DRN-5682439

The complaint

Mr B complains that Novia Financial Plc ("Novia") failed to conduct sufficient due diligence when it allowed him to establish a Self-Invested Personal Pension ("SIPP") and invest in an unregulated collective investment scheme.

Mr B is being represented in the complaint but for ease I'll refer to all representations as being made by Mr B.

What happened

Involved parties

Novia - is a regulated pension provider and administrator. It's been authorised by the regulator – the Financial Conduct Authority ('FCA') - since 16 September 2008.

Falcon International Financial Services Ltd ("Falcon") – is authorised by the FCA to operate unregulated collective investment schemes ("UCIS"). The relevant scheme in this complaint is a plot of land in Stratford-Upon-Avon ("Clopton UCIS").

Falcon International Estates Ltd – was an appointed representative of Falcon and promoted the Clopton UCIS to potential investors.

Sovereign Financial Services, a trading name of J Richfield Ltd ("Sovereign") – was authorised by the FCA as an independent financial adviser until 4 October 2017.

Background

Mr B has told us that he was cold called by Falcon in 2014. Mr B says Falcon told him about an investment involving plots of land owned by Taylor Wimpey. Mr B says he asked Falcon about guarantees but it told him it wasn't a financial adviser but that it was working in partnership with a regulated firm called Sovereign. Mr B was put in touch with Sovereign. Mr B says a compliance check was completed with him over the phone. It's not clear if it was Falcon or Sovereign that completed this compliance check. Mr B has said that much later, when he saw the compliance report, he discovered that he had been noted down as a sophisticated investor with a net worth of £1million. Mr B says this is not true and not what he told the person completing the compliance check.

Sovereign recommended that Mr B transfer his existing pensions to a SIPP and invest in the Clopton UCIS. Mr B accepted Sovereign's recommendation. In April 2014 Mr B signed a letter addressed to Novia, which either Sovereign or Falcon had produced. This stated that Mr B had elected to be classified as a 'Professional Client' for the purpose of the investment in Clopton.

Mr B's existing personal pensions were transferred to Novia. In May 2014 Novia received a total of just over £69,600 from Mr B's existing personal pensions. Just over £15,000 was invested in standard investments and £50,000 was invested into the Clopton UCIS.

Additional background information

The information in this section has been taken from information provided on Mr B's file, as well as information that has been provided on other cases this Service is considering involving the same parties.

Novia has also provided a copy of its 'Terms of Business for Firms' document which it says Sovereign agreed to. When asked about the due diligence it carried out on Sovereign, Novia has told us that:

- An introducer agreement was in place with Sovereign between December 2012 and October 2017.
- Novia only accepts business from FCA authorised financial advisers. Its due diligence confirms the adviser's regulatory status before it accepts the adviser's business.
- Novia wasn't expected to understand an introducer's business model because the introducer, in this case Sovereign, was an FCA regulated financial adviser and was therefore expected to manage its business in accordance with FCA principles and rules
- Novia can rely upon other regulated businesses and it 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 to Novia.
- Investment decisions are solely the responsibility of the advising firm and they can recommend suitable investments from the broad range of investments Novia makes available to support a wide range of customer investment objectives.
- Novia is not responsible for the suitability of the advice and therefore it has no requirement to request copies of suitability reports/pension transfer reports.
- Novia is not required to audit or monitor the actions of other FCA authorised firms and the FCA rules permit firms to rely upon the actions of other regulated businesses.
- Sovereign introduced 180 clients to Novia (although on another complaint this Service has considered it has confirmed this was 166), Just under 11% of those involved a transfer from a Defined Benefit (DB) scheme. Just under 85% of clients introduced by Sovereign invested in non-mainstream investments.
- Mr B was the 167th client to be introduced to Novia by Sovereign.
- It only makes investments available through it service to FCA authorised financial advisers. It remains the adviser's responsibility to recommend suitable investments from all those available.
- The Clopton UCIS is a "landbank" investment and it was therefore Illiquid from the outset.
- Investors in the Clopton UCIS signed a declaration confirming the client's authorisation of the purchase into the Clopton UCIS. This declaration also stated that the investor had elected to be considered a 'professional client'. So investors were informed of the nature of the investment and risks associated with it from the outset. While Novia does not ordinarily use such declarations, it was considered necessary for a transaction into land.

Mr B's complaint

Mr B engaged the services of his representative and made a claim to the Financial Services Compensation Scheme (FSCS) about the advice provided by Sovereign. The FSCS awarded Mr B £50,000 compensation for his claim against Sovereign in January 2022. This was the maximum award he could receive under the FSCS's award limits at that time. But it didn't cover the full extent of his losses, which the FSCS had calculated as a little over £82,900 at that time.

