

The complaint

Mr S complains that Novia Financial Plc (“Novia”) failed in its duty of care by failing to undertake sufficient due diligence on the investments held within his Self-Invested Personal Pension (“SIPP”).

Mr S is being represented in the complaint but for ease I’ll refer to all representations as being made by Mr S.

What happened

Involved parties

Novia

Novia is a regulated pension provider and administrator. It’s been authorised by the regulator – the Financial Conduct Authority (“FCA”) - since 16 September 2008.

Philpott Reed Partnership LLP (“Philpott”)

At the time of the events in this complaint, Philpott was authorised by the FCA. This authorisation ceased on 12 October 2017 and Philpott was dissolved in March 2019 and has since been declared in default by the FSCS.

Hypa Management LLP (“Hypa”)

Hypa was the provider of a number of unregulated investments. In the case of Mr S, he invested in the following bonds:

- Lakeview UK Investments Plc (“Lakeview”) – this was an unregulated 5 year bond offering investors an 11.5% return. An Investment Review Simplified document, completed for Novia by a third party firm, dated 1 July 2015, stated that “*This investment may be deemed to be a non-mainstream pooled investment by the FCA*” and that “*The investment is restricted to sophisticated or high net worth investors*”.
- Biomass Investments Plc (“Biomass”) – this was an unregulated 3 year bond offering investors a 12.5% return. An Investment Review Simplified document completed for Novia by a third party firm, dated 2 July 2015, stated that “*This investment may be deemed to be a non-mainstream pooled investment by the FCA*” and that “*The investment is restricted to sophisticated or high net worth investors*”.
- Real Estate Investments USA PLC (“Real Estate”) - this was an unregulated five year bond offering investors an 15% return. An Investment Review Simplified document, completed for Novia by a third party firm, dated 5 August 2013, stated that “*The structure utilised by the Bond Issuer is such that the Bonds may be deemed by the FCA to be a non-mainstream pooled investment once policy statement PS 03/13 is implemented in January 2014. This may therefore have a restriction on to whom this investment may be marketed to.*”

Product literature for each of the above bonds contained the following risk warning:

"It is not anticipated that there will be an active secondary market for the Bonds and it is not expected that such a market will develop as the Bonds are non-transferable. In addition, there are limitations on transfers and Bonds are only redeemable under limited circumstances as set out in this Offering Memorandum. Investment in the Bonds is therefore relatively illiquid and involves a high degree of risk."

The transaction

Mr S says he was put in contact with Philpott via a friend of a friend. At the time, Mr S held two existing defined contribution (DC) pension plans.

In 2014, Mr S was advised by Philpott to transfer both existing pensions, worth just over £74,000 in total, to Novia. Novia received the funds in October 2014 and a number of standard investments were made at that time. In May 2015, the following Hypa investments were made:

- Lakeview - £10,000
- Biomass - £14,500
- Real Estate - £10,000
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Mr S has told this Service that at the time of advice, he was told by Philpott that the investments were secure. And he has said that the first he knew of a problem was when he tried to access funds in 2020, when he turned 55, and he discovered at this point that some funds were illiquid.

Additional background information

Novia has provided very little information in respect of Mr S's complaint. On another complaint this Service has considered against Novia, involving introductions from Philpott, Novia has provided a copy of its 'Terms of Business for Firms' document. When asked about the due diligence it carried out on Philpott, Novia has previously told us that:

- Philpott accepted Novia's Terms of Business and signed an Adviser Application Form in December 2012.
- Novia only accepts business from FCA authorised financial advisers. Its due diligence confirms the adviser's regulatory status before it accepts the adviser's business. It subscribes to the FCA register data service which validates the adviser firm's continuing authorisation status.
- Novia wasn't expected to understand an introducer's business model because the introducer, in this case Philpott, was an FCA regulated financial adviser and was therefore expected to manage its business in accordance with FCA principles and rules.
- Novia can rely upon other regulated businesses and it doesn't have to understand how they fulfil their regulatory obligations.
- As an advised platform business, Novia expects the financial adviser to have provided advice in relation to all new business instructions to Novia.
- Investment decisions are solely the responsibility of the advising firm and they can recommend suitable investments from the broad range of investments Novia makes available to support a wide range of customer investment objectives.
- Novia is not responsible for the suitability of the advice and therefore it has no requirement to request copies of suitability reports/pension transfer reports.
- Novia is not required to audit or monitor the actions of other FCA authorised firms and

- the FCA rules permit firms to rely upon the actions of other regulated businesses.
- Philpott introduced 179 clients to Novia.

