DRN-5639142

The complaint

Mr B complains about investments made on a platform in a Self-Invested Personal Pension (SIPP) operated by IFG Pensions Limited ("IFG"). Mr B says IFG did not check that an investment made by a Discretionary Fund Manager (DFM) appointed to manage the investments in his SIPP was appropriate for the SIPP, and IFG carried out no due diligence into the activities of the DFM. On this basis he considers IFG to be responsible for the loss he suffered through making the investment. Mr B also complains about issues and delays he experienced when transferring his SIPP from IFG to another provider.

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 B'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 initially acted as Mr B'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 B'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 B's SIPP was made.

Churchill Discretionary Asset Management Ltd ("CDAM")

CDAM was a UK firm, described as a DFM. It was FCA authorised until August 2022. It was appointed DFM to Mr B'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 Moventum platform in Mr B's SIPP to Capital Advisory.

Mr B's dealings with the parties

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

- 23 July 2018 – Mr B signs an application for IFG's SIPP. The application names Mr B's financial advisor as Chartercross, and asks for Mr B's three existing pension schemes to be transferred into the SIPP.

- 26 August 2018 - IFG sends a completed platform application to Capital Platforms in Malaysia. This had been signed by Mr B on 26 July 2018.

- 5 September, 31 October, 8 November 2018 – IFG sends amounts of £53,055, £49,709 and £28,057 respectively from Mr B's SIPP to the Moventum/Capital Platforms platform.

- 25 June 2020 – Chartercross gives instructions to sell the investments which had been made on the Moventum platform, save a structured note investment, which was retained.

- 27 August 2020 – Chartercross sends forms to IFG to appoint CDAM as DFM to the SIPP.

- 11 November 2020 – CDAM invests £90,040 in the Athena Global Growth Fund ("the Athena Fund"); a fund which CDAM was the manager of, and which is the focus of Mr B's complaint. It appears this is the only investment CDAM made, and used the majority of available cash in the SIPP at the time (the remainder being invested in the aforementioned structured note).

- 20 August 2021 – the Athena Fund is suspended from trading. I understand CDAM was replaced as investment manager to the fund around this time, due to concerns about the quality and liquidity of the investments it had made in the fund. The new manager then began a process of liquidating the holdings and distributing the proceeds to investors; a process which is expected to take until 2027.

- 20 August 2021 – IFG writes to Capital Platforms, asking for CDAM to be removed as DFM to Mr B's SIPP with immediate effect.

- 9 June 2022 – IFG receives an application to transfer out from its SIPP to a new SIPP operator.

- 8 September 2023 – the transfer out completes (I understand the Athena Fund was transferred in specie).

Mr B's complaint to IFG

Mr B raised a complaint in November 2022. IFG did not respond but did issue a response to us in May 2024, after the complaint had been referred to us by Mr B. It said, in summary:

- Its responsibility was to classify investments as permissible and not permissible. It does this through its published Permitted Investment Guidelines, a copy of which was attached to Mr B's SIPP application form and provided to Mr B's investment advisor.

- Mr B appointed CDAM as his DFM. CDAM held approvals from the FCA for discretionary investment activities, and IFG checked those were in place prior to accepting Mr B's instruction to appoint CDAM as his DFM.

- It set out its Terms of Business to CDAM and was very clear that all investments made must fall within its clear Permitted Investments Guidelines.

- Its guidelines required that the asset must be 'standard', as defined by the FCA, i.e. able to be accurately and fairly valued on a regular basis and it has a market to enable it to be readily realisable within 30 days.

- It is not IFG's position to take on the DFM's job; it does not hold permissions to do so.

- However, IFG does monitor on a periodic basis to sample check DFM investment activities, and as part of that checked the Athena Fund was standard at onset - and confirmed that it met the requirements to be classed as such.

- Given Mr B appointed the DFM to act on his behalf, and the DFM committed to operating within IFG's Permitted Investment Guidelines, it is not accountable for the DFM's investment choice.

