DRN-5381178

The complaint

Mrs F complains, thorough her representatives, that Options UK Personal Pensions LLP ("Options") previously Carey Pensions UK - didn't carry out adequate due diligence as regards her Self-Invested Personal Pension (SIPP).

What happened

Although Mrs F is represented and her representatives have provided information on her behalf, I will refer to Mrs F throughout for ease of reference. I set out below the roles of the various parties that I will be referring to.

Options – a regulated SIPP operator and administrator providing an execution only service to retail clients and operating a platform through which its clients could invest their SIPP monies themselves or through an investment manager.

Prospect Data Mining ("PDM") – an unregulated introducer of clients to Options based in Spain.

Cornhill Capital Trading ("Cornhill") – the investment manager that Mrs F originally opened an advisory stockbroking account with but which he didn't then use.

Templeton Securities Limited ("Templeton") – an appointed representative of Alexander David Securities between 15 July 2013 and 19 August 2015 and the investment manager that Mrs F subsequently opened an advisory stockbroking account with and which purchased the investments within her SIPP.

Eligere Investments Plc – incorporated on 6 March 2013 and listed on the GXG Market – regulated by the Danish Financial Supervisory Authority but closed down In August 2015 – and suspended from trading in June 2015 with a liquidator appointed to carry out a voluntary winding up in April 2017. The company was dissolved in April 2020.

Emmit Plc – incorporated on 10 March 2005 and admitted to the AIM market on 1 July 2005. Suspended from trading on AIM on 9 April 2013 with Administrators being appointed on 5 July 2013 who proposed a Creditors Voluntary Arrangement through which the debt of the company would be converted to shares and the company relisted on AIM as an investing company. Following this the company was relisted on AIM in early 2014. The FCA provided a warning in respect of investing in the company on 14 October 2014, referring to individuals having been encouraged to transfer money from work pension schemes into SIPPs to buy shares in the company with some investors being offered 'cash back' in order to do so. The company was then suspended from trading again in November 2014. It was finally dissolved on 12 October 2024.

Mrs F's relationship with Options

Mrs F was introduced to Options by PDM, signing an application to transfer two existing pensions into an Options SIPP on 31 December 2013 which application Options received on 11 February 2014. The SIPP application was for direct clients – clients establishing a SIPP

without advice. Under the heading 'Investments' it stated that *"Your investment choices are the sole responsibility of you and/or your Professional Financial Adviser/Investment Manager".* Cornhill is thereafter named as the investment manager that Mrs F wanted to instruct on an advisory basis. She also ticked a box in the application confirming she wished to waive her right to cancel the SIPP within 30 days.

Options telephoned Mrs F on 18 March 2014 and went through what I understand was a pro-forma checklist that it used at the time when dealing with direct clients. I haven't seen the pro-forma checklist or a transcript of the call, but Options emailed Mrs F on 22 March 2014 referring to what was discussed. In summary the email included the following statements:

- We understand that you signed a terms of business with PDM on a non-advised basis and it had been explained to you that PDM is based in Spain and isn't regulated and it can't give financial advice.

- You confirmed you hadn't been offered any inducements.

- You understand that Options doesn't provide financial advice either as to the establishment of a SIPP or the underlying investments you choose to make.

- Neither Options or PDM are responsible for the investment decisions you make, and these are solely your responsibility.

- It was explained to you that you have the opportunity to seek independent financial advice in relation to both the establishment of a SIPP and any underlying investments and the reason you have decided not to take advice was because you felt a SIPP was the best product for you and understood the risks without taking advice.

- You wish to proceed with the establishment of a SIPP with Options on an execution only basis without first seeking financial advice.

Options sent Mrs F a welcome pack and opened her SIPP account on 21 March 2014 and sent transfer forms to Mrs F's pension providers. It received the transfer in of pension monies from her two pensions - on 31 March 2014 for one pension and 2 April 2014 for the other. The total amount received was £31,927.

Mrs F made application for an advisory stockbroking account with Cornhill on 26 March 2014 and she subsequently signed the member declaration Options sent to her for Cornhill on 24 April 2014.

Mrs F then emailed Options on 8 May 2014 stating she wanted to instruct Templeton as her investment manager and completed a new members declaration for Templeton on 9 May 2014. Options sent £30,843 to Mrs F's stockbroking account with Templeton on 20 May 2014 and Mrs F sent an instruction to Templeton the following day for it to invest £15,249 in Eligere and the same amount in Emmit.

As noted above, Eligere was suspended from trading only a few months later, in November 2014, with Emmit being subsequently suspended from trading in June 2015. Both companies are now dissolved.

Mrs F made a complaint to Alexander David Securities as the Principal of Templeton which was then referred to our service. One of our investigators upheld the complaint but it was referred to an ombudsman for decision because Alexander David Securities didn't confirm its agreement to the investigator's opinion. However, the company went into liquidation before

review of the complaint by an ombudsman. A claim was thereafter made to the FSCS but as Mrs F had a potential claim against Options it declined the claim.