When asked about the due diligence it completed on the investments held within Mr S's SIPP, Novia has previously told us that:

- Novia's investment committee ensures that it conducts effective and appropriate due diligence checks on all investments on its platform taking into account its proposition (advised clients only) and a broad range of client types.
- It takes reasonable steps to ensure that all assets are genuine, and not part of a fraud or scam. If it believed an investment would be detrimental to customers, then it would not allow it onto the platform.
- It only makes investments available through its service to FCA authorised financial advisers. It remains the adviser's responsibility to recommend suitable investments from all those available.
- The due diligence is specific to each product but follows the same process. That is to:
 - obtain and review the legal documentation from the investment manager
 - obtain an independent report into the investment, as this may identify information about the investment that is not known to Novia
 - assessment of the individuals connected to the investment taking account of any financial or other irregularities from information available in the public domain
 - consideration of possible investment security arrangements and operational requirements.
- Novia would not ask the client to sign any risk warnings. The FCA financial adviser is responsible for recommending suitable investments to the client taking account of their investment objectives and attitude to risk. Novia reminds financial advisers of the important consideration for certain investments and Non-Standard Investments are included in this cohort.

Novia has also provided a copy of a notice that was displayed to financial advisers before they were able to access these investments.

Mr S's complaint

In 2021, Mr S submitted a claim to the FSCS against Philpott. He received £50,000 compensation, which was the maximum award he could receive under the FSCS's award limits at that time.

The FSCS gave Mr S a reassignment of rights in which, amongst other things, the FSCS explained it was transferring back to Mr S any legal rights it held against Novia. Mr S complained to Novia in September 2022.

In his letter to Novia, Mr S complained, amongst other things, that Novia had failed in its duty by not completing due diligence on the investments within his SIPP.

Novia issued its final response to the complaint on 27 October 2022, in which it said it was rejecting the complaint. Mr S wasn't happy with Novia's response so he referred the matter to this Service for consideration.

One of our Investigators reviewed Mr S's complaint and thought that it should be upheld.

Novia didn't respond to the Investigator's opinion at that time. But it has more recently confirmed that it doesn't believe the complaint was referred in time under the relevant rules. In summary it's said the complaint was made more than six years after the initial investments were taken out. And Novia believes that Mr S was aware, or ought reasonably to have been become aware, that the investments within his SIPP were no longer performing as expected.

Novia has provided a number of SIPP statements, which it says would have been sent directly to Mr S. I've set out some of the information from these statements below.

- May 2016, fund value as at 06/10/2015 - £71,141.61 and as at 05/04/2016 £73,827.06
- November 2016, fund value as at 05/10/2016 - £78,142.19
- May 2017, fund value as at 05/04/2016 - £80,314.96
- November 2017, fund value as at 05/10/2017 - £81,641.75
- May 2018, fund value as at 05/04/2016 - £81,589.54
- November 2018, fund value as at 05/10/2018 - £82,883.24
- February 2019, fund value as at 05/01/2019 - £82,290.41
- May 2019, fund value as at 05/04/2019 - £83,909.66
- August 2019, fund value as at 05/07/2019 - £85,686.29

Novia has also provided copies of Investment Offering Memorandum for the three Hypa investments Mr S took out. It says these clearly outline that a key part of each investment was the regular distribution payments Mr S could expect to receive into the cash facility of his pension.

Novia also confirmed that the Real Estate investment defaulted on interest payments from 2016. And distribution payments stopped being received on the Biomass investment in May 2017, with the Lakeview investment defaulting on interest payments from February 2019.

Novia says the statements that were sent to Mr S provided a transaction summary for the period covered by the statement. So it even if Philpot hadn't explained how the investments worked to Mr S, Novia believes it ought to have been clear to him that he had been receiving distribution payments but that these had stopped. These statements were issued more than three years before Mr S made his complaint to Novia. So Novia considers Mr S has complained too late under the rules.

