DRN-5603435

The complaint

Mr M is unhappy that Pathlines Pensions UK Limited ('Pathlines') – previously London & Colonial Services Limited, but I will refer to Pathlines throughout – failed to meet its obligations and carry out sufficient checks when accepting his self-invested personal pension ('SIPP') and investment applications, causing him a financial loss.

What happened

While I've considered all the information provided, I've focused throughout on what I consider to be key to reaching my decision.

Mr M was a member of a group personal pension ("GPP") arrangement set up by his employer. In around mid-2010, Mr M's employer decided to change pension providers. It was recommended that Mr M (and others) speak to an adviser I will call Mr C, at an IFA firm I will refer to as 'the IFA'. So a meeting was arranged with Mr C who came to speak with Mr M and a group of colleagues.

Mr C was a director of the IFA firm. Mr C also had another business I will call 'the investment company'. This was an unregulated and unlisted company whose business involved secured lending, land/property development and joint ventures with other companies.

Mr M, seemingly like a number of his colleagues, decided to proceed with Mr C who made recommendations to transfers existing pensions to a SIPP with Pathlines and to invest in the investment company. In Mr M's case, the suitability report said, amongst other things, that he had a balanced attitude to risk. Mr C recommended that Mr M switch his pension to a Pathlines SIPP. And, in respect of the investments, it said Mr M was free to give investment instructions either directly himself or through an adviser, for example. The suitability report said that the investment company was a type of investment that appealed to Mr M and met his risk profile and it recommended an investment split for Mr M's pension monies of 86% into the investment company with 14% held on deposit with Pathlines.

I have seen recommendation letters written by Mr C of the IFA to some of Mr C's colleagues. Those I have seen follow a similar format.

Mr M applied for a Pathlines SIPP and this was opened around mid-June 2011, having received advice from Mr C of the IFA to do so. We don't appear to have been provided with a full copy of Mr M's SIPP application form, but that I have been provided with said under the 'Investment' section that Mr M wished to manage the SIPP pension monies himself and he signed the form on 9 June 2011. The IFA's cover letter sent with the SIPP application and transfer forms to Pathlines said that Mr M wanted to transfer in monies from his pensions.

Soon after, Pathlines sent an acknowledgment letter to Mr C, asking for investment instructions. Across June and July 2011, Mr M transferred in just under £56,000 into his Pathlines SIPP from existing personal pension schemes, one being his GPP with his employer.

On 8 July 2011, Pathlines received an unquoted share application from the IFA for Mr M to invest in the investment company, which was signed by him on 9 June 2011. On 13 July 2011, Pathlines confirmed that £50,000 of Mr M's pension monies had been invested in this and the investment company said that a share certificate would be issued, although I don't appear to have been provided with a copy.

In October 2017, Pathlines wrote to Mr M enclosing his valuation and it said:

> "*Until such time as we are provided with an up to date valuation of the* [investment company] *unquoted shares by the company's accountant we will continue to value the shares at cost. Please note that this may not reflect the true position and value of the investment. In order to value unquoted shares for the purposes of taking pension benefits, we will require an up to date valuation from the company's accountant. Where this is not provided we are therefore unable to determine an accurate value for the purpose of benefit calculation and therefore will calculate the unquoted shares at zero*."

Around the same time, Mr M was looking to switch his SIPP to another provider but was seemingly unable to.

In or around November 2017, Mr M complained to Pathlines and, in December 2017, he also made a Financial Services Compensation Scheme ('FSCS') claim in respect of Firm B.

On 2 January 2018, Pathlines sent Mr M its final response letter. It said it understood Mr M was unhappy he couldn't transfer his pension away from it, that his investment was illiquid and a value couldn't be placed on it and that he might have been mis-sold his SIPP and the investment.

Pathlines didn't uphold Mr M's complaint. It said, in summary, that the shares couldn't be sold as there were no buyers, it explained its role and pointed Mr M in the direction of his financial adviser. Pathlines also said that this was its final response and that if he was dissatisfied he had the right to refer the matter to our Service within six months of the date of the letter. And it said he could read the enclosed Ombudsman complaints leaflet for more information.

