DRN-5950068

Financial Ombudsman Service

The complaint

Mr H complains that Mattioli Woods Limited ('MW') didn't carry out adequate due diligence on the adviser that introduced his self-invested personal pension ('SIPP') business to it.

Mr H's SIPP was originally with a firm that MW later acquired in 2016. MW has told our Service it also acquired this firm's liabilities. For simplicity, this decision will only refer to MW.

What happened

pension assets and later met with him, and that Mr C persuaded him to transfer UK pensions he held into a SIPP and invest them through fund manager 'Business M'.

I've seen that Mr C wrote to Mr H on 16 April 2010, in Mr C's capacity as 'General Manager' of the US incarnation of Firm K. The letter was about his UK pensions. The letter set out that Firm K had now received information it had requested from the providers of pensions Mr H held, and their values totalled about £99,000; this comprised a defined benefits ('DB') pension of £49,824, and three defined contribution ('DC') pensions of £31,475, £10,752 and £7,284.

The letter explained how, in Mr C's view, each pension worked and gave their projected values if transferred. Amongst other things, the letter also said that if Mr H transferred these pensions to a SIPP and invested through Business M, then his pension would likely have substantially better growth, and it referred Mr H's attention to an enclosed document called *"Investment recommendations and Key Features".* The letter also said:

- *"Taking into consideration the transfer value of your UK pension, your age, and investment risk assessment, our advice is that you consider investing your pension fund in the award winning* [Business M] *Risk Rated Funds."*
- *"It is recommended you give urgent consideration to completing a transfer of your* [DB] *UK pension and* [DC] *pensions."*
- *"To Summarise, the benefits of following our recommendation are as follows:-*
  1. *Unrestricted growth,*
  2. *Larger Pension Income potential,*
  3. *Optional Cash Lump Sum,*
  4. *Greater flexibility in WHEN and HOW you take your benefits,*
  5. *Larger spouses benefits and more flexible options,*
  6. *Low cost, purer form of administration and transparent management,*
  7. *Personal control and continuing choice of investment content,*
  8. *Security of UK-regulated providers and skilled investment managers."*

The letter said that if Mr H wished to proceed, he should complete the enclosed forms and return them either to Mr C or to a Firm K address in Malta.

In May 2010, Mr H signed an application for a SIPP with MW. It is my understanding that in the transaction complained about here, MW was acting as an execution-only SIPP provider only. MW is a member directed pension scheme provider and it acts on the instruction of its members.

Mr H's MW SIPP application recorded the following information:
- Mr H's *"permanent residential address"* was in the US.
- His *"Independent Financial Adviser (IFA)"* was recorded as Mr C of Firm K. Despite the form requesting them, there was no address or FSA number recorded for Firm K.
- The IFA would be paid an initial fee of 2.5% and an ongoing fee of 0.25%.

Soon after, MW opened a SIPP for Mr H. Monies from his DB and DC pensions were then transferred into it and a total of £91,500 of these were invested with Business M.

I understand that over the years, MW sent Mr H annual SIPP statements. MW has provided copies of the ones it sent Mr H from 2016 to 2025, and these show his SIPP's value overall increased in that time from £111,937 to £206,932, albeit with some relatively minor falls in 2020, 2022 and 2023.

In early 2012, the president of Firm K wrote to Mr H to say he was retiring but that Mr H could move to become a client of 'Firm F', a firm recently set up by the president's daughter and her husband – who was Mr C of Firm K. It seems Mr H agreed to move firms, as he then became a client of Firm F remaining with his adviser Mr C.

Mr H says that in 2023 his US tax and investment adviser undertook a review of his entire finances that for the first time included his UK pension assets, and made him aware of issues with his SIPP – essentially that he shouldn't have transferred the DB pension in 2010 and that the performance of his MW SIPP hadn't lived up to the projections.

So in September 2023 Mr H ended his relationship with Mr C and Firm F. Soon after, Mr H contacted Firm F and the US financial authorities in relation to what he saw to be failures and irregularities on the part of Mr C, Firm K and Firm F.

Around the same time, Mr H contacted MW regarding his SIPP and Mr C, including to ask what checks MW had carried out on Mr C before accepting Mr H's introduction of SIPP business in 2010. They had further communication about this, but Mr H was ultimately unhappy with MW's answers and so he complained to MW in May 2024.

In July 2024, MW issued its final response to Mr H's complaint. In summary, it said:

- MW had searched all the records it held but couldn't find any information to corroborate either the position regarding Mr C or Mr H's concerns about Firm K. But due diligence would've been carried out, including regular ongoing checks, to ensure MW met its responsibilities in maintaining business from advisory firms in the US.
- MW didn't provide Mr H with advice and didn't have any record of any advice Mr H was given in 2010. So MW couldn't comment on the advice or advice process. Mr C was recorded on Mr H's 2010 SIPP application as his adviser, but that might have simply meant he was Mr H's representative at Firm K. Any complaint or queries about the advice should be directed to Firm F.
- Given the time passed since his SIPP opened, Mr H should have raised any concerns he'd had about Mr C's advice or MW's due diligence checks much sooner, especially since Mr H had maintained a relationship with Mr C (through Firm F) until 2023.
- Mr H's SIPP was a self-directed pension scheme and at the time of establishment, Mr H was expected to ensure he understood the advice he received and was satisfied with the advisory firm he appointed.

