DRN-4723644

Financial Ombudsman Service

The complaint

Mr G complains that Intelligent Money Ltd ('IM') did not treat him fairly when dealing with his Self-Invested Personal Pension ('SIPP'). He believes IM did not act in his best interests when it allowed high risk and unregulated investments to be made, and it did not carry out appropriate due diligence on both the advising introducer and the investment. Mr G's pension fund has suffered a loss as a result.

Background

There are several parties involved in the events complained about, so I will list them below:

Intelligent Money

IM is a regulated pension provider and administrator. It's authorised to arrange deals in investments, deal in investments as principal, establish, operate or wind up a personal pension scheme and to make arrangements with a view to transactions in investments.

Novia Financial Plc ('Novia')

For the purposes of this complaint, Novia provided an investment platform, and the investment of Mr G's IM SIPP monies into Greyfriars Portfolio 6 was effected via the Novia platform.

Best Asset Management Ltd

Best Asset Management Ltd described itself as a corporate finance, asset management and wealth management provider. Best Asset Management Ltd's annual report for the year end dated 30 August 2015 shows that it purchased Greyfriars Asset Management LLP in June 2012 and that it owned 99% of the shares in that firm.

Best Asset Management Ltd also traded as Best International. Best Asset Management Ltd's status is currently showing on Companies House as *"liquidation"*.

Greyfriars Asset Management LLP ('Greyfriars')

Greyfriars was a regulated Discretionary Fund Manager (DFM). The Financial Conduct Authority (FCA) required Greyfriars to stop accepting any new funds into the Greyfriars Portfolio 6 offering in October 2016. The FCA Register records that Greyfriars' authorisation with the FCA was cancelled on 31 August 2023.

In Greyfriars' annual report for the year ending March 2015 it was recorded that *"the ultimate controlling party is Best Asset Management Limited…who holds 99% of the capital in the limited liability partnership."*

Greyfriars Portfolio 6 ('P6')

P6 was a portfolio offered by Greyfriars. Greyfriars said that P6 was a portfolio designed for investors wishing to gain exposure to investments that counter the risks associated with mainstream asset classes. And that the portfolio may wholly consist of non-pooled investments such as Exchange Traded Funds, simple deposits and asset backed securities, unregulated investments including direct investments into commercial property or unquoted corporate bonds.

Active Wealth (UK) Limited ('AW')

AW was an Independent Financial Adviser (IFA) firm that was incorporated in July 2014 and dissolved on 14 May 2019. AW was authorised by the FCA between 1 December 2014 and 14 May 2019. Mr R and Mr D were advisers at AW.

The FCA issued a Decision Notice against Mr R on 2 May 2023, it's recorded that Mr R has referred this to the upper Tribunal. It is noted, amongst other things in the Decision Notice/the Decision Notice annexes that:

"The Authority's rules prohibited Active Wealth and its advisers…from receiving commissions, remuneration or benefits of any kind apart from charging for advice provided.
…
The Authority's prohibition on commission payments (COBS 6.1A.4R) was introduced to prevent advisers having a conflict of interest when recommending that customers invest their pensions in particular pension products. Such commissions create an incentive to recommend the product that would produce the highest payment for the adviser rather than the best outcome for the customer.
…
(Mr R) *dishonestly established, maintained and concealed a conflict of interest that was at the heart of Active Wealth's business model so that he, and the other advisers, could receive prohibited commission payments…*
…
(Mr R) *dishonestly: (1) advised Active Wealth's customers to invest in an investment portfolio created by Greyfriars Asset Management LLP (P6) consisting of mini-bonds knowing that it was not suitable for them; (2) falsified the P6 Application Forms in order to create the false impression that P6 was suitable for Active Wealth's customers when it was not…*
…
Active Wealth was a small firm...Active Wealth's primary business was the provision of pension and investment advice to retail customers.
…
On 25 May 2021, (Mr R) *was disqualified by the High Court from being a company director for 13 years following an investigation by the Insolvency Service that found that he failed to act in the best interests of Active Wealth's customers in respect of advice he gave to transfer their pensions to SIPPs and invest in P6.*
…
The investments that Active Wealth recommended for customers' SIPPs typically depended on the date of the recommendation: (1) from about March 2015 to September 2016, Active Wealth recommended that at least 288 customers invest in – among other things – a portfolio of high risk, illiquid investments called Portfolio Six or P6 that was managed by Greyfriars, a DFM. The Authority required Greyfriars to cease accepting new funds into P6 in October 2016; (2) from no later than December 2016 to March 2017, Active Wealth recommended that about 100 customers invest through a second DFM. One of the investments that this DFM invested in were the sub-funds of a UCITS…and (3) from about April 2017 to November 2017, Active Wealth recommended approximately 290 customers to invest through a third DFM. That DFM invested customer funds in the UCITS sub-funds.
…