In March 2018, the FSCS said that, while Mr M's total loss was just over £68,500, it would pay him its maximum award level of £50,000. And Mr M later obtained a reassignment of his rights back from the FSCS.

It seems that, as of June 2019, Mr M's annual SIPP statements reflected that the investment now had a nil value.

In November 2024, Mr M complained again to Pathlines and said, in summary, that as of 2016 his shares in the investment company were illiquid and he was unhappy it hadn't undertaken sufficient checks, including on the investments, before accepting his applications.

On 2 December 2024, Pathlines sent Mr M a further final response letter, which said that his complaint had been made too late to be considered. In summary, it said that:

- Mr M had already complained to it in late 2017 and that complaint, along with the events which led to it, were the same as, or a very similar in nature to, his 2024 complaint.
- It issued its final response letter in respect of Mr M's 2017 complaint on 2 January 2018. And that letter set out that Mr M had six months from the date of the letter to

refer his complaint to our Service if he remained unhappy.
- It wouldn't consider Mr M's further 2024 complaint, given he'd previously submitted the same, or a very similar, complaint to it in 2017 that it had already issued its final response on in 2018. It said that Mr M is unable to bring multiple complaints about the same matters that he has already received a final response on from it.
- Our Service might not be able to consider Mr M's complaint if the events complained of happened more than six years ago and more than three years after he realised or should have realised that there was a problem, or if he has referred the matter to us more than six months after Pathlines final response letter.
- And, except for in limited circumstances, it doesn't consent to our Service considering Mr M's complaint outside our time limits.

Later that month, Mr M referred his complaint about Pathlines to our Service. And in Mr M's submissions to our Service he has said, in summary, that:

- His complaint is that his existing pensions were switched to Pathlines, his investment was later declared illiquid/worthless and Pathlines didn't demonstrate due diligence when handling his funds.
- He and his work colleagues were persuaded to attend a presentation at his work that was run by the investment company, which was a company that was also run by Mr C of the IFA.
- He was told that if he didn't switch his pensions then these would remain at the same value and possibly end up costing him more money.
- He was attracted to the investment because he was assured of substantial returns and that funds would be secure – the nature of the risks associated with the investment weren't discussed.
- He was interested in moving his pensions at the time.
- At the time he understood Pathlines was a reputable company and that its role was to ensure the safe handling of his funds and to provide him with a reasonable return upon retirement.
- He was told around 2016 that he couldn't move or remove his funds from his pension, as these were illiquid and unquoted. And he didn't complain any earlier than 2017, as he'd been receiving statements which showed his fund value was growing.

Our Investigator said that Mr M's complaint had been made in time for our Service to consider it, for the following summarised reasons:

- While Mr M's 2017 complaint to Pathlines didn't explicitly say he was complaining about due diligence, both his 2017 and 2024 complaints were based on his belief that Pathlines ought to have done more to prevent the loss he has incurred.
- Pathlines 2018 final response letter didn't meet the definition of a final response and therefore the final response rule. This is because it didn't say whether it consented to our Service considering Mr M's complaint if referred to us more than six months from the date of its letter and it didn't refer to our website, as required by DISP 1.6.2. As such, we can consider Mr M's 2017 complaint.
- While Mr M's 2017 complaint was made to Pathlines more than six years after the events complained of – which took place in 2011 – it was made within three years of when he was aware, or ought reasonably to have become aware, that something might have gone wrong with his pension investments. This is on the basis he was first reasonably aware something might have gone wrong in or around 2017, as evidenced by his 2017 annual statement and by him making an FSCS claim.