- Having undertaken an investigation, it is clear it had not dealt with Mr B's transfer out request in a timely manner and to the standard that it strives to achieve.

- IFG acknowledges it was responsible for some of the delays and regret any distress and inconvenience this has caused. In recognition of the distress and inconvenience caused by the poor customer service it would like to offer compensation of £350.

IFG's further submissions to us

Our investigator asked IFG some questions about the due diligence it carried out on the investments and parties involved. In terms of the responses IFG gave to the questions the investigator asked, I think the following questions (in bold) and answers about IFG's due diligence are relevant to deciding what is fair and reasonable in the circumstances of this case.

Did you carry out due diligence into the underlying fund held in the SIPP? If so, what were your conclusions in respect of the investment? Please provide evidence of the due diligence you carried out on the investment.

Yes, full due diligence was initially undertaken on underlying fund to ensure they met the criteria for being an acceptable vehicle to hold pension money

How did you satisfy yourself that the valuation was fair and reasonable? Please provide supporting evidence. For example, if you relied on any accountancy reports please provide copies of these reports.

The investments/assets were standard, tradeable with a secondary market.

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

CDA [CDAM] *were appointed by* [Mr B] *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 CDA would adhere to these as a regulated entity.*

What did you understand this DFM'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 the DFM about this.

As above question we provided CDA [CDAM] *with our investment guidelines and we understood that in relation to the agreement they agreed to adhere to as a regulated UK entity.*

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

No

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

No

Was the DFM 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.

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 assets traded by the DFM as they dealt directly with Moventum

In response to questions about the detail of the due diligence IFG had carried out on the investment(s), IFG provided copies of what it described as product and investment literature, and a copy of the application for the Moventum/Capital Platforms investment platform.

Our investigator's view

Our investigator concluded the complaint should not be upheld. Her view, in summary, was as follows:

- She did not consider there was any reason for IFG to have declined Mr B's business from Chartercross.
- She did not think it was unreasonable for Mr B to have held offshore investments managed by an investment manager, and IFG could have taken some comfort from the fact that CDAM was FCA authorised.
- The funds purchased in the Moventum account appear to have been standard investments at the time the investments were made. She did not therefore think that IFG would have been required to undertake enhanced due diligence on the Athena Fund.

Mr B's response to the view

Mr B did not accept the investigator's view. I have considered Mr B's response to the investigator in full, and summarise below what I consider to be the key points he made:

- Closer examination of the Athena Fund would have revealed reason it should not have been allowed by IFG.
- The structured note held in the SIPP had to be sold to allow a transfer to a new SIPP because IFG (and Moventum) had been unable to provide any due diligence documentation relating to it.
- He has not seen any detail of any due diligence carried out on the Athena Fund. He believes no due diligence was carried out and there was therefore no basis for IFG to conclude the Athena Fund was a standard asset.

He understands CDAM and Chartercross were connected, and clients of Chartercross were being routinely invested into the Athena Fund by CDAM.

My provisional decision

I recently issued a provisional decision. Having taken account of the relevant considerations, which I set out again below, I concluded that the complaint should be upheld. I said IFG should not have allowed the Moventum/Capital Platforms account to be opened, as the documentation associated with it was unclear and it appeared to have very high charges associated with it, which would clearly be detrimental to Mr B. I also said that if IFG had done any due diligence on the Athena Fund (and it appeared it had not), it ought to have concluded it should not allow it in its SIPP. I also found that IFG had offered poor service in relation to the transfer out from the SIPP. And that it was fair to ask IFG to compensate Mr B for the loss he had suffered through investing in the Athena Fund, and pay some compensation for the distress and inconvenience caused by the poor service it provided.

Responses to my provisional decision

Mr B accepted my provisional decision. His only comment was that, for redress purposes, it should be noted he was not a tax resident of the UK and had not been so since 2012.

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 B fairly (in relation this IFG summarised the steps it had taken, which had largely been set out in its previous submissions).

- It had DFM terms of business in place and CDAM, 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.

