DRN-5624076

The complaint

Mr F's complaint concerns investments made on a platform by a Discretionary Fund Manager (DFM), in his self-invested personal pension (SIPP), provided by IFG Pensions Limited (IFG). Mr F, via a representative, says IFG allowed the DFM to act without carrying out any due diligence into it, permitted the DFM to make illiquid investments which were inappropriate for the SIPP and allowed high charges/commission to be paid, without full disclosure. Mr F says none of this was in his best interests, and IFG should not have allowed it to happen.

Background

There were a number of parties involved in the events subject to complaint. I have set out a summary of each.

IFG

IFG is a SIPP provider and administrator. At the time of the events in this complaint, IFG was regulated by the Financial Conduct Authority (FCA). IFG was authorised, in relation to SIPPs, to arrange (bring about) deals in investments, to deal in investments as principal, to establish, operate or wind up a pension scheme, and to make arrangements with a view to transactions in investments. IFG provided Mr F's SIPP, and operated under a number of different trading names over the years, including MW Pensions, The MW SIPP, MW SIPP 2, and Sovereign Pension Services. It has however ultimately been the same business throughout, and I will refer to IFG throughout this decision.

Chartercross Capital Management DWC LLC ("Chartercross")

Chartercross is a financial advisory firm based in Dubai, United Arab Emirates (UAE). It acted as Mr F's advisor in relation to the SIPP.

Moventum SCA ("Moventum")

Moventum is a Luxembourg based investment platform provider. It provided the investment platform for Mr F's SIPP.

Capital Platforms (Malaysia) PTE Ltd ("Capital Platforms")

Capital Platforms is a Malaysian firm, through which the application to open a Moventum platform for Mr F's SIPP was made. It appears to have performed some administrative function; as noted below email trade confirmations were sent by it.

Integral Asset Management Ltd ("IAM")

IAM was a UK firm, described as a DFM. It was FCA authorised until January 2024 (but had some permissions suspended from May 2022). It was appointed DFM to Mr F's SIPP, managing the money held on the Moventum platform.

Capital Advisory Group (UK) Ltd ("Capital Advisory")

Capital Advisory is a trading name of a UK-based FCA authorised firm, Boston Direct Management (UK) Ltd. It was described as the administrator of the DFM's investment transactions. Fees were paid from the Movemtum platform in Mr F's SIPP to Capital Advisory.

Mr F's dealings with the parties

I have set out below a timeline of what I consider to be the key events:

- 13 August 2020 – IFG receives a completed SIPP application form, which had been signed by Mr F and his Chartercross advisor on 17 May 2020. The application included instructions to transfer the cash value of several of Mr F's existing pensions to the SIPP.

- 18 August 2020 – IFG sends a completed platform application to Capital Platforms in Malaysia. This had been signed by Mr F on 17 May 2020.

- Late 2020/early 2021 – cash is paid from Mr F's SIPP to Moventum, as and when the transfers to the SIPP complete.

- 22 February 2021 – Chartercross sends various documents to Mr F for him to sign, to appoint IAM as the DFM to the SIPP.

- 8 March 2021 – IAM signs an agreement with IFG, for the provision of DFM services to IFG SIPPs.

- 31 March 2021 – IFG sends completed DFM appointment forms for Mr F's SIPP/platform to IAM and Capital Platforms, attaching its investment guidelines and a letter to IAM, which requested it follow the investment guidelines.

- 12 April 2021 – IAM instructs the first two out of a total of seven trades it placed in Mr F's SIPP (I note, in its response to my provisional decision, IFG lists six trades, but the trades it has listed to not reconcile with the Moventum statements, which show seven trades).

- 18 May 2021, 6 July 2021, 12 October 2021, 25 October 2021, 5 November 2021 – the subsequent five trades are placed by IAM (again, I have based this on the Moventum statements, and it does not reconcile with the detail set out by IFG in its response to my provisional decision).

- 24 January 2022 – the first annual account statement is sent to IFG by Moventum, showing the investments IAM had made. This is the earliest dated statement from Moventum IFG has provided to us (but, as I note again in my findings, it appears Moventum also issued quarterly statements so there were likely earlier statements issued).

- 27 April 2022 – IFG write to IAM to complain that all the seven investments IAM had made in Mr F's SIPP (and others) were "speculative illiquid securities" and therefore contrary to its investment guidelines. IFG asked IAM to remove the investments and return the sums invested.

- 5 May 2022 – the FCA put restrictions on IAM, preventing it making further investments on consumers' behalf.

The investments made by IAM were not ultimately sold, and I understand most or all are now in liquidation.

Mr F's complaint to IFG

IFG did not respond to Mr F's complaint. Mr F therefore referred the complaint to us. Following this referral, IFG did respond. It did not uphold Mr F's complaint and said, in summary:

- It had no part in negotiating or agreeing fees – that was a matter between Mr F and his advisor.

- It was Mr F's own choice to appoint IAM as his DFM and in doing so he gave it the authority to make investment choices and place trades on his behalf.

- It is not regulated to provide investment advice. It is therefore not responsible for advising members on the suitability of investments.

- It verified that IAM held approvals from the FCA to conduct discretionary investment activities. IFG is entitled to place reliance on the FCA's approval.

