

The complaint

Mr F complains, through his representatives, that Options UK Personal Pensions LLP (“Options”) previously Carey Pensions UK - didn’t carry out adequate due diligence as regards his Self-Invested Personal Pension (SIPP).

What happened

Although Mr F is represented and his representatives have provided information on his behalf I will refer to Mr F throughout for ease of reference. I set out below the roles of the various parties that 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.

Prospect Data Mining (“PDM”) – an unregulated introducer of clients to Options based in Spain.

Cornhill Capital Trading (“Cornhill”) – the investment manager that Mr F originally opened an advisory stockbroking account with.

Templeton Securities Limited (“Templeton”) – an appointed representative of Alexander David Securities between 15 July 2013 and 19 August 2015 and the investment manager that Mr F subsequently opened an advisory stockbroking account with and which purchased the investments within his SIPP.

Eligere Investments Plc – incorporated on 6 March 2013 and listed on the GXG Market – regulated by the Danish Financial Supervisory Authority but closed down in August 2015 – and suspended from trading in June 2015 with a liquidator appointed to carry out a voluntary winding up in April 2017. The company was dissolved in April 2020.

Emmit Plc – incorporated on 10 March 2005 and admitted to the AIM market on 1 July 2005. Suspended from trading on AIM on 9 April 2013 with administrators being appointed on 5 July 2013, who proposed a Creditors Voluntary Arrangement through which the debt of the company would be converted to shares and the company relisted on AIM as an investing company. Following this the company was relisted on AIM in early 2014. The FCA provided a warning in respect of investing in the company on 14 October 2014, referring to individuals having been encouraged to transfer money from work pension schemes into SIPPs to buy shares in the company, with some investors being offered ‘cash back’ in order to do so. The company was then suspended from trading again in November 2014. It was finally dissolved on 12 October 2024.

Mr F’s relationship with Options

Mr F was introduced to Options by PDM, signing an application to transfer two existing pensions into an Options Restricted Investment SIPP. He appears to have signed different parts of the application at different times, as he has signed various declarations on 31

December 2013 but then completed the information about investing in Cornhill as his investment manager on 23 January 2014. The application Mr F completed was for direct clients – clients establishing a SIPP without advice. The original application Mr F completed states that the reason he wanted to establish a SIPP without an adviser was because he was satisfied with the recommendations of his stockbroker and is date stamped 11 February 2014. However, Options has provided a further copy of the first page of the application in which the reason for Mr F not using an adviser is stated as *“I have conducted my own research. I do not wish to pay for the additional services of a financial adviser”* which is date stamped 21 February 2014.

The application also includes a disclaimer under the heading “Investments” which states, *“Your investment choices are the sole responsibility of you and/or your Professional Financial Adviser/Investment Manager”*. And Cornhill is named as the investment manager that Mr F wanted to instruct on an advisory basis. He also ticked a box in the application confirming he wished to waive his right to cancel the SIPP within 30 days.

Options telephoned Mr F on 18 March 2014 and went through what I understand was a pro-forma checklist that it used at the time when dealing with direct clients. I haven’t seen the pro-forma checklist or a transcript of the call, but Options emailed Mr F on 22 March 2014 referring to what was discussed. In summary the email included the following statements:

- We understand that you signed a terms of business with PDM on a non-advised basis and it had been explained to you that PDM is based in Spain and isn’t regulated and it can’t give financial advice.
- You confirmed you hadn’t been offered any inducements.
- You understand that Options doesn’t provide financial advice either as to the establishment of a SIPP or the underlying investments you choose to make.
- Neither Options or PDM are responsible for the investment decisions you make, and these are solely your responsibility.
- It was explained to you that you have the opportunity to seek independent financial advice in relation to both the establishment of a SIPP and any underlying investments and the reason you have decided not to take advice was because you felt a SIPP was the best product for you and understood the risks without taking advice.
- You wish to proceed with the establishment of a SIPP with Options on an execution only basis without first seeking financial advice.

Options sent Mr F a welcome pack on 21 March 2014, confirming the start date of his SIPP was the date of the letter. It received the transfer in of pension monies from his two pensions on 28 March 2014 and 1 April 2014 respectively, with the total amount it received amounting to £72,624.

