DRN-5630592

The complaint

Mr C's complaint concerns his self-invested personal pension (SIPP), provided by IFG Pensions Limited (IFG). A Claims Management Company (CMC) has brought the complaint on Mr C's behalf. The CMC says:

- IFG's negligent acceptance of instructions from Howden Insurance Brokers (Mr C's Dubai-based advisors) led to inappropriate investments being placed in Mr C's SIPP.
- IFG failed in its duty of care as it did not carry out appropriate due diligence on Howden Insurance Brokers, which did not have passporting permissions via the FCA to allow it to trade in the UK. Therefore, clients did not have regulatory protections.
- Although IFG Pensions Limited did not provide the investment advice, it is at fault for failing to protect Mr C's best interests.
- The investments IFG arranged within Mr C's SIPP were wholly inappropriate, as they invested in underlying illiquid and high-risk assets.

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 C'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.

Howden Insurance Brokers LLC ("Howden")

Howden was a financial advice business, based in Dubai, United Arab Emirates (UAE). It was one of the advisors on the SIPP arrangement Mr C entered into. There is limited evidence as to the advice it gave, but I understand it advised Mr C to transfer his existing pensions to IFG's SIPP and subsequently gave advice on the investments to be made within the SIPP.

At the time of the events subject to complaint Howden was authorised by the Insurance Authority of Dubai.

Capital Associates

This was another UAE-based financial advice business, which Mr C transferred to shortly after the SIPP with IFG was opened. I understand this was because his advisor moved business.

Gravitas Finance LLC ("Gravitas")

Gravitas is a Mauritius-based based provider of an investment platform called International Investment Platform ("IIP"). An IIP platform account was opened in Mr C's IFG SIPP, once the SIPP had been established.

At the time of the events subject to complaint Gravitas was licensed by the Mauritius Financial Services Commission.

AES Financial Services Ltd ("AES")

AES was a UK-based, FCA authorised Independent Financial Advisor. A business called International Pension Transfer Specialists ("IPTS") was described as the trading name of a Spanish branch of AES. Mr C appointed IPTS to give advice on the transfer of his Defined Benefit (DB) pension schemes to the SIPP. It seems Mr C was introduced to IPTS by Howden.

Mr C's dealings with the parties

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

- 11 July 2017 – Mr C signs an application to open a SIPP with IFG. This recorded that Howden was Mr C's financial advisor, and that Mr C lived in Dubai. The application requested that the cash value of the first of Mr C's DB schemes be transferred into the SIPP.

- 19 July 2017 - Howden submits an application to IIP, to place £431,150 on the platform.

- 2 August 2017 - IPTS sends a report to Mr C about the transfer out of the DB scheme he had applied to transfer to the SIPP.

- 14 September 2017 – the cash value of the first DB scheme is paid from IFG's SIPP to the IIP platform.

- 24 September 2017 - Mr C signs a second application to open a SIPP with IFG. This again recorded that Howden was Mr C's financial advisor, and that Mr C lived in Dubai. The application requested that the cash value of the second of Mr C's DB schemes be transferred into the SIPP.

- 26 September 2017 – Howden submits a second application to IIP, to place £1,167,002 on the platform.

- 6 October 2017 - IPTS sends a report to Mr C about the transfer out of the second DB scheme he had applied to transfer to the SIPP.

- 20 December 2017 - the cash value of the second DB scheme is paid from IFG's SIPP to the IIP platform.

Once the money was paid on to the IIP platform, various investments were made. As mentioned, Mr C changed from Howden to another UAE-based advisor, Capital Associates

in September 2017.

I acknowledge some of the investments made on the IIP platform are part of the complaint, but it is not necessary to set out any further detail of the investments here.

Mr C's complaint to IFG

IFG did not uphold Mr C's complaint. It said it had carried out due diligence on Howden and Gravitas, which were both authorised in the countries they operated from, the selection of investments was the responsibility of Mr C's advisors, it restricted the investments that could be made in the SIPP to standard assets (as defined by the FCA), and did not allow high risk investments. The CMC did not agree with the response; the complaint was hence referred to us.

Our investigator's view

Our investigator did not receive a response from IFG or the CMC to the information requests he had made, so reached a view based on the evidence available to him. He concluded the complaint should not be upheld. His view, in summary, was as follows:

- Mr C was and still is a resident of the UAE, and the CMC has provided no evidence to show Howden conducted business from within a UK territory.