The FSCS gave Mr B a reassignment of rights in which, amongst other things, it explained it was transferring back to Mr B any legal rights it held against Novia. Mr B complained to Novia in October 2023.

Novia issued its final response to the complaint in November 2023 confirming it wasn't upholding it.

Mr B wasn't happy with Novia's response so he referred the complaint to our Service for consideration.

One of our Investigators considered the merits of the complaint and didn't think it should be upheld. The Investigator thought the due diligence checks and processes Novia followed at the time of accepting Mr B's investment were adequate.

Mr B didn't accept the Investigator's opinion. He said that he was not a sophisticated or high net worth investor. And had he been he would have known to research the investment opportunity in more detail and would have discovered that the plot of land to invest in was green belt. As such, the prospect of obtaining planning permission was little to none. Mr B says that Novia therefore failed in its duties as a SIPP operator by failing to complete sufficient due diligence.

Provisional decision

I issued a provisional decision in June 2025. I explained that having considered the available evidence, I was minded to reach a different outcome to the investigator. In summary, I said I intended to uphold the complaint because I thought Novia failed to carry out sufficient due diligence when accepting Mr B's introduction from Sovereign. And I thought it failed to identify that some introductions, including Mr B's, carried a significant risk of consumer detriment.

I also thought Novia ought reasonably to have been aware of facts that should have caused it to decline Mr B's business from Sovereign because it ought to have been privy to information about Sovereign and the business it was introducing which didn't reconcile with what Novia says it was able to rely on. And I thought Novia ought to have had real concerns that Sovereign wasn't acting in customers' best interests and wasn't meeting its regulatory obligations.

In terms of the declaration Mr B had signed, I said that if Novia carried out sufficient due diligence on the introductions it was receiving from Sovereign, it ought to have been aware of issues which would have led to it questioning the validity of the declaration. And so I was satisfied that it was not appropriate for Novia to have relied on the declaration.

Mr B accepted my provisional decision but he raised one point regarding the proposed redress. He said the current proposal is for the compensation to be paid into his SIPP. But he would ask that the payment is made directly to him instead. He said Novia's failings have caused him significant distress, and he no longer wishes to maintain any relationship with it. He explained that he has lost trust in Novia and in the broader pensions industry and would be unwilling to seek further regulated advice to transfer the funds elsewhere.

Moreover, if the funds are placed into the pension, he would incur a substantial tax liability were he to access them. He also has a pressing obligation to repay the FSCS, which he would be unable to do if the funds remain within a pension wrapper.

Novia didn't provide any further comments for consideration.

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.

Having done so, I uphold the complaint. I've explained my reasons for this below and I've set out what I think Novia needs to do to put things right. Other than to address Mr B's latest comments, my final decision largely repeats what I said in my provisional decision.

I should firstly explain that although there are rules setting time limits in which a complaint needs to be made, I've not considered these rules in this instance because Novia has previously confirmed that it consents to our Service to consider Mr B's complaint.

Relevant considerations

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

I have taken into account a number of considerations including, but not limited to:

- The agreement between the parties.
- The Financial Services and Markets Act 2000 ("FSMA").
- Court decisions relating to SIPP operators, in particular Options UK Personal Pensions LLP v Financial Ombudsman Service Limited [2024] EWCA Civ 541 (*"Options"*) and the case law referred to in it including:
    - Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474 ("*Adams"*)
    - R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service [2018] EWHC 2878 (*"Berkeley Burke"*)
    - Adams v Options SIPP UK LLP [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The FCA (previously Financial Services Authority) ("FSA") rules including the following:
    - PRIN Principles for Businesses
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to SIPP operators and good industry practice.

The legal background

As highlighted in the High Court decision in *Adams* the factual context is the starting point for considering the obligations the parties were under. And in this case it is not disputed that the contractual relationship between Novia and Mr B is a non-advisory relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HM Revenue and Customs rules. Novia was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

I have considered the obligations on Novia within the context of the non-advisory relationship agreed between the parties.

The case law

I'm required to determine this complaint by reference to what is in my opinion fair and reasonable in all the circumstances. I am not required to determine the complaint in the same way as a court. A court considers a claim as defined in the formal pleadings and they will be based on legal causes of action. The Financial Ombudsman Service was set up with a wider scope which means complaints might be upheld, and compensation awarded, in circumstances where a court would not do the same.

