DRN-5197436

The complaint

Mr W's complaint concerns transfers to a self-invested personal pension (SIPP) provided by IFG Pensions Limited - at the time trading as Sovereign Pension Services (Sovereign) - and the investments made following that transfer. Mr W is represented by a Claims Management Company (CMC).

The CMC says Sovereign failed to look after Mr W's best interests when accepting the transfers in from his occupational pension schemes. It says the advice Mr W received on the transfers was of questionable quality and this should have been noted by Sovereign; the advice firms involved could not be said to have provided appropriate disclosure, risk warnings or have recommended funds that were suitable for Mr W. In the CMC's view, Sovereign allowed Mr W's pension to be invested in high risk, expensive funds with a limited track record and limited potential for matching the benefits provided by his occupational schemes; and should be held responsible for the losses Mr W has suffered.

What happened

In 2017 Mr W held benefits in two occupational schemes which had accrued over previous periods of employment. He was, at this time, living and working abroad. Mr W discussed his pension with an international advisory firm, based in Dubai. The international advisory firm, in turn, referred Mr W to a UK authorised Independent Financial Advisor (IFA) to give advice on the potential transfer of the benefits Mr W held in the occupational schemes to a SIPP.

Between them the international firm and the UK IFA (the former focussing on how any transferred money should be invested, the latter focussing on the suitability of the transfer to the SIPP) recommended that Mr W transfer the value of his occupational scheme benefits to a SIPP and invest in a series of funds in an offshore investment wrapper. Mr W accepted this advice.

A Sovereign SIPP application was signed by Mr W on 29 October 2017. The SIPP Mr W applied for was described as an "international SIPP" (it seems this was a product targeted at expats, like Mr W). The application confirms an advisor at the international firm was Mr W's investment advisor, and that the international firm was authorised by the UAE Insurance Authority.

Sovereign received all the documentation it required to proceed with the transfer in December 2017. That included two letters confirming Mr W had received independent financial advice on the transfer from his occupational schemes from an authorised (i.e. authorised by the Financial Conduct Authority - FCA) pension transfer specialist (the UK IFA). It also included an application to open the offshore wrapper account, into which investments were to be made.

In January 2018 Sovereign received the value of Mr W's occupational scheme benefits, and this amount – around £97,500 - was credited to his SIPP. The majority of this was then credited to the offshore wrapper account, and invested in three funds of funds, described as cautious, balanced and adventurous respectively.

The UK IFA went out of business in 2019 and Mr W subsequently made a claim to the Financial Service Compensation Scheme (FSCS) about the advice it had given him on the transfer of his occupational scheme benefits. The FSCS accepted Mr W's claim, and said his loss had been assessed as more than the maximum amount it could pay, so it would accordingly pay him that maximum amount (£85,000). The complaint to Sovereign was subsequently made by the CMC on Mr W's behalf.

Sovereign did not uphold the complaint. In response to the complaint it said, in summary:

- It is not regulated to provide investment advice or make recommendations; it is regulated to establish, administrate and wind-up pension schemes. It acts in a member's best interest based on the information provided.

- It undertook due diligence checks on both the UK IFA and the international advisory firm, and the advisors at both. It ensured checks against the FCA Register had been completed for the Defined Benefit Pension Transfer Specialist at the UK IFA. In addition, it checked the UAE Insurance Authority for the international firm, to confirm appropriate permissions and qualifications were held prior to acceptance of the application.

- It refutes the allegations that it did not comply with the relevant FCA standards and rules. It carried out sufficient checks and did not consider the business to be unusual. Mr W had been living and working overseas since 2014; there was no reason to think a transfer to an offshore arrangement was inappropriate.

- It is the responsibility of the financial adviser to check the suitability of the investment in line with their client's attitude to risk.

- The investments made were all standard investments as defined by the FCA, and in line with its investment guidelines.

Our investigator concluded the complaint should not be upheld. He said, in summary:

- The due diligence Sovereign undertook on the UK IFA and the international advisory firm was consistent with good industry practice at the time.

- The CMC says it was recommended to invest into expensive esoteric investments. However, the investment funds recommended were actually standard investments.

- The offshore wrapper provider was a global investment provider authorised by the relevant authority.

- Sovereign says any investment requests are sent to its investment team for review. The Investment team assess any proposed trades against the member's risk profile, and the investment guidelines for the SIPP to ensure it is line with the application.

- Mr W was provided with the fee schedule at the time of his application which he signed as understanding, so he would have been aware of the applicable fees.

- The relevant considerations (the regulatory publications setting out guidance and good practice for SIPP operators, and a number of court cases relating to SIPP due diligence) primarily relate to unauthorised introducers and unregulated investments. Neither of these feature in this instance.

- Overseas introducers could pose additional risks. However, the investments the international advisory firm made were no different to those a UK based FCA authorised investment adviser would likely make.

- It was not unreasonable that Mr W held an offshore wrapper within his international SIPP and used an international investment adviser as he was living as an expatriate. Furthermore, Sovereign could take comfort from the fact that a UK-regulated firm was advising on the pension transfer, and from the fact it stated that its product could not be used for investment in non-standard assets.

