DRN-5406487

The complaint

Mr M's complaint is that Pathlines Pensions UK Limited (previously London & Colonial Services Limited) ('Pathlines') failed to carry out adequate due diligence on the proposed carbon credit investment for his SIPP. He says the investment was unsuitable for his SIPP as it was unregulated, high risk, illiquid and has now failed.

Mr M is represented by a professional third party, but for ease I shall largely refer to Mr M.

What happened

The entities involved

Pathlines Pensions UK Limited

Pathlines is a SIPP provider and administrator, regulated at the time of these events by the Financial Services Authority ('FSA'), now the Financial Conduct Authority ('FCA'). Its authorisations, in relation to SIPPs, were that it could arrange (bring about) deals in investments, deal in investments as principal, establish, operate and wind-up a pension scheme, and make arrangements with a view to transactions in investments.

The Financial Advisers

Mr M's SIPP application form appointed a firm, I'll call business S, as his financial adviser. Business S was, at the time, regulated by the financial services regulator.

After Mr M's SIPP was set up a different regulated firm, business H, was appointed as the servicing agent on the policy. Mr M then made the investment to be held within his SIPP.

Carbon Neutral Investments Limited (CNI) – Carbon Credits

Based in the UK, CNI provided clearing and settlement for transactions involving VER Spot 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 (tC02e) 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.

What happened

Mr M says he was contacted about his pension by someone called 'Jeff' and met with him at his home. Mr M recalls that he was told *"the current plan I was on did not benefit me and he will double my benefit".* He also said 'Jeff' *"was very convincing and had already convinced* *my colleagues to switch."* And that he'd *"received no information on how my pension was going to be invested".*

Mr M says he received a one-off lump sum of £10,000 when he transferred. It appears from what he has told this service that he did not inform Pathlines about the payment at the time.

Business S forwarded Mr M's SIPP application form to Pathlines on 24 February 2012. Mr M had signed the application form on 17 February 2012.

The form confirmed Mr M's financial adviser as Business S and that advice had been given at the point of sale to Mr M. Business S would receive 3% of the amount transferred and thereafter 1% would be paid annually.

Section five of the application enabled the applicant to indicate whether they intend to manage their pension fund themselves, through their financial adviser or appoint an investment manager. In Mr M's case none of the options were selected.

The form noted that, unless otherwise instructed, all cash received will be held in a designated bank account.

The form confirmed Mr M wanted to transfer an employer's pension arrangement to his SIPP. This pension had an estimated transfer value of £88,000.

Mr M's completed SIPP application form was received by Pathlines on 27 February 2012. An acknowledgement was issued to him and to Business S on the same day. In the letter to Business S, Pathlines said that no investment instruction had been received and that when *"the basis for investing the fund has been agreed, please send us the necessary application and/or account opening forms."*

Mr M's workplace pension was transferred to Pathlines in March 2012. A payment of £2,638 recorded as IFA Fee was deducted from Mr M's pension in March 2012 and paid to Business S.

Pathlines have told us that also in March 2012, Business H provided a letter of authority from Mr M in which he requested a change of financial adviser from Business S.

Mr M signed an undated, pre-printed letter apparently intended for Pathlines although addressed only to 'Danielle'. The body of that letter included the following:

> *"I have recently taken advice regarding the investment strategy on my SIPP following my recent pension transfer, it has been advised that I do not invest in carbon credits because of the liquidity issues in the future at any significant level above 5-9%. I have been notified of the potential risks with this type of asset / investment which led* [business H] *to recommend that I do not invest in Carbon.* [Business H] *has advised that* [Pathlines] *permit Carbon Credit Investment and that he does not wish to advise on this asset when respecting his investment process.*
> *…*
>
> *At this time I wish to be wholly responsible for my investment decisions and invest into Carbon Credits for the amount detailed within the attached contract note in Carbon Neutral Investments.*
>
> [Business H] *has strongly recommended against this investment at the current time due to his thoughts on liquidity in the future and the extremely high risk associated with this type of Alternative Investment.*

I respect [Business H's] *thoughts towards and advice towards this and understand he is informing me that this would be against his advice however, Ive* (sic) *strong feelings that this investment will grow considerably in the future and wish to against* [Business H's] *advice at this moment in time and invest the majority of my portfolio into Carbon Credits through CNI. I believe my knowledge of investment markets and alternatives put me in a strong enough position to make my own decisions at this time. I would class myself as a sophisticated investor.*

Please take this email as my instruction that I wish to proceed against [Business H's] *professional advice and be legally responsible in its entirety for my investment decision.* [Business H] *have made me aware of the consequences of alternative investments not being covered by the Financial Ombudsman Service or the Financial Services Compensation 'Scheme and on this basis I still wish to proceed. I fully accept responsibility for my instruction.*

I exclude [Business H] *from any responsibility in the future for my investment decisions if it all goes wrong with investing in Carbon Credits.*

I trust this concludes my investment instruction to you, please expose my funds to the CNI credit as soon as possible as per the attached whilst retaining an element in cash for future SIPP fees.

Please send notification to [Business H] *as he has in no way been party to my own investment decision on this occasion and I feel he should be made aware as my Financial Adviser to continue servicing my Portfolio in the future.* [Business H] *at this stage has only advised me that I should not do what Im (*sic) *asking* [Pathlines] *to do but the decision is mine so please proceed."*

A contract note dated 29 March 2012 was provided by CNI. This refers to the purchase of 12,461 carbon credits at £6.50 each. The contract note was signed by Mr M on 2 April 2012.

Pathlines also completed a 'clearing and supply agreement' with CNI on 11 April 2012. Pathline's file demonstrates that Mr M's SIPP purchased SPOT VCS VER from Carbon Neutral Investments for a price of about £81,000 on 11 April 2012.

A further IFA fee of about £840 was made in April 2013. The SIPP statement shows this second payment was made to Business H.