The approach taken by the Financial Ombudsman Service in two similar (but not identical) complaints was challenged in judicial review proceedings in the *Berkeley Burke* and the *Options* cases. In both cases the approach taken by the ombudsman concerned was endorsed by the court. A number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved.

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

The Principles for Businesses

The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non- advisory basis, in a way appropriate to that relationship.

Principles 2, 3 and 6 are of particular relevance here. They provide:

> "*Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*
>
> *Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*
>
> *Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly*."

I am satisfied that I am required to take the Principles into account (see *Berkley Burke*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

The regulatory publications and good industry practice

The regulator issued a number of publications which reminded SIPP operators of their obligations, and which set out how they might achieve the outcomes envisaged by the Principles, namely:

- The 2009 and 2012 Thematic Review Reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 *"Dear CEO"* letter.

The 2009 Report included:

> *"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…*
>
> *We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers…*
>
> *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"*

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

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However all of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account.

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.

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.
- The comments made in the publications apply to SIPP operators that provide a non-advisory service.
- Neither court in the *Adams* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.
- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

I've carefully considered what Novia has said about publications published after Mr B's SIPP was set up. But, like the Ombudsman in the *BBSAL* case, I don't think the fact that some of the publications post-date the events that took place in relation to Mr B's complaint, mean that the examples of good practice they provide weren't good practice at the time of the relevant events. Although the later publications were published after the events subject to this complaint, the Principles that underpin these existed throughout, as did the obligation to act in accordance with the Principles.

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 to amount 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.

To be clear, I don't say the Principles or the publications obliged Novia to ensure the transactions were suitable for Mr B. It's accepted Novia wasn't required to give advice to Mr B, 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 these are 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, as per the FCA's Enforcement Guide, publications of this type *"illustrate ways (but not the only ways) in which a person can comply with the relevant rules".* So it's fair and reasonable for me to take them into account when deciding this complaint.

I'd also add that, even if I agreed with Novia that any publications or guidance that postdated the events subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time (which I don't), that doesn't alter my view on what I consider to have been good industry practice at the time. That's because I find that the 2009 Report together with the Principles provide a very clear indication of what Novia could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting Mr B's business.

Rules for the promotion of UCIS

There have generally always been restrictions on who these types of investments could be promoted to. The starting point in section 238 of FSMA was that:

> *'An authorised person must not communicate an invitation or inducement to participate in a collective investment scheme'*

There were exceptions to this as they could be promoted to high net worth or sophisticated investors, plus some other exempt categories given in COBS 4.12, including Elective Professional Clients. But this rule specified that the firm had to take reasonable steps to establish that the investor fell within one of the exempt categories, before they were able to communicate the invitation or inducement to the UCIS.

In the case of Mr B, and the other investors I'm aware of that invested in Clopton through their Novia SIPPs, it appears the exemption Sovereign relied on was the 'Elective Professional Client' category. This is defined in COBS 3.5.3R as:

> *"A firm may treat a client as an elective professional client if it complies with (1) and (3) and, where applicable, (2):*
>
> > *(1) the firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved (the "qualitative test");*
> > *…*
> > *(3) the following procedure is followed:*
> >
> > > *(a) the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;*
> > >
> > > *(b) the firm must give the client a clear written warning of the protections and investor compensation rights the client may lose; and*
> > >
> > > *(c) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections"*

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 SIPP business, Novia had to decide whether to accept or reject particular introductions of business and/or investments with the Principles in mind.

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

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

I am satisfied that, to meet its regulatory obligations, when conducting its business, Novia was required to consider whether to accept or reject particular business, with the Principles in mind.

All in all I am satisfied that, in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, Novia should have carried out due diligence which was consistent with good industry practice and its regulatory obligations at the time. And in my opinion, Novia should have used the knowledge it gained from this to decide whether to accept or reject introductions of business or a particular investment.

I note that in practice this was also (broadly at least) Novia's view since it did for example carry out some checks before deciding whether to accept business from Sovereign and allowing the Clopton UCIS in its SIPPs .

Novia's due diligence on Sovereign

As I say, Novia had a duty to conduct due diligence and give thought to whether to accept introductions of SIPP business.

From the information that Novia has provided about its relationship with the introducer in question here, I'm satisfied Novia did take some steps towards meeting its regulatory obligations and good industry practice. For example, Novia checked Sovereign was regulated and asked it to agree to its Terms of Business.

