DRN-6032601

The complaint

Mr F complains that Options UK Personal Pensions LLP (formerly Carey Pensions) ('Options') failed to carry out sufficient due diligence when it accepted the transfer of his deferred defined benefit occupational pension into a self-invested personal pension ('SIPP').

Mr F is being represented by a third party but for ease I'll refer to all representations as being made by Mr F.

What happened

Involved parties

Options

Options is a SIPP provider and administrator. At the time of the events in this complaint, Options was regulated by the Financial Services Authority ('FSA'), which later became the Financial Conduct Authority ('FCA'). Options was authorised, in relation to SIPPs, to arrange (bring about) deals in investments, to deal in investments as principal, to establish, operate or wind up a pension scheme, and to make arrangements with a view to transactions in investments.

Caledonian International Associates

Caledonian International Associates ('Caledonian') was the trading name of MMG Associates, which was registered in the British Virgin Islands. Caledonian wasn't authorised in the UK to undertake regulated activities and it doesn't (and didn't at the time of the events subject to complaint here) appear on the FCA's Financial Services Register. And there is no evidence it was authorised to carry out regulated activities (where there was any relevant legislation) in any other jurisdiction.

Caledonian completed a Carey Pensions Non-Regulated Introducer Profile on 16 March 2012, with the principal address noted as Santiago, Chile.

Firm F

Firm F is an investment provider based on the Isle of Man that provided an offshore bond (i.e. life assurance) wrapper which allows investment in a number of funds with a number of fund providers.

The relationship between Caledonian and Options

Options' relationship with Caledonian began in early 2012. Options has confirmed there were 509 introductions to it made by Caledonian between 27 April 2012 and 20 May 2013. Options has said that it carried out due diligence checks on Caledonian and has provided supporting evidence of the checks it made.

I have set out below a summary of what I consider to be the key events and/or actions during the relationship between Options and Caledonian, which I have observed from the available evidence (this includes evidence from Mr F's case file and generic submissions Options has made to us about its due diligence on, and its relationship with, Caledonian).
In March 2012, a business profile was completed which recorded Options' first meeting with Mr C of Caledonian where he set out their proposed business model. This set out that Mr C was "***preferred adviser*** *(my emphasis) for the Armed Forces occupational pension scheme" for clients who were described as:*

> *"30 to 50 year olds*
>
> *Had been in the armed forces for between 6 to 10 years*
>
> *Had left the armed forces and wanted to transfer their pension arrangements*
>
> *They had no expectation of long life expectancy*
>
> *They were living today so wanted to access funds earlier then they could if their pension stayed in the armed forces pension scheme*
>
> *They were generally still resident in UK but some were now living abroad in various countries such as Thailand, Germany, Spain etc.*
>
> *They were now earning quite large salaries circa £70k plus"*

The business profile detailed that clients were referred to Mr C from his Armed Forces pensions contact or by other clients, and that he was "*currently putting them into an international* [Firm F bond], *the underlying investments were regulated*". It went on:

> "[Mr C] himself was not a regulated adviser, he was a consultant to these clients and ***advised*** (my emphasis) them on their armed forces transfers only, he was a qualified accountant and was a member of the Chartered Institute of Accountants …
>
> [Mr C] was looking at volume business in the region of 50 schemes a month."

On 16 March 2012, Mr C signed and dated Options' "*Non-Regulated Introducer Profile*". The form began:

> *"As an FSA regulated pensions company we are required to carry out due diligence as best practice on unregulated introducer firms looking to introduce clients to us to gain some insight into the business they carry out …"*

In the company information section Mr C explained that Caledonian had been trading since 1997 and had branches in Chile, Peru, Colombia, Argentina, Brazil and Switzerland. He went on to detail that they dealt with the following products:

> *"Offshore savings plans + investment bonds – [Firm F] + [Firm G]"*

And indicated that these products had been accepted by other SIPP providers, including Options, and hadn't been declined by any pension scheme operators.

Under the heading "*Sales and Marketing Approach*" the document detailed that clients would be obtained by "*referral*" and that the sales process would be:

> *"Referral – Visit – Analysis – Visit"*

A question on the form about typical commission structure was answered:

> "*7% up front from bond – 0.5% trail*"

Under the heading "*Training and Information*" Mr C explained that agents were provided with "*ongoing product training and accompanied meetings*" and that their pensions training was delivered through "*visits to providers directly*". He went on to say that the business produced by agents was monitored by:

> *"Full administrative structure – Caledonian, [Options] – compliance, [Firm F] – compliance"*

Under the heading "*Legal and Regulatory Information*" Mr C confirmed that Caledonian didn't work with any FSA regulated company or adviser, wasn't a member of any professional or industry body, had no professional indemnity insurance, and hadn't been subject to any FSA supervisory visits or censure.

In response to the question: "*What measures are in place to ensure the Firm engage legal advice on the activities it carries out to ensure regulated activities are not carried out*?" the response read:

> *"Majority of business carried out in unregulated jurisdictions but where regulations apply we are licensed to carry out our activities."*

To the question: "*How does the firm demonstrate it is treating its customers fairly*?" the response read:

> *"Compliance & Procedures in current alignment with FSA TCF."*

Mr C's other responses on the form were that Caledonian's business objective was "*to continue to develop a fully compliant business of PT to HM Forces*" and that with regards to member-directed pension scheme business they were looking to achieve "*compliant business in a regulated structure*".

On 23 March 2012, Options asked Mr C by email for a copy of Caledonian's latest company accounts and a certified copy of each director's/principal's passport. Options chased for a response to this email on 3 April. A Senior Consultant at Caledonian then supplied a copy of Mr C's passport (uncertified) and said they'd ask Mr C about the accounts when he returned from a trip. On 4 April, Mr C emailed Options:

> *"… my apologies for not having replied before now… I am back tomorrow Thursday and will have te [sic] appropriate documents over to you early next week…"*

On 27 April 2012, Options started to receive introductions from Caledonian (Options has confirmed there were 509 introductions made to it by Caledonian between 27 April 2012 and 20 May 2013).

On 1 August 2012, ahead of a compliance audit, a Team Leader at Options contacted Caledonian to ask again for the certified passports and annual accounts. In an internal email the Team Leader confirmed she'd spoken with Mr C and he'd be "*sending an urgent request for the documentation we require"*.

On 4 September 2012, a "*Non-regulated Introducer Agreement Terms of Business*" document between Options and "*MMG Associates Ltd T/A Caledonian International*

Associates" was signed and dated by Mr C and Options' CEO. That agreement included, amongst other terms, the following undertaking:

> *"The Business Introducer undertakes that they will not provide advice as defined by the Act in relation to the SIPP – for the avoidance of doubt this includes reference to advice on the selection of The SIPP Operator, contributions, transfer of benefits, taking benefits and HMRC rules;"*

On that agreement, Mr C gave an address in Switzerland as the business address.

Options has said that these terms of business were received by Caledonian in March 2012 – so it seems there was a delay in Mr C signing and returning them.

On 1 November 2012, Options conducted a '*World Check'* (a risk intelligence tool which allows subscribers to conduct background checks on businesses and individuals) on two Caledonian employees – one of which was Mr C. This check did not reveal any issues.

Options has said that in early 2013, it "*appointed a dedicated in-house compliance officer and they enhanced the compliance framework within the firm, compliance monitoring programme and risk assessment.*"

On 7 March 2013, an internal email was sent by an Options Manager to several other Options employees summarising a call she'd held with Mr C. The summary included these key points:

- Options had explained that following recent FSA reviews and guidance SIPP providers were being asked to look at business received from their introducers against expectations of type and profile.

- Options explained that several applications received recently had moved away from the expected profile of client and queried whether the profile was changing/extending.

