DRN-4051653

The complaint

Mr B complains that Novia Financial Plc ("Novia") failed in its duty by not completing sufficient due diligence when his Self-Invested Personal Pension (SIPP) was established and his pension monies were invested in a number of non-standard investments. He says this has resulted in him suffering a financial loss.

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

What happened

Involved parties

Novia

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

C3 Financial Services Limited ("C3")

At the time of the events in this complaint, C3 was authorised by the FCA. This authorisation ceased on 6 September 2017 and C3 was dissolved in February 2018.

Hypa Management LLP ("Hypa")

Hypa was the provider of a number of unregulated investments. In the case of Mr B, he invested in the following bonds:

- Biomass Investments Plc ("Biomass") – this was an unregulated 3 year bond offering investors a 12.5% return. An Investment Review Simplified document completed for Novia by a third party firm, dated 2 July 2015, stated that "*This investment may be deemed to be a non-mainstream pooled investment by the FCA*" and that "*The investment is restricted to sophisticated or high net worth investors*".

- Contraxus Plc ("Contraxus") – this was an unregulated 5 year bond offering investors a 12% return. An Investment Review Simplified document completed for Novia by a third party firm, dated 25 November 2015, stated that "*This investment may be deemed to be a non-mainstream pooled investment by the FCA*" and that "*This investment is restricted to sophisticated or high net worth investors*".

- Strategic Residential Developments Plc – ("Strategic Residential") this was an unregulated 5 year bond offering investors an 11% return.

- UK Renewable Investments Plc ("UK Renewable") - this was an unregulated 3

year bond offering investors an 11% return. An Investment Review Simplified document, completed for Novia by a third party firm, dated 9 May 2015, stated that "*This investment may be deemed to be a non-mainstream pooled investment by the FCA*" and that "*The investment is restricted to sophisticated or high net worth investors*".

Product literature for each of the above bonds contained the following risk warning:

> *"It is not anticipated that there will be an active secondary market for the Bonds and it is not expected that such a market will develop as the Bonds are non-transferable. In addition, there are limitations on transfers and Bonds are only redeemable under limited circumstances as set out in this Offering Memorandum. Investment in the Bonds is therefore relatively illiquid and involves a high degree of risk."*

The transaction

Mr B has told us that he was cold called by an unregulated firm before being referred to C3. C3 recommended that Mr B transfer an existing personal pension plan he held to a SIPP with Novia.

Mr B accepted the recommendation and a Novia SIPP was established in June 2016. A total of £84,427.01 was transferred to Novia on 16 June 2016 from Mr B's former pension provider. Three SIPP wrappers were established, with funds in two of the wrappers being invested in standard investments with a Discretionary Fund Manager (DFM). On 30 June 2016, funds in the third wrapper were invested as follows:

- Biomass - £9,900
- Contraxus - £9,900
- Strategic Residential - £9,900
- UK Renewable - £9,900

Mr B cannot recall what he was told about the investments but he's told us he trusted the introducer as they seemed like they had lots of knowledge and they assured him the SIPP was the best type of pension for him.

Additional background information

Novia has provided its business file for this complaint. So any information on the due diligence it completed has been taken from other complaints this service has considered against Novia, involving introduction from C3.

When asked about the due diligence it carried out on C3, Novia has told us that:

- C3 accepted Novia's terms of business and signed an Adviser application form in December 2014.

- Novia only accepts business from FCA authorised financial advisers. Its due diligence confirms the adviser's regulatory status before it accepts the adviser's business. It subscribes to the FCA register data service which validates the adviser firm's continuing authorisation status.

- The end of C3's FCA authorisation led to the end of Novia's Terms of Business with C3 in March 2018.

- Novia wasn't expected to understand an introducer's business model because the introducer, in this case C3, was an FCA regulated financial adviser and was therefore expected to manage its business in accordance with FCA principles and rules.

- Novia can rely upon other regulated businesses and it doesn't have to understand how they fulfil their regulatory obligations.

- As an advised platform business, Novia expects the financial adviser to have provided advice in relation to all new business instructions to Novia.

- Investment decisions are solely the responsibility of the advising firm and they can recommend suitable investments from the broad range of investments Novia makes available to support a wide range of customer investment objectives.

- Novia is not responsible for the suitability of the advice and therefore it has no requirement to request copies of suitability reports/pension transfer reports.

- Novia is not required to audit or monitor the actions of other FCA authorised firms and the FCA rules permit firms to rely upon the actions of other regulated businesses.

- C3 introduced 289 clients to Novia, 4 of those involved a transfer from a Defined Benefit (DB) scheme.

- Just under 74% of clients introduced by C3 invested in non-mainstream investments.

On another complaint against Novia, involving C3, Novia has provided a copy of its Terms of Business. Section 5 of the Terms of Business, headed 'Investment Warranties' says:

> "5.1 The Firm agrees it has sole responsibility to ensure the Product Wrappers and underlying *investments within (or proposed to be held within) the Service are suitable for its Clients in accordance with the FCA Rules (COBS 9) relating to the assessment of suitability.*
>
> *5.2 The Firm agrees that it has the sole responsibility for determining that a client passes the appropriateness test by reference to being a sophisticated investor, or similar as defined by the FCA and is responsible for retaining sufficient records. Novia retains the right to inspect relevant records on request.*
>
> *5.3 The Firm agrees that Novia may rely on the Firm to undertake a suitability assessment prior to an application for a Product Wrapper being submitted and on an ongoing basis, where such assessments are required by FCA Rules.*
>
> *5.4 The Firm will, on reasonable request from Novia and subject to any obligations of confidentiality it owes its Clients, provide evidence to demonstrate that suitability assessments have been conducted"*

We have been provided with a copy of Novia's Terms and Conditions document, the document states that it's effective from 1 January 2014. As I understand it, these are the terms that were applicable to the SIPP that was established for Mr B and it's noted, amongst other things, in this document that:

"Your Adviser must be registered with us and have appropriate FCA authorisation…

…

Novia Financial plc does not give any advice on your portfolio or any investments you hold with the Service. The fact that particular Product Wrappers, investments, investment planning tools or any other feature is made available to you via your Adviser does not constitute advice or imply that it is suitable for you. You should always seek suitable advice before using the Service and investing.

…

Our policy is to treat all Clients as Retail Clients in accordance with the rules of the Financial Conduct Authority (FCA). This ensures that maximum regulatory protection is available to you.

…

You must have an FCA authorised Adviser in order to deal with Novia. Novia does not accept new investments from Clients who have not appointed an Adviser. Your Adviser must be registered with Novia, and have accepted our Terms of Business…

…

You agree that your Adviser is duly authorised to provide Novia with instructions on your behalf as if they had come directly from you. This includes authority to conduct switches and to add, amend or remove rebalancing on your behalf using the Service. You agree to accept full responsibility for all instructions placed and to release Novia from any liability for executing instructions which you or your Adviser place using the Novia Wrap (save for any loss or damage arising directly from the gross negligence, fraud or wilful default of Novia).

…

In authorising your application you have promised that you will be responsible for any losses and/or expenses which are the result, and which a reasonable person would consider to be the probable result, of any untrue, misleading or inaccurate information carelessly given by you, or on your behalf, either in this form or any subsequent form related to the Novia Wrap.

…

Novia will accept no liability for losses or expenses incurred as a result of the actions of your appointed DFM or any claims from the DFM in respect of any Product Wrapper you hold through the Service…

…

You understand that Novia Financial plc has not carried out and shall not in future carry out any review of the nominated Discretionary Fund Manager's financial status or their investment and/or risk strategies and it is the responsibility of you and your Adviser to check these matters. You are responsible for all decisions relating to the purchase, retention and sale of investments made by the DFM and agree to hold Novia Financial plc indemnified against any claim in respect of such actions.

