DRN-5658919

The complaint

Mr R says that his pension monies were transferred and invested into a Novia Financial Plc ('Novia') Self-Invested Personal Pension ('SIPP'). Mr R complains that Novia failed to conduct appropriate due diligence into investments that were made in his SIPP. Mr R also says that Novia didn't act in accordance with its responsibilities under the Principles for Businesses and that he's suffered losses, and been severely inconvenienced, as a result of Novia's failings.

What happened

Mr R has a professional representative and, for simplicity, I refer to Mr R throughout this decision even where the submissions I'm referring to were made on his behalf by his representative.

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

Involved parties

Novia Financial Plc ('Novia')

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

Best Asset Management Ltd

Best Asset Management Ltd described itself as a corporate finance, asset management and wealth management provider. Best Asset Management Ltd's annual report for the period ended 30 August 2015 shows that it purchased Greyfriars Asset Management LLP in June 2012 and that it owned 99% of the shares in that firm.

Best Asset Management Ltd also traded as Best International. Best Asset Management Ltd's status is currently showing on Companies House as *"liquidation"*.

Greyfriars Asset Management LLP ('Greyfriars')

Greyfriars was a regulated Discretionary Fund Manager ('DFM'). The Financial Conduct Authority ('FCA') required Greyfriars to stop accepting any new funds into the Greyfriars Portfolio 6 offering in October 2016. The FCA Register records that Greyfriars' authorisation with the FCA was cancelled on 31 August 2023.

In Greyfriars' annual report for the year ending March 2015 it was recorded that *"the ultimate controlling party is Best Asset Management Limited…who holds 99% of the capital in the limited liability partnership."*

Greyfriars Portfolio 6 ('P6')

P6 was a portfolio offered by Greyfriars. At the relevant time Greyfriars was describing P6 as a portfolio designed for investors wishing to gain exposure to investments that counter the risks associated with mainstream asset classes. Further, that P6 comprised of non-correlated investments that were less volatile because they didn't track the market. Greyfriars was also stating that the portfolio may wholly consist of non-pooled investments such as Exchange Traded Funds, simple deposits and asset backed securities, unregulated investments including direct investments into commercial property or unquoted corporate bonds.

Chadkirk Wealth Management Ltd ('Chadkirk')

Chadkirk was an Independent Financial Adviser ('IFA') firm that was incorporated in June 2014 and dissolved in August 2016. Chadkirk was authorised by the FCA between 1 December 2014 and 2 September 2016.

Agreement in effect between Novia and Greyfriars

Novia has previously provided us with a copy of an agreement between it and Greyfriars. It's noted, amongst other things, in the agreement that:

- The agreement was made on 24 September 2013.
- Novia would enter into an Adviser Terms of Business with permitted advisers that set out the terms on which Novia would accept introductions and allow the adviser access to the Novia Wrap platform.
- Greyfriars would enter into an Investment Management Agreement ('IMA') with permitted advisers in order to act on behalf of investors, and setting out Greyfriars' Terms of Business for its services in relation to Model Portfolios.
- Model Portfolios was defined as *"a portfolio of Investments which is based on a model portfolio created by the Discretionary Fund Manager and which the Discretionary Fund Manager has allowed a Permitted Adviser to make available to Investors."*
- There would be a Model Portfolio Manager – this was an online system provided by Novia to enable Greyfriars to create and manage Model Portfolios.
- The Agreement set out the terms on which Novia would make the Wrap platform available to the DFM to allow the DFM to select and change investments in each Model Portfolio, which Novia would in turn implement for each product held by an investor that referenced the Model Portfolio. It also covered the creation and ongoing management of the Model Portfolios on the Wrap platform and identified the roles and responsibilities of Novia, the DFM and each permitted adviser.
- The Agreement only applied to investors who had been invested into the Model Portfolios by permitted advisers.
- Novia wouldn't be responsible for ensuring that investors had signed the relevant authority form prior to investment into the Model Portfolios.
- Novia would only make Model Portfolios available through the Wrap Platform in a form previously approved by the DFM and Novia would ensure that the Model Portfolios operated in line with the Investor Terms and Conditions.
- The DFM was responsible for ensuring that investors accepted the DFM Terms, either directly or via the IMA with advisers. The DFM was responsible for ensuring that each permitted adviser entered into an IMA.
- It would be the responsibility of the permitted adviser to ensure, amongst other things, that the arrangement under the IMA, including the respective roles of the DFM and the permitted adviser in relation to Model Portfolios, were explained to the investor and that the investor's authority was validly obtained.

- The DFM warranted that it had entered into, or would enter into, appropriate agreement(s) with the permitted adviser and/or each investor that sets out the rights and obligations of the DFM and the investor.
- Novia would be responsible for implementing each Model Portfolio and for any amendments, as instructed by the DFM.
- Novia would make various investments available for inclusion in a Model Portfolio. These investments were listed on the Novia Investments List (which set out investments that were available through the Novia Wrap platform) and were made available for selection via the Model Portfolio Manager.
- Subject to its own due diligence and compliance review processes, Novia would use its reasonable endeavours to add any particular investment requested by the DFM to the Novia Investment List.
- The DFM agreed that it was responsible for managing the investor's investments within the Model Portfolios in accordance with information provided to it by an investor's permitted advisers.
- The DFM's role under the agreement, and under the arrangements with permitted advisers under the IMA, consisted of supplying and updating a range of Model Portfolios consistent with the Terms of Business agreed with the permitted advisers, determining the initial composition of investments for each Model Portfolio, reviewing and rebalancing the investments in each Model Portfolio and providing such information relating to the Model Portfolios as was agreed under the IMA.
- Novia wasn't responsible for the creation of any marketing literature available on the Wrap Platform relating to any Model Portfolio.

The agreement was signed by Greyfriars on 24 September 2013 and by Novia two days later.

We've previously been provided with a document titled Greyfriars & Novia Financial Operating Procedure. The word document we were provided records this as being version 11. It's noted, amongst other things, in this document that:

> *"We have agreed that these procedures will be incorporated into the daily business practice within the respective departments of both Novia Financial PLC (Novia) as the wrap platform, Best Asset Management Ltd. (Best) as the product administrator and Greyfriars Asset Management LLP (Greyfriars) as the fund manager and registrar.*
> *…*
> *On the 27th calendar day of each month Novia will submit an aggregate purchase instruction to sales@bestinternational.co.uk. The initial purchase of any investment provided by Best will be the application form from the offering document and subsequent purchases of the same investment will be in the form of Novia fax template…thereafter. Settlement will be T+0.*
>
> 1. *Novia will send purchase instructions by email to sales@bestinternational.co.uk on the 27th day of each month.*
> 2. *Instructions will be processed at the time prior to funds being remitted.*
> 3. *By no later than 12 noon on the dealing date (27th day of each month) Best Asset Management Limited ("Best") (or third party product issuers, where Best is not administering the relevant products) will send a letter by email to Dealing@novia-financial.co.uk … confirming that, subject to receipt of the funds from Novia, the bonds will be issued to Novia on the next business day.*
> 4. *By no later than 2pm on the dealing date (27th day of each month) Novia will transfer funds equal to the subscription amounts for the products to Greyfriars*

as registrar (or if the 27th day of the month is not a business day, the next business day immediately thereafter).

5. *In a result of non-receipt of letter confirmation Novia will not remit funds to Greyfriars as registrar on the day.*
6. *Once the relevant bonds have been issued, Best will send a bond certificate, contract note or confirmation letter (according to the terms of the relevant bond) to Dealing@novia-financial.co.uk to confirm that the bonds have been issued.*
7. *Bonds issued will always be new issue rather than from the warehouse containing a previous tranche's details.*
8. *In the event that the funds are not received by Greyfriars on the next business day immediately following the 27th day of each month (or if the 27th day of the month is not a business day the second business day after the 27th day of the month) Greyfriars reserve the right to issue Novia a cancelation notice.*

…
All redemptions would have to be submitted on a whole unit basis on the Novia platform where the Discretionary Fund manager will be responsible for issuing such instructions... Redemptions instructions must be received online by the 26th day of each month to be processed or will be dealt on the next available dealing date the following month. Redemption instructions must be submitted by Greyfriars…
…
Novia Dealing date 27th calendar day each month (or if 27th of each month is not a business day the next business day immediately thereafter): Novia will send aggregated redemption instructions by email to sales@bestinternational.co.uk.;
Best send letter…to Novia on the same day (27th calendar day or next business day immediately thereafter) by email to Dealing@novia-financial.co.uk.
Settlement Date is T+4.

***Liquidity -** All purchases and redemptions would be treated as separate transactions, therefore Best agree that there would be liquidity available to service any redemption request by the settlement period T+4.*

***Bond Certificate –** For products where Greyfriars are the registrar, no Physical certificates will be returned by Novia. Issue and redemption of the bonds will be confirmed in writing by email…*
…
All holdings shall be reconciled by Novia on a monthly basis as part of its regulatory obligations. Best will provide details of the total holdings for each monthly investment per product and per nominee per tranche (as at the last day of the month) and a complete history of all transactions for the entire previous month…
…
Best will send to Greyfriars (Registrar) who will confirm holdings match their records. The Manager will provide this information in excel format within five (5) Business days of the month end…
…
All bonds will be priced at face value, i.e. £1 for each bond, throughout the lifecycle of the bond whilst held in the Novia nominee. Bonds always price at £1 when sold or bought.

We've also previously been provided with a document called Best International & Novia Financial Operating Procedure. It's noted, amongst other things, in this document that:

"We have agreed that these procedures will be incorporated into the daily business practice within the respective departments of both Novia Financial PLC (Novia) as

the wrap platform and Best International Ltd (Best) as the fund manager and Greyfriars asset servicing LLP (Greyfriars) as the registrar."

The wording I've specifically referred to above from the Greyfriars & Novia Financial Operating Procedure document is very similar to corresponding wording that appears in the Best International & Novia Financial Operating Procedure, so I've not repeated that wording again here.

Agreement in effect between Novia and Chadkirk

We've been provided with a Novia Adviser Application Form document that Chadkirk completed which, amongst other things, notes Chadkirk's FCA authorisation number and gives Mr M as the contact at Chadkirk.

We've also previously been provided with a Novia Terms of Business for Firms document, it's noted amongst other things in this document that:

"These Terms of Business and the Application Form will govern the relationship between Novia and the Firm. The Terms of Business are legally binding and may only be altered or varied by Novia.

…

Novia will only accept business from FCA authorised firms.

…

Acceptance by Novia of an Application by the Firm is at the complete discretion of Novia which reserves the right not to accept an Application without giving any reasons for doing so.

…

Creation of the Relationship does not oblige any provider or issuer of an investment proposed to be held under the Service to accept an application for such investment.

…

In respect of the Service and providing advice on Product Wrappers and underlying investments which are, or may be, part of the Service, the Firm will be the agent for its Client who has applied through the Firm for investments to be held through the Service. The Firm shall not be the agent of Novia. This shall not affect the personal responsibilities of the Firm to Novia as governed by the terms of the Relationship.

…

The Firm warrants that the information given in the Application is true and complete in all material respects. The Firm shall advise Novia as soon as they become aware that such information (and as may be amended in any later advice) is no longer true and complete and undertakes to keep details of its Clients up to date with Novia at all times.

…

The Firm declares it has read and understood, and agrees to be bound by this Terms of Business and the applicable governing Terms & Conditions of the Service and underlying investments held, or to be held, and any other applicable terms (as may be amended from time to time). The Firm, as the Client's agent, agrees to comply with the Terms & Conditions. The Firm warrants that it will, before submitting an application for any Product Wrapper, ensure that its Client has received a copy of the relevant Key Features Document, the Terms & Conditions, Pension Scheme Rules and any other documentation or disclosure required by FCA Rules. The Firm warrants that it will ensure that its Clients have continuing access to the Terms & Conditions. It remains the responsibility of the Firm to ensure that Clients are advised of any changes to the Terms & Conditions.

…

The Firm agrees it has sole responsibility to ensure the Product Wrappers and underlying investments within (or proposed to be held within) the Service are suitable for its Clients in accordance with the FCA Rules (COBS 9) relating to the assessment of suitability.

…

The Firm agrees that Novia may rely on the Firm to undertake a suitability assessment prior to an application for a Product Wrapper being submitted and on an ongoing basis, where such assessments are required by FCA Rules.

…

The Firm will, on reasonable request from Novia and subject to any obligations of confidentiality it owes its Clients, provide evidence to demonstrate that suitability assessments have been conducted.

…

Novia undertakes to respect the relationship between the Firm and its Clients at all times provided that such relationship does not in any way prejudice the standard of service that Novia wishes to provide to the Client in relation to any Product Wrappers acquired by the Client and Novia reserves the right to contact Clients directly.

Where a Client nominates or appoints a Discretionary Fund Manager (DFM) to manage or advise upon some or all of the underlying investments, the Firm undertakes that prior to such appointment/nomination that it will provide the Client with advice as to the choice of such DFM if the Client requires this, ensure a suitable written agreement is in place. It also agrees that the monitoring of the performance of the DFM is not the responsibility of Novia. The actions and undertakings of the DFM remain the responsibility of the Firm at all times.

Where a Firm appoints a DFM it undertakes to provide to Novia, a copy of the DFM agreement signed by all parties and detailing the name and FCA authorisation number of the DFM duly appointed.

The Firm must ensure the appointed DFM is provided with a Novia Terms of Use prior to the DFM providing services to the Client. Should the agreement between the Firm, Client and DFM be terminated or the DFM no longer provides discretionary services to the Client it is the responsibility of the Firm to inform Novia immediately.

…

The Firm warrants that the information supplied in any application for a Product Wrapper has been supplied by the Client and, where this is passed to Novia electronically, the Client's authority to send it electronically has been obtained.

…

The Firm undertakes to provide accurate information to its Clients. Novia is not obliged to check the accuracy of such information and is not liable for any inaccuracies.

…

The Firm will indemnify and keep Novia indemnified, and its agents/delegates, against all losses incurred directly or indirectly as a result of:

> *Any failure by the Firm to comply with any FCA Rules, Applicable Laws, confirmations, undertakings, warranties and other liabilities undertaken under the Relationship.*
>
> *Loss due to untrue, inaccurate or incomplete information having been given by, or on behalf of, the Firm, or a failure to advise Novia of previous information becoming untrue or incomplete.*

Failure by the Firm or its Clients without just cause to settle any transaction or delay in doing so.

Any breach by the Firm of any of the Terms of Business.

…

The Firm warrants that it holds all appropriate Financial Conduct Authority authorisations and approvals needed for it to carry on the Designated Investment Business contemplated by this Terms of Business and that it will comply at all times with the Act and FCA Rules when carrying on such Designated Investment Business."

What happened

Mr R says that he was cold called and offered a free pension review. Mr R explains he was advised his existing pension wasn't performing well and that the adviser could lower charges and greatly improve investment performance.

Mr M, while working for Furness Financial Management (an advisory firm), wrote to Mr R on 4 March 2015 and said, amongst other things, that:

- Furness Financial Management offered a restricted advice service and recommended products that it had researched and approved.
- Mr R had some previous investment experience.
- Mr R wanted to review his pension arrangements with a view to reducing the potential for losses should there be a market downturn.
- Mr R had around £80,000 in a savings account, a property worth around £290,000 and a little over £70,000 in his pension fund.
- Furness Financial Management had assessed Mr R's attitude to risk as 9 (defined as very-high) on a scale of 1 to 10.
- The likely term of investment was in excess of 10 years and small to medium losses could be tolerated.
- Mr R's pension monies were in a personal pension.
- Furness Financial Management was recommending a SIPP because Mr R wanted to invest some of his pension funds into alternative investments that weren't available through his existing pension plan.
- Furness Financial Management was recommending Novia as a SIPP provider.
- Mr R was interested in investing in P6 and in a Windermere Hydro Hotel.
- Mr R wanted to invest a little over 14% of his monies in P6, a little over 80% in an unregulated fund and a little over 5% in a cash fund.
- P6 offered steady income returns of around 6% a year with low volatility and the potential for capital growth.

Novia has previously explained to us that it's an online platform, that new business is submitted by advisers online and it doesn't provide SIPP application forms.

The FCA Register shows that, at the time Mr R established a Novia SIPP, Mr M held positions at both Furness Financial Management and Chadkirk. And Novia has explained that it was Chadkirk that actually introduced Mr R's business to it.

Novia has previously provided us with a copy of its Terms and Conditions document, the document states that it's effective from 6 April 2015. As I understand it, these are the terms that were applicable to the SIPP that was established for Mr R and it's noted, amongst other things, in this document that:

"Your Adviser must be registered with us and have appropriate FCA authorisation…
…
Novia Financial plc does not give any advice on your portfolio or investments you hold with the Service. The fact that particular Product Wrappers, investments, investment planning tools or any other feature is made available to you via your Adviser does not constitute advice or imply that it is suitable for you. You should always seek suitable advice before using the Service and investing.
…
Our policy is to treat all Clients as Retail Clients in accordance with the rules of the Financial Conduct Authority (FCA). This ensures that maximum regulatory protection is available to you.
…
You must have an FCA authorised Adviser in order to deal with Novia. Novia does not accept new investments from Clients who have not appointed an Adviser. Your Adviser must be registered with Novia, and have accepted our Terms of Business…
…
You agree that your Adviser is duly authorised to provide Novia with instructions on your behalf as if they had come directly from you. This includes authority to conduct switches and to add, amend or remove rebalancing on your behalf using the Service. You agree to accept full responsibility for all instructions placed and to release Novia from any liability for executing instructions which you or your Adviser place using the Novia Wrap (save for any loss or damage arising directly from the gross negligence, fraud or wilful default of Novia).
…
In authorising your application you have promised that you will be responsible for any losses and/or expenses which are the result, and which a reasonable person would consider to be the probable result, of any untrue, misleading or inaccurate information carelessly given by you, or on your behalf, either in this form or any subsequent form related to the Novia Wrap.
…
Novia will accept no liability for losses or expenses incurred as a result of the actions of your appointed DFM or any claims from the DFM in respect of any Product Wrapper you hold through the Service…
…
You understand that Novia Financial plc has not carried out and shall not in future carry out any review of the nominated DFM's financial status or their investment and/or risk strategies and it is the responsibility of you and your Adviser to check these matters. You are responsible for all decisions relating to the purchase, retention and sale of investments made by the DFM and agree to hold Novia Financial plc indemnified against any claim in respect of such actions.
…
Novia reserves the right to reject any or all of your applications where we believe accepting it will result in a breach of these Terms & Conditions. Applications must be fully and correctly completed and signed in full where applicable. Failure to do so may result in delay or rejection by Novia. Novia reserves the right to reject any applications to open a Product Wrapper at its discretion, where it is reasonable to do so…
…
It is your and your Adviser's responsibility to ensure that you understand the features of…individual investments and their consequences, Novia can accept no liability for delays in dealing or non-investment resulting from these. You must read the prospectus, offering document or other literature available from the investment manager to ensure that you understand these features as they are not detailed in these Terms & Conditions…
…

Not all investments can be held within a model portfolio – this is restricted to daily dealt funds and aggregated ETFs, in addition where the model portfolio is managed by a DFM, Equities and Investment Trusts subject to Novia's agreement with the DFM.