Mr H was unhappy with this. Initially he referred his complain to The Pensions Ombudsman, a separate dispute resolution entity. But Mr H then decided he would prefer his complaint to be investigated by the Financial Ombudsman Service and so he asked The Pensions Ombudsman to take no further action.

Mr H referred his complaint to the Financial Ombudsman Service in December 2024. The comments he submitted to our Service included that:

- When his US tax adviser reviewed his entire portfolio in 2023, Mr H was distressed to learn his MW SIPP hadn't lived up to its projections, and he'd never been advised to modify the portfolio. He thought his financial loss could be over £200,000.
- After research, he now knew Mr C had been 'unlicensed' in either the UK or US at the time of the 2010 advice. To support this, he provided copies of a March 2024 email from the FCA, and screenshots of some of the US authorities records of the US qualifications held by Mr C and others at Firm F.
- MW hadn't carried out sufficient due diligence on Mr C, Firm K or Firm F either at the time his SIPP business was introduced in 2010 or on an ongoing basis, and couldn't evidence that it had. And MW hadn't properly mitigated the increased risks from overseas introducers and ensured they had the correct permissions.
- MW had failed to manage a conflict of interest between Firm K, its client and M. And many other UK expats would have been affected.
- MW hadn't fully investigated his complaint or answered his questions.
- Mr C had passed his US 'Series 65' exam over a year after the 2010 advice and transfer. A person at Firm F had also not yet passed their Series 65 exam when Mr H became a client of Firm F in 2012. And the FCA had confirmed that Mr C had never held credentials to practice financial advice in the UK at any time.
- Regarding how the advice came about, Mr H told us that at the time of the advice, he'd been open to a reputable qualified company managing and advising on his UK pension assets. That Mr C had been a UK expat living in the US and seemed to have knowledge of UK/US pension intricacies. He had several meetings with Mr C, and was persuaded to transfer his pensions; Mr C told him his UK pension pot would become less valuable and the returns from a SIPP would be greater. A representative of Business M had travelled from the UK to the US to address a meeting of UK expats that Mr H had attended with many others.
- He now understood he shouldn't have transferred his DB pension and that a SIPP wasn't appropriate for him personally. But Firm K must have known these things in 2010.
- He'd not received any incentive payment for transferring his pensions, or received any compensation from any party in respect of them.

MW's submissions to our Service were that:

- It understood the SIPP provider that originally accepted Mr H's SIPP application (which MW acquired in 2016) followed its standard processes with regard to Firm K, but not regarding specific adviser Mr C because this was not a requirement. And it had been satisfied with the status of Firm K.
- Mr H maintained a relationship with Firm K (then Firm F) until 2023, so any concerns he had should have been raised much earlier. But MW didn't think the complaint had been brought too late under the relevant time limit rules, as it didn't think Mr H ought to have been aware he had cause for complaint about MW more than three years before he did complain. But MW did think Mr H should've approached MW in 2023 when he stopped using Firm F.
- MW had extensively searched but could not locate any due diligence documentation in relation to this complaint.

- The investment made with Mr H's SIPP monies was a standard investment in a self-managed portfolio, and as such was appropriate for inclusion in a SIPP.

One of our Investigators thought Mr H's complaint had been brought within the relevant time limits and should be upheld. She said MW's lack of due diligence records suggested due diligence may have been minimal in this case. But on the evidence that was available, Mr C at Firm K had advised Mr H to transfer his pensions to a MW SIPP, yet Mr C didn't at that time hold the relevant qualifications nor was he authorised to provide such advice by either the FCA or the US authorities. So MW shouldn't have accepted Mr H's application to open a SIPP with it or accept his pension transfer and switches. Therefore, she thought MW should carry out redress calculations for Mr H and compensate him if these showed he'd made a financial loss, and that it should also pay him £300 compensation for the distress and inconvenience it had caused him.

Mr H accepted the Investigator's view and, while he had some questions which our Investigator answered, he didn't provide any further comments or evidence for consideration.

MW said it had received the Investigator's view and intended to respond. But despite being provided with the opportunity, MW didn't come back to us or provide and further comments or evidence for consideration.

As agreement couldn't be reached, this complaint was passed to me. I issued a provisional decision in which I explained why I thought Mr H's complaint should be upheld and set out how I thought MW should put things right for him.

Mr H agreed with the provisional decision but had some comments and questions. In brief, he thought Mr C was trying to 'slip' between regulators, and Firm F was still promoting the cashing in of UK pensions so he was concerned about the extent of any wrongdoing and asked who he should contact at the UK Regulator. That MW was wrong to say he'd not approached it in 2023, as he'd had many emails with MW at that time. That he didn't know whether he'd have stayed with his DC provider if he'd been given suitable advice, though he may have. Mr H wondered whether Firm K was associated with a similarly named UK firm that the Regulator had issued a warning about in 2012, whether Firm K had dealt exclusively with MW, and whether MW had an ongoing relationship with Firm F and had provided evidence of its due diligence checks on it.

