DRN-5385931

The complaint

Mr W complains, with the help of a representative, that Options UK Personal Pensions LLP ('Options' – formerly Carey Pensions) didn't undertake sufficient due diligence before accepting his application to open a self-invested personal pension ('SIPP') and his instruction to invest in carbon credits. He says he's suffered a loss to his pension provision as a result.

The parties involved

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. Carey was not, and Options is not, authorised to advise on investments.

At the time of the events Mr W is complaining about Options was called Carey. But for simplicity, I'll refer to it as Options throughout this decision.

Henderson Carter Associates Limited ('HCA')

At the time of the events in this complaint, HCA was an advisory firm regulated by the FSA. HCA was authorised to carry out regulated activities, including advising on investments (excluding pension transfers), arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments. HCA entered liquidation in February 2017.

Viceroy Jones Ltd ('VJ')

VJ was a limited company that was incorporated in January 2012. It was involved in the marketing and sale of carbon credits to the public for investment. It wasn't regulated and therefore wasn't authorised to advise on investments covered by the Financial Services and Markets Act 2000 ('FSMA') in the UK.

My understanding is VJ received a winding up order from the High Court in January 2017, following a petition that had been lodged by the Insolvency Service on the grounds of public interest arising from its role in selling carbon credits. VJ is now dissolved.

Carbon credits

A carbon credit is a generic term for any tradable certificate or permit representing the right to emit one tonne of carbon dioxide or the mass of another greenhouse gas with a carbon dioxide equivalent to one tonne of carbon dioxide.

Buyers and sellers can use an exchange platform to trade, like a stock exchange for carbon credits. The quality of the credits is based in part on the validation process and sophistication of the fund or development company that acted as the sponsor to the carbon project.

The carbon credits Mr W invested in were sold to him by VJ and another company – Carbon Neutral Investments Ltd ('CNI') – provided custody arrangements for them.

The relationship between HCA and Options

Options has explained that its relationship with HCA began in February 2012. It's said it received 72 introductions from HCA between February 2012 and September 2016, a third of which involved non-mainstream investments. It's told us it ended its relationship with HCA when it did because HCA's authorisation was withdrawn by the FCA, and it went into administration.

Options has told us it undertook due diligence on HCA. This included verifying HCA held the requisite regulatory permissions for the services it was purported to be providing.

Options has said Mr W was the first HCA introduced member that instructed it to purchase carbon credits investments.

Due diligence carried out by Options on carbon credits and VJ

Options has told us that it carried out due diligence checks on the carbon credits investment Mr W made.

Options has explained:

- Investment product literature was never provided despite Options requesting this.

- It conducted its own review of the investment to determine whether the investment could be held in its SIPPs.

- To obtain fair and reasonable valuations of carbon credits, it relied on comparing unit prices of the range of carbon credits being traded and speaking to brokers.

Options has also told us that it carried out due diligence checks on VJ including:

- A check of the Companies House register in July 2012.

- Checks through 'World Check' in July 2012 on two individuals that were involved with VJ at the time. The checks on both individuals returned no adverse findings.

- A review of sample purchase agreements, terms and conditions and disclaimers.

As I understand it, in July 2012, Options concluded from these checks that carbon credits investments via VJ were eligible for investment in a pension scheme. It also decided as a result of these checks that:

- All investors would be required to sign an *"Alternative Investment Member Declaration and Indemnity".*

- Each adviser would be required to sign an *"Alternative Investment Adviser Notification Letter"*.

- Wording limiting Options' liability was to be added to all contracts and assignments.

I will refer to the declaration mentioned above again later in this decision. It's sufficient to say here that following the checks it carried out, Options referred to the investment as *"illiquid and speculative"* and suggested that no more than 50% of an investor's fund was invested in it.

In September 2012, Options decided to no longer accept carbon credits via VJ as an investment in its SIPPs. Options took this decision after some investors contacted it asking when they would receive incentive payments for investing via VJ.

What happened

Mr W has explained that he was contacted by email about transferring his existing stakeholder pension to a SIPP and investing in carbon credits. He says he wasn't interested in changing his pension at the time but was attracted to the transaction as he *"was guaranteed 16% increase to pension over 2 years* [sic]*"* and he *"was offered a lump sum the more money I put in the bigger the lump sum I would get* [sic]*"*. He's told us he received an incentive payment of £4,019 and that he didn't fully understand the risks involved.

Mr W's application was sent to Options in June 2012 by HCA and his SIPP was established soon after. Mr W's application form included his personal and employment details along with details of the pension he intended to transfer to the SIPP. It was recorded that Mr W had received advice on the transfer of his pension from HCA. The section for detailing the investments to be held in the SIPP was left blank.

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.*

In July 2012, the proceeds from the transfer of Mr W's stakeholder pension – approximately £39,000 – were deposited into his SIPP. Following receipt of the transfer proceeds, Options asked HCA to confirm Mr W's investment instructions.

Mr W signed a member declaration and indemnity form for the carbon credits investment on 8 August 2012, instructing Options to open an account with VJ to purchase and sell carbon credits for a consideration of £30,000. The document included a background statement, which said:

> *"The purpose of this introduction is to highlight some of the SIPP related risks involved with Carbon Credits in order that you are aware of these prior to purchase.*
>
> *Whilst carbon credits generally have been around for some time, the market for trading them is still immature - this means there may not be a ready buyer of the*

Carbon Credits held within your SIPP and no guarantee they could be sold at a profit were a buyer found.

Expert commentators suggest that the market in trading Carbon Credits may take some time to develop (assuming it does develop) - typically three to five years is mentioned although again these cannot be guaranteed.

Consequently it should be appreciated by you as the scheme member instructing us to purchase Carbon Credits within your SIPP that this investment is potentially high risk, long term in nature and illiquid."