Mr F made application for an advisory stockbroking account with Cornhill on 26 March 2014 and he subsequently signed the member declaration Options sent to him for Cornhill on 23 April 2014. However, Mr F emailed Options on 8 May 2014 stating he wanted to instruct Templeton as his investment manager, in place of Cornhill. He completed a members declaration for Templeton on 9 May 2014 confirming he wanted to open an account with it in the sum of £71,540.79. Options confirmed it sent this amount to Templeton on 20 May 2014 by way of email to Mr F of the same date. Mr F emailed Templeton on 21 May 2014 instructing it to invest £35,487.50 in both Eligere and Emmit. Templeton subsequently

invested £35,061.50 in Eligere and £35,391 in Emmit.

As noted above, Eligere was suspended from trading only a few months later, in November 2014, with Emmit being subsequently suspended from trading in June 2015. Both companies are now dissolved.

Mr F made a complaint to Alexander David Securities as the Principal of Templeton. This complaint was subsequently referred to our service and one of our investigators upheld the complaint. It was then referred to an ombudsman for decision because Alexander David Securities didn't confirm its agreement to the investigator's opinion. However, the company went into liquidation before review of the complaint by an ombudsman. A claim was thereafter made to the FSCS but as Mr F had a potential claim against Options it declined the claim.

Mr F then complained to Options. It didn't uphold his complaint and it was referred to us. One of our investigators considered the complaint and thought it should be upheld. Options didn't agree and the matter was referred to me for decision.

I issued a provisional decision explaining why I thought the complaint should be upheld. In short, I found that Options shouldn't have accepted the referral of Mr F's SIPP application from PDM. I said that if it had carried out the due diligence it should have concluded that it shouldn't accept referrals of business from PDM before it received Mr F's application, because of the risk of consumer detriment arising if it did so. I was satisfied that if Options hadn't accepted Mr F's SIPP application he wouldn't otherwise have transferred out of his existing pensions and invested as he did. I said Options should pay redress on the basis he would have remained in those pensions. I also made an award of £500 for the distress and inconvenience caused.

I gave both parties the opportunity of responding and providing any further information they wanted me to consider before making my final decision. Neither party has responded.

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.

In reaching what I consider to be a fair and reasonable decision I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

As neither party has responded to my provisional decision, I can see no reason to depart from the findings I made and I repeat those findings below.

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 particular 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 in the course of it accepting Mr F'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 (Berkley 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")

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.

However, 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. And HHJ Dight made clear in his judgment that in seeking to identify the extent of the duty under COBS 2.1.1R "one has to identify the relevant factual context...".

In this complaint I am considering whether Options should have concluded that there was a risk of consumer detriment if it accepted introductions from PDM and if so whether it should then have decided not to accept any business from PDM before it received Mr F's application and entered into an agreement with him. As such the contract isn't the key fact in

the context of the complaint I am considering, as I am in the main considering Options regulatory obligations before any contract between Mr F and Options was entered into. I am therefore satisfied that it is the Principles I have identified above that I need to have regard to.

I have also considered the Court of Appeal's judgment in Options UK Personal Pensions LLP v Financial Ombudsman Service Limited (2024) EWCA Civ 541, which refers to the case law I have referred to above and approved the decision of the ombudsman.

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 a number of 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 possible 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; ability to identify the number of investments; the nature of those investments; the amount of funds under management; spread of introducers; 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 letter came after Mr F had been onboarded by Options as a client and appointed Templeton as his investment manager and invested in Eligere and Emmit. However, it referred to existing obligations for SIPP operators under the Principles, not new obligations, and as such it is a relevant consideration for me in this complaint.

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.

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 F or of the investments he invested in. However, it was required to carry out due diligence on introducers and 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 referrals of business or investments.

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

Options doesn't seek to argue that it wasn't required to carry out due diligence on introducers such as PDM or on businesses such as Cornhill and Templeton to comply with its regulatory obligations - or on investments that its SIPP clients were investing pension monies into.