- 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 the investment.

- The expectations outlined in the provisional decision are significantly different than the expectations of the FCA. It has recently received feedback from the FCA, which Sets out it expectations of the level of oversight and monitoring of the assets purchased by DFMs as follows:

  “*Some industry examples include reviewing contract notes to check the asset is standard and permissible; periodic sampling of assets held by DIMs; annual reviews of underlying holdings in DIMs, etc*.”

- Its current process exceeds this annual frequency, and the periodic checks it has in place are the key reason that the issue with this DFM was identified.

- 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.

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 B, and there are further relevant considerations. 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 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 B'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 it was not fair and reasonable for IFG to allow the Moventum/Capital Platforms account to be opened. The documentation associated with it was unclear and, insofar as it could be understood, set out very high charges which would clearly be detrimental to Mr B.

- IFG should have monitored the investment activity in the SIPP and, had it done so in a way which was consistent with its regulatory obligations, guidance, and standards of good practice at the time, it would have discovered CADM either was intending to invest in the Athena Fund or had already done so.

- IFG has not disputed my finding that it did *not* do any due diligence on the Athena Fund, and I have still seen no evidence to suggest it did carry out any due diligence. So, it seems IFG did not know anything about the Athena Fund.

- I remain of the view that, in the circumstances, IFG should have carried out due diligence on the Athena Fund which was consistent with its regulatory obligations, guidance, and standards of good practice at the time.

- Had IFG done this, I remain of the view that it seems likely it would have found there was very little information available about the Athena Fund. There was insufficient information to conclude it was a standard asset, as defined by the FCA (and therefore an investment of the type IFG permitted in its SIPP). IFG should therefore have sought further information.

- Had IFG sought further information, I remain of the view that would likely have revealed the Athena Fund was not a standard asset. Alternatively, the information would not have been forthcoming. Either way, it would not have been fair and reasonable for IFG to allow the investment.

- It is clear that, as IFG accepts, it provided poor service in relation to Mr B's request to transfer out to a new SIPP. But I am not persuaded this has caused Mr B a financial loss.

- It remains my view that it is fair to award compensation for the loss Mr B has suffered through the Athena Fund investment and use of the Moventum/Capital Platforms account, and for the distress and inconvenience caused by the poor service in relation to the transfer out.

The platform account

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).

I have again set out what I consider to be the key parts of the form.

The application 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 10% will be levied on all incoming cash amounts for the first 6 months. This will be deducted from the client's cash account. The client acknowledges that the 10% 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 8 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*

0.15% 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 the Capital Platforms"

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

"*Product Fee*

Option A - Establishment Charge

Establishment period 8 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) *8 year plan is 10% of the initial premium reducing by 0.3125% per quarter over 8 years. There are no surrender penalties after this period.*"

So, it appears (although it is not specified who the establishment charge is payable to) 20% of the amount placed on the platform is payable as an initial fee, as an establishment charge and platform processing fee. And that ongoing annual service (0.15%, 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. They appear to be highly excessive for an investment platform. 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?

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.

I note the form was signed by Mr B at the pages I have quoted from. However, as mentioned, I think it is difficult to understand. In any event, IFG should, in my view, have recognised the risk of consumer detriment associated with such high fees/charges and should not have allowed the platform account to be opened irrespective of whether Mr B had signed something to say he understood the fees/charges.

Monitoring the investment activity

IFG did not take any steps to ascertain the types of investments CDAM 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. 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.*"

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.

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 CDAM putting the trade instructions to IFG for consideration. That is consistent with the language used in the investment guidelines. However, although IFG does not confirm exactly what monitoring was done here, it is clear from its response to my provisional decision that the trade instructions were *not* put to it.

I nonetheless remain of the view that, if IFG 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.

If the trade instructions were not put to it, IFG should instead have had adequate risk management systems in place which, in my view, should have involved it receiving copies of trade confirmations, to allow it to adequately monitor investment activity in its SIPP. So, it should have been aware what trades had been placed immediately after the trades were placed.