Pathlines sent Mr M a SIPP statement and valuation on 28 July 2014. The cover letter informed him that the Carbon Neutral Investment was illiquid, and no income was being produced and that his SIPP only had a small balance of cash remaining. The letter went on to say this meant the pension could not pay any pension income should he wish to do so, and the annual charges and any adviser fees could not be paid either. The value of Mr M's Carbon Neutral Investment was shown as almost £81,000. A copy of the document was sent to Mr M's adviser, Business H, at the time.

Pathlines provided Mr M with an annual pension statement on 17 March 2015. The cover letter said:

"You will notice from your valuation provided overleaf that we have valued your Carbon Neutral Investment at £0. This simply represents a value that we consider appropriate to attribute to the asset bearing in mind that there is no readily available market on which such an asset is traded and no immediate means of determining a sale value."

And essentially the same information was provided in Mr M's March 2016 pension valuation.

On 30 June 2016, Pathlines wrote to Mr M saying:

> *"As you will of course be aware, the investment that you chose to make in Carbon Credits has unfortunately encountered serious trading difficulties. In the absence of any recognised market there appears to be no reference from which to establish a value or even any market or means to achieve a sale.*
>
> *For this reason the investment in Carbon Credits has to be regarded for the purposes of your SIPP as having no current value and there appear to be no realistic prospects for a sale in the foreseeable future. In the light of this, together with the fact that no other investments are held for your SIPP, your SIPP fund itself cannot now be considered to have any value apart from the relatively small amount of cash held in your SIPP account.*
>
> *In the circumstances, we shall now regard your SIPP arrangement as terminated and write off our outstanding fees that have accrued to date. However, if you advise us within the next 30 days that you would like to make some further contributions in order to make other investments we shall be happy to reinstate your arrangement without any initial charge and only our normal ongoing fees will thereafter apply in accordance with our published fee basis.*
>
> *With regard to the investment in Carbon Credits, while it is considered to have no current value with no realistic prospect of any recovery, if you wish, we will transfer the ownership to you so that you will have the benefit in the event that there should eventually be a recovery of some value."*

The letter went on to explain how the investment ownership could be transferred.

Mr M's SIPP was closed in July 2016, but it is not clear what happened to the carbon credit investment held within the SIPP.

Mr M's complaints

We asked Mr M what had triggered his concerns about his SIPP, and when. Mr M told us that he was concerned about *'losing money'*. He cannot remember when this occurred, but he approached his former representative and a claim was submitted to the Financial Services Compensation Scheme in April 2016.

Mr M also made a complaint through this service. And Pathlines was contacted both in 2016 and 2017 for information in connection with the claims. Ultimately Mr M received compensation from the FSCS in respect of both financial advice companies in July 2018 and December 2019. In each case Mr M was told that his losses exceeded the maximum amount the FSCS could award which was £50,000.

As a result, Mr M complained to Pathlines, via a representative, in a letter dated 21 January 2020. That letter said:

- Pathlines didn't carry out sufficient due diligence on the investment made within Mr M's SIPP.
- Mr M had invested in carbon credits which were unregulated and high risk. The carbon credits were not suited to Mr M's low risk profile nor were they suitable for a SIPP.

- The carbon credit investment has caused Mr M financial loss.
- Pathlines failed to meet its obligations to record and review the type and size of investment and to identify anomalous investments.
- Pathlines failed to request suitability reports.
- Charges and fees associated with the investments have been unnecessary.
- The investments were mis-sold to Mr M.

Pathlines responded to the complaint. Its final response letter, dated 1 April 2020, did not uphold the complaint. In summary it said:

- Mr M's completed SIPP application was received on 27 February 2012. This confirmed Mr M had appointed business S as his financial adviser; that he intended to transfer his pension into a SIPP following regulated financial advice he had received from business S and that he had decided *before* approaching Pathlines that he wanted to invest his SIPP fund into Carbon Credits following advice he'd received from business S.
- The investment application form completed by Mr M included a signed declaration that Mr M had *"read, and that he agreed to, the risks of investing into the regulated investment like Carbon Credits."*
- Mr M's annual statement, of 17 March 2015, showed his carbon credit investment was valued at £nil.
- Mr M hadn't complained until his letter of 21 January 2020.
- Mr M's complaint is time barred.
    - The SIPP was established, transfers were received, and the investment made over six years ago.
    - Mr M was put on notice to raise concerns about the loss of value and lack of liquidity with his investment more than three years before his complaint.

Our initial investigation

Mr M's complaint was referred to this service in July 2020.

Pathlines told us we couldn't consider Mr M's complaint. In making his claims to the FSCS, Mr M had transferred his legal rights to the FSCS in respect of the claims they'd compensated him for.

And in any case, Mr M's complaint had been brought outside the time limits that permit our service to investigate a complaint. In addition to restating the points it had already made, Pathlines told this service that Mr M had contacted the FSCS seeking compensation in 2016 and logged a complaint with this service in 2017. Therefore, he had been put on notice in 2015, at the latest, '*and raised his concern for the loss of his investment via the FSCS and through a complaint with the FOS in respect of a third party.'*

Mr M received a re-assignment of his legal rights to claim against Pathlines from the FSCS in October 2022.

An investigator reviewed the complaint and concluded that it was a complaint we could consider and should be upheld. In summary, he said:

- Mr M's complaint had been made within our time limits. Although the complaint was made more than six years after the events being complained about, he believed

Mr M’s complaint had been made within our three-year time limit.

- Then in terms of the actual complaint. He considered the regulator’s Principles for Businesses were relevant to the complaint as were specific legal judgments. He also considered regulatory publications as evidence of what he considered to be good industry practice at the time.
- He accepted that Pathlines was not obliged, or able, to provide Mr M with advice. And that it likely took comfort from the presence of a regulated adviser.
- But he thought that Pathlines hadn’t carried out enough due diligence on the Carbon Credits Mr M’s SIPP bought. Had sufficient due diligence been carried out, it’s likely Pathlines would have declined to accept both the SIPP application and the investment.