- IFG put terms of business in place with IAM, which included a requirement that all investments made on Mr F's behalf must fall within IFG's clear Permitted Investments Guidelines.

- These Permitted Investment Guidelines clarify that the asset must be 'standard' i.e. it must be able to be accurately and fairly valued on a regular basis and readily realisable within 30 days.

- The definition of a standard asset is set by the FCA. Its Permitted Investment Guidelines are framed around the FCA definitions, and it is its policy to disallow nonstandard investments. However, it should be noted that the FCA rules do permit SIPP operators like IFG to hold non-standard investments in pensions should they wish to do so.

- It is not the responsibility of IFG to oversee the activities of the DFM, however IFG do periodically monitor and sample check DFM investment activities.

Our investigator's view

Our investigator was unable to get a response from IFG to the information requests he had made, so reached a view based on the evidence available to him. He concluded the complaint should be upheld. His view, in summary, was as follows:

- Whilst he appreciated IFG had done some due diligence, this did not go far enough.

- Chartercross does not appear to be authorised and regulated in the UK, which put Mr F at a risk of consumer detriment.

- He had seen no evidence that IFG gathered or analysed management information on Chartercross' business model, how its introductions were obtained or any of the other examples of good practice suggested by the FCA, such as obtaining suitability reports. If IFG could not obtain such information from Chartercross, it should not have accepted business from it.

- He understood IFG only permits investments in standard assets, as defined by the FCA.

- He understood from Mr F that his SIPP holds non-standard assets that are not readily realised. He was not satisfied that IFG had sufficient controls in place to monitor what investments were being made in the SIPP. This put Mr F at risk of consumer detriment, and it appears that this risk had now materialised.

- In view of this, IFG did not act fairly towards Mr F and it should now do something to put things right, by compensating him for the loss he suffered through making the investments.

IFG's response

IFG did not respond to our investigator's view by the deadline given, so the complaint was referred for an Ombudsman's consideration. Following this, IFG responded to the investigator's request for information (but not the investigator's view). Its response included answers to some of the questions which had been asked about the due diligence IFG carried out on IAM and Chartercross. IFG did not fully answer all the questions. It provided some documents; but it is not clear if that is the totality of what it holds on its files - as I set out below, there does not appear to be a full account of events (and I note this remains the case following IFG's response to my provisional decision).

In terms of the responses it gave to the questions the investigator asked, I think the following questions (in bold) and answers about IFG's due diligence on IAM are key to deciding what is fair and reasonable in the circumstances of this case.

What did you understand Integral Asset Management's business model/client process to involve? Please provide any supporting evidence you have about this, including any discussions you had with Integral Asset Management about this.

IAM were appointed by [Mr F] *and were a FCA regulated DFM who held the relevant permissions to act on the behalf of the member in the capacity of DFM.*

The member appointed the DFM, and we undertook due diligence on the firm to ensure as above they held the relevant permissions, and we provided them with our investment guidelines and terms of business requirements to give them structure to allowable investments within the SIPP. We understood IAM would adhere to these as a regulated entity.

What did you understand Integral Asset Management's investment approach to be for the SIPP members who were investing with it? If model portfolios were used, what was your understanding of what these would look like? Please provide any supporting evidence you have you have about this, including any discussions you had with Integral Asset Management about this.

As above … we provided IAM with our investment guidelines and we understood that in relation to the agreement they agreed to adhere to this as a regulated UK entity.

If you reviewed marketing literature from Integral Asset Management as part of your due diligence process, please provide us with a copy of this.

As above question…. marketing literature was not applicable.

After the initial agreement did you have any further discussions with Integral Asset Management about its business model and/or its investment strategy? If so, please provide copies of these discussions.

When IFGL become aware that IAM had invested members funds into non-standard investments which is not in line with IFGL Investment Guidelines.

Please see copies of emails attached in relation to flagging with IAM and raising a complaint with IAM, various emails with FCA and raising a complaint with FOS.

After the initial agreement did you conduct any ongoing checks on Integral Asset Management and/or checks on how members' monies were being invested? If so, how often were checks being made?

Checks were undertaken on receipt of valuations from the investment house, to ensure that investment were classed as standard investments.

Was Integral Asset Management providing you with valuations and/or information about the type and size of investments being made for the consumer in this case? If so, how regularly were you receiving this information from the DFM.

No information received from IAM, valuations received from investment company Moventum

Has any agreement you had in effect with Integral Asset Management now ended? If so, why was the agreement ended? Please provide supporting evidence of the reasons and any discussions with the DFM about ending the agreement.

yes, the agreement has ended as a result of the firm not adhering to our guidelines and restrictions from FCA.

Did you carry out due diligence into the underlying investments the DFM was making for this consumer? Where monies were being invested in a model portfolio had you carried out due diligence into the underlying investments being made within the model portfolio? If so, what were your conclusions? Please provide evidence of any due diligence you carried out on the investments, including copies of any investment product literature you obtained.

We were not aware of the investments as DFM deals directly Moventum

Did you conduct your own independent review of investments and/or did you rely on any reports by a third party? Please provide a copy of any review and any other third party documentation/reports that you relied on. Please also provide copies of any correspondence exchanged relating to any due diligence conducted on investments.

