DRN-5382445

The complaint

Mr W complains, that in 2012, Options UK Personal Pensions LLP ('Options', trading as Carey Pensions UK LLP at the relevant time) didn't carry out adequate due diligence on his introducers and selected investments when it accepted his self-invested personal pension ('SIPP') application and instructions to invest in Store First Limited ('Store First') storage units and GAS Verdant Australian farmland ('GAS Verdant').

The complaint was brought to us by Mr W, who was previously declared bankrupt. Mr W's trustee in bankruptcy has told us it has an interest in any compensation we award and is therefore a joint complainant.

What happened – the parties

Given the various parties involved in Mr W's pension transfers and subsequent investments I've set out a summary of each below, along with a synopsis of some of the key events in their relationships.

Options

Options is a SIPP provider and administrator. At the time of the events in this complaint, Options was regulated by the Financial Services Authority ('FSA'), which later became the Financial Conduct Authority ('FCA'). Options 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. Ms H is, and was at the time of the relevant events, Options' CEO.

TPS Land

TPS Land was an unregulated business based in Spain. At the time of the events here, one of the directors of TPS Land was Terence Wright.

On 15 October 2010, the following was published on the FSA's website, in a section called *"Firms and individuals to avoid"*, which was described as *"a warning list of some unauthorised firms and individuals that we believe you should not deal with"*:

> ***"ALERT***
>
> *The Financial Services Authority (FSA) has today published this statement in order to warn investors against dealing with unauthorised firms.*
>
> *The purpose of this statement is to advise members of the public that an individual*
>
> ***Terence (Terry) Wright***
>
> *is not authorised under the Financial Services and Markets Act 2000 (FSMA) to carry on a regulated activity in the UK. Regulated activities include, amongst other things, advising on investments. The FSA believes that the individual may be*

targeting UK customers via the firm Cash In Your Pension.

Investors should be aware that the Financial Ombudsman Service and the Financial Services Compensation Scheme are not available if you deal with an unauthorised company or individual.

To find out whether a company or individual is authorised go to our Register of authorised firms and individuals at http://www.fsa.gov.uk/register/home.do

Date: 15 October 2010"

We've asked Options to provide evidence of the due diligence it carried out on TPS Land on several occasions. Each time we've done so, Options has provided evidence of the due diligence it conducted on another firm which Mr Wright was also a director of, Commercial Land and Property Brokers ('CL&P'). It hasn't provided any evidence of due diligence carried out on TPS Land.

On 15 May 2012, Options conducted a World Check (a risk intelligence tool which allows subscribers to conduct background checks on businesses and individuals) on Terence Wright. The report included the following:

*"... **THE FOLLOWING INFORMATION WAS REPORTED IN ONE OR MORE OF THE SOURCES BELOW:***

[FINANCIAL SERVICES WARNING]

Appears on the UK Financial Services Authority.

...

[REPORTS]

Appears on the FSA list of unauthorised firms and individuals.

...

INFORMATION SOURCES:

http://www.fsa.gov.uk/pages/Doing/Regulated/Law/Alerts/unauthorised.shtml - ARCHIVE

http://www.fsa.gov.uk/Pages/Doing/Regulated/Law/Alerts/Index.shtml - ARCHIVE

Entered: 2011/10/24 ..."

It's unclear when Options started and stopped accepting business from TPS Land. However, Options stopped accepting business from CL&P on 25 May 2012 after it became aware CL&P was offering incentive payments to clients. I understand Options was made aware that a CL&P client had been offered an incentive payment as early as December 2011.

Douglas Baillie Ltd/The Pension Specialist

The Pension Specialist was an appointed representative of Douglas Baillie Ltd ('Douglas Baillie') from 24 May 2011 to 13 November 2013. At the time of The Pension Specialist's involvement, Douglas Baillie was an FCA regulated financial adviser.

In October 2013, Douglas Baillie suspended its pension switching business – The Pension Specialist – following concerns from the FCA about the standard of the advice it was giving.

In 2016, Douglas Baillie went into Financial Services Compensation Scheme ('FSCS') default.

For ease, I'll now refer to all actions of The Pension Specialist as those of Douglas Baillie, except where I'm referencing a direct quotation or where I think it's appropriate to differentiate.

From the available evidence, I've set out below a summary of what I consider to be the key events during the relationship between Options and Douglas Baillie:

20 October 2011 – An introducer profile and introducer agreement between Options and Douglas Baillie was signed. This set out Options' terms of business and the conduct it expected of Douglas Baillie.

12 December 2011 – Options received its first client from Douglas Baillie.

12 March 2012 – Douglas Baillie emailed Ms H at Options to say:

> *"As you may be aware, we have started sending some transfer cases to your company."*

The email outlined a query on one of these cases and asked exactly how Options' process worked. Douglas Baillie asked:

> *"I spoke to one of your colleagues last week to find out what we need to send to you along with the applications. She advised your* [sic] *need to see a copy of our advice letter and any TVAS* [transfer value analysis]*. Please confirm this is the case."*

16 March 2012 – Ms H at Options emailed Douglas Baillie to detail that her understanding of the agreed process was that:

> *"The Pensions Specialists* [sic]*…are providing full advice on transfer of occupational pension schemes to a SIPP (with us), and will provide us copies of TVAS and advice letter.*
>
> *The Pensions Specialists* [sic] *are appointed as advisers for the purpose of the transfer of existing occupational arrangements and the establishment of the SIPP for which they will be paid from the transfer fund.* [The Pension Specialist] *will get the adviser page of our application form completed and signed by each client.*
>
> *We will on receipt of the SIPP application log* [The Pension Specialist] *as adviser for the purposes of the transfer and SIPP establishment and keep* [The Pension Specialist] *informed of progress of the transfer and copy them in on correspondence to the client including the welcome letter.*

> *On receipt of the transfer of funds we will advise* [The Pension Specialist] *as well as client*
>
> [The Pension Specialist] *will invoice the scheme for the transfer advice which we will pay*
>
> *On receipt of the completion of the transaction* [The Pension Specialist] *will send us a letter resigning as adviser which we will record on our systems."*

18 May 2012 – Douglas Baillie emailed Ms H to say:

> *"Thank you for taking the time out to see* [The Pension Specialist's director] *& Co earlier today.* [The Pension Specialist's director] *mentioned that there were a couple of accounts that you have refused business from, as I tend to be closer to the accounts, can you confirm who they are please. This way, I can ensure that* [The Pension Specialist's office] *are aware of any blacklisted firms and that we can avoid them as well."*

4 September 2012 – Ms H emailed Douglas Baillie to say:

> *"We are currently considering our position going forward with regard to receiving business that is advised on transfer but not on-going and for investments and we may not continue with this line of business, however, it would be helpful for me to understand where you are currently getting the introductions from for the transfer work can you please provide me a list of introducers that you are currently doing transfer advice for to assist me to consider further."*

18-20 September 2012 – Ms H and Douglas Baillie exchanged emails about a number of recent applications involving transfers from defined benefit occupational pension schemes. When Options explained that it would no longer accept these where the advice was against transferring, Douglas Baillie asked Ms H to *"please reconsider this stance and give us the opportunity to complete the cases that until today we had no reason to believe that you would not accept"*. Ms H agreed to accept several further applications.

4 October 2012 – Options accepted its last client from Douglas Baillie. The same day, Douglas Baillie emailed Ms H to say:

> *"We are changing our process slightly so that we are advised (where possible) in advance of a SIPP transfer being made, the expected investment that is going to be made.*
>
> *Whilst we don't intend to comment on this investment, our intention is to ensure that the selected SIPP provider will allow this in advance of the SIPP application being made.*
>
> *Can you provide me with a list of alternative investments that you are currently allowing?*
>
> *I am also hoping that we can convert some of our other introducers who don't currently use you to do so by us taking control of where the SIPP should be placed."*

6 October 2012 – Ms H emailed Douglas Baillie to say:

> *"This is welcomed attached is a list of alternatives we have accepted.*

Another point however, we need to know on the form who the introducer of the business is to you, I advised you that we had de-listed CLP and would not deal with them but we have some information from a member of your team who said in passing to a member of my team when we were asking about the investments they wanted to transact, that they would check with CLP. If you are sending us business that has been introduced by CLP please stop, we do not want to be associated with them as an introducing firm of business to us as we as I [sic] *have said to you before that they offer incentives to the client for transacting the transfer and I understood that you too had concerns, is there any reason why you are still transacting business with them."*

8 October 2012 – Douglas Baillie emailed Ms H at Options to say:

"Thank you for the list, this will assist us going forward.

Like your own decision, we have also decided to stop accepting new business from CLP and are only processing cases that are already in the pipeline.

As far as I am aware, we have not sent you any new cases other than the pipeline cases that were agreed when your original decision was made.

Unfortunately due to the timescales involved in our process, the pipeline has taken some time to run down.

I have two clients on my desk who have requested to transfer benefits into their existing [Options] *SIPPs. These are* [client name] *and* [client name]*. Are you willing to accept these or not? We may or may not receive further requests from existing clients of yours to proceed with incremental transfers.*

I will ensure that no further CLP pipeline cases come your way.

For your own information, we also took the step of writing to all CLP clients that were processed prior to your decision, asking them to confirm if they had been offered any form of incentive. We received no responses confirming this.

Since then we added a disclaimer in our process and have now added a letter that each client must sign confirming that no incentives have been offered. This covers all new cases and not just any pipeline CLP cases.

More than happy to provide you with the name of the introducing firm with each new application form as hopefully by working together on this we can eliminate any rogue introducers."

5 February 2013 – Douglas Baillie emailed Options to say:

"Following the recent FSA alert regarding unregulated investments into SIPP's, we are reviewing our process to ensure that we are providing the best possible service to our clients, and we are also reviewing each provider's stance on different investments and the pension transfer process. With this in mind, I would be grateful if you could confirm the following:"

Douglas Baillie's email went on to list a series of questions concerning Options' position on the types of transfers and investments it was willing to accept.

6 February 2013 – Options' Head of Operations and Technical replied to Douglas Baillie saying:

"Further to your email, I have noted below your queries with clarification of our position in bold for ease of reference.

1. *Are you still willing to accept transfers on an insistent client basis where we have advised a client against a transfer, but we have a letter from them stating that they still wish to proceed anyway?* ***We do not accept final salary transfers on an insistent client basis and have not done so since last year. In line with the recent FSA Alert we would not accept insistent clients on the basis you describe.***

2. *Are you willing to accept subsequent investment into unregulated investments where we have advised a client against it, but have a letter from them stating they still wish to proceed?* ***No – as the adviser you would need to advise the client on all aspects of their scheme including investments.***

3. *Are you still willing to accept pension transfer business where the client is to be orphaned once the transfer is complete, prior to any investment being made?* ***No, this would not follow the recent FSA clarifications of their requirements and expectations in respect of advisers."***

Regarding what investments Options would accept, Options said:

> *"GAS Verdant Australian Farmland – Currently accepted but will be subject to a re-review process" and "Store First Ltd – Not currently accepting new business as under review"*.

Store First

The Store First investment took the form of one or more self-storage units, which were part of a larger storage facility in a UK location. Investors bought one or more units in the facility (often referred to as pods) and were offered a guaranteed level of income for a set period of time. After that, they could either take whatever income the unit(s) provided or sell them (assuming there was a market for them). Mr S was a director of Store First Limited and Harley Scott Holdings Limited, the promoter of Store First.

The Store First investment was marketed as offering a guaranteed 8% return in the first two years, an indicated return of 10% in the following two years, and 12% in the next two years after that. It was also marketed as offering a "*guaranteed*" buyback after five years. But little of this materialised. It seems most investors received one or two years' income of 8%, but nothing beyond that. And investors have found it very difficult to sell, with those that have sold receiving a small fraction of the amount they paid for their pods.

In the judgment in *Adams v Options SIPP UK LLP (formerly Options Pensions UK LLP)* [2020] EWHC 1299 (Ch), the judge found the value of Mr Adams' six pods, acquired for around £52,000 in July 2012, to be £15,000 as of January 2017. And in the judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 it was stated that, in February 2020, Options had said it was valuing store pods at £430 each following (then) recent sales of Store First storage units at auction, and the court used that value in assessing the redress due to Mr Adams.

The available evidence shows the following actions were taken by Options in relation to the Store First investment at the dates mentioned. Some of these actions were taken before Options sent Mr W's money to Store First for investment in or around April 2012.

On **3 May 2011,** Options was contacted by a promoter of Store First, Harley Scott, about a newly launched product – Store First. Options agreed to put the investment through its review process.

Options has told us this review process was established in accordance with its obligations and FSA recommendations at the time, which required it to conduct *"due diligence into the Store First investment to assess its suitability for holding within a SIPP"*.

In the letter confirming its acceptance of the investment, Options noted:

- The investor purchases a 250-year lease of a storage unit within a storage facility. The unit is then sublet to the management company, Store First, subject to an initial 6-year term with 2-year break clauses.

- The investor's interest can be sold/assigned at any time. The break clauses allow the investor to rent out the units individually without the services of the management company (but it insisted they use the management company).

- There was no apparent established market for the investment.

- The investment was potentially illiquid in that it was a direct property investment which may take time to sell. However, it could be sold providing a willing buyer could be found and was assignable so could be transferred in-specie to beneficiaries.

It also said its acceptance was subject to a member declaration and indemnity being completed and signed by each member, and the appointment of a solicitor to act for the trustees in respect of any purchase.

On or around **19 April 2012,** Options invested £24,000 from Mr W's SIPP into Store First storage units on his instructions.

The High Court *Adams* judgment refers to an internal Options email of **20 May 2012**, relating to a conversation between Options and Store First about the level of commission that was generally paid to brokers. This said that in the case of CL&P, Store First had told Options it believed the commission to be 12%.