- Mr C "*explained that predominantly the members were in the close protection industry which as @5 years ago they all went into. He said that foreign operatives were now coming in in a more organised structure. Some were getting promoted into senior positions. Many were previously divers in the military and so going into Diving elsewhere."*

- Options asked Mr C to put together a note for its CEO to update Caledonian's business profile and expectations.

On 20 March 2013, the Options Manager sent Mr C an email following up on their conversation. Options asked again for "*an update as to the changes in profile*", and highlighted that a further two applications had been received for individuals outside of the expected profile.

Options has provided a document titled "*Overseas Introducer Assessment Proforma*". This document is undated but, given that it refers to "*recently received business outside of profile*" and also the World Check completed in November 2012, I think it's likely to have been completed around the end of March 2013, and certainly no earlier than November 2012.

At the end of the '*Company Assessment'* section of this form, the overall result was recorded as Amber, a result described as "*Queries to raise*". The wording against this result read:

"Company details are a mixture of Green and Amber raise with technical review committee before proceeding".

The overall result at the end of the '*Advice/Client Profile/Investment'* section was recorded as Red, a result described as "Decline".

On 26 April 2013, an Options Compliance Officer sent an email to several other Options employees titled "Review of relationship with Caledonian". It began:

"We have a responsibility to proactively monitor our distribution channels to ensure our products do not end up with customers for whom it is not suitable. Based on recent correspondence with Caledonian I am increasingly concerned by their business practices and therefore believe we should review our relationship with them and the business they have introduced. I will arrange a meeting for next week to discuss. In the meantime we need to determine the answers to the questions below to help facilitate our discussions."

The Options Compliance Officer then set out 18 questions and statements about Caledonian and the relationship with Options and invited recipients of the email to "*please provide answers to the following where you can".*

On 30 April 2013, another member of the Compliance Team inserted her answers and comments:

"*Overview of business*

Date relationship commenced: ***April/May 2012***

What is the agreed profile of clients introduced by Caledonian: ***Ex Armed Forces, Approx age 38, working in the Close protection industry (security), earnings of Approx £70k***

Number of clients introduced: ***497 (363 now invested, 134 ongoing)***

Value of investments held: ***£16m***

Nature of investments, i.e. any alternative investments: **[Firm F]** ***(Funds) or,*** **[Firm J]** ***Investment Platform with [Firm C] acting as DFM.***

Number of complaints from Caledonian introduced clients: ***None***

*How many transfers were also accompanied by a TVAS? Who has provided the TVAS****? 37 – Only TVs over £100k (from Armed Forces Pension) or any amount no matter how small on other TVs. TVAS provided by [Mr G] ([Firm C])***

Overview of Caledonian

What due diligence was undertaken on Caledonian prior to establishing the relationship? – ***Unknown but AML was received****.*

Location of head office: ***Geneva, Switzerland***

Do they have a business address in the UK? ***They confirm that they do not have a permanent place of business in the UK, however they have a business address for correspondence and [Mr C] is based in the UK [address]***

Where do they meet with clients, i.e. in the UK? ***Unknown.***

What is Caledonian's regulatory status, i.e. are they regulated in their home jurisdiction? ***[Mr C] - The Chartered Insurance Institute - ID Number XXXXX. [Mr C] certifies all ID and signs the Investment Application Form.***

Are they regulated to provide advice in their home jurisdiction? ***Unknown.***

They have confirmed that they provide advice in Jordan. How does this work? Do they have a place of business in Jordan? Do they need to be regulated in Jordan to provide advice? ***Unknown - Caledonian provide a Non Solicitation*** *Letter which is sent to [Firm F] with the investment App. A copy of a Non Solicitation Letter is attached*

How did we establish Caledonians [sic] knowledge of SIPPs and UK pension rules? ***Unknown***

Based on our contact with Caledonian and reviewing the illustrations they provide to clients, do we have concerns that Caledonian is providing poor advice/ information? ***Yes due to illustrations***

Do Caledonian provide advice on investments within the SIPP? ***Caledonian send to us the [Firm F] Applications with the Application to set up the SIPP. The funds table in the investment App is pre-populated by Caledonian. The Member does see a copy of this document – which we send to them prior to investing their funds.***

What due diligence did we undertake on [Firm C]? ***Unknown****".*

A further reply was made later on 30 April 2013 by Options' CEO. She wrote:

"To add to [Options employee's] information. I attach a business profile which details how the relationship emerged with Caledonian which provides background information, also the process notes that were agreed at a meeting held in our old MK offices which was a workshop to present our SIPP proposition and understand their business better… In answer to some of [Options employee's] unknowns

Where do they meet with clients? ***Generally abroad depending on where their next assignment is, they will also hold meetings in the UK***

Are they regulated to give advice in their home jurisdication (sic)? ***No because they are not regulated they are introducers of business***

They have confirmed they give advice in Jordan? ***When they mean advice they are talking about consultancy they are not regulated in any jurisdication (sic)***

How did we establish their knowledge of UK Pension and SIPP marketplace? ***By meeting with them twice and by running a workshop for them output from which is attached***

Based on our contact with Caledonian and reviewing the illustrations they provide to

*clients, do we have concerns that Caledonian is providing poor advice/ information**? I am not sure it is our place to comment on this maybe on the information but not on advice, if we commented on whether we thought even our regulated advisers were providing poor advice I would probably think we would say yes. Think we need to be careful what questions we are looking to answer comfortable on the information piece but not on the advice piece***

Do Caledonian provide advice on investments within the SIPP? ***No they don't, they consult with the client on the feasibility of transferring their Armed Forces Pension Scheme into a SIPP and their partner to manage the investment is [Firm C]*** *…"*

On 10 May 2013, Options' CEO sent Caledonian an email requesting further information. The email confirmed Options was reviewing its terms of business "*in light of recent announcements from the FCA and our internal compliance reviews*".

Options made clear it was keen to continue doing business with Caledonian but must "*do so in a framework that is robust and compliant and will satisfy the regulators*". The email continued, "*so we must start with ensuring we understand each stage of the process, to enable us to develop a robust and compliant process for this business moving forward*."

Options said that as a starting point it would like Caledonian to clarify a number of issues. The email read:

"1. Can you provide your organisational structure and the jurisdiction in which each is registered and the regulation/regulator that each company operates within. If you are relying on any exemptions please state which exemptions and the reasons you believe you can operate within those exemptions

2. Are you giving advice and if so in what capacity and under what regulatory environment are you providing this advice.

3. What offices do you have and where, do the jurisdictions in which you have offices have a regulatory regime, if so can you provide details of the regulators in those jurisdictions.

4. On what basis are you providing illustrations and the reasons for this basis

5. Do you meet all your clients in Jordan, if not why do your Non Solicitation forms signed by yourself confirm the advice was given in Jordan

6. Please confirm the profile of your clients

7. Please confirm how you receive introductions to your clients

8. Can you update information about your team their background, expertise in dealing with pensions

9. On the Non Solicitation letters you note that Caledonian does not have a permanent place of business in the UK. However, you request correspondence to be sent to, [UK address]. Please can you clarify Caledonian's presence in the UK and the nature of the office in [UK city]."

The email closed with a reminder to Caledonian that from 1 May 2013 Options had implemented some changes to its requirements and "*must have a UK FCA regulated adviser*

providing the TVAS and the sign off for the suitability of transfers from occupational schemes of any values."