Provisional decision

I issued my provisional decision in November 2024. I said that I thought the complaint had been made within time under the rules that apply. And having considered the merits of the complaint, I said intended to uphold it. I've set my provisional findings on the merits of the complaint out below.

“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 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 (“Options”) and the case law referred to in it including:*
 - *Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474 (“Adams”)*
 - *R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service [2018] EWHC 2878 (“Berkeley Burke”)*
 - *Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch) (“Adams – High Court”)*
- *The Financial Conduct Authority (“FCA”) (previously Financial Services Authority) (“FSA”) rules including the following:*
 - *PRIN Principles for Businesses*
 - *COBS Conduct of Business Sourcebook*
 - *DISP Dispute Resolution Complaints*
- *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. And in this case it is not disputed that the contractual relationship between Novia and Mr S is a non-advisory relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HM Revenue and Customs rules. Novia 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.

I have considered the obligations on Novia within the context of the non-advisory relationship agreed between the parties.

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 from the various court decisions.

The Principles for Businesses:

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).

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.”

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 aren’t 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.*

Due diligence on the investment

Novia 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.

I accept that the Hypa investments don’t appear to be fraudulent or a scam. But this doesn’t mean that Novia did all the checks it needed to do. And, as I understand, Novia now accepts that it failed to carry out sufficient due diligence when allowing a number of non-standard investments, including the Hypa investments, in its SIPP.

Therefore, it's not necessary for me to reach a finding on this particular aspect.

Due diligence on Philpott

Novia accepts that it shouldn't have allowed a number of non-standard investments, including the Hypa investments, to be held in its SIPPs. However, I've also considered whether it was appropriate for Novia to have accepted Mr S's business from Philpott in the first place.

Novia has told us that it only accepted introductions from FCA authorised firms. And as an advised platform business it expected the financial adviser to have provided advice in relation to all new business instructions to it.

It has also said that typically it would meet with proposed advisers to understand their business, for example its systems and controls, and to see if the adviser would be a good 'fit' for Novia. Where appropriate, Novia would offer training to advisers. Only if deemed acceptable would advisers become approved on Novia's panel.

In the case of Philpott, Novia hasn't provided notes of any meetings that it says would have taken place between it and Philpott before Novia accepted business from it. But Novia does appear to have carried out the following checks:

- Checking the FCA register to ensure that Philpott was regulated and authorised to give financial advice.*
- It asked Philpott to accept its Terms of Business and for it to sign an 'Adviser Application Form'.*

I've seen a copy of the 'Novia Adviser Application Form' which Philpott completed and signed in December 2012. I can see that it asked Philpott to agree to a declaration confirming, amongst other things, that it had read, understood and agreed to the Novia Terms of Business [for Firms].

I've also seen a copy of Novia's 'Terms of Business for Firms' document. I don't intend to set out what I think are the relevant sections of the 'Terms of Business for Firms' document. This is because I don't think these Terms alone were reasonable or sufficient to meet Novia's regulatory obligations and good industry practice.

And given the circumstances involved here, I don't think Novia took appropriate steps or drew reasonable conclusions from the information that was available to it before accepting Mr S's business.

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

- Philpott was introducing ordinary retail clients to Novia, where in case of Mr S, a significant proportion of his SIPP funds were being invested in non-standard investments and or/NMPs.*

- *The volume of introductions, relating to a significant number of consumers investing in non-standard investments and/or NMPIs, was unusual – particularly from a small IFA business. And Novia should have considered how a small IFA business introducing this volume of higher-risk business was able to meet regulatory standards.*

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

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

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

The nature of business introduced by Philpott

I note Novia has said that it can rely upon other regulated businesses and it doesn't have to understand how they fulfil their regulatory obligations. And in the case of Philpott, because it was an FCA regulated financial adviser, Novia says that it didn't need to understand its business model.

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 Novia to rely on information provided to it in writing by Philpott, unless Novia 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 Philpott's regulatory status and its acceptance of Novia's Terms of Business go some way towards meeting Novia's regulatory obligations and good industry practice, I think Novia needed to do more in order to satisfy itself that it was fair and reasonable to accept introductions from Philpott.