I explain below why I consider its due diligence was inadequate but the argument that Options has made makes it clear in my view that Options accepts that as an execution only SIPP operator it was required to carry out due diligence. This is also supported by the actions it did take, such as entering into terms of business with PDM and Templeton, obtaining an introducer profile from PDM and telephoning clients that PDM had introduced with a view to confirming with those clients such matters as PDM being unable to provide advice and they weren't offered an inducement.

Moreover, I don't think it is in issue that the purpose of such due diligence was so that Options could decide whether to accept a referral of business or an investment. Options' terms and conditions specified that investments are made at its discretion. And, in the course of this complaint and others, it has said that if it had been aware of the instruction to Templeton to invest in Eligere and Emmit it would have been able to stop the transactions as one was unacceptable to it and the language used in the investment instruction to

Templeton wasn't consistent with that of a retail client.

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 accept a referral of business from PDM or permit particular investments within Mr F's SIPP.

The due diligence carried out by Options

Having concluded that Options was required by the Principles and good industry practice to carry out due diligence on introducers and investments I have considered whether the due diligence it carried out in this case was in accordance with its obligations.

The due diligence on PDM

Options has said that this included the following.

- It obtained a completed introducer profile to understand PDM's business.
- It had an agreement in place with PDM from February 2014.
- It confirmed with PDM and Mr F that PDM wasn't providing advice.
- It reviewed World Checks carried out on the individuals it was dealing with at PDM, as identified in the introducer profile.
- It ensured all clients introduced by PDM received a call back to ensure they understood that PDM was unregulated and couldn't provide advice and guided them to seek advice from a regulated adviser.
- It confirmed what was discussed in the telephone call in an email.

However, whilst I accept that the above shows Options did carry out some due diligence with a view to complying with its regulatory obligations, I am not persuaded that what it did went far enough, for the reasons I explain below.

In PDM, Options was dealing with an unauthorised business operating from overseas that had been in operation for less than two years. In the circumstances it is reasonable to have expected Options, in carrying out its due diligence, to have made the enquiries needed to properly understand PDM's business.

The introducer profile provided very limited information on PDM's business. For example, the introducer profile indicated that clients PDM referred would be investing in quoted shares. This suggests the possibility of there being some existing agreement between PDM and another business who was going to be making investments on behalf of clients. This possibility is reinforced by the fact that Options has said it made no payment to PDM, so it was obviously being funded by someone else.

Furthermore, the limited information that the introducer profile did provide showed that PDM would be referring ordinary retail clients with an average pension pot of only £35,000, rather than high net worth or sophisticated clients, but there was no information as to how PDM was identifying such clients in the first place.

Even on the limited information that Options obtained it seems to me that a reasonable

conclusion for it have reached is that it was unlikely that the type of client that PDM would be referring would have fully understood the implications of transferring their pension monies to a SIPP or would all have made that decision without advice of some sort.

One of the examples of good practice within the 2013 finalised SIPP operator guidance is that SIPP operators have processes in place that allow them to identify possible instances of consumer detriment. The guidance goes on to give examples of the management information that firms should consider. This includes the ability to identify; trends in the business submitted by introducers; number of investments; the nature of those investments; the amount of funds under management; the spread of introducers; the percentage of higher risk or non-standard investments

So, with the above good practice and its regulatory obligations in mind, when Options started to receive referrals from PDM it should have identified an obvious issue that the clients were all making direct applications for a SIPP whilst at the same time waiving their cancellation rights. It should also have identified that clients were

Options opened Mr F's SIPP account on, 21 March 2014. It has informed us that it received a total of 34 referrals from PDM, amounting to 21% of new business for Options over the relevant period. It has also been able to confirm that it received 14 of these referrals by the middle of February 2014. So, based on this, it had already received enough referrals from PDM to have identified any similarities or trends in the business it was introducing before it came to open Mr F's account.

And, Options should have identified from these applications that the ordinary retail clients PDM was referring were all making direct applications and waiving their cancellation rights – as shown by various complaints referred to our service. It should also have been aware that clients PDM was referring were also providing very similar explanations as to why they were transferring their pensions without seeking advice – referring to 'having carried out their own research' or 'their own analysis'.