…

Novia reserves the right to reject any or all of your applications where we believe accepting it will result in a breach of these Terms & Conditions. Applications must be fully and correctly completed and signed in full where applicable. Failure to do so may result in delay or rejection by Novia. Novia reserves the right to reject any applications to open a Product Wrapper at its discretion, where it is reasonable to do so…

…

It is your and your Adviser's responsibility to ensure that you understand the features of…individual investments and their consequences and Novia can accept no liability for delays in dealing or non-investment resulting from these. You must read the prospectus, offering document or other literature available from the

investment manager to ensure that you understand these features as they are not detailed in these Terms & Conditions…

…

Novia will make alternative investments available via the Service. These investments are often complex and may carry higher risks than traditional funds. They are normally designed for experienced or sophisticated investors. For the purposes of this clause, complex investments include those such as:…Investments where the opportunity to sell is infrequent or restricted…

…

Before purchasing any alternative investment you should ensure you read and understand the fund factsheet, product specific literature made available via the Novia website and any other relevant literature from the investment provider. You should be aware of any specific risks that may apply to such alternative investments.

…

Risks associated with alternative investments can be higher than the other investments made available via that Service and such investments may not be suitable for all investors. You should always consult your Adviser before buying such alternative investments.

…

You agree to release and indemnify us from, and against, any and all costs, claims, demands, losses, expenses and liabilities suffered by us in acting in reliance upon an instruction given by you, your Adviser or your DFM…

…

Novia Financial plc…conduct investment business on an execution only basis for Advisers and their Clients and do not offer advice about investments. Your Adviser acts to provide financial advice with respect to investments and your portfolio requirements.

…

These Terms & Conditions form the basis of a contract between you and Novia…"

And, in respect of the Novia SIPP, the Terms & Conditions continued to note, amongst other things, that:

"The Scheme is established under a deed of trust and operated according to the Novia SIPP scheme rules…The scheme will be governed and administered according to these rules.

Novia Financial plc is the scheme provider, trustee and administrator of the scheme…

…

Permitted investments

A wide variety of investments are available through a Novia SIPP as permitted by the HMRC regulations. Novia will only allow permissible investments to be bought, sold and held through your SIPP and it is your responsibility, in conjunction with your adviser, to ensure that you do not purchase ineligible investments. Investments available through your SIPP can be found at www.novia-financial.co.uk."

When asked about the due diligence it completed in the investments held within Mr B's SIPP. Novia has told us that:

- Novia's investment committee ensures that it conducts effective and appropriate due diligence checks on all investments on its platform taking into account its

proposition (advised clients only) and a broad range of client types.

- It takes reasonable steps to ensure that all assets are genuine, and not part of a fraud or scam. If it believed an investment would be detrimental to customers, then it would not allow it onto the platform.

- It only makes investments available through it service to FCA authorised financial advisers. It remains the adviser's responsibility to recommend suitable investments from all those available.

- The due diligence is specific to each product but follows the same process. That is to:

    - obtain and review the legal documentation from the investment manager

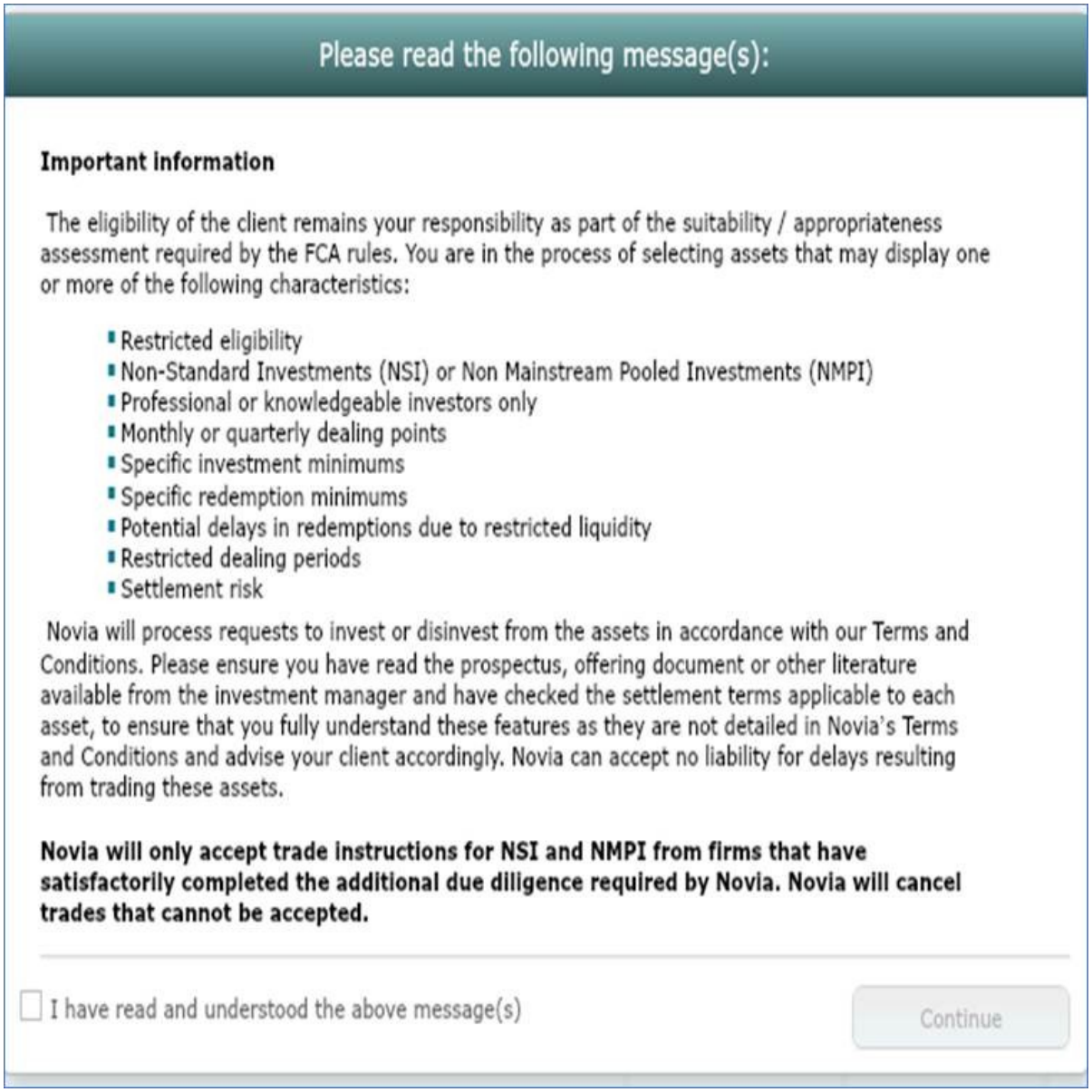
    - obtain an independent report into the investment, as this may identify information about the investment that is not known to Novia

    - assessment of the individuals connected to the investment taking account of any financial or other irregularities from information available in the public domain

    - consideration of possible investment security arrangements and operational requirements.

- Novia would not ask the client to sign any risk warnings. The FCA financial adviser is responsible for recommending suitable investments to the client taking account of their investment objectives and attitude to risk. Novia reminds financial advisers of the important consideration for certain investments and Non-Standard Investments are included in this cohort.

Novia provided a copy of a notice that was displayed to financial advisers before they were able to access these investments.



Mr B's complaint

In 2019, Mr B submitted a claim to the Financial Services Compensation Scheme (FSCS) against C3. He received £50,000 compensation, which was the maximum award he could receive under the FSCS's award limits at that time. This didn't cover the full extent of Mr B's loss. So the FSCS gave Mr B a reassignment of rights. This explained, amongst other things, that the FSCS was transferring back to Mr B any legal rights it held against Novia.

