

The complaint

Mr L complains that Options UK Personal Pensions (“Options”) failed to carry out due diligence on investments he was advised to invest his SIPP in.

What happened

To assist the parties I set out below the roles of the various parties I will be referring to.

Options – a regulated SIPP operator and administrator providing an execution only service to retail clients and operating a platform through which its clients could invest their SIPP monies themselves or through an investment manager.

Gas Verdant – an unregulated investment in the form of a land purchase contract provided by a company initially based in Cyprus (GAS Global Agricultural Services Ltd (“Gas Global”) leasing plots of agricultural land in Australia to investors. The objective behind the investment was that an income would be derived from sale of crops grown on the land with a view to the land being sold after eight years to release gains.

Global Forestry – an unregulated investment provided by GFI Consultants Ltd (“GFI”) in the form of a lease of a plot of land on a timber plantation in Brazil with the return on Mr L’s investment being either by way of exploitation of the timber in the plot by the investor, doing something else or doing nothing in the hope of benefitting from a capital uplift, or sub-leasing the plot to a company to manage the trees.

Ethical Forestry – an unregulated investment provided by Ethical Forestry Ltd (“EFL”) in the form of the cropping rights for hardwood trees on a plantation in Costa Rica with the investment being held for a 10 year or 22 year time frame.

360 Invest Group – the promoter and distributor of the Ethical Forestry investment.

Mr L signed a SIPP application for an Options SIPP on 16 November 2010 which was received by Options on 25 November 2011 when it sent him a welcome pack confirming this as the start date of his SIPP. Mr L transferred £90,000 into his Options SIPP from his Hargreaves Lansdown SIPP.

Mr L didn’t identify any investment for his SIPP within his application but subsequently informed Options he wanted to invest in Ethical Forestry, signing Options’ ‘Alternative Investment Member Declaration and Indemnity’ form for this investment on 7 January 2011 and investing £12,000 into it. He thereafter informed Options he wanted to invest in Gas Verdant and Global Forestry and completing the same form for both these investments on 1 March 2011, investing £10,000 in the former and £5,000 in the latter.

The balance of the monies Mr L transferred remained in cash although he did open an execution only brokerage account and put £10,000 into this so that he could make his own trades. Mr L also took his 25% tax free lump sum from the monies transferred to Options.

On 27 November 2014 Options sent Mr L his annual valuation report and in the covering

letter it explained that his Global Forestry investment had been valued at nil as the income due for 2013 and 2014 hadn't been received and it had been unable to contact the company to verify the position. A liquidator was appointed in 2014 and this was referred to in the covering letter Options sent with the 2015 annual valuation when it confirmed that the investment was valued at nil. The directors of GFI were subsequently prosecuted by the Serious Fraud Office for conspiracy to defraud and found guilty in 2022. The company was finally dissolved on 5 March 2025.

The covering letter for the 2015 annual valuation also informed Mr L that his holding in Gas Verdant had been valued at 50% because a current valuation of the land hadn't been provided. However, in a letter to Mr L dated 25 July 2016 Gas Global referred to restructure of the investment and informed him that his investment was valued at AUD 5,476. It said that it was proposed that this would be exchanged for equivalent units in a Unit Trust to be listed on the Dublin Stock Exchange. In an email to Mr L dated 15 December 2016 about his online annual valuation, Options referred to the valuation by Gas Global and informed him that the Sterling equivalent at the time of the email was £3,230. In a valuation report dated 23 April 2018 the investment in Gas Verdant shown as £3,111. I have seen no valuation beyond that but understand the current value of the investment is nil.

The 2015 annual valuation showed that Ethical Forestry was still valued at £12,000 but based on the original valuation in 2011. However, EFL went into voluntary winding up with a liquidator being appointed in December 2015. The email of 15 December 2016 from Options to Mr L about his valuation for that year stated the investment had been valued at nil because the company was currently in liquidation. The directors of the company are currently the subject of criminal prosecution by the Serious Fraud Office.

Mr L complained to Options by letter dated 18 November 2020 in which the following issues were raised:

- Options should have recognised that the investments were, or were similar, to UCISs and unsuitable for Mr L.
- SIPP providers have a duty to point out issues likely to cause detriment and be able to identify instances of financial crime and consumer detriment.
- Mr L proceeded based on due diligence carried out by Options and if it had carried out the appropriate checks the detriment to Mr L would have been avoided

In its final response letter ("FRL") Options, in summary, made the following points.

- It is an execution only SIPP administrator and as such it would have been in breach of COBS 11.2.19R if it hadn't executed Mr L's specific investment instructions.
- It isn't permitted to provide advice nor comment on the suitability of a SIPP or the underlying investment, or that of the introducer a customer has chosen to use.
- It carried out Mr L's specific execution only instructions to make investments and it isn't responsible for his investment decisions.
- The investments were suitable to be held within a SIPP
- Mr L signed the documents Options provided to him confirming he understood that Options acted on an execution only basis and that it wasn't responsible for his decisions.

- It provided sufficient warnings about the investments, including that they were high risk and speculative so that he could make an informed decision.
- It is reasonable for Options to accept Mr L's signature on various documents confirming his understanding that it didn't provide advice or assess suitability and it isn't for Options to look beyond his signature or decline his instruction on the basis he didn't understand what he was signing when there was nothing to indicate this.
- Options conducted itself in line with the behaviour and type of conduct that the regulator indicated in the report of 2009 Mr L referred to.
- Section 27 of FSMA doesn't apply as Mr L hasn't evidenced that an adviser arranged the establishment of the SIPP.
- The investments weren't Unregulated Collective Investment Schemes and no explanation has been provided why it has been alleged they were.

Mr L referred his complaint to our service and it was considered by one of our investigators who thought that it should be upheld on the basis that Options had failed to carry out the due diligence it should have done on the investments and didn't treat him fairly in allowing the investments within his SIPP.