This similarity in the applications it was receiving from supposedly unadvised clients referred by PDM were an obvious concern which Options should have identified through its due diligence. The apparent willingness of ordinary retail clients to transfer their pensions to a SIPP without advice whilst waiving their cancellation rights along with the similarity in explanation as to why advice wasn't being sought was in my view clearly anomalous. Options should have identified that there was a risk of consumer detriment from it accepting such applications and should have concluded it shouldn't accept such referrals from PDM because of this – and before it opened Mr F's SIPP account.

Even if Options argues that this wasn't of itself enough for it to conclude that it shouldn't accept the referral of Mr F's business from PDM – and I think it was - it should have led it to it considering carefully the other information provided to it. That information included the Cornhill applications. From those that I am aware of in complaints referred to our service, including that of Mr F, the applications showed that the clients PDM was referring generally didn't have any, or any significant, investment experience and were selecting medium risk (as Mr F did) or sometimes both medium risk and high risk when selecting their risk appetite whilst at the same time answering yes to the statement:

“Cornhill Capital Limited focuses primarily on high risk products. Are you prepared to accept a higher degree of risk for your investments with Cornhill Capital in pursuit of higher potential returns.”

An investment manager that 'focusses' on high-risk investments in my view would clearly intend investing the bulk of pension monies it managed in such investments. And, whilst I

accept that ordinary retail clients with a medium risk appetite may choose to invest *some* of their pension monies in high-risk investments alongside other lower risk investments, it would be unusual in my view for such clients to be invested largely in high risk investments.

The fact that PDM was referring ordinary retail clients who had on the face of it selected an investment manager who was going to invest most of their pension monies in that way was in my view another anomaly in the referrals that PDM was making to Options, which should have concerned it.

Moreover, it is very unlikely that the type of clients PDM was referring to Options would all, without any advice, have decided to transfer their pensions to a SIPP, waive their cancellation rights, and invest their pension monies through an investment manager whose focus was on high-risk investment. Options should therefore have identified an obvious issue with the applications it started to receive from clients PDM referred and considered the possibility that clients were receiving advice from someone who wasn't authorised to provide such advice.

The above issues in my view should have reasonably led Options to conclude that there was a serious risk of consumer detriment arising from it accepting referrals from PDM and that it consequently shouldn't do so - and before it accepted Mr F's SIPP application.

Even if Options argues that the issues that I have identified weren't enough for it to have concluded it shouldn't accept referrals of business from PDM, they should have led it to make further enquiries to satisfy itself that the apparent risk of consumer detriment wouldn't arise if it accepted such referrals.

One example of good practice identified in the 2009 Thematic review report was "*identifying instances of clients waiving their cancellation rights, and the reasons for this* (my emphasis)". Moreover, it seems to me the need to establish the reasons behind clients waiving their cancellation rights should have been apparent to Options when the ordinary retail clients PDM was introducing were seeking to do this whilst making direct applications.

I acknowledge that Options did telephone clients following receipt of a SIPP application as part of its due diligence. But from other complaints referred to our service my understanding as to this call is that it is based on a pro-forma checklist of statements, some of which simply require a yes or no response. I haven't been provided with the checklist or a record of the call itself in Mr F's case, but Options did seek to confirm what was discussed in a follow up email to his, which I have seen.

The email refers to Options' understanding that Mr F had signed a 'terms of business' on a non-advised basis and that it had been explained to him that PDM isn't an FCA regulated firm and isn't able to provide advice in relation to the SIPP or any investments. The email also states that Options do not provide financial advice as to establishing a SIPP or the underlying investments.

I think the shortcomings in the discussions that Options had with Mr F and other clients referred by PDM is apparent and that it didn't go far enough to address the risk of consumer detriment. The email makes clear that Options made no attempt to discuss the issues I have identified above.

Options made no enquiries exploring the nature of interactions between Mr F and PDM or the basis he had decided on the course of action he did – transfer his pensions to an Options SIPP, waive his cancellation rights and instruction of an investment manager which concentrated on high-risk investments – all supposedly of his own volition. These are issues that in my view Options needed to have a clear understanding of to comply with its

regulatory obligations with good industry practice in mind.