Mr B complained to Novia on 1 June 2022. In summary he complained that Novia had failed to complete sufficient due diligence on the adviser and investments held within the SIPP.

Novia issued its final response to the complaint on 27 June 2022, in which it said it was rejecting the complaint as it wasn't authorised to provide clients with investment advice. Therefore, it was Novia's belief that all investments purchased were solely the responsibility of the financial adviser.

Mr B wasn't happy with Novia's response so he referred the matter to this service for consideration.

One of our investigators reviewed Mr B's complaint and thought that it should be upheld. The investigator said that Novia shouldn't have accepted Mr B's business from C3.

Novia didn't respond to the investigator's findings so the complaint has been passed to me to decide.

What I've decided – and why

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

When considering what's 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.

Relevant considerations

I've carefully taken account of the relevant considerations to decide what's fair and reasonable in the circumstances of this complaint.

In my view, the FCA's Principles for Businesses are of particular relevance. 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"* (PRIN 1.1.2G). Principles 2, 3 and 6 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've carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ('BBA') Ouseley J said at paragraph 162:

> *"The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirement they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."*

And at paragraph 77 of BBA Ouseley J said:

> *"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."*

In *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ('BBSAL'), Berkeley Burke brought a judicial review claim challenging the decision of an ombudsman who'd upheld a consumer's complaint against it. The ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and hadn't treated its client fairly.

Jacobs J, having set out some paragraphs of *BBA* including paragraph 162 set out above, said (at paragraph 104 of *BBSA*L):

> *"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles-based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."*

The *BBSAL* judgment also considers section 228 of the FSMA and the approach an ombudsman is to take when deciding a complaint. The judgment of Jacobs J in *BBSAL* upheld the lawfulness of the approach taken by the ombudsman in that complaint, which I've described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

As outlined above, Ouseley J in the *BBA* case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what's fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in *BBSAL*. I'm therefore satisfied that the Principles are a relevant consideration that I must take into account when deciding this complaint.

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both these judgments and the judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 when making this decision on Mr B's case.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case, I'm of the view that it doesn't. I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight didn't consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither of the judgments say anything about how the Principles apply to an ombudsman's consideration of a complaint. But, to be clear, I don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of the *Adams* judgments when making this decision on Mr B's case.

I acknowledge that COBS 2.1.1R (*A firm must act honestly, fairly and professionally in accordance with the best interests of its client)* overlaps with certain of the Principles, and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of the FSMA ('the COBS claim'). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

The Court of Appeal rejected Mr Adams' appeal against HHJ Dight's dismissal of the COBS claim, on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal didn't so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

I note that in *Adams v Options SIPP*, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at paragraph 148:

> *"In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction."*

I note that there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr B's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened *after* the contract was entered into. And he wasn't asked to consider the question of due diligence *before* Options SIPP agreed to accept the store pods investment into its SIPP.

And in Mr B's complaint, amongst other things, I'm considering whether Novia ought to have identified that the introductions from C3 involved a significant risk of consumer detriment and, if so, whether it ought to have ceased accepting introductions from C3 *before* entering into a contract with Mr B.

The facts of Mr Adams' and Mr B's cases are also different. And I need to construe the duties Novia owed to Mr B under COBS 2.1.1R in light of the specific facts of Mr B's case. So I've considered COBS 2.1.1R - alongside the remainder of the relevant considerations, and within the factual context of Mr B's case, including Novia's role in the transaction.

However, I think it's important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And, in doing that, I'm required to take into account relevant considerations which include: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This is a clear and relevant point of difference between this complaint and the judgments in *Adams v Options SIPP*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I also want to emphasise that I don't say that Novia was under any obligation to advise Mr B on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr B on the merits of the SIPP and/or the underlying investments.

Overall, I'm satisfied that COBS 2.1.1R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of Mr B's case.

The regulatory publications

The FCA (and its predecessor, the FSA) 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.

I've considered the relevance of these publications. And I've set out material parts of the publications here, although I've considered them in their entirety.

The 2009 Thematic Review Report

The 2009 Report included the following statement:

> *"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. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.*
>
> *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.*
> *…*
> *We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to clients.*

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their customers' interests in this respect, with reference to Principle 3 of the Principles for Business ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

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

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

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

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

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

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

The later publications

In the October 2013 finalised SIPP operator guidance, the FCA stated:

"This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.

All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a 'client' for SIPP operators and so is a customer under Principle 6. It is a SIPP

operator's responsibility to assess its business with reference to our six TCF consumer outcomes."

The October 2013 finalised SIPP operator guidance also set out the following:

> **"Relationships between firms that advise and introduce prospective members and SIPP operators**
>
> *Examples of good practice we observed during our work with SIPP operators include the following:*
>
> - *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un- authorised business warnings.*
>
> - *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*
>
> - *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*
>
> - *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*
> - *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*
>
> *Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers. Examples of good practice we have identified include:*
>
> - *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*
>
> - *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*
>
> - *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non- regulated introducers*

In relation to due diligence, the October 2013 finalised SIPP operator guidance said:

> "**Due diligence**
>
> *Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:*
>
> - *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*
>
> - *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*
>
> - *having checks which may include, but are not limited to:*
>
>   - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*
>   - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*
>
> - *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*
> - *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*
>
> - *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax- relievable investments and non-standard investments that have not been approved by the firm"*

The July 2014 *"Dear CEO"* letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The *"Dear CEO"* letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *correctly establishing and understanding the nature of an investment*

- *ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation*

- *ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)*

- *ensuring that an investment can be independently valued, both at point of purchase and subsequently, and*

- *ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc.)*

Although I've referred to selected parts of the publications, to illustrate their relevance, I've considered them in their entirety.

I acknowledge the 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However, I'm of the view that the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't mean their importance should be underestimated. They 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's 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 have been 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.

At its introduction the 2009 Thematic Review Report says:

> *"In this report, we describe the findings of this thematic review, and make clear what we expect of SIPP operator firms in the areas we reviewed. It also provides examples of good practices we found."*

And, as referenced above, the report goes on to provide "…*examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms."*

So, I'm satisfied that the Report is a *reminder* that the Principles apply and it gives 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. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So I'm satisfied it's relevant and therefore appropriate to take it into account.

The remainder of the publications also 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 to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I'm therefore satisfied it's appropriate to take them into account too.

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 also satisfied that Novia, at the time of the events under consideration here, thought the regulatory publications were relevant as it says it did carry out some due diligence on C3 and the investments. So, it clearly thought it was good practice to do this, at the very least.

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

To be clear, I don't say the Principles or the publications obliged Novia to ensure the transactions were suitable for Mr B. It's accepted Novia wasn't required to give advice to Mr B, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But they're 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.

It's important to keep in mind the judge in *Adams v Options* didn't consider the regulatory publications in the context of considering what's fair and reasonable in all the circumstances bearing in mind various matters including the Principles (as part of the regulator's rules) or good industry practice.

And in determining this complaint, I need to consider whether, in accepting Mr B's SIPP business from C3, Novia complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what Novia should have done to comply with its regulatory obligations and duties.

I'm making a decision on what's fair and reasonable in the circumstances of this complaint – and for all the reasons I've set out above I'm satisfied that the Principles and the publications listed above are relevant considerations to that decision. And taking account of the factual context of this case, it's my view that in order for Novia to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into C3/the business C3 was introducing and undertaken sufficient due diligence into the Hypa investments *before* it accepted Mr B's business.

Ultimately, what I'll be looking at is whether Novia took reasonable care, acted with due diligence and treated Mr B fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issue in Mr B's complaint is whether it was fair and reasonable for Novia to have accepted Mr B's business in the first place.

So, I need to consider whether Novia carried out appropriate due diligence checks before

deciding to accept Mr B's business.