He then set out how he thought Pathlines should put things right for Mr M.

Pathlines did not initially respond to the investigator. Mr M’s representative had acknowledged receipt of the investigator’s opinion but hadn’t replied to the investigator substantively.

Pathlines then sent a lengthy response setting out why it did not agree with the investigator’s assessment.

Pathlines maintained that Mr M’s complaint had been made too late for our service to consider and that it did not consent to our investigation of the complaint. In addition to the comments it had already made it said:

- Mr M’s SIPP application was received on 27 February 2012. The transfer payment was received by Pathlines on 19 March 2012. The investment instruction was received and the carbon credit investment made in April 2012.
- Pathlines informed Mr M in his July 2014 valuation report that the Carbon Neutral investment was illiquid.
- In March 2015, Pathlines informed Mr M the Carbon Neutral Investment was valued at £0.
- In June 2016, Pathlines wrote to Mr M advising him it regarded his SIPP arrangement as terminated.
- In August 2016, Pathlines received notification from the FSCS regarding Mr M’s complaint about business H.
- Pathlines received Mr M’s complaint on 24 January 2020.

The events Mr M has complained about were made more than six years before he did so. And Mr M ought to have known he had cause for complaint from Pathlines’ correspondence with him in 2014 or 2015 and at the latest by 30 June 2016 when his SIPP was terminated. The rules do not require that Mr M need to know what had gone wrong or who was to blame. Even if Mr M did not know to whom the complaint should be directed, it’s reasonable he would have begun to investigate this matter. Therefore, his complaint should have been made to Pathlines no later than 30 June 2019.

Pathlines disagrees with the investigator’s reasoning based on the information obtained from a third party’s website. Mr M was by December 2017 already aware of his losses and had begun to investigate what could be done about it. He had contacted his first representative and had already submitted a claim to the FSCS. His complaint is out of time.

Notwithstanding this, Pathlines also commented on the investigator's view of the merits of Mr M's complaint. It said:

- Mr M had signed declarations noting that Pathlines acts on an execution only basis. Pathlines did not provide advice and were reliant on the instructions provided by Mr M (and any appointed servicing agent).
- Mr M had provided instructions to make the investment within his SIPP. And in doing so he made it clear that he:
    - had been advised *not* to invest in CNI by Business H but still wanted to proceed.
    - was aware of the high-risk nature of the investment.
    - classed himself as a sophisticated investor.
    - had a good understanding of the markets and expected his chosen investment to perform accordingly.
    - did not hold Pathlines (or Business H) liable for any failings in the investment.
- By contrast, in his 2020 complaint letter, Mr M is described as a non-sophisticated and low risk investor.
- Under COBS 11.2, had Pathlines not followed Mr M's instructions it would have been in breach of the rule. Mr M would have sought an alternative pension provider and potentially raised a complaint against Pathlines for not accepting his instruction. Had it not followed Mr M's instructions, Pathlines would not have been able to tell Mr M why.
- Carbon Credits were a widely accepted, alternative investment at the time. Had Pathlines carried out a higher level of due diligence than it was required to do there would have been no evidence to suggest it should not have accepted Mr M's instructions.
- The investigator hasn't explained how it reached a different conclusion to the one reached by the High Court in *Adams v Options SIPP UK LLP [2020] EWHC 1229* despite the facts in that case and in Mr M's complaint being broadly similar.
    - Mr Adams conceded he would have proceeded with the application regardless.
    - Mr Adams' pension provider didn't know his attitude to investment risk and was under no obligation to do so. Even if the investment was unsuitable for him that was not obvious to the provider. The same is true in this case.
    - Mr M's transaction involved a specified investment for the purposes of the Regulated Activities Order and a financial adviser regulated by the then regulator had provided advice on the transaction. There were no red flags and no reason for Pathlines to refuse to accept the investment.
    - Mr M had received advice from regulated firms so Pathlines had not accepted business from an unregulated introducer in his case.
- It does not agree there is justification to use the Principles as the basis for finding against Pathlines and the regulatory publications referred to are of no bearing. Regulatory publications cannot alter the meaning or scope of the obligations imposed by the Principles. Therefore, if Pathlines was not obligated by the Principles to consider and act on the suitability of the SIPP or underlying investment the publications cannot impose such a duty.
- The only publication that could have any bearing is the 2009 thematic review which

doesn't provide (or claim to provide) guidance. The review does little more than highlight examples of 'good practice'. And many of the matters relate to firms providing advisory services not execution only services like Pathlines.

- Pathlines has never had permission to carry out the regulated activity of advising on investments. It has never provided advice as to whether a consumer should open or transfer into a SIPP or about the underlying investments.
- There was no obligation on Pathlines to complete extensive due diligence on the investment. If Pathlines had the obligations set out by the Investigator it would have been required to engage in the activity of advising on investments in contravention of its permissions.
- Pathlines' obligations were framed with reference to the contractual relationship between the parties. And Mr M was aware at all times that Pathlines operated on an execution only basis.
- At the time of the transaction there was no requirement to take advice on a pension transfer (or pension switch).
- It isn't reasonable to conclude that Pathlines should have completed due diligence in respect of the commercial viability of the investment or how returns would be generated. That fell to Mr M's appointed financial adviser.
- Determining suitability of the investment would have required a full assessment of the investment itself and the investor's circumstances. Neither of which was requested or desired from Pathlines by Mr M nor would have been possible under Pathlines' permissions.
- There has never been a restriction on SIPP providers accepting shares. The most likely conclusion is that had Pathlines rejected the investment the transaction would have gone ahead with another provider. Mr M was determined to invest in Carbon Credits.
- It's accepted that Mr M received transfer advice from Business S. But based on the information presented it appears the investment decision was made after the transfer into the SIPP and change of servicing agent to Business H. Any complaint or claim in respect of the merits or viability of the investment would be the responsibility of the financial adviser not the SIPP provider. The FSCS has found Mr M's financial adviser responsible for the consumer's losses and it isn't fair or reasonable to hold Pathlines responsible for that advice.