I also remain of the view it is unlikely Mr B's was the first SIPP on which this investment was proposed, given the number of IFG SIPPs – 40, starting in August 2020 - to which CDAM acted as DFM. And so it is in my view highly likely IFG would have been aware CDAM was making investments in the Athena Fund before the investment was instructed in Mr B's SIPP.

Overall, I remain of the view, IFG should have been aware of the Athena Fund investment either when CDAM proposed or it or immediately after it had been made.

I note IFG's reference in its response to feedback from the FCA on monitoring DFM activity. I do not know the full detail of this feedback (and do not think I need this detail in order to decide what is fair and reasonable in the circumstances of this complaint) but I think it is clear from what is quoted by IFG that the suggestion of reviewing annual statements is one of a number of suggestions which were made, and that another is reviewing contract notes; which infers monitoring investment activity as and when it happens (i.e. when contract notes are issued). So, this does not suggest the FCA was supportive of the extent of the monitoring which took place here (which IFG has not, in any event, fully explained in its submissions to us). And I note that the quote from the FCA's letter IFG has included in its response describes the suggestions as "*industry examples*". So, it seems to me these are non-exhaustive examples of good industry practice, rather than fixed standards being set by the regulator.

Overall, I am not persuaded to depart from my decision on what is fair and reasonable in the circumstances of this complaint based on IFG's submissions about the FCA feedback it has received.

Due diligence on The Athena Fund

When asked if it carried out any due diligence into the assets traded by CDAM, IFG said it "*not aware of the assets traded by the DFM*". But the final response letter it sent to us says

IFG “*checked the Athena Fund was standard at onset*”. It also said when asked if it carried out due diligence into the underlying fund held in the SIPP, that **“***full due diligence was initially undertaken on underlying fund* (sic) *to ensure they met the criteria for being an acceptable vehicle to hold pension money”.*

So, on the one hand, when asked about its due diligence, IFG says it was not aware of the investments traded by CDAM but on the other it says it checked the Athena Fund at the outset and undertook full due diligence into the underlying funds held in the SIPP. These are clearly conflicting positions. In my provisional decision I invited IFG to provide evidence that it did carry out due diligence into the fund and contemporaneous evidence of what that due diligence revealed. And IFG has made no reply to this in its response to my provisional decision.

The only submissions IFG has made remain the literature it provided to evidence to due diligence it undertook into the investment, which does not appear to have any relevance to this complaint; it relates to a Guernsey based business, which does not appear to have had any association with Mr B’s SIPP. My conclusion therefore is that IFG did *not* undertake any due diligence into the Athena Fund.

In my view, had IFG acted in a way consistent with its regulatory obligations, guidance and standards of good practice, having become aware CDAM was making, or proposing to make, investments in the Athena Fund, it should have carried out due diligence into it.

CDAM was a small business which appears to have had no track record as a DFM at the time. 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.

Furthermore, CDAM was the investment manager of the Athena Fund, which created a conflict of interest, and I understand it was routinely investing consumer’s money into the fund, which was newly-launched.

So, it was not fair and reasonable, in my view, in the circumstances for IFG to simply assume CDAM was following the investment guidelines which had been put in place – or not acting in any way otherwise which created a risk of consumer detriment - when making investments in the Athena Fund. It should have carried out due diligence into the fund.

I have therefore again considered what IFG would likely have discovered, had it carried out due diligence into the Athena Fund. The only information about the fund from the period over which it was trading which I have been able to find is a factsheet from February 2021 and confirmation of its authorisation by The Bank of Ireland on 4 August 2020.