Pathlines didn't agree. It said, in summary, that:

- Our view that its 2018 final response letter didn't meet the definition of a final response because it didn't provide details of our website is factually incorrect and in conflict with previous decisions by our Service, where we've acknowledged that a final response must contain at least a referral to our Service's website *or* inclusion of our complaint leaflet. And in Mr M's case, its 2018 final response letter included our Service's complaint leaflet.
- It maintained that it was enough that its 2018 final response letter set out that Mr M had six months to refer his complaint to our Service from the date of its letter. And that its final response was in compliance with rules. But Mr M referred his complaint to our Service more than six months later, in 2024.
- Either way, even if its 2018 final response letter doesn't meet the definition of a final response, the three-and six-year time limit still applied. And Mr M should have referred his 2017 complaint to our Service within three years of making it. That is because Mr M making that complaint shows he was aware he had cause for complaint about Pathlines at that point. But Mr M didn't refer his complaint to our Service until more than three years later, in 2024. That's despite *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ('BBSAL') being published in October 2018. And Pathlines doesn't consent to our Service considering Mr M's complaint outside our time limits.

As no agreement could be reached, Mr M's complaint was referred to me for a decision on whether or not we have the power to consider it. And I issued a decision explaining in summary that, for largely the same reasons as those given by our Investigator, I think we do have the power to consider Mr M's 2017 complaint, as it has been made and referred within our time limits.

I said that it is accepted that the complaint Mr M referred to our Service in 2024 was in essence the same as that he'd already made to Pathlines in 2017. I said that Pathlines 2018 final response letter, sent to Mr M in response to his 2017 complaint, wasn't as required by the rules though. This is because its final response letter needed to – but didn't – include the wording required to say whether or not Pathlines consented to waive the time limit as required by our rules. And that meant the six-month time limit set out in our rules had not been triggered, which in turn meant Mr M's 2017 complaint is not time barred under the six-month time limit.

In respect of our six and three year time limit, I said that while Mr M's 2017 complaint was made to Pathlines more than six years after the events complained of – which took place in 2011 – I'd seen nothing to suggest Mr M was, or ought reasonably to have become, aware of a problem with his pension investments any earlier than 2016/2017. And that it's accepted that Mr M first referred his complaint to Pathlines within three years of that, in late 2017. I said that, while Mr M then didn't refer his complaint to our Service until 2024, as per the words provided for in our rules I think the clock stopping event was the 2017 complaint referral Mr M made to Pathlines, which it acknowledged receipt of in its 2018 correspondence to him.

As I had decided that Mr M's complaint about Pathlines was within our jurisdiction, I moved on to looking at the merits of the complaint. At my request, Pathlines provided some further information. And I'm aware it has made the following summarised points in Mr M's case and in relation to complaints against it concerning the same adviser and investment:

- The High Court decision in the case of Adams v Options makes in clear that the scope of the duties on the SIPP operator must be based on the contractual agreement between the parties.
- Pathlines only agreed to provide an execution only service.

- The rules and guidance do not extend the duties on Pathlines. Finding otherwise would be wrong in law.
- Nothing in the rules required Pathlines to reject an investment on the basis it was high risk.
- We've referred to publications from the regulator which post-date the customer's investment and so are not relevant.
- Bearing all those points in mind, there is no reason to conclude that Pathlines did not act fairly and reasonably.

I issued a provisional decision, in which I explained that as the matter of our jurisdiction had already been separately dealt with, I only intended to address the merits of Mr M's complaint. I said that I thought Mr M's complaint about Pathlines due diligence should be upheld and I set out how it should put this right.

Pathlines disagreed with the provisional decision and provided further comments, which can be summarised as:

