DRN-5372605

The complaint

Mr W’s complaint concerns an investment in two funds of funds, which was made in his self-invested personal pension (SIPP), provided by IFG Pensions Limited (IFG). Mr W is represented by a Claims Management Company (CMC). The CMC says, by allowing the investment, IFG acted contrary to its regulatory obligations and standards of good practice. The CMC says, if IFG had acted in way which was consistent its regulatory obligations and standards of good practice, it would not have allowed the investment.

What happened

There were a number of parties involved in the events subject to complaint. I have set out a summary of each.

IFG

IFG is a SIPP provider and administrator. At the time of the events in this complaint, IFG was regulated by the Financial Conduct Authority (FCA). IFG was authorised, in relation to SIPPs, to arrange (bring about) deals in investments, to deal in investments as principal, to establish, operate or wind up a pension scheme, and to make arrangements with a view to transactions in investments. IFG provided Mr W’s SIPP, and operated under a number of different trading names over the years, including MW Pensions, The MW SIPP, MW SIPP 2, and Sovereign Pension Services. It has however ultimately been the same business throughout, and I will refer to IFG throughout this decision.

Cornhill Management o.c.p., a.s.

Cornhill Management o.c.p., a.s. (Cornhill ocp) is a business based in Slovakia. It is authorised by the National Bank of Slovakia and, at the time of the events subject to complaint, was permitted to carry out certain regulated activities in the UK, under an EEA passport.

Cornhill ocp was the provider of the “FlexMax” investment account, which was an investment platform service which offered a number of model portfolios for investment, through a range of funds of funds. This is what Mr W’s SIPP invested into.

Cornhill ocp later changed its name to International Investment Platform, o.c.p., a.s. and was subject to disciplinary action by the National Bank of Slovakia, which concluded in July 2022 when a final decision was published, finding it had violated a number of pieces of legislation governing its conduct. The final decision can be seen on the National Bank of Slovakia’s website.

Two other business appear to have been involved with the Cornhill ocp business - Cornhill Management SA and Cornhill Management (London) Limited.

Cornhill Management SA

Cornhill Management SA (Cornhill SA) was a Luxembourg based business, with which IFG corresponded when carrying out due diligence into the portfolios provided on the FlexMax account.

The Cornhill Group website (https://www.1cornhill.com/cornhill) currently says Cornhill SA:

"*acted as payment agent for International Investment Platform o.c.p. a.s. in respect to lump sum investment products.*"

Cornhill SA does not appear to have been authorised, either by the FCA or in other jurisdictions in the EEA.

Cornhill Management (London) Limited

Cornhill Management (London) (Cornhill London) was a UK registered company. It later changed its name to FR London Limited.

The website mentioned above currently says Cornhill London was:

"*a subsidiary of Cornhill Management S.A.*

The company was created in order to provide English language marketing and administration services on behalf of International Investment Platform o.c.p. a.s. (Slovakia) and Cornhill Management S.A. (Luxembourg).

Cornhill Management (London) Limited ceased to provide these services in November 2021."

Like Cornhill SA, Cornhill London does not appear to have been authorised, either by the FCA or in other jurisdictions in the EEA.

Connected Financial Services

Connected Financial Services (Connected FS) was a UK based Independent Financial Advisor (IFA), authorised by the FCA at the time of events subject to complaint. It was Mr W's financial advisor in relation to the SIPP and FlexMax account. It ceased trading in 2019, and was no longer authorised from 23 September 2020.

Mr W's dealings with the parties

I have set out below a timeline of what I consider to be the key events:

- 8 November 2016 - Mr W was provided with a financial planning report by Connected FS. The report recommended Mr W switch his four existing personal pensions to a SIPP with IFG, and invest the money in the FlexMax account.

- 9 November 2016 - Mr W signed IFG's SIPP application form. This confirmed Connected FS was his financial advisor and investment manager.

- 9 November 2016 – Mr W signed Cornhill ocp's Risk Tolerance Questionnaire. This concluded Mr W was a balanced risk investor.

- 11 November 2016 – Connected FS completed and signed Cornhill ocp's Investment Allocation Proposal form. This said Mr W should be considered a balanced risk investor, and his investments should be allocated 50% in the LUXIF Amathus

Conservative Portfolio, and 50% in the LUXIF Amathus Balanced Growth Portfolio (these were two of the range of funds of funds offered on Cornhill ocp's FlexMax account I mentioned above).

- 6 December 2016 – IFG completed Cornhill ocp's Account Opening Form and Instructions for Purchase form. These asked Cornhill ocp to open a FlexMax account for Mr W's SIPP, and invest it as per Connected FS's instructions. £81,000 was to be paid into the FlexMax account by the SIPP.

- 8 December 2016 - £81,000 was sent to Cornhill ocp from Mr W's SIPP by IFG.

- 22 February 2017 – a further £8,500 was sent to Cornhill ocp from Mr W's SIPP by IFG (this followed the completion of the final switch from Mr W's existing pension schemes).

- 16 May 2017 – Mr W began to make monthly contributions of £100 to his SIPP.

- 17 January 2019 - IFG wrote to Mr W to inform him that Connected FS had applied to cancel its authorisation with the FCA.

- 18 November 2019 – Mr W took a tax free lump sum of £23,852.21. £22,400 of units in the funds held in the FlexMax account were sold to fund this.

- 10 August 2020 - IFG emailed Mr W to inform him the two funds he had invested in had been suspended.

- 24 November 2021 – IFG emailed Mr W to tell him the funds were in liquidation.

Mr W's complaint to IFG

IFG did not respond to the complaint the CMC made to it on Mr W's behalf. The CMC therefore referred the complaint to us. Following this referral IFG said it was satisfied it had acted reasonably when accepting Mr W's business (I summarise its submissions in more detail below).

The CMC also made a claim to the Financial Services Compensation Scheme (FSCS) on Mr W's behalf about the advice he received from Connected FS. The FSCS accepted Mr W's claim. It ultimately calculated his loss to be more than the applicable limit on what it could pay; accordingly, it paid Mr W an amount equal to that limit (£85,000).

IFG's due diligence into the funds and FlexMax account

Our investigator asked IFG about the due diligence it carried out at the time of Mr W's investments. IFG told us, in summary:

- The funds were recorded on the Cornhill ocp platform as retail funds at the time the investment was allowed. This was further confirmed by Cornhill ocp on 14 June 2022, when it stated that the funds were marketed as suitable for retail and professional clients.

- A thorough and extensive dialogue was conducted with Cornhill SA (in its submissions IFG actually referred to its exchanges as being with Cornhill Asset Management but there was no business of that name and, as I set out below, it was Cornhill SA that IFG corresponded with) regarding the funds and underlying investments held by those funds (copies of this correspondence were provided, and I quote from some of it in my findings below).

- The funds were reviewed in detail and factsheets were provided by Cornhill SA. Cornhill SA said that the funds were a standard asset due to pricing regularly and the ability to be sold within 30 days.

- Mr W's investment was advised by Connected FS, an FCA regulated firm. The appropriate risks associated with the funds were communicated by the adviser to its client.

- The funds were originally onboarded prior to Brexit, and therefore fell under the previous passporting regime where any EEA member state, including Luxembourg, could use the passporting regime to establish a presence or to carry out permitted regulated activities in the UK without being authorised by the Prudential Regulation Authority (PRA) or the FCA.

- Each member completed a Risk and Tolerance Questionnaire as part of their Cornhill FlexMax Application, alongside the financial adviser.

- A Luxembourg SICAV is similar to a UK ICVC, a regulated Collective Investment Scheme (CIS) whose units would be standard assets according to IPRU INV of the FCA Handbook.

- While FCA guidance requires SIPP operators to pay special attention to unregulated CIS when it comes to due diligence, it does not and did not at the time prohibit accepting these or other non-standard assets as SIPP investments altogether.

- While restrictions on the promotion of non-mainstream pooled investments may have been relevant to the introducers, IFG itself did not promote the funds.

- There are limits to the COBS 2.1.1R duty for execution-only SIPP operators when it comes to due diligence, as the Court of Appeal's decision in Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474 (1 April 2021) identified.

- It has always been careful to avoid breaching the scope of its permissions by encroaching into an investment advisory function or determining the merits of investments, and it is content that, based on the FCA Handbook requirements in force at the time, it complied with all its duties and obligations.

IFG's due diligence into Connected FS

We also asked IFG about the due diligence it conducted into Connected FS. The key points IFG made in response were, in summary:

- Terms of Business were entered into with Connected FS on 2 November 2016. The agreement ended on 8 June 2018.

- Checks were made on the FCA Register and Companies House for the names of the directors, regulatory authorisation and permissions, any restrictions in place and any regulatory action.