Mrs F then complained to Options. It didn't uphold her complaint. In summary it made the following points:

- It provides execution only SIPP administration services as confirmed in the various documents it provided to her such as its Terms and Conditions.

- COBS 11.2.19R made it mandatory for it execute an order received from a client and in doing so it is deemed to have complied fully with the regulations and has treated is customer fairly.

- It does not and cannot provide advice to any clients in relation to the establishment of a SIPP, transfers of any previous arrangements into the SIPP or the underlying investments.

- It had no relationship with PDM other than administering SIPPs on behalf of members that were introduced by that business.

- It carried out full due diligence on PDM and had full terms of business in place - in line with its introducer process at the time - and there was no indication from the due diligence it carried out that it shouldn't accept introductions from PDM.

- Mrs F's appointment of an investment manager at Templeton clearly showed she was aware that Options wouldn't be managing her investment and that it was just administering her account.

- Mrs F made clear that she had decided to invest in Templeton before joining Options based on her own research having stated in her SIPP application that she had conducted her own analysis and didn't feel the need to pay for financial advice.

- It made clear in the documents provided to Mrs F that it acted on an execution only basis and repeatedly made clear it wasn't responsible for assessing the suitability of any investment.

- It didn't fail to assess the investment as Mrs F argues as it cannot advise on investments but can conduct the due diligence on the investment and introducers.

- The investment was deemed as appropriate to be held in a SIPP and Options wasn't the only UK pension scheme to draw that conclusion.

- Regardless of Mrs F's investment experience she was presented with clear information in the paperwork she signed.

- Templeton was appointed by Mrs F to assess the suitability of the investments to be held in her advisory stockbroking account and it holds the relevant permissions to assess suitability and her complaint should be made to it as regards the underlying investments in Eligere and Emmit.

- It provided a comprehensive summary of all the potential risks and it has acted as far as it is able as an execution only SIPP provider by ensuring she was fully aware of the risks so she could make an informed decision.

- Mrs F signed an investment manager declaration on 26 April 2014, instructing it to

open an advisory stockbroker account with Templeton and it acted on her specific instructions to appoint Templeton in accordance with its obligations under COBS 11.2.19R.

- It ensured the investment was suitable to be held in a SIPP, provided numerous risk warnings about the investment, recommended Mrs F seek further advice and took steps to ensure Mrs F was aware the agreement was execution only and it carried out appropriate due diligence on both the introducer and investment.

- Execution only SIPP providers are deliberately excluded from the scope of certain COBS rules and this must inform any interpretation of what COBS 2 required of it.

- It carried out due diligence on Templeton to ensure it was suitable for a UK pension scheme and this included its investment committee reviewing the legal paperwork, product information, company background checks and sanction checks on the company, its directors, shareholders, and regulated individuals. Having caried out this due diligence it determined that the investment was suitable to be held within a SIPP.

- It isn't responsible for Mrs F's actions and her decisions to establish her SIPP, transfer her pensions, invest in a Templeton advisory stockbroker account, not to wait for advice, and to instruct Templeton to invest in Eligere and Emmit.

- It is also not responsible for Templeton actioning her instructions to invest in companies Options didn't permit to be purchased by its pension scheme, in contravention of its Permitted Investment List that Templeton had agreed to abide by.

- It wasn't aware of Mrs F's instruction to Templeton until Templeton informed it of the situation with the Emmit Plc shares and it was unaware there was any holding with Emmit Plc or Eligere Investments Plc until Templeton provided a copy of Mrs F's email instruction.

- It wasn't possible for it to value Mrs F's chosen investments at point of acquisition or subsequently because it wasn't included in the email instruction.

- It doesn't consider that section 27 of the Financial Services and Markets Act 2000 (FSMA) applies as there is no evidence that PDM provided Mrs F with investment recommendations, and neither was it aware of PDM doing so.

- In any event even if section 27 of FSMA was found to apply a court would grant relief under section 28 of FSMA on the basis that Options wasn't aware of any contravention of the general prohibition by PDM.

One of our investigators considered the complaint and thought it should be upheld. She set out Options' regulatory obligations and publications that gave examples of good industry practice as well as relevant case law that supported our approach in cases involving execution only SIPP operators. She found that whilst Options had carried out some due diligence on PDM and Templeton it should have done more.

Options didn't provide any response to the opinion of the investigator so the matter was referred to me for review and decision. I issued a provisional decision explaining why I thought the complaint should be upheld. In short, I found that Options shouldn't have accepted the referral of Mrs F's SIPP application from PDM. I said that if it had carried out the due diligence it should have concluded that it shouldn't accept referrals of business from

PDM before it received Mrs F's application, because of the risk of consumer detriment arising if it did so. I was satisfied that if Options hadn't accepted Mrs F's SIPP application she wouldn't otherwise have transferred out of her existing pensions and invested as she did and said it should pay redress on the basis she would have remained in those pensions. I also made an award of £300 for the distress and inconvenience caused.

I gave both parties the opportunity of responding and providing any further information they wanted me to consider. Mrs F responded confirming she accepted my provisional decision. Options responded asking for further time to respond, which was agreed. However, it has provided no further response.