And the questions I need to consider are whether Novia ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by C3 and/or investing as Mr B did, were being put at significant risk of detriment. And, if so, whether Novia should therefore not have accepted Mr B's business.

The contract between Novia and Mr B

This decision is made on the understanding that Novia acted purely as a SIPP operator. I don't say Novia should (or could) have given advice to Mr B or otherwise have ensured the suitability of the SIPP or the Hypa investments for him. I accept Novia made it clear to Mr B that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that the operative Terms and Conditions confirmed, amongst other things, that losses arising as a result of Novia acting on Mr B's, or his adviser's instructions were his responsibility.

I've not overlooked or discounted the basis on which Novia was appointed. And my decision on what's fair and reasonable in the circumstances of Mr B's case is made with all of this in mind. So, I've proceeded on the understanding that Novia wasn't obliged – and wasn't able – to give advice to Mr B on the suitability of the SIPP or Hypa investments. But I'm satisfied that, to meet its regulatory obligations when conducting its operation of SIPPs business, Novia had to decide whether to accept introductions of business with the Principles in mind. And I don't agree that it couldn't have rejected introductions or applications without contravening its regulatory permissions by giving investment advice.

What did Novia's obligations mean in practice?

In this case, the business Novia was conducting was its operation of SIPPs. And I'm satisfied that, to meet its regulatory obligations, when conducting its operation of SIPPs business, Novia had to decide whether to accept or reject particular investments and/or referrals of business with the Principles in mind.

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

As set out above, to comply with the Principles, Novia needed to conduct its business with due skill, care and diligence; organise and control its affairs responsibly and effectively; and pay due regard to the interests of its clients (including Mr B) and treat them fairly. Its obligations and duties in this respect weren't prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

And I think that Novia understood this at the time too, as it did more than just check the FCA entry for C3 to ensure it was regulated to give advice. It asked C3 to accept its Terms of Business and to sign an Adviser application form. And it's apparent that Novia had access to some information about the type and volume of introductions it was receiving from C3, as it's been able to provide us with information about this when requested.

So, and before it received Mr B's business, I think that Novia ought to have understood

that its obligations meant that it had a responsibility to carry out appropriate checks on C3 to ensure the quality of the business it was introducing.

And I think Novia also ought to have understood that its obligations meant that it had a responsibility to carry out appropriate due diligence on investments before accepting them into a SIPP. I think Novia's submissions on the due diligence it undertook prior to allowing the Hypa investments within its SIPPs reflect this. So, I'm satisfied that, to meet its regulatory obligations when conducting its business, Novia was also required to consider whether to accept or reject a particular investment (here the following Hypa investments - Biomass, Contraxus, Strategic Residential and UK Renewable), with the Principles in mind.

Novia's due diligence on C3

Novia has told us that it only accepted introductions from FCA authorised firms. And as an advised platform business it expected the financial adviser to have provided advice in relation to all new business instructions to it.

It has also said that typically it would meet with proposed advisers to understand their business, for example its systems and controls, and to see if the adviser would be a good 'fit' for Novia. Where appropriate, Novia would offer training to advisers. Only if deemed acceptable would advisers become approved on Novia's panel.

In the case of C3, Novia hasn't been able to provide notes of any meetings that it says would have taken place between it and C3 before Novia accepted business from it. But it does appear to have carried out the following checks:

- Checking the FCA register to ensure that C3 was regulated and authorised to give financial advice.
- It asked C3 to accept its Terms of Business and for it to sign an 'Adviser Application Form'.

I've seen a copy of the Novia 'Adviser Application Form' which C3 completed and signed in December 2014. I can see that it asked C3 to agree to a declaration confirming, amongst other things, that it had read, understood and agreed to the Novia Terms of Business [for Firms].

I've also seen a copy of Novia's 'Terms of Business for Firms' document, which was effective from 5 January 2015. While this is slightly after C3 signed the Adviser Application Form, as this was prior to Mr B's business being introduced to Novia, I think it's likely these would have been the same terms, if not similar, to the terms C3 agreed to. I've set out what I think is relevant from the '*Terms of Business for Firms'* document below.

From section 1, '*Definitions and their Interpretation'*:

> *"**Alternative Investment Fund** Means any investment deemed alternative by Novia's investment committee which will include at least non-mainstream investments as defined by the FCA and other investments due to their structure, underlying investment or operational risk"*
>
> ***"Firm** is the FCA authorised Firm/Company and all individuals of the Firm/Company which act as the agent of the Client in relation to all aspects of business which the Firm/Company is conducting on behalf of the Client"*

From section 4, '*Undertakings & Provisions'*

"***4.4*** *The Firm agrees it has sole responsibility to ensure (within the scope of the duties under the Act) that it has the necessary regulatory permission and authorisation to advise its Clients"*

From section 5, **'***Investment Warranties'*

*"**5.1** The Firm agrees it has sole responsibility to ensure the Product Wrappers and underlying investments within (or proposed to be held within) the Service are suitable for its Clients in accordance with the FCA Rules (COBS 9) relating to the assessment of suitability.*

5.2 *The Firm agrees that it has the sole responsibility for determining that a client passes the appropriateness test by reference to being a sophisticated investor, or similar as defined by the FCA and is responsible for retaining sufficient records. Novia retains the right to inspect relevant records on request.*

5.3 *The Firm agrees that Novia may rely on the Firm to undertake a suitability assessment prior to an application for a Product Wrapper being submitted and on an ongoing basis, where such assessments are required by FCA Rules.*

5.4 *The Firm will, on reasonable request from Novia and subject to any obligations of confidentiality it owes its Clients, provide evidence to demonstrate that suitability assessments have been conducted"*

From section 7, '*Due diligence for Alternative Investments Funds'*

*"**7.1.1** The Firm will conduct suitability and appropriateness assessments required by the FCA rules as applicable to the Firm and where relevant for each retail client, or determine as an sophisticated investor as required, before submitting investment orders in respect of such funds or deposits and advise each relevant Client, of the characteristics and terms and conditions of investment, including those contained in the prospectus, or other offering document and the subscription form or other documents required to be completed in order to invest in respect of that Fund or deposit. To the extent required by those terms and conditions, the Firm will obtain from each Client authority for Novia Financial plc and the Nominee to agree to those terms and conditions on the Client's behalf.*

7.1.2 *The Firm will only permit a Client to invest or continue to invest where they are satisfied that the Fund is a suitable investment for the Client taking account of all the specific risks of the Fund, residency and tax implications and that the Client is eligible to invest in the Fund; and have advised the Client accordingly*"

Was this sufficient due diligence in the circumstances?

Given the circumstances involved here, I don't think the above alone was reasonable or sufficient to meet Novia's regulatory obligations and good industry practice. Crucially, I don't think Novia took appropriate steps or drew reasonable conclusions from the information that was available to it before accepting Mr B's business.

I think Novia was aware of, or should have identified potential risks of, consumer detriment associated with business introduced by C3, including the following, before it accepted Mr B's business:

- C3 was introducing ordinary retail clients to Novia, where in many cases, and certainly in the case of Mr B, just under 50% of their SIPP funds were being invested in non-standard investments and or/NMPIs.

- The volume of introductions, relating mainly to consumers investing in non-

standard investments and/or NMPIs, was unusual – particularly from a small IFA business. And Novia should have considered how a small IFA business introducing this volume of higher-risk business was able to meet regulatory standards.

- The risk of a business that wasn't authorised by the FCA to give pension transfer/switch or investment advice being involved in the process.

Novia knew all of this, or else ought to have known it from the information available, but it didn't then make further appropriate checks of C3's business model, either at the start of its relationship or on an ongoing basis.

Novia should have taken steps to address these risks (or, given these risks, have simply declined to deal further with C3). Such steps should have involved getting a full understanding of C3's business model – through requesting information from C3 and through independent checks. Such understanding would have revealed there was a significant risk of consumer detriment associated with introductions of business from C3.