No further submissions were provided by either party.

We requested further information from Pathlines and from Mr M.

Pathlines confirmed it had received a letter of authority in March 2012 (signed on 23 March 2012) in which Mr M changed the nominated adviser from business S to business H. Pathlines acknowledged the change to all three parties in writing on 28 March 2012.

Pathlines confirmed they'd received 70 client introductions between September 2011 and June 2013 from Business S. Mr M's application was the 27th. And in response to 'How many of Business S' clients subsequently changed their adviser of record to Business H?' Pathlines said out of a total of 70 clients a sample of 20 selected changed their IFA from Business S to Business H and *'It would be safe to assume that most if not all members changed their IFA to* [Business H]'.
In other correspondence with this service Pathlines has confirmed that of all 70 applications 76% of clients introduced by Business S changed adviser to Business H within six months of

the transfer into the SIPP. And the same percentage (76%) invested in either Carbon Credits or another unregulated investment.

Pathlines confirmed Mr M's SIPP was closed in July 2016 but the Carbon Credit investment remains illiquid and has a £nil value.

Mr M said that he received a lump sum from the SIPP which he used to clear debts. He contacted a representative concerned with his losses before his claim was made to the FSCS.

Mr M also clarified he was approached by Business S who recommended the transfer to Pathlines in order to get better returns. And Business H promoted and facilitated the Carbon Credit investment.

In advance of this final decision, I issued a provisional decision setting out why I'd found Mr M's complaint was one this service could consider, and that it should be upheld on its merits. I also set out the basis on which the complaint should be resolved.

Neither party responded to my provisional decision.

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.

Our jurisdiction to investigate Mr M's complaint

Pathlines didn't consent to our consideration of Mr M's complaint on the grounds that he made it too late based on our six and three-year time limits. In my provisional decision I set out that Mr M's complaint had been made more than six years after the events about which he complained. However, it had been made within three years of when he should reasonably have known something was wrong, he had suffered a loss and could complain to Pathlines about it. Therefore, for the reasons I gave in my provisional decision, the complaint has been made in time and we can consider its merits.

Merits of the complaint

As the parties didn't respond to my provisional decision, I see no reason to change the findings that I reached in that decision. While I've considered all the points made by the parties, I have not responded to them all below but have concentrated on what I consider to be the main issues.

When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, Regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

Based on Mr M's complaint, what I'll be looking at is whether Pathlines took reasonable care, acted with due diligence and treated Mr M fairly, in accordance with his best interests, and what I think's fair and reasonable in light of that. And I think the key issues in Mr M's complaint are whether Pathlines carried out sufficient due diligence on the Carbon Credits investment, and whether it was fair and reasonable for Pathlines to have accepted Mr M's SIPP application in the first place.

Relevant considerations

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

In my view, 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 1.1.2G). Principles 2, 3 and 6 provide:

> *"Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*
>
> *Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*
>
> *Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly."*

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

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

And at paragraph 77 of BBA Ouseley J said:

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

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

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

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

The BBSAL judgment also considers section 228 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 am therefore satisfied that the Principles are a relevant consideration that I must take into account when deciding this complaint.

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 account of both these judgments when making this decision on Mr M's case.

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

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

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 did not so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

I note that 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 2.1.1R. HHJ Dight said at paragraph 148:

"In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the

> *submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction."*

In my view there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr M's complaint. The breaches alleged by Mr Adams were summarised in paragraph 120 of the Court of Appeal judgment. In particular, as HHJ Dight noted, he was not asked to consider the question of due diligence before Options SIPP agreed to accept the store pods investment into its SIPP.

The facts of this case are also different, and I need to construe the duties Pathlines owed to Mr M under COBS 2.1.1R in light of the specific facts of Mr M's case.

To confirm, I have considered COBS 2.1.1R - alongside the remainder of the relevant considerations, and within the factual context of Mr M's case, including Pathlines' role in the transaction.

However, I think it is important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And, in doing that, I am required to take into account relevant considerations which include:

- law and regulations,
- Regulators' rules, guidance and standards,
- codes of practice,
- and, where appropriate, what I consider to have been good industry practice at the relevant time.

This is a clear and relevant point of difference between this complaint and the judgments in *Adams v Options SIPP*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I also want to emphasise that I don't say that Pathlines was under any obligation to advise Mr M on the SIPP and/or the underlying investments under the circumstances. Deciding to not accept an application because it was being set up to invest in a product that Pathlines considered unsuitable for its SIPP, isn't the same thing as advising Mr M on the merits of the SIPP and/or the underlying investments.

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

<u>The regulatory publications</u>

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

- The 2009 and 2012 Thematic Review reports.
- The October 2013 Finalised SIPP Operator Guidance.
- The July 2014 "*Dear CEO*" letter.

I've considered the relevance of these publications. And I've set out material parts of the publications here, although I've considered them in their entirety.

The 2009 Thematic Review Report

The 2009 report included the following statement:

> "*We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its 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 unauthorised business warnings.*
> - *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*
> - *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*
> - *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*
> - *Identifying instances when prospective members waive their cancellation*

rights and the reasons for this.

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

Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*
- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*
- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from nonregulated introducers"*

In relation to due diligence, the October 2013 Finalised SIPP Operator Guidance said:

*"**Due diligence***

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

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*
- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*
- *having checks which may include, but are not limited to:*
    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*
    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*
- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*
- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*
- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax-relievable investments and non-standard investments that have not been approved by the firm"*

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

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

- correctly establishing and understanding the nature of an investment
- ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation
- ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)
- ensuring that an investment can be independently valued, both at point of purchase and subsequently, 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. These 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 produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take these 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.