17 August 2012 – A member bulletin was sent to Options by an information service it subscribed to which included the following:

> *"Storefirst Limited*
>
> *We are aware of a web-based news article that mentions '*[Mr S'] *firm faces tax investigation' and goes on to reference notes made within the February 2011 accounts of Harley Scott Holdings.* [The information service] *has sought confirmation from* [Mr S] *on this and have been referred to* [Store First's auditors] *who* [the information service] *understands to be the Harley Scott accountants.* [Store First's auditors] *have supplied a letter to* [the information service] *to clarify the position regarding Store First, however as the letter is addressed to* [the information service] *we have been asked not to circulate the letter as* [Store First's auditors] *wish to control its distribution.* [Store First's auditors] *have agreed though to issue a similar letter addressed to individual SIPP operators/trustees upon request. We will leave it to our* [the information service's] *clients to decide whether they require such a letter, however where a letter is required, the contact details for* [Store First's auditors] *are below and they are on notice they may receive requests from clients of* [the information service].*"*

The same day, Options suspended its acceptance of the investment *"because of concerns about the administration and system and controls of the investment provider."*

20 August 2012 – Store First's auditors sent a letter to Options, which included the following:

> *"We confirm that the tax enquiry referred to in the Harley Scott group of companies accounts to 28 February 2011 do not include either Group First Limited nor Store First Limited and furthermore, neither Group First Limited nor Store First Limited are currently under tax enquiry."*

27 September 2012 – Options lifted its suspension on accepting Store First. An internal Options email of that date from Ms H, sent to the Carey Group CEO and other senior members of staff, confirms this. The email from Ms H included the following:

> *"My view is we can start again? As long as we have put the requisite processes and controls in place to be on their case should we not receive what we are expecting, also do we need to make our member declarations clearer re what option the clients have selected eg guaranteed and non-guaranteed to ensure there is no come back on us at a later date that they did not realise."*

The same day, the CEO of the wider Carey Group replied to the above email and simply said *"I agree"* (to the suggestion in Ms H's email).

5 April 2013 – Options' technical review committee decides it will accept no further Store First investments. The note of this meeting refers to an FSA letter dated 11 January 2012 raising concerns about outstanding loans from Store First to Mr S. In previous submissions to us, Options has said:

> *"*[Options] *took this decision because, by April 2013, it had received a number of queries and concerns from its customers and other sources which* [Options] *considered had not been satisfactorily resolved by Store First.* [Options] *wanted to act quickly to protect its customers and therefore ceased administering investments into Store First."*

In May 2014, the Self Storage Association of the UK ('SSA UK') issued a press release (amended in January 2015), detailing the outcome of a review it had commissioned Deloitte LLP to undertake of the marketing material made available to potential investors by Store First. The release referred to a number of misleading and inaccurate statements made by Store First in its marketing material. It also made the following observation:

> *"…a very serious question arises over how Store First is funding the guaranteed returns to existing investors, considering the absence of bank funding and the likely level of losses that require funding in each new store. It may yet prove to be the case that the rental returns being paid to investors are in fact being funded from the sale proceeds of new units, and not the operation of the self-storage business."*

Store First was the subject of a winding up petition issued by the Business Secretary in 2017. On 30 April 2019, the courts made an order shutting down Store First and three of the related companies by consent between those four companies and the Secretary of State. The Official Receiver was appointed as liquidator. At the time, the Chief Investigator for the Insolvency Service said:

> *"These four companies unscrupulously secured millions of pounds worth of investments using a variety of methods that misled investors, particularly those with pension savings.*
>
> *The court rightly recognised the sheer scale of the problem caused by Store First's sales of a flawed business model, based on misrepresentation and misleading information and has shut down these companies in recognition of the damage done to investors retirement plans."*

Following this the freehold, associated assets and goodwill of 15 storage centres were sold by the Official Receiver to a company called Store First Freeholds Limited. As I understand it, the self-storage units continued to be rented to end users and a company called Pay Store now manages the storage sites trading as Store First. The Official Receiver and Store First Freeholds Limited agreed that the latter would accept any requests from investors to surrender their pods. Store First Freeholds Limited would cover its own costs of the surrender, but investors wouldn't receive any payment.

GAS Verdant

The GAS Verdant Australian farmland investment was unregulated and took the form of a 'land purchase contract', involving a company based in Cyprus (GAS Global Agricultural Services Ltd) which leased plots of agricultural land in Australia to investors. Crops were to be planted on the plots, and the objective was to provide an income to investors through the sale of those crops, and capital growth through the sale of the plot of land after eight years. The investor would receive 80% of the net revenue from the yield of the land for eight years. After this, the land could be sold.

Options hasn't provided a detailed account of the due diligence it carried out in relation to the GAS Verdant investment. But Options has said it completed appropriate due diligence on this investment by ensuring that GAS Verdant was suitable to be held in UK registered pension schemes. This involved a review of the investment information, company background checks and also an independent report from an external third-party compliance entity. The third-party compliance entity reviewed the investment in January 2010, and again in January 2012.

Options said that from its due diligence checks in relation to GAS Verdant, it was able to conclude this investment was suitable to be held within a SIPP.

In or around **September 2012,** Options invested £75,000 of the funds in Mr W's SIPP into GAS Verdant Australian farmland on his instructions.

What happened – Mr W's dealings with TPS Land, Douglas Baillie and Options

Mr W has told us that he only dealt with TPS Land over email. He's said that TPS Land advised him to transfer his existing pensions to an Options SIPP. He remembers TPS Land speaking about the *"potential returns"* but not *"the way my pension was invested or the level of risk the investments used"*. He recalls TPS Land telling him that he would be able to retire and access his pension at age 55.

Mr W's application was received by Options in January 2012 and his SIPP was established soon after. The application form, a version intended for clients establishing a SIPP without advice, was largely prepopulated, rather than handwritten. Mr W's personal details were included along with details of the three pensions he intended to transfer to the SIPP. The form set out that he intended to make an investment into Store First through his SIPP. It also confirmed that he was out of work at the time and his selected retirement age was 55.

The final page of the application form required the applicant to make a declaration, which included, amongst other statements, the following:

> *"I agree to indemnify* [Options] *against any claim in respect of any decision made by myself or my Financial Adviser/Investment Manager or any other professional adviser I choose to appoint from time to time.*
>
> *I understand that* [Options] *are not in anyway* [sic] *able to provide me with any advice.*
>
> *I confirm that I am establishing the* [Options] *Pension Scheme on an Execution only basis."*

Mr W's application also included his authority for Options to liaise directly with TPS Land with regard to his pension transfers.

In its welcome letter to Mr W, Options explained that because one of the pensions he wished to transfer included a defined benefit element, it was unable to proceed until he had sought regulated financial advice and provided it with copies of the advice and TVAS.

In February 2012, the proceeds from the transfers of two personal pensions held by Mr W – approximately £28,000 – were deposited into his SIPP.

In March 2012, Options received an *"Alternative Investment – Storefirst Member Declaration & Indemnity"* from Mr W, which said:

> *"I,* [Mr W] *being the member of the above Scheme instruct* [Options] *to Purchase a Leasehold Storage Unit(s) in the Storefirst investment through Harley-Scott Holdings Ltd for a consideration of £24,000 on my behalf for the above Scheme.*
>
> *I am fully aware that this investment is an Alternative Investment and as such is High Risk and / or Speculative.*
>
> *As the Member of the Pension Scheme, I confirm that neither I nor any person connected to me is receiving a monetary or other inducement for transacting this investment.*
>
> *I confirm that I have read and understand the documentation regarding this investment and have taken my own advice, including financial, investment and tax advice.*
>
> *I am fully aware that* [Options] *act on an Execution Only Basis and confirm that* [Options] *have provided* [no] *advice whatsoever in respect of this investment.*
>
> *I confirm that my business / occupation is <u>not</u> renting out storage units.*
>
> *Should any aspect of this investment be deemed by HMRC to provide Taxable Moveable Property and / or any tax charges be deemed by HMRC to apply in future these will be paid directly from the fund or by me as the member of the Scheme.*
>
> *I also understand and agree that, in the event of my demise, if* [Options] *is unable to sell the asset within HMRC timescales that it may be transferred to my beneficiaries through my estate and accordingly may be subject to any Inheritance Tax.*

I instruct [Options] *to appoint the following solicitor to act on behalf of the Scheme:*

[details of solicitor]

I confirm that I agree to [name of solicitor's] *fee of £400 + VAT for transacting this investment.*

I confirm I am fully aware that additional costs will be incurred in this transaction including, but not limited to:

£48 CHAPs Fee;
£8 Land Registry Search Fee;
Stamp Duty Land Tax – To be advised by Solicitor at completion;
Any other taxes – To be advised by Solicitor at completion;

I agree to [Options'] *Fee of £500 + VAT, amounting for transacting this investment.*

I agree that any and all fees and costs will be paid by my Scheme, or in the event of default, by me personally.

I agree to provide [Options] *with any further information and/or documentation they may require prior to completing the purchase of this investment*.

I indemnify [Options] *against any and all liability arising from this investment."*

I'll describe this form as a 'member declaration'.

Options then invested £24,000 of the funds in Mr W's SIPP into Store First storage units on or around 19 April 2012.

Around the start of August 2012, Douglas Baillie sent Options several documents so that it could process Mr W's transfer from an occupational scheme incorporating both defined benefit and defined contribution elements. These included Mr W's confirmation that he had received advice from Douglas Baillie and still wished to proceed with the transfer of his defined benefits, a letter confirming he had appointed Douglas Baillie as his *"agents and brokers"*, as well as a *"Financial Adviser Details"* section of an Options SIPP application form, which set out that Douglas Baillie's advice fee was £1,216 and was for *"ADVICE ON TRANSFER ONLY. NO ADVICE HAS BEEN GIVEN BY US ON INVESTMENT."* A TVAS was also enclosed together with a suitability report, which amongst other things, set out:

- Douglas Baillie's understanding that Mr W wished to transfer to an Options SIPP, as he wished to make investments *"that would not be available via a fully insured plan."* So, it hadn't considered alternative SIPP providers.

- Douglas Baillie had only been asked to provide *"advice on a transfer into SIPP"* and once the transfer was complete Mr W's SIPP would be *"orphaned"* as it didn't provide ongoing advice.

- The transfer value offered by the defined benefit section of Mr W's ceding scheme was approximately £71,000, and an annual investment return of 9% (10.2% including SIPP fees) would be required to provide a benefit equal to the guarantees it offered. It went on to say: *"This critical yield figure is higher than we would normally advise a client to transfer. Our advice is therefore not to transfer into this plan as the critical yield is now higher than advisable. If you elect to proceed with the transfer as requested, then I will have to treat this as an "insistent Client" basis"*.

- The six "*main advantages*" of transferring the defined benefit element, along with four disadvantages, followed by a section which began *"Why is this suitable?" The recommendations are suitable for you for the following reasons…"* Five reasons were then given.

- The additional risks applicable to defined benefit transfers, including losing any guarantees attached to the scheme.

- The transfer value offered by the defined contribution section of the scheme was around £6,000 and transferring this to a SIPP would result in increased charges. Again, a transfer of this element would be *"on an 'insistent client' basis."*

- The insistent client basis meant that Mr W had *"requested to transfer and* [Douglas Baillie] *cannot be responsible should the benefits provided from the alternative plan provide* [him] *or* [his] *spouse with a lower benefit in the future."*

- Douglas Baillie hadn't been asked to advise on the intended investments, and the business was being transacted on a *"limited advice basis"*.

- Douglas Baillie hadn't been provided with a *"financial planning profiler"* for Mr W so wasn't aware of his personal circumstances.

- The documents that needed to be completed, signed and returned in order to proceed.

In late August 2012, the proceeds from the transfer of the scheme incorporating defined benefit and defined contribution elements – approximately £78,000 – were deposited into Mr W's SIPP.

In September 2012, Options received an *"Alternative Investment – Gas-Verdant Australian Farmland Member Declaration & Indemnity"* from Mr W. This member declaration included similar points to the one pertaining to Store First. Mr W instructed Options to purchase 15 units of farmland for £75,000. The form described the investment as *"Alternative"* and *"High Risk and / or Speculative."* Mr W confirmed he hadn't received *"a monetary or other inducement for transacting this investment"*, his awareness that Options acted on an *"Execution Only Basis"* and hadn't provided advice, and that he had taken his own advice *"in respect of this investment."* He also indemnified Options *"against any and all liability arising from this investment."*

Options invested £75,000 of the funds in Mr W's SIPP into GAS Verdant Australian farmland in or around September 2012.

Mr W's complaint

In January 2018, Mr W complained to Options. He said:

- His SIPP was mis-sold and the advice he was given to transfer was incorrect.

- Options appointed Douglas Baillie to deal with the defined benefit transfer. He never met Douglas Baillie and everything was done by phone, post or email.

- Douglas Baillie's report said he was an insistent client. He should have been given time to consider all options before he was treated as an insistent client.

- Neither Options nor Douglas Baillie discussed his attitude to risk.

- He had never heard of the investments prior to dealing with TPS Land. So, how could he have insisted that these investments were used?

- He was told that he would be able to retire and access his pension at age 55. This wasn't possible due to the nature of the investments.

Mr W said that he'd lost defined benefits and a significant amount of money by transferring. He requested that Options rectify the situation by putting him back into the position he would have been in had he not transferred.

Mr W sent a similar complaint to Douglas Baillie the same day.

Options issued its response to Mr W's complaint in March 2018. It didn't uphold the complaint. In summary, it said:

- Douglas Baillie advised on Mr W's defined benefit transfer and held the appropriate regulatory permissions to do so. Mr W may be able to make a claim to the FSCS if he was unhappy with the advice, given this firm had entered liquidation.

- It provides execution-only (i.e. non-advised) SIPP administration services as explained in all the documentation provided to Mr W when he signed up to his SIPP.

- It isn't permitted to provide advice, or to comment on the suitability of a SIPP, the underlying investments or the introducer chosen by the member.

- Mr W signed documentation which made clear he was a direct client, hadn't received advice, his investment choices were his sole responsibility and suggested he seek regulated financial advice.

- Mr W engaged TPS Land and decided to transfer his pensions prior to Options' involvement.

- It explained the potential risks of the investments to Mr W and ensured they were suitable to be held in a SIPP.

- Options was unable to comment on any discussions between Mr W and TPS Land or Douglas Baillie as it wasn't party to these.

Unhappy with Options' response, Mr W referred his complaint to the Financial Ombudsman Service in August 2018.

Our Investigator's view

Mr W's complaint was allocated to one of our Investigators who asked him if he had made a claim to the FSCS about Douglas Baillie. Mr W confirmed that he hasn't made a claim to the FSCS in relation to Douglas Baillie.