It's not reasonable to take so much comfort from a firm's regulated status that it is 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 is 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've considered what Novia has said about FCA regulated financial advisers being expected to manage their business in accordance with FCA principles and rules. But, as I've explained above, I'm satisfied that Novia didn't comply with its regulatory obligations, good industry practice or treat Mr S fairly by failing to undertake adequate due diligence on Philpott. And I'm satisfied that had it undertaken adequate due diligence Novia ought reasonably to have been aware of facts that should have caused it to decline to accept business from Philpott before it accepted Mr S's business. In other words, I'm satisfied that if Novia had undertaken adequate due diligence on Philpott it ought to have been privy to information about Philpott and the business it was introducing which didn't reconcile with what Novia says it was able to rely upon. And, in failing to take this step, I think it's fair and reasonable to conclude that Novia didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr S fairly.

In the case of Philpott, Novia has previously said that not all new SIPP clients introduced by Philpott went into non-standard investments. And it has said that Philpott was initially submitting clients who were wholly invested in standard investments and of those customers investing into non-standard investments, the majority invested mainly in standard investments with a smaller proportion being invested into non-standard investments.

However, in the complaints I've seen against Novia involving introductions from Philpott, along with some standard investments, the same investments provided by Hypa were arranged by Philpott. And in the case of Mr S, along with some standard investments, he invested in three Hypa investments.

I note the brochures and/or the Offering Memorandums for these investments explicitly stated that potential investors should note that these Bonds are high risk and are unlikely to be suitable for those who do not have the experience or understanding to be able to evaluate the chances of success of start-up companies. So I think it was clear from the product literature that these investments were specialist and wouldn't therefore be suitable for all investors.

I think it's fair to say that, whether the Hypa investments were NMPIs or non-standard investments, such investments are highly unlikely to be suitable for the vast majority of retail clients. Which Novia now seems to have accepted.

I've not been provided with any information or evidence to suggest that any additional due diligence was carried out on Philpott. But even if it was, I think Novia still needed to ask further questions of Philpott about the customers it was introducing through asking questions and through independent checks.

Despite some of the Hypa investments only being deemed suitable for sophisticated or high net-worth investor, I've seen no evidence that Mr S met this criteria. Or that Novia asked Philpott when it introduced clients for investment in the various Hypa investments to confirm the investors' status.

Volume of business introduced by Philpott

We asked Novia for details of the number clients Philpott referred, how many of these referrals related to transfers from DB schemes and what percentage of clients went into Non-Standard and/or NMPIs. On one case we've considered Novia has said 179 clients were referred by Philpott and on another it said 159, with 9.43% of these involving transfers from DB schemes and 42.35% of clients being invested in Non-Standard and/or NMPIs. There is clearly some inconsistency in number of clients referred. So it's not clear how many referrals Novia received from Philpott. So Novia should confirm this information, along with the above details, in its response to my provisional decision.

An example of good practice identified in the FSA's 2009 Thematic Review Report was:

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

It seems from the above that Novia either had, or ought to have had, access to information about the number and type of introductions that Philpott made, during its relationship with Novia. But I don't think simply keeping records about the number and nature of introductions that Philpott made without scrutinising that information would have been consistent with good industry practice and Novia's regulatory obligations. As highlighted in the 2009 Thematic Review Report, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

Novia may say the volume of business was small overall compared to the total number of introductions it received during the same period. And, as mentioned above, it's said that initially Philpott's introductions involved clients investing in standard investments. It's not clear when that changed but Novia's due diligence obligations were ongoing. And it ought to have picked up that Philpott had started investing clients it was introducing in non-standard investments and/or NMPIs.

I think that this pattern of business, which involved almost half the customers introduced to Novia (around 42%) investing a significant proportion of their pension monies in Hypa non-standard investments and/or NMPIs ought reasonably to have given Novia cause for concern. Investment in those particular funds in such proportions should've been flagged as posing a high risk of consumer detriment.

I think it's highly unusual for such a large proportion all of a regulated advice firms' introductions to a SIPP provider to involve pension switches so as to invest in non-standard investments and/or NMPIs in such significant proportions. I think it's fair to say that most advice firms don't transact this kind of business in significant volumes, certainly not for ordinary retail investors, like Mr S.