At its introduction the 2009 Thematic Review Report says:

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

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

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

I think the Report is also directed at firms like Pathlines acting purely as SIPP operators, rather than just those providing advisory services. The Report says that "*We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses*…" And it's noted prior to the good practice examples quoted above that "*We agree that firms acting purely as SIPP operators are not responsible for the*

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

The remainder of the publications also provide a *reminder* that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I'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 M's SIPP application and investment in Carbon Credits. But like the Ombudsman in the *BBSAL* case, I do not 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 M's complaint, mean that the examples of good practice they provide were not 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 is also clear from the text of the 2009 and 2012 Thematic Review Reports (and the *"Dear CEO"* letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' *understanding* of how the good practice standards shaped what was expected of SIPP operators changed over time, it is clear the standards themselves had not changed.

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

To be clear, I don't say the Principles or the publications obliged Pathlines to ensure the transactions were suitable for Mr M. It's accepted Pathlines wasn't required to give advice to Mr M, 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 these 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 Pathlines that any publications or guidance that post-dated the events subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time (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 and 2012 Reports together with the Principles provide a very clear indication of what Pathlines could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting Mr M's SIPP application.

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

And in determining this complaint, I need to consider whether, in accepting Mr M's SIPP application with the intention of making an investment in Carbon Credits, Pathlines 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 Pathlines should've done to comply with its regulatory obligations and duties.

Submissions have been made about breaches of the Principles not giving rise to any cause of action at law, and breaches of guidance not giving rise to a claim for damages under FSMA. I've carefully considered these but, to be clear, it's not my role to determine whether something that's taken place gives rise to a right to take legal action. I'm deciding what's fair and reasonable in the circumstances of this complaint – and for all the reasons I've set out above I'm satisfied that the Principles and the publications listed above are relevant considerations to that decision.

And, taking account of the factual context of this case, it's my view that in order for Pathlines to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence checks on the Carbon Credits investment *before* accepting Mr M's application to open a SIPP and invest in Carbon Credits.

And the questions I need to consider include whether Pathlines ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers investing in Carbon Credits were being put at significant risk of detriment. And, if so, whether Pathlines should not therefore have accepted Mr M's applications.

The contract between Pathlines and Mr M

Pathlines has said that it provides execution only (i.e. non-advised) SIPP administration services. It said this was clearly set out to Mr M in its product documentation although that isn't clear from the documentation presented to this service. To be clear, I don't say Pathlines should (or could) have given advice to Mr M or otherwise have ensured the suitability of the investment for him. And that isn't the basis on which Mr M's complaint was made: his representative acknowledges Pathlines didn't, and weren't able to, provide advice to Mr M.

So, I've not overlooked or discounted the basis on which Pathlines was appointed. And my decision on what's fair and reasonable in the circumstances of Mr M's case is made with all of this in mind. I've proceeded on the understanding that Pathlines wasn't obliged – and wasn't able – to give advice to Mr M on the suitability of the investment in Carbon Credits that he made. But I don't agree that it couldn't have rejected applications without contravening its regulatory permissions by giving investment advice.

What did Pathlines' obligations mean in practice?

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

In this case, the business Pathlines was conducting was its operation of SIPPs. It's my view that in order for Pathlines to have met its regulatory obligations, (under the Principles and COBS 2.1.1R), when conducting its operation of SIPPs business, Pathlines had to decide whether to accept or reject particular 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 Pathlines 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 Pathlines acted fairly and reasonably in this case.

I think that it's fair and reasonable to expect Pathlines to have looked carefully at the Carbon Credits investment *before* accepting Mr M's application for a SIPP and permitting it to hold the Carbon Credits investment. To be clear, for Pathlines to accept the Carbon Credits investment without carrying out a level of due diligence that was consistent with its regulatory obligations, wouldn't in my view be fair and reasonable or sufficient. And if Pathlines didn't look at an investment in detail, and if such a detailed look would have revealed that the investment might not be secure, might be fraudulent, or that the investment couldn't be independently valued, or that it was impaired, it wouldn't in my view be fair or reasonable to say Pathlines had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

<u>The due diligence carried out by Pathlines on the Carbon Credits investment – and what it should have concluded</u>

Pathlines 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 Regulator's 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 Pathlines understood this to some extent, as Pathlines have said that the Carbon Credits were a specified investment and there were no 'red flags' preventing the investment going ahead. However, we have no other information about what checks Pathlines actually undertook before accepting carbon credits as an investment within their SIPPs.

Previously Pathlines told this service that typical checks it carried out to determine if an investment could be held in a UK registered pension scheme included:

- A search of companies House including the directors and majority shareholders.
- Internet searches of the company, the directors and majority shareholders, including a check of the company's website if applicable.
- Checking the FCA website to see if the regulated had issued any adverse publications.

Pathlines also said it routinely requested product literature before progressing its review into whether the investment could be accepted into its SIPPs.

Overall, I'm not satisfied that Pathlines undertook sufficient due diligence on the Carbon Credits investment before it decided to accept it into its SIPP. So my finding is that Pathlines didn't meet its regulatory obligations and didn't act fairly and reasonably in its dealings with Mr M, by not performing sufficient due diligence checks on the Carbon Credits investment before deciding to accept it into Mr M's SIPP.

What should Pathlines have done?

Taking everything into account, I'm satisfied that Pathlines 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.

In August 2011, before Mr M's application, the FSA issued a warning about individuals investing in Carbon Credits. 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. It strongly recommended consumers seek advice from FSA-authorised financial advisers before getting involved in the Carbon Credit market. And that:

> *"It is not often made clear to investors that this involves trading on over-the-counter markets which require experience and skill. You may lose money or not be able to sell 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."*

I think it's fair to say 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 also note that amongst some internal emails Pathlines have sent to us an email dated 27 December 2012 – after Mr M's investment – said:

> *"…it is not often made clear to investors that this involves trading on over-the-counter (OTC) markets which require experience and skill. You may lose money or not be able to sell at all…*
>
> *It is very difficult to price an asset in an illiquid market until a sale is made. Carbon Credits are very illiquid and to date we have not had any experience of selling them which is why the best we can do at the moment is to price them at cost. I have attached a recent article which mentions that Carbon Credits may only be worth £1 each.*
>
> *Please continue to price carbon credits at cost until further notice."*

I note Mr M's letter to Pathlines setting out that he wanted to go ahead with the Carbon Credit investment *against* his adviser's advice sets out the same reasons for not making the investment as Pathlines identified some months later.