MW didn't agree with the provisional decision and provided further comments. I've carefully considered all of these but I think the relevant points can be summarised as:

- The provisional decision judged 2010 conduct by 2024 standards and imposed obligations that didn't exist at that time. The 2010 DB transfer didn't require any financial advice; MW wasn't obliged to verify advice had been given and could not have refused the application on this basis; and there was no specialist DB transfer qualification requirement.
- Due diligence was conducted in line with 2010 industry standards, though documentation had been lost through time and corporate acquisitions. The lack of documentation shouldn't lead to an automatic inference that no checks occurred.
- MW was only required to check the transfer was HMRC-compliant, check the receiving investments were appropriate for a SIPP and process the transfer correctly; MW wasn't required to essentially re-advise Mr H. But the provisional decision imposed advisory-level obligations on a non-advisory service, as it says MW should have assessed whether Mr H should transfer his DB pension, verify suitable advice was given, contact Mr H to discuss his decision, and reject the transactions if concerns arose – all were advisory functions.

- In 2010, DB transfers to SIPPs were common and accepted industry-wide, and the 'presumption of unsuitability' didn't exist in anything like its current form. Regulatory concerns about DB transfers only emerged from 2013. The 2009 Thematic Review didn't mention DB transfers as an area of concern for SIPP operators, so it was unfair to say MW should have done so. And the provisional decision placed undue weight on the 2009 Thematic Review.
- MW contacting Mr H wouldn't have revealed any problems, because Firm K was FSA-authorised and Mr H was satisfied with its advice. And even if MW had conducted additional checks, Mr H would likely have still proceeded with these transactions. Mr H was an engaged, internationally mobile, professional actively exploring pension solutions. And he'd maintained his relationship with the same adviser for fourteen years after the transfer, including choosing to follow them to another firm in 2012, which showed confidence in and commitment to the arrangement. So Mr H would have dismissed any concerns MW raised to him and gone to another provider who didn't raise such concerns, and other providers were accepting such business. And another adviser might have given him the same advice as Mr C had done, or Mr H might have decided to transfer some pensions but not all. So the provisional decision made unfounded assumptions about what would've happened.
- The 'red flags' set out in the provisional decision weren't apparent or unusual in 2010 industry practice because:
    - The expat pension market was commonplace.
    - The omitted Financial Services Authority ('FSA') number was an administrative error by the SIPP applicant that would have triggered a check rather than an automatic rejection; MW would've checked the FSA Register and seen Firm K was authorised - the limitations of Firm K's status as an Introducing Appointed Representative wasn't for MW to police. That was an FSA enforcement matter, not a SIPP operator due diligence failure. A firm appearing on the FSA Register with a valid authorisation was reassuring, not concerning. And advisers acting within authorised firms didn't require separate authorisation.
    - MW wasn't obliged to review introducer websites and if MW didn't review Firm K's website, it can't be a red flag that MW missed. The website showed Firm K was actively operating in the expat market, had multiple international offices, appeared to be a substantial operation, and marketed pension transfer advice. This would've been reassuring, not concerning.
- Mr C's lack of US qualifications is a significant factual issue. But MW couldn't have known this because US regulatory and other databases weren't accessible to UK firms at that time. MW wasn't obliged to check Mr C was operating from a UK authorised firm. And the advice was related to UK pensions, so UK regulatory requirements applied. Further, it wasn't for MW to resolve whether the Series 65 qualification was relevant in relation to the advice Mr H was given.
- Business M was a standard investment, which distinguishes Mr H's case from the Berkeley Burke line of cases. And if every standard investment required detailed scrutiny of the adviser and advice process, the execution-only SIPP model would be unworkable.
- If anyone had failed Mr H, it was Firm F who had the opportunity to identify and rectify any problems. And Firm K/Mr C, Business M and Mr H all bore some responsibility for Mr H's alleged loss. MW's role was limited to administration, so it didn't bear 100% liability here.

As both parties have had the opportunity to respond to my provisional decision, I'm now in a position to make my decision.

What I've decided – and why

Preliminary point – jurisdiction

We don't have a free hand to consider every complaint brought to us. Instead, we must follow the Dispute Resolution (DISP) rules set out by the regulator, the FCA. These rules say that, where a business doesn't consent, we can't consider a complaint made more than six years after the event complained of, or if later, more than three years after the complainant was aware, or ought reasonably to have been aware, of their cause for complaint. DISP 2.8.2R can be found online in the Dispute Resolution section of the regulator's handbook.

So, I must firstly consider whether this complaint has been brought in time. For the avoidance of doubt, I am considering this preliminary point on the basis of the applicable rules and law and not on the basis of what is fair and reasonable in all the circumstances.

MW hasn't consented to us considering the complaint if it was made outside the time limits. And Mr H's complaint was made more than six years after the events he complains of. But having reconsidered all the evidence provided, I still haven't seen anything that makes me think Mr H knew, or ought to have known, that there was a problem with his SIPP or its investments and that MW was or might be responsible for this more than three years before he complained to it. The copies of the SIPP annual statements that MW's provided suggest Mr H would have understood his SIPP's value to instead have increased significantly over the years, despite some relatively minor falls at times. And I note that MW itself doesn't think Mr H's complaint has been brought too late under the time limit rules.