On 15 May 2013, Options sent an internal email which was a summary of a telephone conversation with Mr G of Firm C. The summary recorded that:

- Mr G confirmed that an FCA regulated adviser would be providing the TVAS reports on all Caledonian introduced clients. This adviser would produce TVAS reports on the back book of business with Caledonian.
- On this understanding Options had agreed they would continue to process applications where the TVAS report was currently being issued by Mr G. Options says that the last introduction made to it by Caledonian was on 20 May 2013. On 23 May 2013, Options met with Mr G of Firm C and Mr C of Caledonian. In the handwritten summary of that meeting the following was noted:

    - Mr C was a consultant to the Armed Forces and not an adviser in the FCA sense.
    - The [UK City] address was a postal address and not a working office.
    - Mr C met with clients in the UK but initial contact was abroad. The client would contact Caledonian if they wanted to transfer their pension (it was noted that the documents said that he met them in Jordan and that [Firm F] need a letter about where advice was given).
    - Caledonian's website didn't mention that it would give advice, and their documents made it clear no advice was given and clients should take advice from a regulated adviser.
    - Mr G explained that the reason for lots of transfers was the market and their relationship with the providers.
    - The proposal going forward involved an appointed representative of a Manchester IFA being a pension specialist of Firm C – it had the necessary qualifications. Going forward the Manchester IFA would deal with business.
    - Options agreed to allow Caledonian a four-week window to put the proposal in place.
    - The question about advice was irrelevant to Options as no advice is given – Firm F want a letter about advice but no advice is given.
    - Caledonian said its illustrations were provided to facilitate the business. Options queried whether this was advice.
    - A question was noted – is there a terms of business for Caledonian with client?

I haven't seen evidence that any of the agreed actions were completed. As noted, Options did not accept any further business from Caledonian after 20 May 2013.

Options decided to review its relationship with Caledonian. It's provided a copy of its document headed "*Caledonian Relationship Review 2013*". I've reviewed the document in full, but have only quoted below what I consider to be the key part:

> *"…Following a detailed review of the process and documentation concerns were raised regarding whether the clients could be deemed to be receiving advice through an unregulated entity.*
>
> *Following a request for further clarification on these points we have not been able to satisfy ourselves that this is not the case.*
>
> *We have insisted that they move to a model that all cases are fully advised by an FCA regulated firm/individual, which has been accepted …*

Following a meeting in the Milton Keynes office… where [Mr C] from Caledonian, and [Mr G] of [Firm C] explained their current process and documentation and described their future process, [and] further discussions…it was decided that they had not satisfied us enough with their current processes for us to continue to allow taking on new business in the interim without the use of a UK regulated firm or individual who was suitably qualified.

[Options] has instructed the team of this decision so from week beginning 28th May any new business received will be rejected unless it comes through an FCA regulated firm."

It set out a detailed process by which Caledonian proposed to move to a model where all clients would be fully advised by an FCA regulated firm/individual, and it highlighted the benefits of this new approach as being:

"All schemes are coming in on an advised basis
Brings the process and clients into the UK regulated process
Brings the clients into the FSCS and FOS protections
Ensures all occupational schemes undergo analysis and advice"

I haven't seen evidence that this approach was ever enacted – again, as noted, no further business introduced by Caledonian was accepted by Options after 20 May 2013.

Background to Mr F's transaction and complaint

The background to this complaint is well known to both parties and was clearly set out in the Investigator's view, dated 20 November 2025. So I don't intend to repeat it in full here. Instead I've provided a summary of what I consider key to my decision.

Mr F met with Caledonian in 2012. At the time he held a deferred defined benefit pension from his time working in the Armed Forces (the Armed Forces Pension Scheme – the 'AFPS').

Caledonian advised Mr F to transfer his AFPS to an Options SIPP. On 5 September 2012 Caledonian sent Mr F's application to Options. The application noted that Mr F was employed as a Security Consultant and was aged 26. His AFPS transfer value was £16,500 and the funds were to be invested in a Firm F bond. Mr F had waived his cancellation rights and the application didn't list a financial adviser. However, as stated, the application was sent to Options with a covering letter from Caledonian. Mr F had also signed various declarations, some of which listed Caledonian as his adviser.

In October 2012, the SIPP received £17,434.67 from the AFPS. In November 2012 £16,046.99 was transferred to the Firm F bond. Options paid Caledonian an IFA Fee of £250.

An annual statement was provided on 6 September 2013 which confirmed the SIPP was valued at £17,295.05. Annual statements continued to be issued by Options over the years. In May 2020 Mr F emailed Options to update his address and asked a number of questions about his pension.

Mr F complained to Options in August 2025, that it did not undertake adequate due diligence on the introducer or the underlying investments held in the SIPP.

Options provided its final response letter on 2 September 2025. It said it thought Mr F's complaint had been brought too late. It argued that Mr F ought to have been aware that his funds hadn't grown as expected, so he ought reasonably to have known he had cause to complain in 2019. It also referred to the Berkeley Burke SIPP Administration Limited v Financial Ombudsman Service [2018] EWHC 2878 (admin) judicial review judgment in October 2018 ('BBSAL') and stated that Mr F's complaint had been made more than three years from the publication of the court decision.

Mr F referred his complaint to this Service. One of our Investigator's considered matters but was satisfied the complaint had been referred in time and having reviewed the merits, the Investigator thought the complaint should be upheld.

Mr F accepted the Investigator's findings. Options has continued to dispute that the complaint was referred in time but it hasn't provided any further comment in respect of the merits of the complaint.

The matter has been passed to me to decide.

What I've decided – and why about our jurisdiction

I've firstly considered whether the complaint falls within the remit of this Service.

The rules setting out the jurisdiction of the Financial Ombudsman Service are in the DISP section of the Financial Conduct Authority (FCA) Handbook. At the time Mr F referred his complaint to us, DISP 2.8.2R said:

> "*The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service …*
>
> *(2) more than:*
>
> *(a) six years after the event complained of; or (if later)*
>
> *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint; unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*
>
> *unless:*
>
> *(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R … was as a result of exceptional circumstances; or…*
>
> *(5) the respondent has consented to the Ombudsman considering the complaint where the time limits … have expired …"*

In this case Options (the respondent business) has not consented to the complaint being considered. And in its final submissions it said that it believes Mr F was aware in 2020 of his cause for complaint.

Mr F's complaint relates to events that took place in 2012 when his Options SIPP was opened, his transfer from the AFPS completed and his investment with Firm F was made. Mr F first complained to Options in August 2025, which is clearly more than six years after the events he now complains about – Options' acceptance of his SIPP application and

transfer in from the AFPS. So, I've gone on to think about when Mr F became aware (or ought reasonably to have become aware) of his cause for complaint about Options.

In order for Mr F to have awareness of his cause for complaint he needed to be aware, or ought reasonably to have been aware, there is a problem, that he has suffered (or may suffer) material loss and that the problem was or may have been caused by an act or omission by Options (the respondent in this complaint). And I think it's correct to say that before a complainant can start thinking about who might be responsible for a problem, they need first to have awareness that there is a problem.

In its final response, Options asserts that by Mr F signing an acknowledgement of the pension rights he was giving up during the transfer in 2012, this ought to have given him knowledge of his cause for complaint. The evidence I've seen doesn't indicate that Mr F had any desire to move his pension until he spoke with Caledonian and was told he'd be better off and should move it.

I can't find any support for Options' argument in the final response that Mr F was in a dangerous line of work and motivated to move to the SIPP because he wanted his beneficiaries to be able to take a lump sum in the event of his untimely death. Nor did he have any particular need to access his pension at age 55. In these circumstances, at the point of transfer, I don't think Mr F should have known there was a problem, and that he had suffered (or may suffer) material loss as a result of something Options did or omitted to do.

When he signed the documentation in 2012, he'd been advised by Caledonian that transferring out of the AFPS was the best thing to do and that the SIPP would provide him with a better pension in retirement. He wasn't aware, nor should he have been, at that point, that he may have been disadvantaged by his pension transfer.

