DRN-5582123

## The complaint

Mr G complains, through his representative, that Options UK Personal Pensions LLP failed to carry out due diligence on investments he was advised to invest his SIPP in.

## What happened

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

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

**Strategic Wealth Limited ("SWL")** - an advisory firm based in Gibraltar and regulated by the Gibraltar Financial Services Commission ("GFSC") and identified as the advising firm in Mr G's SIPP application.

**Reyker Securities Plc ("Reyker")** – an FCA authorised third party fund custodian holding assets and cash on behalf of its clients. Its directors placed it into special administration on 8 October 2019 and it was declared in default by the FSCS in March 2020.

**Westbury Private Clients LLP ("WPC")** – an FCA authorised firm as from 1 July 2013 operating as a discretionary manager. It went into liquidation in 2017, was declared in default by the FSCS in May 2022 and dissolved in February 2023. In August 2022 Its Founder and Chief Investment Officer was fined by the FCA and prohibited from performing any function in relation to a regulated activity. The FCA's summary of reasons for this shows that this was because between 7 October 2015 and 5 August 2016 he *"recklessly invested 207 pension funds in unsuitable, high risk investments and exposed pension holders to a significant risk of loss."*

**Via Developments Plc** – a property development company incorporated in March 2015 raising money from the sale of debenture stock sales on the ICAP Securities and Derivatives Exchange and making the funds available by way of loans to subsidiary Special Purpose Vehicles (SPVs) to enable the purchase and development of sites the SPVs identified as suitable.

Mr G signed a SIPP application on 4 October 2015. It identified SWL as the firm advising him with an individual, Mr B (name anonymised) as the adviser. The application shows that Mr G intended transferring two pensions into his SIPP with a collective transfer value of around £154,000.

Options sent Mr G a welcome pack on 9 October 2015 confirming this as the start date of his SIPP. Options wrote to Reyker on 15 October 2015 with a completed application appointing WPC as Mr G's discretionary manager.

Mr G thereafter transferred only one pension into his SIPP, £22,414 being received by

Options on 4 November 2014 with £20,706 being later invested with Reyker for Westbury to manage on a discretionary basis. Westbury invested £10,000 of Mr G's pension monies in the Via Developments 7% Debenture – so just short of 50% of the monies held in his Reyker account - and a further £6,662 in Centrica.

In March 2017 Options emailed Mr G with a copy of a letter from Reyker about Reyker no longer using Westbury to manage funds and the need to appoint a new investment manager. Options also stated that it no longer had terms of business in place with Westbury and couldn't accept instructions from Westbury on his behalf and explained what choices he had going forwards. My understanding from the other complaint I have referred to is that Options became aware in 2017 that Westbury had been investing a significant proportion of client pension monies into the Via Development 7% Debenture and this led to it ending the relationship.

Mr G complained through his representatives by letter dated 22 April 2020. His complaint in short was that Options had failed to comply with its regulatory obligations because it failed to carry out proper due diligence on the investments made through his SIPP.

In its final response letter of 11 August 2022 Options, in summary, made the following points.

- Mr G appointed Mr B of SWL as his adviser and it was FCA regulated at the time.
- It had no relationship with SWL other than administering SIPPs for members who used them as their financial adviser.
- It had no reason to believe it shouldn't accept instructions from SWL.
- Its due diligence gave no cause for concern or to suspect that SWL as a regulated firm or its advice was inappropriate.
- It is an execution only SIPP administrator and as such it would have been in breach of COBS 11.2.19R if it hadn't executed Mr G's specific investment instructions.
- It isn't permitted to provide advice nor comment on the suitability of a SIPP or the underlying investment, or that of the introducer a customer has chosen to use.
- Mr G signed to confirm his understanding that it didn't provide advice or assess suitability and it isn't for Options to look beyond his signature or decline his instruction on the basis he didn't understand what he was signing when there was nothing to indicate this.
- The aim of the documentation Options provides to customers is to provide them with the information needed to make an informed decision.
- The purpose of the member declaration Mr G signed was for him to provide his investment instructions and confirm he understood the terms of the investment, he had read and understood all the documentation involved and that he understood the risk warnings that Options considered the investment to be high risk and speculative.