Given all this, I remain satisfied this complaint was referred within the time limits and so I've gone on to consider its merits.

Merits

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And where the evidence is incomplete, inconclusive, or contradictory, I've reached my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

I'd like to again reassure Mr H and MW that I've carefully considered all the comments and evidence they have provided to our Service, including their responses to the provisional decision. But my decision won't address everything they've provided. I mean no discourtesy by this, it's simply that my decision will only address what I see to be relevant to reaching a fair and reasonable outcome to Mr H's own individual complaint in its particular circumstances.

I know Mr H has asked who at the Regulator he should contact about his wider and ongoing concerns about Firm F, but I can only direct him to the contact form on the Financial Conduct Authority's ('FCA') website.

Relevant considerations

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

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

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

The legal background:

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

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

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

The case law:

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

The approach taken by the Financial Ombudsman Service in two similar (but not identical) complaints was challenged in judicial review proceedings in the *Berkeley Burke* and the *Options* cases. In both cases the approach taken by the Ombudsman concerned was

endorsed by the court. A number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved.

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

The Principles for Businesses:

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

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

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

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

The regulatory publications and good industry practice:

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

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

The 2009 Report included:

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

The Report also included:

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

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

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

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

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

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

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

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

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

MW argues that I have placed undue weight on the 2009 Report. I accept that the 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter are not formal guidance (whereas the 2013 finalised guidance is). But all of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I therefore remain satisfied it's appropriate to take them into account (as did the Ombudsman whose decision was upheld by the court in the *Berkeley Burke* case).

Points to note about the SIPP publications include:

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

What did MW's obligations mean in practice?

MW says DB transfers were commonplace in 2010 and that the provisional decision incorrectly sought to impose advisory obligations on it. But to be clear, I've proceeded on the understanding MW was not obliged – and not able – to give advice to Mr H on the suitability of its SIPP or the Business M investment for him personally. But I'm satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business, MW was required to consider whether to accept or reject particular referrals of business and/or investments with the Principles in mind. I say this based on the overarching nature of the Principles (as is clear from the case law) and based on good industry practice. I am also satisfied that bearing in mind the Principles and good industry practice that this obligation was not confined *only* to rejecting an investment on the basis it was not allowed by the SIPP Trust or HMRC regulations.

And while the 2009 Thematic Review Report made clear that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs, it also made 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."* So while MW says the 2009 Thematic Review doesn't mention DB transfers as an area of concern for SIPP operators, I am nonetheless satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business a SIPP operator should for example reasonably refuse a SIPP application if the SIPP operator had serious concerns about possible instances of consumer detriment such as unsuitable SIPPs.

So while I know MW disagrees, I remain satisfied that a non-advisory SIPP operator could decide not to accept a referral of business or a request to make an investment without contravening its regulatory permissions by giving advice. And I am satisfied that in practice many non-advisory SIPP operators did refuse to accept business and/or refuse to make investments without giving advice.

I am satisfied that, in order to comply with its regulatory obligations, a non-advisory SIPP operator should have due diligence processes in place to check any firms introducing business to them and the investments they are asked to make on behalf of members or potential members. And MW should have used the knowledge it gained from its due diligence checks to decide whether to accept such business and/or allow a particular investment.

Due diligence carried out by MW

MW says due diligence would have been carried out before it accepted Mr H's SIPP application, and that it would then have been carried out regularly. However, MW hasn't provided any evidence to support this; it says it's not been able to find any documentary evidence to support that such initial and ongoing due diligence was carried out. MW says the lack of documentation shouldn't lead to an automatic inference that no checks occurred. For clarity, I have not made such an inference.

On the evidence available to me, I'm satisfied that Mr C of Firm K gave Mr H advice to transfer his DB and DC pensions to a MW SIPP in order to invest with Business M. I say this because it's clear that Mr C's April 2010 letter to Mr H on behalf of Firm K set out that advice, and that the SIPP application MW received recorded Mr C of Firm K as Mr H's IFA. And this documentary evidence is supported by Mr H's testimony. So, I'm satisfied advice was given to Mr H by Mr C of Firm K, and I'm also satisfied MW was or ought to have been aware of this.

From the SIPP application form, MW could see that Mr H's permanent residential address was in the US. MW could also see that Mr C of Firm K was recorded as his IFA, but that no address or FSA number was provided for it. It may be that the expat pension market was commonplace at that time as MW says, but given this lack of detail and the examples of good practice set out in the regulator's 2009 Thematic Review Report, I still think MW should have conducted some basic research on Mr C and Firm K.

MW says this missing information would have triggered a check of the FSA Register, and I agree that would have been a reasonable step. Had MW done such a check, it ought to have found that at that time, Mr C himself was not authorised and regulated in the UK. Mr H has provided a copy of an email he received from the FCA in March 2024, in response to his query regarding Mr C. In this, the FCA said it had searched its Financial Services Register but had been unable to locate a record for Mr C. And I myself have searched but not been able to find such a record for Mr C.

