DRN-5602321

The complaint

Mr H transferred monies from two personal pension schemes into a Self-Invested Personal Pension ('SIPP') with Westerby Trustee Services Limited ('Westerby'). The transferred monies were then invested in an asset which Mr H says has no value, causing him a significant loss.

Mr H has complained that Westerby did not carry out sufficient due diligence checks on the investment and if it had done so, it ought to have refused to permit it to be held in his SIPP.

What happened

I've outlined the key parties involved in Mr H's complaint below.

Involved parties

Westerby

Westerby is a regulated pension provider and administrator. It's authorised to arrange deals in investments, deal in investments as principal, establish, operate or wind up a personal pension scheme and to make arrangements with a view to transactions in investments.

Strabens Hall Ltd

Strabens Hall has been authorised since 5 March 2007 by the Regulator – the Financial Services Authority ('FSA'), which later became the Financial Conduct Authority ('FCA') – to advise on regulated products and services including investments and pensions.

Strabens Hall signed an 'Intermediaries Terms of Business' Agreement with Westerby on 19 August 2016.

Strabens Hall entered into administration in September 2024.

LPS

LPS is a technology company based in Switzerland which was incorporated on 27 October 2006.

LPS delivered platforms which accelerate and optimise the delivery of 'Future Cities'. LPS designed a system to connect and optimize urban environments by integrating various city systems like energy, water, and transportation, using a robust digital infrastructure and real-time data analysis.

LPS has been in liquidation since June 2020.

What happened here?

Mr H started to work for LPS in July 2017 and explains that the Chief Executive Officer of LPS ('Mr L') said that he should invest his pension in LPS shares. Mr H was then put in touch with 'Mr J' of Strabens Hall.

Mr H says he was assured that Westerby had carried out due diligence on LPS and had approved it for SIPP investment. Mr H says he was attracted by the potential for accelerated growth of his pension.

Mr H explains that he understood the investment had risk associated with it, but he believed the equity was sought after so even though the shares in LPS weren't listed, there was still a market for them. He says he understood Westerby had identified major companies were involved in live revenue generating projects with LPS. Mr H says this turned out not to be the case.

Mr H said he hadn't previously been interested in switching his pension and he didn't receive any advice from Strabens Hall in respect of the investment.

Westerby received Mr H's SIPP application form from Strabens Hall together with other supporting documents, including a 'Non Standard Asset Questionnaire', on 3 January 2018.

The SIPP application form noted that Mr H was employed by LPS and he wanted to transfer in funds from existing pensions schemes which had a combined value of around £325,000. In the 'Investment Strategy' section, Mr H noted he wanted to invest in unlisted shares in LPS. In the 'Adviser Charges' section, Mr H ticked a box to say he'd received advice from an authorised financial adviser in respect of this application and provided Strabens Hall's details. Mr H signed the application declaration on 27 December 2017.

Mr H completed a Non Standard Asset Questionnaire, in which he stated that he hadn't received advice relating to the investment in LPS. He provided the following details:

- He had an annual income of between £100,000 - £150,000.
- He held investments worth £1,320,000 and his total net worth was just under £2,000,000.
- He'd invested in equities, unlisted shares and residential property in the last 24 months.

Mr H signed the Non Standard Asset Questionnaire declaration on 27 December 2017. By signing the declaration, Mr H confirmed, amongst other things, that:

- He understood the risk factors involved with non-standard assets and he was comfortable that his attitude to risk was appropriate and he was prepared to suffer a total loss of his investment.
- He had not received any advice from Westerby with regard to his investments and he would not hold Westerby to be responsible should he suffer a financial loss as a result of his investments.
- He understood that non-standard investments could be difficult to value and may have an impact when calculating his pension benefits and scheme value.
- He understood that non-standard assets could take time to sell and accepted that he may be locked into an investment for the whole specified term.
- He understood that many non-standard assets were not regulated by the FCA or covered by the FSCS.

- He confirmed that he had taken financial advice specific to the investment within this questionnaire or that he met the FCA criteria for a high net-worth/sophisticated or elective professional investor.
- He elected to be treated as a sophisticated investor.

He also signed to confirm his status as a high net-worth investor on the basis that he held net assets to the value of £250,000 or more in the last year.

Mr H completed an 'Unlisted Share Purchase Questionnaire', in which he confirmed that none of the Directors or Shareholders of LPS were connected to him.

Strabens Hall included a copy of the Share Purchase Agreement for Mr H's investment in LPS. This detailed that Mr H's SIPP would be purchasing 7,186 shares for a total price of £310,000.

Westerby confirmed Mr H's SIPP had been established on 9 January 2018. Westerby received £54,374.78 and £282,177.29 from Mr H's existing pension providers on 16 and 19 January 2018 respectively.

Westerby was provided with a new Share Purchase Agreement on 22 January 2018 which showed that Mr H's SIPP would be purchasing 7,534 shares for a total price of £325,000.

Westerby sent £325,000 to LPS for investment on 22 January 2018.

In late 2019 Mr H became concerned that his investment in LPS couldn't be valued. He contacted Westerby about this, and started to ask questions about how Westerby had valued the investment originally and the extent of the due diligence checks it had carried out before accepting his investment in LPS. In January 2020, Westerby informed Mr H that it had carried out due diligence to the extent required by the Regulator to ensure the investment was genuine and not a scam, albeit it acknowledged the investment was high risk. Westerby said it obtained references and noted it had attracted significant investment from a high-profile company.

Mr H replied on 20 January 2020, explaining that the high-profile company Westerby had named had not invested in LPS, rather it had sold some technology in return for shares and a promise to pay a significant sum, but this was never paid. Mr H also said the references were provided by companies who employed LPS on a consultancy basis for projects that were never commercialised. He also said that a review of the company's accounts would've demonstrated a company in poor financial health which should have led Westerby to question the value of the shares he was purchasing.

Westerby responded, saying that it had satisfied itself the investment was a genuine investment opportunity based on the evidence it obtained, including the references from the companies which confirmed they had worked with LPS. Westerby added that:

"Early stage companies often have no revenue and have significant negative balance sheets as funds raised are used to develop ideas, technology or products to bring to market. This would not by itself have been a reason to disallow the investment because it was clear that the company had acquired/developed technology that had huge potential future value if it could be commercialised.