So I think Novia ought to have had concerns about how Philpott was able to introduce so many ordinary retail clients for investment in non-standard investments and/or NMPIs, whilst complying with the regulator's rules. Particularly in the absence of any information from Philpott about the type of customers it dealt with, which could explain the pattern of high- risk business it was introducing.

I've not seen that Novia asked any further questions about any of this or asked for any documentary evidence of the process or checks that Philpott agreed would be carried out.

Novia's Terms of Business required all clients to have received advice, prior to taking out a SIPP and investing. But it's told us that it didn't ask Philpott for copies of the advice it was providing to the clients it was introducing to Novia – even though the Terms of Business Novia had agreed with Philpott entitled it to do so.

So I'm satisfied Novia couldn't be certain what advice Philpott was offering to the clients it was introducing to Novia, or that Philpott's advice model was in fact operating in line with Novia's assumptions.

I'd like to stress here that I'm not saying Novia 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, in order for Novia to meet its own regulatory obligations, it needed to satisfy itself that Philpott was appropriate to deal with.

And if it had undertaken such steps and carried out even a cursory investigation of the individuals being introduced to it, then it would have become aware no reasonable process was in place, non-standard investments and/or NMPIs were potentially being promoted by Philpott to ordinary retail clients and consumers were not fully informed of the risks, which I'll come on to later.

what fair and reasonable steps should Novia have taken in the circumstances and what would it have discovered?

Novia could simply have concluded that, given the potential risks of consumer detriment – which I think were clear and obvious before it received Mr S's SIPP business – it should not accept business from Philpott. That would have been a fair and reasonable step to take in the circumstances. Alternatively, Novia 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 Philpott

Given the significant potential risk of consumer detriment I think that, as part of its due diligence on Philpott, Novia ought to have found out more about how Philpott was operating before it received Mr S's business. And mindful of the type of introductions it was receiving from Philpott, I think it's fair and reasonable to expect Novia, in line with its regulatory obligations, to have made some specific enquiries and obtained information about Philpott's business model.

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 manner “...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.”

And I think that Novia, before accepting Mr S’s business from Philpott, should have checked with Philpott about things like:

- 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 advice,*
- how and why ordinary retail clients were interested in making these non-standard investments and/or NMPs,*
- what material was being provided to clients by it and what it was telling its clients about the Hypa investments.*

I think it’s more likely than not that if Novia had asked Philpott for this type of information that Philpott would have provided the information sought. And that, amongst other things, Novia would have then been told that many, if not most of the consumer Philpott dealt with, were ordinary retail clients; they weren’t sophisticated or high net worth individuals.

But if Novia had been unable to obtain the information sought from Philpott, then I think it’s fair and reasonable to say that Novia should have then concluded that it was unsafe to proceed with accepting business from Philpott in those circumstances. In my opinion, it wasn’t reasonable, and it wasn’t in-line with Novia’s regulatory obligations, for it to proceed with accepting business from Philpott 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 Novia, 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 Philpott. For example, it could have asked for copies of correspondence relating to the 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.”

So I think it would have been fair and reasonable for Novia to speak to some applicants, like Mr S, directly.

I accept Novia 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 Novia with further insight into Philpott'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.

And, on balance, I think it's more likely than not that if Novia had contacted Mr S to 'confirm the position', Mr S would have told Novia that he was not a sophisticated or high net-worth investor. And he believed the investments were low risk, safe and secure.

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

If Novia had undertaken these steps I think it ought to have identified, amongst others, the following risks before it received Mr S's business:

- *The SIPP business introduced by Philpott was high risk, with some of the investments only being suitable for sophisticated and high net worth investors.*
- *Philpott was promoting non-standard investments and/or NMPIs to ordinary retail investors like Mr S and they were not fully informed of the risks.*
- *Philpott was advising almost half of the clients it was introducing to Novia to invest a high proportion of their pensions in the high risk Hypa investments, as was the case with Mr S.*

These features I've mentioned above carried a significant risk of consumer detriment.

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

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

Is it fair to ask Novia to pay Mr S compensation in the circumstances?