The Investigator went on to consider Mr W's complaint and concluded that it should be upheld. In summary, the Investigator:

- Set out the considerations relevant to reaching their view on the merits of Mr W's complaint, including the FCA's Principles for Businesses, publications issued by the FCA (and its predecessor, the FSA), and relevant case law.

- Explained that Options wasn't responsible for advising Mr W on the suitability of the SIPP or the investments, nor was it permitted to do so. However, it had regulatory obligations to Mr W which included deciding whether to accept or reject particular referrals of business or investments.

- Acknowledged that Douglas Baillie was a regulated adviser but thought this didn't diminish Options' failings. They felt Options ought to have been alive to the risk of consumer detriment given customers advised by Douglas Baillie were all investing in high-risk and esoteric investments, with Douglas Baillie saying that it wasn't advising on these. They also noted that the lack of investment advice wasn't in line with the terms of business agreed between the two firms.

- Considered Options ought to have realised there was a high likelihood of unsuitability where a retail consumer such as Mr W was buying high-risk and esoteric investments like GAS Verdant without receiving individual advice about the investments.

- Thought it wasn't fair and reasonable for Options to ask Mr W to sign indemnities absolving it of its regulatory responsibilities when it ought to have known that accepting the investments could lead to consumer detriment.

- Concluded that Options ought to have declined Mr W's application. And that had it done so, he wouldn't have transferred to the Options SIPP or made the investments.

The Investigator set out how Options should put things right, by putting Mr W, as far as possible, into the position he would now be in had it not accepted his SIPP application. They also recommended Options pay Mr W £500 for the trouble and upset caused by its failings.

Options' response to the Investigator's view

Options didn't accept the Investigator's view. It made a number of points in response, including:

- The Ombudsman must take account of the legal and contractual context of the relationship between it and Mr W. Options acts on a strictly execution-only/non-advised basis and is member directed throughout.

- Options doesn't give advice and the Ombudsman shouldn't come to a finding that places a legal duty on it that doesn't exist.

- Only the SIPP guidance published prior to Options receiving Mr W's SIPP application form in January 2012, and his subsequent instructions to invest, was relevant. It wasn't fair or reasonable for the complaint to be considered in the context of guidance that was published after the events complained of.
- Options undertook due diligence on Douglas Baillie, finding that it was a regulated adviser holding the requisite permissions to advise on defined benefit transfers.
- It was at Options' request that Mr W sought advice on the transfer of his defined benefits. Any loss could have been avoided had Mr W heeded Douglas Baillie's advice and not transferred.
- Douglas Baillie warned Mr W about the risks of transferring his defined benefits. Notwithstanding this, he insisted that the transfer take place. So, even if Options had rejected his application, he would have proceeded to transfer and make the

investments elsewhere.

- The criticisms of its due diligence on the investments are unfounded – under the contract Options' obligations do not extend to assessing the underlying investments.

- The findings in respect of due diligence on the investments amount to imposing an obligation on Options to undertake a qualitative assessment of the investments (based on limited material), and then an obligation to pass on that assessment and those findings with what effectively amounts to a recommendation to Mr W (whether express or not) not to proceed. The Investigator's findings amount to a requirement for Options to have provided advice to Mr W.

- Options didn't cause Mr W's loss. On the material available, it's very likely he was extremely keen to proceed with the investments in order to release funds and would have found a way to invest even if Options hadn't been dealing with TPS Land or accepting his selected investments.

- Had Options rejected Mr W's application, it was likely he still would have proceeded to transfer his defined benefits given he didn't heed the recommendation of a regulated adviser and transferred on an insistent client basis. And once the transfer was complete, this was irreversible.

- Options was obliged to complete the transfer of Mr W's defined benefits once it received his transfer request.

- Mr W must at least bear a measure of responsibility for his own actions. It would be manifestly unfair and unreasonable to hold Options responsible for Mr W's loss in full, given he chose to invest in products that Options had told him were high risk.

- An oral hearing is necessary to determine how Mr W came to hear about the investments, his understanding of the investments and the parties' respective roles, and his motivation for the transactions.

The Investigator considered Options' response but wasn't persuaded to change their opinion. As no agreement was reached, the complaint was passed to me to decide.

My provisional decision

I recently issued a provisional decision on this complaint. I concluded that it should be upheld.

Both Mr W and his trustee in bankruptcy accepted my provisional findings.

Options responded challenging the amount of the distress and inconvenience award. It said the first enquiry Mr W made about accessing his pension benefits was in March 2024, and soon after this he took a pension commencement lump sum and income from his SIPP, so he hadn't been prevented from accessing his pension. It added that Mr W's financial circumstances were his responsibility, not Options, and it shouldn't be subject to an increased trouble and upset award because of this.

I asked Mr W why he didn't contact Options about accessing his pension until March 2024. He said he was told he would be able to access his pension when he reached 55 but when he called Options to do this, he was told his pension was valued at nil. He said he only called Options at the time so doesn't have an email record.

Mr W also responded to some of the questions in my provisional decision. He told me that he received an incentive payment of around £7,000 for transferring and his Options SIPP remains open.

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.

I note Options' comments but haven't been persuaded to depart from my provisional findings.

I find Mr W's statement about him contacting Options when he turned 55, and what it said when he did this, credible. The two investments making up the majority of his SIPP were illiquid and I'm aware from similar complaints that Options provided reduced valuations for these investments from around 2015. So, I don't think it's implausible that Options told Mr W he couldn't access his pension benefits.

To be clear, I'm not penalising Options for Mr W's financial circumstances. The £1,000 trouble and upset award reflects the heightened impact on him of Options' failings due to his individual circumstances, including not being able to access his pension when needed.

As I haven't been persuaded to depart from my provisional findings, I've repeated them below, with a few minor changes, to reflect my final decision.

First, I'll address Options' request for an oral hearing.

Options' request for an oral hearing

Options says an oral hearing is necessary to explore issues such as Mr W's understanding of the investment and the roles played by the parties, and his motivation for entering into the transactions.

The Financial Ombudsman Service provides a scheme under which certain disputes may be resolved quickly and with minimum formality (section 225 of FSMA). DISP 3.5.5 R provides:

> *"If the Ombudsman considers that the complaint can be fairly determined without convening a hearing, he will determine the complaint. If not, he will invite the parties to take part in a hearing. A hearing may be held by any means which the Ombudsman considers appropriate in the circumstances, including by telephone. No hearing will be held after the Ombudsman has determined the complaint."*

Given my statutory duty under FSMA to resolve complaints quickly and with minimum formality, I'm satisfied that it wouldn't normally be necessary for me to hold a hearing in most cases (see the Court of Appeal's decision in *R (Heather Moor & Edgecomb Ltd) v Financial Ombudsman Service* [2008] EWCA Civ 642).

The key question for me to consider when deciding whether a hearing should be held is whether or not *"the complaint can be fairly determined without convening a hearing"*.

We don't operate in the same way as the courts. Unlike a court, we have the power to carry out our own investigation. And the rules (DISP 3.5.8 R) mean I, as the Ombudsman determining this complaint, am able to decide the issues on which evidence is required and how that evidence should be presented. I'm not restricted to oral cross-examination to further explore or test points.

If I decide particular information is required to decide a complaint fairly, in most circumstances we're able to request this information from either party to the complaint, or even from a third party.

I've considered the submissions Options has made. However, I'm satisfied that I'm able to fairly determine this complaint without convening a hearing. In this case, I'm satisfied I have sufficient information to make a fair and reasonable decision. So, I don't consider a hearing is required. The key question is whether Options should have accepted Mr W's application at all. Mr W's understanding of matters is secondary to this.

In any event – and I make this point only for completeness – even if I were to invite the parties to participate in a hearing, that wouldn't be an opportunity for Options to cross-examine Mr W as a witness. Our hearings don't follow the same format as a court. We're inquisitorial in nature and not adversarial. And the purpose of any hearing would be solely for the Ombudsman to obtain further information from the parties that they require in order to fairly determine the complaint. The parties wouldn't usually be allowed direct questioning or cross-examination of another party to the complaint.

As I'm satisfied it's not necessary for me to hold an oral hearing, I shall now turn to my findings on the merits of this complaint.

Merits

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what's fair and reasonable, I'm 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'll start by setting out what I have identified as the 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 1.1.2 G). 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 2.1.1 R

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 this 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 my decision on this case.

I acknowledge that COBS 2.1.1 R (*"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 2.1.1 R, 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 paragraph 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 note that there are significant differences between the breaches of COBS 2.1.1 R alleged by Mr Adams and the issues in this complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1 R that happened *after* the contract was entered into. And he wasn't asked to consider the question of due diligence *before* Options SIPP agreed to accept the storage units investment into its SIPP.

In this complaint, amongst other things, I'm considering whether Options ought to have identified that the Store First and GAS Verdant investments involved a significant risk of consumer detriment and, if so, whether it ought to have declined to accept applications to invest in Store First and GAS Verdant *before* it received Mr W's application. And the same applied to Options deciding whether to accept introductions from TPS Land and Douglas Baillie.

The facts of Mr Adams' case and this case are also different. I make that point to highlight that there are factual differences between *Adams* and this case. And I need to construe the duties Options owed to Mr W under COBS 2.1.1 R in light of the specific facts of this case.

So, I've considered COBS 2.1.1 R – alongside the remainder of the relevant considerations, and within the factual context of this case, including Options' 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*. 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 Options was under any obligation to advise Mr W on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same as advising Mr W on the merits of the SIPP and/or the underlying investments.

Overall, I'm satisfied that COBS 2.1.1 R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of 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. And I've set out material parts of the publications here, although I've considered them in their entirety.

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."*

The later publications

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 aren't formal "guidance" (whereas the 2013 finalised guidance is). However, the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't 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's 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'm therefore satisfied it's appropriate to take them into account.

It's 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.

The introduction to 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's treating its customers fairly and producing 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.

Options has argued that many of the matters which the report invites firms to consider are directed at firms providing advisory services. But to be clear, I think the report is also directed at firms like Options acting purely as SIPP operators. The report says that *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses…"* And it's noted prior to the good practice examples quoted above that *"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 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's treating its customers fairly and producing 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 therefore remain satisfied it's appropriate to take them into account too.

Like the Ombudsman in the BBSAL case, I don't think the fact that some of the publications post-date the events that took place in relation to this complaint, means that the examples of good practice they provide weren't good practice at the time of the relevant events. Although the later publications were published after the events subject to this complaint, the Principles that underpin them existed throughout, as did the obligation to act in accordance with the Principles.

It's also clear from the text of the 2009 and 2012 thematic review reports (and *the "Dear CEO"* letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the 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's clear the standards themselves had not changed.

I note that HHJ Dight in the *Adams* case didn't consider the 2012 thematic review report, 2013 SIPP operator guidance, and 2014 *"Dear CEO"* letter to be of relevance to his consideration of Mr Adams' claim. But it doesn't follow that those publications are irrelevant to my consideration of what is fair and reasonable in the circumstances of this complaint. I'm 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 doesn't mean that, in considering what is fair and reasonable, I'll only consider Options' 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.

The 2013 alert

The regulator also issued an alert in January 2013 about advisers giving advice to consumers on SIPPs without consideration of the underlying investments. The alert *("Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP"*) set out that this type of restricted advice didn't meet regulatory requirements. It said:

> *"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes). Examples of the unregulated investments are diamonds, overseas property developments, store pods, forestry and film schemes, among other non-mainstream propositions.*
>
> *The cases we have seen tend to operate under a similar advice model. An introducer will pass customer details to an unregulated firm, which markets an unregulated investment (e.g. an overseas property development). When the customer expresses an interest in the unregulated investment, the customer is introduced to a regulated financial adviser to provide advice on a SIPP capable of holding the unregulated investment. The financial adviser does not give advice on the unregulated investment and says it is only providing advice on a SIPP capable of holding the unregulated investment…*
>
> *Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.*
>
> *The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes…"*

The alert came after the events in this complaint – but, again, it didn't set new standards. It highlighted that advisers using the restricted advice model discussed in the alert generally weren't meeting *existing* regulatory requirements and set out the regulator's concerns about industry practices at the time.

What did Options' obligations mean in practice?

To be clear, I don't say the Principles or the publications obliged Options to ensure the transactions were suitable for Mr W. It's accepted Options wasn't required to give advice to Mr W, and couldn't give advice. And I accept the publications don't 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. As Options has noted from the FCA's Enforcement Guide, publications of this type *"illustrate ways (but not the only ways) in which a person can comply with the relevant rules"*. And so, it's fair and reasonable for me to take them into account when deciding this complaint.

Options has argued that any publications or guidance that post-dated the events subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time. But that doesn't alter my view on what I consider to have been good industry practice at the time. That's because I find that the 2009 report together with the Principles provide a very clear indication of what Options could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting Mr W's application.

It's important to keep in mind that the judge in the High Court *Adams* judgment 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 to invest in Store First and GAS Verdant, Options 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 Options should have done to comply with its regulatory obligations and duties.

Taking account of the factual context of this case, it's my view that in order for Options to meet its regulatory obligations, (under the Principles and COBS 2.1.1 R), amongst other things, it should have undertaken sufficient due diligence on TPS Land and Douglas Baillie / the business TPS Land and Douglas Baillie were introducing and the Store First and GAS Verdant investments *before* deciding to accept Mr W's application and proceeding with his transfer and investment instructions.

Options has said in other similar cases that it's being held liable because it's the only regulated entity over which the Financial Ombudsman Service has jurisdiction. But ultimately, what I'll be looking at here is whether Options 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 this complaint is whether it was fair and reasonable for Options to have accepted his SIPP application and his investment instructions in the first place. So, I need to consider whether Options carried out appropriate due diligence checks on TPS Land, Douglas Baillie and the Store First and GAS Verdant investments, before deciding to accept Mr W's application and invest his pension monies in this way.

And the questions I need to consider include whether Options ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by TPS Land and/or Douglas Baillie and/or investing in Store First and/or GAS Verdant were being put at significant risk of detriment. And, if so, whether Options should therefore not have accepted Mr W's application for the Options SIPP and/or the investments.