In the alternative, C3 may not have been willing to provide the required information, or fully answer the questions about its business model. In either event Novia should have concluded it shouldn't accept introductions from C3.

I've set out below some more detail on the potential risks of consumer detriment I think Novia either knew about or ought to have known about before it accepted Mr B's SIPP business. These points overlap, to a degree, and should have been considered by Novia cumulatively.

<u>The nature of business introduced by C3</u>

I note Novia has said that it can rely upon other regulated businesses and it doesn't have to understand how they fulfil their regulatory obligations. And in the case of C3, because it was an FCA regulated financial adviser, Novia says that it didn't need to understand its business model.

At the relevant date, COBS 2.4.6R (2) provided a general rule about reliance on others:

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

And COBS 2.4.8G says:

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

So, it would generally be reasonable for Novia to rely on information provided to it in writing by C3, unless Novia was aware or ought reasonably to have been aware of any fact that would give reasonable grounds to question the accuracy of the information.

However, while C3's regulatory status and its acceptance of Novia's Terms of Business go some way towards meeting Novia's regulatory obligations and good industry practice, I think Novia needed to do more in order to satisfy itself that it was fair and reasonable to accept introductions from C3.

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

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

I've considered what Novia has said about FCA regulated financial advisers being expected to manage their business in accordance with FCA principles and rules. But, as I've explained above, I'm satisfied that Novia didn't comply with its regulatory obligations, good industry practice or treat Mr B fairly by failing to undertake adequate due diligence on C3. And I'm satisfied that had it undertaken adequate due diligence Novia ought reasonably to have been aware of facts that should have caused it to decline to accept business from C3 *before* it accepted Mr B's business. In other words, I'm satisfied that if Novia had undertaken adequate due diligence on C3 it ought to have been privy to information about C3 and the business it was introducing which didn't reconcile with what Novia says it was able to rely upon. And, in failing to take this step, I think it's fair and reasonable to conclude that Novia didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly.

In the case of C3, Novia has said that not all new SIPP clients introduced by C3 went into non-standard investments. And it has said that C3 was initially submitting clients who were wholly invested in standard investments and of those customers investing into non-standard investments, the majority invested mainly in standard investments with a smaller proportion being invested into non-standard investments.

However, in the complaints I've seen against Novia involving introductions from C3, along with some standard investments, the same investments provided by Hypa were arranged by C3, including Biomass, Contraxus, UK Renewable and Strategic Developments. And in the case of Mr B, three SIPP wrappers were established, two invested in standard investments via a DFM and the third wrapper invested in the Hypa investments.

I note the brochures and/or the Offering Memorandums for these investments explicitly stated that potential investors should note that these Bonds are high risk and are unlikely to be suitable for those who do not have the experience or understanding to be able to evaluate the chances of success of start-up companies. So I think it was clear from the product literature that these investments were specialist and wouldn't therefore be suitable for all investors.

Novia also employed a third party firm to complete checks on some of the investments provided by Hypa. These reports said, amongst other things, that:

- Biomass – may be deemed to be a NMPI by the FCA and the investment was restricted to sophisticated and high net worth investors.
- UK Renewable - may be deemed to be a NMPI by the FCA and the investment provider had stated it was only suitable for advised clients.

In June 2013, the FCA issued a policy statement (PS13/3 '*Restrictions on the retail distribution of unregulated collective investment schemes and close substitutes'*). At its introduction, the policy statement said:

"1.1 In Consultation Paper (CP) 12/19 the Financial Services Authority (FSA) – our predecessor organisation – proposed a solution to serious problems identified in the distribution of high-risk, complex investments to ordinary retail investors. While sophisticated or high net worth retail clients may be better able to protect their own interests, ordinary retail investors face significant risk of detriment from these investments.

1.2 The CP proposed to ban the promotion of unregulated collective investment schemes (UCIS) and close substitutes in relation to ordinary retail investors in the UK. The investments captured by this marketing restriction are collectively referred to in this paper as 'non-mainstream pooled investments' or NMPIs.

1.3 Having considered the feedback we received to the consultation, we (the FCA) are now making rules based on the FSA proposals. In this paper, we summarise this feedback and set out our response to it.

Who does this affect?

1.4 This Policy Statement (PS) will be of interest to:

- *firms promoting products, now classified as NMPIs, to retail customers ;*
- *product providers offering these products or which allow access to them through investment wrappers;….*

Non-mainstream pooled investments

2.3 The rule changes proposed in the CP aim to improve retail consumer outcomes by ensuring that NMPIs are recognised as specialised products unsuitable for general promotion in the UK retail market. ***As providing financial advice generally includes making a financial promotion, by limiting the ability of firms to bring these products to the attention of consumers, the FSA also aimed to limit the scope for retail clients being wrongly advised to invest in them*** [bold is my emphasis]."

From January 2014, following PS13/3, the FCA updated the rules, placing restrictions on the promotion of NMPIs to ordinary retail clients. These were set out in the FCA handbook under COBS 4.12. As can be seen from the above, PS13/3 said that it would be of interest to "*product providers offering these products or which allow access to them through investment wrappers",* So Novia ought to have been aware of these restrictions.

Novia hasn't said that it disputed the third party's statement that some of these Hypa investments may be NMPIs, and that they were restricted to sophisticated and high net worth investors. Although I do note that in its submissions to this Service it's referred to the investments as non-standard, rather than NMPIs.

I think it's fair to say that, whether the Hypa investments were NMPIs or non-standard investments, such investments are highly unlikely to be suitable for the vast majority of retail clients. I note the product literature for each bond stated that it didn't anticipate that there would be a secondary market for the bonds, that they were relatively illiquid and involved a high degree of risk. These types of investments will generally only be suitable for a small proportion of the population. And I think Novia understood, or ought to have understood, this.

Novia has said that it reminded Financial Advisers arranging certain types of investments, including NMPIs and non-standard investments, of the important considerations. It says it did this by displaying an online notice – which I've set out earlier in this decision – before the advisers were able to access these types of investments. The notice highlighted that the eligibility for these investments remained the advisers' responsibility. It also stated that Novia would only accept trade instructions for non-standard investments and NMPIs from firms that had satisfactorily completed the additional due diligence required by Novia.

I've not been provided with any information or evidence to suggest that any additional due diligence was carried out on C3. But even if it was, I think Novia still needed to ask further questions of C3 about the customers it was introducing through asking questions and through independent checks.

I've seen no evidence that Mr B was a sophisticated or high net-worth investor. Or that Novia asked C3 when it introduced clients for investment in the various Hypa investments to confirm the investors' status.

Volume of business introduced by C3

Novia has confirmed the following about introductions from C3:

- C3 introduced 289 clients to Novia
- Just under 74% of clients referred by C3 invested in non-mainstream investments.
- 1.38% (4 of the 298) involved transfers from defined benefit schemes
- Between June 2015 and July 2017, C3 introduced new business to Novia worth a total of £17,619,689.75. This represented 0.84% of Novia's new business during this period.

An example of good practice identified in the FSA's 2009 Thematic Review Report was:

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

It seems from the above that Novia either had, or ought to have had, access to information about the number and type of introductions that C3 made, during its relationship with Novia. But I don't think simply keeping records about the number and nature of introductions that C3 made without scrutinising that information would have been consistent with good industry practice and Novia's regulatory obligations. As highlighted in the 2009 Thematic Review Report, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

Novia may say the volume of business was small overall compared to the total number of introductions it received during the same period. And, as mentioned above, it's said that initially C3's introductions involved clients investing in standard investments. It's not clear when that changed but Novia's due diligence obligations were ongoing. And it ought to have picked up that C3 had started investing clients it was introducing in non-standard investments and/or NMPIs.