It is important to emphasise that with young tech companies, and entrepreneurial start-ups in general, that the fund raising is often based entirely on hope value; i.e. what the company shares could be worth at some future date if the idea can be developed out into a profitable enterprise. It is normal to see a negative balance sheet/indebtedness in the early stages of

the business. The business could even be pre-revenue. All of this doesn't stop entrepreneurs and angel investors providing financial support by subscribing for shares in such businesses if they are convinced by the idea and consider that the management team have the necessary skills and experience to maximise the chances of success. Of course the hope of future success doesn't mean to say that it will ever succeed – investors could still lose their investment. So the fact that the IP of [LPS] *was never commercialised doesn't render it an inadmissible investment for a SIPP. It is a permissible investment, albeit a high risk one.*

In terms of the share pricing of a new fund raise, that is for the current board/shareholders to determine and for each investor to decide whether they think it's a fair price to pay. The decision of the investor will mostly be based on business projections and potential future value, not an assessment of known metrics such as current NAV, EBITDA or revenue streams because there may be none. This hope value can have a bearing at the start of the business or even years in to the business."

Westerby reiterated that the due diligence process was not designed to confirm whether a fair price is being paid for shares as this is influenced by supply and demand. It also wasn't its role to consider whether an investment is suitable for an investor, that was the role of the investor and their financial adviser.

Mr H responded in February 2020, saying that he still felt Westerby had failed to carry out adequate due diligence and that this had led to a significant loss to his pension. In particular, Mr H believed that sight of the audited accounts would've shown the company was over indebted and that Westerby failed to establish the current shareholding. Mr H added that he joined LPS partly based on Mr L telling him that Westerby had undertaken financial due diligence on LPS which validated the credibility of it. Mr H said Mr L stated the strength of the due diligence had led Westerby to take the exceptionally unusual step of admitting an offshore, unlisted company as an asset into the SIPP. This point was repeatedly and strongly made by the LPS team, internally and externally, to justify the viability of both the Company and its technology.

Westerby issued a response to Mr H's complaint on 2 May 2020. Amongst other things, Westerby said that:

- It acts as SIPP Trustee and Scheme Administrator; it doesn't and can't provide advice on SIPPs or underlying investments. Westerby cannot therefore judge the suitability of an investment for a given investor.
- It does not allow SIPP investments into assets that the FCA deems to be "non-standard" unless the member either meets the criteria of a high net worth and/or sophisticated investor, or they have been advised to make the investment by a regulated financial adviser.
- Mr H provided information which confirmed he met the criteria of both a high net-worth individual and a sophisticated investor. He also confirmed his understanding of the risks involved.
- Mr H worked for LPS and as a very senior employee of LPS, Westerby expected he would have an insight into the company that could only be gained from high level internal involvement and influence.
- Mr H's Linked in profile showed significant experience in financial services and the telecomms industry. Westerby expected Mr H would have a strong understanding of the company's business strategy and financial position and as such, was well-placed to judge whether he should invest.
- Westerby's acceptance of an investment into a SIPP is not an endorsement of the investment or in any way an implication that the investment is likely to succeed.

- Westerby didn't approve LPS's use of its acceptance of the investment into SIPPs to promote LPS in any way.
- Westerby carried out due diligence on LPS in early 2017 for another customer. It was satisfied that:
    - It understood the nature of the investment;
    - Ensured the investment was genuine and not a scam, linked to fraudulent activity, money laundering or pension liberation;
    - Ensured the investment was safe/secure;
    - Ensured the investment could be independently valued and was not impaired.
- Westerby noted the difficulty in valuing the shares but ultimately expected that Mr H would have considered whether the shares were worth the amount he paid. This was a reasonable expectation, given his investment experience and senior position within the company, which would have afforded him significant insights into the viability and commercial prospects for the company and, most importantly the future expectations of success within the company.

Mr H immediately referred his complaint to the Financial Ombudsman Service. He said Mr L had since confessed to misleading investors about the health of the company and adequate due diligence would've uncovered this. Mr H also said that Westerby accepted that it was illegal for a Swiss company to share their accounts, which isn't true. As such, Westerby should've insisted on seeing the accounts before approving LPS for investment. Had it done so, Mr H says the audited accounts would have shown a discrepancy between the audited value of the company and the price shares were being sold at. He says this would've highlighted the risk of fraud. Mr H also says that Westerby wrongly believed LPS had won an award and finally, that it took references from companies that were shareholders of LPS.

Mr H continued to engage with Westerby to see if it was possible to sell his shares. Mr H received an offer from LPS to purchase his shareholding; he expressed concerns with the offer but he says Westerby essentially told him he had nothing to lose by accepting it because if payment wasn't forthcoming, the agreement was void. A share purchase agreement was drawn up in July 2020 and Mr H accepted it.

After some delays, Mr H was told that he could expect payment for his shares by 18 September 2020. Mr H shared his skepticism that payment would ever be made and drew Westerby's attention to the finite period in which the selling party (Westerby) could claim that the agreement was in default. He implored Westerby to act on the breach of contract if payment wasn't made by 29 September 2020.

Although Mr H was promised payment would be made on multiple occasions thereafter, it ultimately wasn't made. Mr H said he was unhappy that Westerby had persuaded him to sell his shares back to LPS even though he always suspected that LPS had no funds to pay for them.

Our Investigator ultimately didn't uphold the complaint. He thought Westerby carried out reasonable due diligence checks on the investment in LPS and as Mr H had a financial adviser, that would've provided some comfort to Westerby.

Mr H didn't agree. Mr H clarified that he had never really been an employee of LPS; LPS had offered him a position, a salary and shares and asked him to update his LinkedIn profile while this was being sorted out. Mr H said he was told everything needed to be agreed by LPS's major investors and would take time, but ultimately it was never agreed. Mr H said he'd lost earnings by working for LPS for nothing and he missed mortgage payments. Mr H said none of this would've happened if it hadn't been for the credibility Westerby gave LPS by accepting it for investment in its SIPPs.

Mr H said LPS was over indebted; it had no employees, no customers or revenue and had no assets to sell. He maintained a review of the audited accounts would have revealed this. Mr H added that the references had been given by investors who stood to gain from further SIPP investment and Westerby ought to have ensured there was no conflict of interest here. He also provided evidence that Mr L had confessed to misleading investors.