- As the advice was provided outside of the UK, Howdens did not require passporting permissions. Howden was regulated by the relevant authority to provide advice within the UAE.

- IFG could rely on the fact that Mr C had chosen to receive advice from Howden, which was regulated in the territory where he resided. If Mr C instead wished to receive FCA regulated advice, he could have done so at the time.

- The funds invested in through the IIP met IFG's and the FCA's definition of a standard asset.

- He had not been presented with any evidence that the IIP account ever held investments of a non-standard nature. IFG has also asserted that non-standard investments were never held within the account.

- As the investments were standard in nature, there was no requirement for IFG to conduct any enhanced due diligence on the investments made.

- It would not be fair or reasonable for IFG to be held responsible for Mr C's actions or the advice provided by other entities. IFG had no requirement to provide advice, did not do so, and so did not have any relevant information to refuse Mr C its product or the investments he chose.

The CMC did not accept this view. It said, in summary:

- Unsuitable investments were involved and enhanced due diligence was therefore required (it gave examples of what it considered to be unsuitable investments). It is not just the evident inappropriateness of these investments at issue; the amounts placed in these respective investments (£410,000 in one and £172,000 in the other) have had a devastating effect on Mr C's pension pot.

- The investigator's view says that other parties, apart from IPG, were involved,

therefore IPG can't be held solely responsible, even though those other parties were non-UK. But the fact that they are non-UK based ought to make those other parties irrelevant, not to be included in these considerations.

Our investigator told IFG the CMC did not accept its view and, having considered the CMC's comments, IFG provided us with a number of documents from its files. IFG also responded to the questions the investigator had earlier asked, which related to the due diligence IFG had carried out. In relation to the introducer of business, the key responses given by IFG were as follows:

- Howden signed Terms of Business with IFG on 4 May 2017.
- Howden is regulated by the Insurance Authority of Dubai, UAE.
- IFG undertook due diligence checks that met the standards required at that time.
- As Mr C's existing schemes had safe-guarded benefits exceeding £30,000 Mr C was required to receive financial advice from a UK regulated firm before proceeding with the transfer. Mr C received appropriate independent advice from IPTS.
- Howden was authorised and approved to provide financial and investment advice and was reasonably expected by IFG to complete a diligent fact find on its client's circumstances, financials, and attitude to risk providing advice on an independent, whole of market basis for an appropriate solution and product to meet the specific requirements of its clients.
- Having established that appropriate independent advice from IPTS was being given prior to each transfer, no additional discussion was required with Howden about how it managed its clients and the associated recommendations.
- At the time of the SIPP acceptance, Mr C's application confirmed he was resident in Dubai, and it was provided with evidence of his residential address.

My provisional decision

I recently issued a provisional decision. Having taken account of the relevant considerations I had set out (which I set out again in my findings below) I concluded the complaint should be upheld. I explained that, in my view, it was fair and reasonable to say that, had IFG acted in a way which was consistent with its regulatory obligations, guidance and good industry practice at the relevant time, it should have concluded that it should not accept this business, as it had a significant risk of consumer detriment associated with it. I set out the details of some significant issues IFG should have identified, relating to exceptionally high commission/fees and the status of IPTS, which had not given FCA regulated advice on the transfers into the SIPP.

Responses to my provisional decision

The CMC said Mr C accepted my provisional decision and had nothing further to add.

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 C fairly, insofar as it:

    - Sought to understand the underlying funds.
    - Adhered to standard industry practices at the time.
    - Advised Mr C as to its role (as distinct from that of other parties).
    - Considered Mr C's confirmations and consents, for example the insistent client letter and his signatures on appropriate documents, indicating his acceptance of fees etc.

- There was no indication at the time that the advice was being given to Mr C from Spain. The declaration from the IFA confirmed the advice was given by a UK regulated firm (AES). Additionally, the letter header and footer confirmed that UK activities were regulated by the FCA. As the IFA signed the declaration in his capacity as CF30 and CF1, it had no reason to question his professional qualifications and integrity in signing the declaration. The IFA also provided a UK address within the transfer advice report, which reinforced its view that advice was being provided in the UK, by a UK regulated firm.

- It is also worth noting that the ceding schemes for both defined benefit transfers did not flag any concerns with the advice provided at the point of transfer out, and I have not raised any concerns about those schemes not undertaking appropriate due diligence.

- The annual management fee, taken from the investment and payable to the advisor was 0.25% per quarter, based on the value of the fund. It does not believe that this charge is excessive. It would not be out of line with typical charges at the time within the market.