The CMC said it did not accept this view. Its main points, in summary, were:

- It had not seen any documentary evidence to show Sovereign carried out the level of due diligence it says it did. Other SIPP businesses which asserted similar high standards of due diligence have had a high number of complaints upheld against them.

- The different responsibilities of the UK IFA and the international advisory firm were not made clear to Mr W therefore Sovereign held an extra responsibility of ensuring Mr W was aware that any investment advice given was unprotected.

- Sovereign do not appear to have safe guarded or protected the financial interests of Mr W as they are required to do. It notes the finding standard investments were made but this is not a view shared by the Isle of Man Arbiter, who found Sovereign not to have been adequately diligent in managing a member's best interests, in relation to the same product, which is regarded as a structured product and holds some complexity where standard funds do not.

What I've decided – and why

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

Relevant considerations

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable 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.

I have taken into account a number of considerations including, but not limited to:

- The agreement between the parties.

- The Financial Services and Markets Act 2000 ("FSMA").

- Court decisions relating to SIPP operators, in particular Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541 and the case law referred to in it including:

    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474

    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service EWHC 2878

- Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch)

- The FSA and FCA rules including the following:
  - PRIN Principles for Business
  - COBS Conduct of Business Sourcebook

- Various regulatory publications relating to SIPP operators, and good industry practice.

The legal background:

As highlighted in the High Court decision in *Adams* the factual context is the starting point for considering the obligations the parties were under. In this case I am satisfied the contractual relationship between Sovereign and Mr W is a non-advisory, or execution only, relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. Sovereign was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

The case law:

I'm required to determine this complaint by reference to what is in my opinion fair and reasonable in all the circumstances. I am not required to determine the complaint in the same way as a court. A court considers a claim as defined in the formal pleadings and they will be based on legal causes of action. The Financial Ombudsman Service was set up with a wider scope which means complaints might be upheld, and compensation awarded, in circumstances where a court would not do the same.

The approach taken by the Financial Ombudsman Service in two similar (but not identical) complaints was challenged in judicial review proceedings in the *Berkeley Burke* and the *Options* cases. In both cases the approach taken by the ombudsman concerned was endorsed by the court. A number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved.

It is not necessary for me to quote extensively here from the various court decisions.

The FCA rules

PRIN

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"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non-advisory basis, in a way appropriate to that relationship.

Principles 2, 3 and 6 are of particular relevance here. They 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 am satisfied that I am required to take the Principles into account (see *Berkley Burke*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

COBS

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 is a relevant consideration here. However, the extent of the duty this imposes depends on the factual context. So, I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr W's case, including Sovereign's role in the transactions.

The regulatory publications and good industry practice:

The regulator 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.

The 2009 Report included:

"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…

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."

The Report also included:

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."*

I have considered all of the above publications in their entirety. It is not necessary for me to quote more fully from the publications here.

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter are not formal guidance (whereas the 2013 finalised guidance is). However all of the publications 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 (as did the ombudsman whose decision was upheld by the court in the *Berkeley Burke* case).

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.

- The comments made in the publications apply to SIPP operators that provide a non-advisory service.

- Neither court in the *Adams* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.

- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

Having carefully considered the above, I have reached the same view as the investigator, for broadly similar reasons. I do not think it would be fair and reasonable to uphold Mr W's complaint. I have set out my findings below. Although, as set out above, there are a significant number of relevant considerations here the issues in this case are, in my view, relatively straightforward. I have accordingly kept my findings brief.

As I mention above, Sovereign was not acting in an advisory capacity. It was acting in an execution only capacity, as the administrator of Mr W's SIPP. Sovereign did not therefore have any obligation to ensure the suitability of the transfer to the SIPP and investments made in it. But, considering the relevant regulatory obligations and standards of good practice set out above, Sovereign should have carried out due diligence on the businesses and investments involved which was consistent with those obligations and standards.

Sovereign's due diligence on the advisors

Sovereign says it checked the international firm was authorised by the relevant authority in the UAE, and confirmed it was, and that it also carried out due diligence on the advisor at the international firm. I am satisfied that were appropriate checks for Sovereign to carry out, to meet its regulatory obligations. But, given the overseas location of the advisor, and the fact the business related to a UK pension scheme, Sovereign should have carried out some further checks to make sure there was not a risk of consumer detriment involved with accepting business from the international firm.

I am not persuaded that any further due diligence – done to an extent which would reasonably meet Sovereign's regulatory obligations and standards of good practice - would have given Sovereign any reasonable basis to conclude it should not accept Mr W's application from the international firm, or that the involvement of the UK IFA should have led it to that conclusion.

The "about us" section of the international firm's website around the time of Mr W's application said it was:

"*a firm of independent financial advisers serving expatriates globally. We provide personal financial planning and wealth management services to thousands of high net worth individuals across all continents.*

By taking a holistic approach to financial planning, we help our clients to reduce their taxes and increase their wealth. Our experienced independent financial advisers will take time to fully understand your circumstances and work alongside you to meticulously devise a plan to achieve your financial goals.

Our main areas of financial expertise include advising on British pensions, overseas pension transfers, lifetime allowance tax planning, inheritance tax planning and wealth management."