I accept that Philpott had some responsibility for initiating the course of action that led to Mr S's loss. However, I'm satisfied that it's also the case that if Novia had complied with its own distinct regulatory obligations as a non-advisory SIPP operator, the arrangement for Mr S wouldn't have come about in the first place and I don't think any of his pensions would have been transferred to Novia and neither of his SIPP wrappers would have been established.

Novia's failure to act in accordance with its regulatory obligations and good industry practice has caused Mr S to suffer financial loss in his pension and to suffer distress and inconvenience - I consider the loss of a significant proportion of his pension provision will inevitably have caused him considerable worry and upset.

Overall, I think it's fair and reasonable to direct Novia to pay Mr S compensation in the circumstances."

Responses to the Provisional decision

Novia accepted my provisional decision.

Mr S responded and said that he had concerns about the method of compensation suggested. He said it didn't allow for him to repay the £50,000 previously awarded to him by the FSCS. He explained that he no longer holds these funds. And in the event that the compensation is paid into his pension, he would need to withdraw the £50,000. He says he has already taken a pension lump sum so this would result in a significant tax liability, thereby increasing his losses.

Mr S asked if I could provide in the decision for either the compensation be paid as a cash lump sum or, in the alternative, that the £50,000 be paid directly to the FSCS.

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.

Having reviewed everything again, I remain of the view that the complaint should be upheld for the reasons I set out previously in my provisional decision.

The provisional decision forms part of this final decision and so I don't intend to repeat those reasons again here. Instead, I've focused on Mr S's concerns about the method of compensation.

I've considered the submissions Mr S has made about his preference being for redress monies not to be paid into his pension arrangement. Or his request that Novia repay the £50,000 he has already received directly to the FSCS.

Mr S was previously paid money by the FSCS as part of his claim against Philpott. And he has subsequently entered into a reassignment of rights agreement with the FSCS. As part of that process Mr S would have been aware, or ought to have been aware, that the terms of his reassignment of rights would require him to return compensation paid by the FSCS in the event this complaint is successful. It was, and is, Mr S's responsibility to make any arrangements needed to ensure he can fulfil that agreement he entered into. And he will need to liaise with the FSCS about the repayment of these funds.

I appreciate Mr M will be disappointed. But his pension monies suffered the loss this complaint concerns and I remain satisfied that, subject to what I've said below about existing protections or allowances, if possible redress monies should be paid back into Mr S's SIPP. So, I remain satisfied that the approach to redress I've set out below is the fair and reasonable approach to redress in this case.

Putting things right

I uphold this complaint. I consider Novia failed to comply with its own regulatory obligations and good industry practice in not refusing Mr S's SIPP business. My aim in awarding fair compensation is to put Mr S back into the position he would likely have been in had it not been for Novia's failings.

As I've already mentioned above – if Novia had refused to accept SIPP business from Philpott before it received Mr S's SIPP business, I'm satisfied the investment would not have gone ahead and Mr S would've retained his existing pension plans.

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

1. Obtain the current notional value, as at the date of this decision, of Mr S's previous pension plans, if they hadn't been transferred to the SIPP.
2. Obtain the actual current value of Mr S's SIPP, as at the date of my final decision, less any outstanding charges.
3. Deduct the sum arrived at in step 2) from the sum arrived at in step 1).
4. Pay a commercial value to buy Mr S's share in any investments that cannot currently be redeemed.
5. Pay an amount into Mr S's SIPP, so that the transfer value of the SIPP is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.
6. Pay Mr S £500 for the distress and inconvenience the problems with his pension have caused him.

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

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

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

Any notional contributions or notional withdrawals to be allowed for in the calculations should be deemed to have occurred on the date on which monies were actually credited to, or withdrawn from, the Novia SIPP by Mr S.

If there are any difficulties in obtaining notional valuations from the operators of Mr S's previous pension plans, Novia should instead calculate a notional valuation by ascertaining what the monies transferred away from the plans would now be worth, as at the date of this decision, had they achieved a return from the date of transfer equivalent to the FTSE UK Private Investors Income Total Return Index (prior to 01 March 2017, the FTSE WMA Stock Market Income total return index).