As a result, it asked Mr W to acknowledge, amongst other things, that:

- He had a good understanding of carbon credits, Voluntary Emission Reductions ('VERs'), Certified Emission Reductions ('CERs') and the Verified Carbon Standard ('VCS').
- Because of potential liquidity issues, Options had suggested up to 50% of his fund be invested in this investment, but he and his adviser had made the decision to invest the amount stated.
- Options was acting on an execution-only basis and hadn't provided any advice.
- He understood he was purchasing an unregulated alternative investment which, as such, was considered high-risk and/or speculative and could be difficult to value and/or sell/realise.
- He understood he was buying the carbon credits through a carbon broker that wasn't a regulated company.
- He had taken his own advice, including but not limited to, financial, investment and tax advice regarding the investment and its value, taxes, costs and fees.
- Should the investment be subject to a tax charge within the scheme this would be paid directly from his fund or by him.
- He hadn't received an inducement.
- He indemnified Options against any and all liability arising from the investment.

The same day Mr W signed a VJ contract note which set out the following details of the proposed investment:

"Carbon Credit Type:	*SPOT VCS VER*	*Settlement Date:*	*14-08-2012*
Price per credit:	*£6.50*	*Currency:*	*GBP*
Quantity:	*4615*	*Total Cost:*	*£29,997.50*
Project:		*VCS Project ID 766 – Teesta - V Hydro Power project in Sikkim, INDIA*	

Mr W also signed a VJ disclaimer setting out, amongst other things, that:

- Carbon credits weren't *"real deliverable commodities."*

- Carbon credits were *“legal constructs which exist for as long as governments are still interested”*.

- Markets would collapse *“if governments lose interest or change tact.”*

- *“Rising supplies of credits could drive down their market value.”*

- If biofuels or other alternative energies improved, emissions would naturally reduce, along with carbon credit prices.

- Carbon credits were *“derived from overseas projects (Voluntary Emissions Reductions – VER’s) which in turn have risks associated with them, namely – political risk, commercial default, war/terrorism, information risk and financial risk”*.

On 10 August 2012, VJ sent Options Mr W’s signed member declaration, contract note and disclaimer, a copy of its terms and conditions, an unsigned contract note and a *“Purchase Agreement & Invoice”*. The unsigned contract note and the *“Purchase Agreement & Invoice”* were then completed and signed by a representative of Options. The agreement explained, amongst other things, that:

> *“‘VER’S’ shall mean the fully verified VCS Carbon Credits and ONE VER shall correspond to 1 (one) Metric Tonne of CO2 (Carbon Dioxide)”*

And:

> *“Viceroy Jones LTD agrees to sell* [Options]*, and* [Options] *agrees to purchase from Carbon Neutral Investments, the quantity of VERs* [4,615] *as detailed in schedule 2, part 1 of this agreement at the price and in the currency* [£6.50] *shown in schedule 2, part 2 of this agreement.*
>
> [Options] *shall pay to Carbon Neutral Investments the price for the VERs within 5 working days of the date* [9 August 2012] *as shown in Schedule 1, Part 3 of this agreement.”*

The same day, Options returned all the signed documents to VJ and sent it around £30,000 from Mr W’s SIPP for his investment in carbon credits.

Mr W appointed his representative in March 2018. It helped him pursue a Financial Services Compensation Scheme (‘FSCS’) claim in relation to HCA.

In July 2019, Mr W withdrew the remaining cash balance in his SIPP and closed it.

In January 2021, the FSCS paid Mr W its maximum award – £50,000 – in relation to his HCA claim. However, this didn’t cover his full loss, which the FSCS calculated as exceeding £67,000. Mr W has obtained a reassignment of rights from the FSCS in order to pursue this complaint.

Mr W’s complaint

After it had been notified of the FSCS’s award, Mr W’s representative raised a complaint with Options on his behalf. The representative made the following points, amongst others:

- Options failed to act in accordance with the standards expected of a regulated SIPP operator.

- Options failed to meet its regulatory obligations, in particular Principles 2 and 6 of the FCA's Principles for Businesses.

- Options failed to assess Mr W's investment knowledge, attitude to risk and personal circumstances. Had it done so, it would have realised Mr W was not in a position to make such an investment.

- Options failed to undertake adequate due diligence on Mr W's selected investment. Had it done so, it wouldn't have allowed Mr W to make the investment given its inherent unsuitability.

- Mr W was neither an experienced nor high-net-worth investor. Options should have identified the investment as high risk and refused to allow it in its SIPPs.

- Options had discretion to refuse to carry out Mr W's investment instructions in the event it considered the investment to be unsuitable to be held in its SIPPs. Options should have refused to carry out Mr W's investment instruction on this basis.

- Mr W relied on Options' professional status when taking advice on making the investment, and trusted that it would reasonably protect his pension funds.

Options issued its response to Mr W's complaint in March 2021. It said his complaint had been made out of time.

Unhappy with Options' response, Mr W referred his complaint to the Financial Ombudsman Service soon after.

Our investigation so far

Mr W's complaint was assigned to one of our Investigators who concluded that it had been made in time and should be upheld. 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 said Options should calculate fair compensation by comparing Mr W's SIPP to how his previous pension would have performed had he not transferred. They also recommended Options pay Mr W £500 for the trouble and upset caused by its failings.

Options didn't accept the Investigator's findings, maintaining that Mr W's complaint had been made out of time. In relation to the merits of Mr W's complaint, Options said the Investigator hadn't adopted a fair procedure, taken proper account of the mandatory relevant considerations, or reached a fair and reasonable outcome. It made the following points, amongst others:

- The Investigator had failed to take into account relevant law and regulations as required.