Mr L responded to the opinion of the investigator pointing out a couple of matters he wanted to clarify. The first was that of the money transferred from his other SIPP into the Options SIPP, around £90,000 remained in cash because he couldn't find any investment that he wanted. The second was that the investment in Gas Verdant was the reason given by Options for him not being able to close his Options SIPP and transfer his cash back to his original SIPP.

Options didn't agree with the investigator and provided a detailed response which I don't think it is necessary to set out here. The complaint was referred to me for decision.

I issued a provisional decision in which I first addressed Options' arguments that an oral hearing was necessary and that the complaint had been referred to our service too late. I explained why I was satisfied that I didn't need an oral hearing in this complaint and why I considered that it had been made within the relevant time limits.

I then went on to consider the merits of the complaint and thought that it should be upheld. In summary my reasons were as follows.

- The FCA's Principles for Businesses (PRIN) are a relevant consideration in this complaint.
- The regulator has issued several publications regarding SIPP operators which provide non-exhaustive examples of good industry practice.
- What Options was obliged to do in practice was to carry out due diligence that was consistent with good industry practice and its regulatory obligations and, based on the conclusions that it should reasonably have come to following such due diligence, decide whether to permit investments within Mr L's SIPP.
- Options should reasonably have concluded that none of the three investments should be permitted within its SIPPs based on the information that was available to it or should have been available if it had carried out proper due diligence.

- Options shouldn't therefore have accepted any of the investments within Mr L's SIPP.

I awarded redress based on a comparison between the investments in the SIPP and a benchmark, the FTSE UK Private Investors Income Total Return Index.

I gave both parties the opportunity of responding and providing any further information they wanted me to consider before making my final decision. Options didn't provide any response. Mr L responded accepting my provisional decision but said he wanted to clarify several points. I summarise the main points he has made below.

- He transferred £90,000 from his Hargreaves Lansdown SIPP not £96,000 as stated.
- The amount remaining uninvested after his investment in the three unregulated investments the subject of his complaint was £63,000.
- The Gas Verdant investment has been liquidated for a small sum and the redemption figure was £2,584 which Options will be aware of as it received the paperwork for this.
- There should be no reason the compensation can't be paid into his SIPP in the circumstances and any such payment needs to be gross as withdrawals will be taxed.
- He doesn't understand the relevance of him taking (most) of his 25% tax free lump sum as the amount he would have been able to take would have been greater if his SIPP hadn't been invested as it was.
- He is not commenting on the award of £300 for distress and inconvenience but whilst he didn't plough everything into the investments the subject of his complaint the amount of his pension invested was not small, being around 20% of his overall pension pot.

Options provided no response to my provisional decision.

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.

Mr L has largely agreed with my provisional decision and Options has provided no response. In the circumstances I can see no basis for significantly changing what I said in my provisional decision the findings from which I repeat below in this final decision.

On the preliminary issue raised by Options as to the need for an oral hearing I have explained my reasons why I don't agree this is necessary in my provisional decision. I am still of the view that I don't need an oral hearing for the reasons I set out. On the preliminary issue as to our jurisdiction I am still of the view that this complaint has been made in time for the reasons I explained in my provisional decision. I don't think it is necessary for me to set out in full my reasoning again on those preliminary issues here but so it is clear I adopt what I said in my provisional decision about those issues in this final decision.

Relevant considerations

The rules under which Options operate include the FCA's Principles for Businesses (PRIN) as set out in its Handbook. The Principles *"are a general statement of the fundamental*

obligations of firms under the regulatory system” (PRIN1.1.2G). The Principles themselves are set out under PRIN 2 and I think the following are of relevance in this complaint.

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 interest of its customers and treat them fairly.

I am satisfied that I am required to take the Principles into account when determining whether Options did anything wrong during in accepting Mr L’s SIPP application and providing its execution only service to him.

In coming to that conclusion I have considered the judgment in the case of *R (British Bankers Association) v Financial Services Authority (2011) EWHC 999 (Admin)* (“BBA”) in which Ouseley J said 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 was fair and reasonable redress to award. At paragraph 184 of his judgment he 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.”

I have also considered the judgments in the following cases, which relate specifically to SIPP operators: *R (Berkely Burke SIPP Administration Ltd) v Financial Ombudsman Service (2018) EWHC 2878* (“BBSAL”), *Adams v Options SIPP (2020) EWHC 1229 (Ch)* (Adams High Court), *Adams v Options UK Personal Pensions LLP (2021) EWCA Civ 474* (“Adams Appeal”) and *Options UK Personal Pensions LLP v Financial Ombudsman Service Limited (2024) EWCA Civ 541* (“Options Appeal”)

In the BBSAL case Jacobs J confirmed that the decision by the Ombudsman that under the Principles and in accordance with good industry practice Berkely Burke should have undertaken due diligence on the investment it accepted within its SIPP was lawful. At paragraph 109 of his judgment he said:

“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.”

Neither the Adams High Court case nor the Adams Appeal case addressed the application of the Principles. However, the application of COBS 2.1.1R - which states that ‘a firm must act honestly, fairly, and in accordance with the best interests of its client’ - was considered by HHJ Dight in the High Court. In his judgment he rejected the argument that Options SIPP had failed to comply with that rule on the facts of the case. The Court of Appeal didn’t allow Mr Adams appeal on that issue but did so on his claim made pursuant to section 27 of FSMA, which provision I discuss in more detail later in my findings.

Although COBS 2.1.1R does overlap with the Principles I have identified above as being a relevant consideration for me in this complaint – in particular Principle 6 – there are significant differences to the breaches of COBS 2.1.1R alleged in the Adams cases and the issues in this complaint.

I have also considered the Court of Appeal's judgment in Options Appeal case, which refers to the case law I mention above and approved the decision of the ombudsman in the case in question.

The courts have consistently ratified our approach in the cases I have referred to above. The various arguments that have previously been put as to why our approach was wrong have been rejected in the cases I have referred to above and those arguments can now reasonably be regarded as resolved, with the courts accepting that our approach in cases such as this one is appropriate and lawful.