I think that this pattern of business, which involved the majority of customers introduced to Novia (just under 74%) investing a significant proportion of their pension monies in Hypa non-standard investments and/or NMPIs ought reasonably to have given Novia cause for concern. Investment in those particular funds in such proportions should've been flagged

as posing a high risk of consumer detriment.

I think it's highly unusual for such a large proportion of a regulated advice firms' introductions to a SIPP provider to involve pension switches so as to invest in non-standard investments and/or NMPIs in such significant proportions. I think it's fair to say that most advice firms don't transact this kind of business in significant volumes, certainly not for ordinary retail investors, like Mr B.

So I think Novia ought to have had concerns about how C3 was able to introduce so many ordinary retail clients for investment in non-standard investments and/or NMPIs, whilst complying with the regulator's rules. Particularly in the absence of any information from C3 about the type of customers it dealt with, which could explain the pattern of high-risk business it was introducing.

I reiterate here that non-standard investments and/or NMPIs are unlikely to be suitable for the vast majority of retail clients, particularly in such proportions, as per the product brochures and third party checks, which said certain of the Hypa investments were only suitable for sophisticated and/or high net worth investors.

I've not seen that Novia asked any further questions about any of this or asked for any documentary evidence of the process or checks that C3 agreed would be carried out.

Novia's Terms of Business required all clients to have received advice, prior to taking out a SIPP and investing. But it's told us that it didn't ask C3 for copies of the advice it was providing to the clients it was introducing to Novia – even though the Terms of Business Novia had agreed with C3 entitled it to do so.

So I'm satisfied Novia couldn't be certain what advice C3 was offering to the clients it was introducing to Novia, or that C3's advice model was in fact operating in line with Novia's assumptions.

I think Novia should have been concerned about how C3 was able to meet its regulatory standards, particularly given the volume of higher-risk business it was arranging for the clients it referred to Novia.

I think this was a clear and obvious potential risk of consumer detriment, particularly as Mr B was investing almost 50% of his SIPP funds in non-standard investments and/or NMPIs.

I'd like to stress here that I'm not saying Novia should have checked any advice that was given – but it should have taken steps to ascertain if a reasonable process was in place and consumers were taking these steps on an informed basis. And, in order for Novia to meet its own regulatory obligations, it needed to satisfy itself that C3 was appropriate to deal with.

And 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, non-standard investments and/or NMPIs were potentially being promoted by C3 to ordinary retail clients and consumers were not fully informed of the risks, which I'll come on to later.

<u>The risk of an unregulated business being involved</u>

Mr B hasn't confirmed the name of the introducer that initially contacted him out of the blue before passing his details on to C3. But given that this firm needed to refer Mr B to C3 to complete the transfer, it seems likely the introducer was unregulated.

Novia may argue there was nothing in the DISP rules preventing SIPP providers from accepting business from unregulated introducers. But as I'll explain, while I think it's likely an unregulated business was involved from the start here and that Novia was, or ought to have been, aware of this, the due diligence Novia may or may not have carried out on the introducer isn't the basis on which I'm upholding Mr B's complaint, or something I've relied on in reaching my conclusions.

Novia may say that it wasn't aware an introducer was involved in the client's transaction – but had it completed reasonable checks, such as contacting some C3-introduced members (like Mr B) to confirm the position, it would have established that some consumers were being contacted by unregulated introducers and offered a free pension review.

The rules around the promotion of NMPIs limit the ability of firms to bring these products to the attention of consumers. And I don't think it's credible that all of these C3-introduced consumers were independently determining to invest in non-standard investments and/or NMPIs before coming into contact with an unregulated introducer or C3.

Mr B has said that after he'd been contacted by the introducer he was referred to C3. So it seems likely that the introducer and C3 were working together. And I'm conscious that Mr B has also said he doesn't recall being told much about the investments, only that the pension was suitable for him. So I'm satisfied that Mr B only invested in these non-standard investments and/or NMPIs after they were introduced to him by C3 (and/or the introducer). And even if the investments weren't NMPIs but were instead non- standard, Mr B still wasn't fully informed about the risks involved.

Given what Novia ought reasonably to have identified about the business it was receiving from C3 had it undertaken adequate due diligence, I think this should have been a significant cause for concern for Novia and caused it to consider the business it was receiving from C3 very carefully, before it received Mr B's SIPP business.

What fair and reasonable steps should Novia have taken in the circumstances and what would it have discovered?

Novia could simply have concluded that, given the potential risks of consumer detriment – which I think were clear and obvious before it received Mr B's SIPP business – it should not continue to accept business from C3. That would have been a fair and reasonable step to take in the circumstances. Alternatively, Novia could have taken fair and reasonable steps to address the potential risks of consumer detriment. I've set these out below.

<u>Requesting information directly from C3</u>

Given the significant potential risk of consumer detriment I think that, as part of its due diligence on C3, Novia ought to have found out more about how C3 was operating before it received Mr B's business. And mindful of the type of introductions it was receiving from C3, I think it's fair and reasonable to expect Novia, in line with its regulatory obligations, to have made some specific enquiries and obtained information about C3's business model.

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

The October 2013 finalised SIPP operator guidance gave an example of good practice as: *"Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with*."

And I think that Novia, before accepting Mr B's business from C3, should have checked with C3 about things like:

- how it came into contact with potential clients,
- what agreements it had in place with its clients,
- whether all of the clients it was introducing were being offered advice,
- what its arrangements with any unregulated businesses were, how and why ordinary retail clients were interested in making these non-standard investments and/or NMPIs,
- whether it was aware of anyone else providing information to clients,
- how it was able to meet with or speak with all its clients, and
- what material was being provided to clients by it.

I think it's more likely than not that if Novia had asked C3 for this type of information that C3 would have provided the information sought. And that, amongst other things, Novia would have then been told that an unregulated firm had introduced the clients to C3 in the first place. That an unregulated introducer was contacting clients, gathering their details and then passing them to C3 for regulated advice in relation to transferring their pensions and the investment advice.

But if Novia had been unable to obtain the information sought from C3, then I think it's fair and reasonable to say that Novia should have then concluded that it was unsafe to proceed with accepting business from C3 in those circumstances. In my opinion, it wasn't reasonable, and it wasn't in-line with Novia's regulatory obligations, for it to proceed with accepting business from C3 if the position wasn't clear.

Making independent checks

I think, in light of what I've said above, it would also have been fair and reasonable for Novia, to meet its regulatory obligations and good industry practice, to have taken independent steps to enhance its understanding of the introductions it was receiving from C3. For example, it could have asked for copies of correspondence relating to the advice.

The 2009 Thematic Review Report said that:

> *"…we would expect (SIPP operators) to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification."*

So I think it would have been fair and reasonable for Novia to speak to some applicants, like Mr B, directly.

I accept Novia couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view such steps included addressing a potential risk of

consumer detriment by speaking to applicants, as this could have provided Novia with further insight into C3's business model. This would have been a fair and reasonable step to take in reaction to the clear and obvious risks of consumer detriment I've mentioned.

And, on balance, I think it's more likely than not that if Novia had contacted Mr B to 'confirm the position', Mr B would have told Novia that he had been contacted out of the blue and offered a pension review.

Had it taken these fair and reasonable steps, what should Novia have concluded?

If Novia had undertaken these steps I think it ought to have identified, amongst others, the following risks before it received Mr B's business:

- The SIPP business introduced by C3 was high risk, with some of the investment only being suitable for sophisticated and high net worth investors.
- The risk of an unregulated business being involved in the transfer and investment process.
- C3 was having business referred to it by unregulated introducers and it was then introducing business to Novia.
- A third party might have 'sold' to consumers the idea of transferring their pensions before the involvement of any regulated parties.
- C3 was promoting non-standard investments and/or NMPIs to ordinary retail investors like Mr B who weren't sophisticated and high net worth investors

These features I've mentioned above carried a significant risk of consumer detriment.