- The way I have described this charge appears to indicate the total of the charges paid to date were deducted from the pension at outset, to Mr C's detriment. This does not reflect what has happened. The statement (this refers to a copy statement IFG attached to its response) shows that the quarterly fee being paid to the IFA was £3,838.19. This means that over 10 years at this rate the amount (around £159k) would be approximately the total cited in my decision; but this was being deducted quarterly from the member's investments as intended, not upfront.

- Whilst the overall charges on the product may be considered to have been high by today's standards, it believes that they were not as high as I am suggesting.

- The initial surrender penalty was 11%. This would have been set to equal the establishment charge. In effect it guarantees that the platform covers its initial costs. It is likely that the establishment fee was split to cover the platform costs (1%) and to cover initial commission (up to 10%).

- Its understanding is that the 10-year exit fee is on a sliding scale, falling by 1% each year. At the time, a 10-year exit penalty was not unusual within the market.

- In 2021 (and slightly earlier), it liaised with the FCA in respect of charges. Following this, it put a cap on commission of 4%, and additionally introduced a cap on the total payable of £22,000. Prior to this it was not aware of any specific requirements. This action was after the event for this case, but does demonstrate that when guidance is provided from the regulator, it implemented changes and supported positive member outcomes.

- Following the discussions with the FCA it also no longer allowed investment in funds

that contained exit charges, or are deemed to have high expense ratios / ongoing charges.

- The General Cash Reserve (I assume this refers to Gravitas' Capital Reserve Account) should not be interpreted as an additional charge. Instead, it is a ringfenced sum set aside by the portfolio to ensure that there is enough money available from which to collect charges and penalties.

It considers that Mr C was aware of the charges, was also aware of the reserve account structure, and signed to confirm as such.

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 is 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 is 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 C - there are other relevant considerations. I remain of the view the relevant considerations in this case are as set out below.

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 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 EWHC 2878
  - Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch)

- The FSA and FCA rules including the following:
  - PRIN Principles for Business
  - 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 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*).

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 C'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 findings therefore closely reflect my provisional ones, and I have mostly adopted the wording used in my provisional decision.

I should again acknowledge that, like the investigator, I think some of the CMC's points of complaint are misconceived. Howden was not subject to passporting rules, as it was operating in the UAE, and giving advice to Mr C there. And IFG was not responsible for the suitability of the investments held in the SIPP for Mr C personally.

However, it remains my view that it is fair and reasonable to say that, had IFG acted in a way which was consistent with its regulatory obligations, guidance and good industry practice at the relevant time, it should have concluded that it should not accept this business, as it had a significant risk of consumer detriment associated with it. In particular:

- I remain of the view the amount of commission paid to Howden was extraordinarily large – it took £159,815 in commission from the two transfers from Mr C's DB schemes. It remains my view this was clearly excessive and not in Mr C's best interests. It also remains my view it significantly impacted Mr C's pension; and facilitating such business was therefore not treating him fairly.

- I remain of the view that the fees/charges associated with Gravitas' IIP platform were high – in particular the exit penalty which would apply to any withdrawals made in the first ten years. There was also a significant portion of the money placed on the platform held in "reserve" without, it seems, being paid any return. Both of these appear largely to be a consequence of the high amount of commission being taken by Howden.

- It is a matter of fact that the advice from IPTS was being given from an office in Spain to a consumer based in the UAE. So, although AES was FCA authorised that authorisation did not apply here. The advice given to Mr C was therefore not subject to FCA authorisation/regulation and none of the regulatory protections associated with that applied. I remain of the view that IFG should have considered the motivation for keeping the advice outside UK regulation. I also remain of the view that if IFG had seen the details of the advice (and note it appears to confirm it did in its response to my provisional decision) it should also have noted it appeared to not actually make a recommendation to Mr C, and to be of poor quality.

I remain of the view all these issues were either known to IFG (or should reasonably have been, given the information available to it) or ought to have been known to it, had it carried out sufficient due diligence. And should have led it to conclude it should not accept Mr C's application.

Howden

The IIP Business Submission Sheet, which was included as a cover sheet to both applications to transfer money from Mr C's SIPP to the IIP platform, had a section which recorded the amount of commission payable. In both instances "10%" had been typed in this section. And, in the first form, the "Notes" section had "PAYABLES: GBP 43,115" written in it. The second had "PAYABLES: GBP 116,700" written in it. Both named the "Broker" as Howden. So, the applications suggest £159,815 initial commission was being taken by

Howden (based on the anticipated transfer amounts). And I remain satisfied a commission of £159,815 was paid to Howden (or at least a sum similar to this, if the amount was recalculated once the precise transfer amounts were known).