…

Novia will make alternative investments available via the Service. These investments are often complex and may carry higher risks than traditional funds. They are normally designed for experienced or sophisticated investors. For the purposes of this clause, complex investments include those such as:…Investments where the opportunity to sell is infrequent or restricted…

…

Before purchasing any alternative investment you should ensure you read and understand the fund factsheet, product specific literature made available via the Novia website and any other relevant literature from the investment provider. You should be aware of any specific risks that may apply to such alternative investments.

…

Risks associated with alternative investments can be higher than the other investments made available via the Service and such investments may not be suitable for all investors. You should always consult your Adviser before buying such alternative investments.

…

You agree to release and indemnify us from, and against, any and all costs, claims, demands, losses, expenses and liabilities suffered by us in acting in reliance upon an instruction given by you, your Adviser or your DFM…

…

Novia Financial plc…conduct investment business on an execution only basis for Advisers and their Clients and do not offer advice about investments…Your Adviser acts to provide financial advice with respect to investments and your portfolio requirements.

…

These Terms & Conditions form the basis of a contract between you and Novia…"

And, in respect of the Novia SIPP, the Terms & Conditions continued to note, amongst other things, that:

"The Scheme is established under a deed of trust and operated according to the Novia SIPP scheme rules…The scheme will be governed and administered according to these rules.

…

Novia Financial plc is the scheme provider and administrator of the scheme…

…

A wide variety of investments are available through a Novia SIPP as permitted by the HMRC regulations. Novia will only allow permissible investments to be bought, sold and held through your SIPP and it is your responsibility, in conjunction with your adviser, to ensure that you do not purchase ineligible investments. Investments available through your SIPP can be found at www.novia-financial.co.uk."

Novia has previously confirmed that, in terms of its members who were invested in P6, it didn't insist or ask for sight of any Greyfriars agreement and/or Greyfriars application signed by the member. And that, because of this, it's not in a position to confirm whether an agreement and/or application was in effect between the SIPP member and Greyfriars directly.

We've also not been provided with a copy of any such agreement and/or application by Mr R. But I don't think that's surprising, I think normally such an agreement/application once signed by an investor would have been returned to the DFM.

While we've not been provided with a copy of any Greyfriars application that Mr R signed, we have on some other cases – such as the case that was the subject of published decision DRN-4653321 ('the published decision') (in which monies were invested in P6 via a Novia wrapper but Novia wasn't the SIPP provider) – seen examples of Greyfriars P6 application forms that were completed by some other SIPP investors. On balance, I think it's more likely than not that Mr R, or Chadkirk on his behalf, would have had to complete some type of form so as to invest in P6 with Greyfriars. I think that's consistent with we've seen in respect of some other SIPP P6 investors, such as the consumer in the complaint that was the subject of the published decision. And I also think it's more likely than not that the kind of statements Greyfriars was making to investors in P6 application forms we've seen are the kind of statements it would have been making in any application form Mr R might have been asked to complete. Examples of the *type* of statements Greyfriars was making to investors in P6 application documentation we've seen included, amongst others, the following:

- The P6 portfolio has been designed for investors wishing to gain exposure to investments that counter the risks associated with mainstream asset classes.
- Investments were chosen on their individual merits to perform independently of major markets.
- The portfolio wasn't run to have a maximum volatility or loss capacity.
- P6 may wholly consist of non-pooled investments such as Exchange Traded Funds, simple deposits and asset backed securities. Greyfriars' discretion extended to investments in unregulated investments such as direct investments into commercial property or unquoted corporate bonds.
- Investments would never include Unregulated Collective Investment Schemes ('UCIS') or Non Mainstream Pooled Investments ('NMPI)'.
- Exposure to non-UCIS and non-NMPI unregulated investments may be 100% in P6.
- Given the nature of the underlying investments, the liquidity of the portfolio might be restricted, but it would endeavour to facilitate trades via the single dealing point each month, where necessary.
- Unregulated investments would not be covered by the Financial Services Compensation Scheme ('FSCS').
- There were no restrictions to the management of the portfolio or the transactions Greyfriars arranged on a discretionary basis concerning the types of investments or markets, or on the proportion of the portfolio invested in any individual, or class, of investment.
- Greyfriars may not transact any business in which Greyfriars, its partners or registered individuals had a personal interest, unless that interest has been disclosed to the investor.
- If Greyfriars, or one of its other clients, had some form of interest in the business Greyfriars was transacting then Greyfriars would inform investors in writing and ask for consent before carrying out any further instructions.
- The portfolio would have one dealing date per month and it may be difficult or impossible to sell some investments at a reasonable price or in some circumstances at any price at all. Greyfriars' parent company "*Best International"* would endeavour to provide liquidity to facilitate trades, but investors may be locked into an investment for an indefinite period.
- Given the nature of the underlying holdings, which are often unquoted, it may be difficult to get an accurate valuation of investments at any period in time. In such instances, investments would be valued, where appropriate, at par.

Following the transfer of Mr R's pension monies into the Novia SIPP it appears that his monies have been held/split across two Novia SIPP wrappers *****2 and *****5. And, based on transaction histories provided to us, I've provided a brief summary below of some of the transactions which were effected.

A transaction history for wrapper *****2 records, amongst other things, that:

- There was a transfer in of £73,312 on 14 May 2015.
- £57,000 was invested into an ABC Bond VI holding on 28 May 2015.
- £10,000 was transferred out on 28 May 2015.

A transaction history for wrapper *****5 records, amongst other things, that:

- There was a transfer in of £10,000 on 28 May 2015 (as I understand it this was the £10,000 that was transferred away from wrapper *****2 on 28 May 2015).
- £1,959 was invested into Lanner Car Park Bond, Olmsted Bond Series III and Resort Group holdings on 30 June 2015.
- £2,938 was invested into an Oasis Atlantico Corporate Bond holding on 30 June 2015.
- £979 was invested into a Coefficient Care Bond Corporate Bond holding on 30 June 2015.

A Novia system summary printout records, amongst other things, that Mr M of *Chadkirk* was the financial adviser from outset through until he was replaced with a different adviser on 20 October 2016.

As I understand it, Mr R subsequently made a claim to the FSCS about Furness Financial Management. The FSCS wrote to Mr R on 29 June 2021 and noted that, following interim payments it had made to Mr R in November 2018 and June 2020 in respect of his claim against Furness Financial Management, it was paying him a further sum of £21,250.90. The FSCS calculated Mr R's total losses at a little over £86,470.86 and the maximum sum it could pay Mr R under its limits was £50,000 (the additional £21,250.90 payment brought the total amount paid by the FSCS to Mr R up to £50,000). The FSCS later gave Mr R a reassignment of rights in which, amongst other things, the FSCS explained it was transferring back to Mr R any legal rights it held against Novia.

Mr R complained to Novia on 12 August 2020 and said, amongst other things, that:

- In 2015, he was advised to transfer pension monies totalling a little over £74,000 into a Novia SIPP.
- The FCA says that exposure to esoteric, Non-Standard and unregulated investments must be reserved for parties who are appropriately qualified to fully understand the implications and risks associated with them.
- Although Novia didn't advise on the investment, it was still responsible for ensuring investments are suitable for retail clients.
- The P6 investments were very high risk, speculative and illiquid investments.
- Novia allowed him to invest in high risk investments that weren't suitable for him.
- Novia was in contempt of the rules it is governed by.
- Had Novia performed competent due diligence, and had it abided by Principle six and the client's best interests rule, it should have made him aware that *"the investments were esoteric, high-risk and illiquid."*
- He fails to see how Novia satisfied its fiduciary duty to him.
- There was insufficient due diligence conducted on the investments.

- At no point did Novia act fairly and reasonably in its dealings with him, nor did it act in accordance with its responsibilities under the Principles for Businesses.
- As a result of Novia's failings he has been treated unfairly, unreasonably, suffered a financial loss and been severely inconvenienced.

Novia replied to the complaint on 16 September 2020 and, amongst other things, said that:

- Novia is an investment platform designed to facilitate the administration of investment choices made by clients through a FCA authorised financial adviser.
- Novia doesn't, and isn't authorised to, provide advice to clients.
- The suitability of choices made for clients is the responsibility of the advising firm (here Chadkirk).
- Chadkirk was responsible for the suitability of the advice to establish a Novia SIPP, transfer Mr R's pension monies into it and to invest transferred monies with Greyfriars.
- Novia has fulfilled its responsibilities diligently and any loss suffered is the responsibility of other parties.
- Non-Standard Investments may be a suitable recommendation for clients based on their investment objectives and risk profile.
- Novia only accepts business from FCA authorised adviser firms and its due diligence on these firms verifies their status.
- Novia verifies the regulatory status of all DFMs before allowing them to provide their services to customers and their adviser.
- Novia doesn't have any obligation or responsibility in relation to the manner in which another FCA authorised firm conducts its business.
- FCA guidance specifically states that SIPP operators aren't responsible for advice and therefore it isn't required to, and didn't, conduct audits of the advisory firm's advice processes and business.
- Novia doesn't accept any business from unauthorised introducers.
- Novia is entitled to rely upon the activities of other FCA regulated firms. And it isn't required to have controls in place to check how other FCA regulated firms operate their businesses. Novia had no reason to reject the instruction from an FCA authorised firm.
- Novia isn't in a position to have known that the advice was not suitable for Mr R.
- Novia follows a detailed due diligence process before making any investment available on the Novia platform.
- Novia's due diligence is specific to each product but follows the same process. It obtains and reviews legal documentation from the investment manager, it obtains an independent report into the investment, it assesses individuals connected to the investment taking account of any irregularities from information publicly available, and it considers investment security arrangements and operational requirements.
- The Lanner Car Park Bond was (then) now in a creditors' voluntary liquidation and the ABC Bond was in administration.
- Mr R's adviser was emailed in December 2016 to inform them that The Property Store Group ('TPS') had been placed into administration. ABC Alpha Business Centres UK Limited, who was a wholly owned subsidiary of TPS, was therefore unable to meet the interest payments under the bonds that were due for November 2016. Mr R's adviser had been informed that the administrators were preparing a report regarding the valuation of the assets and that bondholders as creditors would have a claim.
- In February 2017, Novia was informed that administrators had been appointed for ABC Alpha Business Centre UK Limited and ABC Alpha Business Centre IV Limited. Novia had submitted a creditor's claim on behalf of all bondholders. The first progress report about this had been sent to Mr R's adviser in August 2017.

- The investments that were made were designed to pay a fixed interest on a fixed capital value until maturity when the investors could expect a return of their capital and any unpaid accrued interest.
- Novia was able to value the bonds even without an effective market.
- These were high risk investments and it was possible for bonds to default on the payment of interest or maturity capital.
- Novia has no responsibility to be aware of promotional material being used by other FCA authorised firms. And those firms are responsible for ensuring that their marketing material is compliant.
- Novia didn't produce or provide any promotional material in relation to the P6 bonds or the services offered by Greyfriars.
- Novia is an online platform, so financial advisers are able to submit business online.
- Clients submit their acceptance of Novia's terms and conditions and it is their adviser's responsibility to explain this to them.
- Novia is satisfied that it acted in Mr R's best interests.
- Mr R's financial adviser – Chadkirk – was no longer authorised. But the FSCS may consider a claim for compensation against that firm.

Mr R then referred his complaint to us in December 2020, and Mr R and Novia have both made submissions to us about this complaint.

Amongst other things, Novia has previously said to this Service that:

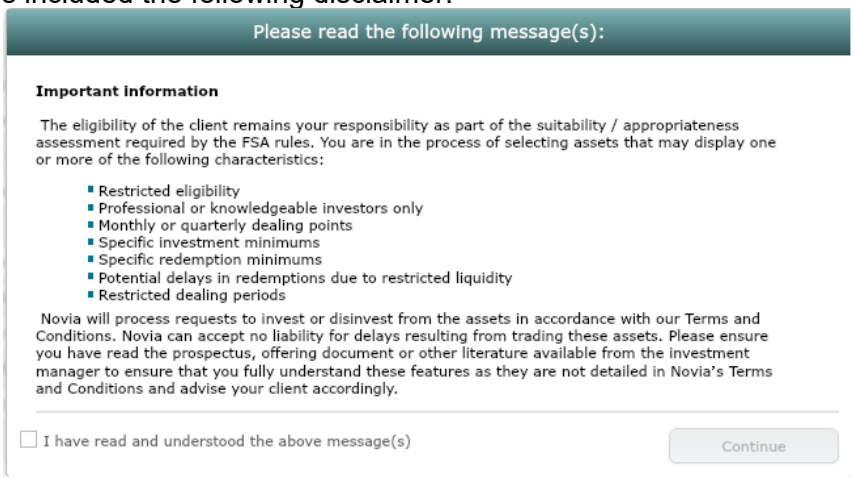
- Chadkirk chose Greyfriars and the P6 investment.
- Chadkirk was responsible for obtaining Mr R's acceptance of the advice and authority to invest in the bonds before submitting the business to Novia.
- Due diligence Novia undertakes confirms an introducer's status before Novia accepts the introducer.
- Novia provides an investment platform and Novia facilitates the administration of investment choices made by clients.
- Novia only makes investments available to FCA authorised financial advisers. And it's the adviser's responsibility to recommend suitable investments and/or to recommend the use of a DFM service like Greyfriars.
- Novia was satisfied it had conducted appropriate due diligence on Greyfriars.
- Novia subscribes to the FCA register data service, this validates the continuing authorisation status of an advisory firm. Novia receives FCA Register data service information weekly.
- Novia isn't expected to understand an introducer's business model in circumstances where the introducer is an FCA regulated financial adviser.
- Novia can rely upon other regulated businesses and doesn't have to understand how they fulfil their regulatory obligations.
- As an advised platform business, Novia expects the financial adviser to have provided advice in relation to all new business instructions.
- Novia only accepts instructions from FCA authorised advisory firms who are responsible for determining that Novia's services, products and investment options remain suitable for the firm's clients.
- Novia supports firms through a team of Regional Sales Managers, training support and a contact centre.
- Novia only facilitates the payment of adviser fees that have been agreed by the adviser with the customer.
- Adviser fees for SIPPs are restricted to be paid within decency limits.
- There was no requirement for Novia to request copies of suitability reports.
- Mr R agreed to Novia's Terms and Conditions as part of the application for the SIPP.

- Chadkirk accepted Novia's Terms of Business and became an introducer of Novia on 17 March 2015.
- Mr M as a Chadkirk financial adviser was able to submit instructions to Novia from 19 March 2015.
- According to its records Furness Financial Management has no relationship with Mr R's Novia accounts. And it was Mr M of Chadkirk who introduced Mr R to the Novia platform and remained his appointed financial adviser until 20 October 2016.
- Chadkirk was removed from Mr R's account on 20 October 2016, after FCA authorisation for Chadkirk was withdrawn on 2 September 2016.

Novia has also previously told this Service that:

- There were discussions between Novia and the key individuals at Chadkirk. Novia's approach was to 'get to know' firms rather than undertaking a tick box exercise.
- Novia's new business records document the nature of the referrals Chadkirk submitted, these were, in the main, switches from other private pension providers.
- Novia hasn't retained a record of some of the checks it did.
- While discussions would have taken place to support Chadkirk these aren't documented.
- There was a real risk of consumer detriment if Novia requested suitability letters and then sought to second guess the advice a qualified and experienced adviser was giving.
- 128 clients were introduced by Chadkirk to Novia and Mr R was number 25 of the introductions.
- 0.78% of the introductions from Chadkirk involved transfers from a defined benefit scheme.
- 52.34% of the introductions from Chadkirk involved consumers who were to invest in non-mainstream investments.
- Novia received introductions from Chadkirk between 1 April 2015 and 14 January 2016. The introductions from Chadkirk constituted 0.52% of Novia's new business during this period.
- Novia's investment committee ('NIC') ensures that it conducts effective and appropriate due diligence checks on all investments on its platform, taking into account its proposition (advised clients only) and a broad range of client types.
- Novia takes reasonable steps to ensure that all assets are genuine and not part of a fraud or scam.
- NIC and SIPP trustees conducted an independent review of investments before allowing them on the platform/within the Novia SIPP.
- The ability to objectively value any investment, including a Non-Standard Investment, is something that Novia considered carefully before accepting an investment onto its approved list. In instances where an up-to-date valuation isn't possible, it values the investment at the last known price/value.
- Novia wouldn't ask the customer to sign any risk warnings. The Terms of Business with the adviser, and all conversations Novia has with the adviser, underlines that it was for the adviser to provide warnings about investment risk and to consider suitability.
- Novia's due diligence confirms an advisory firm's status before it accepts Novia's Terms of Business. The checks Novia undertakes includes a check of the FCA Register for the principals and the expected advisers.
- Novia is an adviser platform and acts on an execution-only basis on instructions received by suitably authorised and appointed financial advisers.
- Novia doesn't give financial advice to any clients and isn't responsible for the suitability of the product or the underlying investment strategy.