The regulatory publications and good industry practice

The regulator has over the years issued several publications reminding SIPP operators of their obligations, setting out how they might achieve the outcomes envisaged by the Principles. These publications include:

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

The 2009 Thematic Review report included the following:

"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 (IFAs)."

"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 customers and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers."

And:

"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 instances of financial crime and consumer detriment such as unsuitable SIPPs."

The report included examples of measures that SIPP operators could consider, which were stated to be from examples of good practice that the regulator had observed and suggestions that it had made to firms. These were:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*
- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment)*

and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*
- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*
- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions and gathering and analysing data regarding the aggregate volume of such business.*
- *Identifying instances of clients waiving their cancellation rights, and the reasons for this.*

I don't think it is necessary for me to comment at length on the other publications from the regulator that I have considered but will do so briefly. In the 2012 Thematic Review the regulator said that:

"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."

The regulator identified one of the ongoing issues as a lack of evidence of adequate due diligence being undertaken for introducers and investments.

The 2013 finalised SIPP Operator Guidance made clear that it didn't provide new or amended requirements but was a reminder of regulatory responsibilities that became a requirement in April 2007. It repeated what was stated in the previous thematic reviews about SIPP operators needing to comply with Principle 6. And under the heading 'Management Information' stated:

"We would expect SIPP operators to have procedures and controls in place that enable them to gather and analyse MI (Management Information) 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 - such as the ability 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.

And under the heading 'Due Diligence' the FCA said the following:

"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."

The July 2014 Dear CEO letter followed a further Thematic Review carried out by the

regulator the key findings from which were annexed to the letter. It again made reference to the need for all firms to conduct their business with due skill, care, and diligence in accordance with Principle 2.

The only formal guidance in the above publications is the 2013 finalised guidance. However, the publications I have referred to explained what the regulator thought SIPP operators should be doing to comply with their obligations under the Principles and to deliver the outcomes envisaged. I am satisfied that as such they provide examples of what amounts to good industry practice and it is appropriate for me to take them into account. In saying that I want to make clear that the examples in the publications are just that and are not the limit of what might amount to good industry practice.

I have considered the fact that the 2012, Thematic Review, 2013 finalised SIPP operator guidance and 2014 Dear CEO letter were published after Options had accepted Mr L's SIPP application. Options argues that it isn't fair to make reference to publications made after the events complained about because these introduced new expectations. However, I don't agree they introduced new obligations. There is nothing in the publications that supports this. To the contrary, the 2013 finalised SIPP operator guidance specifically stated that "These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007. I am satisfied that what was set out in the publications I have referred to related to what SIPP operators should already have been doing, not just what they should be doing going forwards and that the examples of good practice set out are relevant considerations in this complaint.

What did Options' obligations mean in practice?

As a SIPP operator providing an execution only service Options wasn't required to assess the suitability of the SIPP for Mr L or of the investments he invested in. However, it was required to carry out due diligence the investments in accordance with the Principles and good industry practice and having done so decide – based on the conclusions it should reasonably have come to following such due diligence - whether to accept those investments.

Put another way, if Options should have reasonably concluded, having carried out reasonable due diligence with good industry practice in mind, that an investment could involve financial crime or consumer detriment then as an execution only SIPP operator it could be expected to refuse to accept that investment in a SIPP.

So, in short, I am satisfied that what Options was obliged to do in practice was to carry out due diligence that was consistent with good industry practice and its regulatory obligations and, based on the conclusions that it should reasonably have come to following such due diligence, decide whether to permit investments within Mr L's SIPP.

Did Options comply with its regulatory obligations?

Options' due diligence on Gas Verdant

Options has provided the following documents related to its due diligence on Gas Verdant:

- Draft Land Purchase Contract
- Property Inspection report for 'Prestons Farm' dated 8 March 2010
- Property report for 'Dorre-Dale' (undated)

- Options' Investment Committee Minute SIPP Investment approval dated 25 October 2010 ("Investment Committee approval")

The Investment Committee approval indicates that as well as considering the Property report, Property Inspection report, and Draft Land Purchase Contract Options also considered a brochure, reservation form and 'Enhance comment'.

These documents haven't been provided in this complaint but, in another complaint, Options provided a third party report on Gas Verdant from Enhance Support Solutions Limited. It is reasonable to assume that the reference to the 'Enhance comment' in the Investment Committee approval is to that report, which I have considered and comment on further below. It also provided a copy of the brochure for Gas Verdant in that other complaint, which I have also considered.

Overall the documents that were considered by Options before approving Gas Verdant didn't in my view provide the information that Options needed to reasonably conclude, with its regulatory obligations and good industry practice in mind, that Gas Verdant should be approved for its SIPPs. I explain why I have come to that conclusion below.

The evidence indicates that Options' focus was on whether, or not, Gas Verdant could be held in a SIPP from a tax point of view. I say this for a couple of reasons. Firstly because the Investment Committee approval meeting outcome was:

"The meeting resolved that, based on the information provided, there does not appear to be a tax charge liability for this investment and it is therefore in order to proceed."

There is nothing in the minutes of the meeting that any consideration was given to the suitability of Gas Verdant for its SIPPs beyond whether there might be a tax liability.

Secondly the report Options obtained from Enhance Support Solutions was very limited and stated:

"The process undertaken by Enhance Support Solutions seeks to identify whether the investment is likely to be accepted based on HMRC rules as set by the Finance Act 2004 and subsequent amendments."

So, the purpose of the report was, on the face of it, limited to establishing if the investment could be held in a SIPP under HMRC rules, so again was only looking at the investment in terms of its tax implications.

There is nothing in the information I have seen to suggest that Options had taken account of the good practice identified in the regulatory publications I have referred to above or acted in accordance with its regulatory obligations to try and understand whether consumer detriment might arise from it accepting Gas Verdant in its SIPPs.

If it had carried out due diligence with that in mind then, based on the information available to it, Options should reasonably have concluded that consumer detriment was likely to arise if it accepted Gas Verdant within its SIPPs. There are several reasons I have come to that conclusion, as I explain below.