I also remain of the view it is very likely IFG was aware of the commission being paid, as it was set out in the Business Submission Sheet which accompanied the platform application form – and I note IFG has not disputed this in its response to my provisional decision.

I also remain of the view that if IFG was not aware of the commission it ought to have been, had it acted in a way consistent with its regulatory obligations. It should have had regard to the content of the Business Submission Sheet. It should also have had regard to the terms set out in the application form which explained commission of "*up to a maximum of 11%*" was payable and, given the high level of commission which could potentially have been taken and potential risk of consumer detriment associated with this, should have sought confirmation of what commission was being taken if it did not think that was clear from the documentation available.

Furthermore, Part 2 of the IIP application was to be completed by the trustees of the SIPP, and included the following:

"*I/We confirm that the client/member is aware of all fees including but not exclusive to any advisor and/or platform fees…*"

So, IFG was also required to declare it had made Mr C aware of all fees, including any being paid to the advisor, and this is a further basis on which IFG ought to have been paying attention to any commission being paid.

I remain of the view that a commission of 10% is, as a general point, is very high. But when viewed in the context of the sums involved here it is extraordinary. An amount of almost £160,000 was obviously excessive and not in Mr C's best interests, as it was to have a detrimental impact on his pension by increasing the charges and resulting in a significant portion not being available for investment and effectively being paid up front to cover the commission (I explore these points again further below).

I note IFG's reference, in its response, to the charges not being unusual or out of line with what was typical. But it has provided no evidence to support this view. I remain of the view it is fair and reasonable to say that any reasonable market participant should have been aware that commission of 10% on a transfer of around £1.6m was very likely to be detrimental to the consumer and should not be allowed. IFG should have recognised this and simply not allowed the application to proceed. In doing so, it allowed its SIPP to become a vehicle for Howden's excessive commission charging, and therefore acted in a way which was contrary to its regulatory obligations, guidance and standards of good practice.

I also note IFG's reference in its response to subsequent interactions with the FCA. I do not know the detail of these interactions (and do not think I need this detail in order to decide what is fair and reasonable in the circumstances of this complaint) but the fact they concluded with IFG putting a commission cap in place which was a small fraction of the commission paid in this instance does not suggest the FCA was supportive of IFG's acceptance of business of this type. And I do not think the fact the interactions with the FCA post-date Mr C's application is reason to conclude it was consistent with IFG's regulatory obligations, guidance and standards of good practice to accept Mr C's application at the time. All of the regulatory obligations, guidance and standards of good practice I have set out in the relevant considerations above were in place at the time of Mr C's application.

Overall, I remain of the view that acceptance of an application paying such a high level of

commission is sufficient in itself for it to be fair and reasonable to uphold the complaint. But also that it should also be considered alongside the other risks IFG either was aware of, or ought to have been aware of.

Gravitas/IIP

I will again set out what I consider to be the key part of the application form.

Page 14 of the IIP application form includes a blue box, which carries the title "*E. Fees*". The following is included in the text in the box:

"*The Prime Broker shall charge the Client commission per transaction, as per the fee schedule as set out in Schedule 2 of this Agreement.*"

"*The Financial Advisor can charge the Client commission, as per the fee schedule as set out in Schedule 2 of this Agreement*."

"*chose* (sic) *the clients "nominated period of investing"*" (this is answered as "*10 Years*")

The Fee Schedule is in fact set out at Schedule 1, not Schedule 2. It includes the following in reference to fees/charges:

"*Establishment fee*

1% paid quarter over the nominated period of investing (e.g. 10 year period = 0.1% per year). Calculated on the initial value of all assets transferred into the International Investment Platform. Please note, your financial advisor may charge an additional initial fee of up to a maximum of 11%, which will be amortised over nominated period of investing. Early termination charges may be applicable, so please enquire with your financial adviser."

Administration and Custody Fee

The administration and custody fee is 0.60% per annum

Management Fee

The annual management fee can be charged by you (sic) *financial advisor up to the value of 1%, based on the market value of the portfolio."*

"*Early redemption penalty*

If the Investment Platform is terminated during the first 10 years an Early Redemption Penalty will be levied. The penalty will be 11% reducing to nil after ten years – with the amount being reduced daily on a straight line basis."