Mr F's complaint is that Options didn't conduct sufficient due diligence on Caledonian and should have prevented his pension transfer. I can't see that signing a declaration about what he was giving up would have highlighted to Mr F that he had potentially incurred a loss for which Options might be responsible. Not only did he have no awareness of a problem in 2012, but I also think it's very unlikely that he would have known enough about the regulatory obligations of a SIPP provider to be aware that Options had a responsibility to undertake due diligence and to use that to decide whether to accept or reject particular investments and / or referrals of business.

In 2012, when Mr F signed the acknowledgement, he knew Caledonian had advised him on the transfer, about setting up a SIPP with Options, and in relation to his investments. He wasn't advised by Options about setting up the SIPP or the suitability of investments. And in my view, there was nothing in 2012 that would indicate to a reasonable retail investor in Mr F's position that there was a reason to complain about Options.

Options has also said that poor investment performance over the years should have prompted Mr F to investigate whether he could complain. However, I can't see that anything significant happened to the overall valuation of Mr F's SIPP which ought reasonably to have caused him to investigate further.

Options has referred to emails between it and Mr F in May 2020, where Mr F said he was concerned that his pension value had only increased by a little over £400 since being transferred. In response to this Options confirmed to Mr F that current value of the SIPP was a little under £16,000. Options argues that these emails support Mr F being aware of his cause for complaint in 2020.

Options has also said that following the publicity surrounding the Berkeley Burke SIPP

Administration Limited v Financial Ombudsman Service [2018] EWHC 2878 (admin) judicial review judgment in October 2018, Mr F should have known that, in certain circumstances, SIPP operators may owe responsibilities to their customers – and that they may be responsible for some of the losses consumers have suffered in their pensions. So it thinks that this should have started the three-year time period in which he could have brought a complaint.

Before Mr F could consider bringing a complaint to Options, he needed to first know that he had a problem and had suffered a loss. Only then could he begin to think about who might be responsible for his loss. Having considered the available evidence, including emails between Options and Mr F in May 2020, I've seen nothing that ought to have caused Mr F considerable concern or would have indicated to him that he had suffered a significant loss in 2020. While Mr F said in his email he was concerned his fund value had only increased by a little over £400 in 8 years, he asked if this is due to the recent global state having an impact on share prices. And I don't consider concerns about the performance of his SIPP, when there had only really been fairly minor fluctuations in its value, ought to have made him aware that there was a problem with his investments, or indeed with the original transfer of his Armed Forces pension. So there was no reason for Mr F to have been looking for more information following the Berkeley Burke case to find out about Options' responsibilities and whether it may be responsible for a loss that Mr F wouldn't have been aware he had suffered.

Mr F agreed to transfer his pension on the advice that he would be better off in retirement, which was almost 30 years in the future at the time of the transfer (in 2012) if he truly intended to retire at 55. Or nearly 40 years away, if he retired at 65. By 2020, Mr F had only been invested for a relatively short term of 8 years in what he had been told would be a long-term investment – and still many years away from his likely retirement. And he suffered no considerable loss during this time. So I'm not persuaded that the performance of Mr F's pension up until 2020 ought to have given him cause for complaint against Options.

The value of investments also generally goes up and down, and most investors know that, over the long term, and particularly in the case of pensions, value lost can be recovered over time. So, I don't consider that Mr F was on notice that he needed to look into this further.

This was not a case in which it was apparent that Mr F had suffered a loss until much later. Working out whether a loss has occurred when a defined benefit pension has been transferred to a personal pension is a complex exercise and I don't think Mr F had actual or constructive knowledge that he'd suffered a loss before August 2022 (i.e. three years before Options received his complaint).

Indeed, I haven't seen anything that would reasonably have led to Mr F becoming aware there was a problem before seeing an advert on Facebook that he became aware that he may have cause to complain. It was at this point when his representative told him he could have a claim and a complaint was lodged against Options. This was shortly before he complained to Options in 2025. That's when he first knew there may be a problem with the transfer, and that he may have suffered a material loss. It was then that he learnt of the details of what had gone wrong – the details being that his SIPP was never likely to match the valuable benefits he'd given up on the advice of an unregulated overseas adviser, and that Options may have failed in its obligations by allowing this to happen. Prior to that point, Mr F had no reason to realise what Caledonian had advised him to do was detrimental, and so he did not arrive at the awareness that Options might have some responsibility for that detriment.

Overall I've seen no evidence to indicate Mr F ought reasonably to have known that he might be able to complain about Options more than three years before he did complain in August

2025. So, although he made his complaint more than six years after the pension was transferred, he made it within three years of when he knew, or should reasonably have known, something was wrong, he'd suffered a loss and that Options might be responsible for it. Therefore, I'm satisfied that we can consider the merits of Mr F's complaint.

What I've decided – and why about the merits of the complaint

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

Having reviewed all the information, I'm upholding Mr F's complaint. I've set out my reasons why below.

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, what I've seen on similar cases and the wider surrounding circumstances. In reaching my decision I've carefully reviewed all points raised by Mr F and Options but will limit my reasoning to what I consider to be the key issues.

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

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

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

The legal background

As highlighted in the High Court decision in Adams the factual context is the starting point for considering the obligations the parties were under. And in this case it is not disputed that the

contractual relationship between Options and Mr F is a non-advisory relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HM Revenue and Customs rules. Options 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 Options within the context of the non-advisory relationship agreed between the parties.

The case law

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

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

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

The Principles for Businesses

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

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

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

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

The regulatory publications and good industry practice

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

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

The 2009 Report included:

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

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

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

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

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.

- The comments made in the publications apply to SIPP operators that provide a non-advisory service.

- Neither court in the Adams case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.

- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

Like the Ombudsman in the BBSAL case, I don't think the fact that some of the Publications post-date the events that took place in relation to Mr F's complaint, mean that the examples of good practice they provide weren't good practice at the time of the relevant events.

Although the later publications were published after the events subject to this complaint, the Principles that underpin these existed throughout, as did the obligation to act in accordance with the Principles.

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

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

To be clear, I don't say the Principles or the publications obliged Options to ensure the transactions were suitable for Mr F. It's accepted Options wasn't required to give advice to Mr F, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But as I've said above these are evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles. And, as per the FCA's Enforcement Guide, publications of this type "*illustrate ways (but not the only ways) in which a person can comply with the relevant rules*". So it's fair and reasonable for me to take them into account when deciding this complaint.

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

What did Options' obligations mean in practice?

In this case, the business Options was conducting was its operation of SIPPs. I'm satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject particular investments and/or referrals of business. The regulatory publications provided some examples of good industry practice observed by the FSA and FCA during their work with SIPP operators including being satisfied that a particular introducer is appropriate to deal with and a particular investment is an appropriate one for a SIPP.

As noted above, it's clear from Options' "*Non-Regulated Introducer Profile*", that it understood and accepted its obligations meant that it had a responsibility to carry out due diligence on Caledonian.

I'm satisfied that, to meet its regulatory obligations, when conducting its business, Options was required to consider whether to accept or reject particular referrals of business, with the Principles in mind. This seems consistent with Options' own understanding – as Options Compliance Officer noted in their email of 26 April 2013, "*We have a responsibility to proactively monitor our distribution channels to ensure our products do not end up with customers for whom it is not suitable*." And I note in submissions on other complaints Options has told us that "*adherence to TCF*" is something it had in mind when considering its approach to introducer due diligence i.e. the question of whether it should accept business from a particular introducer.

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

Summary of my decision

As set out above, the 2009 thematic review report deals specifically with the relationships between SIPP operators and introducers or "intermediaries". And it gives non-exhaustive examples of good practice. In my view, to meet these standards, and its regulatory obligations, set by the Principles, Options ought to have identified a significant risk of consumer detriment arising from the business model Caledonian described to it at the outset. And so, Options ought to have ensured it thought very carefully about accepting applications from Caledonian.