Please see above question

Submissions from Mr F

Mr F made the following additional points, after the investigator issued his view:

- Trade notifications were sent from Capital Platforms by email (Mr F provided copies of some of these).

- The notifications were sent to Mr F and IFG (which the platform views as "the client") and the advisor. These notifications are there to alert all parties of activity on the account.

- IFG only took action after irregularities were flagged to it by Mr F's current advisors. The assets were held for almost year without action and without IFG noticing, when it was sent notifications at the time of purchase.

My provisional decision

I recently issued a provisional decision. Having taken account of the relevant considerations my key provisional findings, in summary, were as follows:

- IFG failed to conduct sufficient due diligence on IAM. There appears to have been no attempt by IFG to understand IAM's management approach, model portfolios etc (which seems contrary to what is said in the agreement between IFG and IAM), which may have given IFG advance notice of IAM's intentions.

- IFG also did not (as its agreement with IAM appeared to require) ask IAM to place trade instructions through it. And it appears it did not take sufficient steps to monitor the investment activity in Mr F's SIPP otherwise.

- Overall, there is sufficient evidence to say that, if IFG had acted in a way which was consistent with its regulatory obligations, the relevant regulatory guidance and standards of good practice it should either have known before IAM was appointed that it was going to make investments it did not allow, or have quickly identified such investments were being proposed or made, once IAM was appointed.

- Furthermore, there were a number of anomalous features to this business. For example, the large number of parties involved across multiple jurisdictions, some with unclear roles, and the high level of charges, which presented a risk of consumer detriment; and there is no evidence to show IFG took appropriate steps to address these.

- In my view, exploration of these features would likely have led IFG to conclude there were further reasons (beyond the activities of IAM) it would not be consistent with its regulatory obligations and standards of good practice to accept this business.

- In the circumstances, it is in my view fair to ask IFG to compensate Mr F for his losses, which arise directly from its failure to prevent IAM from acting to Mr F's detriment and accepting this business in circumstances where it should have recognised a risk of consumer detriment.

Responses to my provisional decision

Mr F accepted my provisional decision. His only comment was on the benchmark I had suggested for the calculation of compensation. He said his focus was largely on investment in US equities, and the benchmark used should therefore reflect that.

IFG did not accept my decision, and made further submissions. I have considered these in full, but will only summarise what I consider to be the key points, as follows:

- It is clear that what was important was SIPP operators meeting Principle 6 "Treating Customers fairly", and it did treat Mr F fairly (in relation this IFG summarised the steps it had taken, which had been set out in its previous submissions).

- It had DFM terms of business in place and IAM, the UK FCA regulated firm, did not follow the requirements of the terms.

- Where a client wishes to work with a DFM, they sign an appointment letter for the DFM, also agreeing to any fees and charges. The DFM and client are provided with copies of its investment guidelines and terms of business, and the DFM is required to sign up to specific terms of business for DFMs, which include agreeing to adhere to its investment guidelines.

- Essentially part of operating in a discretionary manner includes having delegated authority to place trades and transactions. The SIPP operator does not pre-vet these given the mandate provided to the DFM by the client and governed by the Terms of Business and investment guidelines. The investment team within IFG then periodically reviews the statement of investments, or automated data feed if available, and checks the assets purchased by the DFM against the client's risk rating held on its file, as well as against its asset acceptability criteria.

- Where any problem assets are identified (that don't match either the client risk rating or its asset acceptability criteria), IFG would write to the DFM to instruct them to redeem the problem assets within 30 days. In all normal scenarios a DFM would act on this instruction, and the client outcome would be protected.

- It disputes that it should have had additional checks in place to monitor the activities and actions of the DFM more closely, as this negates the benefits of having a DFM and would add unacceptable costs.

- It was not in a position to prevent the DFM breaching its agreement, due to the very nature of a DFM role within the structure of the investment. In its view it would be appropriate for the DFM to be held accountable for this failure.

- Although IFG became aware of the investments and instructed the DFM to redeem them, the DFM did not act in accordance with its instructions.

- Even if IFG had become aware of the trades at the point they had been transacted it is highly likely that it would not have been able to redeem. This is due to the nature of the investments, and the potential lack of a secondary market.

- Its asset review team has carried out a further review of the assets purchased and have confirmed that it is unlikely that an active secondary market existed for these assets and highly unlikely that the companies that issued the notes would have bought them back immediately after they were sold (in support of this point IFG provided copies of Information Memorandums, news updates to the stock markets etc in relation to the assets).

- It cannot be solely held responsible for the actions of a UK FCA regulated firm that acted outside of its mandate and authority, and did not follow its guidelines. Whilst it would be ideal to identify breaches at the very earliest possible point in time, in practice they could only be picked up after the fact and through periodic reviews. It also relied on the DFM acting in a responsible way as a regulated firm to divest any assets which caused the breaches.

- By adopting a stance where SIPP operators become liable for the actions of DFMs in totality, we would essentially be creating a market environment where customers are unable to instruct investment advisers to act on their behalf, as SIPP operators cannot risk permitting them to operate in their intended role.