The form also refers to Dealing Fees, Bank Charges and Investment Manager Fees (with no limit on the latter being mentioned). It makes no reference to any fees/charges which might apply to any funds held on the platform.

It should be noted that, whilst some terms in the form are capitalised (albeit inconsistently in some instances), there are no defined terms set out in the form.

IFG says, in its response, that the fees/charges associated with the platform as not as high as I had set out in my provisional decision. But it has not provided sufficient evidence to

support this point; and its response suggests that IFG's understanding of the total fees/charges payable is limited.

IFG says the quarterly fee being paid to the IFA was £3,838.19, and that over 10 years at this rate this would approximately equal the total fees/changes cited in my decision. But my provisional decision referred to fees/charges of £217,015.10 over the period from September 2017 to March 2024 i.e. a period of six and a half years. And it also highlighted that these fees/charges were for the Gravitas arrangement only. This total amount was drawn from the investor summary statement from the Gravitas/IIP, which shows all the transactions on the platform over the period 14 September 2017 to 12 March 2024. In my view this is reasonable evidence to rely on.

The statement IFG has provided with its response – described as "Annex 7" - covers only a period of one month in 2024 and does not appear, in any event, to support its response. It shows a "*Advisor Trail Fee : April 2021 to June 2021*" paid of £3.838.49, which IFG refers to; but also a separate fee deduction of the same amount, described as a "*Provider Fee Settlement*", which appears to have been overlooked in IFG's response. If that is taken account of the fees/charges over a 10 year period are in excess of £300,000, which seems consistent with my figure of £217,015.10 over six and a half years.

Ultimately, I am satisfied from the available evidence that this was an excessively expensive arrangement. I remain of the view that, overall, the available evidence shows there are high fees/charges associated with the platform, which it seems mostly arise from the level of commission taken Howden. And I think it is again worth emphasising these are fee/charges for the Gravitas/IIP arrangement *only.* They are not the full cost of the arrangements.

The exit fee was also high, and shows Mr C was bound to pay at least 11% out of his pension, to meet initial fees/charges. I note IFG's point that the penalty reduced annually on a sliding scale, but this does not change my view that, overall, the fees/charges were excessive.

I also remain of the view Mr C was effectively paying out of the capital transferred to the platform to meet the fees/charges up front.

The form included the following:

"*Capital Reserve Account*

The International Investment Platform reserves the right to implement the requirement of a capital reserve account for each account holder up to a maximum holding of 15%. PLEASE NOTE: If there is insufficient cash within the account to cover ongoing fees and charges we reserve the rights to instruct the custodian bank to sell investments from the account holders portfolio for covers such fees, even if that may incur liquidity fees and redemption penalties…."

And the investor summary statement I refer to above shows £191,671.66 of the money from Mr C's SIPP transferred to the IIP platform was immediately put in this "reserve" which, it appears, was not invested, nor received a return on any other basis. The "Annex 7" statement IFG has provided supports this, as it shows that, approaching seven years after the platform account was opened, a "*General Reserve*" account had a balance of £131,597.04 and had received a return since inception of "*0.00%*". It therefore seems some of the ongoing charges were taken from this amount (but the majority taken out of Mr C's investments) and no return was paid on this large sum of money.

So, I remain of the view the Capital Reserve seems to amount to what is effectively an upfront charge.

I also remain of the view these issues with the Gravitas/IIP platform are further reasons for IFG to have concluded it should not accept the application. In my view, this level of fees/charges, the barrier to exiting, and the likely detriment to Mr C's pension should have led IFG to have serious concerns about the arrangement, as it was highly unlikely to be treating Mr C fairly or in his best interests to allow an investment in a product with these features.

Also, when considered alongside the level of commission being taken by Howden, IFG should have considered whether the primary driver here was commission and if Howden was putting its own interests ahead of Mr C's (if the level of commission in itself was not seen to be sufficient evidence of this). In other words, the detail of the product should have added further weight to the concerns IFG ought to have had about the level of commission being taken.

AES/IPTS

In its response to my provisional decision, IFG says there was no indication to it at the time that the advice was being given to Mr C from Spain. It refers to the header and footer on IPTS correspondence, and a UK address within the transfer advice report, which it says reinforced its view that advice was being provided in the UK. On this basis, IFG submits there is no factual basis for a finding that the advice was not provided under FCA regulations.