The contract between Options and Mr W

Options has made submissions about its contracts with consumers like Mr W and I've carefully considered everything Options has said about this.

I acknowledge that Options says that, at the time of the transactions, there was nothing in the regulator's rules preventing SIPP providers accepting business from execution-only customers or high-risk business.

For clarity, my decision is made on the understanding that Options acted purely as a SIPP operator. I don't say Options should (or could) have given advice to Mr W or otherwise have ensured the suitability of the SIPP or the investments for him. I accept that Options made it clear to Mr W that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that forms, which it appears Mr W signed, confirmed, amongst other things, that losses arising as a result of Options acting on his instructions were his responsibility.

I've not overlooked or discounted the basis on which Options was appointed. And my decision on what's fair and reasonable in the circumstances of this case is made with all of this in mind. So, I've proceeded on the understanding that Options wasn't obliged – and wasn't able – to give advice to Mr W on the suitability of the SIPP or the investments.

Options' due diligence on TPS Land and its decision to accept Mr W's application from TPS Land

At the relevant time, the FSA list featured warnings ('alerts') about unauthorised individuals and businesses. If Options had acted in accordance with its regulatory obligations and good industry practice at the relevant time it ought to have undertaken sufficient enquiries on TPS Land to understand who its directors were, and checked the FSA's warning list as part of its due diligence on TPS Land. Had it carried out these checks before accepting business from TPS Land it would have discovered that TPS Land's director Terence Wright was on the FSA warning list.

It wouldn't be sufficient, in my view, to simply ask the introducer if the regulator had raised concerns about its business practices. Rather I think Options, acting fairly, with due regard to Mr W's interests, ought to have carried out its own check on Mr Wright. And that appears to have been Options' view too. Its comments suggest it understood it was good practice, consistent with its regulatory obligations, to make its own independent checks. So, it ought to have undertaken a check on Mr Wright before it began accepting introductions from TPS Land.

In the event, Options didn't check the FSA's list. It used the World Check service. And it didn't check Mr Wright until 15 May 2012.

I note that in submissions on similar complaints, Options has said that the FSA notice relating to Mr Wright wasn't entered onto World Check (the checking service it used) until 24 October 2011. And so, if it had run a check on Mr Wright at the outset, this wouldn't have revealed his entry on the FSA's warning list. Options also says that it was under no obligation to check the FSA's list itself.

TPS Land was an unregulated business, based in Spain, and was proposing to deal with the pensions of UK consumers. Options ought to have known the FSA kept a list of alerts, relating to unregulated businesses, which were often based overseas. As a SIPP operator considering accepting business from an unregulated overseas firm, it should have been mindful of the FSA's list of alerts, and in compliance with its regulatory obligations, checking the warnings posted on the FSA's website is something that Options should have done as a matter of course. I consider this amounts to good industry practice and, in my view, it would have been fair and reasonable, and in accordance with Options' regulatory obligations, for such a check to take place before it entered into a relationship with TPS Land.

Further, the obligation to undertake due diligence is an ongoing one. Information available about individuals and investments changes over time, so such checks should have been conducted on a regular basis.

So, if I accept that use of the World Check service to check Mr Wright at the outset wouldn't have revealed his entry on the list, this doesn't change my view. Options should have checked the FSA's list. The fact that Options chose to use a tool and the tool may have missed something doesn't mean it shouldn't be held responsible – for the reasons given, it should have checked the list itself. To my mind, the fact Options decided to delegate responsibility for undertaking the necessary checks to the World Check tool – when the relevant FSA warning wasn't entered onto that tool until some time after it appeared on the FSA list, meaning that even if Options had entered the right name (which it didn't), it wouldn't have picked up the warning in any event – is irrelevant to my finding that Options failed to undertake sufficient due diligence on TPS Land and missed that Mr Wright was subject to an FSA alert.

Had Options ascertained who the directors of TPS Land were at the outset of the relationship with TPS Land and checked the FSA's list then (or at least at the point it did become aware Mr Wright was a director of TPS Land), it would have discovered that Mr Wright was the subject of the FSA alert I've quoted above.

So, I find that if Options had acted in accordance with its regulatory obligations and good industry practice at the relevant time it ought to have undertaken sufficient enquiries on TPS Land to understand who its directors were, and checked the FSA's warning list as part of its due diligence on TPS Land. Had it carried out these checks before accepting business from TPS Land it would have discovered that TPS Land's director Terence Wright was on the FSA warning list.

Also, prior to Mr W's SIPP application, Options had been made aware that another firm which Mr Wright was also a director of, CL&P, had been offering incentive payments to invest with Store First. Such payments are against the rules covering pensions and can attract a substantial tax charge from HMRC. In the circumstances, I don't think it was fair and reasonable for Options to proceed without at least taking independent steps to check whether an incentive payment had been paid – it could, for example, have contacted Mr W to ask if he had been offered a cash incentive.

If Options had completed sufficient due diligence on TPS Land, what ought it reasonably to have concluded?

In a complaint with similar circumstances to Mr W's, Options previously said:

> *"...the FSA Notice, in the form in which it had been published in 2010 and which would have existed as at the inception of Options' relationship with TPS Land, stated only that Mr Wright was not regulated by the FSA and referred only to a business named Cash In Your Pension targeting UK investors. There was nothing in the FSA Notice which described any criminal or civil wrongdoing and there was no contradiction between the FSA Notice and any statement provided by Mr Wright that they were not subject to any FSA action or censure. Even if, therefore, Options' searches had revealed the FSA Notice there is no reason this should necessarily have led Options to conclude at the time that it should not accept introductions of customers from TPS Land."*

But I think Mr Wright's appearance on the FSA's list ought to have highlighted to Options that the regulator was concerned enough about Mr Wright's activities to warn consumers about him. And I think in the circumstances, it's fair and reasonable to conclude that the warning was aimed at protecting consumers from detriment in their dealings with him.

With this in mind, I think the warning should have acted as a significant reason for Options to be concerned about any business Mr Wright was involved in – not just Cash In Your Pension. The warning mentioned that Mr Wright was involved in the area of pensions – which is the same business area that TPS Land was active in. And the warning said that Mr Wright wasn't authorised and may be *"targeting UK customers"* in connection with investment business conducted through an unregulated company, Cash In Your Pension.

I also think the presence of Mr Wright on the list, after he had answered *"no"* to a question asking him if he was subject to any FSA action or censure when completing an Options introducer profile for CL&P, should immediately have raised a red flag to Options – it should have given rise to significant concern about Mr Wright's conduct and integrity.

A publication headed *"ALERT"* in bold is clearly not routine and unimportant. It's clear from the wording itself that the FSA was *warning* investors against dealing with unauthorised firms and specifically the named Mr Wright. He was involved in *"targeting"* (to use the FSA's phrase) UK based pension investors – which should have been of particular concern to a SIPP operator considering accepting business from him. The alert also provided links to:

- A list of unauthorised firms.
- A press release about unauthorised firms targeting UK investors.
- A document telling investors about the tactics adopted by unauthorised firms targeting UK investors.
- A document explaining share scams.

In my opinion, it's fair and reasonable to conclude that the warning was more than a mere statement of fact that an unauthorised firm couldn't carry out regulated activities. It was a clear warning – an *alert* – relating specifically to Mr Wright, providing links to guidance on consumer protection and warnings about scams.

So, in my opinion, TPS Land's director Terence Wright's presence on the FSA warning list should have led Options to conclude that it shouldn't do business with TPS Land. That is my view and I note it's a view which was held by Ms H when she gave evidence to the court during the *Adams* hearing. This was summarised at paragraph 60 of the High Court judgment as follows:

> *"It was also brought to my attention that from October 2010 the FCA had published warnings about dealing with another director, Mr Terence Wright, who was not authorised under FSMA to carry out regulated activity.* [Ms H] *accepted in cross-examination that no check was made to see whether his name appeared on a regulatory warning notice on the FCA's website until May 2012. The relationship between the defendant and CLP was severed on 25 May 2012. She accepted that had she been aware of such a warning in 2010 the defendant would not have dealt with CLP."*

So, Ms H told the court that had she been aware of the warning in 2010, Options wouldn't have dealt with CL&P, and it follows that it wouldn't have dealt with TPS Land either given Mr Wright was also the director of that firm. Such a conclusion was the proper one it ought to have reached bearing in mind Options' responsibilities under the Principles.

In addition, as I set out above, on the issue of cash incentives, I think Options should have taken steps to independently check the position, and it's fair and reasonable to conclude that prompt action would have inevitably led Options to discover that cash incentive payments were being widely offered at that time by firms Mr Wright was a director of. In the circumstances, it wouldn't be consistent with Options' regulatory obligations to deal with or accept any further business from TPS Land.

So, Options should have taken action on the issue of cash incentives – which would ultimately have led to it ending its relationship with TPS Land before it sent Mr W's money for investment in Store First in April 2012 and GAS Verdant in or around September 2012.

Taking all the above into consideration – individually and cumulatively – I think in the circumstances it's fair and reasonable for me to conclude that Options ought reasonably to have concluded, had it complied with its regulatory obligations which required it to conduct sufficient due diligence on TPS Land before accepting business from it, that it should *not* accept business from TPS Land. If Options had carried out proper introducer due diligence it ought to have concluded that it shouldn't accept business from TPS Land. I therefore conclude that it's fair and reasonable in the circumstances to say that Options shouldn't have accepted Mr W's application from TPS Land in January 2012.

Furthermore, had Options complied with its regulatory obligations – which required it to consider and act on information received about the conduct of TPS Land before continuing to accept business from it – it should, in any event, have concluded it shouldn't proceed with Mr W's application.

Options' due diligence on Douglas Baillie and its decision to proceed with Mr W's application with the involvement of Douglas Baillie

As I've said, I'm of the view that Options shouldn't have accepted Mr W's application from TPS Land at the outset, in January 2012. However, for completeness, I've also considered whether the later involvement of Douglas Baillie in Mr W's application lessened or negated the risk of consumer detriment which I consider Options ought to have identified as existing because of TPS Land's involvement.

Options had a duty to conduct due diligence and give thought to whether to accept business from The Pension Specialist as an appointed representative of Douglas Baillie.

In other complaints involving Douglas Baillie, Options has provided us with a printout from the FCA Register dated 28 December 2011 showing *"Basic details"* for *"The Pension Specialist LLP"*. This said its current status was *"Appointed Representative"* effective from 24 May 2011. This printout also showed a list of four individuals involved with *"The Pension Specialist LLP"*. Options hasn't provided any evidence of the FCA Register searches it completed in 2011/12 in relation to Douglas Baillie or what permissions Douglas Baillie held.

Options also provided this service with a copy of the introducer profile and introducer agreement between Options and *"The Pension Specialist LLP"* as an appointed representative of Douglas Baillie, signed in October 2011.

Amongst other things, the introducer agreement said The Pension Specialist was responsible for the following:

- Under the *"Providing Advice"* section:
    - *"To evaluate your client's financial circumstances and based on this assess their suitability for what, if any, of the* [Options] *Pension range is appropriate;"*

- *"Where a transfer is recommended, all options considered and the advice provided to the client in line with regulatory requirements;"*

- Under the *"Scheme Investments"* section:

  - *"Where your client seeks advice, to provide fully documented advice to your client on the suitability of the Scheme investments, taking account of their financial objectives and attitude to investment risk;"*

  - *"To ensure you have the correct FSA authorisation to provide the investment advice;"*

Options has also provided evidence of some of the discussions it had with The Pension Specialist, as an appointed representative of Douglas Baillie, about the client process and the business it was referring.

From the information that Options has provided about its relationship with The Pension Specialist, I'm satisfied Options did take *some* steps towards meeting its regulatory obligations and good industry practice. However, I don't think the steps we've seen evidence of went far enough or were sufficient to meet Options' regulatory obligations and standards of good industry practice.

I think Options was aware of, or should have identified potential risks of, consumer detriment associated with business introduced by Douglas Baillie, including the following, before it accepted the transfer of Mr W's scheme incorporating defined benefit and defined contribution elements in August 2012:

- The SIPP business Douglas Baillie was involved in had anomalous features – it appears to have been high-risk business, including many defined benefit transfers where monies were ending up invested in unregulated and esoteric investments post-transfer.

- Neither Douglas Baillie nor any other regulated party was offering the consumers involved full regulated advice (that is advice on the transfer or switch to the SIPP, the establishment of the SIPP *and* the intended investment/s). Instead, advice was being restricted and advice wasn't being offered on the suitability of the intended investment/s.

- The risk of an unregulated business being involved in the transfer and investment process.

I've set out below some more detail on anomalous features of the business Douglas Baillie was introducing to Options, and on potential risks of consumer detriment that I think Options either knew about, or ought to have known about, *before* it accepted Mr W's SIPP application. These points overlap, to a degree, and should have been considered by Options cumulatively.

The type of investments involved

Options has told us that Douglas Baillie introduced 59 clients to Options. And that the majority of clients introduced by Douglas Baillie invested in either Store First and/or GAS Verdant.

Given this, and based on the evidence I've seen to date, I think it's more likely than not that either all, or the vast majority of, clients introduced to Options by Douglas Baillie ended up with SIPP monies invested in higher-risk non-standard assets.

I think it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of investors. And I think Options either was aware, or ought reasonably to have been aware, that the type of business Douglas Baillie was introducing was high risk and therefore carried a potential risk of consumer detriment.

Options may argue it didn't know what Mr W and other Douglas Baillie clients were investing in at the time it accepted their applications. But the application submitted via TPS Land in January 2012 made clear that Mr W was intending to invest in Store First, even if at that stage it wasn't apparent he'd also invest some of his funds in GAS Verdant.

I acknowledge that the 2009 thematic review report made clear that firms acting purely as SIPP operators aren't responsible for the SIPP advice given by third parties such as IFAs. But it also made 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."*

And the 2009 report went on to give the following as examples of measures that SIPP operators could consider, taken from examples of good practice the regulator had observed and suggestions it had made to firms:

> *"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."*

So, even if both the investments Mr W's monies were intended for weren't recorded on the application form, Options knew or should have known the investments that were typically being made by clients where TPS Land and/or Douglas Baillie were involved in the application process.