- It maintained Mr M's complaint has been brought too late for us to be able to consider its merits, as its 2018 final response letter was sufficient and complaint with our Service's rules and regulations.
- It said that in my jurisdiction decision I'd acknowledged Pathlines had provided a final response in 2018 which included a copy of our leaflet – which it said contained all relevant information including our website if Mr M didn't agree with Pathlines outcome – and which noted that Mr M must refer his complaint to us within six months of the date of the letter. But my jurisdiction decision failed to provide any formal response, or supporting evidence, as to how and why Pathlines 2018 response doesn't constitute a compliant and binding final response letter. Pathlines said I must provide full reasoning and evidence as to why this didn't meet the definition of a final response and give it sufficient time to respond.
- It said that I hadn't provided sufficient response or argument in my jurisdiction decision as to why I consider that Mr M's complaint to Pathlines again in 2024, and then his referral to our Service in 2024, is not out of jurisdiction under our three-year rule. Pathlines said there's evidence Mr M was aware, or ought reasonably to have become aware, there was a problem with his pension investments by 2016/2017. It said that Mr M didn't refer his 2017 complaint to it again, or first refer this to our Service, until 2024 though. And this was more than three years after he was aware he had cause for complaint about it, and more than three years after BBSAL which was sufficient trigger for customers, such as Mr M, to have become aware of SIPP providers responsibilities. It said that, despite this, we haven't questioned or addressed why Mr M didn't act on his complaint any further after 2018 until 2024, despite being made aware of his right to refer it to our Service.
- If we maintain that Mr M's complaint can be considered by our Service, the testimony given by him about what happened at the time of the events complained of contrasts with information he provided Pathlines with at the outset of his SIPP and are facts it wasn't previously aware of. For example, Mr M being 'persuaded' to attend a sales meeting suggests high pressure tactics. Mr M willfully held such information from it and had he not done so, it's likely Pathlines would have reached a different conclusion in accepting his SIPP or at least been able to provide further information to allow him to make a decision.
- We've noted that Mr M wasn't aware of the risks involved, which conflicts with the information and documentation that he provided at the outset, which confirmed he was fully aware, understood and accepted the high-risk nature of the investments. Pathlines had no reason to think otherwise. And if Mr M truly hadn't understood the product he had plenty of opportunity to raise further queries or decide not to sign

documents. As such, at the very least, Mr M significantly contributed to his own losses and it can't reasonably be held accountable for that.
- If Mr M was already interested in changing his pension, as were his colleagues to make the same or similar investments, it's likely that if it had rejected his application he would have found another provider who would have accepted his chosen investments and gone ahead anyway.

I'm now in a position to make my 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.

Firstly, I'd like to acknowledge that, after I issued my jurisdiction decision, Pathlines made further submissions including about our jurisdiction. I've considered all submissions carefully. However, I don't think Pathlines further submissions contain any new and material evidence which changes the conclusion I set out in my jurisdiction decision – that Mr M's complaint has been referred in time. So, my decision that Mr M's complaint has been made in time remains unchanged. Therefore, in this decision, I'm considering the merits of Mr M's complaint about Pathlines.

I've considered all the points made by the parties. I have not however responded to all of them below; I have concentrated on what I consider to be the main issues.

Relevant considerations:

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

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 (*"Berkeley Burke"*)
    - *Adams v Options SIPP UK LLP* [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The Financial Services Authority (FSA) and Financial Conduct Authority (FCA) rules including the following:
    - PRIN Principles for Business
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to, or relevant 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 the contractual relationship between Pathlines and Mr M is a non-advisory, or execution only, relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. Pathlines 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 Pathlines 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. Our 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 our Service in two similar complaints was challenged in judicial review proceedings in the *Berkeley Burke* 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.

It is not necessary for me to quote extensively from the various court decisions.

The Principles for Businesses:

The Principles for Businesses ("the Principles"), 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 *Berkley Burke*) 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."*

The Report also included:

> *"The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:*
>
> - *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*
> - *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
> - *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*
> - *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*
> - *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*
> - *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*

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

The October 2013 finalised guidance for SIPP operators included the following:

> ***"Relationships between firms that advise and introduce prospective members and SIPP operators***
>
> *Examples of good practice we observed during our work with SIPP operators include the following:*
>
> - *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un-authorised business warnings.*
> - *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*
> - *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*
> - *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*
> - *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*
>
> *Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers. Examples of good practice we have identified include:*
>
> - *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*
> - *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*
> - *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non-regulated introducers."*

Although I have not quoted all the above-mentioned publications, I have considered them all in their entirety.