Mr H asked for the complaint to be referred to an Ombudsman for a final decision.

I asked Mr H for some further information about the advice he received from Strabens Hall as I noted it had confirmed in an email chain (which had been forwarded to Westerby) that he'd received advice from Strabens Hall in respect of his pension transfers. Mr H said that he no longer had any paperwork from Strabens Hall.

I also asked Mr H whether the information he'd given in the Non Standard Asset Questionnaire that he completed for Westerby on 27 December 2017 was correct. Mr H says that he believed it was correct at the time, although the salary he gave turned out to be incorrect as no pay was ever forthcoming from LPS.

I asked Mr H how long he continued to work for LPS without pay and whether he received anything else in return for his work, for example, shares. I asked him why he was persuaded to invest his pension in LPS when by this time he would've been working without pay for several months. And whether he believed that investing his pension at the time was crucial for the success of the company. I also asked when he started to realise that things weren't going well for LPS and if he raised any concerns about this.

Mr H explained:

"Having agreed to work for [LPS] *their debt to me increased month on month which, in effect, meant that I was living off savings without the income to replenish that spending which was increasing the financial impact of not being paid, and the impact grew exponentially over time. I wasn't alone, and there were around 40 other people in the same position, within the UK, USA, EU and China. It is hard to understand how so many senior people bought in so deeply to* [Mr L]*'s deceit, but the deceit was often aided by, for example,* [Mr L] *receiving a call on his mobile where he would show the face of his phone to those present, and it would show Bill Gates, or Jeff Raikes or similar. These were people with the power and capacity to invest at the levels that* [Mr L] *had represented.* [Mr L] *always went to take these calls in private so little did any of us suspect that this was part of* [his] *misrepresentation. We were told after these calls that a deal to acquire the company would be concluded within a month or two, but there was always a seemingly compelling reason for further delay...*

... Such was the combination of how compelling [Mr L] *was, and the feeling that people were too deep in and owed too much money to walk away.* [Mr L] *told people that if they did leave, they would lose what they were due. Some people had been involved for around a decade and still believed in what they were told, as did I, because the alternative was unpalatable. We all believed that the transaction* [Mr L] *represented would take place, and nobody wants to believe or accept they'd been misled.*

On my part, a significant contributing factor in my belief system was driven by the knowledge that a reputable UK based financial service company had undertaken due diligence on [LPS] *to admit investments into a SIPP. I was told that the responsibilities of the SIPP provider were to ensure that the company was legitimate and there was no fraudulent activity; and that the assets could be valued, which I was told had taken place. I did ask for a copy of the accounts and was told that as an employee that I couldn't see these, but that Westerby had reviewed them as part of the due diligence process and concluded that everything with the company was in order and the share valuation had been validated. I now know this not to be*

true but given that a company cannot be valued without knowing the value of its assets and liabilities, I did (and do still) believe that it is a fundamental requirement of a due diligence process to have sight of the accounts, and had that been the case, Westerby would've known the company would be considered insolvent.

I didn't know the scale of the unpaid wages for quite some time thinking that it was only me that was affected, based on what I was told when joining. Later, after I'd transferred my pension into the SIPP, other people started to talk to me about the hardship they were suffering. This worried me greatly. They expressed the view that they had too much to lose to leave so felt trapped. I started to raise concerns for myself and others, but I don't have the correspondence to share because my access to [LPS] *emails was removed without notice a few months after I'd started to raise concerns. From recollection I think it was early in 2019 when I started to raise concerns, but I cannot be certain of the timeline...*

... I can confirm that I did not receive any shares or remuneration during my entire association with [LPS].

Just for context, the 40 or so people that worked for [LPS] without pay for even longer than I included former MPs, business leaders, accountants and experienced IT and professional services personnel. This situation was highly unusual and hopefully the above helps to put a context around that. The story [Mr L] *spun was sufficiently compelling to persuade senior people from a range of backgrounds that what he said was true. The company accounts were never shared but the admission to the Westerby SIPP did result in renewed belief, otherwise things may have come to light earlier...*

... In relation to the transfer of my pension, at the time I transferred it I did not believe it to be necessary for the company to succeed but with hindsight it did perpetuate a situation of insolvency that was never going to be resolved. At that time, I had no idea about the finances of the company nor did I know so many people hadn't been paid for so long."

Finally, I asked Mr H whether he could provide evidence that the persons who provided references for Westerby about LPS were shareholders at the time. Mr H said that it was common knowledge that these individuals were shareholders and this would've been confirmed in the share register, however, this was never circulated and access was highly protected.

I issued a provisional decision on 24 April 2025, explaining I was minded to uphold Mr H's complaint. I thought that Westerby had failed to carry out sufficient due diligence checks on Strabens Hall and the investment in LPS. Had it done so, I thought Westerby ought to have refused to permit the introduction of Mr H's SIPP business from Strabens Hall and the investment in LPS and Mr H would've retained his existing pension arrangements.

Mr H accepted my findings. Westerby disagreed with the conclusions reached in the provisional decision, but said it saw no purpose in contesting this further. However, it made the following points about the proposed redress:

- Strabens Hall had the required permissions from the Regulator to advise on the investment and should have advised Mr H on the suitability of it for his pension. A high court ruling affirmed that an IFA is not entitled to divorce the advice on the suitability of the pension transfer from considering the suitability of the underlying investments.
- It is reasonable in the circumstances to appoint a proportionate amount of the loss against Strabens Hall, given its failure to provide Mr H with advice. Strabens Hall is at least 50% responsible for Mr H's loss if not 100% responsible.
- Given that Strabens Hall has entered into liquidation, Mr H should make a claim with

the FSCS to recover the loss attributed to its failings.
- It would ultimately be fair to limit Westerby's liability to 50% of Mr H's loss.
- Mr H should be asked to confirm his current tax status.

In response, Mr H confirmed that he expected his tax status in retirement to be that of a basic-rate taxpayer.

As no agreement was ultimately reached, I'm now providing my final 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.

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, Regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

Relevant considerations

I have taken into account a number of considerations including, but not limited to:

- The agreement between the parties.
- The Financial Services and Markets Act 2000 ("FSMA").
- Court decisions relating to SIPP operators, in particular Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541 (*"Options"*) and the case law referred to in it, including:
    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474 ("*Adams"*)
    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service [2018] EWHC 2878 (*"BBSAL"*)
    - Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The FCA (previously FSA) rules including the following:
    - PRIN Principles for Businesses
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to SIPP operators and good industry practice.