The February 2021 factsheet, which was issued by CDAM, includes the following:

“*OBJECTIVES AND INVESTMENT POLICY*

The Fund aims to achieve long-term capital growth and preservation of capital while lowering volatility and maximising income yields. The Fund will seek to achieve its investment objective through investing in a diversified portfolio, which will consist of a blended exposure to fixed income instruments and equities of companies, listed or traded on The Regulated

Markets as specified by UCITS rules. Broadly speaking the UCITS Fund will adopt the following composition:

There then follows a pie chart showing an exposure of around 55% fixed income and 40% equity, and a table showing performance data of the fund as follows:

"*Athena Global Fund*

Year
2017 -10.13
2018 - 9.64
2019 - 8.63
Total Returns - 28.40"

The following text is set out below the performance table:

"*Backtested data was derived from backtested results of the Fund holding instruments selected for the Fund's initial portfolio. The Data was derived from taking the proposed composition of the Funds on launch and back testing each financial instrument in the Fund over a 3 year period from 2017-2019. This figure does not include Vulcan Industries plc or MBH Corporation plc as insufficient data was available.*"

The second page of the fact sheet includes the following:

"*The portfolio is 30 day liquid, although it is predominantly designed for clients with a 3-5 year time horizon*"

So, at this point it seems the initial portfolio for the fund had been selected, given the back-tested performance data. But there is very little detail – save for the broad asset allocation – of what the make-up of the fund's portfolio was. It purports to invest predominately in fixed interest but other than it being "*weighted towards corporate bonds*" no detail is provided of the kind of fixed interest investments being made. No mention is made of the size, location and nature of business of the companies issuing the bonds, the credit ratings, or yields. There is a similar lack of detail on the equity investments, and no list of the fund's top holdings. Generally, the fact sheet is very vague and gives little insight into the nature of the fund.

There also seems to be a marked lack of available information about the fund otherwise. Monthly fact sheets, prospectuses, information memorandums, manager's updates etc are the kind of documents which would usually be readily available in relation to an authorised fund but there appears to be nothing of this type in the public domain. Just the single fact sheet from February 2021.

Furthermore, although the fact sheet does say the portfolio held by the fund "*is 30 day liquid*" I do not think it would have been reasonable to conclude from that – given the lack of available detail otherwise – that the fund was a standard asset as defined by the FCA. The definition in question is set out at IPRU-INV 5.9.1R, which says a "*Standard Asset must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required*". The statement re liquidity in the fact sheet does suggest the fund meets the FCA definition, in part, but there is no information in the fact sheet otherwise (save for the fact of the fund being listed) to show the fund can be accurately and fairly valued on an ongoing basis or to support CDAM's statement that the fund had 30 day liquidity.

Overall, I think, to meet its regulatory obligations, guidance and good industry practice at the relevant time, IFG should have asked questions about the make-up of the fund. And if CDAM had provided detail of the make-up of the fund this, in my view, would likely have shown it was not a standard asset; and there was reason to conclude it carried a risk of consumer detriment.

The 20 August 2021 update letter, forwarded by Moventum to holders of the Athena Fund included the following:

"*We, the board of directors of the ICAV (the Board) resolved at a board meeting held on 20 August 2021 to declare the suspension of the determination of the Net Asset Value of the Fund and the issue, repurchase and exchange of shares and the payment of repurchase proceeds in respect of the Fund with effect from 16 August 2021. The Board have resolved to terminate the Fund with effect from today's date, and commence the liquidation of the Fund's investments.*

The above steps have been taken in the best interests of the shareholders in the Fund in accordance with section 1.1 and section 18.1 of Schedule 1 of the Instrument of Incorporation of the ICAV. We have taken these steps in light of concerns on the liquidity profile of the Fund's investments and the likely impact on remaining investors in the Fund of a material redemption request received on 16 August 2021 should such a redemption request be processed. "

A further update was provided by the new investment manager (Lemanik Asset Management SA) in June 2022. That included the following:

"*We (Lemanik) herein provide a further update on the progress made and challenges encountered to date with the Fund's termination and liquidation of its portfolio of securities. As previously communicated and in the best interests of the Shareholders Churchill Discretionary Asset Management Limited (Churchill) was replaced as the Fund's investment manager by Lemanik Asset Management S.A. This decision was taken following repeated failures by Churchill to deliver on undertakings given to Lemanik and to the ICAV's Board of Directors to manage the Fund's liquidity position.*

Lemanik since taking over as investment manager has carried out extensive analyses on the Fund's portfolio of securities to assess the investment quality and liquidity. Lemanik has contacted many brokers and market intermediaries specialising in these securities seeking to sell the remaining portfolio. In the best interests of the Fund's shareholders only security buy orders at reasonable prices have been or will be accepted.