- Connected FS was authorised and approved to provide financial advice and as such was expected to complete a diligent fact find on its client's circumstances and attitude to risk, providing regulated advice on an independent, whole of market basis to determine the appropriate solution and product to meet the specific requirements of the member.

- It checked to ensure financial planning suitability reports had been issued and that the advisor had gone through a thorough process. This included a risk assessment being conducted by Connected FS to ensure the suitability of a transfer into a SIPP and risk tolerance questionnaire to enable set up of a Cornhill FlexMax account. It received a copy of the financial planning report that Connected FS produced for Mr W.

- Having established that suitability reports were being issued prior to each recommendation, there was no additional discussion required with Connected FS about the client process required.

- Its role in the process here is not to act as a financial adviser nor is it following initial investment to ensure the member continues to receive financial advice. Furthermore, it is mindful of the scope of its permissions by encroaching into an unauthorised investment advisory function or determining the merits of investments.

- 28 clients were introduced by the firm, Connected FS, and a SIPP was established for each client. Mr W's was the fourth application it received.

Our investigator's view

Our investigator did not uphold the complaint. He said, in summary:

- IFG did not have to assess the suitability of the investments for Mr W.

- IFG carried out due diligence into Connected FS which, in his view, reflected good practice and was sufficient.

- The volumes of business submitted by Connected FS did not, in his view, give IFG reason to refuse Mr W's application.

- The funds appear to be standard investments. The underlying funds held by the funds appear to invest primarily in equities, property and bond funds which would be acceptable within the guidelines set out by IFG.

- In his view the regulator's guidance relating to enhanced due diligence largely applies to unauthorised introducers and unregulated or esoteric investments. He did not believe it particularly applies to this case. He believed IFG carried out sufficient due diligence on Connected FS and was satisfied the underlying investments in the FlexMax account were standard assets and were in line with IFG's permitted investments. This would not have raised any concerns that would have warranted any enhanced due diligence.

The CMC's response to the view

The CMC did not accept the investigator's view. It said, in summary:

- It did not agree the funds were standard investments.

- The July 2022 final decision of the National Bank of Slovakia describes them as being special alternative investment funds and complex financial instruments that are not suitable for balanced retail clients. It believes that to be irrefutable evidence.

- It is clear that the investments were not suitable for Mr W's SIPP.

- It would have expected IFG to have conducted its own due diligence on the funds, rather than rely on third party emails to conclude they were standard investments.

My provisional findings

I recently issued a provisional decision. My provisional findings were as follows:

- IFG ought reasonably to have recognised the holdings in the two LUXIF funds which were to be used by Cornhill ocp to create the portfolio Mr W's pension was to be invested in were largely highly complex, specialised non-mainstream funds which were likely unsuitable for retail clients.

- IFG should also have been aware of the very high levels of charges (and associated exit fees) associated with the overall arrangements.

- Furthermore, IFG should have been cautious about the business model being followed by Connected FS.

- There was no reasonable basis on which IFG could have concluded the risks associated with the funds and overall costs associated with the arrangements had been fully explained to Mr W, or that the suitability of the funds for him had been properly assessed.

- With these points – individually and cumulatively – in mind, IFG should have concluded the acceptance of this business was not consistent with its regulatory obligations, as it carried with it a significant risk of consumer detriment.

I concluded it was fair to ask IFG to compensate Mr W for the full measure of his loss.

The CMC accepted my provisional decision. IFG did not accept my provisional decision. It appointed a representative to respond on its behalf. Its key points, in my view, were as follows:

- The funds were not higher risk investments wholly inappropriate for retail consumers.

- The charges / fees were not too high.

- Connected FS's business model and the advice it was delivering did not indicate there was a significant risk of consumer detriment.

- IFG was not required to undertake due diligence on the underlying funds held by the funds.

- Mr W would have proceeded to invest even if it had not accepted his application.

- It is not, any event, fair to require it to compensate Mr W for the full measure of his loss.

These were not the only points made by IFG but are, in my view, the key ones. IFG set out its arguments on each point at length in its response. Given the length of the response, I will not attempt a further summary here. But I confirm I have considered it carefully, in full; and I set out my response to IFG's points, where I consider it appropriate to do so, below.

What I've decided – and why

Before reconsidering what is fair and reasonable in the circumstances of this complaint, I have considered a point IFG has made in its response about our jurisdiction to consider this complaint. IFG refers to DISP 2.8.2R of the FCA Handbook, which says that we can only consider a complaint if it is referred to us within six months of a final response letter being issued by the respondent firm. IFG says, as it did not issue a final response letter, Mr W was not entitled to refer his complaint to us. However, this overlooks DISP 2.8.1R, which says:

"*The Ombudsman can only consider a complaint if:*

1. *the respondent has already sent the complainant its final response or summary resolution communication; or*
2. *in relation to a complaint that is not an EMD complaint or a PSD complaint, eight weeks have elapsed since the respondent received the complaint;*"

In this case, the CMC did not receive a final response and waited for more than eight weeks before referring Mr W's complaint to us on his behalf. It is, accordingly, a complaint we can consider.

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

As a preliminary point, the purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, whilst I have again carefully considered all the submissions made by both parties, I have focussed here on the points I believe to be key to my determination of what's fair and reasonable in the circumstances.

In a similar vein, I confirm I have read – and carefully considered – everything the parties have said and submitted. But, as mentioned, the summary I have set out above is not intended to be exhaustive; rather, it is intended to be a summary of what I consider to be key.

I also confirm I am aware of the investigators' views on other complaints relating to the FlexMax account, mentioned by IFG in its response. And I have considered the investigator's view in this case. However, I am required to make my own independent determination of 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, I am required to take into account: 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.

With that in mind I will start by again setting out what I have identified as the key relevant considerations to deciding what is fair and reasonable in this case.

Relevant considerations

The Principles

In my view, the FCA's Principles for Businesses are of particular relevance to my decision. The Principles for Businesses, which are set out in the FCA's handbook "*are a general statement of the fundamental obligations of firms under the regulatory system*" (PRIN 1.1.2G). I consider that the Principles relevant to this complaint include Principles 2, 3 and 6 which say:

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

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

And at paragraph 77 of BBA Ouseley J said:

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

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

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

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

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

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

The *Adams* court cases and COBS 2.1.1R

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

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

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

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

I note that HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at para 148:

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

I therefore need to construe the duties IFG owed to Mr W under COBS 2.1.1R in light of the specific facts of Mr W's case. 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 IFG's role in the transactions.

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

I also want to emphasise that I don't say that IFG was under any obligation to assess Mr W's personal financial circumstances or to advise Mr W on the suitability of the SIPP and/or the investments in the LUXIF funds through the FlexMax account. Refusing to accept an application, having given the introducer and the investment proper scrutiny and identifying concerning issues, is not the same thing as advising Mr W on the merits of the SIPP and/or the underlying investment.

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

Court of Appeal case

I have also considered the Court of Appeal's judgment in Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541, which refers to the case law I mention above and approved the decision of the ombudsman in the case in question.

A decision of The Pensions Ombudsman

In its response to my provisional findings IFG has referred to a decision issued by The Pensions Ombudsman (TPO).

TPO is a different scheme, subject to a different statutory remit and, like us, it decides cases on their own facts, and issues decisions which do not set precedents. Furthermore – and in any event – the decision IFG has mentioned was issued around nine years ago and predates (with the exception of the BBA judgement) all the legal authorities I have mentioned above. In particular, 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. And in both cases the approach taken by the ombudsman concerned – which is the approach I have taken in this case - was endorsed by the court. A number of different arguments have therefore been considered by the courts since the TPO decision was issued and may now reasonably be regarded as resolved. I do not think the TPO decision gives me reason to revisit these points.

The TPO decision is not therefore, in my view, a relevant consideration to this case.

Regulatory publications

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

- The 2009 and 2012 thematic review reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 "Dear CEO" letter.

I've considered the relevance of these publications. All were published before IFG's acceptance of Mr W's SIPP application and the investments in the LUXIF funds, in the FlexMax account. So, they are clearly relevant considerations. I have set out what I consider to be the key parts of the publications here.

