DRN-5168757

The complaint

Mr L transferred his existing pension funds into a Barclays Stockbrokers self-invested personal pension ('SIPP') with AJ Bell Management Limited ('AJ Bell'). Mr L went on to make investments through the stockbroking account which he says were unsuitable for him and lost almost all of their value. Mr L's complaint is that AJ Bell did not carry out adequate checks before accepting the investments in his SIPP.

What happened

In 2012, Mr L said he was advised by a work colleague to transfer his current pension into a Barclays Stockbrokers SIPP, which was administered by AJ Bell, in order to make specific investments in two companies. Mr L says his colleague told him the two companies were going to be bought out so he should "get in there quick". Mr L says his colleague was not a qualified adviser and had no connections to the investment company. Instead his colleague had been "dabbling" in investments via his own SIPP and told Mr L he thought this would be a good investment.

Mr L says he had just been through a divorce and was attracted by the idea as he needed a lump sum within a year to settle the divorce. He says he was shown some discussions online where investors were speculating how much the companies could be sold for.

In March 2012 AJ Bell received a Barclays Stockbrokers SIPP application from Mr L. Mr L included the details of an existing pension that he wished to transfer to the SIPP which had a value of around £28,000. The SIPP was administered by AJ Bell but investment dealing services were provided by Barclays Stockbrokers Ltd ('BSL') on an execution-only basis.

AJ Bell sent Mr L a welcome email on 13 March 2012, confirming the SIPP had been opened and providing links to various documents, including the SIPP Terms and Conditions. AJ Bell also sent Mr L a letter on 19 March 2012 with the same information and included a copy of his application form.

AJ Bell received just over £28,000 into the SIPP on 10 April 2012 and sent Mr L an email to confirm this.

Mr L invested around £5,000 in Xcite Energy Limited ('Xcite') on 11 April 2012 and a total of just under £23,000 in Gulf Keystone Petroleum ('Gulf') between 11 April 2012 and 3 May 2012.

Between 6 May 2014 and 4 August 2016 a total of 9,647 shares in Gulf were disinvested for an aggregate amount of £400.87.

On 29 November 2016 Xcite was delisted and was subsequently liquidated in 2017.

Following a restructuring of the share capital of Gulf in December 2016, the residual 1,706 shares were consolidated into 17 shares. Mr L disinvested from the shares on 11 July 2017 for an aggregate amount of £3.92.

On 31 January 2020 Mr L made a request to close his SIPP and it was closed in October 2020.

Mr L complained to AJ Bell via a representative in December 2020. Although he recognised that AJ Bell hadn't provided any advice, he thought it had a duty of care to ensure the SIPP met his needs and that the investment was a suitable asset for a SIPP. Prior to transferring his funds into the Barclays Stockbrokers SIPP, Mr L says his attitude to risk with investments and pensions was low and he wasn't adventurous with financial decisions in relation to his pension. Mr L described himself as reserved and cautious with these decisions meaning that his attitude to risk was very conservative given the importance of securing a pension fund for later use.

Mr L said AJ Bell should have been aware of the particularly high-risk ventures in the portfolio and ensured that these were only made available to experienced investors and not offered to retail clients. Mr L said he was an inexperienced and unsophisticated investor. He said the proposed investments were 'non-standard' Unregulated Collective Investment Schemes ('UCIS') and AJ Bell should have been aware Mr L hadn't received regulated advice. So it should have refused the introduction and the investment. Had the high-risk nature of the pension transfer and investments been explained to Mr L, he says he would not have transferred his pension and he would not have suffered his loss.

AJ Bell provided a response to Mr L on 16 July 2021 saying it hadn't treated the complaint as a regulatory complaint as it believed it had been made too late under the Financial Conduct Authority's ('FCA') rules. It said Mr L made the investments more than six years ago and he was aware of the loss to his pension in September 2014, when AJ Bell sent him his SIPP statement which showed the value of his portfolio had fallen to around £12,000. AJ Bell added that Mr L's next two SIPP statements in 2015 and 2016 showed the value had fallen further to around £4,500 and then around £1,200. As this was more than three years before he made his complaint, he hadn't made it in time. While AJ Bell said it didn't consent for the Financial Ombudsman Service to consider the complaint, it went on to reject it on the merits.