The current conclusion and Termination Plan is to hold the remaining securities for the shorter of either their maturity dates or until they are sold at acceptable prices. During this period the Fund will distribute to Shareholders on a semi-annual calendar basis the accumulating cash balance until the Fund is fully liquidated. Lemanik have estimated that by holding the securities until their respective maturity (the last security maturing in 2027), the cumulated cash distributable to Shareholders will amount to GBP 13.93 million. Lemanik emphasizes this is an estimate taking account of the current performance of the portfolio, any defaulted securities and the lack of opportunities to sell the remaining portfolio at acceptable prices."

So, it appears that the fund was invested (at least in part) in securities for which there was little or no secondary market and for which it was difficult to determine a valuation. Given the initial letter setting out the issues was sent less than a year after the fund launched, I think it likely it was invested in a similar way from the outset (which may go some way towards explaining the lack of detail in the fact sheet). And that it was therefore not a standard asset from the outset.

Details of the make-up of the fund would therefore have likely led IFG to conclude it was not a standard asset. They should also have led IFG to conclude there was a risk of consumer detriment associated with it, given the fact sheet gives the fund a lower risk rating and the type of investments it appears it contained were clearly inconsistent with such a risk rating. IFG should therefore have concluded it should not allow investment in the fund as it was not consistent with its permitted investment guidelines, and carried with it a risk of consumer detriment.

The alternative is that CDAM would not have provided IFG with full details of the make-up of the fund. In that case, I think the only fair and reasonable step IFG could have taken would have been to conclude it should not allow the fund as it was not able to complete due diligence on it, and its manager had not answered reasonable requests for information about it.

Overall, based on the evidence available, I remain of the view IFG should have allowed an investment in the Athena Fund.

Transfer service

IFG has acknowledged it provided poor service in relation to the transfer; and the available evidence supports that. There were clearly delays.

I think, in part, this point ties into my findings about the Moventum/Capital Platforms account and Athena Fund. Some of the issues Mr B encountered were a consequence of IFG allowing the account and fund; and I again consider below fair compensation for IFG's failings on that.

Going beyond that, it seems there were multiple parties involved in the transfer, and although, as mentioned, it seems IFG caused delays I am not persuaded it was solely responsible for the overall delay. I have also not seen sufficient evidence to show IFG is responsible for a financial loss (beyond what I describe in the previous paragraph). I note that the structured note purchased by CDAM was sold, to facilitate the transfer, as Mr B says he was unable to get sufficient information to allow the new SIPP operator to complete due diligence on it. And Mr B says he suffered a loss through this. But he did not, ultimately, have to sell the note and I am not persuaded IFG had sole responsibility for providing the information Mr B wanted in relation to this. The note was issued by a large international investment business, which should have been able to provide the information required; or the new SIPP operator could have sought it as part of its own due diligence.

So, I remain of the view that some compensation for the distress and inconvenience caused by IFG's poor service is fair and reasonable; but that needs to be awarded with the contributions of others to the delay in mind.

Is it fair to require IFG to compensate Mr B?

When considering this from the perspective of fair compensation, I must be satisfied that, on balance, it is more likely than not Mr B 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 do not think Mr B would have opened the Moventum/Capital Platforms account, had IFG acted fairly and reasonably to meet its regulatory obligations and standards of good practice, given the highly excessive fees/charges. IFG should not have allowed the account in this instance.