Active Wealth charged customers a flat advice fee, typically of about £1,500...Active Wealth typically shared 50% of that flat advice fee with the business that introduced the customer to Active Wealth…The advice fees were the main source of Active Wealth's income.
…
However, in reality, Active Wealth's advisers had a second source of remuneration which was in breach of the Authority's rules, namely commission paid directly or indirectly from Active Wealth's customers' investments.
…
(Mr R) *set up the First Company…and a close relative set up the Second Company… the vast majority of their* (the Companies) *income derived from commission payments paid by issuers of investments into which Active Wealth's customers invested...*
…
The First Company received commission pursuant to marketing agreements…with the issuers of the investments. Of the agreements obtained by the Authority, the commission ranged between 7% and 17% of the sums invested… the First Company also received commission from firms that had their own marketing agreements with issuers for selling investments.
…
…bank statements for the period 12 March 2015 to 22 October 2018 show that the First Company received commission of £2.7 million…for investments that Active Wealth recommended that its customers invest in, including investments through P6 and one other investment.
…
…93.4% of the Second Company's receipts were commission payments: (1) £305,244 (17.6%) represented commission payments for investments in products available through P6...According to the agreements…commission (paid to the Second Company) *ranged between 4% and 17% of the total amount invested...*
…
These…payments represented a conflict of interest between the interests of (Mr R) *(and the other advisers) on the one hand and the customers' interests on the other hand.*
…
There was a significant risk of detriment to Active Wealth's customers because: (1) the commission provided a financial incentive for Active Wealth's advisers to provide unsuitable advice to customers to invest in the investments; (2) as a result of the false and misleading information provided by (Mr R) *to Greyfriars and the SIPP provider about Active Wealth's customers…*(Mr R) *exposed customers to a significant risk of loss from investments through P6 that he knew were highly likely not to have been suitable for them…*
…
Active Wealth's relationship with Greyfriars and P6.

The Greyfriars DFM service operated a range of investment portfolios aimed at financial advisers. One of these portfolios was P6, which was made up of minibonds including overseas investments in real estate, car parks, renewable energy and holiday resorts. The mini-bonds were not listed on a regulated market and promised returns of between 6% and 15% per annum. P6 investments were high risk and illiquid and were unlikely to be suitable for retail customers…
…
On 23 May 2015, Active Wealth entered into the Active Wealth P6 Agreement with Greyfriars. Under the agreement, Active Wealth was responsible for selecting and assessing the suitability of P6 when advising the customer to invest in the portfolio.