Novia has also said that it took comfort from Mr B's signed letter confirming that he'd elected to be treated as a professional client, that he had read the advice report from Sovereign and that he understood the risks and illiquid nature of the Clopton UCIS.

However, I don't think these checks went far enough. And had Novia carried out sufficient due diligence and drew reasonable conclusions from what it knew or ought to have known, I think it ought to have concluded there was a significant risk of consumer detriment associated with some of the SIPP business from this introducer, before it accepted Mr B's application.

Novia considers there were no red flags identified with Sovereign's business model that warranted further action at that time. I disagree. Sovereign was introducing clients who were going on to invest the majority of their SIPP funds in non-standard investments, including the Clopton UCIS.

The Clopton UCIS was a high risk, illiquid and non-mainstream investment and it wouldn't generally be considered suitable for the vast majority of retail clients, certainly not in the proportions that Sovereign was recommending. Novia has confirmed that just under 85% of clients Sovereign introduced to Novia went on to invest in UCIS and/or Non-Standard Investments. Mr B was the 167th referral Novia received from Sovereign.

I think it's highly unusual for such a large proportion of a regulated advice firms' introductions to a SIPP provider to involve pension switches so as to invest in these type of high risk, illiquid investments. I think it's fair to say that most advice firms don't transact this kind of business in significant volumes, particularly with clients investing such a large proportion of their pension funds in these types of investments. Novia disagrees but I think this ought to have been a red flag and Novia ought to have had concerns about how Sovereign was able to introduce so many clients for investment in UCIS and/or Non-Standard Investments, whilst complying with the regulator's rules.

In the case of Mr B, he invested over 70% of his SIPP funds in the Clopton UCIS. I don't expect Novia to have assessed the suitability of such a course of action for Mr B – and I accept it couldn't do that. But, in order to meet the obligations set by the Principles (and COBS 2.1.1R), I think it ought to have recognised Mr B was transferring his pension to invest the majority of funds in a UCIS. This is an unusual proposition, which carried a significant risk of consumer detriment. So, Novia ought to have taken particular care in its due diligence – it had to do so to treat Mr B fairly and act in his best interests. And for reasons I'll go on to explain later, I'm satisfied that had Novia carried out sufficient checks, it ought to have discovered that Mr B was an ordinary retail client and not an Elective Professional client. So I think it ought to have been concerned how Sovereign was able to promote the investment to Mr B, when he didn't fall under one of the exempt categories given in COBS 4.12.

I've not seen that Novia asked Sovereign any further questions about any of this or asked for any documentary evidence of the process or checks that Sovereign agreed would be carried out when it agreed to Novia's Terms of Business. These terms included requiring all clients to have received advice, prior to taking out a SIPP and investing.

Novia has told us that it didn't ask Sovereign for copies of the advice it was providing to the clients it was introducing to Novia – even though the Terms of Business Novia had agreed with Sovereign entitled it to do so. On another complaint this Service has considered Novia said this would have been a valueless step as it had no obligation or relevant expertise to check the advice. However, without this type of check, Novia couldn't be certain what advice Sovereign was offering to the clients it was introducing to Novia, or that Sovereign's advice model was in fact operating in line with Novia's assumptions.

I'd like to stress here that I'm not saying Novia should have checked any advice that was given – but it should have taken steps to ascertain if a reasonable process was in place and consumers were taking these steps on an informed basis. As the regulator confirmed in the 2009 thematic review "*having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely*".

I'm also not satisfied that Novia made appropriate checks of Sovereign's business model, either at the start of its relationship or on an ongoing basis. Such steps should have involved getting a full understanding of things like, how Sovereign came into contact with clients, what it was telling them about the Clopton UCIS and how it satisfied itself that clients met one of the exemptions which meant it was able to promote the Clopton UCIS to them. I think this type of information was needed in order for Novia to meet its own regulatory obligations and satisfy itself that Sovereign was appropriate to deal with.

Novia may say it can rely upon other regulated businesses and it doesn't have to understand how they fulfil their regulatory obligations. And I accept that at the relevant date, COBS 2.4.6R (2) provided a general rule about reliance on others:

> "*A firm will be taken to be in compliance with any rule in this sourcebook that requires it to obtain information to the extent it can show it was reasonable for it to rely on information provided to it in writing by another person*."

And COBS 2.4.8G says:

> "*It will generally be reasonable (in accordance with COBS 2.4.6R (2)) for a firm to rely on information provided to it in writing by an unconnected authorised person or a professional firm, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information*."