Had the account not been allowed and had IFG carried out adequate due diligence on the fund and acted fairly and reasonably to meet its regulatory obligations and standards of good practice. it is, in my view, more likely than not the transaction in the Athena Fund would not have proceeded. The alternative is IFG would have become aware of the investment after it had been made and, as per the process it has described, asked that it be redeemed.

In its response to my provisional decision, IFG says that, in this scenario, it is highly likely that it would not have been able to redeem the investment. It has not provided any evidence in support of this, but I acknowledge, as I have set out above, that the fund did appear to have very limited liquidity.

I cannot of course say with certainty whether the investment in the fund could have been redeemed, if it had been made. However, keeping in mind my finding that it is highly likely that IFG knew of CDAM's use of the Athena Fund before the investment was made in Mr B's SIPP, and that the Moventum platform account should not have been allowed, I do not think it would be fair to say IFG should not pay compensation in relation to the investment based on speculation as to whether the investment would have been made and, if it had, could have been redeemed.

It remains the case that I have not seen sufficient evidence to show IFG should not have dealt with Chartercross at all. And Chartercross was, it seems, using other investments / investment managers, and possibly other platform services – IFG says it introduced 78 applications to it, and only some of those used CDAM as DFM. Chartercross had also made investments in standard assets before CDAM got involved. In this instance, it does seem Chartercross might have been taking a high level of commission, given the very high overall fees/charges. But there is limited evidence currently available about what IFG knew or should have known about Chartercross. So, I am minded to say, based on the evidence currently available, that it was not unreasonable for IFG to accept the transfers into the SIPP.

In summary, based on the evidence available, I remain of the view Mr B would have proceeded to invest in IFG's SIPP, but without using the Moventum/Capital Platforms account, and in accordance with IFG's investment guidelines i.e. only in standard assets.

I accept that Chartercross/CDAM may be responsible for initiating the course of action that has led to Mr B'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 B 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)

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 B fairly.

The starting point, therefore, is that it would be fair to require IFG to pay Mr B 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 B for his loss.

Given what I have set out above, it is my view that it is appropriate and fair in the circumstances for IFG to compensate Mr B to the full extent of the financial losses, which arise directly from IFG's failings. Having carefully reconsidered 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 B.

Putting things right

My aim is that Mr B should be put as closely as possible into the position he would probably now be in if he had not used the Moventum/Capital Platforms platform, and the Athena Fund investment had not been made.

I think Mr B would have invested differently. It's not possible to say *precisely* what he would have done. He may have invested in the same assets (save the Athena Fund) on a different platform; but he may not. So, 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, and the Moventum/Capital Platforms platform not been used.

What must IFG do?

To compensate Mr B fairly, IFG must:

- Compare the performance of Mr B'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 B'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 B'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 B won't be able to reclaim any of the reduction after compensation is paid. I note Mr B's submission that he is not tax resident in the UK but, as a UK pension, income from the SIPP would be subject to UK tax.

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

- It is reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- If either IFG or Mr B 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 B £750 for the upset caused by the potential significant loss to Mr B's pension and the distress and inconvenience caused by the poor service provided in relation to the transfer.

Income tax may be payable on any interest paid. If IFG deducts income tax from the interest, it should tell Mr B how much has been taken off. IFG should give Mr B a tax deduction certificate in respect of interest if Mr B 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 the platform was opened	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of IFG receiving Mr B'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 investment in the Athena Fund, given the issues described in my findings.

If possible, IFG should take ownership of the Athena Fund 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 Mr B's holding in the Athena Fund the *actual value* of it should be assumed to be nil for the purpose of calculation. IFG may require that Mr B provides an undertaking to pay IFG any amount he may receive from the fund 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. That should include any distributions paid from the Athena Fund as a result of Lemanik's efforts to liquidate it. 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.

Why is this remedy suitable?

I’ve chosen this method of compensation because:

- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It’s a fair measure for the return Mr B 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.

I consider that fair compensation should be calculated as set out above. IFG Pensions Limited should pay the amount produced by that calculation plus any interest on that amount as set out above

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 22 July 2025.

John Pattinson
Ombudsman