Mr G referred his complaint to our service and it was considered by one of our investigators who thought it should be upheld. He set out Options' regulatory obligations and publications that gave examples of good industry practice. In short, the investigator upheld the complaint for the following reasons:

- Options carried out due diligence on a different firm to SWL so its due diligence was carried out on the wrong firm.

- Archived web pages for SWL make no mention of it being authorised by the FCA to provide advice and he has seen no evidence that it was passporting its regulatory permissions in Gibraltar into the UK at the time.

- SWL was most likely undertaking the activities of advising on and making arrangements in pensions in the UK which Options ought reasonably to have been aware of.

- If Options had undertaken the due diligence that it should have done it would have discovered that SWL was carrying out those activities when it wasn't authorised by the FCA to do so and having discovered this should have refused to accept the business.

Mr G agreed with the opinion of the investigator. Options didn't respond to the opinion of the investigator, and as it didn't agree with his findings the matter was referred to me for review and decision. As Options had provided no information as to any due diligence on SWL I asked it for further information about this as well as its due diligence on Reyker and Westbury.

In response it provided various documents and, in summary, provided the following comments.

- It has been unable to retrieve searches carried out on SWL but the usual enquiries would have included searches through Companies House, internet searches of the company the directors and majority shareholders, a search of the FCA website to check for any adverse publications and a check of the company website if applicable.

- It carried out due diligence on Westbury which was an FCA authorised business that had permissions for buying and selling investments on behalf of clients on a discretionary basis. Westbury risk assessed each member to enable it to produce a suitable and risk appropriate portfolio for each individual taking into account Options' permitted list so that it didn't breach the terms of business Options had with it.

- Westbury invested members into unregulated holdings within their SIPPs against the terms of business it had agreed with Options leaving members with unacceptable holdings within their SIPPs. The purchase of these assets was without Options' knowledge.

I issued a provisional decision upholding the complaint, in summary for the following reasons.

- The FCA's Principles for Businesses (PRIN) are a relevant consideration in this complaint.

- The regulator has issued several publications regarding SIPP operators which provide non-exhaustive examples of good industry practice.

- In practice Options needed to carry out due diligence that was consistent with good practice and its regulatory obligations and based on the conclusions it should reasonably have come to following its enquiries decide whether to accept the referral of Mr G's business from SWL and/or permit the investment in his SIPP.

- SWL wasn't authorised to provide pension switching advice and in the absence and there was an obvious risk of consumer detriment arising from Options accepting the referral of Mr G's business from it given this.

- If Options had carried out proper due diligence on Westbury it would have reasonably concluded that it was investing client money in investments that weren't suitable for a SIPP and that it shouldn't permit it to provide investment management services to its SIPP clients.

Having found that Options had failed to comply with its regulatory obligations I awarded appropriate redress.

I gave both parties the opportunity of responding to my provisional decision and providing any further information they wanted me to consider before making my final decision. Mr G responded to confirm he accepted my provisional decision. Options didn't provide any response.

**What I've decided – and why**

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

As Mr G has agreed with my provisional decision and Options hasn't provided a response there is no reason for me to change the findings I made or the conclusion I came to in my provisional decision. I am therefore still of the view that this complaint should be upheld and set out again below my reasons.

I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

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

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

However, before discussing merits, I want to make clear that I have considered whether this complaint has been made in time and am satisfied that it has been and that it comes within our jurisdiction.

Turning to the merits, I am persuaded that the due diligence carried out by Options was inadequate to meet its regulatory obligations and didn't accord with good industry practice and that if it had acted with due skill care and diligence, controlled its affairs responsibly and paid due regard to the interests of Mr G it would have concluded that it shouldn't accept the referral of his business. I set out below why I have come to that conclusion.

**Relevant considerations**

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

are set out under PRIN 2 and I think the following are of relevance in this complaint.