(Mr R) *was aware of the warnings contained in Greyfriars' documentation about the risks of investing in P6. In addition, the terms of the Active Wealth P6 Agreement signed by* (Mr R) *confirmed his understanding that "[P6] isn't as liquid as more conventional investments" and that customers could be "locked into a security for an indefinite period".*

…
(Mr R) *told the Authority that he believed that P6 was suitable for customers that were high net worth investors who owned more than one property...*
…
(Mr R's) *assertion that Active Wealth only advised customers who he defined as high net worth, or who owned more than one property, to invest in P6 was false. Rather, P6 was Active Wealth's default investment for its customers…*
…
Further, (Mr R) *admitted that the so-called high net worth customers included those that had "very cautious" or "cautious" attitudes to risk, being those that only wanted to take limited risks with their investments.* (Mr R's) *advice to invest in high-risk, illiquid investments was entirely unsuitable for customers who had "very cautious" or "cautious" attitudes to risk.* (Mr R) *told the Authority that either he or* (Mr D) *had a discussion with each of the customers and advised them that to achieve their targeted income they would have to accept greater risk. However, the evidence shows that it was not true that either* (Mr R) *or* (Mr D) *gave such advice or that the customers agreed to accept the greater risk.*

(Mr R) *knew that Greyfriars would not normally accept an investment into P6 where it represented more than 25% of a customer's "investable wealth". The Greyfriars P6 documentation stated that P6 was appropriate only for a "small proportion" of an investor's funds. However, Active Wealth advised customers to invest up to 62% of their "investable assets" in P6.*
…
…(Mr R) *knew that P6 was not a suitable investment for all of Active Wealth's retail customers but nonetheless allowed it to be Active Wealth's default recommendation and arranged for customers to invest a higher proportion of their SIPP funds than he knew was suitable. This gave rise to a significant risk that Active Wealth's customers would suffer loss that they could not financially bear.*
…
(Mr R)*, on behalf of Active Wealth, signed a declaration in the P6 Application Form that investments in unregulated investments to the proportions specified were suitable for the relevant customer's risk profile, circumstances, knowledge and experience.*

The Authority has reviewed the P6 Application Forms of 18 customers that invested in P6. In the application forms…Active Wealth specified that one of the reasons that the investment…would be suitable…was that they each had a "high" risk profile and capacity for loss. This contradicted Active Wealth's assessment of the attitude to risk and capacity for loss of seven customers because it assessed one customer as having a "very cautious" profile; three customers as having "cautious" profiles; and three customers as having "balanced" profiles.

The Authority considers that Active Wealth and (Mr R) *knowingly and falsely represented on the P6 Application Forms, and to the Authority in interview, that some customers had a "high" risk tolerance and capacity for loss.*

(Examples were given of some customers about whom the FCA considered Mr R/AW had knowingly provided false and misleading information in the P6 Application Forms, including about their attitude to risk, capacity for loss, about being high net worth and the percentage of their investable assets being invested in P6.)
…
(Mr R) *dishonestly arranged for Active Wealth's customers to invest in P6 in the knowledge it was not suitable for them. He…misled them about the suitability of P6 and its liquidity and falsified the P6 Application Forms in order to create the false impression that P6 was suitable for Active Wealth's customers when it was not. P6 was a high-risk illiquid investment and (*Mr R) *knew this. Notwithstanding this knowledge,* (Mr R) *told Active Wealth's*

customers and the Authority that it was a suitable investment for Active Wealth's customers, when there was clear evidence to the contrary.
…
(Mr R) *derived direct financial benefit from the advice fees generated from customers who: switched or transferred out of their existing pension arrangements to SIPPs investing in P6 as a result of Active Wealth's unsuitable advice to invest in P6 and/or invested in P6 as a result of* (Mr R's) *false and misleading statements in the P6 Application Forms.*
…
(Mr R) *accepts that the commission payments ought to have been disclosed to Active Wealth's customers.*
…
*Active Wealth advised at least 658 customers during the Relevant Period (*between 12 March 2015 and 5 February 2018)*. Of those, 580 customers (just over 88%) invested in investments for which commission payments were made. It is highly improbable – particularly for pension investments or pension holders with a low risk profile – that such a high proportion of customers would have been advised to invest in such a narrow range of investments – or investments of these kinds – were it not for the fact that* (Mr R) *and/or other Active Wealth advisers would earn commission if they did so.*
…
… (The FCA) *rejects* (Mr R's) *contention that P6 was not the default investment for Active Wealth customers. Of the 315 Active Wealth clients in the period up to and including September 2016, 255 customers (just over 80%) invested monies in P6.*
…
The high-risk nature of P6 was summarised in statements within the P6 documentation and would also have been apparent to any competent financial adviser…the high risk nature of P6 was clear from when the first investments were made by Active Wealth customers.