- P6 was one of a number of models that Greyfriars managed. The approach to the construction of the model was different to other portfolios because it only included investments that weren't correlated to mainstream investments. Novia isn't aware if such a model was made available on other platforms.
- The P6 model would include a small number of Non-Standard Investments to provide the non-correlated purpose of the investment. The model didn't have a pre-determined list of assets or proportion that would be applied to each customer. Novia wasn't responsible for approving inclusion of an investment in the portfolio, that was Greyfriars' responsibility.
- P6 gave access to non-correlated investments and the service provided enabled some liquidity, this made it appropriate to be held in a pension scheme subject to advice being given by a FCA authorised advisory firm.
- It was a requirement of the due diligence to ensure that the investments could be valued by the investment manager. The majority of Non-Standard Investments were appropriately valued and the value maintained at the initial investment value.
- The financial adviser was responsible both for making sure that a consumer's investment outcomes were met by recommending P6 and for ensuring that P6 was suitable for the consumer.
- Novia wasn't aware of any red flags in respect of the financial advisers that were recommending P6 and therefore didn't have cause to seek further information.
- Novia isn't responsible for vetting an approval for any discretionary managed investment portfolios.
- 1,911 investors invested in P6 through Novia's platform (to avoid any potential confusion on this point, this number includes some SIPP investors where Novia wasn't the SIPP provider but where the investment was being made via a Novia wrapper).
- The underlying assets were available for investment without using P6. Once the bonds were added onto the platform, they were available for any adviser to invest into on behalf of their client via the Alternative Asset Selector on the Novia platform.
- During the period 2013 to 2016 the Alternative Asset Selector page for investors' advisers included the following disclaimer:



- All investments are subject to appropriate due diligence before being included on the Novia platform for purchase either through a model or following specific investment advice.
- Enhanced due diligence is completed for Non-Standard Investments.
- Novia ensured that it had obtained the investment memorandum and other records from the investment manager and it engaged an independent specialist third party to obtain further information which was summarised in a report. Novia also followed up through further enquiries to be satisfied that investments weren't facilitating financial

crime and had a reasonable prospect of providing the investment outcomes, while accepting that Non-Standard Investments are high risk.

- Novia rejected many investment requests before commencing enhanced due diligence and, for those where due diligence was completed, more requests were rejected than approved.
- Its approach to enhanced due diligence for Non-Standard Investments was appropriate to fulfil its regulatory obligations and to protect customers from obvious detriment while enabling access to a wide range of investments that could fulfil customers' objectives.
- Novia received business that involved P6 from 33 financial advisory firms.
- Novia doesn't charge for accessing any Model Portfolio.
- Since the Non-Standard Investments included in P6 aren't liquid, investments acquired by customers continue to be held. And Novia has continued to charge and deduct the platform administration fee for the administration services it has provided.
- A number of meetings/discussions between Novia and Greyfriars took place over a ten-month period which culminated in a bespoke process being created, this included the Investment Memorandum reflecting the redeemable status of the bonds.
- The only assets Greyfriars requested to be made available were the bonds which were reviewed in line with Novia's Non-Standard Investment Product Process. And if they didn't meet Novia's criteria they were rejected.
- Novia classified the underlying bonds in P6 as Non-Standard and therefore performed enhanced due diligence on them. Each bond and bond series Greyfriars requested to be made available was reviewed in line with Novia's Non-Standard Investment Product Process and submitted to the NIC.
- DFMs could include any assets from Novia's Asset Selector. If an investment wasn't already available on Novia's platform a DFM could request that Novia add it and make it available. The investment would then go through Novia's due diligence process.
- Greyfriars' P6 models weren't directly administered via Novia. The bonds were purchased and sold on a monthly basis and therefore couldn't be used as part of DFM models directly via Novia.
- Greyfriars informed Novia on a monthly basis which bonds it wished to be made available for the adviser firms it had a direct relationship with.
- The bonds were then made available for a limited time via the Alternative Asset Selector, and advisers placed purchase requests on behalf of their clients as appropriate.
- The first investment in P6 was in July 2014.
- Novia didn't distribute any documentation regarding the bonds or P6. Advisers had a direct relationship with Greyfriars and any agreement to use Greyfriars as a DFM was made between the adviser and Greyfriars.
- Investment Memorandums were distributed by Greyfriars.
- The bonds in P6 weren't published on Novia's investment list.
- The 'Redemption Cycle' in place between Novia and Best International was part of many discussions and, ultimately, the result of these discussions is reflected in the Investment Memorandum and the Operating Procedures.
- P6 wasn't administered as a model directly via Novia because it traded on a monthly basis and wasn't automatically traded like Standard Assets.
- All redemptions from P6 were successful until approximately September 2016 when the FCA no longer allowed Greyfriars to use the bonds for SIPP investments.
- Approximately 1,230 redemptions had been paid.
- In response to a request from us regarding documents/evidence of the *"Redemption Contract"* in effect between Novia and Best International, which was referred to in Novia's Best Operating Procedure and also in a document Greyfriars had published

following the publication of PS14/12 by the FCA, Novia simply explained that each redemption transaction had a contract note, and provided some examples of contract notes it had received.
- The majority of redemption requests submitted after September 2016 failed as the warehouse facility could no longer function. However, some bond providers did honour redemption requests as and when they had liquidity from 2017, and some bonds also matured and were repaid.

Novia has also confirmed the following to us:

“

1. *Novia did not provide a warehouse facility for the P6 investments*

2. *Best International did not procure liquidity from Novia for the P6 investments, or for any other investment*

3. *We have no record of being asked by any SIPP provider regarding a warehouse facility or a guarantee/confirmation that investors would be able to redeem their investments in P6*

4. *Other comments:*

    - *Greyfriars Asset Management were set up as a discretionary fund manager on the Novia platform…*

    - *…The account holder, SIPP operator or otherwise, would not normally have questioned individual trades made within the account with us directly as this would have been processed and instructed on the platform by the DFM...*

    - *We…operate on an execution-only basis on the instructions received by appointed FCA regulated financial advisers or DFMs. All investments are held in the name of our nominee company for safeguarding.*

    - *We have never operated a warehouse facility for any investment nor conducted business as a market maker*

    - *The P6 investments were traded monthly. We submitted our aggregated deal instructions to Best International on the 27th of every month for purchases and redemptions, trades settled on T+4.*

    We have never provided any literature or information with regards to Non-Standard Investments to any SIPP operator or account holder and would have directed them to the DFM, Bond company, or financial adviser to obtain the Investment Memorandum and any other investment literature. Whilst we did obtain copies of such documentation in the course of the due diligence process we conducted to satisfy ourselves before allowing the underlying mini-bonds onto our platform, these were for internal use only and not shared with any external parties.”

Further that:

“We did not consider any of the P6 investments as FCA standard assets. Novia classified them as Non-Standard Investments from outset and as a result performed enhanced due diligence before we allowed the underlying mini-bonds to be made available on our platform...We have never made any suggestion or representation

> *that they met the criteria for FCA standard assets, and P6 investments have…always been treated as Non-Standard Investments on our platform…"*

And on a separate point that:

> *"We do not insist or ask for a DFM non-advice agreement and/or application signed by the underlying member. Therefore we are not in a position to confirm or deny whether…an agreement existed between the SIPP member and Greyfriars directly. On the Novia/Wealthtime platform once an adviser firm has access to the DFMs they can select any model and apply it to any of their clients online without any written agreement with the underlying client. This applies to both Novia SIPPs and Novia GIAs which are held within another third party SIPP operators pension wrapper."*

And in response to a question about those complaints in which it was acting as the SIPP operator, Novia has also said that:

> *"…we fully accept that the due diligence which Novia conducted at the time did not meet the requirements nor best practice of a SIPP."*

Amongst other things, Mr R has said to us that:

- Prior to the transfer to the Novia SIPP, his pension monies were held in a personal pension plan without any guarantees attached.
- He hasn't taken benefits from his pension.
- He had been cold called and offered a free pension review by someone that he thought worked for Furness Financial Management.
- He was advised that his existing pension wasn't performing well and that the adviser could lower the applicable pension charges and greatly improve investment performance.
- He hadn't been interested in moving his pension until he was told that his pension wasn't performing well.
- He was told that his monies would be invested in a way that was *"safe and secure and would make very good returns."*
- He only signed the paperwork, he didn't fill it out.
- He was told the investments that were made with is pension monies were *"standard investments"* which over time would help his pension fund grow significantly.
- He was told that there would be minimal risk involved.
- He hadn't received a payment when moving his pension.
- His records indicate the servicing of the SIPP was transferred to Chadkirk after Furness Financial Management stopped operating. But all advice and investment-related matters, to the best of his knowledge, were conducted through Furness Financial Management.

One of our investigators reviewed Mr R's complaint, they thought it was more likely than not that Mr R's business was introduced by Furness Financial Management and that Novia didn't treat Mr R fairly or reasonably when accepting his business. Further, that Novia should have decided not to permit P6 into its SIPPs and that any SIPP operator acting fairly and reasonably towards its clients should have reached the same conclusion.

As I understand it, following this Novia wrote to Mr R and made an offer to settle his complaint. And Mr R then emailed Novia on 8 April 2025 and noted, amongst other things, that:

- He was contesting a £50,000 reduction in Novia's offer of compensation in respect of the compensation he had received from the FSCS.
- The approach Novia was taking was unjust and failed to properly consider the reasonable costs Mr R incurred in securing his initial FSCS compensation.
- He had engaged a claims management company to recover the initial £50,000 award due to the complexity of the claim, this was a necessity rather than a discretionary choice given the intricate nature of the process.
- It is both equitable and legally supported that a reasonable proportion of these costs be deducted from the £50,000 reduction prior to any further payment being calculated. This would ensure that the compensation reflects the practical realities of securing redress.
- He wanted to draw attention to the protracted handling of his complaint against Novia. The extended delay in Novia settling his complaint has compounded the financial hardship he has endured, which further underscores the need to account for the reasonable costs he has borne in pursuing the matter.
- The complexity and duration of this complaint have placed an undue burden on him, reinforcing the necessity for a fair adjustment to the reduction.
- The FSCS reassignment agreement explicitly provides for the deduction of reasonable legal costs incurred in pursuing claims under reassigned rights. This principle aligns with established legal precedent, notably *Emptage v Financial Services Compensation Scheme Ltd* [2013] EWCA Civ 729. In that case the Court *"affirmed that compensation mechanisms must not penalise claimants for necessary expenses incurred in securing redress".* And the Financial Ombudsman Service has consistently upheld this approach in its rulings.
- In published decision DRN1234567, an Ombudsman determined that where a consumer reasonably relied on a third-party service to obtain compensation due to case complexity, the firm was obliged to account for a fair portion of those costs rather than imposing an indiscriminate deduction.
- And published decision DRN7654321 reinforced the fact that compensation must reflect the actual costs claimants incur, avoiding an overly rigid application of reductions that disregards fairness.
- Given the FSCS' reassignment of rights agreement's allowance for reasonable costs, the unilateral application of the full £50,000 reduction, without regard for these necessary expenses, contravenes both legal precedent and the regulatory standards upheld by the Financial Ombudsman Service.

Following this, Mr R wrote to us and, amongst other things, said that:

- Novia had offered a settlement of £20,436.38.
- Novia has refused to adjust the £50,000 reduction applied to his FSCS compensation to account for reasonable costs incurred in securing the initial award.
- In the circumstances it was requested that the Financial Ombudsman Service proceed with a final determination on the case.

As agreement wasn't reached, this complaint was passed to me for review. I issued a provisional decision on this complaint concluding that the complaint should be upheld. Briefly, I said that if it had undertaken sufficient due diligence Novia should have stopped permitting the P6 investments to be held in its SIPPs *before* it received Mr R's business. And that but for Novia's failings it was more likely than not Mr R's pension monies wouldn't have been transferred to Novia and invested into the P6 investments.

Mr R replied to my provisional decision, and I've set out below a summary of what I consider to be the main points made in his response to my provisional decision. However, the list isn't exhaustive and before making this final decision I carefully considered the response in full.

In response to my provisional decision, and as a part of submissions about why the distress and inconvenience award should be higher in this complaint, Mr R referenced rules about protecting vulnerable consumers, information on the Financial Ombudsman Service's website and the contents of published decisions DRN-5433691 and DRN-4653321. Mr R also said, amongst other things, that:

- The proposed distress and inconvenience award should be increased.
- An award of £500 underestimates the severe financial and emotional impact of Novia's failings on him, which has been prolonged by Novia's refusal to accept liability.
- Novia rejected his complaint in September 2020, in spite of guidance set out in regulatory publications and also the judgment in *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878.
- He has been caused significant worry about his pension monies. He is now 62 years old and retired, and the loss of around £50,000 has caused him financial strain and emotional distress, which has been compounded by him having to research investments and pursue this complaint.
- A distress and inconvenience award of £1,500 was requested, reflecting the five-year complaint process, Novia's systemic failures and his retirement vulnerability.
- He incurred costs for expert representation in his FSCS claim against Furness Financial Management. Novia's due diligence failures unfairly necessitated the FSCS claim, and it was requested that 50% of his costs be included in the redress awarded to him.
- The FSCS often now directs claims involving P6 to Novia without paying compensation for advisers' failings. Had this applied when he made his FSCS claim, he would have pursued Novia directly through the Financial Ombudsman Service and avoided representation fees.
- Novia's misconduct caused the need for the FSCS claim, so he shouldn't bear the full cost.
- He would prefer Novia to purchase the illiquid P6 holdings. And if Novia resisted then it was requested a *"mandated commercial valuation process"* be put in place.

Amongst other things, in response to my provisional decision Novia has said that:

- It accepts the provisional decision.
- The recommendations for redress contained in the provisional decision are fair.
- The recommended calculation method takes into account any loss incurred during the period this complaint has been ongoing.
- As part of the settlement agreement, Novia is intending to ask Mr R to assign rights to the P6 holdings in exchange for the redress payment – calculated in line with any final decision – and it would then transfer ownership of the investments into Novia's name.

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.

When considering what's 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.

The parties to this complaint have provided detailed submissions to support their position and I'm grateful to them for doing so. I've considered these submissions in their entirety. However, I trust that they won't take the fact that my final decision focuses on what I consider to be the central issues as a discourtesy. To be clear, the purpose of this decision isn't to comment on every individual point or question the parties have made, rather it's to set out my findings and reasons for reaching them.

Given the general nature of Mr R's complaint, in deciding what's fair and reasonable in the circumstances, it's appropriate to take an inquisitorial approach. And, ultimately, what I'll be looking at here is whether Novia took reasonable care, acted with due diligence and treated Mr R fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issues in Mr R's complaint is whether it was fair and reasonable for Novia to have accepted Mr R's SIPP business in the first place and also whether it was fair and reasonable for Novia to have permitted Mr R to invest with Greyfriars in the P6 investments. So, I need to consider whether Novia carried out appropriate due diligence checks on Chadkirk, Greyfriars and P6 before deciding to accept Mr R's business.

On the Chadkirk/Furness Financial Management point. I accept Mr R's submission that Mr M gave him advice as an adviser of Furness Financial Management, but I also accept Novia's submission that its records show that it was Chadkirk and not Furness Financial Management that actually introduced Mr R's business to it.

As I understand it, Mr M worked as an adviser for both Chadkirk and Furness Financial Management at the relevant time. Overall, I think it's more likely than not that Mr M gave Mr R pension advice on the transfer to the SIPP as Furness Financial Management, but that Chadkirk then took over *before* the SIPP application was submitted to Novia online. And that it was, ultimately, Chadkirk who was responsible for introducing Mr R's business to Novia.

Relevant considerations

I've carefully taken account of the relevant considerations to decide what's fair and reasonable in the circumstances of this complaint.

In my view, the FCA's Principles for Businesses are of particular relevance. 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"* (PRIN 1.1.2G – at the relevant date).

PRIN 1.1.9G at the relevant date stated that:

> *"Some of the other rules and guidance in the Handbook deal with the bearing of the Principles upon particular circumstances. However, since the Principles are also designed as a general statement of regulatory requirements applicable in new or unforeseen situations, and in situations in which there is no need for guidance, the appropriate regulator's other rules and guidance should not be viewed as exhausting the implications of the Principles themselves."*

Principles 2, 3 and 6 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've carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ('BBA') Ouseley J said at paragraph 161:

> *"The Principles are the overarching framework for regulation, for good reason. The FSA has clearly not promulgated, and has chosen not to promulgate, a detailed all-embracing comprehensive code of regulations to be interpreted as covering all possible circumstances…The overarching framework would always be in place to be the fundamental provision which would always govern the actions of firms, as well as to cover all those circumstances not provided for or adequately provided for by specific rules."*

At paragraph 162 Ouseley J said:

> *"The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirements they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."*

At paragraph 77 Ouseley J said:

> *"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."*

And at paragraph 184 Ouseley J said:

> *"The width of the Ombudsman's duty to decide what is fair and reasonable, and the width of the materials he is entitled to call to mind for that purpose, prevents any argument being applied to him that he cannot decide to award compensation where there has been no breach of a specific rule, and the Principles are all that is relied on."*

In *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ('BBSAL'), Berkeley Burke brought a judicial review claim challenging the decision of an Ombudsman who had upheld a consumer's complaint against it. The Ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The Ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and hadn't treated its client fairly.

Jacobs J, having set out some paragraphs of *BBA* including paragraph 162 set out above, said (at paragraph 104 of *BBSAL*):

> *"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles-based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."*

And at paragraph 107:

> *"The passages in the judgment of Ouseley J. discussed above were essentially directed at the question of whether the FSA could use the Principles to augment the rules. The answer to that question was that it could and there is no suggestion that the concept of augmentation was to be limited in the manner for which BBSAL contended. However, it is also important that the present case concerns the decision of an Ombudsman, rather than the FSA. In that connection, it is clear from the judgment of Ouseley J. that the Ombudsman can permissibly take an even broader approach than the regulator."*

And then, after citing more passages from the *BBA* case, Jacobs J at paragraph 109 stated:

> *"I consider that these passages, too, are fatal to BBSAL's attempts to put limits on the extent to which the Ombudsman was entitled to use the Principles in order to augment existing rules or duties. The Ombudsman has the widest discretion to decide what was fair and reasonable, and to apply the Principles in the context of the particular facts before him."*

The *BBSAL* judgment also considers section 228 of the Financial Services and Markets Act ('FSMA') and the approach an Ombudsman is to take when deciding a complaint. The judgment of Jacobs J in *BBSAL* upheld the lawfulness of the approach taken by the Ombudsman in that complaint, which I've described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

As outlined above, Ouseley J in the *BBA* case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what's fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in *BBSAL*. I'm therefore satisfied that the Principles are a relevant consideration that I must take into account when deciding this complaint.

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both these judgments and the judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 when making this decision on Mr R's case.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case and I'm of the view that it doesn't. I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight didn't consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither of the judgments say anything about how the Principles apply

to an Ombudsman's consideration of a complaint. But, to be clear, I don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of the *Adams* judgments when making this decision on Mr R's case.