Principle 2 - Skill, care, and diligence: A firm must conduct its business with due skill, care, and diligence.

Principle 3 – Management and control: A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 6 - Customers' interests: A firm must pay due regard to the interest of its customers and treat them fairly.

I am satisfied that I am required to take the Principles into account when determining whether Options did anything wrong during in accepting Mr G's SIPP application and providing its execution only service to him.

In coming to that conclusion I have considered the judgment in the case of *R (British Bankers Association) v Financial Services Authority (2011) EWHC 999 (Admin) ("BBA")* in which Ouseley J said it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what was fair and reasonable redress to award. At paragraph 184 of his judgment he said:

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

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

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

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

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

Although COBS 2.1.1R does overlap with the Principles I have identified above as being a relevant consideration for me in this complaint – in particular Principle 6 – there are significant differences to the breaches of COBS 2.1.1R alleged in the Adams cases and the issues in this complaint.

I have also considered the Court of Appeal's judgment in Options Appeal case, which refers

to the case law I mention above and approved the decision of the ombudsman in the case in question.

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

**The regulatory publications and good industry practice**

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

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

The 2009 Thematic Review report included the following:

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

*"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its customers and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers.*

And:

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

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

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*
- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and*

*introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

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

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

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

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

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

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

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

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

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

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

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

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

The July 2014 Dear CEO letter followed a further Thematic Review carried out by the regulator the key findings from which were annexed to the letter. It again made reference to

the need for all firms to conduct their business with due skill, care, and diligence in accordance with Principle 2.

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

I have considered the fact that the 2013 finalised SIPP operator guidance and 2014 Dear CEO letter were published after Options had accepted Mr G's SIPP application but what was set out in those publications related to what SIPP operators should already have been doing, not just what they should be doing going forwards. In the circumstances, I am satisfied that the examples of good practice set out are relevant considerations in this complaint.

**What did Options' obligations mean in practice?**

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

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

Options doesn't seek to argue that it wasn't required to carry out due diligence on introducers such as SWL to comply with its regulatory obligations, or on investments that its SIPP clients were investing pension monies into – in its final response it set out its due diligence as regards SWL and said this gave no cause for concern.

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

**Did Options comply with its regulatory obligations?**

*Options relationship with SWL*

Options has confirmed it is unable to provide any documentation relevant to its due diligence on SWL. However, it has explained that its usual process with an introducing business such as SWL would have included such things as checking the FCA register, checking Companies House records as to the company as well as directors, and shareholders.

I accept what Options has said about the checks it would usually carry out, but it isn't clear if such checks were carried out on SWL, given the documentation it provided about its due diligence related to a different firm. Even if it did carry out such checks, as SWL wasn't a UK

company checking Companies House wouldn't have disclosed anything. Checking the FCA register would have shown that SWL had been 'passported' into the UK under the 'passporting' regime for financial services at the time – under which a firm authorised in any EU or EEA state could carry out certain regulated activities in other jurisdictions within the EEA.

But a check of the register wouldn't have shown that SWL was authorised to advise on pension switches

And, in another complaint to our service involving SWL it was established that for it to provide such advice in the UK it needed 'top up' permissions from the FCA that it didn't have. So, the usual checks that Options say it would have carried out would have provided no information that would have provided no comfort that consumer detriment wouldn't arise if it accepted Mr G's SIPP application.

A check of the FCA register on the individual adviser named in the SIPP application, Mr B, would have shown that he was employed by Strategic Wealth UK Ltd - previously Gibro Wealth Limited – a UK firm that *was* authorised to provide pension transfer advice. A check of SWL's website at the time would also have shown that this firm was identified as a partner firm of SWL's – as shown by Webpages available through Wayback Machine. However, as Mr B wasn't acting for Gibro Wealth Limited as regards the advice to Mr G and Options could place no reliance on that firms regulatory permissions, it was those of SWL that were relevant and, as I have already found, it didn't have the necessary permissions.