Volume and nature of business introduced

As I say, an example of good practice identified in the 2009 report was:

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

Options has told us that Douglas Baillie made its first introduction to Options on 12 December 2011 and the last on 4 October 2012. That Douglas Baillie introduced a total of 59 clients to Options, and the number of those that were introduced before one particular client. That Options recorded all commission paid to Douglas Baillie, and that commission was based on the transfer value with the average commission being 2.11%. And that the majority of clients introduced by Douglas Baillie invested in either Store First and/or GAS Verdant, with the remainder invested in Central and South American forestry investments. Based on this, I'm satisfied Options had access to information about the number and type of introductions that Douglas Baillie made.

I'm also satisfied Options was aware that Douglas Baillie was only advising on the transfer, and not the investments. I say this because on 16 March 2012, Ms H at Options emailed Douglas Baillie to detail that her understanding of the agreed process included that The Pension Specialist would only advise on the transfer (I've reproduced the relevant parts of this email above).

Further, the suitability report that Douglas Baillie prepared in relation to Mr W, and which was sent to Options in August 2012, made it clear Douglas Baillie was only advising on the transfer, and not the investments. The suitability report said *"we have not been asked to advise you on the investment of the funds held within your SIPP, we will simply arrange for the funds to be transferred* [to the SIPP].*"* And the *"Financial Adviser Details"* section of the application form which Douglas Baillie sent to Options clearly stated *"ADVICE ON TRANSFER ONLY. NO ADVICE HAS BEEN GIVEN BY US ON INVESTMENT."*

So, the documents sent to Options by Douglas Baillie in relation to Mr W made clear that advice had only been given in relation to the transfer and not in relation to any intended investments. And I've seen that this was also the case in other complaints about Options brought to this service featuring Douglas Baillie as the advising introducer.

Based on all this, I think Options was on notice, from very early on in its relationship with Douglas Baillie, that it wasn't giving consumers *any* advice on Store First, GAS Verdant and other higher-risk non-standard asset investments.

Options has said that Douglas Baillie was an FCA regulated business and, at the time it became involved with Mr W's SIPP, Options wasn't aware of any reason it shouldn't accept introductions from Douglas Baillie. But I think that from very early on Options was aware, or ought to have been aware, that The Pension Specialist (an appointed representative of Douglas Baillie) wasn't a firm that was doing things in a conventional way.

It's unusual for regulated advice firms to be involved in transactions involving pension transfers to invest in high-risk esoteric investments, such as Store First and GAS Verdant, where no advice is being given by that firm on the esoteric investments. That's because the risks involved in such investments are unlikely to be fully understood by most people, without obtaining regulated advice. I think it's fair to say that most advice firms decline to be involved in such transactions.

I think this ought to have been a red flag for Options in its dealings with Douglas Baillie. And I think Options ought to have recognised there was a risk that Douglas Baillie might be *choosing* to introduce consumers without them having been offered regulated advice by Douglas Baillie on the unregulated investments that their transfers to Options were intended for. I think Options ought to have viewed this as a serious cause for concern – this was a clear and obvious potential risk of consumer detriment.

And I think this concern ought to have been even greater in a case like Mr W's where defined benefits were involved. At the relevant date COBS 19.1.6 G stated:

> *"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interests."*

While I acknowledge this aims to define the expectation of a regulated financial adviser when determining the suitability of a pension transfer, it emphasises the regulator's concern about the potential detriment such a transaction could expose a consumer to. Given the nature of its business and regulatory status, I'd expect Options to have been familiar with the guidance contained in COBS – even if it didn't apply directly to it. This was a further clear and obvious potential risk of consumer detriment.

Further, the suitability report Douglas Baillie prepared for Mr W made clear it hadn't been provided with a *"financial planning profiler"* for Mr W, so it didn't know his personal circumstances. This, I think, is something Options ought to have been concerned by, not least because the terms of business between Douglas Baillie and Options expected The Pension Specialist to *"evaluate* [the] *client's financial circumstances"* as part of the advice process. I think the suitability report, a copy of which Options received alongside other documents necessary for the transfer to proceed, made it clear this hadn't happened in Mr W's case.

Finally, I think Options ought to have been concerned that so many of Douglas Baillie's clients were proceeding on an apparently 'insistent' client basis, including Mr W. I think there was reason for Options to be concerned that the suitability report prepared by Douglas Baillie had been presented by Douglas Baillie and/or TPS Land as a formality or a 'paper exercise' in the process, with the 'insistent client' wording downplayed so that clients given that moniker remained persuaded that the recommendation overall was to transfer out of their existing scheme.

The suitability reports I've seen, which are substantially similar in content, all suggested the client had *already* indicated a wish to proceed and included instructions on how to proceed with the application to Options and the transfer out. They read as though Douglas Baillie was working on the premise that its advice was going to be disregarded. Indeed, I note there is evidence that Douglas Baillie was keen for these applications from 'insistent' clients to go ahead – when in September 2012 Ms H told Douglas Baillie *"given the heightened risk with Final Salary Occupational transfers and the volume that seem to be coming through we are not prepared to take them on when the advice is not to do it"*, Douglas Baillie's response was to convince Ms H to make some concessions.

Alongside the volume of such applicants, I think Options ought to have identified that the tone of these 'suitability reports' was inconsistent, and it ought to have been alive to the possibility that the 'insistent client' wording had been included, not because Mr W, a retail client, was genuinely insistent, but in an attempt by Douglas Baillie to limit its responsibility. Options ought to have questioned whether Douglas Baillie was putting its own interests ahead of those of its client.

The involvement of an unregulated business

TPS Land was an introducer of business to Options, and Options has made submissions to us in relation to the checks it made on World Check and the FSA notice regarding Mr Wright. Because there is clear evidence that Options' relationship with Mr W began in January 2012 following an introduction from TPS Land, I've considered the submissions Options has made about the due diligence it carried out on TPS Land before accepting introductions from it above.

But turning back to whether Options ought to have proceeded with the transfer in August 2012, I think the involvement of TPS Land, an unregulated business, in the background, remained something which ought to have caused Options to act differently.

As I've mentioned above, from very early on its dealings with Douglas Baillie, I think Options was on notice that Douglas Baillie hadn't given consumers any advice on the intended investments. And having seen many other complaints against Options where Douglas Baillie was the introducing adviser, I think it's more likely than not that most, if not all, Douglas Baillie-introduced Options consumers were doing the same thing. By which I mean that the documentation (i.e. application forms and suitability reports) recorded that advice had been given by Douglas Baillie on the transfer but not on the investments, that pension monies were then being transferred into newly established Options SIPPs for those consumers, and subsequently, the consumers SIPP monies were being invested in Store First, GAS Verdant and other high-risk non-standard investments.

To be clear, I don't think it's credible that most, or all, of these Douglas Baillie-introduced consumers were *independently* determining to invest their pension monies in Store First, GAS Verdant and other high-risk non-standard investments without any input from a third party. Given what Options ought reasonably to have identified about the business it was receiving from Douglas Baillie had it undertaken adequate due diligence, I think this should have been a significant cause for concern for Options and caused it to consider the business it was receiving from Douglas Baillie very carefully.

I think that Options ought to have been alive to the risk that an unregulated third party might have been involved in promoting the investments to investors, like Mr W, and that consumers weren't receiving any regulated advice from Douglas Baillie on the investments.

I acknowledge that Options has said there was nothing in the DISP rules preventing SIPP providers from accepting business from unregulated introducers. But by 25 May 2012, *before* the transfer of Mr W's scheme incorporating defined benefit and defined contribution elements, Options had itself chosen to terminate the introducer agreement it had with another firm which Mr Wright was a director of, CL&P, over the concerns Options had about how CL&P operated. Yet two months later, CL&P was in direct contact with Options regarding Douglas Baillie-introduced clients – CL&P emailed Options directly on 25 July 2012 to say that The Pension Specialist (as an appointed representative of Douglas Baillie) was preparing a TVAS for a client and to ask Options to send the client's discharge papers to The Pension Specialist. The same day, a Pensions Administrator at Options replied to CL&P to confirm Options had done this.

As I've said, Options was obliged to conduct its business with due skill, care and diligence, and to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. And I'm mindful that the regulator's 2009 report said that *"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."* Given all this, I think Options should have been aware and concerned that CL&P was still actively involved in the transfer for a client that Douglas Baillie had introduced to Options, after Options itself had decided its concerns about how CL&P operated were too great for Options to continue accepting introductions from CL&P. This ought to have raised alarms about TPS Land as well, given Mr Wright was a director of both firms.

And Options ought to have been concerned that TPS Land, or another unregulated introducer, had promoted the Store First investment, and possibly also the GAS Verdant investment, to Mr W, or even advised him on the investments. I note that Mr W confirmed on both the member declarations that he had taken his own advice including *"investment and tax advice"* and advice *"in respect of this investment"*. Given Douglas Baillie weren't advising on the investments, this suggests the involvement of a party other than Douglas Baillie.

Taking all the above into consideration – individually and cumulatively – I think in the circumstances it's fair and reasonable for me to conclude that Options failed to conduct sufficient due diligence on Douglas Baillie before accepting business from it. And, in light of the Principles and FSA/FCA regulatory publications I have quoted above, this means Options didn't comply with its regulatory obligations or with good industry practice at the relevant time.

What fair and reasonable steps should Options have taken, in the circumstances?

Options could simply have concluded that given the potential risks of consumer detriment – which I think were clear and obvious at the time – it shouldn't accept business from Douglas Baillie. That would have been a fair and reasonable step to take, in the circumstances. Alternatively, Options could have taken fair and reasonable steps to address the potential risks of consumer detriment.

Requesting information directly from Douglas Baillie

Given the significant potential risk of consumer detriment I think that, as part of its due diligence on Douglas Baillie, Options ought to have found out more about how Douglas Baillie was operating and *before* it proceeded with the August 2012 transfer. Mindful of the type of introductions I think it was receiving from Douglas Baillie, and that the clients introduced weren't receiving regulated advice on the intended investments, I think it's fair and reasonable to expect Options, in line with its regulatory obligations, to have made some very specific enquiries and obtained information about Douglas Baillie's business model.

As set out above, the 2009 report explained that the regulator would expect SIPP operators to have procedures and controls, and for management information to be gathered and analysed, so as to enable the identification of, amongst other things, *"consumer detriment such as unsuitable SIPPs."* Further, that this could then be addressed in an appropriate way *"…for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification."*

The October 2013 finalised SIPP operator guidance gave an example of good practice as:

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

I think that Options, *before* Douglas Baillie became the *"agents and brokers"* of Mr W's SIPP in August 2012, should have checked with Douglas Baillie about: how it came into contact with potential clients, what agreements it had in place with its clients, whether all of the clients it was introducing were being offered full advice, what its arrangements with any unregulated businesses were, how and why retail clients were interested in making higher-risk non-standard investments, whether it was aware of any other party providing information to clients, how it was able to meet with or speak with all its clients, and what material was being provided to clients by it.

I think obtaining this *type* of information from Douglas Baillie was a fair and reasonable step for Options to take, in the circumstances, to meet its regulatory obligations and good industry practice.

And, on balance, I think it's more likely than not that if Options *had* checked with Douglas Baillie and asked the *type* of questions I've mentioned above, that Douglas Baillie would have provided the information sought.

I say this because Douglas Baillie's email to Options on 18 May 2012 shows that Douglas Baillie and Options had some discussion in relation to firms Options had refused business from, and Douglas Baillie was willing to discuss that further – Douglas Baillie said "[The Pension Specialist's director] *mentioned that there were a couple of accounts that you have refused business from, as I tend to be closer to the accounts, can you confirm who* *they are please. This way, I can ensure that* [The Pension Specialist's office] *are aware of any blacklisted firms and that we can avoid them as well."*

But based on the evidence provided to this service, it wasn't until almost a year after an introducer profile and an introducer agreement between Options and Douglas Baillie was signed that Options asked Douglas Baillie about how it came into contact with potential clients. On 4 September 2012, Options emailed Douglas Baillie to say *"…it would be helpful for me to understand where you are currently getting the introductions from for the transfer work can you please provide me a list of introducers that you are currently doing transfer advice for to assist me to consider further."*

Then on 6 October 2012, some months after Options had accepted Mr W's SIPP application, Options emailed Douglas Baillie to say, *"…we need to know on the form who the introducer of the business is to you, I advised you that we had de-listed CLP and would not deal with them but we have some information from a member of your team who said in passing to a member of my team when we were asking about the investments they wanted to transact, that they would check with CLP. If you are sending us business that has been introduced by CLP please stop, we do not want to be associated with them as an introducing firm of business to us as we as I* [sic] *have said to you before that they offer incentives to the client for transacting the transfer and I understood that you too had concerns, is there any reason why you are still transacting business with them."*

So, Options, *before* it accepted Douglas Baillie as Mr W's *"agents and brokers"* in August 2012, should have decided not to accept business from Douglas Baillie, given that Options had decided not to accept new business from CL&P, which Mr Wright was a director of in addition to TPS Land.

Making independent checks

I think, in light of what I've said above, it would also have been fair and reasonable for Options, in order to meet its regulatory obligations and good industry practice, to have taken independent steps to enhance its understanding of the introductions it was receiving from Douglas Baillie. For example, it could have asked for copies of correspondence relating to the transfer advice.

The 2009 thematic review report said:

> *"…we would expect* (SIPP operators) *to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way,* ***for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification****."* [my emphasis]

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

I accept Options couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view, such steps included addressing a potential risk of consumer detriment by speaking to applicants, as this could have provided Options with further insight into Douglas Baillie's business model. This would have been a fair and reasonable step to take in reaction to the clear and obvious risks of consumer detriment I've mentioned.

On balance, I think if Options had contacted Mr W to ‘confirm the position’, either in January 2012 when his application was initially introduced by TPS Land or in August 2012 when Douglas Baillie became his *“agents and brokers”*, Mr W would have told Options that it was TPS Land that had introduced him to the transfer idea, the intended investments and Douglas Baillie. I think it’s likely Options would also have become aware he *“did not know the way* [his] *pension was invested or the level of risk”* (I’ll say more about what I think about Mr W’s understanding of the risks below).