A key issue with Carbon Credits in general is 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 such, there could've been a very significant difference between the price the units were acquired at and the price at which these were sold to Mr M. This is something Pathlines could have and should have investigated further.

Taking this into account, I think it likely Pathlines' view of the liquidity of the market and the potential difficulty in pricing the credits as a result would have been the same before Mr M's investment had they undertaken sufficient checks.

Pathlines 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 if it had carried out appropriate due diligence checks.

Assuming that Mr M would hold valid units or credits, there doesn't appear to be any measure of the quality of the credits in question. In other words, were the units or credits being 'generated' valid?

Whilst Pathlines showed the units as VCS, I haven't seen any independent verification that the units met the Verified Carbon Standard ('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 Chante ('UNFCCC') at the time Mr M invested. The lack of that registration could suggest that the relevant standard hasn't been met.

Furthermore, I haven't seen that it was demonstrated there was any ready market for Mr M's units. It wasn't demonstrated how Mr M would find businesses to buy his small allocation of Carbon Credit units.

And, as I've said above, I think Pathlines also ought to have appreciated that there might not be a market for the Carbon Credits and that there was no guarantee that the credits could be sold at a profit.

So, at the time of Mr M's investment there was little confirmation that Mr M's 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.

Based on the evidence I've seen, I'm satisfied that Pathlines didn't carry out sufficient due diligence at the time to satisfy its reasonable responsibilities as a SIPP provider.

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

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

If Pathlines had completed sufficient due diligence on Mr M's Carbon Credits investment, what should it reasonably have concluded?

It could be that the investment Mr M made was, and is, legitimate. And I 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. So, although they technically worked as claimed, the reality was very different.

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

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

It could be argued that not being able to independently value an investment wouldn't be 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've 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.

Pathlines 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 Financial Services Compensation Scheme or the Financial Ombudsman Service.

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

I'm satisfied Pathlines could've 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. Pathlines ought to have identified significant concerns in relation to the investment, and it ought to have led it to conclude it shouldn't accept the Carbon Credit Investment into its SIPPs before it accepted Mr M's application to invest in Carbon Credits. It ought to have identified that there was a high risk of consumer detriment here. And it's the failure of Pathlines' due diligence that's resulted in Mr M being treated unfairly and unreasonably.

To be clear, I reiterate, I'm not making a finding that Pathlines should've assessed the suitability of the Carbon Credits investment for Mr M. I accept Pathlines had no obligation to give advice to Mr M, or to ensure otherwise the suitability of an investment for him.

I also accept that Pathlines may argue that in Mr M's case he had:

- Received advice from a regulated adviser
- Set out in writing to Pathlines that he had been advised against making the Carbon Credit investment and wanted to proceed anyway
- Informed Pathlines that he was a sophisticated investor (and understood the risk of the investment he would be making)

Given what Pathlines knew and should have known about carbon credits as I've set out I don't think they should have been allowed as an investment through Pathlines' SIPP at all, so things should never have got to the point of Mr M's investment going ahead.

Based on the statistics Pathlines have provided, I think it more likely than not that Mr M opened his Pathlines SIPP in order to facilitate the Carbon Credit investment. I say this because the majority of Business S' clients changed their adviser to Business H and went on to invest in Carbon Credits or another unregulated investment. Simply put, had Pathlines refused to accept any investment in Carbon Credits Mr M would not have transferred his existing pension arrangement into a Pathlines SIPP.

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

<u>Did Pathlines act fairly and reasonably in proceeding with Mr M's instructions?</u>

COBS 11.2.19R

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

Pathlines' argument about having to execute the transaction as a result of COBS 11.2.19R 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 Pathlines' 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 applications.

Is it fair to ask Pathlines to pay Mr M compensation in the circumstances?

The involvement of other parties

In this decision I'm considering Mr M's complaint about Pathlines. However, I accept other parties were involved in the transaction complained about.

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

As I set out above, in my opinion it's fair and reasonable in the circumstances of this case to hold Pathlines accountable for its own failure to comply with the regulatory obligations, good industry practice and to treat Mr M fairly, and the starting point, therefore, is that it would be fair to require Pathlines to pay Mr M compensation for the loss he's suffered as a result of Pathlines' failings.

But I've carefully considered if there's any reason why it wouldn't be fair to ask Pathlines to compensate Mr M for his loss, including whether it would be fair to hold another party liable in full or in part. Whilst I accept that it may be the case that another party might have some responsibility for initiating the course of action that led to Mr M's loss, I'm satisfied that it's also the case that if Pathlines 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.

So, it is my view that it's appropriate and fair in the circumstances for Pathlines to compensate Mr M to the full extent of the financial losses he's suffered due to Pathlines' 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 Pathlines is liable to pay to Mr M. I have however, made allowance for the payments Mr M has received from the FSCS from his claims against Businesses S and H. I set that out in more detail below.

Mr M taking responsibility for his own investment decisions

Pathlines has said that Mr M 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 the 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 am satisfied that it wouldn't be fair or reasonable to say Mr M's actions mean he should bear the loss arising as a result of Pathlines' failings.

Mr M used the services of a regulated personal pension provider in Pathlines. And, in my view, if Pathlines 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 M's investment in Carbon Credits wouldn't have been made in the first place.

I've carefully considered what Pathlines has said about Mr M being aware that the investment was high-risk. But even though Mr M signed a letter to Pathlines confirming this, I don't have any evidence that the assertions he was making in that letter could be substantiated or under what circumstances that letter had been produced.