The legal background

As highlighted in the High Court decision in *Adams,* the factual context is the starting point for considering the obligations the parties were under. And in this case it is not disputed that the contractual relationship between Westerby and Mr H is a non-advisory relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. Westerby was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

I have considered the obligations on Westerby within the context of the non-advisory relationship agreed between the parties.

The case law

I'm required to determine this complaint by reference to what is in my opinion fair and reasonable in all the circumstances. I am not required to determine the complaint in the same way as a court. A court considers a claim as defined in the formal pleadings and they will be based on legal causes of action. The Financial Ombudsman Service was set up with a wider scope which means complaints might be upheld, and compensation awarded, in circumstances where a court would not do the same.

The approach taken by the Financial Ombudsman Service in two similar (but not identical) complaints was challenged in judicial review proceedings in the *BBSAL* and the *Options* cases. In both cases the approach taken by the Ombudsman concerned was endorsed by the court. A number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved. As such, I don't think it is necessary for me to quote extensively from the various court decisions.

The Principles for Businesses

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"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non-advisory basis, in a way appropriate to that relationship.

Principles 2, 3 and 6 are of particular relevance here. They 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 am satisfied that I am required to take the Principles into account (see *BBSAL*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

The regulatory publications and good industry practice

The Regulator 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.

The 2009 Report included:

"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…

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."

I have considered all of the above publications in their entirety but it isn't necessary for me to quote more fully from the publications here.

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 Finalised Guidance is). However, all of the publications 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 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 them into account (as did the Ombudsman whose decision was upheld by the court in *BBSAL*).

Points to note about the SIPP publications include:

- The comments made in the publications apply to SIPP operators that provide a non-advisory service.
- Neither court in the *Adams* cases considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.
- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

Overall, in determining this complaint I need to consider whether Westerby complied with its regulatory obligations as set out by the Principles to act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regards to the interests of its customers (in this case Mr H), to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Westerby could have done to comply with its regulatory obligations and duties.

Mr H's relationship with Westerby and other connected parties

Westerby provided the SIPP on an execution-only basis. As such, I accept that Westerby didn't provide any advice here, and so it didn't have an obligation to consider the suitability of the investments for Mr H. Nevertheless, I think Westerby was required (in its role as an execution-only SIPP provider) to consider whether it was appropriate to accept Mr H's SIPP application and to consider whether the investment he went on to make was acceptable to make within its SIPP. And overall, I think Westerby's duty as a SIPP operator was to treat Mr H fairly and to act in his best interests.

What did Westerby's obligations mean in practice?

In this case, the business Westerby was conducting was its operation of SIPPs. While Westerby was not responsible for considering the suitability of the investment for its clients, it was still responsible for the quality of the SIPP business it administered. And for the reasons set out above in the 'Relevant considerations' section, it is my view that in order for Westerby to meet its regulatory obligations (under the Principles and COBS 2.1.1R) when conducting its operation of SIPPs business, it should have undertaken sufficient due diligence checks to consider whether to accept/reject introductions from a particular business and accept/reject applications for particular investments, with its regulatory obligations in mind.

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 introducer is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. Its obligations and duties in this respect weren't prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

Due diligence checks on the introducer

Westerby hasn't provided detailed information about the due diligence checks it carried out on Strabens Hall before accepting Mr H's SIPP application and transfer of his existing pension funds. But I think that Westerby understood that it was required to carry out some checks on Strabens Hall before accepting introductions from it.

I say this because I can see Westerby asked Strabens Hall to agree to its 'Intermediaries Terms of Business' document when Strabens Hall was first in touch with it about arranging a SIPP for another investor in LPS. The agreement was signed by Strabens Hall on 19 August 2016. I can also see that Westerby checked the Companies House and FCA register entries for Strabens Hall in August 2016 to ensure it had the correct permissions for the transactions it was carrying out. And, following Strabens Hall sending Mr H's applications to Westerby in January 2018, it again checked the FCA register entry for Mr H's adviser at Strabens Hall to ensure he had the correct permissions.

However, I don't think the checks Westerby carried out went far enough – and I think Westerby ought to have been aware that there were deficiencies in the advice process carried out by Strabens Hall that increased the risk of consumer detriment. So, given the circumstances involved here, I don't think Westerby took appropriate steps or drew reasonable conclusions from the information that was available to it before accepting Mr H's SIPP business.

Restricted advice

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

"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal

pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes).
…
Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.

The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes."

A further alert from the Regulator in April 2014 stated:

"Where a financial adviser recommends a SIPP knowing that the customer will (…) transfer (…) to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable (…), then the overall advice is not suitable.

If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer (…) at all as it will not be able to assess suitability of the transaction as a whole.

The failings outlined in this alert are unacceptable and amount to conduct that falls well short of firms' obligations under our Principles for Businesses and Conduct of Business rules. In particular, we are reminding firms that they must conduct their business with integrity (Principle 1), due skill, care and diligence (Principle 2) and must pay due regard to the interests of their customers and treat them fairly (Principle 6)."

In response to my provisional decision, Westerby has highlighted a high court case which affirmed the Regulator's position on this and I've taken account of it.

While I appreciate that the guidance was aimed at advisory firms, I think Westerby ought reasonably to have been aware of the FCA's position on restricted advice given its role as a SIPP administrator. The Regulator's 2009 Thematic Review Report included the following statement:

"…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."

So, in order to identify instances of consumer detriment such as unsuitable SIPPs or poor advice, I think Westerby ought to have been aware of the Regulator's position on restricted advice so that it was able to spot instances of poor advice and potential consumer detriment.

Westerby received Mr H's SIPP application form in January 2018 and in the Adviser Charges section, Mr H indicated that he had received advice from an authorised financial adviser in respect of the application, giving Strabens Hall's details. Westerby was also copied in on an email chain on 22 January 2018, which contained an email from Strabens Hall to Mr H dated 22 December 2017 in which it said, *"our advice in relation to your pensions is therefore now complete and was sent in today's post."* However, in the Non Standard Asset Questionnaire completed for the LPS investment (also sent to Westerby in January 2018), when asked if he had received financial advice specifically relating to this investment, Mr H said 'no'. And this is consistent with what Mr H tells us, that Strabens Hall offered no advice on the suitability of the investment he intended to make. As such, I think that Westerby ought to have known that while Strabens Hall had advised Mr H to transfer his pensions to a Westerby SIPP, it did not give any consideration as to the suitability of Mr H's chosen investment as part of its recommendation.