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 was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of the FSMA ('the COBS claim'). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

The Court of Appeal rejected Mr Adams' appeal against HHJ Dight's dismissal of the COBS claim, on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal didn't so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

I note that in *Adams v Options SIPP*, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at paragraph 148:

> *"In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction."*

I note that there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr R's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened *after* the contract was entered into. And he wasn't asked to consider the question of due diligence *before* Options SIPP agreed to accept the store pods investment into its SIPP.

And in Mr R's complaint, amongst other things, I'm considering whether Novia ought to have identified that the introductions from Chadkirk involved a significant risk of consumer detriment and, if so, whether it ought to have ceased accepting introductions from Chadkirk *before* entering into a contract with Mr R. And I'm also considering whether Novia ought to have identified that the P6 investment involved a significant risk of consumer detriment and, if so, whether it ought to have declined to permit its members to invest with Greyfriars in the P6 investments *before* it accepted Mr R's business.

The facts of Mr Adams' and Mr R's cases are also different. I make that point to highlight that there are factual differences between *Adams v Options SIPP* and Mr R's case. And I need to construe the duties Novia owed to Mr R under COBS 2.1.1R in light of the specific facts of Mr R's case.

So I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr R's case, including Novia's role in the transactions.

However, I think it's important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

And, in doing that, I'm required to take into account relevant considerations which include: 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. This is a clear and relevant point of difference between this complaint and the judgments in *Adams v Options SIPP*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I also want to emphasise that I don't say that Novia was under any obligation to advise Mr R on the SIPP and/or the underlying investments. Refusing to accept an application and/or investment isn't the same thing as advising Mr R on the merits of the SIPP and/or the underlying investments.

Overall, I'm satisfied that COBS 2.1.1R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of Mr R's case.

The regulatory publications

The FCA (and its predecessor, the Financial Services Authority ('FSA')) 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.

I've considered the relevance of these publications. And I've set out material parts of the publications here, although I've considered them in their entirety.

The 2009 Thematic Review Report

The 2009 Report included the following statement:

"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. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.

It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.
…
We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to clients.

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or

potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their customers' interests in this respect, with reference to Principle 3 of the Principles for Businesses ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*

- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*

- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*

- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*

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

The later publications

The introduction to the 2012 Thematic Review Report explains that it was undertaken to investigate concerns that the regulator had about poor firm conduct and the potential for significant consumer detriment, and to determine the extent to which SIPP operators had adapted processes and procedures to reduce risks following the 2009 Report. The regulator stated in the introduction that the findings of the review confirmed its concerns. The 2012 Report states that all SIPP operators should review their business in light of the contents of the report.

Findings from the review included:

- Inadequate risk identification processes and risk mitigation planning underpinned by poor quality management information ('MI').

- An increase in the number of Non-Standard Investments held by some SIPP operators, with often poor monitoring of this.
- A lack of evidence of adequate due diligence being undertaken for introducers and investments.

The Report stated that:

> *"In our 2009 report we identified that there was a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, as this is the responsibility of clients and client's advisers…*
> *…*
> *As we stated in 2009, we are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Business: a firm must pay due regard to the interests of its customers and treat them fairly, in so far as they are obliged to ensure the fair treatment of their members."*

And, under the heading *"Non-standard investments, due diligence and financial crime"* the Report stated that:

> *"Some SIPP operators were unable to demonstrate that they are conducting adequate due diligence on the investments held by their members or the introducers who use their schemes, to identify potential risks to their members or to the firms itself."*

The review set out the regulator's expectation that SIPP operators review their business, paying particular attention to, amongst other things:

- Whether their risk identification and risk mitigation planning was sufficiently robust to ensure that the firm has safeguarded its customer's interests.
- The level of Non-Standard Investments held within their schemes.

In the October 2013 finalised SIPP operator guidance, the FCA stated:

> *"This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.*
>
> *All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a 'client' for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes."*

Under the heading *"Management Information (MI)"* the finalised SIPP operator guidance stated that:

> *"Principle 6 of the FCA's Principles for Businesses requires all firms to pay due regard to the interest of its customers and treat them fairly. SIPP operators are not responsible for the SIPP advice given by third parties such as financial advisers. We would expect SIPP operators to have procedures and controls in place that enable them to gather and analyse MI that will enable them to identify possible instances of financial crime and consumer detriment."*

The guidance goes on to give examples of MI firms should consider which includes:

- Collection of MI to identify trends in the business submitted by introducers.
- The ability to identify the number of investments, the nature of those investments, the amount of funds under management, spread of introducers and the percentage of higher risk or Non-Standard Investments.

The October 2013 finalised SIPP operator guidance also set out the following:

*"***Relationships between firms that advise and introduce prospective members and SIPP operators**

Examples of good practice we observed during our work with SIPP operators include the following:

- *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un-authorised business warnings.*

- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*

- *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*

- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*

- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers. Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*

- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*

- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non-regulated introducers*

In relation to due diligence, the October 2013 finalised SIPP operator guidance said:

*"**Due diligence***

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*

- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*

- *having checks which may include, but are not limited to:*

    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*
    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*

- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*

- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*

- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax-relievable investments and non-standard investments that have not been approved by the firm"*

The July 2014 *"Dear CEO"* letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles. In the letter the FCA said that in a Thematic Review it had recently conducted it had focused on the due diligence procedures SIPP operators used to assess Non-Standard Investments, and how well firms were adhering to the relevant prudential rules.

The letter went on to say that during the Review it found a significant number of SIPP operators were still failing to manage the risks and ensure customers were protected appropriately. The FCA encouraged SIPP operators to review the key findings in its Thematic Review, which were summarised in an annex to the letter, and asked them to take

action to ensure their businesses were able to demonstrate an appropriate degree of protection for consumers' pension savings.

The annex to the *"Dear CEO"* letter states, amongst other things, that the Thematic Review identified significant failings in due diligence procedures to assess Non-Standard Investments and that:

> *"Principle 2 of the FCA's Principles for Business requires all firms to conduct their business with due skill, care, and diligence. SIPP operators should ensure that they conduct and retain appropriate and sufficient due diligence, for example, assessing that assets allowed into a scheme are appropriate for a pension scheme. Our thematic review found that most SIPP operators failed to undertake adequate due diligence on high risk, speculative and non-standard investments…"*

The annex also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. Such obligations could be met by:

- *correctly establishing and understanding the nature of an investment*
- *ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation*
- *ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)*
- *ensuring that an investment can be independently valued, both at point of purchase and subsequently, and*
- *ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc.)*

Further, the annex states that:

> *"We found that most firms do not have the expertise or resources to assess this type of business, but were still allowing transactions to go ahead. This increases the risk that a pension scheme may become a vehicle for high risk and speculative investments that are not secure assets, many of which could be scams. It is not acceptable for firms to put consumers at risk this way.*
>
> *Although our thematic review focussed on non-standard investments, it is important to note that guidance on due diligence applies to all investments.*
>
> *Findings from our review included firms failing to:*
>
> - *understand the nature of an investment, especially contracts for rights to future income, and sale and repurchase agreements*
> - *check that money was being paid to legitimate businesses, and*
> - *to independently verify that assets were real and secure, or that investment schemes operated as claimed*
>
> *We found that, typically, firms had difficulty completing due diligence for non-standard overseas investment schemes where firms did not have access to local qualified legal professionals or accountants. Also, since the last review of SIPP*

operators, we noted an increase in the number of opaque investment structures, such as special purpose vehicles and limited companies, created to pool investment monies and finance other businesses. Firms had difficulty establishing where money was being sent, and whether underlying investment propositions were genuine.

We also found that many SIPP operators accepted investments into their schemes without adequate consideration of how investments could be valued or realised.

Finally, we found many firms continuing to rely on marketing and promotional material produced by investment providers as part of due diligence processes, despite previous guidance highlighting the need for independent assessment of investments."

The annex refers to the proposed definition of Non-Standard Assets as set out in the FCA's Consultation Paper – CP12/13. The proposed definition was by way of a list of Standard Assets with all assets not on the list being categorised as Non-Standard Assets.

The Standard Assets list included Corporate Bonds but also included the following criteria for Standard Assets:

"Standard assets must be capable of being accurately and fairly valued on an ongoing basis, readily realised whenever required (up to a maximum of 30 days), and for an amount that can be reconciled with the previous valuation."

Although I've referred to selected parts of the publications, to illustrate their relevance, I've considered them in their entirety.

I acknowledge that the 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However, I'm of the view that the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't mean their importance should be underestimated. They 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's 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.

It's relevant that when deciding what amounted to good industry practice in the *BBSAL* case, the Ombudsman found that *"the regulator's reports, guidance and letter go a long way to clarify what should be regarded as good practice and what should not."* And the judge in *BBSAL* endorsed the lawfulness of the approach taken by the Ombudsman.

At its introduction, the 2009 Thematic Review Report says:

"In this report, we describe the findings of this thematic review, and make clear what we expect of SIPP operator firms in the areas we reviewed. It also provides examples of good practices we found."

And, as referenced above, the Report goes on to provide "…*examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms."*

So, I'm satisfied that the 2009 Report is a *reminder* that the Principles apply and it gives 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. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So I'm satisfied it's relevant and therefore appropriate to take it into account.

The remainder of the publications also 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 to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I'm therefore satisfied it's appropriate to take them into account too.

It's also clear from the text of the 2009 and 2012 Thematic Review Reports (and the *"Dear CEO"* letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it's clear the standards themselves hadn't changed.

I'm required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time. That doesn't mean that in considering what's fair and reasonable, I'll only consider Novia's actions with these documents in mind. The reports, *"Dear CEO"* letter and guidance gave non-exhaustive examples of good practice. They didn't say the suggestions given were the limit of what a SIPP operator should do. As the annex to the *"Dear CEO"* letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

The publications make frequent reference to introducers but not execution-only stockbrokers or discretionary investment managers. However, given the non-exhaustive nature of the guidance and its purpose to make clear to non-advisory SIPP operators that they have a responsibility for the quality of the SIPP business they administer, I'm satisfied that the points made could be borne in mind in relation to other businesses SIPP operators deal with such as execution-only stockbrokers and discretionary investment managers.

In this regard I note that on 18 April 2013, so well before Mr R's business was accepted by Novia, the FCA published a Final Notice relating to Mr W who had been a director of a SIPP operator called Montpelier Pension Administration Services ('MPAS').

The FSA conducted a supervisory visit of MPAS in October 2010 as part of the SIPP Thematic Review. A number of findings were made against Mr W arising out of that visit including, amongst other things, that he had failed to exercise due skill, care, and diligence in managing the business of MPAS in breach of Principle 6. The findings of fault included findings relating to:

- Due diligence and monitoring of introducers.
- Due diligence of new assets to be accepted into MPAS' schemes.
- Due diligence and monitoring of discretionary fund managers.

It was noted, amongst other things, in the Final Notice that:

> *"4.29. MPAS' due diligence on the Introducers from whom it accepted new business consisted only of a search on the Financial Services Register each time an application for new business was received to ensure that the introducing firm was still authorised. MPAS did not carry out any other monitoring, such as identifying and*

analysing referral trends, which would have enabled it to be satisfied that Introducers were recommending SIPP investments only where it was suitable to members and only where the investment type was suitable to MPAS...

…

4.31. After the Authority had communicated its concerns to MPAS in January 2011 regarding the firm's lack of due diligence and monitoring of Introducers, Compliance conducted an audit which identified a trend of exclusively high-risk business being referred by certain Introducers, indicating that those Introducers were not referring investors to MPAS according to suitability alone, and importing significant risk to members and MPAS alike. Compliance identified two Introducers as having habitually referred an unacceptably high volume of high-risk investments, or as having advised clients who were not sophisticated investors to place the entirety of their SIPP funds into high-risk investments…

…

4.37. MPAS did not have adequate systems and controls in place to monitor and administer SIPP assets on an ongoing basis. (Mr W) *did not ensure that there was an appropriate system in place by which MPAS could identify the exact assets held for individual members, nor was there a system in place by which MPAS could instantaneously ascertain the current value of those assets (for example through real-time price feeds). Instead, MPAS relied on obtaining delayed valuations upon request to the relevant investment platforms.* (Mr W) *did not make reasonable effort during the Relevant Period to identify and implement a method by which MPAS could regularly and closely monitor the value of assets held for individual members…*

…

4.39. MPAS did not routinely gather management information and was thereby unable to identify areas of risk to both itself and to members. Regular collation and analysis of management information should have enabled the Board to have a clear understanding of vital aspects of the business, such as the effectiveness of its compliance procedures, its adherence to service standards and trends indicating risk in the types of business being referred and accepted.

…

5.4. (Mr W) *failed to exercise due skill, care and diligence by giving insufficient consideration to compliance and to the safety of members' investments, including failing to understand the consequences and risks of accepting a high volume of illiquid non-standard investments into the MPAS schemes. By failing to ensure MPAS could identify such issues,* (Mr W) *caused scheme members to be exposed to additional risks such as formulaic selling by introducers, unsuitable recommendations for illiquid or volatile investments, or the potential imposition of a range of tax charges.*

…

5.18. (Mr W) *did not take steps to ensure that MPAS made adequate use of management information so as to enable it to identify areas of risk to both members and to MPAS' itself.* (Mr W) *should have ensured that Compliance and the Board in particular had ready access to management information reports at its quarterly meetings in order to allow it to govern the firm effectively. MPAS did not utilise management information to identify and mitigate areas of risk, with the effect that it only acted upon key areas of risk (such as certain Introducers recommending unacceptably high volumes of risky investments to some members) after they were highlighted by the Authority following its supervisory visit in October 2010…*

…

5.19. As both managing director and MPAS' liaison with Introducers, (Mr W) *failed to take reasonable steps to ensure that MPAS conducted adequate due diligence and continued monitoring on those firms.* (Mr W) *concentrated his efforts on fostering business opportunities for Introducers without taking reasonable steps to ensure that those Introducers were advising scheme members in relation to suitable SIPP*

investments only, in satisfaction of MPAS' regulatory obligation as a SIPP operator to ensure that its members were being properly advised…

…

5.21. Accurate identification and monitoring of SIPP assets should have been of particular concern to (Mr W) *during the Relevant Period given the large proportion of non-standard, investments under MPAS' administration. However,* (Mr W) *failed to take reasonable steps to ensure that MPAS was able to identify and monitor assets accurately on behalf of members. He did not ensure that MPAS had access to regular and accurate asset information, which would have been easily obtainable via software providing regular and live price feeds.* (Mr W) *thereby failed to ensure that MPAS was able to satisfy its basic obligation to SIPP members to maintain proper control over the assets it held for their benefit…"*

Specifically, on the discretionary fund managers point, the FCA said:

"4.38 A proportion of the assets administered by MPAS were managed by discretionary fund managers during the Relevant Period, and MPAS typically entered into agreements with those discretionary fund managers upon recommendation by MPAS' Introducers. However, no due diligence was undertaken in relation to the recommended fund managers, nor was any ongoing monitoring undertaken to ensure that those with responsibility for management of members' assets were doing so properly…"

And

"5.6. Additionally, (Mr W) *did not understand the significance of certain systems and controls, including the use of management information to identify and mitigate areas of risk in the business, and due diligence and continued monitoring of Introducers and discretionary fund managers and the SIPP assets, which would have reduced the risk of members being unsuitably advised or their assets unsafely managed."*

And

"5.22. (Mr W) *failed to ensure that any controls were in place in relation to discretionary fund managers, in the form of agreements setting out the terms on which SIPP assets were to be managed. By failing in this regard,* (Mr W) *exposed members to the risk that their assets would be mismanaged without detection by MPAS, and especially given that no other procedures were in place for continuous monitoring of discretionary fund managers.*

5.23. The Authority therefore considers that in having failed to take reasonable steps to ensure that systems and controls were in place in key areas of MPAS' business, in breach of Statement of Principle 7, (Mr W) *has demonstrated a serious lack of competence and capability as a significant influence function holder."*

To be clear, I don't say that the Final Notice mentioned above was regulatory guidance that I'm required to take into account. But I'm satisfied the above does help to demonstrate that the obligations on SIPP operators, as discussed in the guidance and other publications referred to above, wouldn't necessarily be satisfied *only* by carrying out due diligence on introducers and investments.

I also don't say the Principles or the publications obliged Novia to ensure the transactions were suitable for Mr R. It is accepted Novia wasn't required to give advice to Mr R, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But, as I've said above, they're evidence of what I consider to have been

good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles. And so it's fair and reasonable for me to take them into account when deciding this complaint.

It's important to keep in mind the judge in *Adams v Options* didn't consider the regulatory publications in the context of considering what's fair and reasonable in all the circumstances bearing in mind various matters including the Principles (as part of the regulator's rules) or good industry practice.

And in determining this complaint, I need to consider whether, in accepting Mr R's business from Chadkirk and in permitting Mr R's monies to be invested with Greyfriars in the P6 investments, Novia complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Novia should have done to comply with its regulatory obligations and duties.

I'm making a decision on what's fair and reasonable in the circumstances of this complaint – and for all the reasons I've set out above I'm satisfied that the Principles and the publications listed above are relevant considerations to that decision. And taking account of the factual context of this case, it's my view that in order for Novia to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into Chadkirk/the business Chadkirk was introducing and undertaken sufficient due diligence into Greyfriars/the P6 investment *before* deciding to accept Mr R's business and *before* permitting him to invest into P6.

Ultimately, what I'll be looking at is whether Novia took reasonable care, acted with due diligence, and treated Mr R fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issues in Mr R's complaint is whether it was fair and reasonable for Novia to have accepted Mr R's business and/or permitted him to invest his SIPP monies into the P6 investments in the first place. So, I need to consider whether Novia carried out appropriate due diligence checks before deciding to accept Mr R's business and deciding to allow him to invest his SIPP monies into the P6 investments.

And the questions I need to consider are whether Novia ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by Chadkirk and/or investing with Greyfriars in P6 were being put at significant risk of detriment. And, if so, whether Novia should therefore not have accepted Mr R's business and/or not permitted him to invest his Novia SIPP monies into the P6 investments.

The contract between Novia and Mr R

This decision is made on the understanding that Novia acted purely as a SIPP operator. I don't say Novia should (or could) have given advice to Mr R or otherwise have ensured the suitability of the SIPP or the P6 investments for him. I accept that Novia made it clear to Mr R that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that the operative Terms and Conditions confirmed, amongst other things, that losses arising as a result of Novia acting on Mr R's, or his adviser's/DFM's, instructions were his responsibility.