And as I’ve said, by the time Douglas Baillie became *“agents and brokers”* for Mr W’s SIPP, Options had already terminated its introducer agreement with CL&P, which Mr Wright was also a director of, because of concerns around how that firm operated. So, if Options had asked Mr W why he was interested in transferring out of the scheme incorporating defined benefit and defined contribution elements and investing in GAS Verdant, I think it would have become aware, if it wasn’t already, of the extent of TPS Land’s involvement and should have declined to proceed.

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

If Options had undertaken these steps, I think it ought to have identified, amongst others, the following risks before it proceeded with Mr W’s further instructions:

- Douglas Baillie was having business referred to it by introducers, like TPS Land, and it was then introducing business to Options.
- Douglas Baillie wasn’t offering the consumers it was introducing to Options (like Mr W) advice on the suitability of the high-risk, non-standard and unregulated investments that their Options SIPPs were being (or, in this case, had recently been) established in order to effect.
- A third party might have ‘sold’ consumers the idea of transferring pension monies to invest in Store First, Gas Verdant and other high-risk, non-standard and unregulated investments, before the involvement of any regulated parties.
- The anomalous features I’ve mentioned above carried a significant risk of consumer detriment.

Each of these in isolation is significant, but cumulatively I think they demonstrate that there *was* a significant risk of consumer detriment associated with the business Options received from Douglas Baillie. I think that Options ought to have had real concerns that Douglas Baillie wasn’t acting in customers’ best interests and wasn’t meeting its regulatory obligations.

Options didn’t act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr W fairly by proceeding with his instructions once Douglas Baillie became involved in August 2012. But in any event, as I’ve set out above, I don’t think Options should ever have accepted Mr W’s application when it was initially introduced by TPS Land in January 2012.

To my mind, Options didn’t meet its regulatory obligations or good industry practice at the relevant time and allowed Mr W to be put at significant risk of detriment as a result. Options should have concluded, and *before* it proceeded with Mr W’s business, that it shouldn’t accept introductions from TPS Land or Douglas Baillie. I therefore conclude that it’s fair and reasonable in the circumstances to say that Options shouldn’t have accepted Mr W’s business from Douglas Baillie at all.

And, to be clear, even if I thought Options had undertaken adequate due diligence on Store First and GAS Verdant, and had acted appropriately in permitting these investments into its SIPPs (which, as I'll explain below, I don't), I'd still consider it fair and reasonable to uphold Mr W's complaint on the basis of what I've already set out above – first, that Options shouldn't have initially accepted Mr W's introduction from TPS Land or proceeded with it (and, for the avoidance of doubt), I consider that my findings about that initial acceptance would be sufficient on their own to uphold Mr W's complaint), and secondly, that Options missed a further opportunity to avoid consumer detriment when it accepted Douglas Baillie as *"agents and brokers"* for Mr W's SIPP and proceeded with the further transfer and investment.

But for completeness, I've gone on to consider the due diligence that Options carried out on the Store First and GAS Verdant investments.

Options due diligence on the Store First investment

I'm satisfied that, to meet its regulatory obligations when conducting its business, Options was required to consider whether to accept or reject a particular investment, with the Principles in mind.

I think that it's fair and reasonable to expect Options to have looked carefully at the Store First investment *before* permitting it into its SIPPs. To be clear, for Options to accept the Store First investment without carrying out a level of due diligence that was consistent with its regulatory obligations, while asking its customer to accept warnings absolving it of the consequences, wouldn't in my view be fair and reasonable or sufficient. And if Options didn't look at the investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure or might be fraudulent, it wouldn't in my view be fair or reasonable to say Options had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

The actions Options took in considering whether to permit the Store First investment into its SIPPs are set out in detail in the background section above, so I won't repeat them here.

In respect of the searches, these were carried out on the promoter of Store First, Harley Scott Holdings Ltd, not Store First itself – perhaps because at that point Store First was just being established. The result of the searches reported that Harley Scott Holdings Ltd had a website address *"dylanharvey.com"*, and had changed its name three times having previously been called Dylan Harvey Group Ltd, Dylan Harvey Ltd and Grangemate Ltd. The report also said County Court Judgments ('CCJs') were recorded against the business and that auditors had made adverse comments in the previous three reporting years.

It's not clear what consideration Options gave to this report, after it obtained it. But, in my view, it would have been fair and reasonable for it to have conducted some further basic searches, given there were factors in the report which ought to have been of concern – namely the adverse comments for the previous three years, the CCJs, and the fact the business had recently changed its name.

Had such further basic searches been completed I think it likely they would have revealed that, at the time, Dylan Harvey Ltd and one of its directors, Mr S, were the subject of national press reports, an online petition and proposed legal action, as a result of a failed property investment. It was reported that hundreds of investors had invested in a scheme to develop flats, but the flats hadn't been built and the investors had been unable to recover their money. Those investors were behind the online petitions and proposed legal action.

Options says it obtained copies of Store First's marketing material. It has provided us with copies of this. I accept that potentially this was good practice. In order to correctly understand the nature of the investment, I think it's fair and reasonable to say Options should have reviewed how Store First was marketed to investors – particularly as it was proceeding on the basis that these investments were being made by consumers without regulated advice being provided on the investments. Clearly, Options thought it was important to look at this material at the time too.

Consistent with its regulatory obligations, Options should not only have obtained the material but should also have given careful consideration to it. The marketing material obtained by Options at the relevant time included the following prominent statements:

> *"You will receive guaranteed returns from a 6 year lease already in place upon completion, making this a high yielding, hassle-free investment which has been specifically designed to meet the needs of todays* [sic] *astute investor."*
>
> *"You will receive a 6 year lease in place upon completion. The lease produces an excellent return of 8% (guaranteed for the first 2 years) rising to over 12% in years 5 and 6. The lease contains upward-only rental reviews and break clauses for both parties every two years."*
>
> *"Guaranteed exit route option."*

It then goes on to set out in a table the returns payable in years 1&2, 3&4 and 5&6 at 8%, 10% and 12% respectively. In the question-and-answer section the following is included:

> *"What rental income can I expect?*
>
> *Storepod rental starts at £17 per Sq/Ft per annum. The 6 year tenancy/lease in place on your Storepod has fixed upwards only rental reviews and break clauses (for both parties) every 2 years. This produces an 8% yield on your investment within the first two years, this then is predicted to rise to over 10% return in years 3&4 and then surpass 12% return in years 5&6.*
>
> *Can I easily re-sell my Storepod?*
>
> *Yes. You can re-sell your Storepod at any time and selling your Storepod couldn't be simpler. Store First Ltd can market your Storepod upon your request. We believe that because Storepods are so competitively priced when new, they will make a very attractive sale proposition in the future. We also expect that many tenants will wish to purchase the Storepod they are using. For example, other self storage PLCs usually achieve rent of between £20.00 - £25.00 per square foot. Our Storepods are costed at a rent of only £17.00 per square foot; once higher rents are achieved the capital value of the Storepod will increase.*
>
> *Guaranteed exit route?*
>
> *In year 5, investors have the option to enter the guaranteed buy-back scheme. In this scheme, Store First Management Ltd will guarantee to buy the Storepod back off the investor for the original price paid within the next 5 years. This is a unique offer in the market place and we are happy to be able to offer this exit route to our investors. Most investors are driven to keep the property investment they have purchased and carry on receiving the rental yield produced for years to come, this means only a very limited number of Storepods per centre will ever come onto the resale market, this creates a high sale value and demand for the future".*

The material says the *"figures shown are for illustration purposes".* But it doesn't contain any type of risk warning, or illustrations of any other returns. No explanation of the guarantees was offered, or the basis of the projected returns – other than Store First's own confidence in its business model and the self-storage marketplace.

I note Options considered a report by Enhance Support Solutions. In my view this was of limited value. It was brief and based only on some of the material Options had regard to i.e. the marketing material and lease documents. As a result, I think Options should have found it difficult to reconcile the view reached by Enhance Support Solutions with the information available to Options. The report said:

> *"The following parties are involved in this investment: Seller of the sub-lease: Store First Limited UK Promoter: Harley Scott Holdings Limited No adverse history has been found affecting these parties. A CCJ was issued against the promoter of the scheme however we understand this arose from a disputed invoice which is in the course of being settled. This is* [sic] *any event does not directly impact on the investment".*

This conclusion is inconsistent with the result of Options' own company searches, which reported the adverse comments for the previous three years, the CCJs, and that the business had recently changed its name. The report also makes no comment on the obvious issues with the marketing material. So, I don't think Options should have taken any comfort from the Enhance Support Solution report or attached any significant weight to it.

If Options had completed sufficient due diligence on Store First, what ought it reasonably to have concluded?

The failure of the previous scheme which Dylan Harley/Harley Scott Holdings had been involved in may have been entirely down to market forces. But I think the fact that the company which had approached Options about Store First – and on which Options had conducted searches – had recently been involved in a property investment scheme which had failed, had recently changed its name, and had been subject to a number of adverse comments in succession, following audit, ought to have given Options significant cause for concern. Particularly when it considered the marketing material for Store First.

In my view, there were a number of things about the marketing material which ought to have given Options significant cause for concern and led it to have drawn similar conclusions to those later drawn by SSA UK (on the basis of a report by Deloitte LLP) and the Insolvency Service. Namely, that there was a significant risk that potential investors were being misled.

I think, as it had regard to this material, Options could not overlook the fact that Store First appeared to be presenting the investment as one that was assured to provide high and rising returns, was underwritten by guarantees, and offered a high level of liquidity together with a strong prospect of a capital return – despite the fact that there was no investor protection associated with the investment and that, in Options' own words, there was no apparent established market for the investment and it was potentially illiquid.

Store First had no proven track record for investors and so Options couldn't be certain that the investment operated as claimed. Options should also have been concerned about a guarantee offered by a new business with no track record (and promoted by a business with a questionable one).

I think, in light of this, Options should have been concerned that consumers may have been misled or didn't properly understand the investment they intended to make. Consumers could easily have been given the impression, from the marketing material, that they were assured of high returns with little or no risk and would easily be able to sell their investment when they wished to. Such an impression was clearly misleading.

From the evidence I've seen, I think the information Store First was publishing *before* Mr W's Options monies were invested with it, including marketing material available through its website, gave rise to a significant risk that potential investors were being misled by Store First. And I think Options ought to have identified this *before* permitting the Store First investment into its SIPPs. This is a clear point of concern, which I think Options ought reasonably to have identified *before* it accepted Mr W's application to invest in Store First.

In my opinion, the issues I've identified above should have, when considered objectively, put Options on notice from the beginning that there was a significant risk of consumer detriment. And, without more evidence to ensure the investment was an appropriate one to permit within its SIPPs, I'm satisfied that Options shouldn't have accepted the Store First investment.

Had Options done what it ought to have done, and drawn reasonable conclusions from what it knew or ought to have known, I think that it ought to have concluded there was a significant risk of consumer detriment if it accepted the Store First investment into its SIPPs, and that the Store First investment wasn't acceptable for its SIPPs.

Therefore, based on the available evidence, I don't think Options undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the Store First investment *before* it accepted that investment into its SIPPs. I don't think Options met its regulatory obligations and, in accepting Mr W's instruction to invest in Store First, allowed his funds to be put at significant risk.

To be clear, I don't say Options should have identified all the issues the SSA UK press release set out or should have foreseen the issues which later came to light with Store First. I only say that, based on the information available to Options at the relevant time, it should have drawn a similar overall conclusion – that there was a significant risk that potential investors were being misled. I'm satisfied, on a fair and reasonable basis, that a significant risk of consumer detriment ought to have been apparent from the information available to Options at the time. And I do think that appropriate checks would have revealed issues which were, in and of themselves, sufficient basis for Options to have declined to accept the Store First investment in its SIPPs *before* Mr W invested in it. And it's the failure of Options' due diligence that's resulted in Mr W being treated unfairly and unreasonably.

There's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. I accept Options wasn't expected to, nor was it able to, give advice to Mr W on the suitability of the SIPP and/or Store First investment for him personally. To be clear, I'm not making a finding that Options should have assessed the suitability of the Store First investment for Mr W. I accept Options had no obligation to give advice to Mr W, or to ensure otherwise the suitability of an investment for him.

And I'm also not saying that Options shouldn't have allowed the Store First investment into its SIPPs because it was high risk. My finding isn't that Options should have concluded that Mr W wasn't a candidate for high-risk investments or that an investment in Store First was unsuitable for him. Instead, it's my fair and reasonable opinion that there were things Options knew or ought to have known about the Store First investment and how it was being marketed which ought to have led Options to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that Options failed to act with due skill, to organise and control its affairs responsibly, and to treat Mr W fairly by accepting the Store First investment into his SIPP.

Acting fairly and reasonably to investors (including Mr W), Options should have concluded that it wouldn't permit the Store First investment to be held in its SIPPs *at all*. And I'm satisfied that it's more likely than not that Mr W's pension monies were only transferred to Options so as to enable the Store First investment. So, I think it's likely that if Options hadn't permitted the Store First investment to be held in its SIPPs at all, Mr W's pension monies wouldn't have been transferred to Options. And further, that Mr W wouldn't then have suffered the losses he's suffered as a result of transferring to Options and investing in Store First.

Options due diligence on the GAS Verdant investment

As I've said, I'm satisfied that, to meet its regulatory obligations when conducting its business, Options was required to consider whether to accept or reject a particular investment, with the Principles in mind.

Options has previously said that this service has concluded it shouldn't have allowed the GAS Verdant investment, simply because it was high risk and because it was an investment often made alongside Store First. To be clear, those are not my reasons for concluding that Options shouldn't have allowed the GAS Verdant investment into its SIPPs. My reasons are as follows.

I think it's fair and reasonable to expect Options to have looked carefully at the GAS Verdant investment *before* permitting it into its SIPPs. To be clear, for Options to accept the GAS Verdant investment without carrying out a level of due diligence that was consistent with its regulatory obligations, while asking its customer to accept warnings absolving it of the consequences, wouldn't in my view be fair and reasonable or sufficient. And if Options didn't look at the investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure or might be fraudulent, it wouldn't in my view be fair or reasonable to say Options had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

GAS Verdant was an unregulated, esoteric, high-risk investment. It took the form of 'land purchase contracts' which involved a company and land based abroad. Crops were to be planted on the plots, and the objective was to provide an income to investors through the sale of those crops and capital growth through the sale of the plot of land. This type of investment involved significant risks and a lack of protections.