I appreciate that Westerby may have thought that this might simply be a mistake in the paperwork. But if it had considered that to be the case, I think it ought reasonably to have questioned such an anomaly and taken steps to mitigate against the risk of consumer detriment by, for example, speaking to Mr H directly or requesting sight of his suitability report. And had it done so, I think it would've most likely identified that Strabens Hall wasn't providing full advice on the whole transaction here. So, the advice given was of a restricted nature and as such, was not in line with the Regulator's expectations.

Westerby says that this could have been the arrangement between Mr H and Strabens Hall as he intended to invest regardless. But I still think this ought to have been considered a red flag that meant it shouldn't have accepted Mr H's applications at this time, given the risk of consumer detriment. And I think Westerby ought to have told Mr H that it could not proceed with his applications as they stood.

What would Mr H have done next?

Westerby may say that Mr H was not required to take advice because he was transferring defined-contribution pensions rather than a defined-benefit occupational pension scheme. And it would have facilitated the transaction without an adviser being involved on the basis that Mr H confirmed he was a high net-worth and sophisticated investor. So, it may argue that Mr H's transfer and investment would've proceeded regardless. It also says Mr H was likely determined to invest in LPS regardless.

I've thought about this carefully, but it's evident that Mr H did take advice and was due to pay a significant fee for it, plus ongoing fees. And I haven't seen any evidence to persuade me that Mr H had made an arrangement with Strabens Hall for it to only provide him with advice on the transfer of his pensions.

I don't think Mr H would've known the advice he had received from Strabens Hall wasn't in line with the Regulator's expectations – although he had worked for financial services providers before joining LPS, he worked in sales and marketing. So, on finding out that the advice he'd received and would be paying for didn't meet with the Regulator's guidance, I think Mr H would've wanted to ensure the advice he received covered the entirety of the transaction. And I think it's unlikely he would've asked Strabens Hall to provide that advice given its earlier failings.

Westerby may argue that its contract was with Strabens Hall not Mr H and that if Mr H's application was refused it wouldn't have been at liberty to, or had reason to, contact Mr H. But Westerby did receive Mr H's application, so I'm considering what it ought to have done having received Mr H's application. And for the reasons I've explained above I'm satisfied that, having received Mr H's application from Strabens Hall, it shouldn't then have accepted Mr H's SIPP application.

Mr H went through a process with Strabens Hall that culminated in him completing paperwork to set up a new Westerby SIPP and with the expectation that monies from his existing pension plans would be transferred into the newly established SIPP. Having gone to the time and effort of doing this, I think it's more likely than not that if the Westerby SIPP wasn't then established, and if his pension monies weren't then transferred to Westerby, that Mr H would have wanted to find out why from Strabens Hall and Westerby.

And I wouldn't think it fair and reasonable to say that Westerby shouldn't compensate Mr H for his loss on the basis of any speculation that Strabens Hall and/or Westerby wouldn't have confirmed to Mr H the reason why the transfer hadn't proceeded if asked by him.

So, I think it's fair to conclude that one or more of the parties involved would have explained to Mr H that his application hadn't been accepted as Strabens Hall hadn't provided Mr H with advice in line with the Regulator's guidance. And that Mr H wouldn't then have continued to accept or act on pensions advice provided by Strabens Hall.

It's possible Mr H may have then approached another financial adviser. But although Mr H had self-certified as a high net-worth and sophisticated investor, and clearly had some experience of investing, I think it's unlikely a reasonably competent financial adviser would recommend Mr H switch his pension, which I understand represented a significant portion of his retirement funds at the time, to invest almost the entirety in a high-risk, illiquid, non-standard off-shore investment. Such a strategy would be considered very high-risk and wouldn't generally be suitable for a retail customer.

Of course, I have to consider whether Mr H would've wanted to go ahead with the investment regardless of the advice he received. And I accept that, given he worked for LPS at the time, he would've had more reason to than the average consumer. But I'm mindful that by this time, Mr H had been working for LPS, seemingly without pay, for almost six months. And although it appears Mr L was persuasive and gave Mr H a strong impression that the investment was sound and would help him grow his pension, I think that a regulated professional advising him against this course of action would've given him pause for thought. And ultimately, I'm not persuaded that Mr H would've insisted on transferring his pensions and making the investment in LPS. Particularly, as the more time that passed, the longer he went without pay and the more I think Mr H started to have doubts about the viability of the company. Mr H was already in the position where he was taking a risk with his income and was having to rely on savings. So, I don't think Mr H would've wanted to invest his pension in LPS at that time, against any advice he was given, in light of the prevailing circumstances.

So, for the reasons given above, I don't think Mr H's investment in LPS would have proceeded if Westerby had done what I have found it ought to have done. And I think he would've retained his existing pension arrangements.

Due Diligence checks on the investment

Despite my conclusions above, I've still considered Westerby's obligations under the Principles in respect of carrying out sufficient due diligence on the underlying investment Mr H intended to make. And having done so, I think that if Westerby had carried out

sufficient due diligence checks on LPS it should not have permitted his SIPP funds to be invested in it.

Westerby said that it carried out sufficient due diligence checks to ensure:

- it understood the nature of the investment;
- that the investment was genuine and not a scam, linked to fraudulent activity, money laundering or pension liberation;
- that the investment was safe/secure;
- that the investment could be independently valued and was not impaired.

I accept Westerby did undertake some due diligence checks before permitting the investment to be held in its SIPPs. However, I think it needed to do more to satisfy its obligations under the Principles, primarily in ensuring the investment could be independently valued and that it wasn't impaired, before accepting it for investment. And had it done so, I don't think it would've been fair or reasonable to accept Mr H's investment in LPS into his SIPP.

Westerby told us that Strabens Hall introduced two customers to it, with Mr H being the first. However, it's clear from the evidence provided that Strabens Hall first proposed that one of its clients, who already held shares in LPS, should open a Westerby SIPP to purchase some anti-dilution ('AD') rights which would allow him to purchase further LPS shares. And therefore, Westerby carried out its due diligence on LPS as a result of that introduction.