It is clear from these submissions that IFG did have regard to the declaration and transfer reports when deciding to accept the business.

The footer which IFG says it saw contained the following:

"*International Pension Transfer Specialists (IPTS) is the trading name of the Spain branch of AES Financial Services Limited; IPTS is authorised and regulated for all its Spanish activities by the Comision Nacional del Mercado de Valores (CNMV) and Direccion General de Seguros y Fondos de Pensiones (DGS); the law applicable to such activities (including any IPTS advice) is that of Spain…IPTS does not carry out any advisory business other than in Spain*."

The transfer advice reports, which IFG says it saw, include the following confirmation of the basis on which IPTS was operating:

"*At the outset we clarify that the law applicable to the advice provided in this report is that of Spain (not that of the UAE, Hong Kong or the UK), and therefore this letter does not constitute UAE or Hong Kong-regulated advice or UK FCA-regulated advice. The relevant Spanish regulator is the Dirección General de Seguros ("DGS") and if you have any concern about this advice that cannot be resolved between us, they offer a complaint service on http://www.dgsfp.mineco.es/reclamaciones/index_in.asp, and their contact details are: Servicio de Reclamaciones, la Dirección General de Seguros y Fondos de Pensiones, Paseo de la Castellana nº44, 28046 Madrid, Spain, telephone 0034 902 19 11 11*."

Then, at the conclusion of the report, the advisor includes his FCA Individual Registration Number (IRN), but then adds a note as follows:

"*this IRN and the FCA authorisation of the individual named does not imply that any advice given is FCA-regulated or that UK law is applicable; advice given is Spanish-regulated and*

under the law of Spain."

This, in my view, clearly establishes the factual position. IPTS was as a branch of AES, but was also registered directly with the Spanish authorities. And, in this instance, was operating as a Spanish business, solely under Spanish jurisdiction.

So, I do not agree that there would have been no indication to IFG at the time that the advice was being given to Mr C from Spain. Rather, in my view, it ought to have been clear to IFG that the advice *was* being given from Spain.

I accept that the declaration, in itself, is unclear, as it does quote a UK address, give FCA reference numbers, and refer to the FCA permissions held the advisor. But it also contains the footer quoted above and the covering letter is from IPTS, not AES. And, in any event, it had to be considered alongside the other information available to IFG; it should not have been considered in isolation.

Ultimately, I am satisfied IFG knew, or ought to have known, IPTS was operating in Spain, on the basis I have described. It therefore knew, or ought to have known, that IPTS did not give FCA regulated advice – the advice was given under Spanish jurisdiction, not that of the FCA. And it should have recognised AES's UK address and FCA authorisation number were therefore irrelevant, as the business was being conducted outside the UK and the jurisdiction of the FCA.

So, IFG should have known Mr C was *not* receiving FCA authorised advice, and did not therefore benefit from the protections associated with such advice. And it should have been concerned there was a risk IPTS had been set up to avoid FCA regulation – it is difficult to see why else IPTS was used here, given Mr C was in the UAE and appears to have no connection to Spain otherwise - and questioned the motivation for that.

Furthermore, I remain of the view that if IFG had regard to the advice reports issued by IPTS (and it seems it did) it should have noted they show a recommendation was not in fact being given – and any advice that was being given was not of the standard that could reasonably be expected under the UK regulatory regime. At the outset each report says:

"*While we offer no recommendations for or against a transfer in this letter, we do point out that it is prudent to review pension arrangements on a regular basis. Historically, many different pension arrangements have been created in responses to changes in legislation that provide different benefit structures. There is therefore no generic defined benefit pension scheme, and you should consider whether your existing arrangement will meet your retirement needs: it may be in your best interests to remain in your current scheme, retaining your benefits. You do not have to make a transfer, and it is vital that any decision-making considers your long-term financial security as the first priority.*"

Each report then sets out what is effectively a generic review of DB scheme transfers. And at their conclusion they say:

"*IPTS is not advising on what you **should** do, rather what you **could** do.*"

Mr C is then asked to agree:

"*I confirm that I have read this advice letter and understand that it does not take into account my personal circumstances, specific and detailed objectives or attitude to risk, and is not a personal recommendation to pursue any specific course of action, but provides information only.*"

Whilst I accept IFG was not acting as Mr C's advisor and did not have permissions to give advice itself I nonetheless think it reasonable to say it ought to have recognised this as advice of obviously poor quality.