In GAS Global Agricultural Services Ltd Options was dealing with a Cyprus based company which had only been registered at the end of 2008 – less than two years before the Investment Committee approval meeting. There is nothing to suggest the company had any track record in this type of investment and it is of note that in the brochure it states that:

“GAS Global Agricultural Services (GAS), is one of the first companies to create dynamic products relating to modern agronomy, providing products that yield annual income and have clear exit strategies, over medium and long term periods.”

So, as well as dealing with a new company based abroad Options was also dealing with an investment that was new and untried for ordinary retail client. This of itself should in my view have put Options on notice that it should approach the acceptance of the investment within its SIPPs with caution and that its due diligence needed to be robust.

However, from the evidence I have considered, rather than being robust, Options' due diligence was cursory and although its enquiries were limited it was still provided with information which should in my view have rung clear alarm bells about the investment, with good practice and its regulatory obligations in mind.

Despite its limitations and being focussed only on whether Gas Verdant complied with HMRC rules, the Enhance report did include the following statements:

- There is no established market for buying or selling the beneficial ownership.
- The investment should be viewed as illiquid.
- The investment is unregulated so no investor protection will apply.

In my view, given it should already have been approaching the acceptance of the investment with caution for the reasons I have already stated, Options should have concluded that an unregulated investment involving overseas property, which had no established market and was illiquid, could cause consumer detriment if it was accepted within its SIPPs.

Moreover, it should also have realised from the contents of the brochure that there was a real risk that consumers could be misled into investing, given the brochure provided a picture of an investment that would produce high average returns, was liquid and had good prospects of a capital return with limited risks. For example the brochure includes statements such as:

- The current land purchase price means the return can be estimated at an average of circa 12% per annum.
- The contract terms are usually 8 years at the end of which the land will (my emphasis) be sold and the investor will (my emphasis) receive the open market price.
- The investor can sell or assign the land privately at any time. The form of ownership makes this administratively very simple without necessarily incurring any legal fees.
- There is general consensus that the long-run trends are upwards.

There was an obvious disparity between the picture presented by the above information and the statements in the Enhance report which Options should have identified, given both documents were available to it at the time of the Investment Committee meeting.

It is reasonable to have expected Options to have realised that the brochure could mislead consumers into thinking that they would in effect have high returns on their investment with little risk and with no issues being able to sell their investment in due course, when there was nothing to support this. To the contrary, the Enhance report made it clear that there was no market for clients beneficial interest and the investment was illiquid.

Options should have concluded, from the information available to it at the time the Investment Committee approval meeting took place on 25 October 2010, if not before, that consumers could be misled about the investment by the information Gas Verdant was providing in its brochure. In other words it should have come to this conclusion before it started permitting the investment into its SIPPs, so before it accepted Mr L's application.

Options should also reasonably have concluded that there was a real risk of consumer detriment arising from consumers investing in an unregulated and illiquid investment involving overseas property promoted by a Cyprus based company which had no track record in such investments, where the marketing material available to clients was misleading.

In other words, if Options had drawn the conclusions that it is reasonable to have expected it to have drawn from the information it was provided with, it should have concluded that there was a serious risk that consumer detriment would arise if it accepted Gas Verdant in its SIPPs and that the investment shouldn't be accepted in its SIPPs because of this.

In the circumstances I think it is fair and reasonable to find that Options failed to comply with its regulatory obligations and act in accordance with good industry practice in accepting Mr L's application to invest in Gas Verdant.

Put another way, if Options had acted with due skill, care and diligence, organised and controlled its affairs responsibly, and treated Mr L fairly it should have concluded that it shouldn't accept his application to invest in Gas Verdant - because it should already have concluded before it received his application that there was a serious risk of consumer detriment if the investment was accepted within its SIPPs and that it therefore should reject any application to invest in it.

Options' due diligence on Ethical Forestry

As with Gas Verdant, Options hasn't set out the due diligence it carried out on Ethical Forestry. It has provided a company search and Worldchecks on the directors of the company but these post-date Mr L's investment by a couple of years and on the face of it relate to a different Ethical Forestry project. This was obviously not part of the enquiries Options made at the time of Mr L's investment.

However, Options has provided an Investment Committee meeting minute dated 15 November 2010 for approval of '360 Invest Group – Ethical Forestry – Acacia Forestry Plantation Costa Rica'. And this shows that the following were considered in the meeting - which approved the investment:

- Frequently asked questions
- Purchase form
- Prospectus
- Projections
- Website
- Enhance comment

The frequently asked questions, purchase form, and projections all appear to be included in one document from 360 Invest Group, which I assume is the Prospectus referred to. So, it

seems Options due diligence amounted to consideration of the information in the prospectus, the website and the Enhance comment.

As with Gas Verdant, the reference to the 'Enhance comment' is to information provided by Enhance Support Solutions Ltd and the report stated that the process it had undertaken was to identify whether the investment is likely to be acceptable based on HMRC rules. In short, it only looked at the tax consequences of the investment and whether it could be held in a SIPP from that perspective.

However it did, amongst other things, include the following information:

- There is no established market for buying and selling this investment.
- The investment should be viewed as illiquid.
- The investment is unregulated so no investor protection applies.

The Investment Committee meeting minute confirmed that the investment could proceed as 'there doesn't appear to be a tax charge' but that each client would need to sign an alternative investment member declaration and indemnity and a UCIS New Business Submission form as well as limitation of liability wording being added to all contracts.

Options hasn't provided a copy of the alternative investment declaration for Ethical Forestry but it is a pro-forma document and I have seen the signed forms completed by Mr L for both Gas Verdant and Global Forestry as well as those completed by clients in other complaints. These include a statement that the member signing the form is aware that the investment is high risk and/or speculative and agrees to indemnify Options against any and all liability arising from the investment.

Options was aware that it was dealing with an investment involving overseas property which was unregulated, high risk/speculative, and illiquid and which it treated as a UCIS.