So, it would generally be reasonable for Novia to rely on information provided to it in writing by Sovereign, unless Novia was aware or ought reasonably to have been aware of any fact that would give reasonable grounds to question the accuracy of the information.

However, while Sovereign's regulatory status and its acceptance of Novia's Terms of Business go some way towards meeting Novia's regulatory obligations and good industry practice, I think Novia needed to do more in order to satisfy itself that it was fair and reasonable to accept introductions from Sovereign.

It's not reasonable to take so much comfort from a firm's regulated status that it is thought that no monitoring is called for because, for example, the firm is under a regulatory duty to treat its customers fairly. There had been, prior to the events in this case, examples of regulated firms fined for various forms of poor conduct where the regulated firms failed to act in their clients' best interest.

And it is an obvious point that rules alone are not enough. Relevant behaviour must be observed or monitored to ensure that only permitted behaviour occurs. I'm satisfied this can only be done through effective monitoring. And I'm satisfied this is the case even if the party being monitored is a regulated firm.

While I agree FCA regulated financial advisers are expected to manage their business in accordance with FCA principles and rules. I'm also satisfied from the various regulatory publications that the regulator expected SIPP operators to be gathering and analysing management information so they were able to identify possible instances of consumer detriment.

What checks should Novia have completed and what would it have discovered?

The 2009 Thematic Review Report explained that the regulator would expect SIPP operators to have procedures and controls, and for management information to be gathered and analysed, so as to enable the identification of, amongst other things,

> "*consumer detriment such as unsuitable SIPPs*". Further, that this could then be addressed in an appropriate manner *"…for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification*."

The October 2013 finalised SIPP operator guidance gave an example of good practice as:

> *"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*."

I think that Novia, before accepting Mr B's business from Sovereign, should have checked with Sovereign about things like:

- how it came into contact with potential clients,
- how it satisfied itself that the clients it was introducing for investment in the Clopton UCIS met the FCA's rules for the promotion of UCIS,
- how it satisfied itself that the clients it was introducing for investment in the Clopton UCIS were Elective Professional Clients (the qualitative test set out in COBS 3.5.3R),
- what Sovereign was telling its clients about the Clopton UCIS.

Novia has previously said it didn't have to obtain this information and that it didn't have the expertise to assess an introducer's business model. But I think this was a fair and reasonable step to take, in the circumstances, to meet its regulatory obligations as an execution only SIPP operator and good industry practice. And I don't agree Novia needed to have specific expertise in order to obtain and assess the type of information I've set out above, which I consider was required in order for Novia to satisfy itself that Sovereign was appropriate to deal with.

It's not clear if Novia knew the Clopton UCIS was covered by the general restrictions on promoting UCIS in FSMA as it's not provided a copy of any independent due diligence it completed on this particular investment. But it ought to have understood this. And in these circumstances, and before it could reasonably be satisfied it was appropriate to accept introductions from Sovereign, where SIPP funds were to be invested in the Clopton UCIS, I think it would have been fair and reasonable for Novia, to meet its regulatory obligations and good industry practice, to have taken independent steps to enhance its understanding of the introductions it was receiving from Sovereign. As well as understanding all the parties involved in the transaction.

I'm aware that in some cases, Falcon was cold calling individuals and promoting investments to them and this appears to be what happened in Mr B's case. He's said he was contacted out of the blue and then Falcon referred him on to a firm it was in "partnership with" for financial advice. Novia ought to have been aware that this was how Sovereign was initially coming into contact with the clients it was referring on to Novia for investment in the Clopton UCIS.

Novia may say it had no reasonable basis to question Sovereign about how it came into contact with its clients. But I think Novia should have gained an understanding of where Sovereign's clients came from. And why so many of the clients Sovereign was referring were interested in investing such a high proportion of their pensions in a UCIS. I think this was the type of information Novia should have obtained before it agreed to accept business from Sovereign, certainly where the proposed investment was in a UCIS.

I'm mindful that Sovereign may not have been willing to answer the questions posed to it, or been truthful if it responded, specifically in relation to how it came in to contact with clients, what it was telling clients about the investment and how satisfied itself that they met the qualitative test set out in COBS 3.5.3R for the promotion of UCIS.

But I think the risk of consumer detriment here, only emphasised the need for independent checks. I think Novia ought to have asked the types of questions I've set out above, given the real risk of consumer detriment resulting from Sovereigns' approach. And I don't think it's likely that Sovereign would have been able to give answers that Novia would've reasonably found plausible and acceptable, such that Novia would've been convinced that all was in order and that the concerns it should reasonably have had were baseless. For this reason, I think it would've been reasonable to contact Mr B, and other clients that had been referred by Sovereign, directly.