- On the question of what would be fair and reasonable in relation to any compensation order, it is submitted that defaulting to hold the "last man standing" with assets accountable for all the losses of a SIPP member is untenable.

- Mr F did not go blindly into this, he chose the adviser, and he chose the platform and the DFM, not IFG. Some consequences should arise from those decisions and it is submitted that if I decide to uphold the complaint, it would be appropriate in the circumstances to reduce any compensation order against IFG accordingly.

What I've decided – and why

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

As a preliminary point, the purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by point response to every submission made by the parties to the complaint. And so, whilst I have again carefully considered all the submissions made by both parties, I have focussed here on the points I believe to be key to my determination of what's fair and reasonable in the circumstances.

In a similar vein, I confirm I have read – and carefully considered – everything the parties have said and submitted. But, as mentioned, the summary I have set out above is not intended to be exhaustive; rather, it is intended to be a summary of what I consider to be key.

I am required to make my own independent determination of 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, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

With that in mind I will start by again setting out what I have identified as the key relevant considerations to deciding what is fair and reasonable in this case. I note IFG's point that Principle 6 of the FCA's Principles for Businesses was key. But I do not think that was the

totality of IFG's obligation towards Mr F, and there are further relevant considertions. I remain the view the relevant considerations in this case are as set out below.

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 and the case law referred to in it including:
    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474
    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service [2018] EWHC 2878 ○ Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch)
- The FSA and FCA rules including the following:
    - PRIN Principles for Businesses ○ COBS Conduct of Business Sourcebook
- 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. In this case I am satisfied the contractual relationship between IFG and Mr C 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. IFG 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.

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 *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 here from the various court decisions.

The FCA rules

PRIN

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 nonadvisory 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*).

COBS

I acknowledge that COBS 2.1.1R (A firm must act honestly, fairly and professionally in accordance with the best interests of its client) overlaps with certain of the Principles and that this rule is a relevant consideration here. However, the extent of the duty this imposes depends on the factual context. So, I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr F's case, including IFG's role in the transactions.

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."*

I have considered all of the above publications in their entirety. It is not necessary for me to quote more fully from the publications here.

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 ombudsman whose decision was upheld by the court in the *Berkeley Burke* case).

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.

Summary of findings

Having again carefully considered the above, alongside the available evidence and all the submissions from the parties, I have not been persuaded to depart substantively from my provisional findings. My final finings therefore closely reflect my provisional ones, and I have mostly adopted the wording used in my provisional decision.

My findings, in summary, are:

- I remain of the view IFG failed to conduct sufficient due diligence on IAM. There appears to have been no attempt by IFG to understand IAM's management approach, model portfolios etc, which may have given IFG advance notice of IAM's intentions and therefore given reason for IFG to conclude it should not allow IAM to act as a DFM.

- I also remain of the view there were a number of anomalous features to this business. Such as the large number of parties involved across multiple jurisdictions, some with unclear roles, and a high level of charges, which presented a risk of consumer detriment.

- In my provisional decision I said that on the evidence currently available I was minded to say IFG should not have allowed the platform in its SIPP, given these features. IFG has provided no further evidence on this point and my conclusion therefore is it should *not* have allowed the platform, as the evidence which is available shows exploration of the anomalous features ought to have led it to conclude there were reasons it would not be consistent with its regulatory obligations and standards of good practice to allow the Moventum/Capital Platforms platform in its SIPP.

- So, my final finding is IFG should not have accepted this business at all, had it acted in a way which was consistent with its regulatory obligations, the relevant regulatory guidance and standards of good practice.

- For completeness, I have reconsidered the safeguards IFG put in place, which went some way towards meeting its regulatory obligations, the relevant regulatory guidance and standards of good practice, by putting restrictions on what IAM could invest in and putting a Terms of Business in place with it. However, I remain of the

view there is insufficient available evidence to show IFG took adequate steps to ensure those safeguards were operating effectively.

- Although IFG says it periodically monitored investment activity its explanations of what it did, how it went about it, and with what frequency remain vague. And I remain of the view that, overall, its actions were not consistent with its regulatory obligations, the relevant regulatory guidance and standards of good practice - IFG did not take sufficient steps to monitor the investment activity in Mr F's SIPP.

- I remain of the view, had IFG acted in a way which was consistent with its regulatory obligations, the relevant regulatory guidance and standards of good practice it should have quickly identified that IAM was making investments it did not allow. However, this is now a secondary point, as my concluded view is the business should simply not have been accepted by IFG at all.

- In the circumstances, it is in my view fair to ask IFG to compensate Mr F for his losses, which arise directly from its accepting this business in circumstances where it should have recognised a risk of consumer detriment.

I have set out my findings in more detail below.

Due diligence on IAM

At the outset I should again acknowledge that there were no regulatory rules or guidance that prevented IFG from accepting non-standard assets, per se. However, IFG has been clear that there was no discretion over its policy to only allow standard assets, set out in its investment guidelines. It has described this policy in correspondence with the FCA (its email to the FCA dated 14 November 2022) as its "*strict Permitted Investments rules*" and the language used in the guidelines, the agreement with IAM and the welcome letter (which I quote from below), and IFG's response when it did eventually take action in relation to IAM all suggest its standard-asset restriction is intended to effectively be a bright-line rule; not something to which it will make exceptions. And my findings have been made with this point in mind, where relevant.