The 2009 Thematic Review Report

The 2009 report included the following statement:

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

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

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

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

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

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

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

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

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

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

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

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

<u>*The later publications*</u>

In the October 2013 finalised SIPP operator guidance, the FCA states:

"*This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.*

All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a "client" for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes: …"

The October 2013 finalised SIPP operator guidance also set out the following:

"***Relationships between firms that advise and introduce prospective members and SIPP operators***

Examples of good practice we observed during our work with SIPP operators include the following:

- *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the* *appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for unauthorised business warnings.*

- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*

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

- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*

- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

- *Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers.*

Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*

- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*

- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from nonregulated introducers*"

In relation to due diligence the October 2013 finalised SIPP operator guidance said:

"***Due diligence***

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*

- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*

- *having checks which may include, but are not limited to:*

    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*

    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*

- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*

- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*

- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax relievable investments and non-standard investments that have not been approved by the firm*"

The July 2014 "Dear CEO" letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The "Dear CEO" letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *Correctly establishing and understanding the nature of an investment*

- *Ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation*

- *Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)*

- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently*

- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc)*

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

I acknowledge that the 2009 and 2012 reports and the "Dear CEO" letter are not formal "guidance" (whereas the 2013 finalised guidance is). However, the fact that the reports and

“Dear CEO” letter did not constitute formal guidance does not mean their importance should be underestimated. They provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and producing the outcomes envisaged by the Principles. In that respect the publications, which set out the regulator’s expectations of what SIPP operators should be doing, also go some way to indicate what I consider amounts to good industry practice and I am, therefore, satisfied it is appropriate to take them into account.

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

At its introduction the 2009 Thematic Review Report says:

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

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

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

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

The obligation to act in accordance with the Principles existed throughout the events in this case. It is 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 regulator’s comments suggest some industry participants’ understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

I note that HHJ Dight in the *Adams* case did not consider the 2012 Thematic Review Report, 2013 guidance and 2014 “Dear CEO” letter to be of relevance to his consideration of Mr Adams’ claim. But it does not follow that those publications are irrelevant to my consideration of what is fair and reasonable in the circumstances of this complaint. I am required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

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

To confirm, I do not say the Principles or the publications obliged IFG to ensure the transactions were suitable for Mr W. It is accepted IFG was not required to give advice to Mr W, and could not give advice. And I accept the publications do not alter the meaning of, or the scope of, the Principles. But, as I've said above, they're evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles.

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

And in determining this complaint, I need to consider whether, in accepting Mr W's application to establish a SIPP and invest in the funds through the FlexMax account, IFG complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what IFG should have done to comply with its regulatory obligations and duties.

What did IFG's obligations mean in practice?

I acknowledge IFG was not required to give advice to Mr W (and did not have permissions to do so). This was a non-advisory, execution only relationship. The business IFG was conducting was its operation of SIPPs. I am satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject referrals of business and/or particular investments.

Taking account of the factual context of this case, it's my view that in order for IFG to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into the FlexMax account, the funds which were to be held in the FlexMax account and Connected FS at all relevant times.

What I'm considering here is whether IFG took reasonable care, acted with due diligence and treated Mr W fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issue in Mr W's complaint is whether it was fair and reasonable for IFG to have accepted his SIPP application and to allow the investment in the funds, in the FlexMax account. So, I need to consider whether IFG carried out appropriate due diligence checks on the FlexMax account, the LUXIF funds and Connected FS when deciding to accept Mr W's application and/or instructions to invest.

And the questions I need to consider include whether IFG ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by Connected FS and/or applying to invest in the LUXIF funds, via the FexMax account were being put at significant risk of detriment. And, if so, whether IFG should therefore not have accepted Mr W's application or his application to invest.

Summary of findings

Having taken account of the relevant considerations my findings, in summary, remain largely as set out in my provisional decision:

- There has been a lot of focus on whether the funds were “standard assets”, but that, in my view, is not critical to what is fair and reasonable in the circumstances of this case. Whether the funds were standard assets, as defined in IPRU-INV of the FCA Handbook, or by its common and ordinary meaning, was not the sole basis on which IFG should determine whether or not it should allow them in its SIPP.

- Rather, the key point is whether, based on what IFG knew or ought to have known, following reasonable due diligence consistent with standards of good practice and its regulatory obligations, it ought to have identified a significant risk of consumer detriment associated with this business.

- In my view, IFG ought to have identified a significant risk of consumer detriment here.

- IFG took some reasonable steps to meet its regulatory obligations and standards of good practice. But it did not draw reasonable conclusions from the information it obtained during its due diligence process, and put too much reliance on what it was told by Cornhill SA, rather than taking its own independent steps to check things.

- IFG obtained details of the underlying holdings in the two LUXIF funds which were to be used by Cornhill ocp to create the portfolio Mr W’s pension was to be invested in, in the FlexMax account. IFG ought reasonably to have recognised the holdings were largely in highly complex, specialised non-mainstream funds which were likely unsuitable for retail clients, rather than relying on assertions by Cornhill SA that they were “standard” investments suitable for retail clients.

- IFG ought also to have reasonably recognised that such funds were wholly inappropriate for portfolios described as “conservative” and “balanced”.

- So, IFG ought to have concluded it should not allow investments in the LUXIF funds, based on what it knew. Or it should have made further enquiries about the underlying holdings in the funds; which ought to have led it to conclude it should not allow investment in the LUXIF funds.

- IFG should also have been aware of the very high levels of charges (and associated exit fees) associated with the overall arrangements; and have concluded it would not be consistent with its regulatory obligations to allow investment in arrangements with such high associated charges and significant barriers to exiting.

- Furthermore, IFG should have been cautious about a business model being followed by Connected FS which appeared to involve consumers with pensions held in conventional, mainstream investments being advised to transfer to a SIPP in order to make investments offered by a Slovakian business which involved highly complex, specialised, non-mainstream investments. And possibly high levels of initial fees/commission being payable. IFG ought reasonably to have identified this as anomalous business.

- There was also no reasonable basis on which IFG could have concluded the risks associated with the funds and overall costs associated with the arrangements (including the exit fees) had been fully explained to Mr W, or that the suitability of the funds for him had been properly assessed. Connected FS’s suitability report was incomplete and misleading – it should therefore have led IFG to question the competency and motivation of Connected FS, not provided IFG with reassurance.

- Overall, in my view, for these reasons, individually and cumulatively, it is fair and reasonable to say the acceptance of this business was not consistent with IFG's regulatory obligations. There are a number of bases on which IFG should, in my view, have concluded it should not accept the business as it carried with it a significant risk of consumer detriment.

I remain of the view that, in the circumstances, it is fair and reasonable to ask IFG to compensate Mr W for the loss he has suffered through making the investments in the LUXIF funds, through the FlexMax account.

I have set again out some further detail of my findings below. As I have not been persuaded to depart from my provisional findings, I have largely repeated them, addressing some of the points raised by IFG in its response where I consider it appropriate to do so.

Standard assets

Before I reached my provisional decision, a lot of focus had been put on the question of whether the two LUXIF funds Mr W invested in were "standard assets". This is a term which is defined in the FCA Handbook (IPRU-INV 5.9.1 R "*Liquid Capital Requirement for firms whose permitted business includes establishing, operating or winding up a personal pension scheme"*). It also, in my view, carries a common and ordinary meaning – investments are often described as "standard" or "mainstream" etc. And, conversely, as "non-standard", "non-mainstream" etc.

IFG has not made any further comment on this (save for referring, as it had done in earlier submissions, to Cornhill ocp having described the funds as standard assets). But, for completeness, I confirm that I remain of the view, whether or not the LUXIF funds (and their underlying fund holdings) were standard (or something akin to that) on either basis (i.e. as defined in the FCA Handbook or by common and ordinary meaning) is not determinative of whether it was fair and reasonable for IFG to accept them in Mr W's SIPP (on the assumption IFG did not only allow standard investments in its SIPP). Rather, it is only one of a number of things IFG ought reasonably to have considered when deciding whether to allow the funds in Mr W's SIPP.

So, my focus again is not simply on whether the LUXIF funds were standard assets, but what IFG knew about the funds, the FlexMax account and Connected FS's business, or ought to have known, had it carried out further due diligence. And what it is fair and reasonable to say IFG should have concluded from this, given its regulatory obligations at the time.

What IFG knew about the funds

IFG has provided copies of an email exchange it had with Cornhill SA.

A 30 August 2016 email from Cornhill SA to IFG includes the following, sent in response to a request by IFG for a breakdown of the underlying investments:

"*The clients invest into FlexMax funds Conservative and Balanced Growth sub funds. They have liquidity twice monthly. The funds underlying investments are as you see in the excel file*." (The file referred to has been provided to us, and simply lists the full range of LUXIF Amathus funds of funds.)

A 31 August 2016 email from IFG to Cornhill SA includes the following:

"……*although one of the criteria for an investment to be considered a Standard Investment is that it is capable of being sold/redeemed within a 30 day period we are still obliged to understand the actual investments that the members funds are being invested in, hence* [IFG staff member]*'s question regarding the underlying assets.*

Further, the FCA 'Standard Investment' list includes amongst others collective investments and structured notes but, for instance, we limit the amount that can be in structured notes so the overall portfolio is balanced and appropriate to a retail investor's pension fund. The only break from this is where a member is capable of being designated as a sophisticated and experienced investor.