As I've said above, it's my understanding of the sales process, certainly in the case of the Clopton UCIS, investors - like Mr B - were receiving unsolicited calls from Falcon, who promoted the investment. This appears to have been done prior to any contact with Sovereign, and without any prior consideration of whether Mr B was a professional client; it doesn't appear that any attempt was made to ensure that it was appropriate to promote the Clopton UCIS to Mr B, before Falcon and/or Sovereign began its promotional activity.

To my mind, this means that it was not appropriate for the Clopton UCIS to be promoted to Mr B at all. And this is information that I think Novia ought to have been privy to, if it had asked Sovereign the types of questions I've set out above, before it accepted any business from it where the SIPP funds were to be invested in the Clopton UCIS.

Novia should also have enhanced its understanding of the business it was receiving from Sovereign. So I think it would have been fair and reasonable for Novia to speak to Mr B, or other consumers being referred by Sovereign for investment in the Clopton UCIS, directly.

I accept Novia couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view such steps included addressing a potential risk of consumer detriment by speaking to applicants, as this could have provided Novia with further insight into Sovereign's business model.

This would have been a fair and reasonable step to take in reaction to the clear and obvious risks of consumer detriment I've mentioned. And, on balance, I think it's more likely than not that if Novia had contacted Mr B, and/or other applicants, to 'confirm the position', Novia would have discovered that these clients had been contacted out of the blue by Falcon or Sovereign, who promoted the investment to them.

I think it's also likely that when asked about the Clopton UCIS that Mr B would have said that he was told it was a low risk investment and that he wasn't a professional or Sophisticated Investor and hadn't elected to be treated as one. Given what I think Mr B would have told Novia, had it contacted him, I think Novia ought to have had concerns about whether it had been appropriate for the Clopton UCIS to have been promoted to Mr B. And given his lack of understanding regarding the investment, I think it ought to have been concerned that Mr B had been incorrectly categorised by Sovereign as an Elective Professional Client.

Overall, I'm satisfied that if Novia had completed adequate due diligence it would have realised that some introductions from Sovereign, including Mr B's, carried a significant risk of consumer detriment. And I think it ought reasonably to have been aware of facts that should have caused it to decline Mr B's business from Sovereign because it ought to have been privy to information about Sovereign and the business it was introducing which didn't reconcile with what Novia says it was able to rely upon. And Novia ought to have had real concerns that Sovereign wasn't acting in customers' best interests and wasn't meeting its regulatory obligations. To my mind, Novia didn't meet its regulatory obligations or good industry practice at the relevant time and allowed Mr B to be put at significant risk of detriment as a result. Novia should have concluded that it shouldn't have accepted Mr B's business from Sovereign at all.

The declaration Mr B signed and his status as an Elected Professional Client

I think it's likely, based on other complaints I've seen against Novia involving UCIS, that Novia was aware of the restrictions on the promotion of UCIS to retail clients.

Novia has said that it took comfort from Mr B's signed letter confirming his authorisation of the purchase and confirmation that he had been informed of the nature and risks associated with the investment. This declaration also confirmed that he had elected to be treated as a Professional Client for the purpose of the transaction.

In my opinion, relying on the contents of such a declaration when Novia knew, or ought to have known, that it wasn't appropriate for the Clopton UCIS to have been promoted to Mr B in the first place, wasn't the fair and reasonable thing to do. And I think Novia ought to have been aware that accepting Mr B's business from Sovereign and allowing him to invest in the Clopton UCIS, would put him at significant risk of detriment. Having identified the risks, it's my view that the fair and reasonable thing for Novia to do would have been to decline his business and not to permit Mr B to invest in the Clopton UCIS.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr B signed meant that Novia could ignore its duty to treat him fairly. I'm satisfied that the letter Mr B signed doesn't absolve, nor does it attempt to absolve, Novia of its regulatory obligations to treat customers fairly when deciding whether to accept or reject investments or business.

I appreciate Novia may disagree on this point and may consider it was entitled to rely on the letter. However, I consider that had Novia carried out sufficient due diligence on the introductions it was receiving from Sovereign, it ought to have been aware of issues which would have led to it questioning the validity of the letter. And so I'm satisfied that it was not appropriate for Novia to have relied on this.

Novia's due diligence on the Clopton UCIS

In this case, the business Novia was conducting was its operation of SIPPs. I'm satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject particular investments within its SIPPs. 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 investment was appropriate to accept. That involves conducting checks – due diligence – on investments to make informed decisions about accepting them. This obligation was a continuing one.