Mr F has said in this complaint that he and his wife were contacted by an individual (Mr M) who was associated with both PDM and Paraplanner UK – another unauthorised business. He said that he informed them that their pensions were doing them no favours and that he had a portfolio of investments which would increase their pensions by four or five times and urged them to transfer their pensions. He said that they hadn't been interested in transferring their pensions before being contacted by Mr M.

I acknowledge that Mr F's explanation is limited and he is recalling events from some time ago and I have taken this into account when considering what weight to give what he has said. But, having done so, I accept what he has said about his decision to transfer his pensions to an Options SIPP being the result of what he had been told by Mr M. And I think what he was told amounted to advice, from someone who wasn't authorised to provide such advice.

Mr F's explanation is in my view plausible, as it seems unlikely to me that he'd have decided to transfer his pensions and invest independently. And, if Options had made the enquiries that it should have done of Mr F I think it's more likely than not he would have provided the above explanation to it. So, if Options had made the enquiries that it should have done it would have been aware he had been advised by someone who wasn't authorised.

The risk of consumer detriment arising from Options accepting Mr F's application when he was acting on advice from someone who wasn't authorised to provide advice is obvious. So, if Options had become aware of this it could be expected to have concluded it should reject his SIPP application.

Moreover, I am aware from other complaints to our service that other clients introduced by PDM have also provided similar explanations as to how they came to use PDM's services and transfer their pensions to an Options SIPP. So, if Options had made the enquiries that it should have done when it first started receiving applications through referrals of business from PDM it would, more likely than not, have come to that conclusion before it came to consider Mr F's application. So, it should have already concluded it shouldn't accept referrals of business from PDM, before it accepted Mr F's application and opened his account.

I think there were further failings by Options in terms of its due diligence following its acceptance of Mr F's application, as I explain below. This is very much a secondary issue, given I am satisfied that if Options had carried out due diligence as it should have done it would have concluded that it shouldn't accept referrals of business from PDM before it accepted his application.

Following the opening of his advisory stockbroking account with Cornhill Mr F subsequently informed Options that he wanted to change investment manager to Templeton. Options did carry out some due diligence following this but this was limited to checking that Templeton was an ongoing business and authorised to provide the services Mr F wanted it to provide.

This change of investment manager by a supposedly unadvised client should have raised concerns with Options in my view, especially given that other clients referred by PDM also decided to change investment manager to Templeton around the same time. I think Options should have realised that it was unlikely that unadvised clients PDM had referred would unilaterally have decided they each wanted to instruct Templeton instead of Cornhill.

It should reasonably have led to Options making further enquiries to clarify why clients had decided to change investment manager. Mr F has said the change was initiated by Mr M on the basis that Cornhill were too slow and were doing things wrong and that Templeton would

be quicker and would provide a safety net and not make investments which would lead to any issues.

So, I think it is more likely than not that if Options had made those further enquiries, it would have become aware of Mr M's involvement, not only in the decision to instruct Templeton in place of Cornhill but also his involvement in Mr F's decision to transfer his pension to an Options SIPP in the first place, which I have referred to above. The involvement of an unregulated person in Mr F's decisions created an obvious risk of consumer detriment and the only reasonable conclusion that Options could have reached if it had become aware of this would have been not to proceed with Mr F's SIPP application.

Summary of my above findings

I am persuaded on the evidence in this complaint that Options failed to comply with good industry practice, act with due skill, care, and diligence, organise and control its affairs responsibly, or treat Mr F fairly by accepting the applications he made. I am satisfied that it is fair and reasonable to uphold the complaint in the circumstances because of this.

The application of section 27/Section 28 FSMA

This provides an additional reason for upholding this complaint. I will comment on this as briefly as I can. As I referred to above, the Court of Appeal in the Adams Appeal case overturned the judgment of HHJ Dight in the High Court on the claim made pursuant to section 27 of FSMA. The Court of Appeal found that Mr Adams could unwind his investment and claim damages against Options under section 27 of FSMA and that Options wasn't entitled to relief under section 28 of FSMA.

Section 27 of FSMA applies where an agreement is made by an authorised person in the course of carrying on a regulated activity where that agreement has been made as a consequence of something said or done by a third party in the course of a regulated activity which is in contravention of the 'general prohibition'. In that case section 27 provides that the agreement is unenforceable as against the other party and the other party is entitled to recover any money or property paid or transferred by them under the agreement and compensation for any loss.