Further, MW also ought to have found from checking the Register that what appears to have been a styling of Firm K was recorded as an Introducing Appointed Representative ('IAR') of a UK based authorised firm since October 2007. MW argues that Firm K being authorised would have been reassuring. But I'm still of the view that MW should not have taken any comfort from Firm K appearing only as an IAR, but rather ought to have seen this as a cause for concern. Because an IAR can only introduce customers to another firm or members of the firm's group, and/or give out certain kinds of marketing material – it cannot provide advice, as Mr C of Firm K had done. And anyway, I've seen nothing to suggest Firm K was acting as that UK firm's IAR in this particular case.

MW says it wasn't obliged to review an introducer's website. But had MW carried out basic research as I think it should have, MW would have found Firm K's website. I think this website ought to have been a further cause for concern for MW. Because based on the archived webpages I've seen dated 12 May 2010 and 3 February 2011 (i.e. covering the period MW received Mr H's SIPP application), I think MW ought to have seen that Firm K prominently marketed itself as *"Unlocking your UK pension savings"* and that it *"strives to continue to be, one of the leading suppliers of pension transfer advice to British and other expatriates living outside of the UK who are looking to unlock their UK pension savings"*. And that its 'contact us' section set out the contact details for a number of *"United States Managers"* (including Mr C) as well as an *"International Manager"* who had telephone numbers in Istanbul and Budapest.

MW says the website showed Firm K was actively operating in the expat market, had multiple international offices, appeared to be a substantial operation, and marketed pension transfer advice. And that this would've been reassuring, not concerning. However, it remains the case that the Regulator expected SIPP operators like MW "*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."* I think it's fair to say that misinformation and deception are often common features of financial crime. To be absolutely clear, I am certainly not suggesting that Mr C or Firm K was involved in financial crime and only say this to highlight the importance of undertaking independent checks. So I don't agree with MW that it should simply have taken the information on Firm K's website at face value, but rather I think MW could and should instead have obtained actual evidence and undertaken checks through other sources.

From what could be seen on the website, I think MW ought reasonably to have been aware that Firm K marketed itself as providing pension transfer advice in respect of UK based pensions, and that both Mr H and Mr C of Firm K were in a country which might have a different financial services regulatory regime to the UK.

I've not seen anything to make me think that MW checked what such a regime required of Mr C or Firm K. Had it done so, the evidence suggests MW would have seen that the US regulatory regime required Mr C to hold the Series 65 qualification that was mandatory for individuals providing investment advice for a fee – as Mr C had done here. And that Mr C did not at that time hold that qualification – the search results of the US authorities that Mr H has provided us with suggest Mr C held that qualification from July 2011 onwards, so over a year after giving transfer and investment advice to Mr H.

MW now accepts this was a significant issue, but says it couldn't have known about Mr C's lack of US qualifications because US regulatory and other databases weren't accessible to UK firms at that time. That MW wasn't obliged to check Mr C was operating from a UK authorised firm. And further, it wasn't for MW to resolve whether the Series 65 qualification was relevant in relation to the advice Mr H was given. But given that I've said MW ought to have been concerned about a styling of Firm K being recorded only as an IAR of a UK based authorised firm and that IARs cannot provide advice, I think MW should have satisfied itself whether Mr C of Firm K was providing advice under some other regulatory regime. And I'm not persuaded MW couldn't have contacted the US regulatory authorities directly to ask questions in order to satisfy itself of that.

Given what MW knew, or ought to have known, from the information on Mr H's SIPP application, I think MW ought to have been concerned that this was an unusual arrangement in which it was at the very least unclear whether Mr C and Firm K had the relevant knowledge, experience and authorisations to act as Mr H's IFA regarding transferring his UK pensions into a UK based SIPP. And that there was therefore a significant risk of consumer detriment here.

The 2009 Thematic Review Report explained that the regulator would expect SIPP operators to have procedures and controls, and for management information to be gathered and analysed, so as to enable the identification of, amongst other things, *"consumer detriment such as unsuitable SIPPs"*. Further, that this could then be addressed in an appropriate way *"…for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification."*

So I think MW, on receiving Mr H's SIPP application, should have checked with Firm K about at least:

- its organisational structure and the regulatory regime(s) it operated in,
- whether it was giving advice and if so in what capacity and under what regulatory regime,
- information about Mr C's background, knowledge, experience and qualifications in dealing with UK pensions,
- how it came into contact with potential clients,
- what agreements it had in place with its clients,
- whether all of the clients it was advising were being offered full advice,
- what material was being provided to clients by it.

I think obtaining this type of information from Firm K was a fair and reasonable step for MW to take in the circumstances, to meet its regulatory obligations and good industry practice.

It is possible that, if MW had checked with Firm K and asked the type of questions I've mentioned above, Firm K would have provided the information sought. But if MW had been unable to obtain the information sought from Firm K, I think it's fair and reasonable to say that MW should have then concluded that it was unsafe to proceed with accepting Mr H's SIPP application in those circumstances. In my opinion, it wasn't reasonable, and it wasn't in line with MW's regulatory obligations, for it to proceed with accepting business from Firm K if the position wasn't clear.