Overall, my view remains IFG should have had significant concerns about the involvement of IPTS and this should have given it further reason to conclude it would not be consistent with its regulatory obligations, guidance and good industry practice at the relevant time to accept Mr C's application. Particularly when what ought to have been known about IPTS and its advice was considered alongside the other issues I have set out.

I note IFG's point that the ceding schemes did not flag any concerns with AES/IPTS, and I had not, in my provisional decision, raised any concerns about those schemes not undertaking appropriate due diligence. However, I am deciding a complaint against IFG, not any other parties involved in the transfer process, and therefore have no basis on which I can investigate, and make findings on, the actions of other parties. I am considering IFG's own, independent, regulatory obligations – a point I will return to when reconsidering fair compensation.

The investments placed on IIP's platform

In my provisional decision I noted that at least one significant investment (an investment of £410,000 in the Lombard 82 fund, placed by Howden or its successor) was clearly not a standard asset, as defined in IPRU-INV of the FCA Handbook, and was high risk; and therefore appears to have breached two of IFG's requirements - namely that investments be standard assets and not high risk. I found that the only reasonable conclusion IFG could have reached was that investment in this fund was inconsistent with its investment guidelines, and should not therefore be allowed. Given my findings above, however, I have not given any further consideration to this, as it is not necessary to do so in order to decide what is fair and reasonable in the circumstances.

In summary

With the issues I have set out above in mind IFG should, had it acted in a way which was consistent with its regulatory obligations, guidance and good industry practice at the relevant time, have concluded it should not accept Mr C's application. There were a number of risks of detriment associated with the application which, individually and cumulatively, which meant IFG ought to have concluded it would not be consistent with its regulatory obligations, guidance and good industry practice at the relevant time to accept Mr C's application.

I note IFG's reference to an insistent client letter, and other documents signed by Mr C; and also to Mr C having received advice from both Howden and IPTS. But I do not agree this is evidence Mr C had a full understanding of all the issues I have set out (a point I will explore further below), as I have not seen sufficient evidence to show all the fees/charges were plainly set out to Mr C and the advice Mr C was given appears to have been of poor quality, as mentioned. So, I do not think IFG could have reasonably have accepted the business on the basis Mr C had been made fully aware of the issues I have described, and being insistent on proceeding with that knowledge in mind.

In any event, my findings apply irrespective of anything Mr C signed as, given the clear risks of consumer detriment IFG ought to have identified, it simply would not have been fair and reasonable for it to have proceeded to accept this business, in reliance on any documentation Mr C had signed.

Is it fair to require IFG to compensate Mr C?

When considering this from the perspective of fair compensation, I must be satisfied that, on balance, it is more likely than not Mr C would have made an alternative investment (or retained his existing arrangements), if IFG had not accepted his application.

In my view it is more likely than not the transaction would not have proceeded, had IFG not accepted Mr C's application. By that I mean Mr C would have likely stayed in his existing pension schemes.

As noted above, I have not seen sufficient evidence to show Mr C was made fully aware of the fees/charges. I have not seen any documentation which plainly set these out – and it is, in my view, telling that IFG itself still does not appear to fully understand them. If IFG itself does not understand the fee/charges I do not think it can reasonably say Mr C should have done so.

Overall, I remain of the view it is likely Mr C was not fully aware of the fees/charges – and in particular the level of commission payable to Howden. And I think if Mr C had been aware that approaching £200,000 was going to be effectively immediately removed from his pension to cover fees/charges, and of the importance of seeking advice from an FCA authorised business acting in that capacity it is unlikely he would have ultimately proceeded.

I remain of the view the fees/charges alone would likely have been sufficient to lead Mr C to conclude he should not proceed. But, if they were not, I think it likely he would have sought advice from an FCA authorised advisor acting in that capacity and that it is reasonable to assume that advice would have been of the standard expected by the FCA. Such advice would very likely have strongly advised Mr C against the transfers and set out in fair and balanced terms the options that were available to him in his existing schemes. And I have seen no evidence to persuade me Mr C would not have followed the advice.

I accept that Howden/IPTS may be responsible for initiating the course of action that has led to Mr C's loss, and also the possibility that the ceding schemes might have identified issues with the transfer out advice (although, for the reasons set out above, I make no finding on that here). 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 transfers would not have come about in the first place, and the loss Mr C has suffered could have been avoided.

Furthermore – and in any event - in the circumstances, I am of the view it is not fair and reasonable to say that IFG should not be considered at fault, or that it should bear no responsibility for its faults, based on speculation another SIPP operator would have acted in the same way had IFG refused the application.