The FCA has over recent years become very focussed on the actual assets because of the failure of investments such as those in the Harlequin scheme and the 'fact' that SIPP providers accepted them as 'suitable' within a pension fund. This is the gatekeeper role the FCA imposes on providers.

We are expected to reject an investment if it is too high risk for a retail investor or where it is not transparent what the funds are actually purchasing. So, we do need a granular understanding of a fund or alternatively what the philosophy or intention of a fund is with regard to the disposition, i.e. bonds issued by European companies listed on a recognised exchange or direct equity investment into privately held Brazilian rainforest distressed property management companies. It is all about the risk of failure of an investment.

If the IFA is doing their disclosure role in full and discussing with their client what they are investing in, and this is documented, the risk will be accepted by the client, but we are still obliged not to allow a client to assume investment risk beyond their capability."

A reply came the same day from Cornhill SA, as follows:

"*What do you need from me regarding the portfolio of securities held by FlexMax Funds?*

Attached is the performance analysis which I sent you before.

- *Lombard 82 Fund Euro Medium Term Notes ("EMTN") - Luxembourg Securitisation Fund issuing structured note with monthly dealing - this fund is required in client portfolio to finance future fees to be charged to client by Cornhill or by Sovereign. Interest of 8% per annum paid to client*
- *WSF Global Equity - Guernsey PCC Fund with weekly dealing - investment into a well-diversified portfolio of global equities - 110 stocks in the portfolio*
- *WIOF Conservative - Luxembourg UCITS with daily dealing investing in bonds primarily;*
- *Paraiba Brazilian Opportunities Fund - Luxembourg Securitisation Fund with twice-monthly dealing investing in bonds with high yield (11%) secured by Brazilian real estate development with cover currently twenty times over - see schematic attached showing how the bond issue is secured*
- *GFG FX Algorithmic Fund - Guernsey PCC Fund with daily dealing - investment into a mixture of bonds, cash and an FX trading position*
- *Xantis Private Equity EMTN - Luxembourg Securitisation Fund issuing structured note with monthly dealing. Similar structure as for Lombard 82. Interest of 8% per annum paid to client*
- *WIOF South-East Asia Fund - Luxembourg UCITS with daily dealing investing in equities from Asian countries*
- *WIOF China Performance Fund - Luxembourg UCITS with daily dealing investing in equities from Greater China;*

- *WSF Asian Pacific Fund - Guernsey PCC Fund with weekly dealing - investment into a well-diversified portfolio of Asian equities excluding Japan - some 40 stocks in the portfolio.*"

I have not seen any evidence to show IFG asked any further questions following this email.

IFG has also confirmed it saw fact sheets for each of the funds. I have not seen the fact sheets contemporaneous to the above email exchanges, but IFG has provided copies of fact sheets dated 28 February 2017 for the two funds Mr W invested in in its submissions to us. These show the following breakdown of holdings:

LUXIF- Amathus Conservative Portfolio:

Lombard 82 Securitisation Fund 8% p.a. EMTN - 25%
WSF Global Equity Fund – 20%
WIOF Conservative Risk 3% Portfolio – 15%
Paraiba Brazilian Opportunities Fund – 10%
GFG FX Algorithmic Fund – 10%
Xantis Private Equity Fund 8% p.a. EMTN – 10%
Theseus Special Opportunities Fund – 5%
WSF Asian Pacific Fund – 5%

LUXIF- Amathus Balanced Growth:

Lombard 82 Securitisation Fund 8% p.a. EMTN – 25%
WSF Global Equity Fund – 15%
Paraiba Brazilian Opportunities Fund – 10%
GFG FX Algorithmic Fund – 10%
Xantis Private Equity Fund 8% p.a. EMTN – 10%
WIOF South East Asia Performance Fund – 10%
WIOF China Performance Fund – 10%
Theseus Special Opportunities Fund – 5%
WSF Asian Pacific Fund – 5%

I think it likely the breakdown as of the time of IFG's email exchange with Cornhill SA (and prior to Mr W's investments in the funds being made) was similar.

What should IFG have concluded about the funds?

I remain of the view the above is clear evidence that IFG knew enough at the time of Mr W's initial SIPP application and the time of his investments in the LUXIF funds to identify a significant risk of consumer detriment associated with investment in the LUXIF funds.

To be clear, this finding is based on what IFG actually knew at the time of accepting Mr W's application, irrespective of my findings later in this decision as to any additional due diligence it could or should have carried out, and conclusions it should have drawn from that.

It remains my view that it is obvious even from the names of the underlying funds involved that a number of them were wholly inappropriate for a "conservative" or "balanced" portfolio of a retail client.

In its response to my provisional decision, IFG essentially says that my finding on this overlooks the level of diversification there was in the investments. It highlights that Mr W was investing in two funds, which each invested in several other funds. And it says it does not accept any of the underlying funds should have been considered higher risk but, even if some were, some 40% of the portfolio of the funds was invested in a highly diverse portfolio of equities and bonds, to mitigate risk.

I remain of the view that many of the funds should have been considered likely to be high or at least higher risk, based on the information available. On this point, there is little I can add to my provisional findings. Funds which specialise in overseas unregulated securitised debt, Forex algorithmic trading and Brazilian real estate development bonds which yield 11%, for example, are, in my view, by any reasonable measure high risk.

In my view IFG should reasonably have recognised the following as at least potentially high risk:

Lombard 82 Securitisation Fund 8% p.a. EMTN
Paraiba Brazilian Opportunities Fund
GFG FX Algorithmic Fund
Xantis Private Equity Fund 8% p.a. EMTN
Theseus Special Opportunities Fund

And IFG should have recognised that some of the other funds had the potential to be higher risk, depending on the underlying holdings.

I explore the make-up of the underlying funds further later in my findings but, at this stage, I am focussing on what IFG actually knew at the time of accepting Mr W's business.

I acknowledge there was some diversification, on the basis the LUXIF funds were investing in other funds, rather than single assets (although I do not think any finding can be made as to the extent of diversification without knowing the detail of the underlying funds) and that IFG could reasonably have taken that into account. But I am not persuaded that offered a basis for IFG to reasonably conclude that it should allow the funds in its SIPP.

I remain of the view, had IFG acted reasonably to meet its regulatory obligations, it ought to have concluded the LUXIF funds were clearly not as described i.e. were clearly appropriate portfolios for conservative or balanced investment, and that many of the underlying funds held by the funds were highly unlikely to be suitable for retail clients at all.

Whilst a conservative/low risk portfolio might reasonably contain a mix of investment risk profiles, and a spread of assets, I think it reasonable to say a competent market participant should be aware that the exposure to high or higher risk investments should be low in such a portfolio, and that it is only diversification away from high risk assets rather than diversification within the high risk asset class that would materially reduce risk to a level that would be normal for a conservative/low risk portfolio. And, in this case, IFG should have noted, from the information available to it, that the *majority* of the fund's holdings appeared to be high risk; and concluded there was therefore a clear overexposure to high risk.

Similarly, a balanced portfolio, whilst it might contain a greater amount of higher risk exposure, could not be reasonably expected to have the *majority* of its portfolio invested in high risk investments. And, as with the conservative fund, the balanced fund appeared to have the *majority* invested in high risk funds. IFG should therefore have noted this fund, too, appeared to be overexposed to high risk.

I remain of the view IFG ought also to have noted there was no apparent justification for the selection of the underlying funds. For example, why was a 20% investment in a highly complex, speculative, unregulated Luxembourg based investment required "*to finance future fees to be charged to client by Cornhill or by Sovereign* (IFG)"; particularly where the fund in question had significant exit penalties for surrenders made within six years of investment and (as I set out below) limits on redemptions?

In my view, IFG should have concluded the composition of these supposedly conservative and balanced funds was a "red flag", as it clearly calls into question the motivation and competency of Cornhill and Connected FS (I turn to the latter again below).

IFG's response refers to a "focus" on Mr W's risk profile in my provisional findings. To confirm, I make no finding that IFG should have assessed the suitability of the funds for Mr W. Rather, that it should have identified a general risk of consumer detriment, based on what it knew.

I remain of the view that, acting reasonably to meet its regulatory obligations, with the above in mind – i.e. based on what it actually knew at the time - IFG should either have simply declined to allow investment in the LUXIF funds (and therefore declined to accept a SIPP application being made in order to facilitate investment in them). Or it should have found out more i.e. considered the make-up of the underlying funds the LUXIF funds were investing in. I am satisfied, in the circumstances of this case, these steps are consistent with IFG's regulatory obligations and standards of good practice at the time. IFG did not take such steps, it seems.