But having reached the conclusions set out above, the due diligence Novia may or may not have carried out on the Clopton UCIS isn't the basis on which I'm upholding this complaint, or something I've relied on in reaching my conclusions. As I've explained, I think Novia didn't reach the right conclusions about accepting some introductions of SIPP business from Soverign, based on the information available to it.

So I don't think it's necessary for me to also consider Novia's due diligence on the investments it allowed within Mr B's Novia SIPP. I'm satisfied that Novia wasn't treating Mr B fairly or reasonably when it accepted his SIPP business in the first place, so I've not gone on to consider the due diligence it may have carried out on the investments and whether this was sufficient to meet its regulatory obligations. And I make no findings about this issue.

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

I accept that Sovereign (and Falcon) had some responsibility for initiating the course of action that led to Mr B'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 non-advisory SIPP operator, the arrangement for Mr B wouldn't have come about in the first place and I don't think any of his pension monies would have been transferred to Novia or that his SIPP would have been established.

Novia may say that the Clopton UCIS was not Mr B's sole investment made through his Novia SIPP. And I accept that a little under 30% was used to invest in standard investments. Novia may also argue that Mr B transferred on the basis of the advice provided by Sovereign and wasn't motivated specifically or exclusively by a desire to invest in the Clopton UCIS.

But Mr B was contacted out of the blue by Falcon so it doesn't appear he was necessarily intending to make changes to his existing pensions. And, while I accept a small proportion of Mr B's SIPP fund was used to invest in standard investments, the majority was invested in the Clopton UCIS. So I'm satisfied the SIPP was only established for Mr B to enable the investment into the Clopton UCIS.

I'm satisfied that Novia's failure to act in accordance with its regulatory obligations and good industry practice has caused Mr B to suffer financial loss in his pension and to suffer distress and inconvenience. I consider the loss of a significant proportion of his pension provision will inevitably have caused him considerable worry and upset. And my conclusion is that Novia shouldn't have accepted Mr B's business from Sovereign so had Novia done what I think it ought to have done, Mr B's Novia SIPP wouldn't have been set up and I think he would have retained his existing pension arrangement.

Mr B 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 B'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 Sovereign and the Clopton UCIS and reach the right conclusions. As I've explained above, I think in terms of Sovereign, Novia 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 accepted Mr S's business from Sovereign. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr B wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

Sovereign was a regulated firm with the necessary permissions to advise Mr B on his pension provisions and Mr B also then used the services of a regulated personal pension provider in Novia. I'm satisfied that Mr B was a retail client and that in his dealings with Sovereign and Novia, Mr B trusted them to act in his best interests. And I don't think it would be fair or reasonable to say Mr B should 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, it's fair and reasonable to say Novia should compensate Mr B for the loss he's suffered. And I don't think it would be fair to say in the circumstances that Mr B should suffer the loss because he ultimately, through his adviser, instructed the transactions be effected.

How should any redress be paid to Mr B?

I've considered the submissions Mr B has made about his preference being for redress monies not to be paid into his pension arrangement.

Mr B was previously paid money by the FSCS as part of his claim against Sovereign. And he has subsequently entered into a reassignment of rights agreement with the FSCS. As part of that process Mr B would have been aware, or ought to have been aware, that the terms of his reassignment of rights would require him to return compensation paid by the FSCS in the event this complaint is successful. It was, and is, Mr B's responsibility to make any arrangements needed to ensure he can fulfil that agreement he entered into. And he will need to liaise with the FSCS about the repayment of these funds.

I appreciate Mr B will be disappointed. But his pension monies suffered the loss this complaint concerns and I remain satisfied that, subject to what I've said below about existing protections or allowances, if possible redress monies should be paid back into Mr B's SIPP.

So, I'm satisfied that the approach to redress, as set out below, is the fair and reasonable approach to redress in this case.

Putting things right

I uphold this complaint. I consider Novia failed to comply with its own regulatory obligations and good industry practice in not refusing Mr B's SIPP business from Sovereign. My aim in awarding fair compensation will be to put Mr B back into the position he would likely have been in had it not been for Novia's failings.

As I've already mentioned above, had Novia carried out sufficient due diligence on the business it was receiving from Sovereign, I'm satisfied the investment would not have gone ahead and Mr B would've retained his existing pension plans.