I've not overlooked or discounted the basis on which Novia was appointed. And my decision on what's fair and reasonable in the circumstances of Mr R's case is made with all of this in mind. So, I've proceeded on the understanding that Novia wasn't obliged – and wasn't able –

to give advice to Mr R on the suitability of the SIPP, using Greyfriars as an investment manager or the P6 investments.

What did Novia's obligations mean in practice?

In this case, the business Novia was conducting was its operation of SIPPs. And I'm satisfied that, to meet its regulatory obligations, when conducting its operation of SIPPs business, Novia had to decide whether to accept or reject particular investments and/or referrals of business with the Principles in mind.

The regulators' reports and guidance provided some examples of good practice observed by the FSA and FCA during its work with SIPP operators. This included being satisfied that a particular introducer is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.

As set out above, to comply with the Principles, Novia needed to conduct its business with due skill, care and diligence; organise and control its affairs responsibly and effectively; and pay due regard to the interests of its clients (including Mr R) and treat them fairly. Its obligations and duties in this respect weren't prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

And I think that Novia understood this to some degree at the time too, as it did more than just check the FCA Register for Chadkirk and Greyfriars to ensure they were regulated – for example, it also entered into agreements with those parties.

So, and well before the time it accepted Mr R's business, I think that Novia ought to have understood that its obligations meant that it had a responsibility to carry out appropriate checks on Chadkirk to ensure the quality of the business it was introducing.

And I think Novia also ought to have understood that its obligations meant that it had a responsibility to carry out appropriate due diligence on investments to be held/being held in its SIPPs. I think Novia's submissions on the fact it did undertake some due diligence prior to allowing the P6 holdings within its SIPPs reflect this. So, I'm satisfied that, to meet its regulatory obligations when conducting its business, Novia was also required to consider whether to accept or reject a particular investment (here the P6 investments), with the Principles in mind.

Further, in addition to P6 I think Novia should have carried out appropriate due diligence on Greyfriars. And in my opinion, Novia should have used the knowledge it gained from its due diligence to decide whether to accept or reject any application that involved a request to use Greyfriars as investment manager.

Novia's due diligence on P6

I'm satisfied that, to meet its regulatory obligations when conducting its business, Novia was required to consider whether to accept or reject a particular investment (here P6), with the Principles in mind.

I think that it's fair and reasonable to expect Novia to have looked carefully at the P6 investment both initially and on an ongoing basis *before* permitting consumers like Mr R to invest in it through their Novia SIPPs. For Novia to permit its members to invest in P6 without carrying out a level of due diligence that was consistent with its regulatory obligations and good industry practice, while asking its customers to accept warnings absolving it of the

consequences, wouldn't in my view be fair and reasonable or sufficient. And if Novia didn't look at the investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure, it wouldn't in my view be fair or reasonable to say Novia had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

Regarding the due diligence it undertook on P6, amongst other things, Novia has at various points told this Service that:

- It entered into an agreement with Greyfriars.
- The P6 model would include a small number of Non-Standard Investments to provide the non-correlated purpose of that investment. The model didn't have a pre-determined list of assets or proportion that would be applied to each customer.
- A number of meetings/discussions between it and Greyfriars/Best International took place over a ten-month period which culminated in a bespoke process being created.
- It carried out due diligence on the underlying bonds that P6 investors were investing into through the Novia platform.
- It had discussions with Best International about the process.
- It put in place a Non-Standard Product Process document.
- It didn't consider any of the P6 investments as Standard Assets. It classified them as Non-Standard Investments from the outset and as a result performed enhanced due diligence on them.
- The only assets Greyfriars requested to be made available were bonds which were reviewed in line with Novia's Non-Standard Product Process. If the bonds didn't meet Novia's criteria they were rejected.
- It obtained the investment memorandums for the P6 investments, as well as other records from the investment manager and it engaged an independent specialist third party to obtain further information which was summarised in a report. It also followed up through further enquiries to be satisfied that investments weren't facilitating financial crime and had a reasonable prospect of providing the investment outcomes, while accepting that Non-Standard Investments were high risk.

Internal Novia documents

We've previously been provided with a Novia Non-Standard Product Process document, this appears to have been signed off by various personnel at Novia in November 2013. It's noted, amongst other things, in this document that:

> *"To detail the process for when an Adviser requests a Fund / Product which does not fall into our standard on boarding process as set out in the Investment Principles, the document will allow for a smooth and clear understanding in regards to the process of reviewing non-standard product requests.*
> *…*
> *There are two types of nonstandard products…those that are detailed under the structured product process and those that are detailed under the nonstandard product process. The… structured products are those that fall into the our standard on boarding process but have special trading conditions those in the Nonstandard process are product* [sic] *that fall outside of this, the Investment analyst will be responsible for deciding which process the request will follow.*
> *…*
> *Timing and clarity is of upmost importance in this process, along with assuring Novia is aware of all relevant risks posed by these non-standard products, and recording them for audit purposes."*

In a Section titled *"Process Controls"* it was noted, amongst other things, that a key risk was *"Client Eligibility for FCA COBS"* and that the control for this was:

> *"Complex Investments are for sophisticated investors. We ensure that this clear to Advisers by keeping these funds on the Alternative asset list and not allowing them to be held within model portfolios."*

The document references identifying the proposed holding, including details like issue, name, provider, relevant information and so on. And also documents that may be applicable including fund memorandums, prospectuses and brochures.

The document also references an initial check and, amongst other things the following questions are noted:

- Is there clarity of cash flow and suitable security of client money?
- What is the funds ownership?
- Are there multiple contract streams?
- Does the fund give Novia Direct Property Ownership?
- Are there any service contracts that Novia would be responsible for?
- Does the fund require Novia to enter Pre Dealing Commitments?

Later, if the NIC wished to go ahead with investigating a fund, then the fund manager would be contacted and asked to complete a SIPP questionnaire, to provide any due diligence they had created themselves and a copy of the application form.

Following this, if points needed further investigation/questioning this would occur and there was *"Expertise/knowledge centres"* that could be used. And at a point when any feedback required had been assessed and sorted the issue would be presented to the NIC for discussion and a decision.

We've been provided with a Novia Investment Principles document, this is dated as being effective from 1 April 2013. It's noted, amongst other things in this document, that:

> *"Assets to be made available via the Novia Service must be approved by the Investment Committee and no purchases or sales of an asset may be permitted until the approval of the Investment Committee has been granted.*
> …
> *In general, Novia will accept assets for sale or purchase across the range of its wrappers providing the following criteria can be met:*
>
> A. *The asset in question has been established in the UK and is authorised and regulated by the Financial Conduct Authority, or*
>
> B. *the asset is established under the laws of an EEA country and is recognised by the FCA for the purposes of marketing to UK individuals, or*
>
> C. *where the asset is established in a designated state or territory documented under s.270 of the Financial Services and Markets Act 2000.*
>
> D. *all UK and foreign* securities including Unit Trusts, loan stock and non crest securities*
>
> ** mainly in the European, American, and Australian markets via Stocktrade.*
> *…*

Non Permissible Assets Types

…

- *Insured Fund* *Unitised Insurance Funds.*
- *PAIF* *Property Authorised Investment Funds*
- *With-profits policy* *Open-ended with a life policy structure.*

…

Provided the above are satisfied, the Investment Committee will generally accept the asset onto the platform where the following criteria also apply:

1. *Where the Trustees of the SIPP determine the asset to be appropriate for retail investors...*

…

2. *The ownership and legal structure of the asset, asset provider and any custody arrangements are clearly defined and understood.*
3. *Where the asset is non FCA regulated, the home country has compensation arrangements similar to those of the Financial Ombudsman Service and Financial Services Compensation Scheme in the UK. The Compliance Function will provide further information if required.*
4. *Where there are no restrictions over the liquidity of the asset greater than 90 days.*
5. *Accurate pricing information is available from Financial Express either daily, or when the asset price is published.*

…

Exceptions

Assets…that do not meet the criteria in points 1 to 5 above, may also be considered for acceptance onto the Platform but will be subject to greater scrutiny prior to acceptance being granted.

The main points that will be subject to increased due diligence are:

1. *Understanding the ownership and legal structure of the asset, asset provider and any custody arrangements.*
2. *Understanding restrictions over the liquidity of the asset that may affect the suitability of the asset for certain wrappers.*

These assets may therefore be subject to delays in becoming available whilst information is gathered and considered.

Restricted or non-standard assets

Wrapper Availability

Novia reserves the right to restrict the wrappers within which Assets may be held. It will be for the Investment Committee to decide whether or not to apply restrictions on a case by case basis, but likely reasons for this are as follows:

All Wrappers

1. *Where accurate pricing and valuation for the asset is not readily available from Financial Express.*
2. *Where assets carry additional responsibilities, such as maintenance fees for Property Funds or part paid units/shares.*

3. *Where assets cannot be administered by Novia on a sustainable, compliant, commercially appropriate or efficient basis or the asset is unsuitable for a platform model.*

…

SIPP Only

5. *Where the Trustees of the SIPP determine the asset to be unsuitable for retail investors due to extreme complexity.*
6. *Where the asset concerned falls under the "taxable property" definition as set out in the UK Finance Act 2006 – "taxable property" consists of residential property and most tangible moveable assets and is subject to additional tax charges such as to make it unattractive.*
7. *Where the asset is an investment or deposit held as a member of a property investment Limited Liability Partnership.*

…

Non-permissible Assets

Novia will not accept assets onto the platform where the ownership and legal structure of the asset, asset provider and any custody arrangements are not clearly defined and understood.

…

Suitability of an investment for a client remains the responsibility of the adviser at all times – Novia makes no judgement on the suitability or otherwise of any investment on the platform for an adviser's client. We undertake due diligence on investments made available on the platform to ensure we can effectively administer client's holdings in an efficient and compliant manner – we make no judgement on the risk of any investment or whether it may be appropriate for any client.

All investments are made available to advisers and their clients subject to the Terms & Conditions (governing the relationship with clients) and Terms of Business (governing the relationship with advisers).

Many investments made available may have restrictions and specific characteristics that make them unsuitable for many clients. Whether such non-standard or alternative assets are suitable remain the responsibility of an adviser and are accessed by clients subject to the alternative assets section of the Terms & Conditions.

Advisers should always seek full information about all investments they wish to access via the platform from the investment manager concerned. Such information may include prospectuses, offering documents, report and accounts and any other material required to make a full judgement about the investment. Such information can be accessed via the investment manager's website.

…

Exceptional Circumstances

Novia reserves the right to request an appropriateness declaration for switch instructions relating to complex investments, or for instructions to purchase assets where there are no regulatory protections or custodial arrangements in place, even if these are received via the client's adviser.

In such circumstances, TCF demands that the investor is prompted to declare their knowledge of investment matters and the likelihood of them understanding the risks attaching to the asset they are purchasing.

The Investment Committee will, in deciding to accept an asset on to the platform, consider and decide whether or not an Appropriateness Declaration is required from clients who purchase the asset.
…
Wrapper Specific Principles…SIPP… No investment defined as "taxable property."… No unquoted shares… No assets where investment or deposit is held as a member of a property investment LLP."

We've been provided with a subsequent Novia Non-Standard Product Process document; this appears to have been signed off by various personnel at Novia in May 2015 and July 2015. It's noted, amongst other things, in this document that:

"To detail the process for when an adviser request's a Fund / Product which does not fall into our standard on-boarding process as set out in the Investment Principles, the document details the additional steps and due diligence necessary for reviewing non-standard product requests.
…
Timing and clarity is of upmost importance in this process, along with assuring Novia is aware of all relevant facts and key risks posed by these non-standard products which must be recorded for auditing purposes."

In a Section titled *"Process Controls"* it was noted, amongst other things, that a *"risk/issue"* was "*Client Eligibility for FCA COBS 9 relating to investor suitability"* and that the control for this was:

"Complex Investments are for sophisticated or professional investors only. We ensure that this it is clear to Advisers by keeping these funds on the Alternative asset list and not allowing them to be held within model portfolios."

The document references identifying the proposed holding, including details like issue, name, provider, relevant information and so on. And also documents that may be applicable including fund memorandums, prospectuses and brochures. The document also references a high level product review to check for red flag criteria and to complete a non-standard risk matrix for operational criteria. Amongst other things the following questions are noted:

- What is the funds ownership?
- Are there multiple contract streams?
- Does the fund give Novia Direct Property Ownership?
- Are there any service contracts that Novia would be responsible for?
- Is there clarity of cash flow and suitable security of client money?
- Is there any obvious unfair investor contract terms?

It's explained that the product along with an initial assessment will be taken to the next scheduled NIC meeting. The NIC then decides if they wish to proceed with the full review or reject based on operational feedback and recommendations. If the NIC wishes to proceed with the review, third party due diligence will commence.

Later it's explained that the investments team would submit a due diligence questionnaire provided by SIPP Investment Platform, a third party technical service, to the fund provider to complete, once NIC had agreed to proceed with the request. And that the SIPP Investment Platform due diligence forms part of Novia's review process.

The fund provider completes a questionnaire and provides any due diligence material including investment memorandums, prospectuses and applications forms and then SIPP Investment Platform would write a product report.

Whilst the third party due diligence is being conducted Novia's investments team uses the product literature and materials available to perform a detailed review. The review considers the type of investment, parties involved, regulation, how the product is administered and fund specific details. Operational points of focus include dealing and trade cycle, liquidity, pricing, transferability, reconciliations and fund specific details.

Any further information needed from the product provider would be obtained, And at any point in the review process further expertise may be needed.

Novia would issue a service level agreement ('SLA') to the product provider to review. This document would form part of the dialogue between the parties and once all terms had been agreed an executed copy would be signed by both the provider and the platform. Issues covered within the SLA would include:

- Dealing
- Settlement
- Reconciliation of Holdings
- Pricing
- Distributions
- Fund Events
- Stock Transfers and Re-Registration
- Product Schedule

Once all the steps stipulated in the document had been completed a full due diligence review including a SIPP report would be presented to the Heads of Operations and Investment Administration for an initial operations and compliance sign-off. And the final step would then be for the due diligence and product information to be provided to the NIC, so that the NIC can make a formal decision on acceptance or rejection.

Email discussions between Novia and Best International about the process

It's noted, amongst other things, in an email Novia sent to Best International on 12 May 2014 (and later resent following some amendments the following day) that:

- An addendum was required for all the offering invitations to specify there was no restriction of bonds to Greyfriars' discretionary advised clients.
- An addendum was also needed to cover the agreed dealing process and trade settlements on the Novia platform.
- Novia was providing a proposed monthly dealing timeline for investments into the bonds.

It's noted, amongst other things, in Best International's 13 May 2014 response to Novia that:

- It was attaching a revised dealing cycle.
- Novia wasn't being asked to be a warehouse. Best International would operate a warehouse that would buy and sell (by transfer process) any surplus or deficit to balance the portfolio.
- Bond instruments allowed for the Bond Company to redeem all or part of the bonds at its discretion.

We've also been provided with a couple of internal Novia emails that followed on from this, in which Novia discusses how to respond to Best International. It's noted, amongst other things, in Novia's internal discussions that:

- Novia was operating as an administrative platform for advisers.
- The trade cycle Novia had put together was purely to demonstrate the process around the loading and trading of the bonds.
- Novia understands the bond would not be issued at the point of the purchase instruction, but it needs a contract note that says assuming funds are transmitted the bond will be issued.
- Novia understands that Best International will operate the Warehouse, but Novia cannot utilise this method of trading and it would only be able to purchase new bonds, and would not redeem/transfer unless it was for 100% of the holding.
- If Best International wanted to utilise the warehousing facility then Novia would need a full understanding of how it would work, and how Best International intended to resolve an issue that Novia had previously discussed with it surrounding pricing due to accrued interest.
- The Bond Issuer had the right to force redeem all or part of the bond at their request, but this would be done at the nominee level and not a disaggregated client level.
- Redemption orders would be aggregated and submitted on the 27th monthly.
- Novia would require a letter confirming redemption approval by T+1.
- Settlement terms must be honoured regardless of whether Best International intended to redeem or transfer holdings (to another party).

Due diligence Novia undertook into the underlying bonds within P6 that Mr R's SIPP monies were invested into

We've been provided with example/draft copies of the invitation documents for all of the Corporate Bonds that Mr R's P6 monies were invested into. These are fairly lengthy documents, but there are a number of common themes in them which I refer to in more detail below.

I'm aware of other complaints we've received against Novia where consumers' monies were invested in P6 prior to Mr R's investment and I'm satisfied it's more likely than not that, while all investors might not have had their monies invested in identical Corporate Bonds or in the same proportions or in the same issue, the Corporate Bonds which Mr R's P6 monies were invested into were typical of the sort of Corporate Bonds that Greyfriars had been investing consumers' monies into in P6 for some time.

I'm satisfied that Novia obtained copies of draft or final promotional invitation documents for a number of the Corporate Bonds that Greyfriars was investing investors' P6 monies into and that this included all of the bonds that Mr R's monies were invested into. Some of the points below were referred to in all of the invitation documents I've seen for the bonds that Mr R's monies were invested into, others just in the majority:

- The Corporate Bonds were only available to individuals who have taken independent financial advice or who are Certified High-Net-Worth Investors, Certified Sophisticated Investors, Self-Certified Sophisticated Investors, Certified Restricted Investors and/or Professional Investors.
- Whilst the investment in the Corporate Bonds would represent a secured debt of the Issuer, there was no certainty or guarantee that the Issuer would be able to repay them.
- Investment in the Corporate Bonds was speculative.