What I've decided – and why

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

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied that I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

As Mrs F agreed with my provisional decision and Options provided no response, I can see no reason to depart significantly from my provisional decision and I have largely repeated the findings I made below.

Relevant considerations

The rules under which Options operate include the FCA's Principles for Businesses (PRIN) as set out in its Handbook. The Principles *"are a general statement of the fundamental obligations of firms under the regulatory system"* (PRIN1.1.2G). The Principles themselves are set out under PRIN 2 and I think the following are of particular relevance in this complaint.

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 interest of its customers and treat them fairly.

I am satisfied that I am required to take the Principles into account when determining whether Options did anything wrong in the course of it accepting Mrs F's SIPP application and providing its execution only service to her.

In coming to that conclusion I have considered the judgment in the case of *R (British Bankers Association) v Financial Services Authority (2011) EWHC 999 (Admin) ("BBA")* in which Ouseley J said 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 was fair and reasonable redress to award. At paragraph 184 of his judgment he said:

"The width of the Ombudsman's duty to decide what is fair and reasonable, and the width of the materials he is entitled to call to mind for that purpose, prevents any argument being applied to him that he cannot decide to award compensation where there has been no breach of a specific rule, and the Principles are all that is relied on."

I have also considered the judgments in the following cases, which relate specifically to SIPP operators: *R (Berkley Burke SIPP Administration Ltd) v Financial Ombudsman Service (2018) EWHC 2878 ("BBSAL"), Adams v Options SIPP (2020) EWHC 1229 (Ch) (Adams High Court), Adams v Options UK Personal Pensions LLP (2021) EWCA Civ 474 ("Adams Appeal")* and *Options UK Personal Pensions LLP v Financial Ombudsman Service Limited (2024) EWCA Civ 541 ("Options")*

In the BBSAL case Jacobs J confirmed that the decision by the Ombudsman that under the Principles and in accordance with good industry practice Berkely Burke should have undertaken due diligence on the investment it accepted within its SIPP was lawful. At paragraph 109 of his judgment he said:

"The Ombudsman has the widest discretion to decide what was fair and reasonable, and to apply the Principles in the context of the particular facts before him."

Neither the Adams High Court case nor the Adams Appeal case addressed the application of the Principles. However, the application of COBS 2.1.1R - which states that *'a firm must act honestly, fairly, and in accordance with the best interests of its client*' - was considered by HHJ Dight in the High Court. In his judgment he rejected the argument that Options SIPP had failed to comply with that rule on the facts of the case. The Court of Appeal didn't allow Mr Adams appeal on that issue but did so on his claim made pursuant to section 27 of FSMA, which provision I discuss in more detail later in my findings.

However, although COBS 2.1.1R does overlap with the Principles I have identified above as being a relevant consideration for me in this complaint – in particular Principle 6 – there are significant differences to the breaches of COBS 2.1.1R alleged in the Adams cases and the issues in this complaint. And HHJ Dight made clear in his judgment that in seeking to identify the extent of the duty under COBS 2.1.1R *"one has to identify the relevant factual context…".*

In this complaint I am considering whether Options should have concluded that there was a risk of consumer detriment if it accepted introductions from PDM and if so whether it should then have decided not to accept any business from PDM before it received Mrs F's application and entered into an agreement with her. As such the contract isn't the key fact in the context of the complaint I am considering, as I am in the main considering Options regulatory obligations before any contract between Mrs F and Options was entered into. I am therefore satisfied that it is the Principles I have identified above that I need to have regard to.

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 have referred to above and approved the decision of the ombudsman.

The courts have consistently ratified our approach in the cases I have referred to above. The

various arguments that have previously been put as to why our approach was wrong have been rejected in the cases I have referred to above and those arguments can now reasonably be regarded as resolved, with the courts accepting that our approach in cases such as this one is appropriate and lawful.

The regulatory publications and good industry practice

The regulator has over the years issued a number of publications reminding SIPP operators of their obligations, setting out how they might achieve the outcomes envisaged by the Principles. These publications include:

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

The 2009 Thematic Review report included the following:

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

"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.

And:

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

The report included examples of measures that SIPP operators could consider, which were stated to be from examples of good practice that the regulator had observed and suggestions that it had made to firms. These were:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*
- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*
- *Being able to identify anomalous investments, e.g. unusually small or large*

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

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

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

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

I don't think it is necessary for me to comment at length on the other publications from the regulator that I have considered but will do so briefly. In the 2012 Thematic Review the regulator said that:

"As we stated in 2009, we are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Business."

The regulator identified one of the ongoing issues as a lack of evidence of adequate due diligence being undertaken for introducers and investments.

The 2013 finalised SIPP Operator Guidance made clear that it didn't provide new or amended requirements but was a reminder of regulatory responsibilities that became a requirement in April 2007. It repeated what was stated in the previous thematic reviews about SIPP operators needing to comply with Principle 6. And under the heading 'Management Information' stated:

"We would expect SIPP operators to have procedures and controls in place that enable them to gather and analyse MI (Management Information) that will enable them to identify possible instances of financial crime and consumer detriment."