I again acknowledge that IFG did take a number of steps before accepting IAM as a DFM. It checked to see IAM was FCA authorised and had the requisite permissions. It also put an agreement in place with IAM and, in association with this, provided IAM with investment guidelines, which set out restrictions on what IAM could make investments in.

This went some way towards meeting IFG's regulatory obligations, the relevant regulatory guidance and standards of good practice. However, as mentioned, I remain of the view these steps were insufficient overall, in the circumstances.

It was reasonable, when deciding to allow IAM to manage investments in its SIPP, for IFG to put some reliance on IAM's authorised status, the agreement, and the associated investment guidelines. But I remain of the view it was not fair and reasonable for IFG to rely on these exclusively to meet its regulatory obligations, guidance and good industry practice at the relevant time, in the circumstances.

IAM was a small business which appears to have had no, or a limited, track record as a DFM at the time. There were anomalous features associated with the overall arrangements, as I set out below. And IFG ought to have been aware at the time that there had been instances of UK authorised DFMs making unsuitable/inappropriate investments in pension schemes, to the detriment of consumers. Some high-profile cases had been reported in the trade press.

There had been some failures of businesses which had put consumers' money into inappropriate investments, and significant compensation paid by the Financial Services Compensation Scheme (FSCS). IFG should also have been mindful of the need for it to independently meet its own regulatory obligations.

So, I remain of the view IFG should have found out more about IAM before allowing it to manage investments in its SIPP. It should have obtained copies of any documents relating to IAM's DFM services, details of its investment approach/strategy and details of the assets it intended to invest in.

The agreement between IAM and IFG appears to envisage these sort of steps being taken. It includes the following defined term:

"*"Model Portfolio" a portfolio of Investments established by the DFM and designed to represent an attitude to risk and/or an investment mandate, the composition of which shall be advised by the DFM to via* (sic) *the Platform from time to time*."

This appears to envisage IFG requiring the DFM to provide details of its management approach by setting out how it would typically invest for certain attitudes to risk and investment mandates. And to acknowledge IFG's obligation to ensure appropriate investments are made in its SIPPs.

In any event, for the reasons given, this is the sort of information IFG should have sought, before agreeing to allow IAM to manage investments in its SIPP. And it is not clear why IFG did not ask IAM about its management approach here. IFG has made no comment on this is its response to my provisional decision.

Had IFG asked IAM about its management approach (documents relating to its service, model portfolios, intended investment assets etc) that, in my view, would likely have revealed how IAM was planning to invest. It would therefore have made IFG aware that IAM was planning to make investments which were inconsistent with its strict guidelines which, in turn, ought to have led IFG to conclude it should not allow IAM to act as a DFM to its SIPP.

I again acknowledge that, as IAM did not adhere to the terms under which it agreed to provide the DFM service, it is possible it may not have been honest about its intentions if it had been asked about its management approach. However, as I have summarised above, IFG's due diligence failings in relation to IAM are not the only basis on which I consider it accepted this business when it was not fair and reasonable for it to do so. Which brings me to the next point, which relates to the anomalous features associated with the Moventum platform and the parties linked to it.

Due diligence on Moventum, Capital Platforms etc

The application form for the platform is a Moventum form with a Capital Platforms cover sheet. The form does appear to be specific to Capital Platforms because, as I note below, it refers to Capital Advisory on multiple occasions. And I assume therefore that Capital Platforms and Capital Advisory are linked (although it remains unclear in what way).

The form includes reference to fees/charges on two pages which are titled "*Intermediary Fee Schedule*", and a further page which is titled "*Business Conditions*".

The first page of the Intermediary Fee Schedule includes the following:

"*Platform Processing Fee*

A processing fee of 5% will be levied on all incoming cash amounts. This will be deducted from the client's cash account. The client acknowledges that the 5% deduction relates to the fees paid directly to Capital Advisory Group (UK). This fee is based on a scheduled investment term of a minimum of 4 years. In the event of an exit before the minimum term there will be no rebate of the fees deducted."

"*Annual Account Fee*

This fee is levied to cover the cost of administering the client's account. It is a fixed cost of EUR 100 per annum…"

"*Annual Service Fee*

0.5% p.a. is charged to the client's cash account per annum. This is charged quarterly by Capital Advisory Group (UK) LTD"

"*Exit Fee*

No exit fee is charged by Capital Advisory Group (UK) LTD"

The second page of the Intermediary Fee Schedule includes the following:

"*Product Fee*

Option A - Establishment Charge

Establishment period 4 years Quarterly Service Fee 0.3125% per quarter

Quarterly Admin Charge 0.0375% per quarter"

"*A surrender charge will be levied on the account as a result of surrendering the policy, the figure remaining will be displayed by the client's "cash management account"*"

"*The cash management account is a virtual representation of the full quarterly service fees over the term.*"

And the Business Conditions page includes the following:

"*Fees and charges explained*"

"*Capital Advisory Group (UK) Ltd reserves the right to pay the Independent Financial Advisor their quarterly Service Fees in advance as a Processing Fee when the policy is first established. This payment will be equal to but not exceeding the fees due for the contractual duration of the account. In the event of this the fees will be amortized on a decreasing term of the account, in effect creating a virtual valuation of the Cash Management Account*"

"*The early encashment charge for an (sic) 4 year plan is 5% of the initial premium reducing by 0.3125% per quarter over 4 years. There are no surrender penalties after this period*."