- The Issuers' ability to meet their payment obligations to the holders of the Corporate Bonds would be wholly linked to, contingent on, highly sensitive to and dependent on the performance of Loan Note Instruments and/or the Loan facility.
- If the Operating Company didn't perform as expected then it may default on the payment of interest or capital repayment pursuant to the Loan Note Instrument and/or Loan facility. This in turn may result in the Issuer defaulting on the payment of interest or principal of the Corporate Bonds on the due dates.
- Whilst transferrable, there was no secondary market for the Corporate Bonds on which the Corporate Bonds could be bought and sold.
- There would be a redemption date for the Corporate Bond investments, for some bonds there would also be a second earlier specified redemption date (for example, The Resort Group Bond offered redemptions around the fifth and tenth year anniversaries).
- Outside of the redemption dates, requests to redeem would be at the absolute discretion of the directors.
- If a SIPP member's death was the sole reason for an early redemption request, the directors would use reasonable endeavours to secure redemption within 24 months of a request for redemption.
- Greyfriars was the registrar.
- There are significant risks associated with investing in the Corporate Bonds. And where risks specified in the prospectuses materialised investors could lose part or all of their investment.
- Something akin to *"Potential investors should…be aware that an investment in the Company involves a high degree of risk"* was stated.
- Sums equivalent to those being raised from the Corporate Bonds for the specified purpose weren't available to the Operating Companies from banks at an acceptable cost and/or the Operating Companies weren't able to obtain desirable funding from banks.
- The security offered for the Corporate Bonds wasn't a guarantee from a third-party or financial institution. If the Company and/or Operating Company, and/or any other members of the Group/associated firms that had granted security, were wound-up or liquidated and their assets/security were worth less than the value of the outstanding Corporate Bonds, Bondholders would not get back all, or possibly any, of the monies invested.
- The invitation document for the bonds had been approved as a financial promotion for UK publication by Greyfriars.
- Greyfriars was acting exclusively for the Company (the *"Company"* was the Bond Issuer) in connection with the issue of the Corporate Bonds and no one else, and would not regard any other person as its customer, or be responsible to any other person for providing the protections afforded to customers of Greyfriars, or for advising that any investment be made on the basis of the invitation and the instrument.

Additional details

From the documentation that's been provided to us, which I've carefully considered in its entirety, it's clear that Novia engaged in internal and external discussions about the investments, including seeking clarification on various points, before making investments available through the Novia SIPP.

In addition to the internal and external discussions, Novia also obtained reports from a third party about a number of Corporate Bonds that were held in P6, including all of the bonds Mr R's monies were invested in. Typically, it was explained towards the end of these reports that the contents of the reports were based on a combination of things including documents

like the Investment Memorandum for the bonds, questionnaires completed by employees of Greyfriars and/or the Best International Group of companies and legal opinions from a law firm that was engaged by the Bond Issuer and/or Operating Company.

Novia has provided us with the third party due diligence reports it obtained for all of the Corporate Bonds that Mr R's monies were invested into. I'm satisfied that the *type* of information contained within these reports, much of which was also provided for in the invitation documents, includes some of the *type* of information a reasonably competent SIPP provider would have been able to ascertain about the bonds in question at the pertinent time if undertaking sufficient due diligence into them.

Further, and as I've noted above, I'm satisfied that it's more likely than not that the Corporate Bonds which Mr R's P6 monies were invested into were typical of the type of Corporate Bonds that Greyfriars had been investing consumers' monies into in P6 for some time.

I've set out a brief summary of some of the points noted in the third party due diligence reports into all of the Corporate Bonds that Mr R's monies were invested into below:

Olmsted III Report

- Administrator & Consultant/Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.
- Issuer – Olmsted Properties III Ltd, owned by Olmstead US III LLC.
- Operator – Olmstead US III LLC.
- Registrar – Greyfriars.
- Development Manager – Olmsted Property Investments.
- Security trustee – Greyfriars Administration Services Ltd, directors of whom were Mr L and Greyfriars. And owners of whom were Mr L and Mr H.
- An initial fee of up to 15% could be paid to Best Asset Management Ltd.
- Investors subscribe for 6.75% secured redeemable bonds issued by Olmsted Properties III Ltd. The bonds were secured by a debenture over the assets of the Issuer, which is a subsidiary of Olmstead US III LLC.
- Bond proceeds were loaned by the Issuer to the Operator and were secured by a guarantee and security agreement over the assets of the Operator.
- There was an early redemption option after year three. Investors who remained invested for a full five-year term would receive a 3% bonus.
- The Operating Company would be purchasing single-family properties in the South-eastern United States and, after making energy efficiency upgrades and refurbishments, would let the properties.
- A Development Manager, Olmsted Property Investments LLC, would be acting as investment adviser and receive fee payments from the Operating Company.
- The Issuer, the Operator and the Development Manager were all part of The Palmetto Group.
- Experian credit checks revealed Olmsted Properties III Ltd as *"High Risk"*.
- The investment was in an unlisted bond and no protection was offered through the FSCS.
- If not a NMPI, this was a non-readily realisable security.
- The investment may be deemed to be a NMPI by the FCA.
- The underlying assets are residential property, which is illiquid and may limit an investor's ability to redeem their investment in a timely manner.
- There was no secondary market for the investment.
- The bond was illiquid for at least three years from its issue.
- The entire investment was at risk.

- *"We suggest that SIPP/SSAS operators should:*

    1. *satisfy themselves that they are content to hold such a difficult to value investment in their pension*

    2. *satisfy themselves that they are content to hold such an illiquid investment in their pension*

    3. *obtain an acknowledgement from scheme members of the high risk, illiquid nature of this investment.*

    4. *ensure that where accepted for investment this should be via an FCA authorised adviser, or ensure that the member meets one of the exemptions set out in COBS 4.7.7R "*

Resort Group Report

- Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.
- Issuer – TRG Bonds Limited, directors of whom were Mr L and Best Asset Management Ltd. The owner of the Issuer was The Resort Group Plc.
- Borrower – The Resort Group Plc.
- Registrar – Greyfriars.
- There was an initial distributor/adviser charge/commission of 7%.
- Investors subscribed for 7% secured corporate bonds issued by TRG Bonds Limited.
- The bonds would be secured by a debenture on the assets of the Issuer, a guarantee provided by Tortuga Beach Resort S.A. (a subsidiary of the Borrower) and ultimately 110% security on real assets (the Tortuga Beach Resort Property).
- Internet searches on some of the parties involved with the bond revealed numerous adverse articles and comments on The Resort Group Plc's investments in Cape Verde, including but not limited to a Facebook community page titled *"Action Against The Resort Group".*
- Experian credit checks revealed TRG Bonds Limited as *"High Risk".*
- As the investment is an unlisted bond, no protection was offered through the FSCS.
- As a non-readily realisable security, direct offer promotions to non-advised retail clients are prohibited unless they meet one of the exemptions in COBS 4.7.7R.
- The investment may be considered an NMPI by the FCA.
- The underlying assets will be property, which is illiquid and may limit the Issuer's ability to meet any redemption requests.
- There is no secondary market for the investment.
- The bond is illiquid for at least five years.
- The entire investment is at risk.
- *"We suggest that SIPP/SSAS operators should:*

    1. *satisfy themselves that they are content to hold such a difficult to value investment in their pension*

    …

    3. *satisfy themselves that they are content to hold such an illiquid investment in their pension*

    4. *obtain an acknowledgement from scheme members of the high risk, illiquid nature of this investment.*

    …

    6. *ensure that where accepted for investment this should be via an FCA authorised*

adviser, or ensure that the member meets one of the exemptions set out in COBS 4.7.7R "

ABC VI Report

- Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.
- Issuer – ABC Alpha Business Centres VI UK Ltd.
- Borrower – Alpha Business Centres LLC incorporated in Dubai and its parent The Property Store.
- Registrar – Greyfriars.
- Investors subscribe for 8.11% corporate bonds issued by ABC Alpha Business Centres VI UK Ltd. The bonds are secured by a debenture over the assets of the Issuer, who will lend the funds to its parent, Alpha Business Centres LLC, which is incorporated in the UAE. The bond proceeds will be used to expand its network of serviced business centres.
- The investment was a 4-year investment with the option to exit at the end of year 3.
- Experian credit checks revealed ABC Alpha Business Centres VI UK Ltd as *"High Risk".*
- As the investment is an unlisted bond, no protection was offered through the FSCS.
- If not a NMPI, the investment is a non-readily realisable security.
- The underlying assets are commercial property, which is illiquid and may limit an investor's ability to redeem their investment or the Issuer's ability to pay maturity proceeds in a timely manner.
- There is no secondary market for this investment.
- The entire investment is at risk.
- *"We suggest that SIPP/SSAS operators should:*

    1. *satisfy themselves that they are content to hold such a difficult to value investment in their pension*

    …

    3. *satisfy themselves that they are content to hold such an illiquid investment in their pension*

    4. *obtain an acknowledgement from scheme members of the high risk, illiquid nature of this investment.*

    …

    7. *ensure that where accepted for investment this should be via an FCA authorised adviser, or ensure that the member meets one of the exemptions set out in COBS 4.7.7R "*

Oasis Atlantico Report

- Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.
- Issuer – Oasis Atlantico Bonds Limited, the owner of which was Oasis Atlantico Portugal SGPS S.A.
- Borrower - Oasis Atlantico Portugal SGPS S.A.
- Registrar – Greyfriars.
- Investors subscribed for secured corporate bonds issued by Oasis Atlantico Bonds Limited. The bonds would pay fixed and variable interest. The fixed interest element was 3% a year and, after 31 December 2015, the variable interest element was up to 13% a year dependent on, and linked to, the performance/gross operating profit of the group. Until 31 December 2015 the variable rate was fixed at 5%.

- Oasis Atlantico Bonds Limited would use the funds raised to lend to its parent Oasis Atlantico Portugal SGPS S.A, who in turn would use the funds to refurbish two existing hotels in the Cape Verde Islands.
- The bonds would be secured by a debenture on the assets of the Issuer, a guarantee provided by Oasis Atlantico Portugal SGPS S.A and ultimately (before funds were lent) 110% security on real assets.
- The bonds matured after 30 years but they were redeemable on request subject to a redemption fee if redemption was requested within the first four years.
- There was an initial distributor/adviser charge/commission of up to 13%.
- Experian credit checks revealed Oasis Atlantico Bonds Limited as *"High Risk".*
- As the investment is an unlisted bond, no protection was offered through the FSCS.
- The investment was a non-readily realisable security.
- The underlying assets will be property, which is illiquid and may limit the Issuer's ability to meet any redemption requests in a timely manner.
- There was no secondary market for the investment.
- The entire investment is at risk.
- *"We suggest that SIPP/SSAS operators should:*

    2. *satisfy themselves that they are content to hold such a difficult to value investment in their pension*

    …

    4. *satisfy themselves that they are content to hold such an illiquid investment in their pension*
    5. *obtain an acknowledgement from scheme members of the high risk, illiquid nature of this investment.*
    6. *ensure that where accepted for investment this should be via an FCA authorised adviser, or ensure that the member meets one of the exemptions set out in COBS 4.7.7R "*

<u>Lanner Car Parks Report:</u>

- Product Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.
- Issuer – Lanner Car Park Bonds Limited, directors of whom were Mr L and Best Asset Management Ltd. The owner of the Issuer was S.E. Contractors Limited.
- Operating Company – S.E. Contractors Limited.
- Registrar – Greyfriars.
- The Bond Issuer was looking to raise a maximum of £3.7 million through a 5-year bond issue targeting a minimum annual return of 6%. The Bond Issuer would lend funds to the Operating Company to purchase *"Car Park Assets"*. These might include leasehold interest in existing car parks, units in niche investment funds that contain car park investments, land with car park development opportunities and interests in commercial property which contain car parking facilities.
- There was an initial distributor/adviser charge/commission of up to 13%.
- A Security Trustee would have a debenture in place against the Bond Issuer as well as a guarantee agreement with the Operating Company.
- The underlying assets are commercial property, which is illiquid and may limit an investor's ability to redeem their investment in a timely manner.
- Experian credit checks revealed Lanner Car Park Bonds Limited as *"High Risk"* and S.E. Contractors Limited as *"Maximum Risk"*.
- As the investment is an unlisted bond, no protection was offered through the FSCS.
- If not a NMPI, this was likely to be a non-readily realisable security.

- Underlying assets were likely to be very illiquid and redemption, if possible, was not likely to be carried out expediently.
- *"We suggest that SIPP/SSAS operators should:*

    1. *satisfy themselves that they are content to hold such a difficult to value investment in their pension*

    …

    3. *satisfy themselves that they are content to hold such an illiquid investment in their pension*

    4. *obtain an acknowledgement from scheme members of the high risk, illiquid nature of this investment.*

    5. *ensure that where accepted for investment this should be via an FCA authorised adviser, or ensure that the member meets one of the exemptions set out in COBS 4.7.7R "*

<u>Coefficent Care Report</u>

- Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.
- Issuer – Coefficent Care Bonds Limited, directors of whom were Best Asset Management Ltd and Mr L. Coefficent Care Bonds Limited was owned by Woodlands Care Group Ltd.
- Borrower – Woodlands Care Group Ltd.
- Registrar – Greyfriars.
- Investors subscribed for 5% secured redeemable bonds issued by Coefficent Care Bonds Limited. Coefficent Care Bonds Limited would use the funds raised to lend to its parent Woodlands Care Group Limited, who in turn would develop a new 55-bedroom care home in Bolton. The bonds were secured by a debenture over the Issuer's assets and a charge over the land.
- It was intended that the bonds would be redeemed after five years but investors would have the option of early redemption after three years, investors who remained invested for the whole 5-year term would receive a 5% bonus payment on maturity.
- Experian credit checks revealed Coefficent Care Bonds Limited as *"High Risk"*.
- The investment was in an unlisted bond and no protection was offered through the FSCS.
- The investment was a non-readily realisable security.
- The investment may be deemed to be a NMPI by the FCA.
- The underlying assets will be property, which is illiquid and may limit the Issuer's ability to meet any redemption requests, especially if third party funding isn't sourced.
- There was no secondary market for the investment.
- The bond was illiquid for at least three years from its issue.
- The entire investment was at risk.
- *"We suggest that SIPP/SSAS operators should:*

    1. *satisfy themselves that they are content to hold such a difficult to value investment in their pension*

    …

    3. *obtain an acknowledgement from scheme members of the high risk, illiquid nature of this investment*

    …

5. *ensure that where accepted for investment this should be via an FCA authorised adviser, or ensure that the member meets one of the exemptions set out in COBS 4.7.7R."*

Summary

Having carefully considered all of the evidence that's been made available to us, I'm satisfied that Novia undertook some checks on the underlying bonds it was adding to its platform.

I do think it was good practice for Novia to undertake due diligence into each of the Corporate Bonds that Greyfriars was looking to invest Novia's members' monies into as part of the P6 proposition. But I don't think *only* undertaking due diligence on the underlying investments would be adequate or sufficient. I say that because I'm satisfied that Novia was aware, or ought reasonably to have been aware, that the bonds it was agreeing to be added to its platform were assets that would be held by some investors as part and parcel of their investment into Greyfriars' P6 portfolio. And that it was the P6 proposition, as opposed to the specific underlying individual bonds, that was being promoted and sold to investors.

In such circumstances I think that, in addition to undertaking checks on the individual unlisted and potentially highly illiquid bonds that Greyfriars was seeking to purchase with Novia members' monies, Novia should also have carefully considered the overall P6 proposition. And if Novia didn't look at the P6 investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure, it wouldn't in my view be fair or reasonable to say Novia had exercised due skill, care and diligence – or treated its customers fairly – by permitting and/or facilitating its SIPP members to invest with Greyfriars into P6.

Novia has provided some evidence of due diligence it undertook into the P6 proposition and premised on the evidence that is available, I'm not satisfied that Novia undertook sufficient due diligence on the P6 investment *before* it permitted Mr R's monies to be invested with Greyfriars. As such, in my view, Novia didn't comply with its regulatory obligations and good industry practice, and it didn't act fairly and reasonably in its dealings with Mr R, by not undertaking sufficient due diligence on the P6 investment *before* it permitted Mr R's monies to be invested with Greyfriars.

Further, as I explain in more detail below, based on what it knew, or ought to have known, had it undertaken sufficient due diligence, I think Novia failed to draw a reasonable conclusion before it accepted Mr R's business about whether it should continue to permit and/or facilitate consumers' investments with Greyfriars in P6 through Novia SIPPs.

If Novia had completed sufficient due diligence on P6, what ought it reasonably to have discovered?

Greyfriars' website doesn't exist in the same format(s) as existed between 2014 and 2016. However, some pages from Greyfriars' website have been archived and are accessible through an internet archive. I think the contents of Greyfriars' website from around the date of Mr R's investment is helpful in building up a picture of what Greyfriars was saying about the P6 investment at that time. And I also think they help to illustrate the *type* of things a reasonably competent SIPP provider, undertaking adequate due diligence at the relevant time, should have been able to discover about how Greyfriars was marketing P6.

An archived page from Greyfriars' website from November 2015 states, amongst other things, that:

"…handling funds of £10,000 upwards, Greyfriars Discretionary Fund Management (DFM) manages five risk-graded portfolios – moving money between equities, property, fixed interest securities and cash – to match a preferred risk profile and, of course, secure the very best returns.

Alongside Open-Ended Investment Companies (OEICs), Greyfriars increasingly looks at Investment Trusts and Exchange Traded Funds (ETFs) to shape portfolios. We host all portfolios on the Novia Platform, allowing us to be more responsive and dynamic in our approach.

We have also developed a passive offering for clients and launched Portfolio Six, a unique product ***delivering a secure, low-risk investment with high level of income****.* (bold my emphasis)*."*

Another archived page from Greyfriars' website, again from November 2015, contains more detailed information about P6 and, amongst other things, states that:

"Placing capital in mainstream investments exposes investors and savers to the vagaries of the economic cycle. However, Non-Correlated Investments are isolated from such cycles, which means investors sidestep the risk, and instead access niche asset classes and enjoy the benefits of diversification.

PORTFOLIO SIX

With interest rates at historic lows, it's impossible to generate annual returns of over 2% without taking some investment risk.

Generating annual returns of over 5% requires investment into the equity market, which can be volatile – a shift in the market can severely reduce the fund's value, which in turn impacts the level of withdrawal.

Our solution is Portfolio Six, a secure investment with low risk and a high level of income.

Available on the Novia Platform, Portfolio Six is a unique portfolio management service introduced as a 'first in the market place' by Greyfriars Asset Management LLP and Best International.