So, when it came to due diligence on the funds IFG acknowledged its obligations and showed it had a good understanding of those obligations and the standards of good practice they brought about. IFG acknowledged "*We are expected to reject an investment if it is too high risk for a retail investor or where it is not transparent what the funds are actually purchasing*". But did not then meet those obligations, as it did not draw reasonable conclusions which were consistent with treating Mr W fairly and acting in his best interests. It is not clear why, given what it knew about the funds Mr W was to invest in, it did not either decline to allow investments in the LUXIF funds or take steps to find out more about them.

To be clear, I do not say IFG's acknowledgement, quoted above, put its obligations higher than they would have been otherwise – I highlight this only to illustrate the point that IFG clearly understood at the time that it needed to consider the underlying funds held by the LUXIF funds Mr W was to invest in, to meet its regulatory obligations.

For the reasons I set out below, I remain of the view that if IFG had considered the make-up of the underlying funds (as opposed to simply concluding it would not allow investment in the LUXIF funds, based on what it knew) the only reasonable conclusion that it could have reached was that it should not allow investments in the funds.

I have again set out below what IFG likely would reasonably have discovered at the time, had it looked into the funds held in the Conservative Portfolio, based on the information I have been able to find about each.

Lombard 82 Securitisation Fund

The Q4 2016 performance update for this fund includes the following:

"*Introduction*

- *Lombard 82 Securitisation Fund, formerly known as Zero Load Securitisation Fund or 'ZLSF', or 'Zero Load' is a Fund established under the Securitisation Fund Law of 2004 (Luxembourg)*

- *Its purpose is to acquire the future income of Luxembourg based financial investment products at a discounted present value of up to 9% per annum - resulting in a discounted sale price of around 50% of the face value*

- *Over time actual income from the purchased Luxembourg investment products flow into Lombard 82*

- *On average it takes 3.5 years for Lombard 82 to break even - from this point on Lombard 82 is generating an additional return for investors on top of the fixed minimum return*

- *In order to finance its activities Lombard 82 issues bonds in the form of index linked notes (EMTNs)*"

"*Exit fees*

All redemptions made before the end of year 5 (that is during years 2-5) will attract exit fees which will be charged at the discretion of the Management Company, up to a maximum of 8%"

The Private Investment Memorandum for the Lombard 82 Fund Euro Medium Term Notes includes the following:

"*The performance of Euro Medium Term Notes is commensurate and depends on the performance of the Underlying Assets (as defined in the Memorandum) and is considered to be a speculative investment involving a high degree of risk (significant fluctuation of the value of the Underlying Assets). The Issuer gives no assurance as to the performance of the EMTNs.*"

"*EMTNs are reimbursable within 60 (sixty) days after the Maturity Date. The Maturity Date is 11 years after the Effective Date, depending on the subscription ("Reimbursement date").*

The reimbursement shall be conducted at the price calculated on the Reimbursement date by the Calculating Agent. It shall be equal to at least 100% of the par value. No redemptions before end of Year 1. All redemptions made before end of Year 5 (ie Year 2 – Year 5) are subject to redemption fees, calculated on the redeemed amount as follows:

- *5% within the second year following the effective date for redemption;*
- *4% within the third year following the effective date for redemption;*
- *3% within the fourth year following the effective date for redemption;*
- *2% within the fifth year following the effective date for redemption;*
- *0% within the sixth year following the effective date for redemption*."

So, the only reasonable conclusion IFG could have reached, in my view, was that this fund was high risk, highly complex and specialised. Its characteristics were not consistent with an investment which was appropriate for the pension schemes of retail clients. IFG should also have called into question what Cornhill SA had said about liquidity, in the light of the contents of the Private Investment Memorandum.

WSF Global Equity Fund

This was a cell of the World Shariah Funds PCC Limited, a Guernsey-based fund.

The 30 April 2016 Annual Report includes the following:

"*The investment objective of the WSF Global Equity Fund cell is to seek long term capital growth from an actively managed portfolio of Shariah-compliant securities which may be located in any jurisdiction or in any economic sector provided that such securities are listed securities or securities quoted on a Recognised Stock Exchange*."

So, this did not have the complexity of the Lombard fund; and is not quite as specialised. But IFG ought to have noted it was likely a higher risk investment (as it could invest in *any* Shariah compliant security listed globally).

WIOF Conservative Risk 3% Portfolio

This was a sub fund of the World Investment Opportunities Funds SICAV, a Luxembourg-based fund.

According to the statement of investments and other net assets in the 30 April 2016 annual report more than half of this sub fund was invested in "*other assets*", with no details given of what those assets were. Only around 43% of the fund was invested in securities, and 22% of this was invested in the WSF Global Equity Fund and WSF Asian Pacific Fund - cells of World Shariah Funds PCC Limited, in which the overall Conservative Portfolio fund was already invested.

It is not clear what the objective of this sub fund was, or why it carried the name "*Conservative Risk 3% Portfolio*". The 30 April 2016 annual report had this to say (spelling and grammatical errors are as in the original):

"*As of the end of April 2016, the Sub-Fund was mainly invested in equity (28.20% versus 30.66% on April end 2016) wide diversified through other funds across Sharian Global stocks as well as on Poland, Eastern Europe, Russian, Turkish, Chinese, and Indian companies. The fixed income investments were mainly for US Corporate bond as for GOLDMAN SACHS GROUP INC GS 2 ⅝ 08/19/20 Corp (-0.71% one year performance) and Poland Government bond as for POLAND GOVERNMENT BOND POLGB 4 ¾ 10/25/16 Corp (-2.81% one year performance). The Sub-Fund with mixed allocation in emerging market bond and emerging equity had a negative performance at one year by more than 12.29% following market sharpe sell off in all main asset class invested*."

So, the make-up of the fund does not appear to bear any relation to what might be reasonably expected to form a conservative portfolio. Rather, insofar as its make up is known, it appears to be a disparate group of higher risk investments. And the lack of information about where more than half the fund was invested ought, in my view, to have been a significant concern.

Paraiba Brazilian Opportunities Fund

I have not been able to fund any details of this fund which are contemporaneous to IFG's due diligence and Mr W's investment. I have found a February 2019 fact sheet, which says:

"*Introduction*

- *The Paraiba Brazilian Opportunities Fund is a Fund established under the Securitisation Fund Law of 2004 (Luxembourg) whose exclusive purpose is to enter into one or more securitisation transactions within the meaning of the Securitisation Law.*

- *The assets of the Paraiba Brazilian Opportunities Fund are segregated from those of the Management Company.*

- *The adviser for the Fund's portfolio investments is Paraiba Projects Consulting Limited.*

- *The Investments predominantly take the form of secured and backed bonds with fixed income interest of 11% p.a. paid monthly*."

"*Projects under the Fund are mainly focused on real estate investments in Brazil which currently cover dwelling, leisure and commercial developments in the area of João Pessoa on the Atlantic coast*."

So, the fund appears to be securitised debt, based on loans made to property developments in one part of Brazil, paying double-digit rates of interest. I recognise this fact sheet post-dates the due diligence but it seems unlikely the fund was significantly different at the time. The only reasonable conclusion IFG could have reached in relation to his fund, in my view, was that it was high risk, highly complex and specialised. Its characteristics were not consistent with an investment which was appropriate for the pension schemes of retail clients.

GFG FX Algorithmic Fund

Very little information about this fund appears to be available. What is available are some update communications, which suggest the fund was launched in 2014 to trade in foreign exchange and wound up in 2020, when its only assets were cash and a loan to a commodities business, which was in arrears. It is not clear why the fund made a loan to a commodities business.

I expect more information would have been available to IFG at the time, had it sought it, and that information would have been unlikely to reasonably lead IFG to the conclusion this was anything other than a high risk investment. In any event, in my view, a fund which was described as one which used algorithms to trade foreign exchange should reasonably have been considered high risk, highly complex and specialised, simply based on its headline objective i.e. to use algorithms to carry out Foreign Exchange trades. So, this fund too had characteristics were not consistent with an investment which was appropriate for the pension schemes of retail clients.

Xantis Private Equity Fund

Again, I have not been able to fund any details of this fund which are contemporaneous to IFG's due diligence and Mr W's investment. I have found a Q3 2018 performance update. That includes the following:

Introduction

- "*The Xantis Private Equity Fund is a Fund established under the Securitisation Fund Law of 2004 (Luxembourg).*

- *Its purpose is to acquire private equity investments on behalf of the fund including all types of unlisted equity instruments and equity securities.*

- *In order to finance its activities the Xantis Private Equity Fund issues bonds in the form of index linked notes known as Euro Medium Term Notes (EMTNs)*."