I acknowledge Options did take some steps – initially and on an ongoing basis – which did amount to good practice consistent with its regulatory obligations. But I think, acting fairly and reasonably to meet its regulatory obligations and good industry practice, Options had reason at the outset – and by the time of Mr F's application – to have significant concerns about the business Caledonian would be introducing. And it ought to have taken the sort of action it took in April and May 2013 – which effectively ended its relationship with Caledonian – before the relationship with Caledonian began.

Acting fairly and reasonably, Options should have:

- Been aware – or at least concluded there was a significant risk – at the outset of its relationship with Caledonian, that Caledonian was giving advice on the transfer out of consumers' existing defined benefit schemes to the SIPP and the investment in the Firm F bond.
- Been aware that Caledonian was arranging the transfer out of consumers' existing defined benefit schemes to the SIPP and the investment in the Firm F bond too.
- Sought clarification on where these activities were taking place.
- Concluded Caledonian was, in at least some instances, carrying out regulated activities in the UK. Further, Options should have recognised, and promptly reacted to, the following risks of consumer detriment:

    - Caledonian's staff did not have the qualifications – and therefore expertise – to give advice on defined benefit pension transfers.
    - There was no evidence to show a proper advice process had been followed and consumers such as Mr F were therefore unable to make fully informed decisions about the transfer to the SIPP and investment in the Firm F bond.

- The high volume of business being proposed/brought about by Caledonian.
- The high level of commission Caledonian was taking.
- That Caledonian had failed to provide its company accounts, despite repeated requests for copies of them by Options.

I think these points – individually and cumulatively – should have led Options, acting fairly and reasonably, to have concluded at the outset that it should not accept business from Caledonian. And so, Mr F's application should not have proceeded.

It follows that it's fair and reasonable to uphold Mr F's complaint.

Finally, I'm also satisfied that s27 FSMA applies here, as regulated activities were undertaken by Caledonian, in breach of the General Prohibition. So, Mr F is entitled to recover any money or other property paid or transferred by him under the agreement (i.e. the SIPP), as well as compensation for any loss suffered. I'm also satisfied that in the circumstances a court would not exercise its discretion to allow the agreement to be enforced; or money paid or transferred under the agreement to be retained. This is a further basis on which I consider it to be fair and reasonable to uphold Mr F's complaint.

Because I've decided to uphold Mr F's complaint on the basis that Options shouldn't have accepted his introduction from Caledonian, it's not necessary for me to consider whether or not Options should have allowed the Firm F investment in Mr F's SIPP. So I make no findings about the appropriateness of the Firm F investment for the Options SIPP which Mr F opened.

I've set out my decision in more detail below.

What activities did Caledonian undertake and what should Options have concluded?

Advice

I note that Options says it "*did not at any point become aware that Caledonian were providing advic*e". This is a surprising assertion, given Options recorded in March 2013, when assessing Caledonian, under the heading "*Advice*":

> "*No details of how advice given. No regulatory bodies / permissions seen. Although suggested on email that advice given in Jordan*?"
>
> "*Advice possibly given in Jordan, although not sure if true for UK based clients*"

And so, it seems Options understood at this point that advice was being given. To ask questions about how and where advice was being given, the conclusion must first have been reached that advice was being given. There is nothing to suggest this was a view it had recently reached – rather it seems that it was an existing understanding which was being flagged as an issue for the first time.

When further action on this point was eventually taken by Options, a member of its staff said on 30 April 2013: "*No they* [Caledonian] *don't* [give advice], *they consult with the client on the feasibility of transferring their [occupational pension scheme] into a SIPP*".

This seems to be an effort to backtrack on the earlier answers given to the questions in the 26 April 2013 email, which appear to accept Caledonian was giving advice, although much else was "*unknown*". But, to my mind, describing Caledonian's role as consulting on the feasibility of doing something is simply another way of describing an advisory role. It would also have been clear to Options that Caledonian's role was not limited to advice on the

transfer out of the consumer's existing scheme. I say this because it's my understanding from other complaints that it was declared on the Firm F applications that Caledonian was giving advice on the bond too, and so any "*consulting*" wasn't solely limited to the transfer out from the existing scheme. This was clearly not viewed by Options as a satisfactory answer to this point in any event as its enquiries continued and, on 10 May 2013, Options asked Caledonian:

> "*Are you giving advice and if so in what capacity and under what regulatory environment are you providing this advice."*

This shows Options was clearly of the view at this point that, at the very least, Caledonian might be giving advice as there is no other basis on which it could have sought clarification from Caledonian as to whether advice was being given.

It seems this was a view Options maintained. As set out above, it later noted:

> "*Following a detailed review of the process and documentation concerns were raised regarding whether the clients could be deemed to be receiving advice through an unregulated entity.*
>
> *Following a request for further clarification on these points we have not been able to satisfy ourselves that this is not the case*."

And it ultimately concluded in May 2013 that all business should come to it through a UK IFA with permissions to give pension transfer advice – an unusual step to take if it didn't remain of the view there was at least a risk Caledonian was giving advice.

Options has previously told us that it took that step as a wider policy decision and not as a response to concerns about Caledonian, the evidence it gave about that wider policy decision suggested that the wider policy decision was made in 2014, and was based on reviews and considerations which mostly took place after May 2013. The decision as it related to accepting new business from Caledonian appears to be set out in a document from May 2013 headed "*Caledonian Relationship Review 2013*".

The above suggests to me that Options knew – or suspected – advice was being given from the outset but took a reactive, piecemeal approach to addressing this obvious risk.

Furthermore, from the information available to Options at the very outset of its relationship with Caledonian, there was a clear identifiable risk that advice was being given by Caledonian. Caledonian said, at the outset, it was:

> *"preferred adviser for the Armed Forces occupational pension scheme"*
>
> *"a consultant to these clients and advised them on their armed forces transfers only"*
>
> *"currently putting them into an international [Firm F] Bond"*

And Caledonian's sales process was described as:

> *"Referral – Visit – Analysis – Visit"*

Finally, as mentioned, many of the Firm F applications I've seen on other complaints confirm Caledonian was giving advice (in Jordan – a point I'll turn to below) and Options would have been privy to many of these forms from an early stage in its relationship with Caledonian.

I note it was recorded that Caledonian advised on the transfer only, but it was also recorded that it was selecting the investment vehicle (the Firm F bond). And it's also very difficult to see how advice on a transfer out didn't encompass advice on where to transfer to (i.e. the SIPP) – particularly when it was clearly anticipated that all consumers would be transferring to an Options SIPP. It's not clear how this could happen without those consumers being advised to take this course of action.

Furthermore, the "*Referral – Visit – Analysis – Visit*" process Caledonian describes is a typical advice process involving an initial meeting, information gathering and analysis, and a further meeting.

Options should also have been aware that it's not usual for pension transfers to happen without the consumer receiving advice or a recommendation – and very unusual for this to happen at a rate of 50 a month, which Caledonian was proposing. Options should have concluded that it was simply implausible that such a large volume of consumers were deciding to transfer out of their existing schemes, open a SIPP with Options, and make the same Firm F investments within the SIPP without being advised to do so.

I note Options' terms of business with Caledonian, signed September 2012 (but, Options says, in place since March 2012) said:

> *"The Business Introducer undertakes that they will not provide advice as defined by the Act in relation to the SIPP – for the avoidance of doubt this includes reference to advice on the selection of The SIPP Operator, contributions, transfer of benefits, taking benefits and HMRC rules;"*

I also note the SIPP application form, which was signed and dated by Mr F, said:

> *"This Form should be used if you are a client establishing a SIPP without advice. You have made this decision independently and are aware of the implications of this decision."*

And:

> *"As you do not have a Financial Adviser, your investment choices are your sole responsibility. You will instruct us and we will act on those instructions as long as it is an accepted investment in the [Options] Pension Scheme."*

But the member declaration, signed by Mr F, included the following:

"I confirm that I have received full and appropriate advice from Caledonian International and following this advice I wish to proceed with the transfer."