So, it appears (although it is not specified who the establishment charge is payable to) 10% of the amount placed on the platform is payable as an initial fee to Capital Advisory Group (UK); 5% as an establishment charge or product fee, levied up front, and 5% as a platform processing fee, taken quarterly over four years (with any outstanding balance payable as a surrender charge, if a surrender is made within those four years). And that ongoing annual

service (0.5%, charged annually) and administration fees (Euro 100 annually and 0.0375% quarterly) are also payable.

The reference quoted above to a "*quarterly service fee*" payable to the Independent Financial Advisor does not appear anywhere else in the document. And the amount and basis on which any such fee is payable remains unknown (IFG makes no comment on this in its response to my provisional decision).

I remain of the view that the terms set out in the form are poorly drafted and unclear. It cannot be readily ascertained what the total costs associated with the arrangement are. And there appear to be multiple fees/charges payable for what amounts to the same thing. The distinction between a product or establishment fee and processing fee, and a service fee and administration fee are not clear, for example. It is also not clear what amounts are being paid to what entities. That, in itself, creates a risk of consumer detriment, in my view.

Insofar as the information about fees/charges can be understood it is clear they are exceptionally high. A 10% initial charge for an investment platform was obviously excessive and clearly not in Mr F's best interests.

It is also not clear what the role of Capital Advisory UK is – why are fees being paid to it, via a firm in Malaysia, in relation to a Luxembourg platform? It was described as the administrator of IAM's investment transactions, but it is not clear what that meant in practice, or why such an administrative role was needed in circumstances where a platform provider had already been engaged and was being paid fees/charges for its services.

The role of Capital Platforms also remains unclear. I assume this was a "white labelling" of the Moventum platform. But it is not clear why an entity in Malaysia needed to be involved in the arrangements.

Overall, the arrangements appear to be unnecessarily complex and involve layers of unclear, high fees/charges. Having seen no further evidence on this point, my conclusion is IFG allowed its SIPP to become a vehicle for excessive charging by allowing the platform, and therefore acted in a way which was contrary to its regulatory obligations, guidance and standards of good practice. And that IFG ought to have identified a clear risk of consumer detriment associated with the platform. In the circumstances, IFG should *not* have allowed the platform.

Monitoring the investment activity

Given my concluded findings set out above, the question of whether IFG did enough to monitor the investment activity in the SIPP is a secondary point as, in my view, IFG should simply have not allowed IAM to act and not allowed the Moventum/Capital Platforms platform. But I have reconsidered this point, for completeness.

It remains my view that IFG should also have taken steps to make sure IAM was following the investment guidelines, and generally not acting in a way which created a risk of consumer detriment. It was not fair and reasonable, in my view, for IFG to simply assume IAM would follow the investment guidelines which had been put in place. In the circumstances, it would have been consistent with IFG's regulatory obligations and standards of good practice to have adequate risk management systems in place to allow it to monitor the investment activity in its SIPP.

In the submissions it made before my provisional decision was issued, IFG said checks were undertaken on receipt of valuations from the investment house (which, I assumed, was

referring to Moventum). I remain of the view this was not an effective way of monitoring the investment activity in Mr F's SIPP, in the circumstances.

IFG had not taken any steps to ascertain the types of investments IAM might make. This, in my view, made it particularly important for IFG to ensure it was monitoring the investment activity in the SIPP, to adequately manage the risk of consumer detriment. If a DFM was making investments it was not supposed to be making and IFG was reliant wholly on statements to monitor the DFM's activity it might take a number of months before this was noticed, by which time a consumer may have suffered significant detriment. So, this was not sufficient; that, in my view, did not amount to adequate risk management systems.

IFG itself seems to recognise this in its Investment Guidelines, which include the following:

"*Sovereign* [IFG] *is involved with the investment process and plays a role in the administration of a Member's SIPP investments, and investments are always made by the Trustee of the Sovereign International SIPP in the name of a Member's SIPP.*

All investment instructions received from Members, or their appointed specialist advisers, are considered by the Trustee and Scheme Administrator in light of the Member's risk profile as detailed in by the Member in the Sovereign International SIPP Application Form."

"*Sovereign will not accept non-standard investments into the Sovereign International SIPP.*"

And in the welcome letter to IAM dated 31 March 2021, which included the following:

"*The principal objective of the Scheme is to provide the member with a pension income in retirement. As a trustee and retail investor we must ensure that the member's pension fund remains liquid and diversified...*"

So, IFG recognised it should be part of the investment process; and must ensure appropriate investments are made within the SIPP. And it clearly undertook to play a proactive role in ensuring the investment guidelines were met – it was saying *it* will not accept certain investments.