Each of these in isolation was significant, but cumulatively I think they demonstrate that there was a significant risk of consumer detriment associated with introductions from C3. I think that Novia ought to have had real concerns that C3 wasn't acting in customers' best interests and wasn't meeting its regulatory obligations.

Novia didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly by accepting his business from C3. To my mind, Novia didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr B to be put at significant risk of detriment as a result. Novia should have concluded, and before it accepted Mr B's business from C3, that it shouldn't accept introductions from C3. I therefore conclude that it's fair and reasonable in the circumstances to say that Novia shouldn't have accepted Mr B's business from C3 at all.

Due diligence on the underlying investments

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

I accept that the Hypa investments don't appear to be fraudulent or a scam. But this doesn't mean that Novia did all the checks it needed to do. However, given what I've said about Novia's due diligence on C3 and my conclusion that it failed to comply with its regulatory obligations and good industry practice at the relevant time, I don't think it's necessary for me to also consider Novia's due diligence on the Hypa Investments. I'm satisfied that Novia wasn't treating Mr B fairly or reasonably when it accepted his business from C3, so I've not gone on to consider the due diligence it may have carried out on the Hypa investments and whether this was sufficient to meet its regulatory obligations. And I make no findings about this issue.

Was it fair and reasonable in all the circumstances for Novia to proceed with Mr B's business?

For the reasons previously given above, I think Novia should have refused to accept Mr B's business from C3. So things shouldn't have got beyond that.

Novia knew that Mr B's SIPP Terms and Conditions were intended to acknowledge, amongst other things, his awareness of some of the risks involved with investing and to indemnify Novia against losses that arose from acting on his, or his adviser's instructions. And, in my opinion, relying on the contents of such terms when Novia knew, or ought to have known, that the type of business it was receiving from C3 would put investors at significant risk of detriment, wasn't the fair and reasonable thing to do. Having identified the risks I've mentioned above, it's my view that the fair and reasonable thing for Novia to do would have been to decline to accept Mr B's business from C3.

The Principles exist to ensure regulated firms treat their clients fairly. I appreciate C3 may have agreed to Novia's Terms of Business but I don't think this meant that Novia could ignore its duty to treat Mr B fairly. To be clear, I'm satisfied that any agreement Novia had with Mr B or C3 didn't absolve, nor does it attempt to absolve, Novia of its regulatory obligations to treat customers fairly when deciding whether to accept or reject business.

I'm satisfied that Mr B's SIPP shouldn't have been established and the opportunity to execute investment instructions shouldn't have arisen at all. And I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for Novia to proceed with Mr B's business.

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

In this decision I'm considering Mr B's complaint about Novia. However, I accept that other parties were involved in the transactions complained about – including C3, the unregulated introducer and Hypa.

I also accept that Mr B pursued a complaint against C3 with the FSCS. The FSCS upheld Mr B's complaint, and paid him the maximum compensation of £50,000, although it had calculated his total loss to be more than this at that time. Following this the FSCS provided Mr B with a reassignment of rights.

Novia may say that it should not be liable for the full extent of Mr B's loss because of the involvement of these other businesses and to make no allowance for this in the redress is neither fair nor reasonable.

The DISP rules set out that when an Ombudsman's determination includes a money award, then that money award may be such amount as the Ombudsman considers to be fair compensation for financial loss, whether or not a Court would award compensation (DISP 3.7.2R).

In my opinion it's fair and reasonable in the circumstances of this case to hold Novia accountable for its own failure to comply with its regulatory obligations, good industry practice and to treat Mr B fairly. The starting point, therefore, is that it would be fair to require Novia to pay Mr B compensation for the loss he's suffered as a result of its failings.

I've carefully considered if there's any reason why it wouldn't be fair to ask Novia to compensate Mr B for his loss.

I accept that other parties, including C3, might have some responsibility for initiating the course of action that led to Mr B's loss. However, I'm satisfied that it's also the case that if Novia had complied with its own distinct regulatory obligations as a SIPP operator, the arrangement for Mr B wouldn't have come about in the first place, and the loss he's suffered could have been avoided. So, I'm not asking Novia to account for loss that goes beyond the consequences of its failings. Overall, it's my view that it's appropriate in the circumstances for Novia to compensate Mr B to the full extent of the financial losses he's suffered due to Novia's failings. And, having carefully considered everything, I don't think that it would be appropriate or fair in the circumstances to reduce the compensation amount that Novia's liable to pay to Mr B.

I'm not making a finding that Novia should have assessed the suitability of the SIPP or investments for Mr B. I accept that Novia wasn't obligated to give advice to Mr B, or otherwise to ensure the suitability of the pension wrappers or investments for him. Rather, I'm looking at Novia's separate role and responsibilities – and for the reasons I've explained, I think it failed in meeting those responsibilities.

Mr B taking responsibility for his own investment decisions

In reaching my conclusions in this case I've thought about section 5(2)(d) of the FSMA (now section 1C). This section requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the general principle that consumers should take responsibility for their own investment decisions.

I've considered this point carefully and I'm satisfied that it wouldn't be fair or reasonable to say Mr B's actions mean he should bear the loss arising as a result of Novia's failings.

In my view, if Novia had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr B's business from C3 *at all*. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr B wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

As I've made clear, Novia needed to carry out appropriate initial and ongoing due diligence on C3 and reach reasonable conclusions. I think it failed to do this. And just relying on the SIPP Terms and Conditions and/or C3's agreement to its Terms of Business, wasn't an effective way of Novia meeting its obligations, or of escaping liability where it failed to meet its obligations.

C3 was a regulated firm with the necessary permissions to advise Mr B on his pension provisions and Mr B also then used the services of a regulated personal pension provider in Novia. I'm satisfied that in his dealings with these parties, Mr B trusted each of them to act in his best interests.

So, overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair and reasonable to say Novia should compensate Mr B for the loss he's suffered. I don't think it would be fair to say in the circumstances that Mr B should suffer the loss because he ultimately instructed the transactions be effected.

Had Novia declined Mr B's business from C3, would the transactions complained about still have been effected elsewhere?

Novia may say if it hadn't accepted Mr B's business from C3, that the transfer of Mr B's pension and the investment would still have been effected with a different SIPP provider. But I don't think it's fair and reasonable to say that Novia shouldn't compensate Mr B for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found it did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr B's business from C3.

Furthermore, if Novia had declined to accept Mr B's business from C3, I think it's unlikely Mr B would've sought advice from a different adviser, given that he wasn't previously interested in moving or changing his pension before he was contacted by the unregulated introducer and C3. But even if I thought Mr B would have sought advice from another adviser (which I don't) I think it's unlikely that another adviser, acting fairly, would have advised Mr B to transfer his pensions to a SIPP and to invest almost 50% of funds in NMPIs/non-standard investments, given his personal circumstances.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if Novia had declined to accept Mr B's business from C3, the transactions complained about wouldn't still have gone ahead and Mr B would have retained his existing pensions and Mr B's monies wouldn't have been transferred into the Novia SIPP.

In *Adams v Options SIPP*, the judge found that Mr Adams would have proceeded with the transaction regardless. HHJ Dight says (at paragraph 32):

> *"The Claimant knew that it was a high risk and speculative investment but nevertheless decided to proceed with it, because of the cash incentive."*

But, I don't think these circumstances apply to Mr B. Mr B was not provided with an incentive; he had been contacted by the unregulated introducer/C3 out of the blue and otherwise had no reason to review his pension. And, based on the evidence I've seen, I'm not satisfied that Mr B understood the risks involved in the transactions.

On balance, I'm satisfied that Mr B, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this case is very different from that of Mr Adams. And having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that if Novia had refused to accept Mr B's business from C3, the transactions this complaint concerns wouldn't still have gone ahead.