- The Investigator had failed to show whether the due diligence duties they said Options had were recognised by law, and had failed to clarify the standard against which Options' actions were being assessed.

- The obligations the Investigator was seeking to place on Options went far beyond those which it owed at the relevant time, including a duty to reject a general category of investment due to its attributes, when the regulator hadn't prohibited the acceptance of, or investment in, such an investment.

- Only the regulators' reports published prior to Mr W's application were relevant.

- The regulator's 2009 thematic review, and the other publications referred to by the Investigator, can't form a claim for compensation in themselves and don't assist in the construction of the Principles.

- The 2009 review didn't provide 'guidance' and wasn't statutory guidance in any case, and it was neither fair nor reasonable to determine Mr W's complaint by reference to the regulator's publications.

- The criticisms of Options' due diligence on the carbon credits investment are unfounded and fail to take into account the very limited nature of Options' legal obligations in respect of due diligence on the investment.

- The Investigator's findings imposed an obligation on Options, effectively amounting to making a recommendation to Mr W not to proceed, which would have significantly overreached its legal obligations at the time. Further, it didn't have the necessary regulatory permissions to do this.

- Options would have been unable to comment on the price Mr W was paying for the carbon credits or the market for selling them without giving advice, which it was unable to do.

- It was clear that the Investigator had taken issue with the carbon credits investment purely on the basis that it was high risk. There was no prohibition on the acceptance of high-risk investments into a SIPP, and the purpose of a SIPP is to allow investors greater investment control and flexibility.

- The member declaration Options required prospective investors to sign was clear as to the nature and risks associated with carbon credits, and the wording used reflected the regulator's earlier consumer warning.

- It wasn't fair nor reasonable to find that Options needed to go further than the warnings it gave, especially since the regulator hadn't deemed it necessary to prohibit investment in carbon credits, nor to regulate their sale or marketing.

- The Investigator only left it the option of a blanket rejection of the investment for no reason other than the member might lose money, which is common to any investment.

- Options didn't cause Mr W's loss. It was likely Mr W was keen to proceed with the investment given his desire to make green investments and would have found a way to invest even if Options hadn't accepted his application. Options made Mr W aware of the risks involved with the investment, yet he chose to proceed regardless.

- The contract between Options and Mr W was effective to relieve Options of any liability it might otherwise bear.

- It's fair and reasonable for Mr W to bear a measure of responsibility for his own actions. Mr W's loss flows simply from the fact that his selected investment didn't perform as he'd hoped – an investment that Options had told him was high risk.

With regard to the redress calculation suggested by the Investigator, Options thought:

- Any compensation awarded to Mr W should be reduced to reflect his own responsibility for his decisions.

- Any redress should take account of the £50,000 Mr W had already received from the FSCS.

- There was inconsistency with our service's approach to using benchmarks and discount rates when considering investment growth.

- Options agreed that Mr W ought to assist Options in taking ownership of the investment. But if this didn't happen and Mr W retained ownership, the Investigator thought there should be no adjustment to the compensation award to reflect this. This wasn't fair nor reasonable, and if retained and no compensation adjustment was made, would give Mr W a windfall.

Options also requested that an Ombudsman holds an oral hearing to explore issues such as Mr W's understanding of the investment and the parties' respective roles, and his motivation for entering into the transactions.

Another Ombudsman considered the arguments raised by Options in respect of our time limits. They determined that Mr W's complaint had been made in time. Despite the Ombudsman's jurisdiction decision, Options continues to dispute that we're able to consider Mr W's complaint.

Mr W's complaint was then passed to me for a decision on its merits.

My provisional decision

I recently issued a provisional decision on this complaint. I concluded that Mr W's complaint should be upheld.

Mr W accepted the findings in my provisional decision, but Options didn't respond.

As I haven't received any further submissions from either party, and haven't been persuaded to depart from my provisional findings, I've repeated those findings below, to reflect my final decision. I've therefore not provided any further detail about my provisional findings in this background summary.

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.

As noted above, I haven't received any further submissions from the parties since issuing my provisional decision and haven't been persuaded to depart from my provisional findings. So, I've repeated those findings below, with a few minor changes, to reflect my final decision.

I note Options maintains that we're unable to consider Mr W's complaint. Another Ombudsman has already decided that we can consider Mr W's complaint – and for the avoidance of doubt I agree with that decision. Options hasn't subsequently provided any further submissions or evidence which might make a difference to the outcome of that jurisdiction decision.

This decision therefore solely relates to the merits of Mr W's complaint.

I've carefully considered all the points raised by the parties. Although I've considered them all, I don't intend to respond to all the points in detail when reaching my final decision. This isn't intended to be discourteous. But the Financial Ombudsman Service's role is to resolve disputes quickly and with minimum formality. So, I've concentrated on the issues I consider to be necessary for me to reach a fair and reasonable decision on Mr W's complaint.

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 of the FCA's Dispute Resolution rules 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 or proceeded with the investment instruction. 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 the other 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 Mr W's 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

I have carefully taken account of the relevant considerations to decide what's fair and reasonable in the circumstances of this complaint.

The Principles

I think the FCA's Principles for Businesses are of particular relevance. 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). And 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 hadn't 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 of 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 that I must take into account when deciding 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 have taken both these judgments into account when making this decision on Mr W's case.

I note that the Principles 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 judgment said 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 both judgments into account when making this decision on Mr W's 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 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 had complied with the best interests rule on the facts of Mr Adams' case.

The Court of Appeal rejected Mr Adams' appeal against 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 didn't 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 in the High Court judgement, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1 R. 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 there are significant differences between the breaches of COBS 2.1.1 R alleged by Mr Adams (summarised in paragraph 120 of the Court of Appeal judgement) and the issues in Mr W's complaint. 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 agreed to accept the investment into its SIPP.