The guidance goes on to give examples of MI firms should consider, such as; the ability to identify trends in the business submitted by introducers; ability to identify the number of investments; the nature of those investments; the amount of funds under management; spread of introducers; the percentage of higher risk or non-standard investments.

And under the heading 'Due Diligence' the FCA said the following:

"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.

The July 2014 Dear CEO letter followed a further Thematic Review carried out by the regulator the key findings from which were annexed to the letter. It again made reference to the need for all firms to conduct their business with due skill, care, and diligence in accordance with Principle 2. The letter came after Mrs F had been onboarded by Options as a client and appointed Templeton as his investment manager and invested in Eligere and

Emmit. However, it referred to existing obligations for SIPP operators under the Principles, not new obligations, and as such it is a relevant consideration for me in this complaint.

The only formal guidance in the above publications is the 2013 finalised guidance However, the publications I have referred to explained what the regulator thought SIPP operators should be doing to comply with their obligations under the Principles and to deliver the outcomes envisaged. I am satisfied that as such they provide examples of what amounts to good industry practice and it is appropriate for me to take them into account. In saying that I want to make clear that the examples in the publications are just that and are not the limit of what might amount to good industry practice.

What did Options' obligations mean in practice?

As a SIPP operator providing an execution only service Options wasn't required to assess the suitability of the SIPP for Mrs F or of the investments she invested in. However, it was required to carry out due diligence on introducers and investments in accordance with the Principles and good industry practice and having done so decide – based on the conclusions it should reasonably have come to following such due diligence - whether to accept referrals of business or investments.

Put another way, if Options should have reasonably concluded, having carried out reasonable due diligence and with good industry practice in mind, that a referral of business from an introducer or an investment could involve financial crime or consumer detriment then as an execution only SIPP operator it could be expected to refuse the referral of business or an investment.

Options doesn't seek to argue that it wasn't required to carry out due diligence on introducers such as PDM or on businesses such as Cornhill and Templeton to comply with its regulatory obligations - or on investments that its SIPP clients were investing pension monies into.

I explain below why I consider its due diligence was inadequate but the argument that Options has made makes it clear in my view that Options accepts that as an execution only SIPP operator it was required to carry out due diligence. This is also supported by the actions it did take, such as entering into terms of business with PDM and Templeton, obtaining an introducer profile from PDM and telephoning clients that PDM had introduced with a view to confirming with those clients such matters as PDM being unable to provide advice and they weren't offered an inducement.

Moreover, I don't think it is in issue that the purpose of such due diligence was so that Options could decide whether to accept a referral of business or an investment. Options' terms and conditions specified that investments are made at its discretion. And, in the course of this complaint and others, it has said that if it had been aware of the instruction to Templeton to invest in Eligere and Emmit it would have been able to stop the transactions as one was unacceptable to it and the language used in the investment instruction to Templeton wasn't consistent with that of a retail client.

So, in short, I am satisfied that what Options was obliged to do in practice was to carry out due diligence that was consistent with good industry practice and its regulatory obligations and, based on the conclusions that it should reasonably have come to following such due diligence, decide whether to accept a referral of business from PDM or permit particular investments within Mrs F's SIPP.

The due diligence carried out by Options

Having concluded that Options was required by the Principles and good industry practice to carry out due diligence on PDM I have considered the due diligence it actually carried out. Options has said that this included the following.

- It obtained a completed introducer profile to understand PDM's business.
- It had an agreement in place with PDM as from February 2014.
- It confirmed with PDM and Mrs F that PDM wasn't providing advice.
- It reviewed World Checks carried out on the individuals it was dealing with at PDM as identified in the introducer profile.
- It ensured all clients introduced by PDM received a call back to ensure they understood that PDM was unregulated and couldn't provide advice and guided them to seek advice from a regulated adviser.
- It confirmed what was discussed in the telephone call in an email.

However, whilst I accept that the above shows Options did carry out some due diligence with a view to complying with its regulatory obligations, I am not persuaded that what it did went far enough, for the reasons I explain below.

In PDM Options was dealing with an unauthorised business operating from overseas that had been in operation for less than two years and there was therefore a risk of consumer detriment from it accepting referrals of business from it. In the circumstances it is reasonable to have expected Options in carrying out its due diligence to have made the enquiries needed to properly understand PDM's business. It was dealing with an unauthorised business , but I am not satisfied that it did this.

The introducer profile provided very limited information on PDM's business. For example, the introducer profile indicated that clients PDM referred would be investing in quoted shares. This suggests it had already had discussions with someone about what clients would be investing their pension monies into and there being some existing agreement between PDM and another business. This possibility is reinforced by the fact that Options has said it made no payment to PDM, so it was obviously being funded by someone else.

Furthermore, the limited information that the introducer profile did provide showed that PDM would be referring ordinary retail clients, rather than high net worth or sophisticated clients, with an average pension pot of only £35,000 but there was no information as to how PDM was identifying such clients in the first place.