To date, Options has provided little information about what checks it carried out on the GAS Verdant investment, other than to say it reviewed investment information, company background checks and also an independent report dated 7 October 2010 from Enhance Support Solutions. In some cases, it's also provided a copy of a report completed by the same individual as the 2010 report, dated 6 January 2012 (which appears to have been 'downloaded' by Options, presumably for consideration, in July 2012).

Options has made no reference to what conclusions it drew from this information, other than to say these checks were sufficient to conclude that this investment was suitable to be held within a UK pension scheme.

In my view, the 2010 report was brief and based on some of the material Options already had regard to in relation to GAS Verdant. That said, I'm satisfied Options should have been concerned by some of the information the report highlighted. In particular, the report said (with my emphasis):

“Description of investment

Beneficial ownership of Australian farmland, purchased in seven hectare plots.”

“Is there a market for buying or selling the investment?

***There is no established market for buying or selling the beneficial ownership**, although the land can be sold or assigned at any time subject to a buyer being found.”*

“How liquid is the investment and in any event, could the investment be liquidated within two years?

*The investment is predicted to have an eight year lifespan at which point it is anticipated the farmland will be sold and the proceeds, less fees, will be distributed to investors. **Therefore the investment should be viewed as illiquid** subject to the comments above.”*

“Does the proposed investment offer any form of investor protection?

The investment is unregulated so no investor protection will apply.”

“Based on the information available, is the proposed investment cleared to be held in a member-directed pension?

Yes.”

“Disclaimer

… The process undertaken by Enhance Support Solutions Limited seeks to identify whether the investment is likely to be acceptable based on HMRC rules as set by the Finance Act 2004 and subsequent amendments …”

The 2012 report, which was similarly brief, contained an almost identical disclaimer, again said that as an unregulated investment there would be no investor protection, and included the following:

“Exit strategy

*At the end of the term (anticipated to be 2017) the land will be sold on the open market with proceeds, less costs, distributed to investors. **There is no guarantee as to what the final sale price will be.”***

“Parties involved

*… Web searches have revealed no adverse history on these parties however it should be noted that GAS Global are Cyprus based and therefore **limited information available.”***

> *"Disposal of the investment*
>
> ***The land can be disposed of at any time subject to a buyer being found which of course cannot be guaranteed."***

> *"Valuation*
>
> ***No initial valuation of the land has been supplied** however it is assumed that the initial investment for the beneficial interest is predicated more on the income stream and incorporates an allowance for ongoing upkeep costs rather than purely on the underlying value of the land. Annual accounts will be supplied by the farm manager showing the harvest revenue and distribution however **this will not show the underlying value of the capital**, which is anticipated to comprise a mixture of income stream and underlying land value. Any such valuation would need to be procured by the SIPP operator and no doubt a cost would be involved".*

> *"Any other comments*
>
> *Where used by the SIPP/SSAS operator/trustees, a scheme member 'high risk/illiquid' disclaimer could be considered*."

So, the reports only sought to identify whether the investment was likely to be acceptable based on HMRC rules – they did not seek to identify risk of consumer detriment. This is likely why they were brief. Nonetheless, Options ought to have seen from the reports that there was a significant risk of consumer detriment due to the illiquid and unregulated nature of the investment, and there being no established market for buying and selling the investment. Therefore, I don't think Options should have taken any comfort from either report.

As the FCA has noted, it's difficult to complete due diligence for non-standard overseas investment schemes where firms do not always have access to local qualified legal professionals or accountants. Consistent with its regulatory obligations, Options should not only have obtained adequate material in order to make a properly informed decision about whether to permit the GAS Verdant investment into its SIPPs, but it should also have given careful consideration to that material. And I've seen no evidence to suggest Options went beyond basic checks with the GAS Verdant investment.

Options says it provided the clients with numerous risk warnings regarding their chosen investments, including the warnings in the member declarations they signed. And that these forms were very clear regarding what the investments were and, crucially, that they were high risk.

But there is no reasoning given as to why Options thought such an unusual and high-risk venture was appropriate to hold in its SIPPs. As I said above, Options should not only have carried out the searches on the investment but also given careful consideration to what they revealed so that it could be satisfied the investment was real and secure and operated as claimed and could be independently valued.

And in any case, I don't think it would be fair and reasonable to conclude that including warnings in member declarations meant Options could simply ignore its own regulatory obligations and all red flags to proceed with permitting the investment into its SIPPs – and I'll return to this point.

If Options had completed sufficient due diligence on GAS Verdant, what ought it reasonably to have concluded?

I've seen a copy of the GAS Verdant marketing brochure which TPS Land likely provided to consumers in 2012. The brochure itself is undated, but the data it contains runs up to 2010 and it's reasonable to think that an investment being considered for acceptance within SIPPs would have associated marketing material. So, on balance, I'm satisfied that this marketing brochure, or information very similar to that which it contained, was more likely than not available to Options at the time it was considering whether to permit the GAS Verdant investment into its SIPPs.

In my view there were a number of things about the marketing material which ought to have given Options significant cause for concern. Namely, that there was a significant risk that potential investors were being misled.

I think, as it had regard to this brochure, Options could not overlook the fact that GAS Verdant appeared to be presenting the investment as one that was assured to provide high and rising returns, offering a high level of liquidity together with a strong prospect of a capital return – despite the fact that there was no investor protection associated with the investment and that, as the reports to Options had stated, the investment was illiquid and unregulated, and there was no established market for buying and selling the investment.

Further, the GAS Verdant marketing brochure says GAS *"is one of the first companies to create dynamic products relating to modern agronomy…"* I think this indicates GAS Verdant didn't have a proven track record for retail investors, and so Options couldn't be certain that the investment operated for them as claimed.

In light of this, Options should have been concerned that consumers may have been misled or didn't properly understand the investment they intended to make. Consumers could easily have been given the impression, from the marketing brochure, that they were assured of high returns with little or no risk and would easily be able to sell their investment when they wished to. Such an impression was clearly misleading.

From the evidence I've seen, I think the information in the GAS Verdant marketing brochure published *before* Mr W's Options monies were invested with it gave rise to a significant risk that potential investors were being misled by GAS Verdant. And I think Options ought to have identified this *before* permitting the GAS Verdant investment into its SIPPs. This is a clear point of concern, which I think Options ought reasonably to have identified *before* it accepted Mr W's instruction to invest in GAS Verdant.

In my opinion, the issues I've identified above should have, when considered objectively, put Options on notice that there was a significant risk of consumer detriment. And, without more evidence to ensure the investment was an appropriate one to permit within its SIPPs, I'm satisfied that Options shouldn't have accepted the GAS Verdant investment.

In my opinion, it's fair and reasonable to say that Options ought to have concluded there was an obvious risk of consumer detriment here. All in all, I'm satisfied that Options ought to have had significant concerns about the GAS Verdant investment from the beginning. And I think such concerns ought to have been a red flag for Options when it was considering whether to accept the GAS Verdant investments into its SIPPs. Such concerns emphasise the importance of sufficient due diligence being undertaken *before* investments are accepted and *before* SIPP investors monies are invested.

Had Options done what it ought to have done, and drawn reasonable conclusions from what it knew or ought to have known, I think it ought to have concluded there was a significant risk of consumer detriment if it accepted the GAS Verdant investment into its SIPPs and that the GAS Verdant investment wasn't acceptable for its SIPPs.

Therefore, based on the available evidence, I don't think Options undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the GAS Verdant investment *before* it accepted that investment into its SIPPs. I don't think Options met its regulatory obligations and, in accepting Mr W's instruction to invest in GAS Verdant, allowed his funds to be put at significant risk.

To reiterate, there's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. I accept that Options wasn't expected to, nor was it able to, give advice to Mr W on the suitability of the SIPP and/or GAS Verdant investment for him personally. To be clear, I'm not making a finding that Options should have assessed the suitability of the GAS Verdant investment for Mr W. I accept Options had no obligation to give advice to Mr W or to ensure otherwise the suitability of an investment for him.

And I'm also not saying that Options shouldn't have allowed the GAS Verdant investment into its SIPPs because it was high risk. My finding isn't that Options should have concluded that Mr W wasn't a candidate for high-risk investments or that an investment in GAS Verdant was unsuitable for Mr W. Instead, it's my fair and reasonable opinion that there were things Options knew or ought to have known about the GAS Verdant investment and how it was being marketed which ought to have led Options to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that Options failed to act with due skill, organise and control its affairs responsibly, or treat Mr W fairly by accepting the GAS Verdant investment into his SIPP.

I think the fair and reasonable conclusion based on the evidence available is that Options shouldn't have accepted Mr W's instruction to invest in GAS Verdant. In my opinion, it ought to have concluded that it wouldn't be consistent with its obligations to do so. To my mind, Options didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr W to be put at significant risk of detriment as a result.

Acting fairly and reasonably to investors (including Mr W), Options should have concluded that it wouldn't permit the GAS Verdant investment to be held in its SIPPs *at all*. And I'm satisfied that it's more likely than not that Mr W's pension monies were only transferred to Options so as to bring about the Store First and GAS Verdant investments. So, I think it's more likely than not that if Options hadn't permitted the GAS Verdant investment to be held in its SIPPs at all that Mr W's pension monies wouldn't have been transferred to Options. Further, that Mr W wouldn't then have suffered the losses he's suffered as a result of transferring to Options and investing in GAS Verdant.

Did Options act fairly and reasonably in proceeding with Mr W's instructions?

Options has said that it was Mr W's decision to proceed on an execution-only basis and it made this clear to him. Options has also made the point that COBS 11.2.19 R obliged it to execute investment instructions. It has effectively said that once the SIPP has been established, it's required to execute the specific instructions of its client. Before considering this point, I think it's important for me to reiterate that, it wasn't fair and reasonable for Options to have accepted Mr W's SIPP application from TPS Land in the first place. So, in my opinion, the SIPP shouldn't have been established and the opportunity to execute investment instructions or to proceed in reliance on an indemnity shouldn't have arisen at all.

In any event, Options' argument about having to execute the transaction as a result of COBS 11.2.19 R was considered and rejected by the judge in BBSAL. In that case, Jacobs J said:

> *"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."

Therefore, I don't think Options' argument on this point is relevant to its obligations under the Principles to decide whether or not to accept an application to open a SIPP in the first place or to execute instructions to make the investments, i.e. to proceed with the application.

Was it fair and reasonable in all the circumstances for Options to proceed with Mr W's application?

For the reasons given above, I think Options shouldn't have accepted Mr W's business from TPS Land (or later, Douglas Baillie) and I also think it shouldn't have accepted the Store First and GAS Verdant investments into his SIPP. So, things shouldn't have got beyond that.

And, to be clear, even if I thought Options had undertaken adequate due diligence on TPS Land and Douglas Baillie, and acted appropriately in accepting Mr W's business initially from TPS Land, and later from Douglas Baillie (which, as I've explained, I don't), I'd still consider it fair and reasonable to uphold this complaint on the basis that Options didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr W fairly, by accepting the Store First and GAS Verdant investments into his SIPP.

I make this point here to emphasise that while I've concluded *both* that Options shouldn't have accepted Mr W's business from the introducers *and* also that it shouldn't have accepted his instructions to invest in Store First and GAS Verdant, if I had only reached the conclusions I've set out above on one of those aspects and not also gone on to reach findings on the other aspect for completeness, I'd still consider it fair and reasonable in all the circumstances to uphold this complaint. That's because Options didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr W fairly by accepting his business from TPS Land or Douglas Baillie. And because, separately, Options also didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr W fairly, by accepting the Store First and GAS Verdant investments into his SIPP. And to my mind, Options didn't meet its regulatory obligations or good industry practice at the relevant times and allowed Mr W to be put at significant risk of detriment as a result.

Further, in my view it's fair and reasonable to say that just having Mr W sign declarations, wasn't an effective way for Options to meet its regulatory obligations to treat him fairly, given the concerns Options ought to have had about the business being introduced by TPS Land and Douglas Baillie, and about the Store First and GAS Verdant investments.

Options knew Mr W had signed forms intended to acknowledge, amongst other things, his awareness of some of the risks involved with investing and to indemnify Options against losses that arose from acting on his instructions. And, in my opinion, relying on the contents of such forms when Options knew, or ought to have known, that both the type of business it was receiving from TPS Land and Douglas Baillie and allowing the Store First and GAS Verdant investments to be held within its SIPPs would put investors at significant risk, wasn't the fair and reasonable thing to do. Having identified the risks I've mentioned above, I think the fair and reasonable thing for Options to do would have been to decline to accept

Mr W’s business from TPS Land (and to decline his instructions when Douglas Baillie became involved), as well as refusing to accept the Store First and GAS Verdant investments into his SIPP.

The Principles exist to ensure regulated firms treat their clients fairly. And I don’t think the paperwork Mr W signed meant that Options could ignore its duty to treat him fairly. To be clear, I’m satisfied that indemnities contained within the contractual documents don’t absolve, nor do they attempt to absolve, Options of its regulatory obligations to treat customers fairly when deciding whether to accept or reject investments or business.

So, I’m satisfied that Mr W’s SIPP shouldn’t have been established and his SIPP monies shouldn’t have been invested in the Store First and GAS Verdant holdings. And that the opportunity for Options to execute the investment instructions to invest Mr W’s monies in Store First and GAS Verdant or to proceed in reliance on an indemnity and/or risk disclaimers shouldn’t have arisen at all.

I’m of the view that it wasn’t fair and reasonable in all the circumstances for Options to accept Mr W’s business from TPS Land or Douglas Baillie, or for it to accept his instructions to invest in Store First and GAS Verdant.

Is it fair to ask Options to pay compensation in the circumstances?

The involvement of other parties

In this decision I’m considering the complaint Mr W has made about Options. But I accept other parties were involved in the transactions complained about, including TPS Land and Douglas Baillie.

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 3.7.2 R).

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

The starting point, therefore, is that it would be fair to require Options to pay compensation for the loss suffered as a result of its failings. I’ve carefully considered if there’s any reason why it wouldn’t be fair to ask Options to pay compensation for the loss.