In Mr W's complaint, amongst other things, I'm considering whether Options ought to have identified that the carbon credits investment involved a significant risk of consumer detriment. And if so, whether it ought to have declined Mr W's application.

The facts of Mr Adams and Mr W's cases are also different. 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 his case.

So, 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 Mr W's case.

However, it's important to emphasise that I must determine this complaint by reference to what I think is 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 both *Adams* cases. 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 thing as advising Mr W on the merits of the SIPP and/or the underlying investments. But I'm satisfied Options' obligations included deciding whether to accept particular referrals of business and investments into its SIPP. And I don't accept that it couldn't make such an assessment without straying into giving advice.

Regulatory publications

The FCA (and its predecessor, the FSA) issued a number of publications which reminded 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 what I consider to be the 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 clients 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 members 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 stated:

"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 un-authorised 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 non-regulated 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 provided 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, and*

- *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.)"*

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 the importance of these 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 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. Therefore, I remain satisfied it's relevant and appropriate to take it into account.

I think the 2009 report is also directed at firms like Options acting purely as SIPP operators, rather than just those providing advisory services. The report says *"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 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'm therefore satisfied it's appropriate to take them into account too.

I appreciate that some of the publications I've listed above were published after Mr W's SIPP application and investment in carbon credits. But like the Ombudsman in the BBSAL case, I don't think the fact that the later publications (i.e. those other than the 2009 thematic review report), post-date the events that took place in relation to Mr W's complaint, mean 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, while 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 hadn't changed.

I note that HHJ Dight didn't consider the 2012 thematic review report, the 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's 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 to amount to good industry practice at the relevant time.

That doesn't mean that in considering what's 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 practice. They didn't say the suggestions given were the limit of what a SIPP operator should do. As the annex to the *"Dear CEO"* letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

To 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 are 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. And, as per 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"*. So, it's fair and reasonable for me to take them into account when deciding this complaint.

I'd also add that, even if I agreed with Options that any publications or guidance that post-dated the events which are the subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time (which I don't), 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 SIPP application and investment instruction.

It's also important to keep in mind that *Adams* 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 SIPP application and his instruction to invest in carbon credits, 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, I think 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 checks into Mr W's introducer and the business it was introducing, as well as the carbon credits investment *before* accepting his SIPP application and investment instruction.

Ultimately, what I'll be considering 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. In my view, the key issue in Mr W's complaint is whether it was fair and reasonable for Options to have accepted his SIPP application and investment instruction in the first place. So, I need to consider whether Options carried out appropriate due diligence checks on the introducer and carbon credits investment before deciding to do so.

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 HCA and/or investing in carbon credits were being put at significant risk of detriment. And, if so, whether Options should therefore not have accepted Mr W's application for the SIPP and/or his instruction to invest in carbon credits.

The contract between Options and Mr W

Options has said that it provides execution-only (i.e. non-advised) SIPP administration services. It's said this was clearly set out to Mr W in its product documentation. To be clear, I don't say Options should (or could) have given advice to Mr W or otherwise have ensured the suitability of the SIPP or investment 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 investment. And that forms 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 Mr W's case is made with all of this in mind. 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 investment in carbon credits. But I don't agree that it couldn't have rejected applications without contravening its regulatory permissions by giving investment advice.

What did Options' obligations mean in practice?

The regulatory reports and guidance provided some examples of good practice observed by the FSA and FCA during their work with SIPP operators. This included being satisfied that particular introductions of business and investments are appropriate to accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.

In this case, the business Options was conducting was its operation of SIPPs. It's my view that to meet its regulatory obligations (under the Principles and COBS 2.1.1 R) when conducting this business, Options had to decide whether to accept or reject particular introductions and investments with the Principles in mind.

Taking account of the regulator's guidance and what I consider to have been good practice at the time, it's my view that Options was obliged to carry out due diligence on the carbon credits investment – due diligence that went further than simply checking that the investment was permitted to be held in the SIPP under HMRC rules. I say that after taking into account the regulatory publications I've referenced earlier in this decision, amongst other matters, in considering whether Options acted fairly and reasonably in this case.

I think that it's fair and reasonable to expect Options to have looked carefully at the carbon credits investment it was allowing Mr W's pension fund to be invested in. To be clear, for Options to accept the carbon credits 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 nor sufficient. And if Options didn't look at an investment in detail, when such a detailed review would have revealed that it might not be secure, might be fraudulent, couldn't be independently valued, or that it was impaired, it wouldn't in my view be fair and reasonable to say Options had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

The due diligence Options carried out on the carbon credits investment – and what it should have concluded

Options had a duty to conduct due diligence and give thought to whether the investment in carbon credits was acceptable for inclusion into a SIPP. That's consistent with the Principles and the regulatory publications as set out earlier in this decision. It's also consistent with HMRC rules that govern what investments can be held in a SIPP.

I also think Options understood this to some extent, as it's explained it carried out due diligence on the carbon credits investment and concluded, at least initially, that it was a suitable investment to be held within a UK pension scheme.

In response to the Investigator's view, Options explained that following its due diligence into carbon credits, it updated its member declaration to include the following wording:

> *"The purpose of this introduction is to highlight some of the SIPP related risks involved with Carbon Credits in order that you are aware of these prior to purchase.*
>
> *Whilst Carbon Credits generally have been around for some time, the market for trading them is still immature – this means there may not be a ready buyer of the Carbon Credits held within your SIPP and no guarantee they could be sold at a profit where a buyer found.*

> *Expert commentators suggest that the market in trading Carbon Credits may take some time to develop (assuming it does develop) – typically three to five years is mentioned although these cannot be guaranteed.*
>
> *Consequently it should be appreciated by you as the scheme member instructing us to buy Carbon Credits that this investment is potentially high risk, long term in nature and illiquid."*

Options said this reflected the contents of the FSA consumer warning, which I assume to mean the warning issued by the FSA in August 2011 about individuals investing in carbon credits (see below). Options said the FSA noted in the warning that not all carbon credits investments are scams and it clearly appreciated that in some circumstances it would be appropriate to invest in them. Options further queried that if the warnings included in the member declaration weren't sufficient to convey to Mr W that the investment was high risk, what wording would have been sufficient to convey that it was high risk.