So, I don't think the application documents gave Options any basis to conclude advice hadn't been given – particularly given what I say above. They present a confused, inconsistent, picture. And where the documents expressly said that Mr F hadn't been advised, they said in most instances that Options hadn't advised Mr F, rather than Caledonian hadn't advised him.

Taking account of the available evidence, I consider that, in this case, Caledonian did provide advice to Mr F on the merits of transferring his AFPS pension to the SIPP and investing in the Firm F bond. Mr F recalls Caledonian telling him he'd be in a much better position than if he left his AFPS where it was. So, I think it's more likely than not that Caledonian proactively suggested to Mr F he transfer his defined benefit occupational pension and make the investment. Mr F had limited investment experience and transferred to the same SIPP, and same investment as many other consumers who Caledonian

introduced. I don't think Mr F would have transferred his AFPS pension to a SIPP or invested it in Firm F of his own volition or without a positive recommendation from Caledonian.

The paperwork I've seen also supports that Mr F was given advice. The evidence is that the Caledonian representative presented themselves as an 'adviser' to Mr F. As I've highlighted above, the Caledonian representative's signature was entered in the space for 'adviser name' on the member declaration accompanying the SIPP application form.

So, I'm satisfied advice was given to Mr F by Caledonian in this case, and that, from the outset of its relationship with Caledonian, Options was (or at the very least ought to have been) aware, generally, that Caledonian was offering advice to consumers, or there was a significant risk it might be doing so.

Arranging

It's also clear from what Options was told by Caledonian at the outset – and from the available evidence in this complaint and others – that Caledonian was heavily involved in the arrangement of the transfer out of Mr F's existing pension scheme to the SIPP and the investment of the cash transferred to the SIPP in the Firm F bond. It clearly wasn't simply introducing Mr F to Options and leaving it to him to proceed with the application. It was involved in the setting up of the SIPP and in arranging the Firm F bond and associated investments. It was commonly involved in gathering all the information and documents needed for things to proceed and it sent all the required information, forms, documents etc. to all the parties involved, and dealt with any queries arising from these.

I think Options ought to have been aware of this. The extent of Caledonian's involvement was clear from the application documentation Caledonian sent to Options, and its involvement in other applications of the same nature.

Where were the activities taking place?

I haven't seen any evidence that, prior to May 2013, Options established where Caledonian was carrying out its activities in relation to each application – including Mr F's.

As set out above, Caledonian told Options at the outset that "They [the consumers] were generally still resident in UK but some were now living abroad in various countries such as Thailand, Germany, Spain etc". It was also recorded that Caledonian had branches in Chile, Peru, Columbia, Argentina, Brazil and Switzerland. And, as Options later noted, Caledonian also used a UK address.

Caledonian also told Options at the outset:

> *"Majority of business carried out in unregulated jurisdictions but where regulations apply we are licensed to carry out our activities."*

And, as mentioned, the sales process adopted by Caledonian was set out as "*Referral – Visit – Analysis – Visit*". So, it was clear Caledonian was meeting consumers in person. Furthermore, the Certificate of Non-Solicitation signed by Caledonian for Firm F – to which Options was privy – said in each instance (as far as I'm aware) "*The advice was given in Jordan*".

Caledonian therefore gave what appears to be conflicting information. But Options ought to have been aware, from what was said by Caledonian, that it was possible Caledonian might be dealing with a UK resident consumer in the UK, or dealing with a consumer in any one of a number of different countries, all of which might have different financial services regulatory

regimes (or no such regime).

It's fair to say the picture was far from clear – and Options should have been aware it was unlikely all of the information provided by Caledonian could be correct. It's not, for example, clear how the advice in every instance could have been given in Jordan when, by Caledonian's own account, it had a number of offices around the world (none of which were in Jordan), was dealing with consumers who "*were generally still resident in UK*" or "*living abroad in various countries*" and said elsewhere that it was carrying out business in various jurisdictions.

Options didn't, however, check any of this at the outset. It was therefore in no position to know what, if any, regulatory regimes applied, and whether Caledonian required any authorisations to conduct the activities it did. Caledonian itself appears to have suggested it needed "*licences*" in some jurisdictions, but I've seen no evidence of it having given details of any such "*licences*".

I think Options should have been particularly concerned – given that, as mentioned, Caledonian told Options the consumers it dealt with "were generally still resident in UK" – about whether advice was being given (or any other regulated activity carried on) in the UK, as Caledonian wasn't authorised by the FSA nor, later, the FCA. There was reason, as I've explained, to think Caledonian might be breaching the General Prohibition against persons carrying on a regulated activity in the UK without authorisation. Despite this, I've seen no evidence to show Options identified this risk until March 2013 when, as set out above, it was noted:

> *"No details of how advice given. No regulatory bodies / permissions seen. Although suggested on email that advice given in Jordan?"*
>
> *"Advice possibly given in Jordan, although not sure if true for UK based clients"*

Then no further action appears to have been taken until 26 April 2013 when, in a further internal email exchange at Options, a number of questions were asked and answers were received on 30 April 2013 (these have been set out in the background section of the decision so I don't intend to repeat these here).

Despite the uncertainty it wasn't until 10 May 2013, when Options finally challenged Caledonian on this point (amongst others):

> *"Can you provide your organisational structure and the jurisdiction in which each is registered and the regulation/regulator that each company operates within. If you are relying on any exemptions please state which exemptions and the reasons you believe you can operate within those exemptions*
>
> *What offices do you have and where, do the jurisdictions in which you have offices have a regulatory regime, if so can you provide details of the regulators in those jurisdictions.*
>
> *Do you meet all your clients in Jordan, if not why do your Non Solicitation forms signed by yourself confirm the advice was given in Jordan*
>
> *On the Non Solicitation letters you note that Caledonian does not have a permanent place of business in the UK. However, you request correspondence to be sent to The Pensions Service Centre, [UK City]. Please can you clarify Caledonian's presence in the UK and the nature of the office in [UK City]."*

Given what I say above, acting fairly and reasonably, Options should have made these enquiries at the outset. And, as set out in the background, these enquiries (along with the other points of query put to Caledonian and then discussed with it) led to Options quickly concluding it shouldn't accept further applications from Caledonian unless they came through a UK IFA with permissions to give pension transfer advice – a restriction which it seems had the effect of no further business being introduced by Caledonian. I think it's fair to say that Options would have reached the same conclusion had it taken this action at the outset of its relationship with Caledonian. And it certainly should have done so, to act fairly and reasonably to meet its regulatory obligations and standards of good practice.

In this case, Mr F's address was in the UK at the time of his SIPP application, and he's said that Caledonian visited his workplace (in the UK) and gave him advice. For all the reasons I have mentioned, Options should have concluded it was possible Caledonian was carrying out activities in the UK before it received Mr F's application. If Options had reached that conclusion, as I believe it should have, through taking appropriate steps at the start of its relationship with Caledonian, then Options should have declined to enter into a relationship with Caledonian at all or at least ended its relationship with Caledonian before accepting Mr F's application. I think this was the only fair and reasonable step it could take in the circumstances.