Given the above, when considering whether to accept the investment within its SIPP's Options should have realised that it was unlikely to be appropriate for most client pensions. If this wasn't enough of itself for it to conclude that it shouldn't accept the investment in its SIPP's because of the risk of consumer detriment it should at least considered the other information available to it through the Ethical Forestry website and prospectus with a great deal of scrutiny. If it had done so then it reasonably should have concluded that consumer detriment was likely to arise from it accepting Ethical Forestry within its SIPP's. I say this because it has said it considered both the website for ethical forestry as well as the Prospectus.

I have used the Wayback Machine to consider web pages from the Ethical Forestry website in the months before the Investment Committee meeting. The information on the website included statements such as:

"If you are looking for a certified, high return investments, low risk, ethical investment which is both profitable and carbon friendly, our Tropical Hardwood Investments demand your serious consideration."

"Timber investments offer steady, stable increases with predictably high returns, and as they are not correlated to the stock market, they do not suffer from unpredictable peaks and troughs."

"Low risk - No peaks or troughs, just steady and stable increases."

The website also offered the following projections, described as conservative.

“A typical investment of £18,000 invested over 10 years is projected to return £93,642.

“A typical investment of £18,000 invested over 22 years is projected to return £93,642.

These returns were contrasted with the return from a high-return account at 6% compound interest per annum which was calculated to yield just £32,235 over 10 years.

The prospectus that the Investment Committee confirmed that it had considered had similar statements about the low risk high return nature of the investment. It is headed ‘Specialists in secure, high-return timber investments followed by a quote which states *“Timber is the best long-term investment there is, it is the only low-risk, high return asset there is.”*

There are further statements made within the prospectus along the same lines, such as *“Timber investments offer steady, stable increases with predictably high returns, and as they are not correlated to the stock market, they do not suffer from unpredictable peaks and troughs.”* And *“Low Risk – no peaks or troughs just steady stable increases.”*

The same projections for returns at 10 years and 22 years as set out on the website are repeated in the prospectus.

I acknowledge that there is reference to risks in the small print within the purchase order included within the prospectus - with currency risk, illiquidity, and unrecoverable local taxation being referred to. The terms set out in the purchase order also include disclaimers including that the growth or value of the trees not being guaranteed.

However, overall the information within both the website and the prospectus is overwhelmingly positive with repeated reference to the investment being ‘low risk’, ‘stable’, ‘secure’ and ‘high return’. It is reasonable to have expected Options to have concluded that the marketing of the investment wasn’t consistent with its nature – an unregulated high/risk/speculative overseas property investment.

Options should have further concluded that there was a good possibility that clients were being misled into investing into Ethical Forestry by the marketing material presenting it as low risk and stable given Options’ own documentation shows that it was of the view that the investment was high risk/speculative. The risk of clients being misled was even greater given the financial projections as to the returns in my view. Ethical Forestry Limited was projecting that its supposed low risk and stable investment could produce returns of over 500% in 10 years and over 4000% in 22 years.

Such high returns were quite obviously questionable in my view and should have been questioned by Options in the absence of any evidence provided to support the figures. It is reasonable to have expected Options to have concluded that clients were likely to be misled into investing in Ethical Forestry both by the unfounded and repeated claims that the investment was low risk, stable and secure and the unsupported projections as to the ‘conservative’ returns that were likely to be achieved. This is especially so when it was clear from both the website and prospectus that Ethical Forestry Limited was targeting pensions.

The website in 2010 had a page dedicated to pensions which was headed ‘Pensions. Our Investments Are Ideal For SIPP’s’ and goes on to explain why SIPP’s are popular and list the types of pensions that can be transferred into a SIPP and offering to recommend a financial adviser that can advise them on the transfer if the client doesn’t have one. The prospectus from 360 Invest Group repeated what was set out on the website and then provides positive ‘case studies’ of clients who had elected to invest their pension monies into Ethical Forestry.

If Options had acted with good industry practice and its regulatory obligations in mind, the information available to it at the time of the Investment Committee meeting should reasonably have led to it concluding it shouldn't accept the investment because there was a serious risk consumer detriment would arise from it doing so - given it was a high risk unregulated overseas property investment with no track record that had been misleadingly promoted to clients on the basis that it was low risk and secure and would produce returns significantly above what they could expect from any standard investment. In short, Options should never have accepted the investment in its SIPP's based on the information that was available to it at the time of the meeting and should have rejected Mr L's application to invest in Ethical Forestry.

Options' due diligence on Global Forestry

Options has again not specified the due diligence it carried out on Global Forestry but I am aware that in other complaints to our service it has said it did carry out the due diligence it needed to before accepting the investment in its SIPP's, to establish that the investment was genuine and wouldn't incur tax charges for its SIPP clients.

I want to make clear that I am not satisfied that Options' due diligence obligations started and ended with it checking if the investment was genuine and whether it would incur tax charges. And, as I explain below, I am not satisfied that it did carry out the enquiries needed to conclude the investment was genuine in any event.

Options did provide documents in those other complaints which it said were considered by it. These include Worldchecks on GFI, its Directors and the Trustee GFI appointed as well as project summaries, legal opinion and information in respect of the title, ownership, and nature of the investment. It also said it considered sample copies of the rental agreements for the plots of land and reviewed the investment brochure for Global Forestry.

It has not provided those documents in this complaint but in any event whilst these do show Options carried out some due diligence on the investment, I am not its enquiries went far enough and persuaded that its conclusion that it should accept the investment within its SIPP's was a reasonable one for it to have come to from the information available to it or that its enquiries went far enough.

GFI had only been incorporated in April 2010, so had been in existence less than 12 months at the time Options was considering whether to accept Global Forestry in its SIPP's. GFI therefore had no investment track record that might have given some comfort that the investment it was promoting to potential investors wouldn't cause consumer detriment. In the circumstances, given it was dealing with a new company and new product Options' enquiries needed to be robust and it needed to look carefully at the information available to it and draw reasonable conclusions from this. I am not satisfied that it did consider the information available to it carefully, nor that it carried out the enquiries it should have done before accepting the investment in its SIPP's, as I explain below.