Current COBS rules, and previous good practice, expect firms to document where a consumer wants to proceed as an insistent client and not in accordance with the recommendation given. I find it unusual that Mr M should have provided Pathlines, as his SIPP operator, with such a letter. Pathlines hadn't given Mr M any advice and it doesn't say it requested Mr M provide such a statement. In these circumstances Pathlines should have questioned why it had been provided.

But even if Mr M *had* received an explanation of the risks involved with the investment, for the reasons I've already given, I'm satisfied that if Pathlines 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.

So, overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair and reasonable to say Pathlines should compensate Mr M for the loss he's suffered. I don't think it would be fair to say in the circumstances that Mr M should suffer the loss because he ultimately instructed the transaction to be effected.

Had Pathlines declined to accept Mr M's investment in Carbon Credits, would the transaction complained about still have gone ahead elsewhere?

Pathlines has said that if it had refused to permit the investment in Carbon Credits, the investment would still have proceeded with a different SIPP provider. But I don't think it's fair and reasonable to say that Pathlines shouldn't compensate Mr M for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found Pathlines 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 M'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."*

In this case, Mr M says he received a cash lump sum as a result of the transaction. But he believes the money was released from his pension which appears not to have been the case. I am persuaded that this incentive would have been attractive to him. So, I've considered whether Mr M would have transferred if Pathlines had turned any investment in Carbon Credits down.

On balance, I'm not persuaded that the incentive was so great that Mr M would have put his pension fund at such a level of risk had Pathlines refused to accept his business. Mr M has explained that he transferred to get much better (i.e. higher) retirement benefits after the transfer. I'm not satisfied Mr M was determined to move forward with the transaction in order to take advantage of any cash incentive.

On balance, I'm satisfied that Mr M, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this 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 if Pathlines had refused to accept Mr M's application to invest in Carbon Credits, the transaction this complaint concerns wouldn't still have gone ahead.

So, overall, I do think it's fair and reasonable to direct Pathlines to pay Mr M compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to Mr M's loss, I consider that Pathlines failed to comply with its own regulatory obligations when it didn't put a stop to the transactions proceeding. It ought to have declined Mr M's application to open a SIPP to invest in Carbon Credits when it had the opportunity to do so.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr M. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against Pathlines that requires it to compensate Mr M for the full amount of his loss. But for Pathlines' failings, I'm satisfied that the transaction this complaint concerns wouldn't have occurred in the first place.

As such, I'm not asking Pathlines to account for loss that goes *beyond* the consequences of its failings. I'm satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for that same loss is a distinct matter, which I'm not able to determine. However, that fact shouldn't impact on Mr M's right to fair compensation from Pathlines for the full amount of his loss.

The key point here is that but for Pathlines' failings, Mr M wouldn't have suffered the loss he's suffered. And, as such, I'm of the opinion that it's appropriate and fair in the circumstances for Pathlines to compensate Mr M to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by another third party.

<u>In conclusion</u>

Taking all of the above into consideration, I think that in the circumstances of this case it's fair and reasonable for me to conclude that Pathlines should not have accepted Carbon Credits into its SIPPs and therefore wouldn't have received Mr M's application to open a SIPP to be used to hold the investment in Carbon Credits.

I don't think Pathlines met its regulatory obligations or the standards of good practice at the time, and it allowed Mr M's pension fund to be put at significant risk as a result.

So, for the reasons I've set out, I think it's fair for Pathlines to compensate Mr M for the full losses he's suffered. I say this having given careful consideration to the *Adams* judgments but also bearing in mind that my role is to reach a decision that's fair and reasonable in the circumstances of the case having taken account of *all* relevant considerations.

Putting things right

I consider that Pathlines failed to comply with its own regulatory obligations and didn't put a stop to the transactions that are the subject of this complaint. My aim in awarding fair compensation is to put Mr M back into the position he would likely have been in had it not been for Pathlines' failings.

Had it done so, I think Mr M's pensions would have remained with his previous scheme and he wouldn't have opened the Pathlines SIPP or invested in Carbon Credits. However, I cannot be certain that values will be obtainable for what the previous policy would have been worth. I understand from what Mr M says that his former workplace pension was a defined contribution scheme. No evidence has been provided to indicate there were any guarantees available within that scheme.

I acknowledge that Mr M has received a lump sum upon transfer and two sums from the FSCS, and that he has had use of the monies received from the FSCS. The terms of Mr M'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 M received from the FSCS. And it will be for Mr M to make the arrangements to make any repayments he needs to make to the FSCS.

However, I do think it's fair and reasonable for some allowance to be made for the sums Mr M actually received from the FSCS and has had the use of for a period of the time covered by the calculation.

If Pathlines wishes to make such an allowance, it must first calculate the proportion of the total FSCS payment Mr M received that it's fair and reasonable to apportion to each individual transfer into the SIPP – this *must* be proportionate to the value of the actual sums transferred in. The total FSCS payment allowed for *must* be no more than the total FSCS payment Mr M actually received. Having done this, Pathlines can then make the allowance by following the steps set out in the sections below.

And in terms of the lump sum received by Mr M, Pathlines may account for this payment by treating it as a withdrawal from the pension. If Mr M is unable to provide further detail, Pathlines may assume the withdrawal was £10,000 (as Mr M told this service) and took place as at the date of the transfer from his former workplace pension.

What must Pathlines do?

In summary, I require that Pathlines should:

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

- Undertake a loss calculation and pay any redress owing in line with the steps set out below. This payment should take account of any available tax relief and the effect of charges. Pathlines should add interest to this payment if it is not made within 28 days of the acceptance of my final decision.

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

- Pay Mr M £300 to compensate him for the distress and inconvenience he's been caused by Pathlines' failings.

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

Treatment of any illiquid assets held

I understand Mr M's SIPP was closed in 2016 although the position of his Carbon Credits investment is unclear.