The reference to the general prohibition is to section 19 of FSMA, which states that no person may carry on a regulated activity in the UK or purport to do so unless they are an authorised person or an exempt person.

Section 28 allows a court to grant relief from section 27 and the agreement to be enforced or money and property to be retained by the authorised person where this is just and equitable but provides that in considering this the court has to have regard to whether the authorised person was aware that the third party in carrying out the regulated activity was contravening the general prohibition.

I have already found that Mr F's decision to transfer his pension to an Options SIPP was the result of advice from someone who wasn't regulated. In the circumstances I am satisfied that it is more likely than not a court would find that section 27 applies for the following reasons:

- Options carried out the regulated activity of operating a personal pension scheme and entered into an agreement with Mr F in the course of that activity.
- The agreement was entered into as a result of an unregulated person saying or doing something in the course of it carrying on a regulated activity in breach of the general prohibition.

I have considered the application of section 28 of FSMA. In doing so it is appropriate to refer to what the Court of Appeal said when refusing relief to Options under section 28 in the Adams Appeal case. The reasons for refusing relief were set out under paragraph 115 of the judgment and included:

"i) A key aim of FSMA is consumer protection. It proceeds on the basis that, while consumers can to an extent be expected to bear responsibility for their own decisions, there is a need for regulation, among other things to safeguard consumers from their own folly. That much reduces the force of Mr Green's contentions that Mr Adams caused his own losses and misled Carey;

ii) While SIPP providers were not barred from accepting introductions from unregulated sources, section 27 of FSMA was designed to throw risks associated with doing so onto the providers. Authorised persons are at risk of being unable to enforce agreements and being required to return money and other property and to pay compensation regardless of whether they had had knowledge of third parties' contraventions of the general prohibition;"

I accept that in considering the application of that section a court would take into account that Options didn't actually know that the general prohibition had been contravened but as the excerpt above indicates, such lack of knowledge doesn't mean relief should necessarily be granted.

In this case the reason Options wasn't aware that the general prohibition had been breached was because it didn't make the enquiries it should have done when faced with multiple direct applications from ordinary retail clients the content of which was very similar and included clients waiving their cancellation rights. I think a court would more likely than not conclude that if Options had made the enquiries it should have done it would have become aware of the circumstances behind Mr F making the applications and that he had been advised by someone who wasn't regulated and as such the general prohibition had been breached and refused relief under section 28 accordingly.

In the circumstances I am satisfied that section 27 of FSMA provides another reason why it is fair and reasonable for me to uphold this complaint and award redress.

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

Options made more than one reference in its final response letter and subsequently to it acting on an execution only basis and to it being Mr F's decision to transfer his pension, instruct Templeton and invest in Eligere and Emmit.

It 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 F's SIPP application in the first place, and I have found that it shouldn't have done so.

The argument was also 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 manner in which orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2 as a whole, 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 at the moment 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 or not the order should be accepted in the first place.”

In the circumstances, I am satisfied that the argument that Options has made in relation to COBS 11.2.19R isn't relevant to its obligations under the Principles, 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 F?

Options might say that if it hadn't accepted Mr F's business from PDM that the transfer of his pensions would still have taken place through a different SIPP provider and he would still have invested in Eligere and Emmit. However, I don't think it would be fair and reasonable to find that Options shouldn't compensate Mr F for his loss based on speculation that another SIPP operator would have also failed to comply with their regulatory obligations. Rather, I think it is fair and reasonable to say that another SIPP operator would have complied with its regulatory obligations and good industry practice and in doing so have concluded it shouldn't accept business from PDM.

Moreover, I am mindful that Mr F didn't decide to transfer his pensions himself, but was advised to do so by someone who wasn't authorised to provide advice and he didn't select Options as his SIPP provider himself but was directed to it by the unregulated person/s he spoke to at the outset. It seems likely to me that if the SIPP operator that had been selected for him had said it wasn't going to accept his application, he would have had good reason to question what those who had persuaded him to transfer his pensions were doing. I think in those circumstances he is unlikely to have gone ahead with a different SIPP provider in any event.