Furthermore, the agreement between IAM and IFG includes the following:

"*3 ORDER EXECUTION*

3.1 The Client shall sign a Discretionary Management Services Form (DMS) to enable the DFM to sign dealing instructions and submit trades for the Client.

3.2 The DFM shall provide Sovereign Pension Services (UK) Limited [IFG] *with the dealing instruction to purchase or sell Investments via the Platform on behalf of its Clients.*

3.3 Sovereign Pension Services (UK) Limited may accept instructions from any person authorised by the DFM to give such instructions from time to time even when such instructions are given by an unauthenticated facsimile, provided Sovereign Pension Services (UK) Limited acts in good faith. Such persons authorised by the DFM include the Client, who may need to provide instructions in cases including, but not limited to, the need to sell Investments to provide the Minimum Cash Balance."

"*3.5 The Parties acknowledge that Client Investments will be treated by Sovereign Pension Services (UK) Limited as client assets for the purposes of the FCA Rules. All Investments*

purchased will be held by Moventum (Custodised by Banque De Luxembourg as their appropriate nominee)."

It therefore seems the process that ought to have been in place (which, in my view, was consistent with IFG's regulatory obligations, the relevant regulatory guidance and standards of good practice) involved IAM putting the trade instructions to IFG for approval, to be relayed to Moventum. That is consistent with the language used in the investment guidelines.

Finally, IFG was the account holder with Moventum/Capital Platforms and, as the account holder, IFG should have ensured it was getting trade notifications, to allow it to effectively monitor the investment activity in its SIPP. "

My provisional finding, made with the above points in mind, was that the evidence available suggested IFG did not do enough to monitor the investment activity in the SIPP and, if it had acted in a way which was consistent with its regulatory obligations, guidance and good industry practice at the relevant time (and, it seems, its own policies) it should have been aware of trade instructions as and when they were placed or at least have been aware what trades had been placed immediately after the trades were placed.

IFG has made no further submissions on this point, save for stating that it does not "*pre-vet*" trade instructions and "*periodically reviews the statement of investments, or automated data feed if available*". It remains unclear what this meant in practice, for example what exactly IFG had regard to and how frequently its reviews took place.

It remains my view that it is fair and reasonable to say, given the available evidence, that IFG should, in the circumstances, though monitoring of investment activity, have prevented the investments taking place or, failing that, have identified the initial ones (i.e. those placed on 12 April 2021) immediately after their execution. And I remain satisfied this should have led to the termination of IAM as DFM, and at least some of the loss Mr F suffered being prevented.

In my provisional decision, having made the finding IFG Had not taken sufficient steps to monitor the investment activity, I went on to say that it appeared IFG had failed to follow the approach it described to monitoring the investments, in any event; as the evidence shows a number of statements had been issued showing the non-standard assets but no action had been taken by IFG until around a year after the first investments had been made. However, given the final findings I have set out above, and the absence of any further evidence as to the steps IFG actually took, I do not think this is a point I now need to give any further consideration to.

Is it fair to require IFG to compensate Mr F?

When considering this from the perspective of fair compensation, I must be satisfied that, on balance, it is more likely than not Mr F would have made an alternative investment (or retained his existing arrangements), if IFG had taken sufficient steps to meet its regulatory obligations, guidance and good industry practice at the time.

I note IFG's submissions on the liquidity of the assets IAM purchased for Mr F's SIPP (although, as I note in the background, IFG's understanding of which assets were invested in seems to differ from what is recorded in the Moventum statements). However, in my view, it is more likely than not the transactions (i.e. the investments in the non-standard assets) would simply not have proceeded, had IFG not allowed IAM to act as DFM to Mr F's SIPP, and not allowed the Moventum/Capital Platforms arrangement. And that, in my view, is a fair

basis on which to say IFG should compensate Mr F for the loss suffered through investment in the assets, as I am satisfied those investments would not have been made, had IAM not been appointed and the Moventum/Capital Platforms account not set up.

The question of whether the liquidity of the assets would have prevented their sale is now a secondary point, as it only arises if the finding is it was fair and reasonable for IFG to allow IAM to be appointed as DFM and for the Moventum/Capital Platforms account to be opened, and the failing is only in its subsequent monitoring of investment activity. For completeness, I will however note that, whilst it is not certain there would have been sufficient liquidity to allow the sale of the assets it is also not certain there would *not* have been sufficient liquidity. Particularly if IFG, as it ought reasonably to have done, had quickly identified the initial purchase of non-standard assets. And of course the later investments would likely have been prevented, in those circumstances. But I make these points only for completeness.

It remains the case that I have not seen sufficient evidence in this case to show IFG should not have dealt with Chartercross. Chartercross was clearly using other investments / investment managers, and possibly other platform services – IFG says it introduced 78 applications to it, and only 8 of those used IAM as DFM (assumedly on the Moventum platform). There is also evidence to show Chartercross and/or investment managers it recommended were making investments in standard assets. And there is limited evidence available about what IFG knew or should have known about Chartercross otherwise. So, I remain of the view, on the available evidence, that IFG should not have simply refused to deal with Chartercross. I therefore remain of the view it is likely Mr F would have proceeded to invest, but without using IAM or the Moventum/Capital Platforms account, and in accordance with IFG's investment guidelines i.e. only in standard assets.