AJ Bell said it didn't provide Mr L with any advice and he made the investments via the stockbroking service provided by BSL. It said it wasn't aware of any other party being involved in the pension transfer. AJ Bell said Xcite and Gulf were listed on the Alternative Investment Market ('AIM') and London Stock Exchange Main Markets ('LSE') respectively – both recognised stock exchanges. As such, both investments would've been considered to be what are now known as a 'standard assets'. It said it wasn't required to carry out any extra due diligence as it was reasonable for it to rely on the managers of the investments to have complied with the related listing requirements. It added that it wasn't required to carry out an appropriateness test.

Mr L referred his complaint to the Financial Ombudsman Service. Mr L explained that everything was done online and no one from AJ Bell called him to explain things. He says AJ Bell didn't carry out a risk assessment or sophistication check to check whether a SIPP was suitable for him and he received no warnings or advice regarding his investment.

An Investigator considered Mr L's complaint. He thought Mr L had complained in time but didn't uphold it.

The Investigator said AJ Bell wasn't required to consider whether the SIPP or investment was suitable for him, and the investment account with BSL was execution-only, meaning he was responsible for giving investment instructions. The Investigator also said that because the investments were non-complex, it wasn't required to carry out an appropriateness check.

Mr L didn't accept the Investigator's opinion and asked for an Ombudsman's decision. He didn't provide any further comments. The complaint was later passed to me to make a decision.

I issued a provisional decision on 7 November 2024, explaining that I thought Mr L's complaint had been made in time but that I wasn't intending to uphold it.

Mr L didn't accept the provisional decision and his representative made the following points:

- The FCA made submissions in past court proceedings that COBS 2.1.1R includes a duty not to accept into a SIPP an investment of a kind that is inappropriate for any SIPP, or any SIPP investment for a retail customer that it knows hasn't received regulated advice about the investment.
- The purpose of a SIPP is to provide a pension at retirement so to accept highly speculative investments without any diversification is inconsistent with that purpose and with the client's best interests.
- Although a SIPP operator does not as such owe advisory or discretionary management duties, in the FCA's submission it fails to act in the client's best interests if it accepts into the SIPP wrapper an asset that is manifestly unsuitable as a pension investment.

AJ Bell didn't provide a response.

As both parties have had an opportunity to respond to my provisional decision, I'm now providing my final decision on the matter.

What I've decided – and why

Jurisdiction

AJ Bell hasn't disputed the findings I made in my provisional decision about Mr L having made his complaint in time. But for completeness, I've reconsidered all the available evidence and arguments to decide whether we can consider Mr L's complaint.

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

The section of the rules that applies to this complaint means that, unless AJ Bell consents, we can't look into this complaint if it's been brought:

- more than six years after the event complained of;
- or, if later, more than three years after Mr L was aware – or ought reasonably to have become aware – he had cause for complaint;
    - unless the complaint was brought within the time limits, and there's a written acknowledgement or some other record of it having been received; or
    - unless, in the view of the Ombudsman, the failure to comply with the time limits was as a result of exceptional circumstances.

Mr L made his complaint to AJ Bell in December 2020. The complaint was that Mr L thought AJ Bell had a duty of care to ensure the SIPP met his needs and that the investment was a suitable asset for a SIPP. So, in essence, Mr L complained that AJ Bell should not have accepted his SIPP application and allowed the investments to be made within it.

The SIPP was opened in March 2012, which is more than six years before Mr L referred his complaint to AJ Bell in December 2020. As such, I have to consider when Mr L ought

reasonably to have been aware of his cause for complaint. And having established that date, whether Mr L complained to AJ Bell within three years of it. This means if Mr L ought reasonably to have been aware of his cause for complaint before December 2017, he made his complaint to AJ Bell too late under the Regulator's rules.