I am mindful that Options' due diligence on the Ethical Forestry investment included consideration of its website, which was a reasonable step for it to take when carrying out due diligence and one that Options could reasonably have been expected to have taken with GFI.

From considering Wayback Machine the GFI website at around the time of Mr L's investment placed a lot of emphasis on the supposedly safe and secure nature of the Global Forestry investment, and there being guaranteed returns. For example it included the following:

"If you are looking for a certified, high return, low risk, ethical investment which is both

profitable and carbon friendly, our Tropical Hardwood Investments demand your serious consideration."

"Our investment packages always offer a minimum 10% return every year, contractually guaranteed."

"Our projects are backed by the Brazilian Government. We provide lots of investor securities."

"Low risk investment with high returns."

If Options had considered the website, it would have been apparent that statements within it were misleading – the investment clearly wasn't low risk and Options was aware of this given it knew the investment was unregulated and it required Mr L to sign its Alternative Investment Member Declaration and Indemnity which referred to it as a high risk and/or speculative investment.

The statement as to contractually guaranteed returns of at least 10% was also one that could be expected to have concerned Options, given that such high guaranteed returns was questionable for any investment, let alone a new product that was an unregulated and high risk investment involving overseas property.

In other complaints to our service, Options has said that it considered draft rental agreements through which plots leased to investors are sub-let to a forestry management company. I haven't been provided with any draft rental agreements in this complaint but I have seen the rental agreement dated 25 January 2011 between Mr L's SIPP and a forestry management company.

This provided that the company would pay the SIPP £500 per annum – so 10% of the amount Mr L's SIPP invested – as well as 2% net per plot generated from the 'Harvest Proceeds'. However, whilst the rental agreement entitled Mr L to a payment of £500 per annum, I have seen no evidence that shows the company was financially able to make such payments.

Moreover, the rental agreement allowed for the rental company to terminate the agreement after only three years when the marketing information made clear that the maximum return is calculated at 25 years – in short the investment could be held for 25 years so referring to 10% return on investment every year contractually guaranteed when the rental agreement could be terminated after three years was in any event misleading even if the term guaranteed wasn't in itself questionable, which I think it was.

As I have said, I haven't been provided with copies of the draft rental agreements that Options said it considered as part of its due diligence in other complaints but it is reasonable to assume these would have been worded similarly to Mr L's rental agreement. It is reasonable to have expected this to have led to Options to question the accuracy of the information GFI was providing to visitors to its website.

The website overall provides a picture of Global Forestry as a low risk, safe, and secure investment with guaranteed returns of at least 10% per annum when this wasn't the reality and this is something it is reasonable to expect Options to have realised if it had made the enquiries that it should have done. This picture was very much at odds with Options being aware that it was an unregulated alternative investment which it considered was high risk and/or speculative - as evidenced by the Alternative Investment Declaration and Indemnity form Mr L signed.

It should have been apparent to Option that there was a real risk that the website content could mislead clients into investing and that the investment wasn't as described by GFI and might not be genuine. And it is reasonable to have expected it to have concluded there was a real risk consumer detriment could arise if it accepted Global Forestry in its SIPPs because of this and that it shouldn't therefore accept the investment at all – before it received Mr L's application to invest.

I am reinforced in that view by the online brochure available through the website. I have considered the brochure dated 17 May 2010 which it is reasonable to assume reflected what was available when Mr L decided to invest in Global Forestry some months later. This included the following statement.

“Tropical Forestry offers the ideal diversification from real estate and equity portfolios, providing a non-volatile market with high long-term returns on investment and a low risk-to-return ratio.”

There are also references in the brochure to forestry providing long-term and stable returns and a constant growth rate and increasing demand and providing a “*Minimum 10% ROI PA*” - so again in effect guaranteeing this was the lowest annual return that investors would receive. The brochure also included FAQs, one of which stated that a £5,000 investment in Global Forestry produces a projected return of £56,849 over 25 years as compared to a return of only £16,932 for a deposit earning 5% compound interest over the same period.

And, under the heading ‘Investment Risks’ instead of identifying the risks of the investment the brochure provides a list of insurances that are said to fully cover the investment - from explosion damage, wind damage and storm damage to malicious damage and civil commotion – giving the impression that even if things go wrong, investors will be protected through insurance.

The brochure reinforces the false picture painted by the website of Global Forestry as a low risk, safe, and secure investment with guaranteed returns of at least 10% per annum. As I have said, this was clearly at odds with Options own conclusion that it was dealing with an unregulated alternative investment which was high risk and/or speculative. The only reasonable conclusion that Options could have come to when considering its regulatory obligations and good industry practice was not to accept Global Forestry in its SIPPs because there was a significant risk consumer detriment would arise if clients invested their pension monies into it.

I acknowledge that the brochure did state that “*Past growth rates are by no means a guarantee of those in the future*” but any impact that statement might have had was very much limited by GFI following this with “*they are however the only “yardstick” one has in looking forward and should therefore be viewed realistically. The positive viewpoint here is that market values have consistently risen over the years and one would hope this trend would continue*”. I am not satisfied that such warnings were enough to put right the misleading impression the website and brochure gave of a safe and secure investment that would provide guaranteed returns.

Options could have been expected to have identified other concerns with the information in the online brochure. Two pages of the brochure are about investing ‘via your pension’ and then sets out the advantages of investing through a SIPP. The brochure goes on to state that

“An IFA is generally needed to help complete the very complex SIPP application forms, as well as advise on transfers. If an investor wishes to invest in GFI through a SIPP, but does not have a suitable IFA, he/she should contact our inhouse IFA.”