Contrary to what was stated in some of the P6 documentation, P6 was not comprised of up to 40% in equities, up to 40% in fixed interest securities and up to 20% in property with the balance in cash...(Mr R) *was aware of this at the time that he was recommending that Active Wealth customers invest in P6.*
…
Greyfriars sent monthly emails to Active Wealth setting out the bonds in which P6 customers were invested. This information made it clear that they were investments in mini-bonds…
…
(Mr R) *does not deny that he stated on P6 Application Forms that Active Wealth customers, who he had assessed as having "very cautious", "cautious" and "balanced" risk profiles, had a high-risk profile and capacity for loss.*
…
It appears to the Authority that the SIPP provider was not given the customer questionnaires which contradicted the information in the P6 Application forms…therefore, the SIPP provider cannot have known that they were not accurate."

The FCA also issued a Final Notice against Mr D of AW on 28 September 2023. It was noted, amongst other things, in the Final Notice that:

"…when advising customers to transfer or switch their pensions to SIPPs and invest part of their SIPP funds in high risk, illiquid investments, (Mr D) *recklessly closed his eyes to the obvious risks that they were not suitable to recommend. This put customers at serious risk of receiving unsuitable advice...*
…
During his time at Active Wealth, (Mr D) *received total income from Active Wealth of £94,773. In addition,* (Mr D) *received total payments of £123,326 from the First Company and £83,023 from the Second Company.*
…

During his time at Active Wealth, (Mr D) *advised about 65 customers to switch or transfer their existing pension arrangements to SIPPs and subsequently advised them to invest part of their SIPP funds in P6*…(Mr D) *failed to provide proper advice to these customers.*
…
(Mr D) *knew that the underlying products in P6 were unregulated investments, including overseas property investments, and that those products relied on alternative funding because they could not receive funding from mainstream banks.* (Mr D) *knew that the underlying products carried a higher risk that customers might lose some or all of their pension funds and were not protected by the FSCS.*

Notwithstanding (Mr D's) *awareness of the significant risks of these underlying products, he usually recommended that customers, including those that he assessed as having a cautious attitude to risk or who were not sophisticated investors, invest in P6. He told the Authority that he did so because it was Active Wealth's "preferred" investment and that it was "part of Active Wealth's investment process" to recommend P6…*
…
(Mr D) *recklessly ignored the obvious risk that P6 was unsuitable for his clients, and proceeded to recommend it."*

What happened

In 2015 Mr G was employed, and his employer provided a Defined Benefit (DB) pension. His employer was changing the administrator of this pension, and this prompted Mr G to review his overall pension provision. In addition to his DB pension, Mr G had two other pensions, a Group Personal Pension (GPP) and a personal pension (PPP).

Mr G was contacted by a business who it seems passed his details on to AW, and he then had a meeting with Mr R. During this meeting Mr R provided Mr G with a Pension Switch Report, dated 19 October 2015.

Under the heading 'Personal Information' it showed Mr G's name, date of birth, that he was employed and that he was divorced. Under all the sections 'Health Status', 'Dependents', 'Attitude to Risk' and 'Lifetime Limit' it had recorded 'Unknown'.

This form documented details of his current GPP and PPP provision (it did not mention his DB pension) and provided a comparison of the projected growth between his existing providers and that if he were to transfer the pensions into an IM SIPP. The document did not specify the proposed investments to be held within the IM SIPP.