"*Exit fees*

All redemptions made before the end of year 5 (that is during years 2-5) will attract exit fees which will be charged at the discretion of the Management Company, up to a maximum of 8%"

I recognise this fact sheet post-dates the due diligence; but it seems unlikely the fund was significantly different at the time. In my view, IFG ought reasonably to have concluded this fund was also a high risk, highly complex and specialised one. I think the vague/wide ranging objective should have been a concern too – the summary essentially says the fund can invest in *anything*. This, in my view, was another fund which IFG ought to have concluded had characteristics which were not consistent with an investment which was appropriate for the pension schemes of retail clients.

Theseus Special Opportunities Fund

Again, I have not been able to find any details of this fund which are contemporaneous to IFG's due diligence and Mr W's investment. I have found a June 2019 fact sheet for the Theseus Special Opportunities Fund. That includes the following:

"*Fund Objective*

- *The exclusive purpose of the Fund is to enter into one or more securitisation transactions within the meaning of the Securitisation Law.*

- *The Theseus Special Opportunities Fund may, in this context, assume risks, existing or future, relating to the holding of assets, whether movable or immovable including investing in the property sector and holding directly or indirectly through one or several special purposes vehicle(s) (i.e. a company entirely owned by the Fund, dedicated to the acquisition or disposal of assets) various properties (the Fund will have an indirect exposure to various commercial properties), tangible or intangible, as well as risks resulting from the obligations assumed by third parties or relating to all or part of the activities of third parties, in one or more transactions or on a continuous basis*"

"*Introduction*

- *The Theseus Special Opportunities Fund is a Fund established under the Securitisation Fund Law of 2004 (Luxembourg).*

- *In order to finance its activities the Fund may issue Securities in the form of units or debt instruments in accordance with the provisions of the Securitisation Law.*

- *The assets of the Theseus Special Opportunities Fund are segregated from those of the Management Company.*"

I recognise this fact sheet post-dates the due diligence; but it seems unlikely the fund was significantly different at the time. In my view, IFG ought reasonably to have concluded this fund was also a high risk, highly complex and specialised one. Again, the objective seems to be very vague/wide ranging - it effectively says investments will be made in assets of any type - and this should have been a concern too. Again, this was a fund which IFG ought to have concluded had characteristics which were not consistent with an investment which was appropriate for the pension schemes of retail clients.

WSF Asian Pacific Fund

The fund is another cell of the World Shariah Funds PCC Limited.

The 30 April 2016 Annual Report includes the following:

"*The investment objective of the WSF Asian Pacific Fund cell is to seek long term capital appreciation and income generation through investment predominantly in equities listed in stock exchanges in the emerging and developed markets in the Asian Pacific region excluding Japan, that are Shariah-compliant*."

Like the WSF Global Equity cell, this did not have the complexity of the other funds held, and is not quite as specialised. But IFG ought to have noted it was likely a higher risk investment (as it could invest in *any* Shariah compliant security listed in the Asian Pacific region).

The above is an analysis of the funds held by the LUXIF Amathus Conservative Portfolio only. I recognise the balanced fund had some differences, but I do not think it is necessary to carry out any further analysis – the above is sufficient to illustrate the point i.e. that a look at the underlying funds would have revealed the LUXIF funds were not what they were purported to be by Cornhill SA, or Cornhill ocp i.e. "conservative" or "balanced" funds dealing in standard assets suitable for retail clients.

Given the above, it remains my view that further consideration of the underlying funds held by the funds Mr W invested in should not have allayed concerns about the risks of consumer detriment – rather it should have led to further concerns. The obvious inappropriateness of the underlying funds for a conservative or balanced portfolio, and a lack of detail about some of the funds, should, in my view, have been a further "red flag". The majority of the conservative fund was invested in high risk, specialised overseas assets which were unlikely to be appropriate for most retail clients. The balanced fund had a similar profile.

In the circumstances IFG could not reasonably rely on Cornhill SA having said that the underlying funds were standard assets and suitable for retail clients – particularly not given what IFG knew about the composition of the portfolios from its initial email exchanges with Cornhill SA. The detail Cornhill SA provided about what made up the funds, in my view, should have made IFG very cautious about relying on anything Cornhill SA or Cornhill ocp had to say.

Although the Slovakian regulator operates in a different jurisdiction, under different rules etc I remain of the view it is nonetheless relevant to note here what it had to say in its 2022 final decision. That decision (as translated) said the regulator was fining Cornhill ocp, as it, amongst other things:

"*did not assess the compatibility of financial instruments with the needs of clients to whom it provided investment services and at the same time did not ensure that financial instruments were offered or recommended only if it was in the client's interest, since, based on the data provided in the list of financial instruments as an appendix to* the Target Markets *, the company International Investment Platform, ocp, as could offer in the period from 3 January 2018 to 31 July 2019:*

- Lombard 82 bonds - EMTN Bonds Series 6, 7, 8 and 9 to all types of clients, including conservative ones, despite the fact that the aforementioned bonds are complex financial instruments issued by a securitized fund with a complicated structure, while at the same time they are not traded on regulated markets and are therefore not suitable for the aforementioned type of clients;

- special alternative investment funds LUXIF Amathus Balanced Growth and LUXIF Amathus Conservative Portfolio to conservative - balanced clients, despite the fact that they are complex financial instruments that are not suitable for the aforementioned type of clients;"

That is consistent with my findings above. I have reached my findings independently, based on the relevant considerations I have set out above. But, given the consistency between my findings and those of the Slovakian regulator I think it is appropriate to highlight the latter here.

I acknowledge, as IFG notes in its response to my provisional decision, that the decision of the regulator post-dates IFG's acceptance of Mr W's business. But I remain of the view it is further evidence of what could have been discovered, had the make-up of the underlying funds the LUXIF funds were investing in been considered.

In short, I remain of the view, had IFG considered the make-up of the underlying funds the LUXIF funds were investing in, this would have confirmed the conclusion it ought to have reached at the outset i.e. the funds were being misdescribed and were wholly inappropriate for the investment of retail clients' pension schemes. IFG ought to have concluded from what it would have discovered, had it asked for details of the funds held by the LUXIF funds Mr W was to invest in, that many of those funds were high risk, complex and specialised. And some were of questionable quality. This, in turn, ought to have led IFG to question the motivations and competency of Cornhill opc and the businesses associated with it.

I acknowledge IFG does not agree with my finding on this point. But it has not offered any further evidence on this and there is therefore little I can add to my provisional findings, which are largely repeated above.

I note IFG's points about my analysis being broad brush and selective. My analysis is not intended to be exhaustive – and is based on the limited information I have been able to find about the underlying funds. But it is, in my view, sufficient to demonstrate what IFG would likely have discovered, and I have seen no evidence to show there was any reasonable basis for IFG to conclude the underlying funds were appropriate for cautious or balanced investments of retail clients.

In its response to my provisional decision IFG has referred to various statements about risk in the documents Mr W signed. To be clear, my conclusion is that the investment in the LUXIF funds should not have been allowed by IFG irrespective of anything Mr W signed. I say this because IFG should have identified a clear risk of consumer detriment, and it would not have been consistent with its regulatory obligations to allow investment in the funds to proceed on the basis of Mr W having signed documents containing generic risk warnings. And I am not persuaded any of the documentation demonstrates the risks had been fully explained and understood, in any event.

The above, in my view, is sufficient basis for it to be fair and reasonable to uphold the complaint – IFG should simply not have allowed investment in the funds, and the FlexMax account, as it was not consistent with its regulatory obligations (or standards of good practice) to do so. I have however, for completeness, again considered what IFG ought reasonably to have concluded about the fees/charges associated with the arrangements.

Fees / charges

The LUXIF fund fact sheets mentioned above confirmed the annual management charges applicable to the funds and exit fees which would apply to both funds for the first six years from investment.

The FlexMax account opening form which was sent to Cornhill London by IFG, included the following in the "Fee Schedule" page:

"*Establishment Fee - 0.5% per quarter for 9 years*"

"*Notes:*
1. *Establishment Fees are taken annually in arrears*
2. *Establishment Fees are based on the original investment and charged for the first 9 years only. In the event of termination of the Agreement the Client will be charged with the residual uncharged part of the total Establishment Fees due under the Agreement*"

I remain of the view that, with this information in mind, IFG ought reasonably to have considered the very high charges associated with the arrangements. As noted above, the application form for the FlexMax account confirms the account had a 0.5% per quarter (i.e. 2% per year) establishment charge, based on the initial investment amount, which applied for the first nine years, and the balance of this was payable if a surrender was made before nine years had lapsed. That is an establishment fee of *18%* of the initial investment amount; which the consumer is bound to pay, whether they retain the investment for nine or more years or not.

The fact sheets confirmed the funds had annual charges of 1.35% (conservative) and 1.55% (balanced) plus 20% of any performance over 4% (conservative) and 6% (balanced). And that each of the funds had exit penalties sliding from 6% to 0% over the six years from the initial investment.