I think, in light of what I've said above, it would also have been fair and reasonable for MW, to meet its regulatory obligations and good industry practice, to have taken independent steps to enhance its understanding of the SIPP application it had received for Mr H. So I think it would have been fair and reasonable for MW to speak to Mr H directly. I accept MW couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view such steps included, for example, addressing a potential risk of consumer detriment by speaking to an applicant, like Mr H.

And, on balance, I think it's more likely than not that if MW had contacted Mr H to 'confirm the position', Mr H would have told MW that Mr C of Firm K had advised and persuaded him to transfer a DB and three DC UK pensions to a MW SIPP and invest through Business M on the basis that he'd be better off. So by taking fair and reasonable steps, MW would have seen that Mr H's SIPP business involved a transfer out of a UK DB pension scheme into a UK SIPP to invest with Business M.

MW points out that in 2010, a DB transfer didn't require any financial advice and there was no specialist DB transfer qualification requirement. For clarity, I do not say that in 2010 Mr H was required to receive such transfer advice. But the particular circumstances here are that Mr H did in fact receive advice to transfer his pension, from Mr C of Firm K.

As MW has also pointed out, the regulations about pensions, including those specifically about transferring a DB scheme to a personal pension arrangement, weren't the same in 2010 as they are today. To be clear, I'm not considering the advice with the benefit of hindsight. Instead, I am considering the advice against the background of the prevailing rules, regulations and requirements at that time, including what was considered good industry practice. And in 2010, a DB transfer was still a complex transaction involving many risks, and potentially the loss of significant guaranteed benefits. For this reason, advice on such transactions was tightly regulated in the UK and there were standards of good practice that those giving the advice were expected to follow.

MW says that at the time of the advice, the 'presumption of unsuitability' didn't exist in anything like its current form. But at that time COBS 19.1.6 G said:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, ***a firm should start by assuming that a transfer or opt-out will not be suitable*** [my emphasis]*. A firm should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt out is in the client's best interests."*

I accept this aims to define the expectation of a regulated financial adviser when determining suitability of a pension transfer, but I'd expect MW, as a pensions provider, to have been aware of this and to have taken account of it. So in 2010, it could be seen that the transfer of a DB pension was usually not in the customers' best interests and that an adviser should only consider a transfer if it could demonstrate it was in the client's best interest – such a demonstration generally involved several steps being taken as part of the advice process and documentation such as fact-finds, suitability reports, transfer value reports, and illustrations generally featured in the advice process. The purpose was to ensure any advice given took into account all relevant factors, was suitable, and the recipient of the advice was in a fully informed position, where they understand the benefits they are giving up and the risks associated with the transfer.

Although the relevant UK regulatory requirements only apply in the UK, I think MW, acting fairly and reasonably, should have satisfied itself that a similar process was being followed here, even if it thought the advice was being given outside the UK. I say this because there was a clear risk of consumer detriment if Mr H was not in a fully informed position and therefore unable to understand the risks associated with the transfer.

I don't say MW should have checked any advice that was given – but it should have taken steps to ascertain if a reasonable process was in place and consumers were taking these steps on an informed basis. And I think if it had undertaken such steps, it would have become aware that Mr H had received advice to transfer his DB pension, as well as three DC pensions, from what amounted to an unauthorised and unregulated firm.

Taking everything into account, I still think MW was aware of, or should reasonably have identified, potential risks of consumer detriment associated with Mr H's SIPP application, before MW accepted that application. In the circumstances, MW ought reasonably to have decided, had it complied with its regulatory obligations which required it to conduct sufficient due diligence on Firm K and draw fair and reasonable conclusions from what it discovered, that it shouldn't accept Mr H's SIPP application. That would have been the fair and reasonable step to take in the circumstances. And in the circumstances, I think MW should reasonably have explained to Mr H, even in broad terms, why it had rejected his application.

MW says Mr H would have dismissed such concerns it raised because he stayed with the same adviser for another fourteen years, demonstrating his confidence and commitment to the arrangement. But that wasn't the case in 2010; at that time, Mr H only had short acquaintance with Mr C and Firm K. So had MW explained to Mr H why it had rejected his SIPP application, I still think it's more likely than not that Mr H would have lost confidence in Firm K's advice and not proceeded at all.

Due diligence on the underlying investments

MW had a duty to conduct due diligence and give thought to whether an investment itself is acceptable for inclusion into a SIPP. That's consistent with the Principles and the regulators' publications as set out earlier in this decision. It's also consistent with HMRC rules that govern what investments can be held in a SIPP.

MW says Business M was a standard investment, and that if every standard investment required detailed scrutiny of the adviser and advice process, the execution-only SIPP model would be unworkable. I've already set out my thoughts about MW's due diligence on Firm K. And given my conclusion that MW failed to comply with its regulatory obligations and good industry practice at the relevant time, I don't think it's necessary for me to also consider MW's due diligence on the investments. I'm satisfied that MW wasn't treating Mr H fairly or reasonably when it accepted his SIPP application from Firm K, so I've not gone on to consider the due diligence it may have carried out on the investments and whether this was sufficient to meet its regulatory obligations. And I make no findings about this issue.