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

I acknowledge that Mr S 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 S'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 S received from the FSCS. And it will be for Mr S to make the arrangements to make any repayments he needs to make to the FSCS.

However, I do think it's fair and reasonable to allow for a *temporary* notional deduction equivalent to the payment Mr S actually received from the FSCS for a period of the calculation, so that the payment ceases to accrue any return in the calculation during that period.

As such, if it wishes, Novia may make an allowance in the form of a notional deduction equivalent to the payments Mr S received from the FSCS following the claim about Philpott on the date the payments were actually paid to Mr S. Where such a deduction is made there must also be a corresponding notional addition at the date of my final decision equivalent to the FSCS payments notionally deducted earlier in the calculation.

To do this, Novia should calculate the proportion of the total FSCS payment that it's reasonable to apportion to each transfer into the SIPP, this should be proportionate to the actual sums transferred in. And Novia should then ask the operator of Mr S's previous pension plans to allow for the relevant notional withdrawal in the manner specified above.

The total notional deductions allowed for shouldn't equate to any more than the actual payments from the FSCS that Mr S received. Novia must also then allow for a corresponding notional addition as at the date of my final decision, equivalent to the accumulated FSCS payments notionally deducted by the operators of Mr S's previous pension plans.

Where there is any difficulty in obtaining a notional valuation from the previous operators, Novia can instead allow for both the notional withdrawal and contribution in the notional calculation it performs, provided it does so in accordance with the approach set out above.

2. *Obtain the actual current value of Mr S's SIPP, as at the date of my final decision, less any outstanding charges.*

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

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

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

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

It isn't clear whether Mr S's Hypa investments have now been closed and removed from the SIPP or if the SIPP remains open.

But for any illiquid holdings that remain within Mr S's Novia SIPP, Mr S's monies could be transferred away from Novia. In order to ensure the SIPP could be closed and further Novia SIPP fees could be prevented, any remaining illiquid holdings need to be removed from the SIPP. To do this Novia should reach an amount it's willing to accept as a commercial value for the investments, and pay this sum into the SIPP and take ownership of the relevant investments.

If Novia is unwilling or unable to purchase the investments, then the actual value of any investments it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include their being given a nil value for the purposes of ascertaining the current value of Mr S's SIPP in step 2).

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

If Novia doesn't purchase the investments, and if the total calculated redress in this complaint is less than £170,000, Novia may ask Mr S to provide an undertaking to account to it for the net amount of any future payment the SIPP may receive from these investments. That undertaking should allow for the effect of any tax and charges on the amount Mr S may receive from the investments after the date of my final decision, and any eventual sums he would be able to access from the SIPP in respect of the investments. Novia will need to meet any costs in drawing up the undertaking.

If Novia doesn't purchase the investments, and if the total calculated redress in this complaint is greater than £170,000 and Novia doesn't pay the *recommended* amount, Mr S should retain the rights to any future return from the investments until such time as any future benefit that he receives from the investments together with the compensation paid by Novia (excluding any interest) equates to the total calculated redress amount in this complaint.

Novia may ask Mr S to provide an undertaking to account to it for the net amount of any further payment the SIPP may receive from these investments thereafter. That undertaking should allow for the effect of any tax and charges on the amount Mr S may receive from the investments from that point, and any eventual sums he would be able to access from the SIPP in respect of the investments. Novia will need to meet any costs in drawing up the undertaking.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr S'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 S 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%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

If either party disagrees with the presumed income tax rate, they'll need to let us know when they respond to the provisional decision as the redress can't be changed once a final decision has been issued.

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

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

SIPP fees

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

Interest

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

My final decision

For the reasons explained, I uphold this complaint and direct Novia Financial Plc to calculate redress as set out above.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £170,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £170,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out above. My final decision is that Novia Financial Plc should pay Mr S the amount produced by that calculation – up to a maximum of £170,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £170,000, I recommend that Novia Financial Plc pays Mr S the balance.

This recommendation is not part of my determination or award. Novia Financial Plc doesn't have to do what I recommend. It's unlikely that Mr S can accept my final decision and go to court to ask for the balance. Mr S may want to get independent legal advice before deciding whether to accept this final decision.

Lorna Goulding

Ombudsman