So, when considered in their entirety, there were high ongoing charges – around 3.5% per year for the first nine years, plus the SIPP costs and (as I mention below) a 0.5% ongoing advice charge. And exceptionally high exit penalties; a surrender in the first year would result in a charge of around *24%* of the investment value.

IFG says the 0.5% per quarter establishment charge was based on the net investment value at the time, and that it does not understand my finding that a surrender in the first year would result in a charge of *24%* of the investment value. Its points in relation to this appear to overlook the notes I have quoted above, which confirm that the 0.5% per quarter is on the original investment, and the balance of the establishment charge is payable on surrender. Hence a surrender in the first year incurs the exit penalties associated with the fund and payment of the balance of the establishment charge. To be precise, it may not have been exactly 24% as, to be completely accurate, it is actually a 6% of the exit fee plus 18% of original value on surrender, which might not equal exactly 24% of the surrender value; and some of the quarterly 0.5% payments may have been made ahead of the surrender, reducing the balance due. But the point remains that this was an exceptionally high exit charge.

IFG says these fees were not excessive and broadly in line with the market. It has however provided no evidence to support this. I think it is reasonable to say that an annual charge in excess of 4% overall is high and an 18% establishment fee is exceptionally high.

In my view, this level of charges should have led IFG to have serious concerns about the arrangement, as it was highly unlikely to be treating Mr W fairly or in his best interests to allow an investment in a product which had such high charges. Particularly given what I mention above about a 20% investment being made in the Lombard 82 Fund to meet charges. These charges should have led further questions about the motivations and competency of Cornhill opc and the businesses associated with it.

I remain of the view the very high establishment fee should also have led IFG to consider whether a high level of commission was being paid by Cornhill opc to Connected FS (particularly when Connected FS was already taking a 4% initial fee from the SIPP) – a point I will turn to below. I note IFG says in its response to my provisional decision that this point is purely speculative and there is no evidence of commission being payable. The very high establishment fee is, in my view, evidence commission was possibly being paid – establishment fees are commonly used to recover amounts paid out by product providers as commission, and it is not clear on what other basis Cornhill opc was taking 18% of the investment amount.

Again, my conclusion on this applies irrespective of anything Mr W signed. I acknowledge that, overall, the documentation did disclose the fees/charges – albeit without them being stated clearly in one place. But, in my view, it is fair and reasonable to say IFG should not have proceeded simply because they had been disclosed, in circumstances where the fees/charges clearly posed a further risk of consumer detriment.

It remains my view that the high level of charges, alone, were sufficient reason for IFG to conclude it would not be consistent with its regulatory obligations to allow investment in the LUXIF funds using the FlexMax account. And that this is a further basis on which it would be fair and reasonable to uphold the complaint. I have however, for completeness, considered what IFG ought reasonably to have concluded about Connected FS's role in this business.

Connected FS

IFG clearly knew it was Connected FS's intention to routinely use the FlexMax account to invest in the funds Mr W invested in. Cornhill SA, in its 29 August 2016 email to IFG, said:

"*Further to our conversation last week, I have remade the target portfolios for the SIPPs through Connected as attached*."

So, it was clearly Connected FS's intention from the outset to use IFG's SIPP to invest in the LUXIF funds; it had "target portfolios" intended for such a purpose.

Although IFG had only received a few introductions from Connected FS before Mr W's it should still have identified the business being brought by Connected FS as being anomalous, and have been very cautious about accepting it. Connected FS was following a business model which appeared to involve consumers being advised to transfer away from conventional pension schemes invested in mainstream UK-based investments to a portfolio provided by a Slovakian business investing in overseas funds with specialist/high risk underlying assets, which carried very high charges. And there was a risk Connected FS was taking a high level of commission or initial fees when carrying out this business.

I acknowledge the points IFG has made in response to my provisional findings on this. But I have not been persuaded to depart from my provisional findings.

Connected FS's financial planning report, which IFG has submitted a copy of as part of its submissions on the due diligence it carried out (and says it saw at the time of Mr W's application) says the following when recommending the FlexMax account:

"*Recommendation and rationale*

Cornhill Management were established in 1997 and currently have over $550 million under management. They are based in Luxembourg but manage investments worldwide. Their

Flex Max Investment Account has been specifically designed to offer a MiFID compliant investment account for both regular savings and lump sum investments.

Cornhill Management Advisory Services will invest your pension funds into a mixture of the following funds tailored specifically to your attitude to risk as agreed;

The Lombard 82 Fund is a fund established in Luxembourg. Its purpose is to acquire the future income of Luxembourg based financial investment products at a discounted present value of up to 9% per annum resulting in a discounted sale price of around 50% of the face value. The capital invested is fully protected and the fund returns a minimum of 2% per quarter.

The World Investment Opportunities Fund offers a comprehensive range of investment portfolios within a single legal structure, enabling investors to create and manage a portfolio of investments according to their level of risk tolerance and objectives. The fund also comprises a number of so-called "Portfolio" Sub-Funds which combine different investment strategies and risk profiles in one single Sub-Fund.

The World Strategy Portfolio offers a range of investment portfolios structured as funds of funds, all encompassed within a single legal structure, with a range of Sub-Funds which will allow investors to invest according to their level of risk tolerance and investment goals."

I remain of the view this misdescribes the FlexMax account. The account was provided by Cornhill ocp; which was based in Slovakia, not Luxembourg, and did not, as far I have been able to ascertain, trade under the name Cornhill Management Advisory Services. And it also misdescribes the intended investments. Mr W's SIPP was not to be invested in "*a mixture of the following funds tailored specifically to your attitude to risk*". As set out, Mr W's SIPP was to be invested in the two LUXIF funds, which invested a range of other funds. The report does not fully explain this or detail all the underlying funds Mr W would be investing in. It also fails to disclose the risks involved and misleadingly describes the Lombard 82 Fund as "fully protected" and having a guaranteed minimum return, suggesting there is no risk involved – with it at all - or at least that the risk was low - when, in fact, it was a high risk, highly specialised fund with limited liquidity.

I do not agree, as IFG suggests in its response, that these are "minor typographical errors". They are, in my view, clearly misleading statements; and are significant.

I accept the contents of the report need to be considered in the context of other warnings/explanations given, and I have considered the appendix to IFG's response to my provisional decision, which sets these out. But, as mentioned above, I am not persuaded that any of the warnings fully explained the risks associated with the investment. So, IFG could not reasonably have overlooked the shortcomings in the report on the basis they had been addressed elsewhere.

So, I remain of the view IFG should have concluded that the risks had *not* been fully discussed with Mr W by Connected FS, rather than concluding they had been fully discussed. And, furthermore, that Mr W may have been misled by Connected FS as to the nature of the funds he was to invest in.

As noted above, Connected FS also took a 4% initial fee, and the arrangements it was recommending came with high associated charges. These charges, in my view, were not adequately explained in Connected FS's financial planning report.

Under "*Charges and Performance*" the following is said:

"*The charges for entry into the Cornhill Flex Max Investment Account is 0.5% per quarter*."

Under "*Adviser Remuneration*" the following is said:

"*Connected Financial Services will deduct the agreed fee from your new plan at the outset. This is in accordance with your signed Fee Agreement.*

I explained that our services can be paid for either by way of fees paid directly by you, or fees deducted from your pension and paid to us by the product provider, or a combination of the two.

Our standard fee for arranging this pension transfer is 4% which in this case equates to £3765.28.

You have elected to receive one client review per annum and the current charges for this service are 0.5% per annum of the amount of your Investment as per the terms stated in our Service Proposition and Engagement.

This amount will be deducted directly from the investment on an annual basis."

This, in my view, was not an adequate explanation of the charges. It does not explain the term of the establishment fee, and confirm what that meant, in terms of the total percentage payable. It is also does not disclose all the other charges payable annually, or give a single total figure for these charges, so they could be readily understood. In my view the high total charges – over 4% per year overall for the first nine years, which included an establishment fee which totalled 18% of the initial investment amount, payable over and above the 4% initial fee Connected FS was taking from the SIPP – should have been set out in much clearer terms. IFG ought to have recognised a clear risk of consumer detriment arising from the absence of such an explanation in Connected FS's suitability report.

I again acknowledge that information on fees / charges was available across all of the documentation. But it should nonetheless have been a further point of concern that the suitability report does not disclose them in full, and in a way that is easily understood.

IFG should also have considered, given the very high establishment fee, whether and undisclosed commission or an initial fee was being paid to Connected FS by Cornhill ocp. The size of the establishment fee suggests a high level of commission, or initial fee, may have been payable. Given 4% was already being taken from the SIPP by Connected FS if a significant commission or fee was being paid by Cornhill ocp that should have been a further point of concern – particularly given it does not seem that any commission or fee was disclosed to Mr W.