But I think this somewhat misses the point of what Options' obligations were in line with the Principles and good industry practice. While ensuring Mr W was aware of the risks of the investment he intended to make was appropriate, Options was still obliged to consider whether the investment was an appropriate investment to be held in its SIPPs *at all*, bearing in mind what it should have ascertained about the investment had it carried out appropriate due diligence checks.

Options has provided evidence of the due diligence it carried out on carbon credits investments via VJ. The evidence provided by Options shows that it:

- Carried out checks through 'World Check' on individuals involved with VJ.
- Searched the Companies House record for VJ.
- Reviewed sample purchase agreements, terms and conditions, and disclaimers.
- Held an Investment Committee meeting in July 2012 to consider whether to permit carbon credits investments via VJ, which involved reviewing the above materials.

The committee concluded that there didn't appear to be a tax charge liability for the investment, so it was to be permitted. However, the committee required the following in order to proceed:

- Signed member declaration for each client that wished to transact in the investment.
- Adviser notification letter signed by each adviser as confirmation they had discussed relevant information about the investment with their client.
- Options' limitation of liability wording provided for all investments.
- Confirmation that no inducements would be paid to scheme members nor any person connected with them.

So, while Options did undertake some due diligence checks before permitting the investment to be held in its SIPPs, I think it needed to do more to satisfy its obligations under the Principles. And it's important to note that Options' obligations under the Principles were continuous, i.e. it wasn't sufficient to carry out checks once and allow the investment to proceed, it had to be alive to developments, including any updates or commentary from the regulator, and carry out ongoing checks to limit the risk of consumer detriment.

In August 2011, before Mr W made his investment, the FSA (the then regulator) issued a consumer warning about the risks of investing in carbon credit schemes. This is the warning Options was likely referring to in response to the Investigator's view.

As Options said, although the FSA stressed that not all carbon credit schemes are scams, it explained that *"experience and skill"* was needed when trading on over-the-counter markets. It said:

> *"…it is often not made clear to investors that trading on Over-The-Counter (OTC) markets requires experience and skill. You may lose money on your investment by not getting a competitive rate when trading a small volume of carbon credits or not being able to sell your credits at all…*
>
> *Beware that VERs certificates are often labelled as 'certified', but this certification is voluntary involving a wide range of bodies and different quality standards that are not recognised by any UK financial compensation scheme.*
>
> *Just because the salesperson mentions the Kyoto Protocol or 'government-backed' plans does not tell you anything about the type of carbon credit you are investing in."*

These investments were unlikely to be suitable for the majority of retail investors. And they were only generally likely to be suitable for a small element of the investment portfolio of a sophisticated investor.

I think this was something Options recognised, given it approved the investment to be held in its SIPPs with caveats. Options wrote to the custodian of the carbon credits investment on 1 August 2012 following the Investment Committee meeting, stating that it had approved the investment but had some additional requirements, which included members taking their own tax, investment and financial advice to determine whether it was a suitable investment for them. And that it suggested no more than 50% of members' funds should be invested in this asset given the potential liquidity issues.

In my view, Options ought to have had serious concerns about some of the information it gathered during the due diligence process and drawn different conclusions about the appropriateness of the investment to be held in its SIPPs. Moreover, other information it should have obtained, ought to have given Options real cause for concern about the risk of consumer detriment associated with this business.

Taking everything into account, I'm satisfied that Options should – as a minimum – have:

- Identified the carbon credits investment as a high-risk, speculative and non-standard investment and carried out due diligence on it.

- Correctly established and understood the nature of the investment.

- Considered whether the investment was an appropriate investment to make available via its SIPPs.

- Made sure the investment was genuine and not a scam or linked to fraudulent activity.

- Made sure the investment worked as claimed.

- Ensured that the investment could be independently valued, both at the point of purchase and subsequently.

A key issue with carbon credits in general is that there is no price transparency – there is no independent source regarding the price being set, and nothing to confirm at what price the credits should be acquired. So, there was no way to establish how the purchase price was being arrived at. As a result, there could have been a very significant difference between the price the units were acquired at and the price at which they were sold to Mr W. This is something Options could and should have investigated further.

There also doesn't appear to be any measure of the quality of the credits in question. In other words, were the credits valid?

It doesn't appear that Options obtained any information about the business selling the credits or the type of carbon credits Mr W was investing in. The contract note gave the project name as *"V Hydro Power"* but little other information about the project was provided, except that it was based in India.

I haven't seen any independent verification that the units met the VCS standard. So, at the time, there was a risk this validation wouldn't be achieved. I also haven't seen evidence of a registration of the project with the United Nations Framework Convention on Climate Change ('UNFCCC'). The lack of that registration could suggest the relevant standard hadn't been met.

So, at the time of Mr W's investment there was little confirmation that his SIPP was acquiring anything of any realisable value, whether the credits were being sold at inflated prices and whether there was a market for them.

And I don't think simply noting and making Mr W aware of these issues through a member declaration was consistent with the Principles and good practice. I think Options needed to weigh up these concerns and features and consider whether carbon credits were an appropriate investment to be held in retail investors' pensions.