Options was aware that GFI wasn't authorised to provide advice, or any other financial service. So, the suggestion that clients should contact its inhouse IFA could be expected to have raised concerns with Options that GFI might be advising clients as to the transfer of their SIPP's and investment in Global Forestry, in breach of the general prohibition in section 19 of the Financial Services and Market Act 2000 ("FSMA"). There was an obvious risk of consumer detriment arising from clients investing in their pension monies in Global Forestry in those circumstances and Options could reasonably be expected to have concluded it shouldn't accept the investment within its SIPP because of this – and before it received Mr L's application to invest.

In summary, if Options had carried out the due diligence that it should have done with its regulatory obligations and good practice in mind, it should reasonably have established the following:

- GFI was a new company and Global Forestry a new investment that had no track record, so no assurance could be taken that the investment was genuine.
- The marketing of Global Forestry through the GFI website and online brochure provided a picture of a safe and secure investment which would provide a minimum return of 10% each year.
- This picture was misleading, as the investment was an unregulated and high risk and/or speculative alternative investment.
- There was a risk that clients could be misled into investing in Global Forestry by the contents of the website and online brochure.
- GFI was targeting pension investors for investment in Global Forestry when as an unregulated and high risk/speculative investment it wasn't suitable for most pensions.
- There was a risk that GFI was also advising clients as to transfer of their pensions to a SIPP and investment in Global Forestry, in breach of the general prohibition in FSMA.
- The misleading presentation of the investment as being safe and secure with guaranteed returns meant there was a risk it might not be a genuine investment.

There was an obvious risk of serious consumer detriment from clients investing in Global Forestry given the above and as such it is reasonable to have expected Options to have concluded that it shouldn't accept the investment in any SIPP. It therefore shouldn't have accepted the investment in Mr L's SIPP.

I am satisfied in the circumstances that it is fair and reasonable to find that in accepting the investment in Mr L's SIPP Options failed to act with due skill, care, and diligence, didn't organise and manage its affairs responsibly and failed to have regard to Mr L's interest or treat him fairly.

In making the above findings I have had regard and taken account of the arguments that Options has put in response to the investigators opinion as to why it considers it doesn't bear any responsibility for Mr L's SIPP being invested in the three investments but its arguments are not persuasive. I don't think it is necessary to address everything it has said.

It has referred to the legal and contractual context of the relationship it had with Mr L but I have taken account of that context in making my findings above. I accept that it provided an execution only service and wasn't responsible for ensuring the suitability of any investment

Mr L chose to invest his SIPP into.

My findings have not been made on the basis that it did have such a responsibility. They have been made on the basis that Options had its own regulatory obligations that included it carrying out due diligence on investments through which it could obtain the information it needed to reasonably decide whether an investment was appropriate for its SIPPs. I have found that if Options had carried out the due diligence it should have done it should have concluded that none of the investments the subject of this complaint were appropriate for its SIPPs and that it therefore shouldn't have accepted these within Mr L's SIPP and should have refused his instruction to make those investments accordingly.

Options has also referred to the contract between it and Mr L, arguing that this was effective to relieve it of any liability it might otherwise bear and that to find otherwise would be to render the contract void. However, neither the contract between Options and Mr L nor any indemnity signed by Mr L permitted Options to ignore its own regulatory responsibilities and it is on the basis that it failed to comply with its own regulatory responsibilities that I have upheld this complaint. I would point out that a firm isn't permitted to exclude its liability or rely on any exclusion or restriction of any duty or liability it may have to a client under the regulatory system, which system includes the Principles.

The application of section 27 FSMA

I agree with Options and the investigator that this isn't relevant in this complaint.

Did Options act fairly and reasonably in proceeding with Mr Ls' instructions?

Options has argued that COBS 11.2.19R made it mandatory for it to execute an order received from a client and that in doing so it is deemed to have complied fully with the regulations and has treated its customer fairly. This argument is only relevant if Options should have accepted Mr L's SIPP application in the first place, and I have found that it shouldn't have done so.

In any event, this argument was considered and rejected by Jacobs J in BBSAL in which he said at paragraph 122 of his judgment:

"The heading to COBS 11.2.1R shows that it is concerned with the way orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2, namely: "Best execution". The text of COBS 11.2.1R is to the same effect. The expression "when executing orders" indicates that it is looking now when the firm comes to execute the order, and the way in which the firm must then conduct itself. It is concerned with the "mechanics" of execution; a conclusion reached, albeit in a different context, in Bailey & Anr v Barclays Bank [2014] EWHC 2882 (QB), paras [34] – [35]. It is not addressing an anterior question, namely whether a particular order should be executed at all. I agree with the FCA's submission that COBS 11.2 is a section of the Handbook concerned with the method of execution of client orders, and is designed to achieve a high quality of execution. It presupposes that there is an order being executed, and refers to the factors that must be taken into account when deciding how best to execute the order. It has nothing to do with the question of whether the order should be accepted in the first place."

I am satisfied that the argument that Options has made in relation to COBS 11.2.19R isn't relevant to its regulatory obligations, under which it needed to decide whether, or not, to accept an application to open a SIPP in the first place or to execute the instruction to make the investments i.e. to proceed with the application.

Is it fair and reasonable to ask Options to compensate Mr L?

Options argues that if it hadn't accepted Mr L's business the transfer of his pension would still have been taken place through a different SIPP Operator and he would still have invested in the investments the subject of this complaint. I agree with Options that Mr L would still have transferred part of his pension from his Hargreaves Lansdown SIPP.

However, there is no basis for finding that he wouldn't have transferred to Options but another SIPP operator instead. His Options SIPP application didn't make any reference to the investments he subsequently made and from the information I have seen Mr L chose these after the transfer.

There is also no suggestion that Options would have reason to question the transfer because of the involvement of an unregulated introducer, as there is no evidence an introducer business was involved in the decision to transfer. From what Mr L has said, his decision to transfer was because he wanted to split his pension fund, leaving part with Hargreaves Lansdown and putting the rest into another SIPP.