I can see that Westerby appears to have carried out some checks of its own; for example, it looked up LPS on the Swiss Company Register and also the entries for its auditor and accountant. Westerby also contacted two people whose contact details had been given, to provide references. And based on those references, Westerby was satisfied that LPS was a genuine business and not part of a fraud or scam.

For the avoidance of doubt, putting aside Mr H's concerns that these references were not independent, I don't think that LPS was likely a fraudulent investment. Although it has transpired that the company was not in good financial health and it did not have the prospects that Mr L presented to his staff, the evidence demonstrates that LPS was a genuine business venture with a product that could have been a success. However, it seems to me that Westerby placed too much emphasis on ensuring LPS was a genuine business, rather than seeking further assurance in respect of the other types of checks the Regulator expected SIPP providers to carry out.

I also think that Westerby relied on Strabens Hall to facilitate and carry out the majority of the other checks on LPS before it was approved for SIPP investment. And I think Westerby ought to have had serious concerns about some of the information provided and drawn different conclusions about accepting the investment to be held in its SIPPs. Furthermore, other information I think it should have obtained, ought to have given Westerby real cause for concern about the risk of consumer detriment associated with this.

Mr H's main concern here is that Westerby failed to interrogate the financial health of the company. And had it done so, it would've found it was essentially insolvent, which should have led to it questioning the value of the shares Mr H intended to purchase and ultimately refused it for investment in its SIPPs.

I can see that Westerby, through Strabens Hall, asked for some information before approving LPS for SIPP investment. On 24 February 2017, Mr J of Strabens Hall provided

some information about the client who wanted to purchase the AD rights using the Westerby SIPP. He said:

"In terms of financials, the Swiss rules on what information may be disclosed to whom make this aspect a little difficult, but in the pack is the statement made to [the auditors] on 20 January 2017 and if further details are needed I will put you in direct contact with the treasurer of [LPS]*…*

… Schedule of shareholders. Swiss law prevents the individual names being released but I am informed that other than [Mr L]*, the only 5%+ holding is a trading corporate (under 'investor' in the schedule) whose IP was sold to* [LPS] *in return for the shares. That business is a private UK company the shares of which are owned 50% by the Bahrain Sovereign Wealth fund and 25% each by two individuals neither of whom is connected to [consumer]."*

The statement referred to was nothing more than a covering letter to the financial statements provided to the auditor in January 2017. It essentially said that the Board had approved the financial statements for the year ending 31 December 2015, that the information within them was complete and accurate and that they complied with Swiss law.

It appears that a discussion then took place between Mr J and Westerby because in an email dated 1 March 2007, Mr J explained to Westerby that he had raised the points previously discussed with the Treasurer of LPS and provided her responses to Westerby's questions [which I've included in italic]:

2. "How might a shareholder obtain a valuation of their shares? Let's take a situation in which [consumer] decides to transfer his pension (containing say cash and the [LPS] shares). The trustee will need to value the shares at that time. Has there been an 'appointed' person to carry out valuations in the past – perhaps an accountant? Has the question of value (at this simple level) been addressed before? *The short answer is No and No. We do however have audited statements and have assets on our balance sheet which include intellectual property both acquired and self-developed. The period of time we are about to enter into has us going live with our software platform at scale over the next 2 months. There will be market comps available at that time.*

3. Accounts – as shareholders, will the trustees be provided with annual accounts? *Yes* As potential shareholders, are you able to release anything at all other than the auditor's letter in connection with the last financial year? *No*

4. Shareholders – the share ledger summary was helpful, but we will need to provide more than this if we are to persuade the trustee that it has been able to conduct sufficient checks on potential connected parties. This is a key aspect of HMRC's review of pension plans. Ordinarily, the trustee will be provided with a comprehensive shareholder register. This I recall is not practical (though is possible) and so I wonder if we might be able to obtain a letter from the company's lawyers confirming that to the best of their knowledge none of the shareholders are 'connected' (for UK tax purposes) with [consumer] and consequently he does not have a >5% interest? Can you think of any other way we might deal with this point without breaching any Swiss laws? *As part of the annual audit the auditor does review the Cap Table and our CFO can make representations and warranties that there are no "connected parties". In addition as I have previously disclosed,* [LPS] *only has two shareholders with greater than 5%. Those are the founder* [Mr L] *and* [well-known Business] *which holds 6% of the company which was in exchange for their intellectual property.*

5. AD Rights value – our planning at the moment is based on a 'path of least resistance'

approach. If shares are bought from [consumer] we will need to have an independent valuation of the shares carried out now, which is not ideal. If the pension buys the shares from the company (taking up the rights) then the price is fixed in accordance with the Agreement. The question then is can [consumer]'s rights be assigned or sold to a third party, albeit one who would purchase the shares as the legal owner, but holding the beneficial interest for [consumer]? I believe this must be the case*. His rights can be assigned and just require a simple approval by* [LPS] *and specifically I can authorize this on behalf of the company.*

6. If the rights may only be exercised by [consumer], or a trustee on his behalf, then they have zero market value for these purposes. If, on the other hand, they could be assigned to an unconnected third party – e.g. me - and I could exercise them then we will need to have the rights themselves valued. I suspect that the former will be the case but it would be good to have this confirmed. *You are correct that this can only be exercised by* [consumer] *or his trustee, they can't be sold."*

I think that these exchanges show that Westerby was concerned about how it would be able to value any investment in LPS. And I don't think that any of the answers it received should've provided it with any degree of comfort that the shares could be valued in the future. The fact that LPS's treasurer said that the question of how to value shares (or the act of actually undertaking a valuation) hadn't yet materialised, despite the company having been in existence since 2006, ought to have been very concerning.

Furthermore, I think Westerby ought to have seriously questioned why it was unable to view the financial statements. The financial statements would've provided some insight as to the financial health of the company (and in turn the viability of the investment) and ought to have formed part of its check into whether the investment was impaired. Westerby ought to have known that while a private company in Switzerland does not have to make its financial statements public, that does not prevent it from using its discretion to share the statements with interested parties. And I would've expected that a company keen to secure investment would've been willing to share whatever information was requested in order to make that happen.

By accepting LPS's statements at face value, I think Westerby failed to ascertain important information about the viability of the investment. And accepting investment in LPS into its SIPPs without having this information, increased the risk of consumer detriment.