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

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

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

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

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

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

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

I think that Mr L was aware of a problem with the investments he'd made in the SIPP by September 2014. I say this because by this time, the value of the investments he'd made had reduced to around £12,000 – meaning he'd lost almost 60% of the amount he'd invested just two years previously. So, I think Mr L was aware of a problem with his pension investments that had caused him a material loss at that point. But, I'm not satisfied that Mr L would have, or ought to have, been aware that AJ Bell could have any responsibility for the position he was in.

There's nothing I've seen that was sent to Mr L more than three years before his complaint was referred to AJ Bell that would have caused Mr L, or a reasonable retail investor in his position, to link AJ Bell to the problems he'd experienced with the pension investment. I think it's worth highlighting that Mr L wasn't advised by AJ Bell about setting up the SIPP or the suitability of investments. And I think the obvious first thought when problems arose would have been that the person who told him about the investments might have misled him or that the people who ran the Companies he'd invested in might have caused the issue.

I'm not aware of anything AJ Bell said or did at the outset of its relationship with Mr L that would have caused him to think it might be responsible if a problem with his pension investments occurred. Nor am I aware of anything AJ Bell said or did that ought to have caused Mr L to think it was responsible once Mr L became aware of a problem.

I don't think Mr L would need to have understood the details of AJ Bell's obligations to have been aware (or be in a position whereby he ought reasonably to have been aware) of his cause for complaint. But I think Mr L would have needed to have actual or constructive awareness that an act or omission by AJ Bell had a causative role in the problem causing

him loss or damage. And I don't think Mr L, or a reasonable investor in his position, ought reasonably to have attributed his problem to acts or omissions by AJ Bell more than three years before he complained to AJ Bell.

I've thought about whether there was anything else that ought to have prompted Mr L, or a reasonable investor in his position, to have attributed his problem to acts or omissions by AJ Bell more than three years before he complained to it.

When the unsuccessful judicial review challenge in R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service [2018] EWHC 2878) ('*BBSAL*') was published on 30 October 2018, the case attracted publicity and there was commentary surrounding it. And it could be seen from this that much of the industry's position that SIPP provider's obligations were very limited was not correct. It could also be seen that the Regulator's view, and the Financial Ombudsman Service's view, were different, and that an Ombudsman had decided that a SIPP operator was responsible for the losses a consumer suffered in some circumstances and the court had rejected the SIPP operator's challenge to that decision.

Mr L had experienced a significant loss – by April 2016 his investments of around £28,000 had lost almost all of their value. The statement AJ Bell provided to Mr L in September 2016 showed the value of his pension was only around £1,000. So, after allowing time to notice the change in the landscape following the *BBSAL* judgment and work out the implications for him (either through his own research or by appointing an expert) I think Mr L ought reasonably to have been aware of his cause for complaint by the start of 2019. And this would've given him until the start of 2022 to complain to AJ Bell about its role in the transactions he's complained about here.

It's evident that Mr L appointed a representative to help him with a complaint in 2020, and the representative made a complaint on his behalf to AJ Bell in December 2020. So, I think the complaint was made within three years of Mr L becoming aware, or at the point he ought reasonably to have been aware, he had cause for complaint about AJ Bell. As such, I think he made his complaint in time.

Merits of the complaint

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

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

I have taken into account the FCA's Principles for Businesses, in particular Principles 2, 3 and 6 which 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 also considered the relevant law including:

- *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ('BBA');
- *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) which I've already referred to as BBSAL above; and
- The High Court decision in *Adams v Options SIPP* [2020] EWHC 1229 (Ch) and the Court of Appeal decision in the same case *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474.
- The Court of Appeal decision in *Options UK Personal Pensions LLP v Financial Ombudsman Service Ltd* [2024] EWCA Civ 541.

And I have considered the various publications the FCA (and its predecessor, the FSA) issued 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 acknowledge that the 2009 and 2012 reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 Finalised Guidance is). However, the reports and *"Dear CEO"* letter 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.

I'm mindful that most of the publications listed above were published after Mr L's SIPP was set up and the investments were made. But, like the Ombudsman in the *BBSAL* case, I don't think the fact that some of the publications post-date the events that took place in relation to Mr L's complaint, mean that the examples of good practice they provide weren't good practice at the time of the relevant events. Although some publications were published after the events subject to this complaint, the Principles that underpin these existed throughout, as did the obligation to act in accordance with the Principles.