I also think a reasonable conclusion for Options to have reached based on the limited information that was provided within the introducer profile is that it was unlikely that the type of client that PDM would be referring would all have fully understood the implications of transferring their pension monies to a SIPP or would have all made that decision without advice of some sort.

So, when Options started to receive referrals from PDM it should have identified an obvious issue that these clients were all making direct applications for a SIPP. I say this with the 2013 finalised SIPP operator guidance in mind, one of the examples of good practice within this being that SIPP operators have processes in place that allow them to identify possible instances of consumer detriment.

The guidance goes on to give examples of the management information that firms should

consider, including the ability to identify trends in the business submitted by introducers, ability to identify the number of investments, the nature of those investments, the amount of funds under management, the spread of introducers and the percentage of higher risk or non-standard investments.

Options has been able to inform us in complaints involving PDM that it received a total of 34 referrals amounting to 21% of new business for Options during the period in question. It has also been able to confirm that it received 14 of these referrals by the middle of February 2014. I have been provided with two front pages of the SIPP application supposedly completed by Mrs F but only one has her name and signature on it.

I have therefore taken this to be the front page relevant to her application and it is date stamped 21 February 2014. I have taken this as the date her application was received by Options, by which time it had already received nearly half of all applications from PDM. However, there is nothing to suggest it analysed the information in the SIPP applications it had received to identify any trends, or the nature of the investments clients were making, which I think it should have done in accordance with good industry practice and to comply with its regulatory obligations.

If it had analysed the information in the applications that it was receiving it is more likely than not it would have identified that all clients referred by PDM were making direct SIPP applications and at the same time wanted to waive their cancellation rights, as shown in various complaints referred to our service including this one. The explanation in the applications as to why advice wasn't being sought by clients also tended to be similar - such as the client had 'carried out their own research' or as in Mrs F's s case that she had 'carried out my own analysis'.

The similarity in the applications it was receiving from supposedly unadvised clients referred by PDM were an obvious concern which Options should have identified through its due diligence. It was aware from the introducer profile that PDM was referring ordinary retail clients with small pension pots. For all such clients it had received applications from before receipt of Mrs F's application to be apparently willing to transfer their pensions to a SIPP without advice whilst waiving their cancellation rights was in my view clearly anomalous and should have been identified by Options as creating a risk of consumer detriment. That clients were providing similar explanations as to why they weren't seeking advice in my view made this risk even clearer.

Even if Options argues that this wasn't enough for it to conclude that it shouldn't accept the referral of Mrs F's business from PDM – and I think it was enough for it to conclude that - it should have led it to it considering carefully the other information provided to it. That information included the Cornhill applications. From those that I am aware of in complaints referred to our service, including that of Mrs F, the applications showed that the clients PDM was referring generally didn't have any, or any significant, investment experience and were selecting medium risk (or sometimes both medium risk and high risk) when selecting their risk appetite and at the same time answering yes to the statement:

"Cornhill Capital Limited focuses primarily on high risk products. Are you prepared to accept a higher degree of risk for your investments with Cornhill Capital in pursuit of higher potential returns."

I accept that ordinary retail clients with little or no investment experience and a medium risk appetite may choose to invest some of their pension monies in high-risk investments alongside other lower risk investments. But an investment manager that 'focussed' on high-risk investments could reasonably be expected to invest the bulk of pension monies in such investments and this should in my view have been identified as an obvious potential issue by

Options in the course of its due diligence.

Moreover, it seems to me that Options should have reasonably concluded from the information available to it that it was very unlikely that the clients PDM was referring to it would have decided to transfer their pensions to a SIPP, waive their cancellation rights, or invest their pension monies through an investment manager whose focus was on high-risk investments all without advice. It should therefore have identified an obvious issue with all such clients making direct applications for a SIPP and the possibility that clients were receiving advice from someone who wasn't authorised.

The above issues in my view should have reasonably led Options to conclude that there was a serious risk of consumer detriment arising from it accepting referrals from PDM and that it consequently shouldn't do so - and before it accepted Mrs F's SIPP application.

Even if Options argues that the issues that I have identified weren't enough for it to have concluded it shouldn't accept referrals of business from PDM, it should have led it to make further enquiries to satisfy itself that the apparent risk of consumer detriment wouldn't arise if it accepted such referrals.

One example of good practice identified in the 2009 Thematic review report was "*identifying instances of clients waiving their cancellation rights, and the reasons for this* (my emphasis)". Moreover, it seems to me the need to establish the reasons behind clients waiving their cancellation rights should have been apparent to Options when all ordinary retail clients PDM was introducing were seeking to do this whilst making direct applications.

If Options had made the enquiries that it should have done, I think it is more likely than not it would have concluded that clients were being advised to transfer their pensions to an Options SIPP and more likely than not as to what to include within their SIPP applications by someone who wasn't authorised to provide advice. The risk of consumer detriment arising from clients being advised by an someone who wasn't authorised when they were supposedly not receiving advice is obvious in my view. It would be reasonable to expect Options with good practice and its regulatory obligations in mind to have concluded that it shouldn't continue to accept referrals of business from PDM in the circumstances.