Without having sight of the audited financial statements, Westerby was simply left with the references provided by previous collaborators and LPS telling it that it had secured intellectual property from a well-known business in return for some shares. I acknowledge that Westerby also found evidence of a project using LPS's operating system that had won an award, this was in 2013. And whilst the information gathered did evidence that LPS was a genuine business, it does not shed any light on the viability of the investment Mr H proposed in 2018.

<u>What should Westerby have done?</u>

I think Westerby should have insisted that LPS share its latest audited accounts so that it could better understand the financial health of the company, so that it could be satisfied about the viability of the investment. This is information Westerby would have always sought for an investment in unquoted shares in a British company, so the fact that this information was more difficult to obtain for a Swiss company should not have led Westerby to abandon the need for this information altogether.

It seems to me that if Westerby had insisted on seeing this information prior to accepting Mr H's investment, LPS would most likely have not provided it. That's because I think by the time Mr H was investing his pension in LPS, the company was not in good financial health and it was not generating income. I say this given that I've seen Mr L's 'confession' dated 30 November 2017, where he stated that he had made representations that LPS was in negotiations with regard to a major investment in LPS but those negotiations never took place. So, I don't think LPS would have wanted this known to Westerby, particularly if it wanted to achieve further pension investments.

I think LPS being unwilling to share financial information about the company ought to have been a significant red flag that meant Westerby could not be satisfied that the investment wasn't already impaired.

Westerby has said that it isn't unusual for a technology start-up to not be generating income – the investment was always speculative and was based on the possibility of generating future returns. But I don't think that LPS was suggesting in any way that it was a start-up – it had been in business for over a decade by the time it was first introduced to Westerby. And the share price was not suggestive of a business that wasn't making money. So, I do think that the absence of any assurance that the investment was financially viable ought to have been a serious barrier to accepting Mr H's investment in it.

I think it's important I emphasise here that I'm not saying that Westerby should necessarily have discovered everything that later became known (particularly Mr L's confession about misleading investors) had it undertaken sufficient due diligence before accepting the LPS investment into its SIPPs. But I do think that appropriate checks would have revealed some fundamental issues which were, in and of themselves, sufficient basis for Westerby to have declined to accept the LPS investment in its SIPPs altogether.

And overall, I'm of the view that Westerby should not have permitted Mr H to invest his SIPP monies in LPS. And had it done so, Mr H would not have gone on to invest as he did.

Is it fair to ask Westerby to pay Mr H compensation in the circumstances?

The involvement of other parties

In this decision I'm considering Mr H's complaint about Westerby. However, I accept that other parties were involved in the transactions complained about – including Strabens Hall and LPS.

Westerby says that it should not be liable for the full extent of Mr H's loss because of the involvement of these other businesses, particularly Strabens Hall, and to make no allowance for this in the redress is neither fair nor reasonable. It points to a court case which supports its view that Strabens Hall should be held fully responsible for Mr H's loss given its failure to provide advice on the suitability of the investment for Mr H.

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).

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

I accept that other parties, including Strabens Hall and LPS, might have some responsibility for initiating the course of action that led to Mr H's loss. However, I'm satisfied that it's also the case that if Westerby had complied with its own distinct regulatory obligations as a SIPP operator, the investment wouldn't have proceeded, and the loss he's suffered could have been avoided.

I've carefully considered causation, contributory negligence and apportionment of damages. And it's my view that it's appropriate and fair in the circumstances for Westerby to compensate Mr H to the full extent of the financial loss he's suffered due to Westerby's failings. And, having carefully considered everything, I don't think it would be fair in the circumstances to reduce the compensation amount that Westerby is liable to pay to Mr H.

Mr H taking responsibility for his own investment decisions

In reaching my conclusions in this case I've thought about 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 and I'm satisfied that it wouldn't be fair or reasonable to say Mr H's actions mean he should bear the loss arising as a result of Westerby's failings. I appreciate that Mr H was working for LPS at the time of his SIPP investment. And I can understand where Westerby is coming from when it says that it would've expected Mr H to have a good understanding of the investment and the financial status of the company due to his privileged position. But that doesn't mean that Westerby should not have undertaken sufficient checks, in line with the Regulator's guidance, to determine whether the investment was an appropriate one for its SIPPs.

In my view, if Westerby had acted in accordance with its regulatory obligations and in line with its own policies and procedures the investment in LPS wouldn't have proceeded. So, if that had happened, I'm satisfied the loss he's suffered could have been avoided.

As I've made clear, Westerby needed to carry out appropriate due diligence on Strabens Hall and LPS and reach reasonable conclusions. I think it failed to do this. And just having Mr H sign forms containing declarations wasn't an effective way of Westerby meeting its obligations, or of escaping liability where it failed to meet its obligations.

Strabens Hall was a regulated firm with the necessary permissions to advise Mr H on his pension provisions and Mr H also then used the services of a regulated personal pension provider in Westerby. I'm satisfied that in his dealings with these parties, Mr H trusted each of them to act in his best interests.

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

<u>Would the transactions complained about here still have been effected elsewhere?</u>

Westerby says if it hadn't accepted Mr H's SIPP application from Strabens Hall, that the transfer of Mr H's pension and the investment would still have been effected with a different SIPP provider. But I don't think it's fair and reasonable to say that Westerby shouldn't compensate Mr H for his loss on the basis of speculation that another SIPP operator would have made the same mistakes and accepted the transfer and investment. 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 H's application from Strabens Hall and/or wouldn't accepted the LPS shares into its SIPPs.

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."

But I don't think these circumstances apply to Mr H as I haven't seen any evidence to persuade me that Mr H was incentivised in this way to invest his pension in LPS. While I don't necessarily think Mr H should have placed as much reliance as he seemed to on the fact that Westerby had approved LPS for SIPP investment, I don't think he'd have found another way to invest in LPS regardless. Ultimately, I don't think Mr H understood that he was taking a significant risk in investing his pension in LPS or that he would have sought to do so if he'd understood the financial health of the company at the time.

Having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that if Westerby had refused to accept Mr H's applications, the investment in LPS wouldn't still have gone ahead.