I accept that other parties, including TPS Land and Douglas Baillie, might have some responsibility for initiating the course of action that led to the loss. However, I’m satisfied that it’s also the case that if Options had complied with its own distinct regulatory obligations as a SIPP operator, the arrangement for Mr W wouldn’t have come about in the first place, and the loss suffered could have been avoided.

I want to make clear that I’ve taken everything Options has said into consideration. And it’s my view that it’s appropriate and fair in the circumstances for Options to pay compensation representing the full extent of the financial losses suffered due to its failings. And, having carefully considered everything, I don’t think that it would be appropriate or fair in the circumstances to reduce the compensation amount that Options is liable to pay.

Mr W taking responsibility for his own investment decisions

In reaching my conclusions in this case I've thought about section 5(2)(d) of FSMA (now section 1C). This section requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the general principle that consumers should take responsibility for their own investment decisions.

I've considered this point carefully and I'm satisfied that it wouldn't be fair or reasonable to say Mr W's actions mean he should bear the loss arising as a result of Options' failings.

In my view, if Options had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr W's business from TPS Land and Douglas Baillie or accepted his instructions to invest in Store First and GAS Verdant at all. That should have been the end of the matter – if either of those things had happened, I'm satisfied the arrangement for Mr W wouldn't have come about in the first place, and the loss suffered could have been avoided.

As I've made clear, Options needed to carry out appropriate initial and ongoing due diligence on TPS Land and Douglas Baillie and on the Store First and GAS Verdant investments and reach the right conclusions. I think it failed to do this. And just having Mr W sign forms containing declarations and indemnities wasn't an effective way of Options meeting its obligations, or of escaping liability where it failed to meet its obligations.

I've carefully considered what Options has said about Mr W being aware of the risks – that he signed documents confirming the investments were high risk. As I explain below, I don't agree that the evidence we've seen to date supports the contention that it's more likely than not that Mr W understood the Store First and GAS Verdant investments were high risk. But, in any eventuality, this is a secondary point because, as mentioned above, if Options had acted in accordance with its regulatory obligations and good industry practice, I'm satisfied the arrangement for Mr W wouldn't have come about in the first place.

So, overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair and reasonable to say Options should pay compensation for the loss suffered. I don't think it would be fair to say in the circumstances that Mr W should suffer the loss because he ultimately instructed the transactions to be executed.

Had Options declined Mr W's business from TPS Land and Douglas Baillie, would the transactions complained about still have been effected elsewhere?

Options has argued that it didn't cause the loss because it's very likely that Mr W was extremely keen to proceed with the investments to release funds and would have found a way to invest even if Options hadn't been dealing with TPS Land and Douglas Baillie or hadn't been accepting Store First and GAS Verdant investments. It says that if it had refused to process applications like Mr W's for any reason, the client would have likely made the same investments via a different SIPP provider. So, would have suffered the same loss.

However, Options has provided no evidence to support an argument that Mr W wanted to open a SIPP and invest his SIPP monies in Store First and GAS Verdant no matter what.

I've thought carefully about what Mr W would likely have done if Options had told him it was rejecting his business. Mr W has said TPS Land spoke about the *"potential returns"* but not *"the way* [his] *pension was invested or the level of risk the investments used"*. Therefore, I think if Options had rejected his application and explained the reasons for doing so to him, he would have likely concluded that such a course of action may not be in his best interests.

I don't think it's fair and reasonable to say that Options shouldn't pay compensation for the loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found Options did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr W's business from TPS Land and Douglas Baillie or permitted the Store First and GAS Verdant investments into its SIPPs.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if Options had refused to accept Mr W's application from TPS Land and/or hadn't permitted the Store First and GAS Verdant investments in its SIPPs, the transactions wouldn't still have gone ahead, and Mr W would have retained his monies in his previous schemes. Further, if Options had rejected Mr W's later instructions following the involvement of Douglas Baillie, he wouldn't have proceeded with the transfer of his defined benefits.

And had Options explained to Mr W why it refused to accept his application from TPS Land and/or Douglas Baillie and/or hadn't permitted the Store First and GAS Verdant investments in its SIPPs, I think it's very unlikely Mr W would have tried to find another SIPP operator to accept the business.

At paragraph 32 of the High Court *Adams* judgment, HHJ Dight found that Mr Adams would have proceeded with the transaction regardless:

> *"The Claimant knew that it was a high risk and speculative investment but nevertheless decided to proceed with it, because of the cash incentive."*

Options says clients understood the investments were high risk. But Mr W's comments suggest that the nature of the investment wasn't made clear to him. Indeed, he's told us that he didn't know how his pension would be invested or the level of risk involved.

I've carefully considered what Options has said about Mr W being aware of the risks – that Options provided him with numerous risk warnings regarding his chosen investments, including the warnings in the member declarations he signed, and these warnings were very clear regarding what the investments were and that they were high risk.

But I think the information Mr W likely received at the start regarding the investments presented them, in detail, as providing high returns with little to no risk.

Overall, I don't agree the contents of the forms support the contention that Mr W understood the investments were high risk. I'm not persuaded that Mr W, an individual with limited investment experience, proceeded to invest his pension provision in the knowledge that the investments he was making were high risk.

Having carefully considered all the circumstances, I'm satisfied it's fair and reasonable to conclude that if Options had refused to accept Mr W's application from TPS Land and Douglas Baillie and/or to permit the Store First and GAS Verdant investments in its SIPPs, the transactions this complaint concerns wouldn't still have gone ahead.

In conclusion

Taking everything into consideration, I think that in the circumstances of this case it's fair and reasonable for me to conclude that Options should have decided not to accept business from TPS Land and/or to accept the Store First and GAS Verdant investments to be held in its SIPPs *before* it had received Mr W's application from TPS Land. And that it should have decided not to accept business from Douglas Baillie *before* it had received Mr W's further instructions. I conclude that if Options hadn't accepted Mr W's introduction from TPS Land and/or the Store First and GAS Verdant investments to be held in its SIPPs, he wouldn't have established an Options SIPP, transferred his existing pensions to it or invested in

Store First and GAS Verdant. And that Options missed a further opportunity to avoid consumer detriment by accepting Mr W's later instructions from Douglas Baillie.

For the reasons I've set out, I think it's fair and reasonable to direct Options to pay compensation for the loss suffered as a result of Options accepting Mr W's business from TPS Land and Douglas Baillie and permitting him to invest his SIPP monies in Store First and GAS Verdant. I say this having given careful consideration to the *Adams* judgments but also bearing in mind that my role is to reach a decision that's fair and reasonable in the circumstances of the case having taken account of all relevant considerations.

Overall, I think it's fair and reasonable to direct Options to pay compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to the loss, I consider that Options failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining to accept Mr W's applications when it had opportunities to do so. And I'm satisfied that Mr W wouldn't have established the Options SIPP, transferred monies in from his existing pensions, or invested in Store First and GAS Verdant if it hadn't been for Options' failings.

In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against Options that requires it to pay compensation for the full measure of the loss.

I've seen nothing to suggest Mr W has previously sold any of his Store First or GAS Verdant holdings. But whether or not Mr W has previously managed to sell any of his holdings doesn't alter my opinion that, but for Options' failings, Mr W's pension monies wouldn't have been transferred to Options and invested in Store First and GAS Verdant. Further, and from a redress perspective, I'm satisfied that Options will need to check whether there are still any Store First or GAS Verdant investments held in Mr W's SIPP when it's performing the first step of the redress calculation I've set out below.

Putting things right

I consider that Options failed to comply with its own regulatory obligations and didn't put a stop to the transactions that are the subject of this complaint. My aim in awarding fair compensation is to put Mr W back into the position he would likely have been in had it not been for Options' failings. Had Options acted appropriately, I think it's *most likely* that Mr W would have remained a member of the pension plans he transferred into the SIPP.

In light of the above, Options should:

- Take ownership of the Store First and GAS Verdant investments if possible.
- Calculate and pay compensation for the loss Mr W's pension provision has suffered as a result of Options accepting his applications.
- If Mr W has paid any fees or charges from funds outside of his pension arrangements, Options should also refund these. Interest at a rate of 8% simple per year from date of payment to date of refund should be added to this.
- Pay £1,000 in recognition of the trouble and upset caused to Mr W by Options' failings.

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

Take ownership of the Store First and GAS Verdant investments if possible

In order for the SIPP to be closed and further SIPP fees to be prevented, any remaining Store First and GAS Verdant investments need to be removed from the SIPP. To do this, Options should calculate an amount it's willing to accept for Mr W's Store First and GAS Verdant investments and pay that sum into Mr W's SIPP and take ownership of the Store First and GAS Verdant investments. Any sums paid into the SIPP to purchase the Store First and GAS Verdant investments will then make up part of the current actual value of the SIPP.

If Options is unable to purchase the Store First and/or GAS Verdant investments, the actual value of any Store First and GAS Verdant investments it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include a nil value being given for the purposes of ascertaining the current value of Mr W's SIPP. I think this is fair because I think it's unlikely the Store First or GAS Verdant investments will have any significant realisable value in the future.

I understand Mr W has the option of returning the Store First investment to the freeholder for nil consideration. That may enable him (subject to the position with the GAS Verdant investment) to close his SIPP if Options doesn't take ownership of the Store First investment. In the event the Store First investment remains in the SIPP and Mr W decides not to transfer it to the freeholder he should be aware that he will be liable for all future costs associated with that investment such as business rates, ground rent and any other charges. He should also be aware it's unlikely he will be able to make a further complaint about these costs.

Mr W would only be liable for any SIPP fees if the GAS Verdant investment can be sold or no longer exists. If Options doesn't take ownership of the GAS Verdant investment and it still exists in his SIPP and can't be sold, then Options should waive any SIPP fees until it can be sold or ceases to exist.

Options has previously argued that if the investments remain in the SIPP or otherwise with its client with no adjustment in the redress, this would give them an unfair windfall. Though I think it's unlikely, it's possible that the Store First and GAS Verdant investments may have some realisable value in the future. So, in this instance, for any investments assumed to be nil value, Options may ask Mr W to provide an undertaking to account to it for a sum equivalent to the net amount of any payment the SIPP may receive from the investments in the future. That undertaking should allow for the effect of any tax and charges on the amount Mr W may receive from the investments and any eventual sums he would be able to access. Options should meet any reasonable costs in drawing up the undertaking and Mr W taking advice in relation to it. Options should only benefit from the undertaking once full compensation has been paid for the loss (to be clear, this includes any loss that's in excess of our award limit).

Calculate the loss suffered as a result of transferring defined benefits

Options should undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in Policy Statement PS22/13 and set out in the regulator's handbook in DISP App 4.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr W and his trustee in bankruptcy's acceptance of my final decision.

If the redress calculation demonstrates a loss, Options should pay redress as a cash lump sum payment to Mr W's trustee in bankruptcy. It will be for Mr W and the trustee in bankruptcy to agree between themselves what proportion of any redress each is entitled to.

Redress paid as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31 G (3), Options may make a notional deduction to allow for income tax that would otherwise have been paid. Mr W's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31 G (1) this notional reduction may not be applied to any element of lost tax-free cash.

Calculate the loss suffered as a result of transferring defined contribution benefits

Options should first contact the providers of the plans which were transferred into the SIPP and ask them to provide notional values for the policies as at the date of calculation. 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 in the policies would have remained invested in an identical manner to that which existed prior to the actual transfer.

Any contributions or withdrawals Mr W has made from the SIPP will need to be taken into account whether the notional values are established by the ceding providers 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 any return in the calculation from that point on. The same applies for any contributions made, these should be added to the notional calculation from the date they were actually paid, so any growth they would have enjoyed is allowed for.

Account should also be taken of the payment of around £7,000 Mr W says he received as a result of these transactions. This can be taken into account in the calculation by way of treating it as an income withdrawal paid at the outset.

If there are any difficulties in obtaining notional valuations from the previous providers, then 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). That is a reasonable proxy for the type of return that could have been achieved over the period in question.

The notional value of Mr W's existing plans if monies hadn't been transferred (established in line with the above) less the proportion of the current value of the SIPP that's attributable to monies transferred in from the same existing plans (as at the date of calculation) is the loss.

If the redress calculation demonstrates a loss, it should be paid directly to Mr W's trustee in bankruptcy 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 Mr W's likely income tax rate in retirement – as above this is presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this. Again, it will be for Mr W and his trustee in bankruptcy to agree between themselves the proportion of any redress each is entitled to.

Pay £1,000 in recognition of the trouble and upset suffered by Mr W

In addition to the financial loss suffered as a result of the problems with the SIPP, I think it's fair and reasonable to say that the loss of a significant portion, if not all, of his pension provision has caused Mr W worry and upset. Further, on several occasions, Mr W has contacted us and said that due to his personal circumstances including severe financial difficulties, it would be extremely helpful if he could access the benefits in his SIPP. However, he's been prevented from doing so as the investments within are illiquid. Options should pay £1,000 for the substantial distress and inconvenience caused over many years. This payment should be made to Mr W directly.

Award limit

Where I uphold a complaint, I can award fair compensation of up to £150,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £150,000, I may recommend that the business pays the balance.

I don't know what award the above calculation might produce. So, while I acknowledge that the value of Mr W's original investment fell within our award limit, for completeness I have included information below about what ought to happen if fair compensation amounts to more than our award limit.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. Options UK Personal Pensions LLP must pay the amount produced by that calculation up to the maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest and costs set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I also recommend that Options UK Personal Pensions LLP also pays the trustee in bankruptcy the balance plus any interest on the balance.

The recommendation isn't part of my determination or award. Options UK Personal Pensions LLP doesn't have to do what I recommend. It's unlikely that a final decision could be accepted and then a court approached to ask for the balance. Mr W and/or his trustee in bankruptcy may want to get independent legal advice before deciding whether to accept my final decision.

My final decision

My final decision is that I uphold this complaint. To put things right, Options UK Personal Pensions LLP must calculate and pay the award set out above to Mr W's trustee in bankruptcy. It must also pay the distress and inconvenience award to Mr W direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and his trustee in bankruptcy to accept or reject my decision before 7 April 2025.

Alex Salton
Ombudsman