I accept that Chartercross/IAM may be responsible for initiating the course of action that has led to Mr F's loss. But IFG failed unreasonably to put a stop to that course of action when it had the opportunity and obligation to do so. I am satisfied that if IFG had complied with its own distinct regulatory obligations as a SIPP operator, the loss Mr F has suffered could have been avoided.

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)

I remain of the view it is fair and reasonable in the circumstances of this case to hold IFG accountable for its *own* failure to comply with its regulatory obligations, good industry practice and to treat Mr F fairly.

The starting point, therefore, is that it would be fair to require IFG to pay Mr F compensation for the loss he's suffered as a result of its failings. I have again carefully considered if there is any reason why it would not be fair to ask IFG to compensate Mr F for his loss.

Given what I have set out above, I remain of the view that it is appropriate and fair in the circumstances for IFG to compensate Mr F to the full extent of the financial losses, which arise directly from IFG's failings. Having carefully considered everything, I do not think that it would be appropriate or fair in the circumstances to reduce the compensation amount that IFG is liable to pay to Mr F.

Putting things right

My aim is that Mr F should be put as closely as possible into the position he would probably now be in if IFG had not allowed IAM to act as DFM or for the Moventum/Capital Platforms account to be opened.

I think Mr F would have invested differently. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is a fair and reasonable measure to use to ascertain the likely return he would have received, had investments been made in standard assets.

What must IFG do?

To compensate Mr F fairly, IFG must:

- Compare the performance of Mr F's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable. If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- IFG should also add any interest set out below to the compensation payable.

- If there is a loss, IFG should pay into Mr F's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If IFG is unable to pay the compensation into Mr F's pension plan, it should 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. This is an adjustment to ensure the compensation is a fair amount - it isn't a payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.

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

- It's reasonable to assume that Mr F is likely to be a higher rate taxpayer at the selected retirement age, so the reduction would equal 40%. However, if Mr F 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 30%.

- If either IFG or Mr F dispute that this is a reasonable assumption, they must let us know as soon as possible so it can be reconsidered. It will not be possible for us to amend this assumption once any final decision has been issued on the complaint.

- Pay Mr F £500 for the upset caused by the significant loss to Mr F's pension.

Income tax may be payable on any interest paid. If IFG deducts income tax from the interest, it should tell Mr F how much has been taken off. IFG should give Mr F a tax

deduction certificate in respect of interest if Mr F asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Moventum platform	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of IFG receiving Mr F's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual* value of the investments in the non-standard assets, as they appear to be illiquid.

IFG should take ownership of any illiquid assets by paying a commercial value acceptable to it, as the pension provider. The amount IFG pays should be included in the actual value before compensation is calculated.

If IFG is unable to purchase any illiquid assets the *actual value* of those assets should be assumed to be nil for the purpose of calculation. IFG may require that Mr F provides an undertaking to pay IFG any amount he may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan.

IFG will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if IFG totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

The SIPP and platform cannot be closed because of the illiquid assets. In order for the SIPP (and therefore platform) to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by IFG taking over any illiquid assets. But I do not know if that is possible.

If IFG is unable to purchase any illiquid assets, to provide certainty to all parties I think it's fair that it pays Mr F an upfront lump sum equivalent to five years' worth of fees (calculated

using the fee in the previous year to date, and including both the platform and SIPP). This should provide a reasonable period for the parties to arrange for the SIPP (and therefore platform) to be closed.

Why is this remedy suitable?

I note Mr F's submission that, as he is US-based, his investments will have a large US exposure. I have considered this, but remain satisfied that the FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is an appropriate benchmark to use. The intention is not to precisely replicate how Mr F would have invested otherwise, as it cannot be determined exactly how he would have invested. I am instead seeking to put Mr F in the position, broadly, he would likely be in, had his pension been invested appropriately. I am satisfied the selected index does this – it is made up of a range of indices with different asset classes. It is therefore fair measure for the return Mr F would likely have received. Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison.

My final decision

For the reasons given, I uphold the complaint.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £415,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £415,000, I may recommend that IFG Pensions Limited pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that IFG Pensions Limited should pay the amount produced by that calculation up to the maximum of £415,000 (including distress or inconvenience but excluding costs) plus any interest on that amount as set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £415,000, I recommend that IFG Pensions Limited pays Mr F the balance plus any interest on the balance as set out above.

If IFG Pensions Limited does not pay the recommended amount, then any investment currently illiquid should be retained by Mr F. This is until any future benefit that he may receive from the portfolio together with the compensation paid by IFG Pensions Limited (excluding any interest) equates to the full fair compensation as set out above.

IFG Pensions Limited may, at its cost, request an undertaking from Mr F that either he repays to IFG Pensions Limited any amount Mr F may receive from the portfolio thereafter, or if possible transfers the investment to IFG Pensions Limited at that point.

The recommendation is not part of my determination or award IFG Pensions Limited doesn't have to do what I recommend. It is unlikely that Mr F could accept a final decision and go to court to ask for the balance and Mr F may want to get independent legal advice before deciding whether to accept my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 17 July 2025.

John Pattinson
Ombudsman