Regulated activities in the UK
Under Article 53 of the RAO (as set out in the version that was current at the relevant time) the following are regulated activities:

> "*Advising a person is a specified kind of activity if the advice is-*
>
> *(a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and*
>
> *(b) advice on the merits of his doing any of the following (whether as principal or agent)-*
>
> > *(i) buying, selling, subscribing for or underwriting a particular investment which is a security or a relevant investment, or*
> > *(ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment."*

Under Article 25 of the RAO (as set out in the version that was current at the relevant time) the following are regulated activities:

> *"(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is-*
>
> > *(a) a security,*
> >
> > *(b) a relevant investment, or*
> >
> > *(c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article, is a specified kind of activity.*
>
> *(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity."*

There is an exclusion under Article 26 of "*arrangements which do not or would not bring about the transaction to which the arrangements relate*."

Rights under a personal pension scheme are a security.

The investments made within the Firm F bond – which Caledonian itself described as "*regulated*" – were also securities or relevant investments.

Finally, the Firm F bond was a contract of insurance, and rights under a contract of insurance are also a relevant investment.

As set out above, I'm satisfied Caledonian gave advice and made arrangements. For many of the clients it introduced to Options, the activities it undertook clearly meet the above definitions. The arrangements it made brought about the transactions (the transfer out of an existing pension into the SIPP, the opening of the Firm F bond within the SIPP and the making of investments within that bond). The arrangements had that direct effect. And advice was given on the merits of transferring out of the existing pension scheme to the SIPP in order to invest in the Firm F bond – Mr F was persuaded he would be better off in retirement if he transferred.

So, I'm satisfied the activities undertaken by Caledonian for many of the clients they introduced to Options took place in the UK and were regulated activities. Caledonian therefore carried out regulated activities without authorisation.

These points about the activities Caledonian was undertaking, where it was undertaking them, and its authorisation to undertake them, are ones Options should have considered individually and cumulatively. And to be clear, I think the fact Caledonian was carrying out regulated activities without authorisation was enough reason, in itself, for Options to have concluded, that it should not accept applications from Caledonian.

This was a significant 'red flag'. The fact Caledonian was carrying out regulated activities without authorisation calls into question its integrity, motivation and competency. I think the only fair and reasonable conclusion Options could reach in these circumstances was that it should not accept business from Caledonian. And I think this alone is sufficient reason to conclude it's fair and reasonable to uphold Mr F's complaint. But I have nonetheless gone on to consider the further risks of consumer detriment I've summarised above.

Caledonian's expertise

Caledonian's proposed business model, as documented at Options' first meeting with its representative, involved former members of the Armed Forces who, it said, worked in security related jobs in dangerous areas. The business model wasn't one involving, say, former financial advisers or other finance professionals.

There was therefore no reason to think that the typical client Caledonian was proposing to introduce to Options had a good level of understanding of pensions or was in a position to work out for themselves if a pension transfer was in their best interests. They would be reliant on Caledonian's advice.

The introductions involved transfers out of a defined benefit pension scheme into a UK SIPP to invest in a range of funds within a Firm F bond. The transfers of defined benefit (final salary) pensions are usually not in the customers' best interests, are complex and present a variety of consequences and matters which the ordinary individual would be hard-pressed to understand without professional financial advice. Those giving such advice in the UK are required by the FCA to pass specialist exams, reflecting the risks and complexities involved.

Options, as a provider of SIPPs, would or ought to have been aware of this.

Not only did Caledonian's advisers not have the qualifications required by the FCA (or FSA as it then was) to give advice on pension transfers, there is no evidence they had any relevant qualifications. The only qualification of any kind which is mentioned is that Mr C of Caledonian was a qualified accountant.

I've seen no evidence to show Options noted this obvious risk until March 2013 when it reviewed its relationship with Caledonian and "Professional Qualification" was then assessed as "high risk". The reason for this assessment was "*No qualifications documented other than meeting note from March 2012 where [Mr C] stated he was a qualified accountant and member of Chartered Institute of Accountants*."

And, despite this "*high risk*" flag, I've seen no evidence Options took any action until 26 April 2013 when it was asked "*How did we establish Caledonian's knowledge of SIPPs and UK pension rules?*" The answer to this was initially recorded on 30 April as "*unknown*". The later answer on 30 April was, "*By meeting with them twice and by running a workshop for them output from which is attached*". But I don't think this is enough to show Options had sufficiently addressed this risk – it does nothing to show Caledonian's staff had adequate professional qualifications.

Indeed, this (along with the other points of query raised at the time) was a point which led to Options quickly concluding it shouldn't accept further applications from Caledonian unless they came through a UK IFA with permissions to give pension transfer advice – a restriction which had the effect of no further business being introduced by Caledonian. And I think it's fair to say Options would have reached the same conclusion had it taken this action at the outset of its relationship with Caledonian. And it certainly should have done so to meet its regulatory obligations and standards of good practice.

The transfer process

As mentioned above, a defined benefit transfer is a complex transaction. It involves many risks, and potentially the loss of significant guaranteed benefits. For this reason, advice on such transactions is tightly regulated in the UK and there are standards of good practice that those giving the advice are expected to follow. This means several steps need to be taken as part of the advice process and documentation such as fact-finds, suitability reports, TVAS, and illustrations generally feature in the advice process. The purpose is to ensure any advice given takes into account all relevant factors, is suitable, and the recipient of the advice is 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 Options, 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, given that Caledonian's starting point appears to have been that the consumers it dealt with would be transferring out of the defined benefit scheme (i.e. it seems to have taken the view a transfer was suitable for all) there was a clear risk of consumer detriment if consumers were not in a fully informed position and therefore able to understand the risks associated with the transfer.

I do not say Options 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 and carried out even a cursory investigation of the individuals being introduced to it, then it would have become aware no reasonable process was in place and consumers were not fully informed

of the risks. As discussed, I think it would have also quickly discovered that at least some of the individuals being introduced to it, including Mr F, had received what amounted to advice about the transfer from an unregulated introducer. And that in many cases this advice had been provided in the UK.

Options' reference to "*illustration*s" in the list of questions in the 26 April 2013 email, and the initial answers to those questions, appears to be a further acknowledgement of the risk that consumers weren't fully informed before agreeing to transfer to the SIPP:

> *"Based on our contact with Caledonian and reviewing the illustrations they provide to clients, do we have concerns that Caledonian is providing poor advice/ information? Yes due to illustrations"*

Again, this (along with the other points of query raised at the time) appears to be a point which led to Options quickly concluding it should not accept further applications from Caledonian unless they came through a UK IFA with permissions to give pension transfer advice – a restriction which had the effect of no further business being introduced by Caledonian. And I think it's fair to say Options would have reached the same conclusion had it taken this action at the outset of its relationship with Caledonian. And it certainly should have done so, on a fair and reasonable basis to meet its regulatory obligations and standards of good practice.

Volume of business

At the outset of the relationship between Options and Caledonian, Options was told that Caledonian would be introducing about 50 applications a month (and I note a similar volume was introduced once the relationship began).

I think on a fair and reasonable basis, Options should have been concerned that Caledonian intended to (and did) make such a high volume of introductions, relating only to occupational pension schemes. In my view, this was a further reason for Options to conclude there was a significant risk of consumer detriment – particularly when considered alongside the other points I've set out.

Firstly, it's not clear how Caledonian would be, or was, bringing about such a high volume of applications without giving advice. It was simply implausible it could bring about this number of applications without influencing consumers' actions through a positive recommendation. Options also ought to have considered Caledonian's competence to deal with this volume of transfers – there is no evidence to show it had the significant resources this would require.

Further, Options should have been aware of the very low likelihood the transfers would all be suitable. At the outset of Options' relationship with Caledonian (and the time of Mr F's application) 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 Options, as a pensions provider, to have been aware of this and to have taken account of it.

Finally, Options had cause to question the motivations of Caledonian, given it was bringing about such a high volume of applications. There was a clear risk that Caledonian was putting its own interests above those of Mr F.