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter are not 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 ombudsmen whose decisions were upheld by the courts in the *Berkeley Burke* and *Options* cases).

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.
- The comments made in the publications apply to SIPP operators that provide a non-advisory service.
- Neither court in the *Adams* case 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.

Pathlines position in broad terms:

In broad terms Pathlines position is:

- It carried out due diligence to a degree that was appropriate for its role as non-advisory SIPP operator.
- Its due diligence did not reveal any cause for concern at the time.
- It was not reasonably required to do more.

What did Pathlines obligations mean in practice?

Pathlines has said its due diligence was limited to checking an investment was allowed within the Trust (governing the SIPP) and HMRC's regulations.

I'm satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business, Pathlines was required to consider whether to accept or reject particular investments and/or referrals of business with the Principles in mind. I say this based on the overarching nature of the Principles (as is clear from the case law) and based on good industry practice. I am also satisfied that bearing in mind the Principles and good industry practice that this obligation was not confined only to rejecting an investment on the basis it was not allowed by the SIPP Trust or HMRC regulations.

I am satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business a SIPP operator should for example reasonably refuse an investment if the SIPP operator had serious concerns about "*possible instances of financial crime and consumer detriment such as unsuitable SIPPs*". Or, for example if, the SIPP operator had concerns that the investment might not be genuine, or not be secure or might be impaired in some way.

I am satisfied that a non-advisory SIPP operator could decide not to accept a referral of business or a request to make an investment without giving advice. And I am satisfied that in practice many non-advisory SIPP operators did refuse to accept business and/or refuse to make investments without giving advice.

I am satisfied that, in order to comply with its regulatory obligations, a non-advisory SIPP

operator should have due diligence processes in place to check any firms introducing business to them and the investments they are asked to make on behalf of members or potential members. And Pathlines should have used the knowledge it gained from its due diligence checks to decide whether to accept such business and/or allow a particular investment.

Due diligence carried out by Pathlines on the IFA

Pathlines due diligence on the IFA before accepting introductions from it, consisted of Pathlines asking Mr C, the director of the IFA, to complete an Intermediary Application which asked a number of questions. Pathlines then entered an Intermediary Agreement with the IFA in early 2009 following completion of the application. The FSA Register was also checked to ensure the IFA and Mr C were appropriately authorised (which they were).

From around June 2009 Mr C told Pathlines that he (or the IFA) wanted to introduce prospective Pathlines SIPP clients to the investment company. Pathlines then carried out some checks on the investment to ensure it could be held in its SIPP and that it met HMRC requirements.

Pathlines requested, and received, information from both Mr C and the investment company's accountant about its business activities. The documents and information provided to Pathlines showed that the investment company's principal trading activity was in 'secured lending and property development'. In practice, this meant that the investment company would lend funds to businesses who were developing property either with, or without, planning permission.

Pathlines continued monitoring the activities of the IFA and the investment company after its initial due diligence. Pathlines has provided copies of internal email correspondence. The first emails we have received are from 2011. At that time, some employees of Pathlines appeared to start expressing some concerns about the investment. Pathlines was thinking about the amount being invested in the investment company, the fixed nature of the share price, the connection between the adviser and the investment company, and the creditworthiness of the company. For example, in October 2011 an email from one of Pathlines directors included:

> "*I'm a bit uncomfortable about the connection between the IFA and the investment companies. IFAs advising their clients to put their money into our SIPP and then invest in their associated companies might be the sort of trend that the FSA are expecting us to identify, monitor and possibly also report on? I'm not saying I think there's anything untoward going on but we should probably consider, decide and document etc etc*".

In a letter to the investment company in September 2012, Pathlines said it was asking further questions having noted a recent very large investment request, and the large amounts of money being placed with the investment company, so it was asking for more information "*as a matter of good governance*". (I note here that this thinking about matters of "good governance" was after the first FSA Report, referred to below, was published in 2009 and before the second was published in October 2012.)