Options could be expected to have known this through the enquiries it should reasonably have made given its checks into SWL wouldn't have provided the assurance it needed that it should proceed with the SIPP application. Options could also have been expected to know through its enquiries that SWL Having considered webpages for SWL available through Wayback Machine it can also be seen that it identified Gibro Wealth Limited as a partner firm – shown by webpages for SWL available through Wayback Machine.

However, rather than this providing assurance to Options this could be expected to have raised questions as to the relationship between Strategic Wealth UK Limited and SWL and why Mr B was providing advice through SWL as an overseas business to provide pension advice instead of the UK firm that employed him and which was authorised to provide such advice. In short, it is reasonable to have expected Options to have made enquiries to understand why Mr G was being advised by SWL and such enquiries could reasonably be expected to have established that SWL wasn't authorised to provide such advice – insofar as this hadn't been established by Options through other enquiries.

There was an obvious risk of consumer detriment arising from Options accepting the introduction of business from SWL where it was providing pension switching advice to Mr G which it wasn't authorised to provide. In the absence of any explanation for why Mr B was providing advice through an offshore business that wasn't authorised this should have led Options to conclude that it shouldn't accept Mr G's SIPP application.

Even if it is argued that Options didn't have reason to reject Mr G's SIPP application because SWL wasn't authorised to provide pension switching advice there are further reasons that should have led to it concluding it shouldn't proceed with his application, as I explain below.

*Options relationship with Westbury*

Options has provided limited information in this complaint as to its relationship with Westbury. I have seen a document titled *'UK Introducer Profile – Regulated Financial*

*Services Firm'* dated 25 March 2014 that Options required Westbury to complete 'to assist with its due diligence and on-boarding process'. The information provided by Westbury within that form shows that it purported that it:

- acted for High Net Worth and sophisticated investors with an average pension transfer value of at least £250,000
- provided investment advice (only) for SIPPs, SSASs, and Workplace Pensions
- the investments it would look to use would be *"FCA regulated DFM"* and *"Platform – we use Praemium and Smartfunds Administration Ltd*."

The form includes a declaration which includes the introducing firm undertaking that they will remain correctly authorised and that when acting on behalf of a client will *"operate in line with the roles and responsibilities outlined in the Terms of Business Agreement."*

As supporting documents a template investment management agreement between Westbury and its clients was provided as well as a fee schedule. This sets out seven investment portfolios ranging from lowest risk to highest risk along with two other portfolios – 'distribution' identified as medium risk and 'income' identified as high risk.

The documentation Options has provided also includes a record from the FSA register dated 31 March 2014 and pages from Westbury's website dated 31 March 2014. I am also aware from another complaint to our service that Options accepted Westbury could introduce clients and provide its investment management services to clients applying for an Options SIPP as from June 2014.

I accept that the information Options has provided shows that it did carry out some due diligence on Westbury before accepting it as an introducer of business in 2014 and allowing it to act as a discretionary manager for client pension portfolios. However, I am not satisfied that its due diligence went far enough to satisfy its regulatory obligations.

Options has said that it expected Westbury to manage client portfolios within the parameters of its permissions and in line with the Terms of Business that had been agreed. Options argued in the other complaint to our service I have referred to, that it was part of the agreement with Westbury that clients would only be invested in investments on Options' 'Permitted Investments List'. I have not been provided with a copy of that list in this complaint nor of any agreement with Westbury which limited it to investing only in investments on the Permitted List - and no evidence of such an agreement was apparently provided in that other complaint. However, as I understand it the Permitted List didn't include the Via Developments 7% bond and it was because Options became aware in 2017 that Westbury had been investing client pension monies in that investment that it ended the relationship with Westbury.

Whilst I acknowledge the fact that Westbury was authorised to provide discretionary management services would have given some comfort to Options, in my view, it placed too much reliance on this and its enquiries into what Westbury would do with SIPP clients pension monies were superficial and it should have gone further - given its own regulatory obligations - for the reasons I explain below.

The descriptions of the portfolios set out in Westbury's template investment agreement refers broadly to these being invested in equities, exchange traded funds, fixed interest, and commodities but Options didn't seek any information as to what actual investments might be included in the portfolios Westbury was intending to invest client pension monies into.