On 11 November 2015 Mr G signed a handwritten application to open an IM SIPP. Within the application it showed that he wished to transfer the benefits from his DB pension, his GPP and PPP into the SIPP. It named Mr R from AW as his Financial Adviser. The form did not say where he wished his funds to be invested. Under the section 'Platform Provider / DFM' it said '*TBA'.*

A declaration at the end of the SIPP application form, signed by Mr G stated, amongst other things, that:

- The applicant understood they should read and understand the Terms and Conditions of the IM SIPP before signing.
- The applicant would be bound by the trust deed and SIPP rules.
- The applicant, and where applicable their financial adviser, would be responsible for all investment purchase decisions.

- The applicant would indemnify the Provider and Trustee against any claim in respect of investment decisions.
- The Trustee and the Provider had a right to refuse to action, or to dispose of, any investment which doesn't fall within a list of funds as amended from time to time.

Although not provided by IM for this complaint, I have seen a copy of the IM SIPP Terms and Conditions and these stated, amongst other things:

- The Terms and Conditions set out the contract between the member and IM and should be read in conjunction with the Key Features of the IM SIPP.
- IM undertook to operate the SIPP in accordance with the SIPP Rules and the Terms and Conditions Agreement.
- The Provider (IM), Operator (IM) and the Trustee (IM or Intelligent Money Trustees Limited) didn't offer and weren't authorised to give advice on transfers.
- The Operator didn't check transfers for suitability.
- It was investors' responsibility to decide whether the IM SIPP was suitable.
- Details of transactions undertaken by Investment Managers on an investor's behalf would only be available from the Investment Managers. The Investment Manager must provide valuations at least monthly to the Operator.
- Neither the Provider, Trustee nor the Operator provided financial advice or accepted any liability for the performance or choice of investments.
- The Operator will not be liable for any loss arising from investor's investment instructions.
- Neither the Trustee, nor the Operator accepted liability for any loss occasioned by any Investment Manager or other person or body which is responsible for any fund management or ancillary connected service.
- The FCA publishes a list of Standard Assets for SIPPs. IM strictly prohibits the investment of any SIPP funds into any asset that doesn't meet the FCA's definition of a Standard Asset.
- A Standard Asset must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required. Any investment that doesn't meet the definition of a Standard Asset, as detailed in the document, is classed as a Non-Standard Asset.
- IM strictly prohibits the holding of Non-Standard Assets within IM SIPPs and investors aren't permitted to make any instruction to any party to hold Non-Standard Assets within the SIPP.
- IM instructed investors' Financial Advisers/Discretionary Fund Managers to also agree not to hold any Non-Standard Assets within investors' plans.
- Investors acknowledged, agreed and undertook that Intelligent Money, Intelligent Money Trustees, Intelligent Money Group and their individual Directors and employees have no liability should an investor, their financial adviser or their Discretionary Fund Manager (where relevant) breach the plan rule and access Non-Standard Assets.
- Investors acknowledged and agreed that IM's rule to strictly prohibit the holding of Non-Standard Assets within the SIPP satisfies and discharges IM's duty of care to investors in relation to Non-Standard Assets within their SIPP. And investors agreed to waive any rights to make any claim against these IM entities should the investor,

their Financial Adviser or their DFM breach IM's rule on Non-Standard Assets and to keep IM fully indemnified against any claim in relation to Non-Standard Assets.

- The terms are effective as of 1 January 2015.

The IM SIPP Key Features document stated, amongst other things, that:

- Investors, or their Financial Adviser, nominate an Investment Manager to administer, arrange and take investment decisions on the investments held in the IM SIPP.
- IM doesn't accept any liability for any loss as a result of any action by an Investment Manager, IFA or any other person or body responsible for any investment management or associated ancillary services related to investors' IM SIPPs.

On 19 November 2015 the IM SIPP was opened.

On 9 December 2015 £293,855 was transferred from Mr G's DB pension provider, and £229,105.34 from his GPP, both into the IM SIPP. And on 10 December 2015 a further £27,392.84 was transferred into the IM SIPP from his PPP.