So Pathlines did carry out some relevant initial checks before accepting introductions from the IFA. However, I don't think Pathlines went far enough, or that these checks were sufficient, to meet Pathlines regulatory obligations and good industry practice since it was largely focused on two points: whether the investment was permitted by the Trust and whether it was permitted by HMRC regulations.

As is now known, the investment company went into administration in 2018, which was some time after the investment was made by Mr M in 2011. And I accept that the failure of the investment and its timing could not have been foreseen in 2011 as such. However, that does not mean that it wasn't foreseeable that such a problem could or even might well happen (given the high-risk nature of the investment) or that the investment could reasonably have been viewed as giving no cause for concern in the circumstances in 2011, before Mr M's SIPP application was received.

To be clear I do not say that the investment should not have been allowed because it was high risk. SIPP investors may choose to invest in high-risk investments. The issue here was not about investment risk (as normally understood).

Instead, it's that Pathlines was aware of, or should reasonably have identified, potential risks of consumer detriment associated with the business the IFA was proposing to introduce. And I consider these risks should have been identified before Pathlines accepted Mr M's application.

In particular, I do not think there were sufficient systems and controls put in place to manage the clear conflict of interest between Mr C and the investment he was introducing clients to. Mr C was an IFA who was recommending clients transfer their pensions to Pathlines SIPPs and invest in unquoted shares in a company he was the sole director of. He also owned shares in that company. Pathlines was aware of this set up from the outset. And it ought to have had serious concerns about this from the start. This is particularly so given that the investment was in the form of unlisted shares which are difficult to value and to sell, and are a form of investment that is not suitable for most retail investors even where there is no connection between the adviser and the SIPP member.

Pathlines should have realised that it was unlikely that the IFA was acting in the best interests of its clients when Pathlines was first made aware it intended to recommend to its clients invest in the investment company. It should therefore have decided not to do further business with the IFA when the potential investment in the shares of the connected investment company was first discussed.

Further, by the time of Mr M's SIPP application in June 2011 and investment in July 2011, it should have been clear to Pathlines that all (or most) of the IFA clients with Pathlines SIPPs were investing in the same connected high risk, esoteric investment.

In my view, Pathlines should have concluded, given the potential risks of consumer detriment from the pattern of business being introduced to it by the IFA (if not before) – which I think should have been clear and obvious at the time – that it should not continue to accept applications from the IFA. And in my view that should have been a refusal to accept any and all applications not just applications that were known to involve the connected shares at the outset. This is because Pathlines should reasonably have had concerns about the IFA and its willingness or ability to act reasonably and in its clients' best interests. This would have been the fair and reasonable step to take in the circumstances.

It is therefore my view that if Pathlines had acted appropriately it would not have accepted Mr M's SIPP application from the IFA and his application to invest in shares in the investment company.

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

In deciding whether Pathlines is responsible for any losses that Mr M has suffered on his investments I need to look at what would have happened if Pathlines had done what it should have done i.e. had it not accepted or proceeded with Mr M's applications.

When considering this I have taken into account the Court of Appeal's supplementary judgment in Adams ([2021] EWCA Civ 1188), insofar as that judgment deals with restitution/compensation.

While I accept that the IFA was responsible for initiating the course of action that led to Mr M's loss, I consider that Pathlines failed unreasonably to put a stop to that course of action when it had the opportunity and obligation to do so. I am, accordingly, satisfied that if Pathlines had complied with its own distinct regulatory obligations as a non-advisory SIPP operator, the arrangement for Mr M wouldn't have come about in the first place. Mr M would not have transferred to the Pathlines SIPP. Further, that the investments Mr M made in his SIPP would not have come about and the loss Mr M has suffered would have been avoided.

Pathlines has argued that Mr M would have invested regardless of its involvement. But I'm not persuaded by this. I'm satisfied that the transaction would not have proceeded as it did if Pathlines had not accepted Mr M's applications. While Mr M may well have transferred his pensions elsewhere as he has said he was interested in doing so, had Pathlines explained to Mr M even in general terms why it would not accept his application or was terminating the transaction, I find it very unlikely that Mr M would have tried to find another SIPP operator to accept the business.