Options may consider that carrying out the kind of assessment that would be required to establish and interrogate such factors as I've discussed and undertaking appropriate due diligence, imposes requirements on it over and above its responsibilities as a SIPP provider. But I'm satisfied these are the kind of things Options needed to do when accepting Mr W's proposed investment to meet its regulatory obligations and standards of good practice. And I don't accept this amounts to a conclusion that Options should have assessed the suitability of the carbon credits investment for Mr W's individual circumstances.

So, based on the evidence I've seen, I'm satisfied that Options didn't carry out sufficient due diligence at the time it accepted the carbon credits investment into its SIPP to satisfy its reasonable responsibilities as a SIPP provider.

If Options had completed sufficient due diligence on Mr W's carbon credits investment, what should it reasonably have concluded?

It could be that the investment was/is legitimate. I also accept that technically there was a market for carbon credits. But it's been highlighted that it often wasn't possible to sell carbon credits even though there was a market for them. And even VJ's terms acknowledged it might not be possible to sell the credits at all. So, although they might technically have worked as claimed, the reality was very different.

The FSA warning was published before Mr W's investment instruction and this made it clear that there may be issues with selling carbon credits. I'm satisfied this is something Options was, or should have been, aware of at the time, and it should have considered this as a significant factor in deciding whether to permit the investment. The fact Mr W might have struggled to realise the investment should have caused it significant concern – especially as the majority of the funds in Mr W's SIPP were invested in carbon credits. It also isn't clear how Mr W would be able to take benefits from his pension if the investment was difficult to value or realise.

At the point Mr W's investment was arranged, Options would have been aware that he was investing almost all his pension fund in an unregulated, esoteric and high-risk investment which would likely be difficult to sell. I acknowledge that Options wouldn't be aware whether the amount being invested in carbon credits was the entirety of Mr W's pension savings because he may have had other benefits elsewhere. But it was an indicator of the kind of risk to which Mr W was being exposed. These were 'red flags', so to speak, which should have caused Options significant concern as to whether the investment was appropriate to be held in members' SIPPs.

It could be argued that not being able to independently value an investment isn't indicative of its performance or legitimacy. But the investment was predicated on the carbon credits being sold for more than what was paid for them. And so, I think there should have been concerns if it wasn't possible to independently value them. And if an independent valuation had been possible, it's now been highlighted that voluntary carbon credits were often sold at *"significantly inflated prices"* so it seems likely this would then have been identified. This would effectively render the investment fundamentally unviable.

Options should also have been aware that investors would be unlikely to benefit, in terms of the investment itself, from any regulatory protections (the investment being unregulated) such as access to the FSCS or the Financial Ombudsman Service.

In the circumstances, I'm satisfied there were a number of concerns Options should have identified. It should have known there was a significant risk of consumer detriment, and it shouldn't have permitted the investment to be held in its SIPPs. When doing so, I think it didn't act with due skill, care and diligence or treat Mr W fairly.

I reiterate that I'm not making a finding that Options should have assessed the suitability of the carbon credits 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.

I'm satisfied Options could have identified the concerns I've mentioned, and ought to have drawn the conclusions I've set out, based on what was known at the time. Options ought to have identified significant concerns in relation to the investment, which ought to have led it to conclude it shouldn't accept the carbon credits investment into its SIPPs before it accepted Mr W's instruction to invest. It ought to have identified that there was a high risk of consumer detriment. And it's the failure of Options' due diligence that's resulted in Mr W being treated unfairly and unreasonably.

I've decided that Options didn't meet its regulatory obligations or the standards of good practice at the time, and it allowed Mr W's pension fund to be put at significant risk as a result. So, I think it's fair and reasonable to conclude that Options didn't act with due skill, care and diligence, and didn't treat Mr W fairly, by accepting the carbon credits investment in his SIPP.

Options' due diligence on HCA

Options had a duty to conduct due diligence and give thought to whether to accept introductions from HCA. That's consistent with the Principles and the regulatory publications set out earlier in this decision.

However, given what I've said about Options' due diligence on the carbon credits investment and my conclusion that it failed to comply with its regulatory obligations and good industry practice at the relevant time, I don't think it's necessary for me to also consider Options due diligence on HCA. I'm satisfied that Options wasn't treating Mr W fairly or reasonably when it accepted the carbon credits investment into its SIPPs, so I've not gone on to consider the due diligence it should have carried out on HCA before accepting Mr W's business and whether this was sufficient to meet its regulatory obligations. And I make no findings about this issue.

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

I need to consider the lack of investment instruction in Mr W's initial SIPP application of June 2012. Further, Options has argued that it was reasonable to proceed in light of the indemnity, and that it was obliged to proceed in accordance with COBS 11.2.19 R.

No investment instruction in initial SIPP application

As I set out in the background to this decision, there was no investment instruction given in Mr W's initial SIPP application. Options has also explained that Mr W was the first HCA introduced member that instructed it to purchase carbon credits investments. It appears that Options wasn't notified of Mr W's specific investment instruction until 10 August 2012.

So, I accept that at the time Options received Mr W's initial SIPP application in June 2012, there may, on the face of it, have seemed no reason to reject it, given it had been introduced by a regulated adviser and no details of the selected investment had been provided. However, for the reasons given above, I do think Options should have rejected Mr W's subsequent instruction to invest in carbon credits.

We've also seen a number of similar complaints from consumers advised by HCA and others to transfer their pensions to Options SIPPs and invest in carbon credits. And I think that Options was more likely than not aware that Mr W's pension was being opened with a view to investing in carbon credits.

However, I've decided that given the lack of evidence in this regard for Mr W's complaint, in the redress I've provided for below, I've set out that the comparison should be done with a benchmark instead of the notional value of Mr W's previous scheme. While I can't say for certain how Mr W would have invested had Options rejected his instruction to invest in carbon credits, I'm satisfied that the benchmark is a fair comparator for the return Mr W could have achieved using a different investment strategy more closely aligned to his attitude to risk and capacity for loss.