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

Overall, in determining this complaint I need to consider whether AJ Bell complied with its regulatory obligations as set out by the Principles to act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regards to the interests of its customers (in this case Mr L), to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the Principles and the publications listed above to provide an indication of what AJ Bell could have done to comply with its regulatory obligations and duties.

Mr L's relationship with AJ Bell and other connected parties

AJ Bell explained its role in its response to Mr L's complaint as follows:

"The Barclays PensionMaster SIPP was marketed and promoted by Barclays. AJ Bell provided the related pension administration services on a non-advised basis for retail customers who had set up a Barclays PensionMaster SIPP and Barclays provided them with an execution-only dealing and safe custody service for their Barclays PensionMaster SIPP."

So, AJ Bell provided the SIPP on an execution-only basis. Although AJ Bell has referred to The Barclays PensionMaster SIPP above, I'm satisfied Mr L opened a Barclays Stockbroker SIPP as this is confirmed by his application summary. And based on what I know about this SIPP product, BSL provided the SIPP investment services.

As such, I accept that AJ Bell didn't provide any advice here, and so it didn't have an obligation to consider the suitability of the investments for Mr L. Nevertheless, I think AJ Bell was required (in its role as an execution only SIPP provider) to consider whether it was appropriate to accept Mr L's SIPP application and to consider whether the investment he went on to make was acceptable to make within its SIPP. And overall, I think AJ Bell's duty as a SIPP operator was to treat Mr L fairly and to act in his best interests.

What did AJ Bell's obligations mean in practice?

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

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 is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business.

As set out above, to comply with the Principles, AJ Bell 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 L) 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.

AJ Bell says it wasn't aware of any involvement of any unregulated adviser or introducer, so it was treated as a direct application. It says that it didn't have any grounds to refuse the SIPP application and it was Mr L's decision to make the investments, which were made through BSL not AJ Bell. AJ Bell said it was not subject to any duty to undertake any specific investment due diligence on either of the investments because although a SIPP operator has an obligation to undertake due diligence on a standard asset, a SIPP operator can rely on the fact that the issuer has to comply with the related listing requirements. Furthermore, it considered any further due diligence requirements fell to BSL.

However, AJ Bell was still responsible for the quality of the SIPP business it administered. And for the reasons set out above in the "relevant considerations", it is my view that in order for AJ Bell to meet its regulatory obligations (under the Principles and COBS 2.1.1R), it should have undertaken sufficient due diligence checks to consider whether to accept or reject particular applications for investments, with its regulatory obligations in mind.

To be clear, for AJ Bell to accept the investments without carrying out a level of due diligence that was consistent with its regulatory obligations, wouldn't in my view be fair and reasonable or sufficient. And if AJ Bell didn't look at an investment in detail, and if such a detailed look would have revealed that the investment might not be secure, might be fraudulent, or that the investment couldn't be independently valued, or that it was impaired, it wouldn't in my view be fair or reasonable to say AJ Bell had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

Due diligence checks on the introducer

AJ Bell has not made any representations about checks on any introducer here as it was a direct application received from Mr L. But I've considered a similar case involving this SIPP product, and in that case AJ Bell said BSL could be considered to be the introducer. And in that case, it said an agreement dated 5 January 2009 governed the relationship between BSL and AJ Bell.

Although it is evident that Mr L was introduced to the idea of investing in the two companies by a colleague, he doesn't assert that he was given advice to open the SIPP with AJ Bell or make the investments. The way he describes it is akin to his colleague giving him a 'tip'. So, I don't think that AJ Bell ought to, or could have been aware of the involvement of an unregulated party when Mr L applied to open his SIPP and make the investments. AJ Bell received an application form direct from Mr L – there was no covering letter or any indication that any other firm or person had assisted him and it doesn't appear that Mr L is saying that happened here in any event.