Is it fair to ask MW to pay Mr H compensation in the circumstances?

I accept that Firm K had some responsibility for initiating the course of action that led to Mr H's potential financial loss. I note that Mr H has contacted Firm F and the US financial authorities regarding what he sees as failures and irregularities on the part of Mr C, Firm K and Firm F. I'm mindful that I may not have been provided with copies of the entire correspondence between Mr H and these parties. But the response I have seen from Firm F said it wasn't responsible for Firm K's advice, and Mr H says he's not received any compensation in relation to this matter. And despite inviting such in the provisional decision, I've not been provided with any information or evidence to make me think that Mr H has been, or is likely to be, compensated by any other party in relation to the matter being considered here.

MW says it's not fair to hold it 100% liable for Mr H's alleged loss, because all the other parties here bore some responsibility. I've carefully considered what MW has said here, but I remain satisfied that it's also the case that if MW had complied with its own distinct regulatory obligations as a non-advisory SIPP operator, the arrangement for Mr H wouldn't have come about in the first place. MW's failure to act in accordance with its regulatory obligations and good industry practice has potentially caused Mr H to suffer financial loss in his pension, and I think it's also caused Mr H worry and upset about that.

MW says that even if it had conducted additional checks, Mr H would likely have still proceeded with these transactions because he was an engaged, internationally mobile, professional actively exploring pension solutions, and his confidence in Mr C and Firm K meant he would have dismissed any concerns MW raised to him and gone to another provider who didn't raise such concerns. And other providers were accepting such business. MW suggests Mr H might also have gone to another adviser who might have given him the same advice as Mr C of Firm K had done, so Mr H would therefore have suffered the same loss even if MW had rejected his SIPP application.

But I'm not persuaded that it's more likely than not that Mr H would still have proceeded, either through another adviser or another SIPP operator, if MW had rejected his SIPP application. I accept Mr H has said that at that time he was open to having his UK pensions managed and advised on. But it does not automatically follow that, prior to Firm K's advice, he wanted to transfer his pensions no matter what, and I've not seen anything to make me think this was the case.

Instead, Mr H recalls that he met Mr C of Firm K at an expat event, and that on meeting with Mr C, he was advised and persuaded to transfer out of his DB and DC pensions on the understanding he'd be better off. So I think it's more likely than not that Mr C of Firm K proactively suggested to Mr H he transfer his DB and DC pensions and make the investment. I've not seen anything to suggest Mr H had any relevant knowledge or experience with pensions or investments. So I don't think he'd have transferred his DB

and three DC pensions to a SIPP to invest with Business M of his own volition or without a positive recommendation from Mr C of Firm K.

I'm not aware that any other UK SIPP operator dealt with Firm K, but I accept it's possible. But in any case, any UK SIPP operator acting fairly and reasonably should have reached the same conclusion I think MW should have here – that they shouldn't accept Mr H's SIPP application. So I don't think it would be fair to say Mr H shouldn't be compensated based on speculation that another SIPP operator might have made the same mistakes as MW.

For similar reasons, I'm not persuaded Mr H shouldn't be compensated by MW, or his compensation should be reduced, because I've not made the finding that the Business M investment, in itself, wasn't something MW should have accepted. Or because the benefits from Mr H's existing pensions were lost once the transfer request was made. If MW had acted fairly and reasonably to meet its regulatory obligations and good industry practice, Mr H's SIPP application wouldn't have proceeded at all. So, no transfer requests or Business M investments would have been made.

So, I'm satisfied that MW's failure to comply with its regulatory obligations and industry best practice at the relevant time have led to Mr H potentially suffering a significant loss to his pension. And my aim is therefore to return Mr H to the position he would likely now be in but for MW's failings.

When considering this I've taken into account the Court of Appeal's supplementary judgment in *Adams* ([2021] EWCA Civ 1188), insofar as that judgment deals with restitution/ compensation. But ultimately, it's for me to decide what is fair and reasonable in all the circumstances.

Putting things right

I consider that MW failed to comply with its own regulatory obligations and didn't put a stop to the transactions that are the subject of this complaint. My aim in awarding fair compensation is to put Mr H back into the position he would likely have been in had it not been for MW's failings.

In response to my provisional decision, Mr H said he didn't know whether he'd have stayed with his DC provider if he'd been given suitable advice, though he also says he may have done. As I say, where the evidence is incomplete, inconclusive, or contradictory, I've reached my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances. And in these circumstances, where I'm still of the view that Mr H would have lost confidence in Mr C and Firm K had MW acted appropriately by rejecting his SIPP application, I still think it's more likely than not that Mr H would have remained a member of the pension schemes he transferred into the SIPP.

Mr H transferred monies from a number of different pension schemes into the SIPP, including monies from both DB and DC schemes. To put things right MW will need to undertake different types of loss calculations, one in relation to the monies that originated from the DB scheme and another in relation to monies that originated from the DC schemes. As part of doing this MW will need to calculate the portion of Mr H's SIPP value attributable to each of the respective transfers/switches and apply them to the relevant calculations.