I acknowledge that Options did telephone clients following receipt of a SIPP application as part of its due diligence. But from other complaints referred to our service my understanding as to this call is that it is based on a pro-forma checklist of statements, some of which simply require a yes or no response. I haven't been provided with the checklist or a record of the call itself in Mrs F's case, but Options did seek to confirm what was discussed in a follow up email to her, which I have seen.

The email refers to Options' understanding that Mrs F had signed a 'terms of business' on a non-advised basis and that it had been explained to her that PDM isn't an FCA regulated firm and isn't able to provide advice in relation to the SIPP or any investments. The email also states that Options do not provide financial advice as to establishing a SIPP or the underlying investments.

I think the shortcomings in the discussions that Options had with Mrs F and other clients referred by PDM is apparent and it didn't go far enough to address the risk of consumer detriment. The email makes clear that Options made no attempt to discuss the issues I have identified above. It made no enquiries exploring the nature of interactions between Mrs F and PDM or the basis she had decided on the course of action she did – transferring her pensions to an Options SIPP, waiving her cancellation rights and instructing an investment manager which concentrated on high-risk investments - supposedly of her own volition. These are issues that in my view Options needed to have a clear understanding of through

its due diligence and acting with good practice in mind.

Mrs F has said in this complaint that she and her husband were contacted by an individual (Mr M) who was associated with both PDM and Paraplanner UK – another unauthorised business. She said that he informed them that their pensions were doing them no favours and that he had a portfolio of investments which would increase their pensions by four of five times and urged them to transfer their pensions. She said that they hadn't been interested in transferring their pensions before being contacted by Mr M.

I acknowledge that Mrs F's explanation is limited and she is recalling events from some time ago so her recollection is unlikely to be complete. But I accept what she has said about her decision to transfer her pensions to an Options SIPP was because she was persuaded by what she had been told by Mr M about her pension doing better as a result - which I think amounted to advice, from someone who wasn't authorised.

Her explanation is in my view plausible, as it seems unlikely that she'd have decided to transfer her pensions and invest independently. And, if Options had made the enquiries that it should have done of Mrs F I think it's more likely than not she would have provided the above explanation to it so that Options would have been aware she had been advised by someone who wasn't authorised.

The risk of consumer detriment arising from Options accepting Mrs F's application when she was acting on advice from someone who wasn't authorised to provide advice is obvious in my view. So, if Options had been aware of this, as it would have been if it had made the enquiries that it should have done, it could be expected to have rejected her SIPP application or any further referrals of business from PDM.

Moreover, I am aware from other complaints to our service that other clients introduced by PDM have also provided similar explanations as to how they came to use PDM's services and transfer their pensions to an Options SIPP. So, if Options had made the enquiries that it should have done when it first started receiving applications through referrals of business from PDM it would, more likely than not, have come to that conclusion before it came to consider Mrs F's application - given the number of applications it had received by the time it received her application.

I think there were further failings by Options in terms of its due diligence following its acceptance of Mrs F's application, as I explain below. This is very much a secondary issue, given I am satisfied that if Options had carried out due diligence as it should have done and acted in accordance with good industry practice it would have concluded that it shouldn't accept referrals of business from PDM before she even made her application.

Following the opening of her advisory stockbroking account with Cornhill Mrs F subsequently informed Options that she wanted to change investment manager to Templeton. Options did carry out some due diligence following this but this was limited to checking that Templeton was an ongoing business and authorised to provide the services Mrs F wanted it to provide.

This change of investment manager by a supposedly unadvised client should have raised concerns with Options in my view, especially given that other clients referred by PDM also decided to change investment manager to Templeton around the same time. I think Options should have realised that it was unlikely that unadvised clients PDM had referred would unilaterally have decided they each wanted to instruct Templeton instead of Cornhill.

Furthermore, Options should, through its due diligence, have picked up on the differences between the information provided by Mrs F at the time of her Cornhill application and the information provided as regards her instruction of Templeton and sought to clarify these. I

am referring to the fact that the information in Mrs F's Cornhill application didn't suggest any previous investment experience whereas the Templeton application identified that she had between one to five years of experience investing in funds and had previous experience of using an advisory broker.

Moreover, from other complaints I have seen, other clients PDM referred put the same information about having one to five years of experience of investing in funds as well as previous experience of using an advisory broker. This similarity in the information of separate unadvised clients whose only connection was that PDM was the introducer was an obvious anomaly in my view that should have been identified by Options through its due diligence.

Even if these issues weren't enough for Options to decide not to continue with Mrs F's SIPP application, it should reasonably have led to it making further enquiries to understand why the information in her Templeton application wasn't consistent with information previously provided and what had prompted her to instruct Templeton. Mrs F has said the change was initiated by Mr M on the basis that Cornhill were too slow and were doing things wrong and that Templeton would be quicker and would provide a safety net and not make investments which would lead to any issues.