Mr W met the profile of client described – he was, as mentioned, an expat (living in the Middle east, where the international firm was also based) and the information available to Sovereign said Mr W had a high income. The international firm was also described as having expertise in advising on UK (British) pensions.

Sovereign could have taken further comfort from the involvement of the UK IFA. Sovereign says it checked the UK IFA was authorised by the FCA and the advisor was a pension transfer specialist. Sovereign says it confirmed the UK IFA was authorised and it and the advisor had the correct permissions. Therefore, even if there were questions about the international firm's expertise to advise on UK pensions, the involvement of the UK IFA would, in my view, have been reasonably sufficient to allay any concerns.

I have not seen sufficient evidence to show that any other further reasonable enquiries should reasonably have led to the conclusion Sovereign should not deal with either the UK IFA or the international firm.

The CMC has mentioned very high volumes of business. We have asked Sovereign about this, and it has said less than 100 applications had been referred to it by the time of Mr W's application, and the advisor at the international firm introduced 26 applications in total. These are quite high volumes. But, given all the other factors here – for example, the involvement of the UK IFA, the nature of the investment involved (a point I'll turn to involve), the status of the international firm, the profile of Mr W and the restrictions put in place by Sovereign (another point I'll turn to below) – I do not think there is sufficient evidence to say the volume of business, in itself, was reason for Sovereign not to deal with the international advisory firm *at all.* Rather, it was reason to act with caution, which the evidence shows it did here. As I set out below, I think took reasonable, prudent steps to ensure investment was made in a way which appropriate for a pension scheme, to limit the risks of consumer detriment.

The CMC also says the different responsibilities of the UK IFA and the international advisory firm were not made clear to Mr W, and they could not be said to have provided appropriate disclosure, risk warnings; and that these things should amounted to a "red flag" to Sovereign. I do not think this is supported by the available evidence. The UK IFA's suitability report, in my view, adequately sets out responsibilities of it and the international advisory firm. The suitability report and point of sale documentation otherwise (the SIPP application and associated documents, and the offshore investment platform application form) also shows that all the fees associated with the arrangements were disclosed, and that Mr W's attitude to risk was discussed, and defined. So, I do not think it would be fair and reasonable to say Sovereign ought to have concluded the application had the anomalous features the CMC describes.

For completeness, I note (and I will say more on this point below) the CMC considers the acceptance of Mr W's business by Sovereign to be analogous to other complaints which have been upheld. We consider each complaint on its own facts. But, of course, where there are similar facts consistent outcomes should be arrived at. However, in my view, the facts here are very different to the cases the CMC mentions. Neither the international firm nor the UK IFA were, for example, carrying out regulated activities in the UK without the requisite regulatory permissions. Nor was this a case where a business without any authorised status was introducing a consumer to a high risk esoteric investment provided by an unauthorised business. So, I do not think it is inconsistent with our approach in other due diligence complaints to say it would not be fair and reasonable to uphold this particular complaint, based on its own facts.

Sovereign's due diligence on the investments/offshore platform provider

Mr W's application involved the money being transferred into the SIPP going on to an offshore investment platform. I do not think Sovereign should reasonably have identified that as being anomalous, given Mr W was an expat. Or that there was a risk of consumer detriment otherwise. The platform provider was a large, well known, long-established business, with a global client base and the required authorisation and permissions with the relevant regulator.

Sovereign also gave clear instructions to offshore investment platform to ensure investments were made in standard assets (i.e. a standard asset as per IPRU-INV 5.9.1 R, which required the asset to fall into a defined category and be readily realisable within 30 days), in a way which was appropriate for a pension scheme. It also asked Mr W to confirm his attitude to investment risk in the SIPP application form, and I have not seen any evidence to show the money transferred onto the platform was not subsequently invested in a way which was consistent with that. The transaction history for the SIPP shows it was invested in range of collective investment schemes, described as "cautious", "balanced" and "adventurous" which were funds of funds, and managed by an long-established asset manager with several billion GBP under management, and UK authorisation.

I note the CMCs reference to a report from an arbiter (the CMC refers to this as a report from the Isle of Man arbiter, but the report is actually from the Maltese arbiter) which refers to investments held within the offshore investment platform used by Mr W's SIPP. I have seen the report. In my view, it deals with an entirely different set of facts to those here. It is about the activity of a trustee, not just the administrator (as is the case here) and relates to investments made on the platform of a type that were not made in Mr W's SIPP (structured products). So, I do not think it is relevant to Mr W's complaint.

In the circumstances I do not think it would be fair and reasonable to say Sovereign should have taken any further steps in relation to the investments made; I am satisfied, in the circumstances, the steps it took were consistent with its regulatory obligations and standards of good practice at the time. And I should emphasise that the circumstances – in particular that the SIPP money was being invested in conventional, mainstream investments by a well-known business which was large and long-established – are key here. This is not a case where money was being invested in unusual or esoteric assets provided by unauthorised parties with limited track records. The risk of consumer detriment could therefore reasonably have been considered to be low.

My final decision

For the reasons given, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 January 2025.

John Pattinson
Ombudsman