Mr R of AW wrote to IM on 5 January 2016 and said that he was enclosing:

- Payment instructions for Mr G to transfer £300,000 to a Novia Platform.
- A *"DFM (P6) application for £300,000",* the last page of which needed to be signed by IM.
- A *"Greyfriars DFM Agreement (P6)",* the last page of which needed to be signed by IM.
- A letter to Greyfriars.

It was explained that the documents mentioned in the final three bullet points above, once completed [by IM] where necessary, would need to be sent on to Greyfriars.

Mr R also stated that:

> *"I can confirm you* (IM) *are entered as the email contact for transactional confirmations for the client and Intelligent Money the correspondence address for the client holding."*

We've been provided with a copy of a Greyfriars Discretionary Fund Management Service P6 application form for Mr G. It's noted in the form that:

- £300,000 was to be invested into P6.
- AW was recorded as the intermediary.
- The period anticipated by Mr G for the investment was 5-15 years.
- The investment amounted to 23% of Mr G's *"fiscal assets"*.
- Mr G had no investment restrictions or preferences.
- Mr G was a high-net-worth investor, experienced in investing primarily in property, equities, bonds and other mainstream investments.
- Mr G had a high risk profile and capacity for loss, and that Mr G understood and accepted the risks associated with these investments.

- The Trustee details were given as IM's details with Mr G recorded as being the underlying member.

Under the heading 'Investment Objectives and Attitudes to Risk' it said:

> *"The portfolio has been specifically designed for investors wishing to gain exposure to investments that counter the risks associated with mainstream asset classes. Each investment is chosen on its individual merit to perform independently of major markets, with management focussing on specific opportunities, without reference to an index or other more correlated assets. As such the portfolio is not run to have a maximum volatility or loss capacity.*
>
> *Portfolio Six may wholly consist of non-pooled investments such as Exchange Traded Funds, simple deposits and asset backed securities and our discretion extends to investments in unregulated investments such as direct investments into commercial property or unquoted corporate bonds, but will never include 'Unregulated Collective Investment Schemes' (UCIS) or 'Non Mainstream Pooled Investments' (NMPI).*
>
> *Given the nature of the underlying investments, the liquidity of the portfolio may be restricted, but we will endeavour to facilitate trades via the single dealing point each month, where necessary."*

Mr R, on behalf of AW, signed a declaration in the application form on 16 December 2015 so as to confirm, amongst other things, that:

- AW considered the Greyfriars Discretionary Fund Management Service, and its fee of 0.5% through the Novia Platform, suitable for the investor.
- An appropriateness flowchart for P6 had been completed and this had confirmed the appropriateness of the portfolio for the investor.
- The objectives and mandate against which P6 would be managed was suitable for the risk profile and circumstances of the investor.
- Investment in unregulated investments of up to 100% was suitable for the risk profile, financial circumstances, knowledge and experience of the investor.
- The Trustees had placed no restrictions on the investments that could be held within the Scheme.

Mr G and Intelligent Money Trustees Limited signed an underlying investor/member/trustee agreement in the application form on 16 December 2015 and 7 January 2016 respectively. The declaration stated, amongst other things, that:

- The information contained in the application was accurate.
- The P6 DFM (non-advice) agreement had been read and understood and Greyfriars would treat the intermediary named in the application as its client.
- The intermediary was authorised to give dealing instructions.

Amongst other things, the P6 DFM (non-advice) agreement said that:

- The agreement gave Greyfriars discretion to manage funds held on the Novia platform within the parameters set out in the agreement.

