp is unable, or if there are any difficulties in buying Mr H's illiquid investment/s, it should give the holding/s a nil value for the purposes of calculating compensation. In this instance Yorsipp may ask Mr H to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the relevant holding/s. That undertaking should allow for the effect of any tax and charges on the amount Mr H may receive from the investment/s and any eventual sums he would be able to access. Yorsipp will have to meet the cost of drawing up any such undertaking.

Calculate the loss Mr H has suffered as a result of making the transfer in relation to monies originating from the GMP scheme

A fair and reasonable outcome would be for Yorsipp to put Mr H, as far as possible, into the position he'd now be in if it hadn't accepted his applications. As explained above, had this occurred I consider it's more likely than not Mr H would have remained in his GMP scheme.

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

For clarity, I understand Mr H has retired. So, compensation should be based on him taking benefits at the age he retired.

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

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

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

For the purposes of the calculation that's being carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4, if it wishes, Yorsipp *may* notionally, for the period from the point of their payment through until the valuation date (as per the DISP App 4 definition of that term), allow for that proportion of the payment Mr H received from the FSCS following the claim about DBL, that it's fair and reasonable to apportion to monies transferred in from the defined benefit schemes and in accordance with what's stated earlier in this decision, as a notional deduction (while not an income withdrawal payment, for the purposes of the calculation it may be treated as a notional income withdrawal payment). Where such an allowance is made then Yorsipp must also, at the end of the calculation, allow for a corresponding notional addition to the overall calculated loss that's equivalent to the relevant notional deduction(s) allowed for. The effect of this notional addition will be to increase the overall loss calculated using the most recent financial assumptions in line with

PS22/13 and DISP App 4, by a sum that's equivalent to the proportion of the payment Mr H received from the FSCS accounted for in this part of the calculation.

Redress paid directly to Mr H as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Yorsipp may make a notional deduction to allow for income tax that would otherwise have been paid. Mr H's likely income tax rate in retirement is presumed to be 20%, and neither party has disputed this. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

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

Yorsipp should first contact the provider of the plans which were transferred into the SIPP and ask them to provide notional values for the policies as at the date Mr H's Yorsipp SIPP was closed. For the purposes of the notional calculation the providers should be told to assume no monies would have been transferred away from the plan, and the monies in the policy would have remained invested in an identical manner to that which existed prior to the actual transfer.

Any contributions or withdrawals Mr H has made from the SIPP will need to be taken into account whether the notional value is established by the ceding provider or calculated as set out below. To do this, Yorsipp should calculate the proportion of the contributions or withdrawals that it's reasonable to apportion to each transfer into the SIPP, this should be proportionate to the actual sums transferred in.

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

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

If it wishes, Yorsipp *may* make an allowance in the form of a notional deduction equivalent to that proportion of the payment Mr H received from the FSCS following the claim about DBL, that it's fair and reasonable to apportion to monies transferred in from the defined contribution schemes in accordance with what's stated earlier in this decision, and on the date the payment(s) was actually paid to Mr H. Where such a deduction is made there must also be a corresponding notional addition, at the date of my final decision equivalent to the total relevant notional deduction(s) accounted for in this part of the calculation.

To do this, Yorsipp should ask the operators of Mr H's previous defined contribution pension plan(s) to allow for the relevant deduction(s) in the manner specified above. Yorsipp must also then allow for a corresponding notional addition as at the date of my final decision, equivalent to the accumulated FSCS payment(s) notionally deducted by the operators of Mr H's previous defined contribution pension plan(s).

Where there are any difficulties in obtaining notional valuations from the previous operators, Yorsipp can instead allow for both the notional deduction(s) and addition(s) in the notional calculation it performs, provided it does so in accordance with the approach set out above.

The notional value of Mr H's existing plan(s) if monies hadn't been transferred (established in line with the above) less the proportion of the current value of the SIPP that's attributable to monies transferred in from the same existing plan(s) (as at the date Mr H's Yorsipp SIPP was closed) is Mr H's loss.

Any calculated loss as at the date Mr H's Yorsipp SIPP was closed must be brought up to date. To do this, Yorsipp must calculate what the current value of the loss figure would be if it had enjoyed a return equivalent to the FTSE UK Private Investors Income Total Return Index from the date Mr H's Yorsipp SIPP closed through until the date of my final decision.

Pay an amount into Mr H's pension so that the transfer value is increased by the loss calculated above in relation to monies originating from defined contribution schemes

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr H as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%, and neither party has disagreed with this. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Pay Mr H £500 for the distress and inconvenience the problems with his pension have caused him

In addition to the financial loss Mr H has suffered as a result of the problems with his pension, I think it's fair and reasonable to say that the loss of a significant portion of his pension provision caused Mr H distress - I note he's told us he'd now retired, partially due to ill health, and has a very limited income due to his current circumstances and the failure of his pension. So I think that it's fair for Yorsipp to compensate him for this as well, and I think that £500 is a reasonable amount in the circumstances.

My final decision

For the reasons given, it's my decision that Mr H's complaint should be upheld and that Yorsipp Limited must pay fair redress as set out above.

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

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

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend Yorsipp Limited pay Mr H the balance plus any interest on the balance as set out above.

The recommendation isn't part of my determination or award. Yorsipp Limited doesn't have to do what I recommend. It's unlikely that Mr H could accept a decision and go to court to ask for the balance and Mr H may want to get independent legal advice before deciding whether to accept a final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 December 2024.

Ailsa Wiltshire
Ombudsman