Summary

Overall, I think it's fair and reasonable to direct Novia to pay Mr B compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to Mr B's loss, I consider that Novia failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining to accept Mr B's business when it had the opportunity to do so. I say this having given careful consideration to the *Adams v Options SIPP* judgments but also bearing in mind that my role is to reach a decision that's fair and reasonable in the circumstances of the case having taken account of all relevant considerations.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr B. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against Novia that requires it to compensate Mr B for the full measure of his loss. Novia accepted Mr B's business from C3 and, but for Novia's failings, I'm satisfied that Mr B's pension monies wouldn't have been transferred to Novia at all.

As such, I'm not asking Novia to account for loss that goes beyond the consequences of its failings. I'm satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for that same loss is a distinct matter. However, that fact shouldn't impact on Mr B's right to fair compensation from Novia for the full amount of his loss. The key point here is that but for Novia's failings, Mr B wouldn't have suffered the loss he's suffered. As such, I'm of the opinion that it's appropriate and fair in the circumstances for Novia to compensate Mr B to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by other firms involved in the transactions.

Putting things right

My aim is to return Mr B to the position he would now be in but for Novia's failure to carry out appropriate due diligence checks on C3 before accepting his SIPP business.

As I've already mentioned above – if Novia had refused to accept SIPP business from C3 before it received Mr B's SIPP business, I'm satisfied the investment would not have gone ahead and Mr B would've retained his existing pension plan(s).

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

1) Obtain the current notional value, as at the date of this decision, of Mr B's previous pension plan(s), if it/they hadn't been transferred to the SIPP.

2) Obtain the actual current value of Mr B's SIPP, as at the date of my final decision, less any outstanding charges.

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

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

5) Pay an amount into Mr B's SIPP, so that the transfer value of the SIPP is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.

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

I've explained how Novia should carry out the calculation, set out in steps 1 - 6 above, in further detail below:

1) *Obtain the current notional value, as at the date of this decision, of Mr B's previous pension plan(s), if it/they hadn't been transferred to the SIPP.*

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

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

If there are any difficulties in obtaining notional valuations from the operator(s) of Mr B's previous pension plan(s), Novia should instead calculate a notional valuation by ascertaining what the monies transferred away from the plan would now be worth, as at the date of this decision, had they achieved a return from the date of transfer equivalent to the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index).

I'm satisfied that's a reasonable proxy for the type of return that could have been achieved over the period in question. And, again, there should be a notional allowance in this calculation for any additional sums Mr B has contributed to, or withdrawn from, his Novia SIPP since the outset.

I acknowledge that Mr B has received a sum of compensation from the FSCS, and that he has had the use of the monies received from the FSCS. The terms of Mr B's reassignment of rights require him to return compensation paid by the FSCS in the event this complaint is successful, and I understand that the FSCS will ordinarily enforce the terms of the assignment if required. So, I think it's fair and reasonable to make no *permanent* deduction in the redress calculation for the compensation Mr B received from the FSCS. And it will be for Mr B to make the arrangements to make any repayments he needs to make to the FSCS. However, I do think it's fair and reasonable to allow for a *temporary* notional deduction equivalent to the payment Mr B actually received from the FSCS for a period of the calculation, so that the payment ceases to accrue any return in the calculation during that period.

As such, if it wishes, Novia may make an allowance in the form of a notional withdrawal (deduction) equivalent to the payments Mr B received from the FSCS following the claim about C3 on the date the payments were actually paid to Mr B. Where such a deduction is made there must also be a corresponding notional contribution (addition) at the date of my final decision equivalent to the FSCS payments notionally deducted earlier in the calculation.

To do this, Novia should calculate the proportion of the total FSCS' payment that it's reasonable to apportion to each transfer into the SIPP, this should be proportionate to the actual sums transferred in. And Novia should then ask the operator of Mr B's previous pension plan(s) to allow for the relevant notional withdrawal in the manner specified above. The total notional deductions allowed for shouldn't equate to any more than the actual payments from the FSCS that Mr B received. Novia must also then allow for a corresponding notional contribution (addition) as at the date of my final decision, equivalent to the accumulated FSCS payments notionally deducted by the operators of Mr B's previous pension plan(s).

Where there is any difficulty in obtaining a notional valuation from the previous operator, Novia can instead allow for both the notional withdrawal and contribution in the notional calculation it performs, provided it does so in accordance with the approach set out above.

2) *Obtain the actual current value of Mr B's SIPP, as at the date of my final decision, less any outstanding charges.*

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

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

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

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

It isn't clear whether Mr B's Hypa investments have now been closed and removed from the SIPP or if the SIPP remains open.

But for any illiquid holdings that remain within Mr B's Novia SIPP, Mr B's monies could be transferred away from Novia. In order to ensure the SIPP could be closed and further Novia SIPP fees could be prevented, any remaining illiquid holdings need to be removed from the SIPP. To do this Novia should reach an amount it's willing to accept as a commercial value for the investments, and pay this sum into the SIPP and take ownership of the relevant investments.

If Novia is unwilling or unable to purchase the investments, then the actual value of any investments it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include their being given a nil value for the purposes of ascertaining the current value of Mr B's SIPP in step 2).

If Novia doesn't purchase the investments, it may ask Mr B to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from these investments. That undertaking should allow for the effect of any tax and charges on the amount Mr B may receive from the investments, and any eventual sums he would be able to access from the SIPP. Novia will need to meet any costs in drawing up the undertaking.

If Novia doesn't purchase the investments, and if the total calculated redress in this complaint is less than £160,000, Novia may ask Mr B to provide an undertaking to account to it for the net amount of any future payment the SIPP may receive from these investments. That undertaking should allow for the effect of any tax and charges on the amount Mr B may receive from the investments after the date of my final decision, and any eventual sums he would be able to access from the SIPP in respect of the investments. Novia will need to meet any costs in drawing up the undertaking.

If Novia doesn't purchase the investments, and if the total calculated redress in this complaint is greater than £160,000 and Novia doesn't pay the *recommended* amount, Mr B should retain the rights to any future return from the investments until such time as any future benefit that he receives from the investments together with the compensation paid by Novia (excluding any interest) equates to the total calculated redress amount in this complaint. Novia may ask Mr B to provide an undertaking to account to it for the net amount of any further payment the SIPP may receive from these investments thereafter. That undertaking should allow for the effect of any tax and charges on the amount Mr B may receive from the investments from that point, and any eventual sums he would be able to access from the SIPP in respect of the investments. Novia will need to meet any costs in drawing up the undertaking.

5) *Pay an amount into Mr B's SIPP, so that the transfer value of the SIPP is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.*

The amount paid should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into a pension plan if it would conflict with any existing protections or allowances.

If Novia is unable to pay the compensation into Mr B's SIPP, or if doing so would give rise to protection or allowance issues, it should instead pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax in retirement at his selected retirement age.

It's reasonable to assume that Mr B is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 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.

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

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

SIPP fees

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

Interest

The compensation resulting from this loss assessment must be paid to Mr B or into his SIPP within 28 days of the date Novia receives notification of Mr B's acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation isn't paid within 28 days.

My final decision

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

Where I uphold a complaint, I can make an award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Novia Financial Plc pays the balance.

Determination and award: For the reasons set out above, I uphold Mr B's complaint. My final decision is that Novia Financial Plc must calculate and pay Mr B the compensation amount produced by the calculation, as set out in the steps above, up to the maximum of £160,000.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Novia Financial Plc pay Mr B the balance.

My recommendation would not be binding. Further, it's unlikely that Mr B could accept the final decision and go to court to ask for the balance. Mr B may want to get independent legal advice before deciding whether to accept the final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 October 2024.
Lorna Goulding
Ombudsman