- *Portfolio Six comprises non-correlated investments that are less volatile because they do not track the market.*
- *It provides a monthly dealing opportunity, enabling investors to inject cash into the managed portfolio, which is sustainable over the medium to long term.*
- *The underlying investments are traded monthly on the platform – allowing investors to exit completely or in part – to produce a one-off supplement to regular income, for example.*
- *Although annual income returns vary depending on the underlying investments selected, Portfolio Six distributions are in the region of 6% per year (net of charges), providing a higher return compared to other market opportunities, and are also sustainable over a longer term.*
- *The underlying investments are usually unquoted Corporate Bonds, secured on real assets, providing security and high-income yield.*
- *Through the monthly dealing facility on the Novia Platform,* ***the investments qualify as 'standard' investments as referenced by the Financial***

> ***Conduct Authority Policy Statement 14/12.*** *They are therefore available through many Self-Invested Personal Pensions, including the Novia option.* (bold my emphasis)*."*

In a Citywire article dated 25 June 2015, a representative of Greyfriars had also said the following about P6:

> *"We launched Portfolio Six in April of last year, a full managed portfolio of non-correlated investments using varied asset classes with the objective of generating all-round returns to investors. It allows investors to gain exposure to both non-correlated and niche investment propositions.*
>
> *Portfolio Six is a rapidly growing part of the business. £5.1 million came in this month, taking total assets under management of the portfolio to £20 million. What makes Portfolio Six different are the mini bonds it holds. Many of these are provided by Best International Group and they are bonds that help raise money for entrepreneurs and smaller businesses and generate income for investors."*

We've also been provided with a Greyfriars document titled *"Fully Managed Discretionary Portfolio"*. It's noted, amongst other things, in this document that:

- Greyfriars was releasing a statement further to the FCA's guidance on Standard Assets for the purpose of calculating capital adequacy liquidity requirements for companies who provide pension administration services.
- The statement was being provided to help SIPP providers plan for their capital adequacy requirements when considering the implications of the FCA paper PS14/12, and also for IFAs when considering a recommendation to use the Greyfriars DFM service/P6.
- The Greyfriars DFM service, available via the Novia platform, would only allocate investments, including in P6, to Standard Assets as defined by the FCA paper PS14/12.
- IFAs and SIPP providers should record all assets held as part of the Greyfriars DFM services as Standard Investments.
- There had been some confusion about the assets held within P6, in particular between the definition of Non-Correlated Assets, which P6 prioritises, and Non-Standard or Alternative Assets.
- Non-Correlated doesn't have the same meaning as Non-Standard, it's possible to have a Standard Investment that is also a Non-Correlated Investment and the products held in P6 are examples of this.
- Greyfriars defined Non-Correlated Assets as investments whose likely performance is assessed based on the expertise of the managers and the strength of the business case for an investment, rather than an analysis of the underlying industry or macro-economic factors.
- In selecting products suitable for P6, the following is required:
    - The product must not be regarded as an Unregulated Collective Investment Scheme.
    - The product must not be a Non-Mainstream Pooled Investment.
    - The product must be accepted by the Novia Platform.
    - The product must be a Standard Investment as defined by the FCA in PS14/12.
- All products held within Portfolio Six satisfy these criteria.
- Due to the nature of Non-Correlated Investments, and also the criteria set by Novia, the assets in P6 would generally have the expectation of 30-days' notice for redemption or liquidity.

- The Corporate Bonds that are acquired by Novia as part of P6 might not be listed on a recognised exchange. However, it's a requirement of Novia that any bond can be traded within the 30-day dealing cycle for P6.
- A number of Corporate Bonds made available directly to the public didn't have a 30-day (or less) redemption option. However where these products are held by Novia there is a specific trading and redemption contract allowing this. For this reason, these bonds, accessed through Novia, fall within the definition of Standard Investments provided by the FCA.
- All assets held via the Novia platform had a valuation at which the assets would be traded that month. This reflects the nature of a Standard Asset as reflected by the recent FCA guidance, and also allows SIPP providers to respond to the requirement to address valuations as expressed by the FCA Chief Executive in his open letter at the end of the most recent thematic review.

If Novia had completed sufficient due diligence on P6 *before* it accepted Mr R's business I'm satisfied it ought reasonably to have discovered that:

- Greyfriars appeared to be presenting P6 as an investment that was low risk, would provide high levels of income, was secure and offered a high level of liquidity with P6 being tradable monthly.
- Greyfriars was investing P6 investors' monies in speculative high risk and potentially highly illiquid unlisted Corporate Bonds.
- Bonds being purchased promised high returns; at the time of Mr R's initial investment the Bank of England base rate was 0.5%.
- There was no secondary market for the Corporate Bonds.
- Bond Issuers were typically recently incorporated businesses that were owned wholly, or largely, by an Operating Company, specifically for the purpose of raising finance via the issue of the Corporate Bonds.
- The companies issuing the bonds had high risk credit ratings.
- Greyfriars' parent company was involved in, at the very least, a significant proportion of the unlisted Corporate Bonds Greyfriars was investing P6 investors' monies into. And it was apparent from invitation documents that, in at least some instances, Best International may receive a commission and/or administration fee in respect of bonds that were issued.
- There were provider and/or initial distributor/adviser charges/commissions payable from a number of the P6 bonds and no suggestion consumers were being made aware of this.
- The invitation documents for some of the Corporate Bonds Mr R's monies were invested in had been approved as a financial promotion for UK publication by Greyfriars and Greyfriars had agreed to act exclusively for the Bond Issuer *"in connection with the issue of the Corporate Bonds and no one else, and would not regard any other person as its customer or be responsible to any other person for providing the protections afforded to customers of Greyfriars or for advising that any investment be made on the basis of the Invitation and the Instrument."*
- In addition to investing consumers' P6 monies into the bond Greyfriars was also acting as registrar for the bonds being issued.

If Novia had completed sufficient due diligence on P6, what ought it reasonably to have concluded?

In my view there were things about the way in which P6 was being marketed by Greyfriars which ought to have given Novia significant cause for concern, and to have led it to conclude that there was a significant risk that potential investors were being misled.

P6 didn't have a long proven track record for investors, so Novia couldn't be certain that the investment operated as claimed. And Greyfriars appeared to be presenting the P6 investment as one that was low risk, would provide high levels of income, was secure and offered a high level of liquidity being tradable monthly. This was despite the fact that the underlying unlisted Corporate Bond investments which were being made with P6 investors' monies were noted as being high risk in all of the invitation documents I've seen, all of which also highlighted the potential for partial or complete loss of sums invested. It also ought to have been clear and obvious that the unlisted Corporate Bond investments were also potentially highly illiquid.

I think, in light of this, and had it undertaken sufficient due diligence, Novia should have been concerned that consumers may have been misled or didn't properly understand the investment they intended to make. Consumers could easily have been given the impression, from statements akin to those that Greyfriars was making on its website, that they were assured of high returns with little or no risk and would easily be able to sell their investment when they wished to. Such an impression was clearly misleading.

Further, Greyfriars was stating to investors that P6 investments were Standard Assets as defined by the FCA in PS14/12. However, Novia says it didn't consider any of the P6 investments as FCA Standard Assets and that it classified them all as Non-Standard Investments from outset.

I can appreciate why Novia reached that conclusion at outset. I think it ought to have been very clear at the time from the promotional documents for the Corporate Bonds that they weren't investments that were readily realisable within 30 days *whenever required*. Further, mindful of the fact that Greyfriars was predominantly, if not entirely, investing Novia's members' P6 investment monies in speculative high risk and potentially highly illiquid unlisted Corporate Bonds (as I'm satisfied was the case), I think it ought to have been very clear and obvious at the time that investors' overall P6 investments were unlikely to be readily realisable within 30 days *whenever required*.

I've also noted that the third party firm that provided reports to Novia considered the bonds Mr R's monies were invested into to be non-readily realisable securities.

I recognise that there have been periods when investors have been able to disinvest from P6. I don't think that's surprising; potentially highly illiquid investments, or investments in portfolios consisting of potentially highly illiquid investments, can still enjoy periods of liquidity. But that doesn't mean such investments are readily realisable within 30 days *whenever required*, or that it would be fair or reasonable for Novia to have assumed that this was the case given what it ought to have known about the P6 investment had it undertaken adequate due diligence.

From the evidence I've seen I think the information Greyfriars was publishing *before* Mr R's monies were invested in P6, including marketing material available through its website, gave rise to a significant risk that potential investors were being misled. This is a clear point of concern, which I think Novia ought reasonably to have identified *before* it accepted Mr R's business.

In my opinion, the issues I've identified above should have, when considered objectively, put Novia on notice that there was a significant risk of consumer detriment. And I'm satisfied that Novia should not have been accepting the P6 investments in its SIPPs *before* it accepted Mr R's business. I'm in agreement with Novia's statement to this Service that it accepts "*the due diligence which Novia conducted at the time did not meet the requirements".*

In my opinion Novia ought to have concluded there was an obvious risk of consumer

detriment here. All in all, I am satisfied that Novia ought to have had significant concerns about the P6 investment from very early on and certainly before it accepted Mr R's business. And I think such concerns ought to have been a red flag for Novia when it was considering whether to continue accepting P6 investments into its SIPPs. Such concerns emphasise the importance of sufficient due diligence being undertaken initially and on an ongoing basis.

Had Novia done what it ought to have done, and drawn reasonable conclusions from what it knew or ought to have known, I think that it ought to have concluded from very early on, and certainly before it accepted Mr R's business, that there was a significant risk of consumer detriment if it continued accepting the P6 investments into its SIPPs and that the P6 investments weren't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think Novia undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the P6 investment. I don't think Novia met its regulatory obligations and good industry practice, and in permitting Mr R to invest with Greyfriars in the P6 investments it allowed Mr R's funds to be put at significant risk.

To be clear, I don't say Novia should have identified all issues which later came to light. I only say that, based on the information that was available at the relevant time had it undertaken sufficient due diligence, Novia should have identified that there was a significant risk that potential investors were being misled. I'm satisfied, on a fair and reasonable basis, that a significant risk of consumer detriment ought to have been apparent from the information available to Novia from very early on and certainly before it accepted Mr R's business. And I do think that appropriate checks would have revealed issues which were, in and of themselves, sufficient basis for Novia to have declined to accept the P6 investments in its SIPPs *before* it accepted Mr R's business. And it's the failure of Novia's due diligence that's resulted in Mr R being treated unfairly and unreasonably.

There's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. I accept that Novia wasn't expected to, nor was it able to, give advice to Mr R on the suitability of the SIPP and/or P6 investment for him personally. I'm not making a finding that Novia should have assessed the suitability of the P6 investment for Mr R. I accept Novia had no obligation to give advice to Mr R, or to ensure otherwise the suitability of an investment for him.

And I'm also not saying that Novia shouldn't have allowed the P6 investments into Mr R's SIPP because they were high risk. My finding isn't that Novia should have concluded that Mr R wasn't a candidate for high risk investments or that an investment in P6 was unsuitable for Mr R. Instead, it's my opinion that from very early on, and certainly before it accepted Mr R's business, there were things Novia knew or ought to have known about the P6 investment and how it was being marketed which ought to have led Novia to conclude it wouldn't be consistent with its regulatory obligations or good practice to continue to allow P6 investments into its SIPPs. And that Novia failed to act with due skill, organise and control its affairs responsibly, or treat Mr R fairly by accepting the P6 investments into his SIPP.

Based on the evidence available, I don't think Novia should have permitted Mr R to invest into the P6 investments. In my opinion, it ought to have concluded that it would not be consistent with its obligations to do so. To my mind, Novia didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr R to be put at significant risk of detriment as a result.

Acting fairly and reasonably to investors (including Mr R), Novia should have concluded – and prior to it accepting Mr R's business – that it wouldn't continue to permit the P6 investments to be held in its SIPPs *at all*.

As I understand it from P6 complaints we've received, Novia was one of a very small number of providers who were permitting P6 to be held within their SIPPs. I say that mindful of the fact that in other complaints I've seen involving P6 (such as published decision DRN-4653321 – where Novia wasn't the SIPP provider) then the P6 investment was still being effected through a Novia wrapper that was held within the other provider's SIPP. Which appears to be consistent with what Greyfriars was stating in material it was publishing about P6 being available *"on the Novia platform".*

I've noted the contents of Furness Financial Management's 4 March 2015 letter but I'm also satisfied that it was a second firm of advisers, Chadkirk, who brought about the transactions this complaint concerns. Further, given how soon after the transfer to Novia Mr R's P6 investments were made, and given that other monies in Mr R's Novia SIPPs were left in cash following the transfer, I think it's more likely than not a key reason Mr R's pension monies were transferred to Novia specifically was so as to invest in P6. And if Novia had decided not to permit the P6 investments to be held in its SIPPs before it accepted Mr R's business, I think it's more likely than not that Mr R's pension monies wouldn't then have been transferred to Novia. Further, that Mr R wouldn't then have suffered any losses he's suffered as a result of transferring to Novia and investing into the P6 investments.

For the reasons given above, Novia shouldn't have permitted Mr R to invest with Greyfriars into the P6 investments. Novia didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr R fairly, by permitting his SIPP monies to be invested in the P6 investments. And to my mind, Novia didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr R to be put at significant risk of detriment as a result.

Novia's due diligence on Chadkirk

Novia has explained to us that it only accepts instructions from FCA authorised advisory firms. And Novia has said that checks it undertook before it accepted business from Chadkirk would, amongst other things, have included:

- Checking that Chadkirk was regulated and authorised by the FCA to give financial advice.
- Checking the FCA Register entry for the principals of the business and the expected advisers.
- Entering into a Business Agreement with Chadkirk.

Novia has explained that it hasn't retained a record of some of the checks it did. However, Novia now seeks to rely, in part, on its submissions about such checks to evidence some of the due diligence it undertook. In my opinion, if such checks were the way Novia was intending to evidence some of the due diligence it undertook either before accepting business from Chadkirk or before permitting Chadkirk-introduced consumers to invest with Greyfriars in the P6 investments then, in order to comply with its regulatory obligations, in particular Principle 2, (to conduct its business with due skill, care and diligence), and Principle 3, (to take reasonable care to organise and control its affairs responsibly and effectively), Novia should have had processes in place to ensure that it was able to evidence this aspect of the due diligence it says it carried out.

Novia had a duty to conduct due diligence and give thought to whether to accept introductions from Chadkirk. That's consistent with the Principles and the regulators' publications as set out earlier in this decision.

I accept Chadkirk was authorised by the FCA when it introduced Mr R to Novia. But this doesn't necessarily mean that Novia did all the checks it needed to do. However, given what I've said elsewhere in this decision about Novia's due diligence on Greyfriars and the P6 investment, I don't think it's necessary for me to also consider Novia's due diligence on Chadkirk. I'm satisfied that Novia should have declined to accept the P6 investments in its SIPPs *before* it first accepted Mr R's business from Chadkirk and I'm satisfied that Novia didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr R fairly, by permitting Mr R to invest in P6 investments through the Novia SIPP. Because of this, it's not necessary for me to go on to consider the due diligence Novia carried out on Chadkirk before accepting Mr R's business from it and whether this was sufficient to meet its regulatory obligations. And I make no findings about this issue.

Was it fair and reasonable in all the circumstances for Novia to proceed with Mr R's business?

For the reasons given above, I think Novia shouldn't have been allowing its members to invest their SIPP monies with Greyfriars in the P6 investments by the time it received Mr R's business. So things shouldn't have got beyond that.

Further, in my view, just having Mr R accept terms and conditions wasn't an effective way for Novia to meet its regulatory obligations to treat him fairly, given the concerns Novia ought to have had about the P6 investment.

Novia knew that Mr R's SIPP Terms and Conditions were intended to acknowledge, amongst other things, his awareness of some of the risks involved with investing and to indemnify Novia against losses that arose from acting on his, or his adviser's/DFM's, instructions. And, in my opinion, relying on the contents of such terms when Novia knew, or ought to have known, that investing with Greyfriars in P6, would put investors at significant risk of detriment, wasn't the fair and reasonable thing to do. Having identified the risks I've mentioned above, it's my view that the fair and reasonable thing for Novia to do would have been to decline to permit Mr R to invest in the P6 investments.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the SIPP Terms and Conditions meant that Novia could ignore its duty to treat Mr R fairly. I'm satisfied that indemnities contained within the contractual documents don't absolve, nor do they attempt to absolve, Novia of its regulatory obligations to treat customers fairly when deciding whether to accept or reject investments or business.

So, I'm satisfied that Novia should have declined to accept the P6 investments in its SIPPs *before* it first accepted Mr R's business from Chadkirk and that the opportunity for Novia to execute investment instructions to invest Mr R's monies in P6 investments, or proceed in reliance on indemnities and/or disclaimers, shouldn't have arisen at all. I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for Novia to permit Mr R to invest his Novia SIPP monies with Greyfriars in the P6 investments.

Is it fair to ask Novia to pay Mr R compensation in the circumstances?

<u>The involvement of other parties</u>

In this decision I'm considering Mr R's complaint about Novia. However, I accept that other parties were involved in the transactions complained about – including Furness Financial Management, Chadkirk and Greyfriars.

I also accept that Mr R pursued a complaint against Furness Financial Management with the FSCS. The FSCS upheld Mr R's complaint and paid him some compensation. Following this the FSCS provided Mr R with a reassignment of rights.

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 Novia accountable for its own failure to comply with its regulatory obligations, good industry practice and to treat Mr R fairly.

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

I accept that other parties, including Furness Financial Management, Chadkirk and Greyfriars, might have some responsibility for initiating the course of action that led to Mr R's loss. However, I'm satisfied that it's also the case that if Novia had complied with its own distinct regulatory obligations as a SIPP operator, the arrangement for Mr R wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

I want to make clear that I've taken everything Novia has said into consideration. And it's my view that it's appropriate in the circumstances for Novia to compensate Mr R to the full extent of the financial losses he's suffered due to Novia's failings. And, having carefully considered everything, I don't think that it would be appropriate or fair in the circumstances to reduce the compensation amount that Novia's liable to pay to Mr R.

I'm not making a finding that Novia should have assessed the suitability of the SIPP or investing with Greyfriars in the P6 holdings for Mr R. I accept that Novia wasn't obligated to give advice to Mr R, or otherwise to ensure the suitability of the pension wrapper, investment manager or investments for him. Rather, I'm looking at Novia's separate role and responsibilities – and for the reasons I've explained, I think it failed in meeting those responsibilities.

Mr R taking responsibility for his own investment decisions

In reaching my conclusions in this case I've thought about section 5(2)(d) of the FSMA (now section 1C). This section requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the general principle that consumers should take responsibility for their own investment decisions.

I've considered this point carefully and I'm satisfied that it wouldn't be fair or reasonable to say Mr R's actions mean he should bear the loss arising as a result of Novia's failings.