In light of the above, Novia should calculate fair compensation by comparing the current position to the position Mr B would be in if he hadn't transferred his existing pension plans to the Novia SIPP. In summary, Novia should:

1. Obtain the current notional values, as at the date of the final decision, of Mr B's previous pension plans, if they hadn't been transferred to the SIPP.
2. Obtain the actual current value of Mr B's SIPP, as at the date of my final decision, less any outstanding charges.
3. Deduct the sum arrived at in step 2) from the sum arrived at in step 1).
4. Pay a commercial value to buy Mr B's share in any investments that cannot currently be redeemed.
5. Pay an amount into Mr B's SIPP, so that the transfer value of the SIPP 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 B £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 this decision, of Mr B's previous pension plans, if they hadn't been transferred to the SIPP.*

Novia should ask the operators of Mr B's previous pension plans to calculate the current notional values of Mr B's plan, as at the date of this decision, had he not transferred them into the SIPP. Novia must also ask the same operators to make a notional allowance in the calculations, so as to allow for any additional sums Mr B has contributed to, or withdrawn from, his Novia SIPP since the outset. To be clear this doesn't include SIPP charges or fees paid to third parties like an adviser.

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

If there are any difficulties in obtaining a notional valuation from the operators of Mr B's previous pension plans, Novia should instead calculate a notional valuation by ascertaining what the monies transferred away from the plan would now be worth, as at the date of the 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 01 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 B has contributed to, or withdrawn from, his Novia SIPP since the outset.

I acknowledge that Mr B 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 B'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 B received from the FSCS. And it will be for Mr B 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 Mr B actually received from the FSCS for a period of the calculation, so that the payment 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 payments Mr B received from the FSCS following the claim about Sovereign the date the payments were actually paid to Mr B. Where such a deduction is made there must also be a corresponding notional addition at the date of my final decision equivalent to the FSCS payments notionally deducted earlier in the calculation.

To do this, Novia should calculate the proportion of the total FSCS payment 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 of Mr B's previous pension plans to allow for the relevant notional deduction in the manner specified above. The total notional deductions allowed for shouldn't equate to any more than the actual payments from the FSCS that Mr B received. Novia must also then allow for a corresponding notional addition as at the date of my final decision, equivalent to the accumulated FSCS payments notionally deducted by the operators of Mr B's previous pension plans.

Where there is any difficulty in obtaining a notional valuation from the previous operators, Novia can instead allow for both the notional withdrawal and contribution 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 Mr Bs SIPP, as at the date of my final decision, less any outstanding charges.*

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

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

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

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

It isn't clear whether the Clopton UCIS has now been closed and removed from the SIPP or if the SIPP remains open.

But for any illiquid holdings that remain within Mr B's Novia SIPP, Mr B's monies could be transferred away from Novia. In order to ensure the SIPP could be closed and further Novia SIPP fees could be prevented I think it would be best if any illiquid assets held could be removed from the SIPP. Mr B would then be able to close the SIPP, if he wishes. That would then allow him to stop paying the fees for the SIPP. The valuation of the illiquid investment may prove difficult, as there is no market for it. For calculating compensation, Novia should establish an amount it's willing to accept for the investments as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investments.

If Novia is able to purchase the illiquid investment then the price paid to purchase the holdings will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holdings).

If Novia is unable, or if there are any difficulties in buying Mr B's illiquid investment, it should give the holdings a nil value for the purposes of calculating compensation. In this instance Novia may ask Mr B to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the relevant holdings. That undertaking should allow for the effect of any tax and charges on the amount Mr B may receive from the investments and any eventual sums he would be able to access from the SIPP. Novia will have to meet the cost of drawing up any such undertaking.

5. *Pay an amount into Mr B's SIPP, so that the transfer value of the SIPP 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.*

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

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

In addition to the financial loss that Mr B has suffered as a result of the problems with his pension, I think that the loss suffered has caused him distress. And I think that it's fair for Novia to compensate him for this as well. I think £500 is a reasonable sum given that Novia's actions led to a significant loss to Mr B's pension, which will have been a great source of worry for him.

SIPP fees

If the investment can't be removed from the SIPP, and because of this it can't be closed after compensation has been paid, then it wouldn't be fair for Mr B to have to pay annual SIPP fees to keep the SIPP open. So, if the SIPP needs to be kept open only because of the illiquid investment and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

Interest

The compensation resulting from this loss assessment must be paid to Mr B or into his SIPP within 28 days of the date Novia receives notification of Mr B'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.

My final decision

For the reason explained, I uphold this complaint and direct Novia Financial Plc to calculate redress due as set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 August 2025.
Lorna Goulding
Ombudsman