And, in any event, I don't think it's fair and reasonable to say that Pathlines shouldn't compensate Mr M for his loss based on speculation that another SIPP operator would have made the same mistakes as I think it did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr M's applications.

So I'm satisfied that Mr M would not have continued with his Pathlines SIPP and investment applications, had it not been for Pathlines failings. And I consider that Pathlines failed unreasonably to put a stop to that course of action when it had the opportunity and obligation to do so.

I have considered paragraph 154 of the Adams v Options High Court judgment, which says:

> "*The investment here was acknowledged by the claimant to be high risk and/or speculative. He accepted responsibility for evaluating that risk and for deciding to proceed in knowledge of the risk. A duty to act honestly, fairly and professionally in the best interests of the client, who is to take responsibility for his own decisions, cannot be construed in my judgment as meaning that the terms of the contract should be overlooked, that the client is not to be treated as able to reach and take responsibility for his own decisions and that his instructions are not to be followed*."

For the reasons I've set out, I'm satisfied that it would not be fair to say Mr M's actions mean he should bear the loss arising because of Pathlines failings. I do not say Pathlines should not have accepted the application because the investment was high risk. I acknowledge Pathlines has said that Mr M confirmed he was fully aware, understood and accepted the high-risk nature of the investments. But, as I set out above, Pathlines did not share significant warning signs with Mr M so that he could make an informed decision about whether to proceed or not. And, in any event, Mr M's applications should never have been accepted or alternatively the transaction should have been terminated at a much earlier stage in the process.

So I am satisfied in the circumstances, for all the reasons given, that it is fair and reasonable to conclude that Pathlines should compensate Mr M for the loss he has suffered.

The DISP rules set out that when an Ombudsman's determination includes a money award, 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 (DISP3.7.2R).

I consider it is fair and reasonable in the circumstances of this case to hold Pathlines accountable for its own failure to comply with its regulatory obligations, good industry practice and to treat Mr M fairly.

Pathlines failure to act in accordance with its regulatory obligations and good industry practice has caused Mr M to suffer financial loss in his pension and to suffer distress and inconvenience. I consider the substantial loss of Mr M's pension provision will inevitably have caused him considerable worry and upset.

It is my view that it is appropriate and fair in the circumstances for Pathlines to compensate Mr M for the full extent of the financial loss he has suffered due to its failings. I don't think it would be appropriate or fair in the circumstances to reduce the compensation amount Pathlines is liable to pay Mr M.

Mr M taking responsibility for his own investment decisions

Section 5(2)(d) of the FSMA (now section 1C) 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. Having considered this I'm satisfied that it wouldn't be fair or reasonable to say Mr M's actions mean he should bear the loss arising as a result of Pathlines failings.

For the reasons given, I think that if Pathlines had acted in accordance with its regulatory obligations and good industry practice it shouldn't have nor permitted his applications. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr M wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

As I've made clear, Pathlines needed to carry out appropriate due diligence and reach the right conclusions. I think it failed to do this. And having Mr M sign forms that he did containing declarations wasn't an effective way of Pathlines meeting its obligations, or of escaping liability where it failed to meet these.

Mr M used the services of a regulated provider, trusting it to act in his best interests. So, I don't think it would be fair to say in the circumstances that Mr M should suffer the loss because he ultimately instructed the transaction to be effected. Overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair to say Pathlines should compensate Mr M for the loss he's suffered.

Putting things right

I uphold this complaint. I consider Pathlines failed to comply with its own regulatory obligations and good industry practice in not refusing Mr M's SIPP and the investment company applications.

My aim in awarding fair compensation is to put Mr M as closely as possible back into the position he would likely have been in had it not been for Pathlines failings.

While, for the reasons given, I'm satisfied that Mr M wouldn't have otherwise transferred to a Pathlines SIPP and then invested in the way he did if Pathlines had complied with its obligations, Mr M has said that he was interested in moving his pensions at the time. So he may well have sought to amalgamate these. And from what I can see these were personal pensions without any guarantees attached – neither party has disputed my understanding, despite being given the opportunity to do so by the deadline to respond to my provisional decision.