Caledonian's accounts

I note that Options made repeated requests for Caledonian's accounts. It sent several emails to Caledonian between March and August 2012. Options also explained in its email of 23 March 2012 that in order to comply with its own compliance procedures this was needed.

Nevertheless, Options started accepting introductions from Caledonian having not received the accounts – seemingly in breach of its own procedures. Acting fairly and reasonably, Options should have met its own standards and should have checked Caledonian's accounts at the outset before accepting any business from it. And, based on Caledonian's conduct, it seems very unlikely accounts would ever have been forthcoming.

Caledonian's reluctance to provide basic information should also have been a further factor which ought to have led Options to question whether it should enter into or continue a relationship with Caledonian. This again calls into question the competence and motivations of Caledonian and it also calls into question the ability of Caledonian to organise its affairs. It also meant Options was missing information which might be critical to the decision as to whether to enter into business with Caledonian.

In conclusion

Taking all of the above into consideration – individually and cumulatively – I think in the circumstances it's fair and reasonable to conclude that Options ought reasonably to have decided, had it complied with its regulatory obligations which required it to conduct sufficient due diligence on Caledonian and draw fair and reasonable conclusions from what it discovered, that it shouldn't accept business from Caledonian, including Mr F's application. I therefore conclude that it's fair and reasonable in the circumstances to say that Options shouldn't have accepted Mr F's application from Caledonian.

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

In my view, for the reasons given, Options simply should have refused to accept Mr F's application. So, things shouldn't have got beyond that. However, for completeness, I've considered whether it was fair and reasonable for Options to proceed with Mr F's application.

I acknowledge Mr F signed Options' member declaration when applying for his SIPP. I note this document does give warnings about the loss of benefits that would result in the transfer to the SIPP. And the indemnities sought to confirm that Mr F would not hold Options responsible for any losses resulting from the investments. However, I don't think this document demonstrates Options acted fairly and reasonably by proceeding with Mr F's instructions.

Asking Mr F to sign a declaration absolving Options of all its responsibilities when it ought to have known that Mr F's dealings with Caledonian were putting him at significant risk was not the fair and reasonable thing to do. I also note that the declaration was based on Mr F having "received full and appropriate advice from Caledonian International" where, for the reasons I have given, Options ought to have been aware Caledonian didn't have the competency to give such advice and there were questions about its motivations and integrity.

Asking Mr F to sign declarations wasn't an effective way for Options to meet its regulatory obligations, given the concerns Options ought to have identified about his introduction. So, it wasn't fair and reasonable to proceed, on the basis of these. I make this point only for completeness – the primary point is Mr F should simply not have been able to proceed, as his application should simply not have been accepted.

Furthermore, as set out above (and I detail below), I am satisfied s27 FSMA offers a further and alternative basis on which it would be fair and reasonable to conclude Mr F's complaint should be upheld.

s27 and s28 FSMA

I've set out the key sections of s27 and s28 above and have considered them carefully and in their entirety. In my view, I need to apply a four-stage test to determine whether s27 applies and whether a court would exercise its discretion under s28, as follows:

1. Whether an unauthorised third-party was involved;

2. Whether there is evidence that the third-party acted in breach of the General Prohibition in relation to the particular transaction and, if so;

3. Whether the customer entered into an agreement with an authorised firm in consequence of something said or done by the unauthorised third-party in the course of its actions that contravened the General Prohibition; and

4. Whether it is just and equitable for the agreement between the customer and the authorised firm to be enforced in any event.

Test 1 is clearly satisfied here – Caledonian was an unauthorised third party. Test 2 is also satisfied – for the reasons I have set out above, I'm satisfied Caledonian carried out activities in breach of the General Prohibition – and any one regulated activity is sufficient for these purposes so this test would be met if Caledonian had only undertaken arranging (which, for the reasons I have set out, I do not think is the case). Test 3 is satisfied too – the SIPP was opened in consequence of the advice given, and arrangements made, by Caledonian. That brings me to the final test, 4.

Having carefully considered this, I'm satisfied a court would not conclude it's just and equitable for the agreement between Mr F and Options to be enforced in any event. I think very similar reasons to those mentioned by the Court of Appeal in the Adams case apply here:

- 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.

- 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.

- For all the reasons set out above, Options should have concluded Caledonian was giving advice or have suspected it was (and it seems it did belatedly draw this conclusion); and giving advice to consumers who were not necessarily financially sophisticated.

- As set out above, Options was aware, or ought to have been aware that:

    - Caledonian's staff didn't have the qualifications – and therefore expertise – to give advice on defined benefit pension transfers.
    - There was no evidence to show a proper advice process had been followed and consumers such as Mr F were therefore unable to make a fully informed decision about the transfer to the SIPP and investment.
    - The high volume of business being proposed/brought about by Caledonian.
    - That Caledonian had failed to provide its company accounts, despite repeated requests for copies of them by Options.
    - The investment didn't proceed until long after all these things were known to Options and so it was open to it to decline the investment, or at least explore the position with the consumer.

I've therefore gone on to consider the question of fair compensation.

Fair compensation

I've seen no evidence to show that Mr F would have proceeded even if Options had rejected his application. He was approached by Caledonian and he was encouraged to transfer out of his existing pension on the understanding that Caledonian would improve this. I've seen no evidence which suggests Mr F was considering transferring prior to Caledonian's approach.

I've not, in any event, seen any evidence that any other SIPP operator dealt with Caledonian. And any operator acting fairly and reasonably should have reached the conclusion it shouldn't deal with Caledonian. I don't think it would be fair to say Mr F shouldn't be compensated based on speculation that another SIPP operator might have made the same mistakes as Options.

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

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

My aim is to return Mr F, as far as is possible, to the position he would now be in but for what I consider to be Options' failure to carry out adequate due diligence checks before accepting his SIPP application. Options might not think Mr F has suffered a loss. But it can't know that until the requisite calculations have taken place. And I doubt very much that the benefits Mr F will get from the SIPP are equivalent to what he would have got from his AFPS pension.

In light of the above, I require that Options calculates fair compensation by comparing the current position to the position Mr F would be in if he hadn't transferred from his AFPS pension.

Options 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

For clarity, Mr F has not yet retired, and has said he has no plans to do so at present. So, compensation should be based on his normal retirement age as provided for in the AFPS and following the usual assumptions in the FCA's guidance.

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

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

- always calculate and offer Mr F redress as a cash lump sum payment,

- explain to Mr F before starting the redress calculation that:

  - their 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 their redress prudently is to use it to augment their DC pension

- offer to calculate how much of any redress Mr F receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr F accepts Options' offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr F 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 F's end of year tax position.

Redress paid directly to Mr F 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), Options may make a notional deduction to allow for income tax that would otherwise have been paid. Mr F's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

Distress and inconvenience

I think it's fair to say this would have caused Mr F some distress and inconvenience. He will clearly have been worried since discovering the problem that his retirement provision will have been reduced. So, I consider that a payment of £300 is appropriate to compensate for that upset.

My final decision

For the reasons given, my final decision is that I uphold this complaint. To put things right I require that Options UK Personal Pensions LLP must calculate and pay Mr F the award set out above.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £200,000, plus any interest and/or costs / interest on costs that I think are appropriate. If I think that fair compensation is more than £200,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out above. My decision is that Options UK Personal Pensions LLP should pay Mr F the amount produced by that calculation – up to a maximum of £200,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £200,000, I recommend that Options UK Personal Pensions LLP pays Mr F the balance.

This recommendation is not part of my determination or award. Options UK Personal Pensions LLP doesn't have to do what I recommend. It's unlikely that Mr F can accept my decision and go to court to ask for the balance. Mr F may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 April 2026.
Lorna Goulding
Ombudsman