In light of the above, MW should:

- Obtain the actual transfer value of Mr H's SIPP, including any outstanding charges.

- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).
- Undertake loss calculations as set out below in respect of each of the schemes from which monies were transferred into the SIPP and pay any redress owing in line with the steps set out below.
- If the SIPP needs to be kept open only because of any illiquid investment and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.
- If Mr H has paid any fees or charges from funds outside of his pension arrangements, MW should also refund these to Mr H. Interest at a rate of 8% simple per year from date of payment to date of refund should be added to this to reflect Mr H having been deprived of the use of these monies. Income tax may be payable on any interest paid. If MW deducts income tax from the interest, it should tell Mr H how much has been taken off. And MW should also then give Mr H a tax deduction certificate in respect of interest if he asks for one.
- Pay to Mr H £300 to compensate him for the distress and inconvenience he's been caused by this matter.

Treatment of any illiquid assets held within the SIPP

I've not seen that there are any illiquid assets held within Mr H's SIPP. But if there are, I think it's appropriate for MW to take ownership of any such investments.

To do this, MW should calculate an amount it's willing to accept for any such illiquid assets and pay that sum plus any costs and take ownership of those investment(s). Any sums paid to purchase those investment(s) will then make up part of the current actual value of the SIPP for the purposes of the redress calculation. If MW is able to purchase any such illiquid investment(s) then the price paid to purchase the holding(s) will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding(s)).

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

<u>Calculate the loss Mr H has suffered as a result of making the transfer in relation to monies originating from the DB scheme</u>

A fair and reasonable outcome would be for MW to put Mr H, as far as possible, into the position he'd now be in if it hadn't accepted his SIPP application. As explained above, had this occurred I consider it's more likely than not Mr H would have remained in his DB scheme.

Therefore I think it's appropriate to say MW must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

It is my understanding that Mr H has not yet retired and neither party has disputed this. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr H's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, MW should:

- always calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
  - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest his redress prudently is to use it to augment his defined contribution pension
- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts MW's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid directly to Mr H as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), MW may make a notional deduction to allow for income tax that would otherwise have been paid. Mr H's likely income tax rate in retirement is presumed to be 20%, and neither party has disputed this. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

<u>Calculate the loss Mr H has suffered as a result of making the transfer in relation to monies originating from DC schemes</u>

A fair and reasonable outcome would be for MW to put Mr H, as far as possible, into the position he'd now be in if it hadn't accepted his applications. As explained above, had this occurred I consider it's more likely than not Mr H would have remained in his DC schemes.

MW should first contact the provider of the DC plans which were transferred into the SIPP and ask them to provide notional values for the policies as at the date of calculation. For the purposes of the notional calculation the providers should be told to assume no monies would have been transferred away from the plan, and the monies in the policy would have remained invested in an identical manner to that which existed prior to the actual transfer.

Any contributions or withdrawals Mr H has made from the SIPP will need to be taken into account whether the notional value is established by the ceding provider or calculated as set out below. To do this, MW should calculate the proportion of the contributions or withdrawals that it's reasonable to apportion to each transfer into the SIPP, this should be proportionate to the actual sums transferred in.

Any withdrawal out of the SIPP should be deducted 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 have enjoyed is allowed for.

If there are any difficulties in obtaining a notional valuation from the previous providers, then

MW 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). That is a reasonable proxy for the type of return that could have been achieved over the period in question.

The notional value of Mr H's existing plan(s) if monies hadn't been transferred (established in line with the above) less the proportion of the current value of the SIPP that's attributable to monies transferred in from the same existing plans (as at the date of calculation) is Mr H's loss.

Pay an amount into Mr H's pension so that the transfer value is increased by the loss calculated above in relation to monies originating from defined contribution schemes

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr H 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% and neither party has disputed this. So, making a notional deduction of 15% overall from the loss adequately reflects this.

SIPP fees

If any illiquid investment cannot be removed from the SIPP, and because of this it cannot be closed after compensation has been paid, then it wouldn't be fair for Mr H 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 an illiquid investment and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

Pay Mr H £300 for the distress and inconvenience the problems with his pension have caused him

Although it's not clear yet whether Mr H has in fact suffered a financial loss here, I understand that his US tax advisor led him to believe he may have suffered a loss of over £200,000. So I think the potential loss of a significant portion of his pension provision has caused Mr H distress. So I think MW should compensate him for this as well, and I think that £300 is a fair and reasonable amount in the circumstances.

My final decision

For the reasons given, it's my decision that Mr H's complaint should be upheld and that Mattioli Woods Limited must pay fair redress as set out above.

Where I uphold a complaint, I can award fair compensation of up to £195,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £195,000, I may recommend that the business pays the balance.

Determination and Award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Mattioli Woods Limited should pay the

amount produced by that calculation up to the maximum of £195,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £195,000, I recommend Mattioli Woods Limited pay Mr H the balance plus any interest on the balance as set out above.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 March 2026.

Ailsa Wiltshire
Ombudsman