The pro-forma introducer profile that Westbury completed provided no additional information – only showing that Westbury used two platforms for the investments that it would be making - with no mention of Reyker. Although Westbury may have been incorporated in 2010, the introducer profile and in the FCA register shows that it had only been authorised from July 2013. There is nothing to show that Options made any enquiries into how this newly authorised business was identifying and onboarding the clients it identified it would be acting for – the HNW and sophisticated clients typically transferring minimum pension sums of £250,000 that Westbury identified in the introducer profile as its average client.

I am not satisfied that the information that Options obtained from Westbury gave it a good understanding of the way Westbury's business operated overall and what it would be doing with client monies and the investments it would be making on their behalf. Options due diligence on Westbury was in my view perfunctory. Its checks only amounted to it confirming that Westbury was authorised and there was no recorded disciplinary or other identified issues with Westbury or the individuals behind the business and no obvious issues with the information on its website or in the terms of its proposed agreement with clients.

Options made no enquiries beyond the basic information provided through the FCA register, Westbury's website, the introducer profile, and Westbury's usual terms of business. It should have been apparent to Options that it needed to make further enquiries to properly understand Westbury's business and satisfy itself that consumer detriment wouldn't arise if it allowed Westbury to provide investment management services to Options' SIPP clients.

In 2022 the Founder of Westbury and its Chief Investment Officer was the subject of a financial penalty by the FCA as well as an order prohibiting him from performing any function in relation to a regulated activity. The summary of reasons provided by the FCA was lengthy but included that between 7 October 2015 and 5 August 2016 Mr G had 'recklessly invested 207 pension funds in unsuitable high-risk investments and exposed pension holders to a significant risk of loss'.

I acknowledge that the action taken against the Founder of Westbury took place several years after Westbury had been accepted by Options and Mr G made his SIPP application. I also accept that the FCA was concerned with actions by the Founder of Westbury from 7 October 2015 and not before this.

However, whilst I accept this of itself doesn't establish that Options would have established through enquiries made before this that Westbury would be investing client pension monies inappropriately, I think it is likely such enquiries would have done so. Put another way, I think it is unlikely that Westbury suddenly started investing client monies in this way on 7 October 2015 and not beforehand and in my view it is more likely than not this was how Westbury was operating from the outset, when it started providing its services to Options' SIPP clients in 2014 – in other words, I think Westbury was likely to be already investing substantial proportions of client pension monies into high-risk investments that weren't suitable for their SIPPs before October 2015.

Even if I am wrong, and this isn't something that would have been apparent from the enquiries that Options should have made before it permitted Westbury to start providing its services to clients, Options should, with good practice and its regulatory obligations in mind, have been monitoring and analysing what Westbury was doing with client pension funds in any event. And if it had been analysing what Westbury was doing from June 2014 then I think it is more likely than not that Options would have concluded, before it received Mr G's SIPP application, that investments Westbury was making on behalf of clients were not suitable for a SIPP and that Westbury shouldn't be permitted to continue to provide investment management services to its clients because of this. This is a secondary point, given I have found Options shouldn't have accepted Mr G's SIPP application from SWL in

the first place.

*Options relationship with Reyker*

Given the findings I have made above, I don't think it is necessary for me to address the Options' due diligence on Reyker and make findings on whether it should have permitted Mr G's investment into an account with Reyker.

**Did Options act fairly and reasonably in proceeding with Mr Gs' instructions?**

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

In any event, this argument was considered and rejected by Jacobs J in BBSAL in which he said at paragraph 122 of his judgment:

*"The heading to COBS 11.2.1R shows that it is concerned with the way orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2, 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 now 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 the order should be accepted in the first place."*