In the circumstances there was no reason for Options to refuse his application and not accept the transfer of his pension monies and as such no basis for finding another SIPP operator would have been involved. And given I have found that Options should have concluded that it shouldn't accept Mr L's subsequent applications for his SIPP to invest in Gas Verdant, Global Forestry and Ethical Forestry it is fair and reasonable to ask Options to compensate Mr L for his losses arising from those investments being made.

I have considered whether it would be fair and reasonable for Options to pay the full amount of Mr L's losses. Having done so I am satisfied that it would be fair and reasonable for it to do so - given that if it had complied with its regulatory obligations and acted in accordance with good industry practice, his SIPP wouldn't have invested in the investments I have discussed above.

In making that finding I have considered what Options has said about Mr L having to bear some of the responsibility for his losses. However, whilst I accept that he chose the investments made by his SIPP, I am not persuaded that means he shouldn't recover his losses in full. Options should have concluded that it shouldn't permit those investments in any SIPP from the outset, or at least before it received Mr L's applications, so they shouldn't have been available for Mr L to apply for in any event.

Putting things right

I consider that Options failed to comply with its own regulatory obligations and didn't put a stop to the transactions set out above. My aim in awarding fair compensation is to try, as far as possible, to put Mr L into the position he would have been in had he not made those transactions through his SIPP.

Mr L has made clear that he transferred part of his pension to his Options SIPP with a view to investing in alternative investments to diversify his overall pension funds. However, he wasn't attracted by any other alternative investments available in his Options SIPP, leaving the balance of his pension monies in cash and then subsequently opening a trading account for a small part of this. So, there is no reasonable basis for finding that Mr L would have invested the money he put into GFI, EFL and Gas Verdant in other alternative investments.

Mr L was obviously aware that the investments were unregulated and has made clear he was aware of the identified risks with his investments, such as the possibility of crop failures and drops in commodity prices, and that growth targets might not be achieved. However, he says he limited himself to assets where you shouldn't lose money. From what he has said he considered that these weren't as risky as investing in an equity investment.

I have taken the above into account when considering how redress should be calculated. I have also taken account of what Mr L has said in response to my provisional decision. I think the only matters raised by him that I need to address relate to the notional deduction for tax if the compensation is paid to him as a lump sum rather than into his SIPP and what he has said about payment received for his Gas Verdant investment which both relate to the redress payable.

On the first point, I said that if Options paid redress to Mr L as a lump sum it should deduct a notional amount of 20% from this to allow for the tax payable by Mr L at his marginal rate. I have reconsidered this, as at the time he took his lump sum he says his GFI and EFL investments were valued at nil and his Gas Verdant investment was valued at half its original value. Given this I am not satisfied that it would be fair or reasonable for the notional deduction to be at Mr L's full marginal rate.

On the second point, Mr L has said that Gas Verdant has been liquidated.

What Options must do

To compensate Mr L fairly, Options must:

- Compare the performance of Mr L's investments with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value there is a loss and compensation is payable.
- Options should also add any interest set out below to the compensation payable.
- If there is a loss this should be paid into Mr L's pension plan to increase its value by the amount of compensation and any interest, allowing for the effect of charges and any available tax relief. 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 plan isn't possible or has protection or allowance implications, it should be paid direct to Mr L as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid because it would have provided a taxable income. This is a notional deduction to ensure compensation is fair and reasonable and therefore Mr L won't be able to reclaim any deduction.
- If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr L 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.
- If the SIPP needs to be kept open only because of any illiquid investment/s and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.
- Pay Mr L £300 for the distress and upset caused by the losses he suffered to his pension because of what Options did wrong.

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

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

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Gas Verdant	No Longer in force	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of Options being notified of Mr L's acceptance)
GFI	No longer in force	As above	As above	As above	As above
EFL	No longer in force	As above	As above	As above	As above

Actual value

This means the actual amount payable from the investments at the end date. My understanding is that GFI and EFL no longer exist, so the actual value for those investments should be nil. Mr L has stated that Gas Verdant has also been liquidated, so it appears this no longer exists as well and should likewise be treated as having a nil value.

If I am wrong and any of the investments still exist then they are illiquid and Options should take ownership of any illiquid investment by paying a commercial value acceptable to it, as the pension provider. The amount Options pays should be included in the actual value before compensation is calculated.

If Options is unable, or if there are any difficulties in buying any illiquid investment/s, it should give such holding/s a nil value for the purposes of calculating compensation. In this instance Options may ask Mr L to provide an undertaking to account to it for the net amount of any payment from the illiquid asset in the future. That undertaking should allow for the effect of any tax and charges that would be incurred on drawing the receipt from the pension plan. Options will have to meet the cost of drawing up any such undertaking.

Fair value

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

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. The same applies for any contributions made, these should be added to the notional calculation from the date they were actually paid, so any growth they would've enjoyed is allowed for.

Sipp fees

If the SIPP cannot be closed because of any illiquid investment/s and only remains open because of this and Options is unable to take over any illiquid investment/s so that it can be closed then it wouldn't be fair for Mr L to have to continue 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/s then I think it's fair that Options waive the SIPP fees until the SIPP can be closed.

Distress and Inconvenience

I think the loss of the pension provision the subject of this complaint would have caused distress and inconvenience to Mr L. He has lost almost all the money his SIPP invested in the three companies the subject of this complaint and he says this amounted to around 20% of his overall pension provision. I consider an award of £300 is appropriate in the circumstances.

Why is this remedy suitable?

I've chosen this method of compensation because:

- I can't say definitively into what holdings, and in what proportions, Mr L's monies would otherwise have been invested had he not invested as he did. However, overall, I consider the measure below is a fair and reasonable proxy for the return his monies might have experienced over the period in question if his SIPP hadn't been invested in the three investments the subject of this complaint.
- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison.

Options must also provide the details of its redress calculation to Mr L in a clear and simple format.

My final decision

I uphold this complaint for the reasons I have set out above. Options UK Personal Pensions LLP must calculate redress as set out above and pay this to Mr L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 29 August 2025.

Philip Gibbons
Ombudsman