As I've made clear, Novia needed to carry out appropriate initial and ongoing due diligence on Greyfriars and the P6 investment and reach the right conclusions. I think it failed to do this. And just having SIPP Terms and Conditions in operation wasn't an effective way of Novia meeting its obligations, or of escaping liability where it failed to meet its obligations. In my view, if Novia had acted in accordance with its regulatory obligations and good industry

practice it shouldn't have permitted Mr R to invest his Novia SIPP monies in the P6 investments. That should have been the end of the matter – if those things had happened, I'm satisfied the arrangement for Mr R wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

Chadkirk (who I'm satisfied introduced Mr R's business to Novia) was a regulated firm with the necessary permissions to advise Mr R on his pension provisions. Greyfriars was a regulated firm with the necessary permissions to invest Mr R's monies and Mr R also then used the services of a regulated personal pension provider in Novia. I'm satisfied that Mr R was a retail client and that in his dealings with these parties, Mr R trusted each of them to act in his best interests. And I don't think it's fair or reasonable for Mr R to bear some portion of the loss arising as a result of Novia's failings.

So, overall, I'm satisfied that in the circumstances, for all the reasons given, Novia should compensate Mr R for the loss he's suffered. And I don't think it's fair or reasonable that Mr R should suffer the loss because he ultimately, through his adviser, instructed the transactions be effected.

Had Novia declined to accept the P6 investments in its SIPPs *before* it first accepted Mr R's business, would the transactions complained about still have been effected elsewhere?

On balance, as I've explained above, I think it's more likely than not that a key reason Mr R's pension monies were transferred to Novia specifically by Chadkirk was so as to invest in P6.

Novia might say that if it hadn't permitted the P6 investment in its SIPPs, that the transfer and investment would still have been effected with a different SIPP provider. I don't think it's fair and reasonable to say that Novia shouldn't compensate Mr R for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found Novia did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have permitted and/or facilitated the P6 investment into its SIPPs.

In the circumstances, I'm satisfied that if, and *before* it received Mr R's business, Novia hadn't continued to permit its members to invest into the P6 investments, Mr R's monies wouldn't still have been transferred into the Novia SIPP or been invested into P6.

In Adams v Options SIPP, the judge found that Mr Adams would have proceeded with the transaction regardless. HHJ Dight says (at paragraph 32):

> *"The Claimant knew that it was a high risk and speculative investment but nevertheless decided to proceed with it, because of the cash incentive."*

But, in this case, I'm not satisfied that Mr R proceeded knowing that the investments he was making were high risk and speculative, and that he was determined to move forward with the transactions in order to take advantage of a cash incentive.

Mr R says that he was told that his monies would be invested in a way that was *"safe and secure and would make very good returns."* Further, that there would be minimal risk involved and that the investment would help his pension to grow significantly. On balance, I'm not satisfied that Mr R knew he was making high risk investments.

I've also not seen any evidence to show Mr R was paid a cash incentive. It therefore cannot be said he was incentivised to enter into the transaction. And, on balance, I'm satisfied that Mr R, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this case is very different from that

of Mr Adams. And having carefully considered all of the circumstances, I'm satisfied that if Novia had decided not to permit its members to invest with Greyfriars into the P6 investments *before* it accepted Mr R's business, the transactions this complaint concerns wouldn't still have gone ahead.

Summary

So, overall, I do think it's fair and reasonable to direct Novia to pay Mr R compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to Mr R's loss, I consider that Novia failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining to continue to permit the P6 investments to be held in its SIPPs when it had the opportunity to do so.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr R. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against Novia that requires it to compensate Mr R for the full measure of his loss. Novia continued to permit its members to invest into the P6 investments and, but for Novia's failings, I think it's more likely than not that Mr R's pension monies wouldn't have been transferred to Novia and invested into the P6 investments.

As such, I'm not asking Novia to account for loss that goes beyond the consequences of its failings. I'm satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for that same loss is a distinct matter. However, that fact shouldn't impact on Mr R's right to fair compensation from Novia for the full amount of his loss. The key point here is that but for Novia's failings, Mr R wouldn't have suffered the loss he's suffered. As such, I'm of the opinion that it's appropriate and fair in the circumstances for Novia to compensate Mr R to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by other firms involved in the transactions.

What would have happened if Mr R's pension monies hadn't been transferred to Novia?

Mr R has said that he hadn't been interested in moving his pension prior to being cold called. It's also the case that benefits weren't taken following the transfer and, other than cash, the P6 investments appear to be the only investments made with the monies that were transferred into Mr R's Novia SIPPs. As I've mentioned previously, I think it's more likely than not that a key reason Mr R's monies were transferred to Novia specifically by Chadkirk was so as to invest a portion of the transferred monies into P6.

I'm also satisfied that Novia should have decided not to continue permitting its SIPP members to invest with Greyfriars in the P6 investments *before* it received Mr R's business from Chadkirk. Further, I don't think it's fair and reasonable to say that Novia shouldn't compensate Mr R for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found Novia did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have permitted and/or facilitated the P6 investment into its SIPPs.

So, in the circumstances, I'm satisfied that if, and *before* it received Mr R's business, Novia hadn't continued to permit its members to invest into the P6 investments, it's more likely than not that Mr R's monies wouldn't have been transferred into the Novia SIPP or been invested into P6.

On balance, mindful of Mr R's testimony and the fact I think Chadkirk arranged the SIPPs and transfer so as to invest into P6, I think it's more likely than not Mr R's pension monies would have remained in his existing pension arrangements if Novia had decided not to continue permitting its SIPP members to invest in the P6 investments *before* it received Mr R's business from Chadkirk.

In conclusion

Taking all of the above into consideration, I think that in the circumstances of this case Novia should have decided not to continue permitting its SIPP members to invest with Greyfriars in P6 investments *before* it received Mr R's business from Chadkirk. And I also think it's more likely than not that if Novia hadn't continued permitting its SIPP members to invest in P6 investments *before* it accepted Mr R's business, that Mr R's monies would have remained in his existing pension arrangement and he wouldn't have transferred his monies into Novia SIPPs or invested in the P6 investments.

For the reasons I've set out, I also think it's fair and reasonable to direct Novia to compensate Mr R for the loss he's suffered as a result of Novia's failings.

Mr R's response to Novia's previous offer

In response to Novia's offer, Mr R highlighted some issues that he felt should be considered in respect of the payment he received from the FSCS. As far as this decision is concerned, there are a few points I think it's worth clarifying.

Mr R referred to a part of the reassignment of rights document that provides for the deduction of reasonable legal costs incurred in pursuing claims in respect of the reassigned rights. As I understand it, the clause in the reassignment of rights Mr R is referring to, is clause 5. Clause 5 reads:

> *"The Claimant agrees that in respect of the Reassigned Rights the proceeds of the claims shall first be applied to:*
>
> *a. repay from the proceeds the Claimant's reasonable legal costs incurred in pursuing a claim in respect of the Reassigned Rights;*
> *b. repay an amount equal to the Compensation Sum to FSCS; and*
> *c. pay any applicable interest falling due in accordance with clause 6."*

That clause relates to the agreement between Mr R and the FSCS and how it has been agreed (between the FSCS and Mr R) that any monies he obtains from claims he makes, after having obtained the reassignment of rights from the FSCS, are to be applied.

I've noted Mr R also referenced two Financial Ombudsman Service decision references in his discussions with Novia. However, the first of those DRN1234567 shows a nil return when I search for it on our website of published decisions. And the second reference, DRN7654321, appears to refer to a banking complaint that we rejected.

Importantly, we review each individual complaint on its individual facts and my role is to reach findings in *this* complaint. I have to assess matters in this complaint based on my own judgement, not on what an Ombudsman has said in a different complaint. And I've set out what I consider to constitute fair and reasonable redress in this complaint later on in this decision.

With regards to the FSCS payment; I've set out in detail below how I think this should be treated for the purposes of the redress calculation and I've found that it's fair and reasonable to make *no permanent deduction* in the redress calculation for the compensation Mr R received from the FSCS. But that it's fair and reasonable to allow for *a temporary notional deduction* equivalent to the payments Mr R actually received from the FSCS for a period of the calculation, so that the payments cease to accrue any return in the calculation during that period.

In response to my provisional decision, amongst other things, Mr R asked for a portion (50%) of the fees he paid in pursuing his FSCS claim to be awarded in this complaint about Novia.

Some of the issues the FSCS had to weigh up when considering Mr R's claim about Furness Financial Management might have been complex, but the process for raising a claim with the FSCS in general terms isn't (and wasn't) complex.

I think the obvious first thought for a reasonable investor in Mr R's position who had any concerns about any of the transfer of their pension, their SIPP or the P6 investments would have been that the firm who Mr R says advised him (Furness Financial Management) might have given poor advice, and I'm not in agreement that professional representation was necessary to pursue a claim with the FSCS about that firm.

I'm satisfied that an award against Novia for a portion of the fees Mr R incurred in pursuing his claim with the FSCS about Furness Financial Management isn't justified. Ultimately, it was Mr R's choice to use a representative's services in pursuing the claim with the FSCS. I don't agree it was a necessity, but I also don't doubt that Mr R valued the assistance of his representative in the matter.

And the fact that Mr R incurred costs by being represented in his FSCS claim doesn't change my opinion on what I'm satisfied constitutes fair and reasonable redress for Novia to pay in this complaint, which is set out below.

Distress and inconvenience

Mr R has made a number of submissions about the type of distress and inconvenience payment he feels would be appropriate. And I've carefully considered all of the submissions Mr R has made, including in respect of the two published decisions he referenced – DRN-5433691 and DRN-4653321 (one of which we made a £500 distress and inconvenience award in and the other of which we made a £750 distress and inconvenience award in).

We review each individual complaint on its individual facts and my role is to reach findings in *this* complaint. And I have to assess matters in this complaint based on my own judgement, not on what an Ombudsman has said in a different complaint.

I've considered all the available evidence and submissions, and I'm satisfied that the loss suffered to Mr R's pension provisions, and the impact this has had on him and his retirement plans over an extended period, has caused Mr R considerable distress and worry. I also think that it's fair for Novia to compensate Mr R for this.

I understand that Mr R feels strongly about this issue, and that this portion of my decision will come as a disappointment to him but, overall, and having given very careful consideration to this issue, I'm still of the view that £500 is the appropriate sum for Novia to pay for the distress and inconvenience it's caused Mr R.

Putting things right

Mr R hasn't stated that there were any guarantees attached to the pension plan(s) he transferred to Novia, so I've proceeded on the basis that there weren't guarantees attached to the pension plan(s) that was transferred to Novia.

As I've explained above, but for Novia's failings I think it's more likely than not that Mr R's monies would have remained in his existing pension arrangement and wouldn't have been transferred into a Novia SIPP or invested in P6. And my aim is to return Mr R to the position he would now be in but for what I consider to be Novia's failure to carry out adequate initial and ongoing due diligence checks before accepting Mr R's business.

In light of the above, I think it's fair and reasonable for Novia to calculate fair compensation by comparing the current position to the position Mr R would be in if he hadn't transferred from his existing pension plan(s). In summary, Novia must:

1) Obtain the current notional value, as at the date of my final decision, of Mr R's previous pension plan(s), if they hadn't been transferred to the SIPP.

2) Obtain the actual current value of the monies that were transferred into Mr R's Novia SIPP(s), as at the date of my final decision, less any outstanding charges. This value might be £0.

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

4) Pay a commercial value to buy Mr R's share in any residual P6 holdings in his Novia SIPPs that cannot currently be redeemed.

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

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

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

1) Obtain the current notional value, as at the date of my final decision, of Mr R's previous pension plan(s), if they hadn't been transferred to the SIPP.

Novia should ask the operator(s) of Mr R's previous pension plan(s) to calculate the current notional value of Mr R's plan(s), as at the date of my final decision, had he not transferred into the SIPPs. Novia must also ask the same operator(s) to make a proportionate notional allowance in the calculations, so as to allow for any additional sums Mr R has contributed to, or withdrawn from, his Novia SIPPs since outset. To be clear this doesn't include SIPP charges or fees paid to third parties like an adviser. Further, the total notional contributions or withdrawals to be allowed for shouldn't be any more than the total contributions or withdrawals Mr R actually made/took.

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

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

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

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

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

To do this, Novia should calculate the proportion of the total FSCS' payment(s) that it's reasonable to apportion to each transfer into the SIPP, this should be proportionate to the actual sums transferred in. And Novia should then ask the operator(s) of Mr R's previous pension plan(s) to allow for the relevant notional deduction(s) in the manner specified above. The total notional deductions allowed for shouldn't equate to any more than the actual payment(s) from the FSCS that Mr R received. Novia must also then allow for a corresponding notional addition as at the date of my final decision, equivalent to the accumulated FSCS payment(s) notionally deducted by the operator(s) of Mr R's previous pension plan(s).

Where there are any difficulties in obtaining notional valuations from the previous operator(s), Novia can instead allow for both the notional deduction(s) and addition(s) in the notional calculation it performs, provided it does so in accordance with the approach set out above.

2) *Obtain the actual current value of the monies that were transferred into Mr R's Novia SIPP(s), as at the date of my final decision, less any outstanding charges. This value might be £0.*

This should be the current value of these monies as at the date of my final decision.

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

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

4) *Pay a commercial value to buy Mr R's share in any residual P6 holdings in his Novia SIPPs that cannot currently be redeemed.*

But for any illiquid P6 holdings that remain within Mr R's Novia SIPPs, Mr R's monies could be transferred away from Novia. In order to ensure the SIPPs could be closed and further Novia SIPP fees could be prevented, any remaining illiquid P6 holdings need to be removed from the SIPPs. To do this Novia should reach an amount it's willing to accept as a commercial value for any illiquid P6 holdings that remain within Mr R's Novia SIPPs, and pay this sum into the SIPPs and take ownership of the relevant investments.

If Novia is unwilling or unable to purchase any illiquid P6 holdings that remain within Mr R's Novia SIPPs, then the actual value of any such investments it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include their being given a nil value for the purposes of ascertaining the current value of such investments in step 2).

If Novia doesn't purchase the investments, and if the total calculated redress in this complaint is less than £160,000, Novia may ask Mr R to provide an undertaking to account to it for the net amount of any future payment the SIPPs may receive from these investments. That undertaking should allow for the effect of any tax and charges on the amount Mr R may receive from the investments after the date of my final decision, and any eventual sums he would be able to access from the SIPPs in respect of the investments. Novia will need to meet any costs in drawing up the undertaking.

If Novia doesn't purchase the investments, and if the total calculated redress in this complaint is greater than £160,000 and Novia doesn't pay the *recommended* amount, Mr R 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 Novia (excluding any interest) equates to the total calculated redress amount in this complaint. Novia may ask Mr R to provide an undertaking to account to it for the net amount of any further payment the SIPPs may receive from these investments thereafter. That undertaking should allow for the effect of any tax and charges on the amount Mr R may receive from the investments from that point, and any eventual sums he would be able to access from the SIPPs in respect of the investments. Novia will need to meet any costs in drawing up the undertaking.

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

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

If Novia is unable to pay the compensation into a pension arrangement for Mr R, or if doing so would give rise to protection or allowance issues, it should instead pay that amount direct to him. But had it been possible to pay into the plan, it would have

provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

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

It's reasonable to assume that Mr R is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr R would have been able to take a tax-free lump sum, or *further* tax-free lump sum if he's already taken some tax-free cash from his Novia SIPP(s), the reduction should only be applied to that portion of the compensation that couldn't have been taken as a tax-free lump sum. For example, if Mr R would have been able to take a tax-free lump sum of 25%, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

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

   In addition to the financial loss that Mr R has suffered as a result of the problems with his pension, I think that the loss suffered to Mr R's pension provisions, and the impact this has had on him and his retirement plans, has caused Mr R considerable distress and worry. And I think that it's fair for Novia to compensate him for this as well.

SIPP fees

If there remain illiquid P6 holdings that can't be removed from Mr R's Novia SIPP(s), and it hence cannot be closed after compensation has been paid, then it wouldn't be fair for Mr R to have to continue to pay Novia SIPP fees to keep the SIPP(s) open. As such, if the Novia SIPP(s) needs to be kept open only because of illiquid P6 holdings, and is used only or substantially to hold the illiquid P6 holdings, then any future Novia annual SIPP fees must be waived by Novia until the SIPP(s) can be closed.

Interest

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

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

Costs

I've also considered whether an award should be made for any costs Mr R has paid, or will pay, a representative for having been represented in his complaint with us.

We are a Service that is free at point of access to consumers. It's not usually necessary to have professional representation in bringing a complaint although an award for such costs may be made where it's considered fair and reasonable to do so.

We are informal and we have an inquisitorial remit, so it's not necessary for a consumer to set out all aspects of the complaint – such as might be necessary in bringing legal action. I

accept that some of the issues I've addressed in this decision are complex. But when this complaint was first made, the process for raising a complaint with a SIPP provider in general terms and the process for referring a complaint on to us if dissatisfied, wasn't complex.

I'm not satisfied that professional representation was necessary for Mr R to pursue a complaint with Novia. And once with us, if Mr R had queries about our findings, or the proposed redress (or any other aspect of the matter), we could have dealt with those directly – that's a service we routinely provide where consumers have brought complaints to us without representation and where clarification is sought on some aspect of our investigation or assessment of their complaint. So, while many of the complaints we deal with are technical and complex, that doesn't automatically mean that an award for the costs of professional representation should be made.

Here, I'm satisfied that it was Mr R's choice to use his representative's services in bringing the complaint. I don't doubt that Mr R values the assistance of his representative in this matter. But I don't think an award for fees is justified here.

My final decision

For the reasons given above, it's my final decision that Mr R's complaint is upheld and that Novia Financial Plc must calculate and pay fair redress as set out above.

Where I uphold a complaint, I can make an award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Novia Financial Plc pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that Novia Financial Plc must pay the amount produced by that calculation up to the maximum of £160,000 (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 £160,000, I recommend that Novia Financial Plc pay Mr R the balance plus any interest on the balance as set out above.

The recommendation isn't part of my determination or award Novia Financial Plc doesn't have to do what I recommend. It's unlikely that Mr R could accept a final decision and go to court to ask for the balance and Mr R may want to get independent legal advice before deciding whether to accept this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 July 2025.

Alex Mann
Ombudsman