I think it is more likely than not that if Options had made those further enquiries, it would have become aware of Mr M's involvement not only in the decision to instruct Templeton in place of Cornhill but also his involvement in Mrs F's decision to transfer her pension to an Options SIPP in the first place, which I have referred to above. The involvement of an unregulated person in Mrs F's decisions created an obvious risk of consumer detriment and the only reasonable conclusion that options could have reached if it had become aware of this would have been not to proceed with Mrs F's SIPP application.

Summary of my above findings

I am persuaded on the evidence in this complaint that Options failed to comply with good industry practice, act with due skill, care, and diligence, organise and control its affairs responsibly, or treat Mrs F fairly by accepting the applications she made for the reasons I have explained. I am satisfied that it is fair and reasonable to uphold the complaint in the circumstances because of this.

The application of section 27/Section 28 FSMA

This provides an additional reason for upholding this complaint. I will comment on this as briefly as I can. As I referred to above, the Court of Appeal in the Adams Appeal case overturned the judgment of HHJ Dight in the High Court on the claim made pursuant to section 27 of FSMA. The Court of Appeal found that Mr Adams could unwind his investment and claim damages against Options under section 27 of FSMA and that Options wasn't entitled to relief under section 28 of FSMA.

Section 27 of FSMA applies where an agreement is made by an authorised person in the course of carrying on a regulated activity where that agreement has been made as a consequence of something said or done by a third party in the course of a regulated activity which is in contravention of the 'general prohibition'. In that case section 27 provides that the agreement is unenforceable as against the other party and the other party is entitled to recover any money or property paid or transferred by them under the agreement and compensation for any loss.

The reference to the general prohibition is to section 19 of FSMA, which states that no person may carry on a regulated activity in the UK or purport to do so unless they are an

authorised person or an exempt person.

Section 28 allows a court to grant relief from section 27 and the agreement to be enforced or money and property to be retained by the authorised person where this is just and equitable but provides that in considering this the court has to have regard to whether the authorised person was aware that the third party in carrying out the regulated activity was contravening the general prohibition.

I have already found that Mrs F's decision to transfer her pension to an Options SIPP was the result of advice from someone who wasn't regulated. In the circumstances I am satisfied that it is more likely than not a court would find that section 27 applies for the following reasons:

- Options carried out the regulated activity of operating a personal pension scheme and entered into an agreement with Mrs F in the course of that activity.

- The agreement was entered into as a result of an unregulated person saying or doing something in the course of it carrying on a regulated activity in breach of the general prohibition.

I have considered the application of section 28 of FSMA. In doing so it is appropriate to refer to what the Court of Appeal said when refusing relief to Options under section 28 in the Adams Appeal case. The reasons for refusing relief were set out under paragraph 115 of the judgment and included:

"i) *A key aim of FSMA is consumer protection. It proceeds on the basis that, while consumers can to an extent be expected to bear responsibility for their own decisions, there is a need for regulation, among other things to safeguard consumers from their own folly. That much reduces the force of Mr Green's contentions that Mr Adams caused his own losses and misled Carey;*

ii) While SIPP providers were not barred from accepting introductions from unregulated sources, section 27 of FSMA was designed to throw risks associated with doing so onto the providers. Authorised persons are at risk of being unable to enforce agreements and being required to return money and other property and to pay compensation regardless of whether they had had knowledge of third parties' contraventions of the general prohibition;"

I accept that in considering the application of that section a court would take into account that Options didn't actually know that the general prohibition had been contravened but as the excerpt above indicates, such lack of knowledge doesn't mean relief should necessarily be granted.

In this case the reason Options wasn't aware that the general prohibition had been breached was because it didn't make the enquiries it should have done when faced with multiple direct applications from ordinary retail clients the content of which was very similar and included clients waiving their cancellation rights. I think a court would more likely than not conclude that if Options had made the enquiries that it should have done it would have become aware of the circumstances behind Mrs F making the applications and that she had been advised by someone who wasn't regulated and as such the general prohibition had been breached and refused relief under section 28 accordingly.

In the circumstances I am satisfied that section 27 of FSMA provides another reason why it is fair and reasonable for me to uphold this complaint and award redress.

Did Options act fairly and reasonably in proceeding with Mrs F's instructions?

Options made more than one reference in its final response letter and subsequently to it acting on an execution only basis and to it being Mrs F's decision to transfer her pension, instruct Templeton and invest in Eligere and Emmit.

It has argued that COBS 11.2.19R made it mandatory for it to execute an order received from a client and that in doing so it is deemed to have complied fully with the regulations and has treated is customer fairly. This argument is only relevant if Options should have accepted Mrs F's SIPP application in the first place, and I have found that it shouldn't have done so.

The argument was also considered and rejected by Jacobs J in BBSAL, in which he said at paragraph 122 of his judgment:

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

In the circumstances, I am satisfied that the argument that Options has made in relation to COBS 11.2.19R isn't relevant to its obligations under the Principles, under which it needed to decide whether or not to accept an application to open a SIPP in the first place or to execute the instruction to make the investments i.e. to proceed with the application.

Is it fair and reasonable to ask Options to compensate Mrs F?