COBS 11.2.19 R

Options has made the point that COBS 11.2.19 R obliged it to execute investment instructions. It effectively says that once the SIPP has been established, it's required to execute the specific instructions of its client.

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."*

I therefore don't think that Options' argument on this point is relevant to its obligations under the Principles to decide whether or not to execute the instruction to make the carbon credits investment i.e. to proceed with the instruction.

The indemnity

In my view, for the reasons given, Options should have refused to allow Mr W's investment in carbon credits. So, things shouldn't have progressed beyond that. Had Options acted in accordance with its regulatory obligations and best practice, it's fair and reasonable in my view to conclude that it shouldn't have permitted the investment.

Further, just having Mr W sign declarations or indemnities wasn't, in my view, an effective way for Options, acting fairly and reasonably, to meet its regulatory obligations to treat him fairly, given the concerns Options ought to have had about the investment.

Options knew that Mr W had signed forms intended, amongst other things, to indemnify it 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, allowing the carbon credits investment to be held within its SIPPs would put investors at significant risk wasn't the fair and reasonable thing to do. The fair and reasonable thing to do would have been to refuse to accept the investments in its SIPPs at all.

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.

Ultimately, I'm satisfied that Mr W's investment in carbon credits shouldn't have been permitted and so the opportunity to proceed in reliance on an indemnity shouldn't have arisen at all.

I share the same view about Mr W signing the member declaration which included a statement that he hadn't received an inducement, when he's told us he did receive one. Had Options acted as it should have, Mr W's application would never have reached the point of him having to sign this document.

Is it fair to ask Options to compensate Mr W?

The involvement of other parties

In this decision I'm considering Mr W's complaint about Options. However, I accept it's likely other parties were involved in the transaction complained about, including HCA and VJ.

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).

As set out above, 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 the regulatory obligations, good industry practice and to treat Mr W fairly. The starting point, therefore, is that it would be fair to require Options to pay Mr W compensation for the loss he's suffered as a result of its failings.

But I've carefully considered if there's any reason why it wouldn't be fair to ask Options to compensate Mr W for his loss, including whether it would be fair to hold another party liable in full or in part. While I accept that it may be the case that another party might have some responsibility for initiating the course of action that has led to Mr W's loss, I'm satisfied it's also the case that if Options had complied with its own distinct regulatory obligations as a SIPP operator, the investment in carbon credits wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

Consequently, it's my view that it's appropriate and fair in the circumstances for Options to compensate Mr W to the full extent of the financial losses he's suffered due to its failings. And, taking into account the combination of factors I've set out above, I'm not persuaded that it would be appropriate or fair in the circumstances to reduce the compensation amount that Options is liable to pay to Mr W.

Mr W taking responsibility for his own investment decisions

Options has said that Mr W ought to bear some responsibility for his own actions and the losses that followed. And in *Adams*, the judge held that in construing the SIPP operator's regulatory obligations, regard should be had to 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. But having done so, I'm satisfied that it wouldn't be fair nor reasonable to say Mr W's actions mean he should bear the loss arising as a result of Options' failings.

HCA was a regulated firm with the requisite permissions to advise on the transactions this complaint concerns. I'm satisfied that in his dealings with it, Mr W trusted it to act in his best interests.

Mr W also used the services of a regulated personal pension provider in Options. And in my view, if Options had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted carbon credits investments into its SIPPs at all. That should have been the end of the matter – if that had happened, I'm satisfied Mr W's investment in carbon credits wouldn't have been made in the first place.

I've carefully considered what Options has said about Mr W being made aware that the investment was high risk. But I'm not satisfied that Mr W understood the risks of the carbon credits investment. Indeed, Mr W recalls being told the returns were *"guaranteed"*.

But even if Mr W had received an explanation of the risks involved with the investment, for the reasons already given, I'm satisfied that if Options had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted the investment into his SIPP. So, the loss he's suffered could have been avoided in any event.

Overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair and reasonable to say Options should compensate Mr W for the loss he's 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 effected.

Had Options declined to accept Mr W's investment in carbon credits, would the transactions complained about still have been effected elsewhere?

Options has said that if it had refused to permit the investment in carbon credits, Mr W would have still made the same investment elsewhere, given his desire to make green investments. However, I've not seen anything that suggests Mr W had a strong desire to make green investments. It appears that the idea of investing in carbon credits was put to him by HCA and/or VJ.

I also don't think it's fair and reasonable to say that Options shouldn't compensate Mr W for his loss on the basis of speculation that another SIPP provider 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 application to hold carbon credits in its SIPP.

In *Adams v Options SIPP*, the judge found that Mr Adams would have proceeded with the transaction regardless. HHJ Dight says (at paragraph 32):

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

I've considered this point carefully, as Mr W has told us he was paid an incentive payment of £4,019. However, I'm not satisfied that Mr W proceeded knowing that the investment he was making was high risk, and that he was determined to move forward with the transaction to take advantage of the cash incentive.

There is nothing to show Mr W genuinely understood the risks involved. Mr W recalls being told the returns from the carbon credits investment were *"guaranteed"* and has explained that he didn't fully understand the risks involved.

I'm also not persuaded that Mr W was determined to move forward with the transactions in order to take advantage of the cash incentive. Although Mr W received an incentive payment, I've not seen any evidence to suggest he had an overriding need for the cash which would have outweighed other considerations – such as the tax implications or the potential impact on his pension of taking this sum.

It's possible that the lure of £4,019 would have caused Mr W to invest in carbon credits whatever Options did, but I think that's unlikely. I think Mr W decided to accept the incentive payment as he was persuaded by HCA his pension would perform better with the investment it was promoting. If he'd understood the circumstances giving rise to a significant risk of detriment, I don't think he'd have exposed his pension fund to this risk just to receive the capital sum. On balance, I'm satisfied that Mr W wasn't so eager to complete the transactions in order to receive the cash incentive that he'd have gone ahead if Options had declined his investment instruction and explained the reasons for doing so.