I can't state definitively which provider would have been used, or into what holdings, and in what proportions the monies would have otherwise been invested. So, having carefully considered this, and given the lack of certainty on this point (including about the specific provider, holdings, and the specific proportions, monies would have been invested in post-transfer had transfers elsewhere still been effected), for the purposes of quantifying redress in this case I think the fair and reasonable approach is to assume that the pension monies in question would have achieved a return 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 fair and reasonable proxy for the type of return that could have been achieved over the period in question.

In light of the above, on a fair and reasonable basis, Pathlines should:

1. Calculate a notional value, as at the date of this decision, of the monies that were transferred into the Pathlines SIPP if they'd not been transferred into this.

2. Obtain the actual current value of Mr M's Pathlines 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 any illiquid investments (or treat them as having a zero value).

5. Pay an amount into Mr M's Pathlines SIPP, so that the transfer value of this 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.

6. Pay Mr M £500 for the distress and inconvenience the problems with his pension have caused him.

I've explained how Pathlines should carry out the calculation, set out in steps 1 - 6 above, in further detail below:

1. Calculate a current notional value, as at the date of this decision, of the monies that were transferred into the Pathlines SIPP if they'd not been transferred into it. To do this, Pathlines should calculate what the monies transferred into the SIPP would now be worth had they instead achieved a return equivalent to that of the FTSE UK Private Investors Income Total Return Index from the date they were first switched into the Pathlines SIPP through until the date of my final decision. I'm satisfied that's a reasonable proxy for the type of return that could have been achieved over the period in question.

   Pathlines must also make a notional allowance in this calculation for any additional sums Mr M has contributed to, or withdrawn from, this SIPP since outset. To be clear this doesn't include SIPP charges or fees paid to third parties like an adviser.

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

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

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

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

   This should be the current value as at the date of my final 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 M's pension provisions.

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

   I'm satisfied that Mr M's Pathlines SIPP only still exists because of the illiquid investments that are held within it. And that but for these investments Mr M's monies could have been transferred away from Pathlines. 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 Pathlines 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 Pathlines 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 M's SIPP in step 2).

   If Pathlines doesn't purchase the investments, it may ask Mr M 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 M may receive from the investments, and any eventual sums he would be able to access from the SIPP. Pathlines will need to meet any costs in drawing up the undertaking.

5. Pay an amount into Mr M's Pathlines SIPP, so that the transfer value of this 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 Pathlines is unable to pay the compensation into Mr M'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 M's actual or expected marginal rate of tax in retirement at his selected retirement age.

   It's reasonable to assume that Mr M is likely to be a basic rate taxpayer *at his selected retirement age*, so the reduction would equal 20%. However, if Mr M 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%.

   Neither Mr M nor Pathlines have disputed that this is a reasonable assumption. Despite being given the opportunity to do so by the deadline to respond to my provisional decision and being made aware it won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

6. Pay Mr M £500 for the distress and inconvenience the problems with his pension have caused him.

   In addition to the financial loss that Mr M has suffered as a result of the problems with his pension, I think that the loss suffered to Mr M's pension provision has likely caused him distress. Mr M lost some of his pension provision, as this is seemingly his only retirement provision – aside from state pension – and I think this is likely to have caused him worry. And I think that it's fair for Pathlines to compensate him for this as well.

Pathlines must also provide the details of its redress calculation to Mr M in a clear, simple format.

SIPP fees

If the investments can't be removed from the SIPP, and because of this it can't be closed after compensation has been paid, then it wouldn't be fair for Mr M 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 investments and is used only or substantially to hold those assets, then any future SIPP fees should be waived until the SIPP can be closed.

Interest

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

My final decision

For the reasons given, it's my decision that Mr M's complaint should be upheld and that Pathlines Pensions UK Limited must pay fair redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 July 2025.

Holly Jackson
Ombudsman