AJ Bell may refer to BSL as the introducer, but I don't think that's really the case. And even if BSL could be considered to be the introducer, I don't think AJ Bell could've reasonably been expected to refuse the introduction. AJ Bell had an agreement with BSL, it was a regulated firm and as such was subject to the regulatory framework. I think AJ Bell could take some comfort in this.

Mr L wished to transfer an existing personal pension to the SIPP – he wasn't looking to transfer a defined-benefit occupational pension. AJ Bell also wouldn't have known, on receipt of Mr L's SIPP application, how Mr L intended to invest his funds. So, I don't think there were any concerning features about Mr L's SIPP application such that AJ Bell should've carried out further checks on this occasion before accepting it.

Overall, I haven't seen any evidence to persuade me that AJ Bell ought to have refused to accept Mr L's SIPP application. So, I think it was reasonable for AJ Bell to open the SIPP for Mr L and accept the transfer of his existing pension funds in accordance with his instructions.

But AJ Bell also needed to carry out appropriate due diligence checks on the investments to be held in its SIPPs. So, I've thought about the due diligence checks that AJ Bell ought to have carried out on the investments before it should've accepted them. And whether the information it ought to have gathered should have led it, if acting in line with the Principles and guidance, to decline to accept the investment into the SIPP.

Due Diligence checks on the investment

As the Regulator has made plain, SIPP operators have a responsibility for the quality of the SIPP business that they administer. So, SIPP operators should undertake appropriate independent enquiries about the nature or quality of an investment proposed before determining whether to accept or decline it into its SIPP, which would mean making independent checks into the investment. That's even the case where the investments are being facilitated by a third-party platform, such as BSL here, where those parties also have obligations to consumers.

AJ Bell said it understood the shares Mr L invested in to have been the equivalent of what the FCA now categorises as standard assets because they were listed on recognised stock exchanges. So, AJ Bell says it was not subject to any duty to undertake any specific investment due diligence on either Xcite or Gulf because, although a SIPP operator has an obligation to undertake due diligence on a standard asset, the FCA has not issued any express guidance on the scope of the related due diligence in connection with listed securities. As such, it says a SIPP operator can rely on the fact that the issuer has to comply with the related listing requirements.

The FCA has made it clear that the due diligence checks required on SIPP investments will vary depending on the nature of the intended investments. But I still think AJ Bell ought to have carried out checks, in line with good industry practice for a SIPP operator at that time, in order to establish:

- the nature and legal structure of the investment;
- that it was a genuine investment and not a scam, or linked to fraudulent activity, money laundering or pensions liberation;
- that appropriate custody arrangements were in place in order to ensure that the investment was safe and secure; and
- that it could obtain valuations at the point of purchase and subsequently.

The Xcite shares were listed on AIM and the Gulf shares were listed on the LSE, both of which were regulated investment exchanges in the UK.

Listing on the LSE's Main Market involves very strict admission and ongoing duties on companies. Companies listed on AIM must have and retain a nominated adviser at all times. The nominated adviser is responsible to the LSE for assessing the appropriateness of a company for AIM and for advising and guiding an AIM company on its responsibilities under the AIM Rules. Whilst the requirements for listing on AIM are not as stringent as the Main Market, there are working capital requirements, financial reporting requirements and corporate governance requirements.

So, I think AJ Bell could therefore be satisfied that:

- It understood the nature of the investments – they were fairly standard tradeable securities.
- The investments were not part of a scam or fraudulent activity, money laundering or pensions liberation.
- The investments could be independently valued – both AIM and the LSE provided share valuations that were easily accessible, day by day and throughout each day.
- There was no evidence that previous investors might have had impaired investments other than typical fluctuations in share prices.

In light of the above, I don't agree with Mr L's representative's comments that the investments were inappropriate investments to be held in a SIPP. And overall I think it was reasonable for AJ Bell to rely on the investments meeting the listing requirements of AIM and the LSE. As such, I'm not persuaded that AJ Bell had any reasonable grounds to refuse to accept Mr L's investments in Xcite and Gulf into the SIPP.