Therefore, in my opinion, Mr W's case is very different from that of Mr Adams. And having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that had Options refused to accept Mr W's instruction to invest in carbon credits and explained to him its reasons for doing so, the transactions this complaint concerns wouldn't have gone ahead.

In conclusion

Having carefully considered all the circumstances, I'm satisfied it's fair and reasonable to conclude that had Options refused to permit the carbon credits investment in its SIPPs then Mr W wouldn't have made the investment he did. So, Options should put him back in the position he would have been in if it hadn't accepted his investment instruction.

I've carefully considered causation, contributory negligence, apportionment of damages and DISP 3.6.4 R. But in the circumstances, I'm still satisfied it's fair for Options to compensate Mr W for the full loss he's suffered from his investment in carbon credits.

As I explained above, the evidence in this complaint is lacking so I haven't concluded that Options should have rejected Mr W's initial application for the SIPP, as at that time it wasn't clear, on the face of the documents, that he wished to invest in carbon credits. But I do think Options should have rejected Mr W's subsequent instruction to invest in carbon credits. So, in the redress I've provided for below, I've set out that the comparison should be done with a benchmark instead of the notional value of Mr W's previous scheme.

Putting things right

I consider that Options failed to comply with its own regulatory obligations and didn't put a stop to the investment in carbon credits. 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 wouldn't have invested in in the manner he did.

I take the view that Mr W would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable under the circumstances.

In light of the above, Options should:

- Calculate the notional transfer value of Mr W's pension plan.
- Obtain the actual transfer value of Mr W's SIPP, including any outstanding charges.

- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).

- Pay an amount into Mr W's SIPP so as to increase the transfer value to equal the notional value established. This payment should take account of any available tax relief and the effect of charges.

- If the SIPP needs to be kept open only because of the illiquid investment/s and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

- If Mr W has paid any fees or charges from funds outside of his pension arrangements, Options should also refund these to Mr W. Interest at a rate of 8% simple per year from date of payment to date of refund should be added to this.

- Pay Mr W £500 to compensate him for the distress and inconvenience he's been caused by Options' failings.

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

Treatment of the illiquid assets held within the SIPP

I think it would be best if any illiquid assets held could be removed from the SIPP. Mr W would then be able to close the SIPP, if he wishes. That would then allow him to stop paying the fees for the SIPP. The valuation of the illiquid investment/s may prove difficult, as there is no market for it. For calculating compensation, Options should establish an amount it's willing to accept for the investment/s as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investment/s.

If Options is able to purchase the illiquid investment/s then the price paid to purchase the holding/s will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding/s).

If Options is unable, or if there are any difficulties in buying Mr W's illiquid investment/s, it should give the holding/s a nil value for the purposes of calculating compensation. In this instance Options may ask Mr W to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the relevant holding/s. That undertaking should allow for the effect of any tax and charges on the amount Mr W may receive from the investment/s and any eventual sums he would be able to access from the SIPP. The undertaking should also not be enforceable until Mr W has been compensated fully for his entire loss, including any element that may exceed our award limit. Options must meet the reasonable cost of drawing up, and Mr W taking advice on, any such undertaking.

Calculate the loss Mr W has suffered as a result of making the investment/s

Options should arrive at a notional valuation by assuming the monies transferred into his SIPP 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.

I acknowledge that Mr W has received a sum of compensation from the FSCS, and that he has had the use of the monies received from the FSCS. The terms of Mr W's reassignment of rights require him to return compensation paid by the FSCS in the event this complaint is successful, and I understand that the FSCS will ordinarily enforce the terms of the assignment if required. So, I think it's fair and reasonable to make no *permanent* deduction in the redress calculation for the compensation Mr W received from the FSCS. And it will be for Mr W to make the arrangements to make any repayments he needs to make to the FSCS. However, I do think it's fair and reasonable to allow for a *temporary* notional deduction equivalent to the payment(s) Mr W actually received from the FSCS for a period of the calculation, so that the payment(s) ceases to accrue any return in the calculation during that period.

As such, if it wishes, Options may make an allowance in the form of a notional deduction equivalent to the payment(s) Mr W received from the FSCS following the claim about HCA, and on the date the payment(s) was actually paid to Mr W. Where such a deduction is made there must also be a corresponding notional addition, at the date of my final decision, equivalent to all FSCS payment(s) notionally deducted earlier in the calculation.

Any contributions or withdrawals Mr W has made will need to be taken into account.

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 £4,019 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.

The notional value of Mr W's pension plan less the current value of the SIPP (as at date of calculation) is Mr W's loss.

Pay an amount into Mr W's SIPP so that the transfer value is increased by the loss calculated above

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr W's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

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

SIPP fees

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

Interest

The compensation resulting from this loss assessment must be paid to Mr W or into his SIPP within 28 days of the date Options receives notification of his acceptance of my final decision. The calculation should be carried out as at the date of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation is not paid within 28 days.

Distress and inconvenience

The loss of a significant portion of his pension benefits will naturally have caused Mr W much worry and upset, especially as the loss occurred as he was approaching retirement. I consider that a payment of £500 is appropriate to compensate him for that.

Award limit

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, 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 well within our award limit, and the compensation may be nowhere near £160,000, 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 this 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 £160,000 (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 £160,000, I also recommend Options UK Personal Pensions LLP pays Mr W the balance plus any interest on the balance.

This 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 Mr W could accept my final decision and go to court to ask for the balance. Mr W 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 Mr W the award set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 April 2025.

Alex Salton
Ombudsman