As a result of this it's likely Mr M will not have paid further SIPP fees after 2016 but may have paid fees or charges if he has retained the investment outside the SIPP.

I think it would be best if any illiquid assets held could be bought from Mr M to stop any future fees being charged. The valuation of any illiquid investment may prove difficult, as there is no market for it. For calculating compensation, Pathlines 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.

If Pathlines is able to purchase the illiquid investment then the price paid to purchase the holding may be allowed for in the current transfer value (even though it won't have been paid into the SIPP to secure the holding).

If Pathlines is unable, or if there are any difficulties in buying Mr M's illiquid investment, it should give the holding a nil value for the purposes of calculating compensation. In this instance Pathlines may ask Mr M to provide an undertaking to account to it for the net amount of any payment he may receive from the relevant holding. That undertaking should allow for the effect of any tax and charges on the amount Mr M may receive from the investment. Pathlines will have to meet the cost of drawing up any such undertaking and the reasonable cost of Mr M taking advice in relation to it. The undertaking should also only take effect once Mr M has been compensated in full, to include receipt of any loss that may be above our award limit.

And where Pathlines does not buy Mr M's illiquid investment it should waive any fees associated with holding it. Mr M would not be responsible for those fees if Pathlines had not accepted the transfer of his pensions into the SIPP.

Calculate the loss Mr M has suffered as a result of making the transfer in relation to monies originating from defined contribution schemes

Pathlines should first contact the trustees (or provider) of Mr M's former workplace pension which was transferred into the SIPP and ask them to provide a notional value for the pension as at the date of calculation. For the purposes of the notional calculation the provider should be told to assume no monies would have been transferred away from the plans, and the monies would have remained invested in an identical manner to that which existed prior to the actual transfer.

If there are any difficulties in obtaining a notional valuation from the previous provider, then Pathlines should instead arrive at a notional valuation by assuming the monies would have enjoyed a return in line with the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, this was called 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.

Any contributions or withdrawals Mr M has made will need to be taken into account whether the notional value is established by the ceding provider or calculated as set out below.

Any withdrawal out of the SIPP (including as I've set out above the payment Mr M says he received upon transfer) 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.

If it wishes, Pathlines *may* make an allowance in the form of a notional withdrawal (deduction) equivalent to that proportion of the payments Mr M received from the FSCS following the claims about the advice he received, that it's fair and reasonable to apportion to monies transferred in from the defined contribution scheme in accordance with what's stated earlier in this decision, and on the date the payments were actually paid to Mr M. Where such a deduction is made there must also be a corresponding notional contribution (addition), at the date of my final decision equivalent to the total relevant notional withdrawal(s) accounted for in this part of the calculation.

To do this, Pathlines should ask the operator of Mr M's previous defined contribution pension plans to allow for the relevant notional withdrawal(s) in the manner specified above. Pathlines must also then allow for a corresponding notional contribution (addition) as at the date of my final decision, equivalent to the accumulated FSCS payments notionally deducted by the operators of Mr M's previous defined contribution pension plans.

Mr M's loss, if any, is the total notional value of the previous plans' transfer value(s) (or, if required, as established in line with the index set out above) less the current value of his SIPP/existing arrangement (also as at the date my final decision) if any.

Compensation should be paid as calculated above promptly. If Pathlines does not pay the compensation within 28 days of being notified of Mr M's acceptance of my final decision, Pathlines is to pay 8% simple interest per year on the compensation from the date of that final decision until the date of payment.

I will also add here that income tax may be payable on any interest paid pursuant to this award. If Pathlines deducts income tax from the interest, it should tell Mr M how much has been taken off. Pathlines should give Mr M a tax deduction certificate for any interest if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Pay an amount into Mr M's pension 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 M's pension plan. Mr M's Pathlines SIPP is closed and it isn't clear that Mr M has any other pensions into which a compensation payment could be made. If it is possible to make such a payment it 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 M as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr M won't be able to reclaim any of the reduction after compensation is paid.

Under current legislation, Mr M will be entitled to a tax-free lump sum of 25% of the value of his pension with the remainder being taxed as income. This means of any loss calculated, 25% would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

Pathlines should also provide details of all of its calculations to Mr M in a form that should be understandable to him.

Fees and charges paid outside the SIPP

If Mr M has paid any fees or charges to Pathlines or in respect of the carbon credit holding more generally after the SIPP closure from funds outside of his pension arrangements, Pathlines should also refund these to Mr M. Interest at a rate of 8% simple per year from the date of payment to the date of refund should be added to this.

Pay Mr M £300 for the distress and inconvenience caused by Pathlines' failure to act fairly and reasonably

Mr M transferred his existing pension to a SIPP and has suffered the loss of use of the majority of those funds since.

I think it's fair to say this would have caused Mr M some distress and inconvenience particularly at a time he may have been thinking about the possibility of retirement. I consider that a payment of £300 is appropriate to compensate for that upset.

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

Determination and money award: I uphold this complaint. I think that fair compensation should be calculated as shown above. It's my final decision that I require Pathlines Pensions UK Limited to pay Mr M the amount produced by that calculation – up to a maximum of £160,000 (including the £300 to compensate for the distress and inconvenience Pathlines' actions caused) plus any interest and costs.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Pathlines pays Mr M the balance.

If Mr M accepts my final decision, this recommendation does not form part of my determination or award and won't be binding on Pathlines. Pathlines doesn't have to do what I recommend. It's unlikely that Mr M can accept my final decision and go to court to ask for the balance after the award has been paid. Mr M may want to consider getting independent legal advice before deciding whether to accept my final decision.

My jurisdiction decision

My decision is that Mr M's complaint has been made in time and is one this service can consider.

My final decision

My final decision is that I uphold this complaint. To put things right I require that Pathlines Pensions UK Limited should calculate and pay the award, and take the actions, set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 April 2025.

Claire Poyntz
Ombudsman