Summary

Overall, I think it's fair and reasonable to direct Westerby to pay Mr H 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 H's loss, I consider that Westerby failed to comply with its own distinct regulatory obligations and didn't put a stop to the transactions proceeding by declining to accept Mr H's application to invest in LPS when it had the opportunity to do so. I say this having given careful consideration to the *Adams v Options SIPP* 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.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr H. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against Westerby that requires it to compensate Mr H for the full measure of his loss. But for Westerby's failings, I'm satisfied that Mr H's pension monies wouldn't have been invested in LPS at all. As such, I'm not asking Westerby 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. And I'm of the opinion that it's appropriate and fair in the circumstances for Westerby to compensate Mr H to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by other firms involved in the transactions.

Putting things right

My aim is to return Mr H to the position he would now be in but for Westerby's failings.

As I've already mentioned above, if Westerby had declined to accept Mr H's application from Strabens Hall and/or refused to permit his investment in LPS, I think Mr H would've retained his existing pension arrangements.

In light of the above, Westerby should calculate fair compensation by comparing the current position to the position Mr H would be in if he hadn't transferred his existing pension plans to the SIPP. In summary, Westerby should:

1) Obtain the current notional values, as at the date of this decision, of Mr H's previous pension plans, if they hadn't been transferred to the SIPP.

2) Obtain the actual current value of Mr H's SIPP, as at the date of this decision, less any outstanding charges.

3) Deduct the sum arrived at in step 2) from the sum arrived at in step 1).

4) Pay a commercial value to buy Mr H's share in any investments that cannot currently be redeemed.

5) Pay an amount into Mr H's SIPP, so that the transfer value of the SIPP is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.

I've explained how Westerby should carry out the calculation, set out in steps 1 - 5 above, in further detail below:

1) *Obtain the current notional values, as at the date of this decision, of Mr H's previous pension plans, if they hadn't been transferred to the SIPP.*

   Westerby should ask the operators of Mr H's previous pension plans to calculate the current notional values of Mr H's plans, as at the date of this decision, had he not transferred them into the SIPP. Westerby must also ask the same operators to make a notional allowance in the calculations, so as to allow for any additional sums Mr H has contributed to, or withdrawn from, his Westerby SIPP since the outset. To be clear this doesn't include SIPP charges or fees paid to third parties like an advisor.

   Any notional contributions or notional withdrawals to be allowed for in the calculations should be deemed to have occurred on the date on which monies were actually credited to, or withdrawn from, the Westerby SIPP by Mr H.

   If there are any difficulties in obtaining notional valuations from the operators of Mr H's previous pension plans, Westerby should instead calculate a notional valuation by ascertaining what the monies transferred away from the plan would now be worth, as at the date of this decision, had they achieved a return from the date of transfer equivalent to the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index).

   I'm satisfied that's a reasonable proxy for the type of return that could have been achieved over the period in question. And, again, there should be a notional allowance in this calculation for any additional sums Mr H has contributed to, or withdrawn from, his Westerby SIPP since the outset.

2) *Obtain the actual current value of Mr H's SIPP, as at the date of this decision, less any outstanding charges.*

   This should be the current value as at the date of this decision.

3) *Deduct the sum arrived at in step 2) from the sum arrived at in step 1).*

The total sum calculated in step 1) minus the sum arrived at in step 2), is the loss to Mr H's pension provisions.

4) *Pay a commercial value to buy Mr H's share in any investments that cannot currently be redeemed.*

Based on what I've seen, Mr H sold his LPS shares back to Mr L in 2020, so the shares are no longer held in the SIPP. It isn't clear, however, whether the SIPP is closed. If the SIPP remains open and still holds the shares, I'm satisfied that Mr H's Westerby SIPP only still exists because of the illiquid investments that are held within it. And that but for these investments Mr H's monies could have been transferred away from Westerby. In order for the SIPP to be closed and further SIPP fees to be prevented, any remaining investments need to be removed from the SIPP.

To do this Westerby should reach an amount it's willing to accept as a commercial value for the investments and pay this sum into the SIPP and take ownership of the relevant investments.

If Westerby is unwilling or unable to purchase the investments, then the actual value of any investments it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include their being given a nil value for the purposes of ascertaining the current value of Mr H's SIPP in step 2).

If Westerby doesn't purchase the investments, it may ask Mr H to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from these investments. That undertaking should allow for the effect of any tax and charges on the amount Mr H may receive from the investments, and any eventual sums he would be able to access from the SIPP. Westerby will need to meet any costs in drawing up the undertaking.

5) *Pay an amount into Mr H's SIPP, so that the transfer value of the SIPP is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.*

The amount paid should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into a pension plan if it would conflict with any existing protections or allowances.

If Westerby is unable to pay the compensation into Mr H's SIPP, or if doing so would give rise to protection or allowance issues, it should instead pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr H's actual or expected marginal rate of tax in retirement at his selected retirement age.

Based on what I've seen, it's reasonable to assume that Mr H is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%. However, if Mr H would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

SIPP fees

If the investment remains in the SIPP and can't be removed from it, and it hence cannot be closed after compensation has been paid, then it wouldn't be fair for Mr H to have to continue to pay annual SIPP fees to keep the SIPP open. As such, if the SIPP remains open and it is used only or substantially to hold illiquid LPS holdings, Westerby should waive any future fees which might be payable by Mr H's SIPP.

Interest

The compensation resulting from this loss assessment must be paid to Mr H or into his SIPP within 28 days of the date Westerby receives notification of Mr H's acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation isn't paid within 28 days.

My final decision

For the reasons given, my final decision is that I uphold Mr H's complaint against Westerby Trustee Services Limited.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

Determination and award: I require Westerby Trustee Services Limited to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I additionally require Westerby Trustee Services Limited to pay Mr H any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Westerby Trustee Services Limited to pay Mr H any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Westerby Trustee Services Limited pays Mr H the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr H.

If Mr H accepts a final decision, the award is binding on Westerby Trustee Services Limited.

My recommendation is not part of my determination or award.

Westerby Trustee Services Limited doesn't have to do what I recommend. Further, it's unlikely that Mr H can accept my decision and go to Court to ask for the balance. Mr H may want to consider getting independent legal advice before deciding whether to accept any final decision.

If Westerby Trustee Services Limited agrees to pay the full calculated redress, and elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr H for his consideration and agreement. Any expenses incurred for the drafting of the assignment should be met by Westerby Trustee Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 July 2025.

Hannah Wise
Ombudsman