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

In my opinion it's fair and reasonable in the circumstances of this case to hold IFG accountable for its *own* failure to comply with its regulatory obligations, good industry practice and to treat Mr C fairly.

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

As mentioned, I acknowledge that Howden/IPTS may be responsible for initiating the course

of action that has led to Mr C's loss. But, as I have set out, I am satisfied Mr C would not have invested *at all* had IFG met its regulatory obligations.

It's my view that it is appropriate and fair in the circumstances for IFG to compensate Mr C to the full extent of the financial losses he has suffered due to its 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 C.

Putting things right

My aim is to return Mr C to the position he would likely now be in but for what I consider to be IFG's failure to carry out adequate due diligence checks before accepting his SIPP application.

IFG should calculate fair compensation by comparing the current position to the position Mr C would be in if he'd not transferred from his DB schemes. In summary, IFG should:

1. Take ownership of any illiquid investments if possible.
2. Calculate and pay compensation for the loss Mr C's pension provisions have suffered as a result of IFG accepting his application.
3. Pay Mr C £500 for the trouble and upset he has suffered.

I explain how IFG should carry out these steps in further detail below.

1. Take ownership of any illiquid investments if possible.

   In order for the SIPP to be closed and further SIPP fees to be prevented, any illiquid investments held on the IIP platform need to be removed from Mr C's SIPP. To do this, IFG should calculate an amount it's willing to accept as a commercial value for these investments, pay that sum into Mr C's SIPP, and take ownership of the investments. The sums paid into the SIPP to purchase the investments will then make up part of the current actual value of the SIPP.

   If IFG is unwilling or unable to purchase the illiquid investments, then the actual value of any illiquid investments it does not purchase should be assumed to be nil for the purposes of the redress calculation.

   If IFG does not purchase the investments, if the total calculated redress in this complaint is greater than £190,000 (as is very likely the case) and IFG does not pay the recommended amount, Mr C should retain the rights to any future return from the investments until such time as any future benefit that he receives from the investments together with the compensation paid by IFG (excluding any interest) equates to the total calculated redress amount in this complaint. IFG may ask Mr C to provide an undertaking to account to it for the net amount of any further payment the SIPP may receive from these investments thereafter. That undertaking should allow for the effect of any tax and charges on the amount Mr C may receive from the investments from that point, and any eventual sums he would be able to access from the SIPP in respect of the investments. IFG will need to meet any costs in drawing up the undertaking.

2. Calculate and pay compensation for the loss Mr C's pension provisions have suffered as a result of IFG accepting his application.

A fair and reasonable outcome would be for IFG to put Mr C, as far as possible, into the position he'd now be in if it hadn't accepted his application from. As explained above, had this occurred then I consider it to be more likely than not that Mr C would not have established the IFG SIPP, or transferred monies into it from his DB schemes. IFG must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Mr C is recorded as wanting to take benefits from age 55. And on balance, I'm satisfied that he would have wanted to take benefits from his DB schemes at that age had he remained in the DBS and been able to do so. So, the calculation should assume Mr C took benefits from the DBS from age 55, or the earliest point subsequently that he would have been permitted to.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, IFG should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
    - redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment his defined contribution pension
- offer to calculate how much of any redress Mr C receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Mr C accepts IFG's offer, to calculate how much of his redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid directly to Mr C as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), IFG may make a notional deduction to allow for income tax that would otherwise have been paid. Mr C's likely income tax rate in retirement is presumed to be 40%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

3. Pay Mr C £500 for the trouble and upset he has suffered.

In addition to the financial loss that Mr C has suffered as a result of the problems with his pension, I think that the loss of a significant portion of his pension provisions has caused Mr C distress. And I think that it is fair for IFG to

compensate him for this as well.

My final decision

Where I uphold a complaint, I can make an award requiring a financial business to pay compensation of up to £190,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £190,000, 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 provisional decision is that IFG Pensions Limited must pay the amount produced by that calculation up to the maximum of £190,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £190,000, I recommend that IFG Pensions Limited pay Mr C the balance plus any interest on the balance as set out above.

The recommendation isn't part of my determination or award IFG Pensions Limited doesn't have to do what I recommend. It is unlikely that Mr C could accept a final decision and go to court to ask for the balance and Mr C 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 C to accept or reject my decision before 18 July 2025.

John Pattinson
Ombudsman