- Greyfriars operated six risk graded portfolios. The investor's adviser had advised, and the investor had agreed that P6 – a portfolio of uncorrelated and often unquoted assets – is appropriate.
- Greyfriars would manage the investment portfolio on a discretionary basis. Its discretion extended to some unregulated investments including unquoted Corporate Bonds.
- Exposure to non-UCIS and non-NMPI unregulated investments may be 100% in P6.
- Unregulated investments would not be covered by the Financial Services Compensation Scheme ('FSCS').
- Other than those specified in the agreement, there were no restrictions to the management of the portfolio or the transactions Greyfriars arranged on a discretionary basis concerning the types of investments or markets, or on the proportion of the portfolio invested in any individual, or class, of investment.
- Greyfriars may not transact any business in which Greyfriars, its partners or registered individuals has a personal interest, unless that interest has been disclosed to the investor.
- By signing the agreement Greyfriars wouldn't be obliged to provide Key Features Documents or Key Investor Information Documents in advance of purchasing investments within the portfolio.
- Greyfriars would provide periodic statements within 25 days of each valuation. Valuation dates would occur six months after the agreement commenced and every six months thereafter, or every three months if requested. Statements would include performance statistics and would be on a *"bid"* basis.
- The charges for Greyfriars' discretionary management services included an annual management of 0.5% of the portfolio value. This was in addition to charges outlined within the Novia Key Features Document and Available Investment Guide.
- On occasion Greyfriars, or one of its other clients, may have some form of interest in the business Greyfriars was transacting. If this happened then Greyfriars would inform investors in writing and ask for consent before carrying out any further instructions.
- The portfolio would have one dealing date per month and it may be difficult or impossible to sell some investments at a reasonable price or in some circumstances at any price at all. Greyfriars' parent company "*Best International"* would endeavour to provide liquidity to facilitate trades, but investors may be locked into an investment for an indefinite period.
- Given the nature of the underlying holdings, which are often unquoted, it may be difficult to get an accurate valuation of investments at any period in time. In such instances, investments would be valued, where appropriate, at par.

Mr G and Intelligent Money Trustees Limited signed a declaration at the end of the agreement on 16 December 2015 and 7 January 2016 respectively and it was confirmed that no initial or ongoing fee was to be paid to Mr G's adviser for his services.

The P6 investments.

Mr G's investments and their purchase prices, held in Greyfriars P6, were as follows:

- Olmsted V Bond £73,500

- Enviroparks IV Bond £73,500
- Orthios Eco Parks IV Bond £73,500
- Resort Group V Bond £73,500
- Uavend Bond £1,500

The remainder of his funds were held in cash.

On 12 June 2017 Mr G took £25,000 in tax-free cash from his pension as a Pension Commencement Lump Sum (PCLS).

Mr G's complaints

In November 2019 Mr G has said that he was 'cold called' by a claims management company ('CMC'), and this CMC told him he may have a claim against AW as it had advised him to transfer the benefits of a DB pension. The CMC submitted a claim to the Financial Services Compensation Scheme ('FSCS') against AW on Mr G's behalf and the FSCS upheld his claim. The FSCS told Mr G that it had calculated the losses to his pension arrangements totalled £454,142.27. The FSCS paid him its maximum compensation of £50,000.

Mr G has said that as his losses amounted to much more than the compensation he had received from the FSCS, he looked further into the Greyfriars investment and engaged with his current representatives (AC) after finding them on the internet. AC submitted a further claim to the FSCS, this time against Greyfriars Asset Management LLP. But this claim was rejected by the FSCS on 7 December 2021.

On 11 May 2022 AC, on Mr G's behalf, complained to IM and requested compensation for his losses plus interest. In his letter of complaint Mr G said, in summary:

- He felt IM had treated him unfairly and was breaching the FCA rules and regulations when dealing with his SIPP.
- IM had breached the FCA Principles, namely:
    - Principle 2 – a firm must conduct its business with due skill, care and diligence;
    - Principle 3 – a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems; and
    - Principle 6 – a firm must pay due regard to the interests of its customers and treat them fairly.

IM replied to Mr G on 17 May 2022 saying it had determined his complaint was not valid as more than six years had passed since the initial investment was made. Unhappy with this response Mr G referred his complaint to our Service where it was considered by an Investigator.