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

**Is it fair and reasonable to ask Options to compensate Mr G?**

I have also considered whether it would be fair and reasonable for Options to pay the full amount of Mr G's losses. Having done so I am satisfied that it would be fair and reasonable for it to do so - given that if it had complied with good industry practice and its regulatory obligations, he would have remained in his original pension. Options might say that if it hadn't accepted Mr G's business from SWL that the transfer of his pension would still have been taken place through a different SIPP Operator and he would still have invested as he did. However, I don't think it would be fair and reasonable to find that Options shouldn't compensate Mr G for his loss based on speculation that another SIPP operator would have also failed to comply with their regulatory obligations. Rather, I think it is fair and reasonable to say that another SIPP operator would have complied with its regulatory obligations and good industry practice and in doing so have concluded it shouldn't accept business from SWL and or permit Westbury to provide investment services to its SIPP clients. In the circumstances I am satisfied that if Options had complied with its regulatory obligations Mr G would have remained in the pension plan that he transferred into the SIPP.

I have taken account of the fact that other firms were involved in Mr G investing as he did and his SIPP being unsuitable as a result. However, I do not think that this is a basis for Options not to be responsible for the entirety of Mr G's losses arising from its regulatory failures. Mr G's representatives have confirmed that a claim made to the FSCS against Westbury was rejected – it should provide a copy of the rejection letter in response to this provisional decision.

**Putting things right**

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

In light of the above, Options should:

- Obtain the notional transfer value of Mr G's previous pension plan.
- Obtain the actual transfer value of Mr G's SIPP, including any outstanding charges.
- Pay a commercial value to buy the illiquid investment (or treat it as having zero value)
- Pay an amount into Mr G's SIPP, to increase the transfer value to equal the notional value established. The payment should allow for the effect of charges and any available tax relief.
- If the SIPP needs to be kept open only because of the illiquid investment and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.
- Pay Mr G £300 for the distress and inconvenience he has suffered from Options' failings.

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

*Treatment of the illiquid assets held within the SIPP*

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

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

If Options is unable, or if there are any difficulties in buying Mr G's illiquid investment, it should give the holding a nil value for the purposes of calculating compensation. In this instance Options may ask Mr G to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the relevant holding. That undertaking should allow for the effect of any tax and charges on the amount Mr G may receive from the

investment and any eventual sums he would be able to access from the SIPP. Options will have to meet the cost of drawing up any such undertaking.

*Calculate the loss suffered as a result of the transfer of Mr G 's existing pension to an Options SIPP.*

Options should first contact the provider of the plan which was transferred to the SIPP and ask it to provide a notional value for the plan as at the date of calculation. For the purposes of the notional calculation the provider should be told to assume no monies would've been transferred away from the plan, and the monies in the policy would've remained invested in an identical manner to that which existed prior to the actual transfer.

Any contributions or withdrawals Mr G has made to his SIPP will have 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 should be deducted at the point it was actually paid so it ceases to accrue a return in the calculation from that point on. To be clear, this doesn't include SIPP charges or fees paid to third parties, but it does include any pension lump sum or pension income Mr G took after his pension monies were transferred to Options.

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

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

The notional value of Mr G's existing plan if monies hadn't been transferred (established in line with the above) less the current value of the SIPP (as at the date of calculation) is Mr G 's loss.

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

If the redress calculation above demonstrates a loss, the compensation should, if possible be paid into Mr G's pension plan, allowing 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 plan isn't possible or has protection or allowance implications, it should be paid direct to Mr G as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his income tax rate in retirement, which it is reasonable to assume would be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

*SIPP fees*

If the investment can't be removed from the SIPP, and because of this it can't be closed after compensation has been paid, then it wouldn't be fair for Mr G to have to continue to pay annual SIPP fees to keep the SIPP open. So, if the SIPP needs to be kept open only

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

*Distress and inconvenience*

Mr G lost a substantial part of the money transferred from his existing pension plan into his SIPP and this will no doubt have impacted his plans to some extent and caused him some distress and inconvenience. However, I am mindful that he only ended up transferring the much smaller of his two pensions and the impact on him will in my view have been upsetting but limited. I consider an award of £300 for this is appropriate in the circumstances.

*Interest*

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

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

## My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 June 2025.

Philip Gibbons
**Ombudsman**