I have also considered whether it would be fair and reasonable for Options to pay the full amount of Mr F's losses, given the potential responsibility of others for his pension monies being invested in Eligere and Emmit. Having done so I am satisfied that it would be fair and reasonable for Options to pay Mr F's losses in full, given that if it had complied with good industry practice and its regulatory obligations, he wouldn't have transferred his pensions to a SIPP in the first place through which he could have invested in those companies. In short, I am satisfied that Options failings have caused the full extent of Mr F's losses.

Putting things right

The aim of the redress I award is to put Mr F, as far as possible, in the position he would have been in but for the failings on the part of Options I have identified in my findings. I am satisfied that but for those failings Mr F wouldn't have transferred his pensions to a SIPP and invested in Eligere and Emmit. I have seen no evidence that Mr F would otherwise have transferred out of his existing pensions.

I cannot be certain that a value will be obtainable for what the transferred pension plans would have been worth, but I am satisfied that what I have set out below is fair and reasonable in the circumstances.

To compensate Mr F fairly Options must:

- Obtain the notional transfer value of Mr F's previous transferred pension plans to the date of decision had he stayed with his previous providers.
- Obtain the actual current value of Mr F's SIPP less any outstanding charges, as at the date of decision.
- If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss.
- Pay an amount into Mr F's Options SIPP, to increase its value by the amount of the loss. The payment should allow for the effect of charges and any available tax relief.
- Pay Mr F £500 for the distress and inconvenience he has suffered from Options' failings.

I set out below how Options should go about calculating compensation in more detail below.

Calculate the loss resulting from the transfer of Mr F's existing pensions to an Options SIPP.

Options should contact the providers of the two pension plans that Mr F transferred into the SIPP and ask them to provide a notional value for this as at the date of decision. For the purposes of the notional calculation the providers should be told to assume no monies would have been transferred away from the plans and the monies invested would have remained invested in an identical manner to that which existed prior to the transfer.

Any contributions or withdrawals Mr F has made to his SIPP will have to be taken into account, whether the notional value is established through the previous provider or calculated as set out below.

Any withdrawal out of the SIPP should be deducted at the point it was actually paid so it ceases to accrue a return in the calculation from that point on. To be clear, this doesn't include SIPP charges or fees paid to third parties, but it does include any pension lump sum or pension income Mr F took after his pension monies were transferred to Options.

Similarly, any contributions made to the SIPP should be added to the notional calculation from the date they were actually paid, so any growth they would have enjoyed is allowed for.

If there are any difficulties in obtaining a notional valuation from the previous providers Options should instead arrive at a notional valuation by assuming the monies would have enjoyed a return in line with the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017 the FTSE WMA Stock Market Income Total Return Index). I think that is a reasonable proxy for the type of return that could have been achieved over the period in question.

The notional valuation, as calculated above, less the value of the SIPP as at the date of decision is Mr F's loss. Options should pay this amount into Mr F's SIPP if possible, allowing for the effect of charges and any available tax relief. The compensation shouldn't be paid into the SIPP 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 direct to Mr F 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, which it is reasonable to assume would be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

SIPP fees

I assume there is no reason that the SIPP can't be closed once compensation has been paid, given the two companies that Mr F invested in have both now been dissolved. If I am wrong and the SIPP needs to be kept open only because of illiquid investments and is used only or substantially to hold those assets, then any future SIPP fees should be waived until the SIPP can be closed.

Distress and inconvenience

Mr F lost almost the entirety of the monies transferred from his existing pension plans into his SIPP and this will undoubtedly have caused him distress and inconvenience. I consider an award of £500 for this is appropriate in the circumstances.

Interest

The compensation that Options calculates is payable to Mr F in accordance with what I have set out above must be paid into Mr F's SIPP, or directly to him if that isn't possible, within 28 days of the date that Options receives notification of his acceptance of my final decision. Simple interest at 8% per year must be added to the compensation from the date of my final decision until payment if compensation isn't paid within 28 days.

Options must also provide the details of its redress calculation to Mr F 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 F.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 September 2025.

Philip Gibbons
Ombudsman