Mr L's representative says that AJ Bell shouldn't have allowed him to invest his pension funds in high risk portfolios that involved UCIS. But as I've said above, the investments Mr L made were in listed shares and as such they were not inappropriate investments for a SIPP. It may be that the investments in Xcite and Gulf were speculative and carried a higher degree of risk than Mr L expected. And I appreciate that the investments have subsequently failed and that this has had significant consequences for Mr L. But that does not mean that AJ Bell or any other SIPP operator acting in line with the Principles and guidance should not have permitted the investments to be held in the SIPP.

Mr L has also made the point that he was not a sophisticated investor, but I'm not aware of any evidence to suggest that the investment in either Xcite or Gulf could only be promoted to sophisticated or high net-worth investors. This would be the case if the investment was, for example, a non-mainstream pooled investment vehicle. But the shares in Xcite and Gulf were listed on recognised exchanges, so would now be considered to be standard assets.

Mr L's representative said that AJ Bell failed to check whether the SIPP and investments were suitable for him. And in response to my provisional decision, it added that accepting highly speculative investments without any diversification was inconsistent with the purpose of a pension and with Mr L's best interests. But I don't think AJ Bell was required to check the suitability of the arrangement for Mr L under the regulations, Principles and good industry practice I've referred to above. And I think taking a view on whether Mr L's pension investments were diverse enough would fall into a suitability assessment. AJ Bell did not and was not able to provide Mr L with any advice – it made this clear within the SIPP terms and conditions, which Mr L accepted when he confirmed he wanted to open the SIPP.

Mr L also says AJ Bell should've refused the application because he hadn't received regulated advice and it should have checked Mr L's understanding of the investment and the risks. But I think it was Mr L's responsibility to ensure that he understood the investment and that it was suitable for him – or alternatively to engage with a financial adviser to carry out a suitability assessment before deciding to switch his pensions and make the investment.

Mr L decided to switch his pension and make the investments following a tip from a work colleague – he understood he wasn't being given regulated financial advice from his colleague. I can also see that on establishment of the SIPP, AJ Bell sent Mr L a welcome email in which it reiterated that if he had any concerns about the transfer of his pension and needed advice, that he should contact a financial adviser. So, Mr L could've taken regulated advice at this stage but it seems to me that he trusted his colleague enough to make this decision himself. As such, he chose to proceed with the transfer of his existing pension and make the investments without seeking advice.

Furthermore, even if AJ Bell had provided warnings to Mr L about the risks involved in the investments he was making, I don't think that would've likely made a difference here. Mr L has said that he needed money for a divorce settlement so I think he was interested in the potential rewards of making these specific investments. So, ultimately, even if AJ Bell had highlighted the risks of investments of this nature, I think he still would've most likely gone on to make them.

I've taken account of Mr L's representative's comments on the FCA's submissions about COBS 2.1.1R in *Adams.* But I think it is significant that the High Court was not persuaded by

those arguments and the Court of Appeal upheld the case on a different basis. I'm not aware of any other judicial authority that says COBS 2.1.1R is to be interpreted as meaning that a SIPP operator must not accept a SIPP investment by a retail customer who is not known to have received independent regulated advice. Ultimately, I think a SIPP operator should consider each case on its own facts and use its judgement about whether to accept or refuse applications where the consumer is known not to have received independent regulated advice, as well as all the other circumstances of the application. And for the reasons given above, I still don't think AJ Bell acted unreasonably by accepting Mr L's applications.

Summary

Overall, I'm satisfied that AJ Bell carried out some due diligence checks before accepting Mr L's applications. And I think AJ Bell could take comfort from the fact that a regulated stockbroker was involved and that the investments Mr L went on to make were listed on a recognised stock exchange.

I think AJ Bell needed to carry out further checks in accordance with the Regulator's rules, Principles and good industry practice before accepting the SIPP application and the investments in the SIPP. But even if AJ Bell had carried out further independent checks, I haven't found anything that would've been discoverable to AJ Bell at the time that ought to have led it to refuse the investments to be made within its SIPP.

So, based on everything I've seen, I'm not upholding Mr L's complaint. I appreciate this will be very disappointing for him to hear.

My final decision

For the reasons set out above, I'm not upholding Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 December 2024.

Hannah Wise
Ombudsman