Options might say that if it hadn't accepted Mrs F's business from PDM that the transfer of her pensions would still have been taken place through a different SIPP provider and she would still have invested in Eligere and Emmit. However, I don't think it would be fair and reasonable to find that Options shouldn't compensate Mrs F for her loss based on speculation that another SIPP operator would have also failed to comply with their regulatory obligations. Rather, I think it is fair and reasonable to say that another SIPP operator would have complied with its regulatory obligations and good industry practice and in doing so have concluded it shouldn't accept business from PDM.

Moreover, I am mindful that Mrs F didn't decide to transfer her pensions herself but was advised to do so by someone who wasn't authorised to provide advice and she didn't select Options as her SIPP provider herself but was directed to it by the unregulated person/s she spoke to at the outset. It seems to likely to me that if the SIPP operator that had been selected for her had said it wasn't going to accept her application, she would have had good reason to question the credibility of those who had persuaded her to transfer her pensions. I think in those circumstances she is unlikely to have gone ahead with a different SIPP provider in any event.

I have also considered whether it would be fair and reasonable for Options to pay the full amount of Mrs F's losses, given the potential responsibility of others for her pension monies

being invested in Eligere and Emmit. Having done so I am satisfied that it would be fair and reasonable for Options to pay Mrs F's losses in full, given that if it had complied with good industry practice and its regulatory obligations, she wouldn't have transferred her pensions to a SIPP in the first place through which she could have invested in those companies. In short, I am satisfied that Options failings have caused the full extent of Mrs F's losses.

Putting things right

The aim of the redress I award is to put Mrs F, as far as possible, in the position she would have been in but for the failings on the part of Options I have identified in my findings. I am satisfied that but for those failings Mrs F wouldn't have transferred her pensions to a SIPP and invested in Eligere and Emmit. I have seen no evidence that Mrs F would otherwise have transferred out of her existing pensions.

I cannot be certain that a value will be obtainable for what the transferred pension plans would have been worth, but I am satisfied that what I have set out below is fair and reasonable in the circumstances.

To compensate Mrs F fairly Options must:

- Obtain the notional transfer value of Mrs F's previous transferred pension plans to the date of decision had she stayed with her previous providers.

- Obtain the actual current value of Mrs F's SIPP less any outstanding charges, as at the date of decision.

- 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.

- Pay an amount into Mrs F's Options SIPP, to increase its value by the amount of the loss. The payment should allow for the effect of charges and any available tax relief.

- Pay Mrs F £300 for the distress and inconvenience she has suffered from Options' failings.

I set out below how Options should go about calculating compensation in more detail below.

Calculate the loss resulting from the transfer of Mrs F's existing pensions to an Options SIPP.

Options should contact the providers of the two pension plans that Mrs F transferred into the SIPP and ask them to provide a notional value for this as at the date of decision. For the purposes of the notional calculation the providers should be told to assume no monies would have been transferred away from the plans and the monies invested would have remained invested in an identical manner to that which existed prior to the transfer.

Any contributions or withdrawals Mrs F has made to her SIPP will have to be taken into account, whether the notional value is established through the previous provider or calculated as set out below.

Any withdrawal out of the SIPP should be deducted at the point it was actually paid so it ceases to accrue a return in the calculation from that point on. To be clear, this doesn't include SIPP charges or fees paid to third parties, but it does include any pension lump sum or pension income Mrs F took after her pension monies were transferred to Options.

Similarly, any contributions made to the SIPP should be added to the notional calculation from the date they were actually paid, so any growth they would have enjoyed is allowed for.

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

The notional valuation, as calculated above, less the value of the SIPP as at the date of decision is Mrs F's loss. Options should pay this amount into Mrs F's SIPP if possible, allowing for the effect of charges and any available tax relief. The compensation shouldn't be paid into the SIPP if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid direct to Mrs F as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to her likely income tax rate in retirement, which it is reasonable to assume would be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

SIPP fees

In my provisional decision I said that I assumed there was no reason that the SIPP couldn't be closed once compensation had been paid, given the two companies that she invested in had both now been dissolved. I asked Options to confirm that is correct but it hasn't provided a response. If I am wrong and the SIPP needs to be kept open only because of the illiquid investments and is used only or substantially to hold those assets, then any future SIPP fees should be waived until the SIPP can be closed.

Distress and inconvenience

Mrs F lost almost the entirety of the monies transferred from her existing pension plans into her SIPP and whilst she wasn't near retirement this will have impacted her plans and undoubtedly caused her distress and inconvenience. I consider an award of £300 for this is appropriate in the circumstances.

Interest

The compensation that Options calculates is payable to Mrs F in accordance with what I have set out above must be paid into Mrs F's SIPP, or directly to her if that isn't possible, within 28 days of the date that Options receives notification of her acceptance of my final decision. Simple interest at 8% per year must be added to the compensation from the date of my final decision until payment if compensation isn't paid within 28 days.

Options must also provide the details of its redress calculation to Mrs F in a clear and simple format.

My final decision

I uphold this complaint for the reasons I have set out above. Options UK Personal Pensions LLP must calculate redress as set out above and pay this to Mrs F.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or

reject my decision before 4 April 2025.

Philip Gibbons
Ombudsman