In my view, this is a further basis on which IFG should have concluded it should not accept this business. With its regulatory obligations and standards of good practice in mind, IFG ought to have concluded from what it knew about Connected FS's business model and the advice it was delivering that there was significant risk of consumer detriment associated with this business, and it would therefore not be consistent with its regulatory obligations to accept it.

To be clear, my overall conclusion on what is fair and reasonable in the circumstances of this complaint would be the same regardless of this finding. As I set out above, I am satisfied it is fair and reasonable to find IFG should have declined to allow investment in the LUXIF funds based on the other points I have set out. So, this is a further or additional basis on which I consider it is fair and reasonable to uphold Mr W's complaint.

I note that IFG says, in its response to my provisional decision, that I had made a provisional finding it may have been reasonable for it to accept the business if the funds had been appropriately assessed by Connected FS as being suitable ones for Mr W's SIPP and the significant risks associated with them had been explained. For completeness, I confirm what was set out in my provisional decision; that this finding was made whilst setting aside the conclusion I had already reached that IFG should not have accepted the LUXIF funds.

In any event, for the reasons I have set out, I am not satisfied the evidence shows the funds had been appropriately assessed by Connected FS as being suitable ones for Mr W's SIPP and the significant risks associated with the funds had been explained Connected FS. So, there is not, in my view, any reasonable basis on which IFG could have proceeded in reliance on Connected FS's involvement.

In summary, for the reasons set out, I am satisfied it is fair and reasonable to find that IFG ought to have concluded it should not accept this business, as doing so would not be consistent with its regulatory obligations and standards of good practice.

Is it fair to require IFG to compensate Mr W?

In its response to my provisional decision IFG says Mr W was an insistent customer, and refers to Finalised Guidance from the FCA on the Consumer Duty (which does not apply here, as the events in question pre-date the Consumer Duty). The term insistent customer generally relates to an advised process, and circumstances in which a consumer wishes to take a course of action despite being advised against it. I do not think it applies in the context of IFG's role as a SIPP provider. But I have nonetheless again considered the question of whether Mr W would have proceeded, if IFG had not accepted the application.

As I set out in my provisional decision, when considering this from the perspective of fair compensation, I must be satisfied that, on balance, it is more likely than not Mr W would have made an alternative investment (or retained his existing arrangements), if IFG had not accepted his application.

I remain of the view it is more likely than not the transaction would not have proceeded, had IFG not accepted Mr W's application. By that I mean Mr W would have likely stayed in his existing pension schemes.

I set out in my provisional decision that I had seen no evidence to show Mr W was considering making any changes to his existing arrangements until he was advised by Connected FS to do so. That remains the case. I acknowledge IFG's point that, by the time the application was submitted to it, Mr W *had* been advised to make changes. And, when delivering that advice Connected FS had set out reasons why Mr W wanted to move away from his existing scheme. But the reason for the transfer to the SIPP was essentially to allow Mr W to make investments in the LUXIF funds which I do not think IFG should have allowed, and I do not think that Mr W would inevitably have gone to the other operator, had IFG acted fairly and reasonably to meet its regulatory obligations by not allowing investments in the LUXIF funds in its SIPP.

I have not seen any evidence to show Mr W would have paid no regard to the refusal by IFG to accept the LUXIF funds. He says he was cold-called and offered a pension review. So, it is not the case he had decided he wanted to transfer his pensions to a different arrangement, sought advice on this, and was determined to do so.

In the circumstances of this complaint, my view remains that, whilst I accept that Connected FS may be responsible for initiating the course of action that has led to Mr W's loss, I consider that IFG failed unreasonably to put a stop to that course of action when it had the opportunity and obligation to do so. I am satisfied that if IFG had complied with its own distinct regulatory obligations as a SIPP operator, the investment would not have come about in the first place, and the loss Mr W has suffered could have been avoided.

Furthermore – and in any event - in the circumstances, I am of the view it is not fair and reasonable to say that IFG should not be considered at fault, or that it should bear no responsibility for its faults, based on speculation another SIPP operator would have acted in the same way had IFG refused the application.

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

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

The starting point, therefore, is that it would be fair to require IFG to pay Mr W compensation for the loss he's suffered as a result of its failings. I have carefully considered if there is any reason why it would not be fair to ask IFG to compensate Mr W for his loss.

As mentioned, I acknowledge that Connected FS may be responsible for initiating the course of action that has led to Mr W's loss. I also acknowledge that the FSCS accepted Mr W's claim about that advice, implying the FSCS was of the view that advice was unsuitable. But, as I have set out, I am satisfied Mr W would not have invested *at all* had IFG met its regulatory obligations.

I note IFG says it would be fair to hold Mr W liable (at least in part) for his loss, as he saw documentation which set out the risk associated with the investments he was making. I do not agree. As I have set out, I do not think Mr W did see documentation which set out the risks in full. I am therefore not persuaded Mr W did fully understand the risks and make a properly informed decision to accept them; or that he otherwise acted unreasonably in the circumstances.

It's my view that it is appropriate and fair in the circumstances for IFG to compensate Mr W to the full extent of the financial losses he has suffered due to its failings. Having carefully considered everything, I do not think that it would be appropriate or fair in the circumstances to reduce the compensation amount that IFG is liable to pay to Mr W.

Putting things right

Fair compensation

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if he had he not transferred to the SIPP.

I think Mr W would have remained with his previous providers, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr W's circumstances and objectives when he invested.

What must IFG do?

To compensate Mr W fairly, IFG must:

Compare the performance of Mr W's investment with the notional value if it had remained with the previous providers. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

IFG should also add any interest set out below to the compensation payable.

If there is a loss, IFG should pay into Mr W's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If IFG is unable to pay the compensation into Mr W's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr W won't be able to reclaim any of the reduction after compensation is paid.

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

It is reasonable to assume that Mr W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr W would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

IFG should also pay Mr W £500 for the distress and inconvenience caused by the arrangements, which have clearly caused him significant worry. I am satisfied that is a fair sum of compensation, in the circumstances of this complaint.

Income tax may be payable on any interest paid. If IFG deducts income tax from the interest, it should tell Mr W how much has been taken off. IFG should give Mr W a tax deduction certificate in respect of interest if Mr W asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
IFG SIPP	Illiquid	Notional value from previous providers	Date of transfer	Date of my decision	8% simple per year from date of my final decision to settlement, if not paid within 28 days of acceptance

Actual value

This means the actual amount payable from the investment at the end date.

Notional Value

This is the value of Mr W's investment had it remained with the previous providers until the end date. IFG should request that the previous providers calculate this value. I am satisfied it is fair to take these valuations as of the date of my decision as my finding is Mr W would have remained in his existing schemes.

Any additional sum paid into the SIPP should be added to the *notional value* calculation from the point in time when it was actually paid in. Any withdrawal from the SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. The withdrawal of the tax free lump sum should be taken proportionally from the notional value of each of Mr W’s previous schemes.

If there is a large number of regular payments, to keep calculations simpler, I’ll accept if IFG totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous providers are unable to calculate a notional value, IFG will need to determine a fair value for Mr W's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

I understand the LUXIF funds are in the hands of a liquidator and the process of winding them up is not complete. However, IFG has confirmed it is not applying any fees to the SIPP and does not intend to do so; any fees due are being waived. I therefore do not think I need to make any award of compensation for future fees due.

Why is this remedy suitable?

I’ve chosen this method of compensation because:

- Mr W wanted to achieve a reasonable return with some to his capital.

- If the previous providers are unable to calculate a notional value, then I consider the FTSE UK Private Investors Income Total Return Index would be a fair measure given Mr W's circumstances and objectives. It is the sort of investment return a consumer could have obtained with some risk to their capital.

FSCS compensation

I acknowledge that Mr W has received a sum of compensation from the FSCS, and that he has had the use of the money he received from the FSCS. The terms of Mr W’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 is fair and reasonable to make no permanent deduction in the redress calculation for the compensation Mr W received from the FSCS. And it will be for Mr W 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 W 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, IFG may make an allowance in the form of a notional withdrawal (deduction) equivalent to the payment Mr W received from the FSCS following the claim about Connected FS, and on the date the payment was actually paid to Mr W. Where such a deduction is made there must also be a corresponding notional contribution (addition), at the date of my final decision, equivalent to all FSCS payment(s) notionally deducted earlier in the calculation.

My final decision

For the reasons given, I uphold the complaint.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £170,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £170,000, I may recommend that IFG Pensions Limited pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that IFG Pensions Limited should pay the amount produced by that calculation up to the maximum of £170,000 (including distress or inconvenience but excluding costs) plus any interest on that amount as set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £170,000, I recommend that IFG Pensions Limited pays Mr W the balance plus any interest on the balance as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 April 2025.

John Pattinson
Ombudsman