IM's submissions to our Service

Following a request from our Service IM sent us documents relating to the original SIPP application. These included the transfer paperwork for all three of Mr G's pension schemes, the IM SIPP application, the application to open the Novia platform and a copy of Mr R's certificate showing he was authorised to advise on pension transfers. And in response to questions our Investigator asked IM about the due diligence it carried out on AW, IM said:

- AW became an introducer of business to IM in February 2015.
- IM had an introducer agreement in place with AW from 13 February 2015 and this was updated in February 2017. The agreement was terminated in November 2017 when the FCA placed restrictions on AW.
- IM ensured AW was authorised by the FCA, it checked AW's permissions on the FCA register and ensured it had a copy of the adviser's certificate.
- It understood that at the time of the advice given by AW, Mr R and Mr D from AW were meeting clients face to face for them to sign the application forms – IM only accepted wet signatures.
- It had no further discussions with AW regarding the client process and referrals of business following the initial agreement.
- IM conducted regular spot checks to ensure AW continued to be authorised and hold the required permissions.
- It paid the initial advice fee of £1,200 to AW but paid no further fees.
- It did not request to see copies of the suitability and pension transfer reports that had been provided to Mr G. But it did note the administrators of the DB scheme had approved the transfer.
- The introducer agreement with AW ended in November 2017 when restrictions were placed on AW by the FCA. IM was not aware of any FCA investigation before this time.
- 375 clients had been introduced by AW to IM during the course of its agreement. Mr G's application was number 131 and 51.46% of applications submitted via AW involved DB transfers.
- It did not permit non-standard assets when clients opened their plans. Mr G's assets were at all times classified as standard assets.
- AW provided 3.95% of IM's total new business during its agreement period.

IM also provided answers to questions regarding its due diligence on the Greyfriars P6 investment. It said:

- P6 was not classed as non-standard at the time.
- It was unable to provide any investment literature as the investment was held via a regulated third-party platform/DFM.
- It had a DFM agreement in place with Greyfriars.
- It did not carry out its own independent review of P6.
- It satisfied itself that the investment valuations were fair and reasonable as the prices were all quoted on a recognised exchange or by a regulated fund manager.
- It didn't ask consumers to sign any risk warnings or disclaimers.

We've been provided with an IM Terms of Business Agreement; this was signed by Mr R of AW on 13 February 2015 (so prior to IM accepting Mr G's business from AW). Amongst other things, it was stated in this agreement that:

> *"IM is under no obligation to accept any Client as a client of Intelligent Money Ltd. If any Client is refused as a client of IM, IM is under no obligation to provide a reason for this refusal to the Introducer.*

> …
>
> *The introducer agrees to provide Intelligent Money Ltd with all necessary documentation in relation to the client's application for a Scheme and to co-operate with Intelligent Money Ltd in the provision of any additional information as necessary.*
>
> *The Introducer agrees to co-operate with Intelligent Money in its reasonable endeavours to adhere to the guidance previously provided by the FSA in respect of SIPP & PP operators.*
>
> …
>
> …[IM] *will not engage in the provision of investment advice (as defined in FSMA and relevant secondary legislation) to clients of the Introducer.*
>
> …
>
> *The Introducer agrees that it is responsible for any advice including but not limited to advice as to the suitability or appropriateness of the Scheme services of IM for the Client. IM shall not be responsible for any advice or recommendation given by the Introducer in relation to underlying investments."*

We've also been provided with a copy of a *"Stockbroker/Discretionary Fund Manager Account Agreement"* between IM and Greyfriars. This was signed by both parties in September 2014 (so prior to IM accepting Mr G's business from AW). It's noted, amongst other things, in this agreement that:

> *"IM is the Scheme Administrator of the Pension Scheme.*
>
> *IM as the Scheme Trustee is the sole Trustee and legal owner of all assets held by the pension scheme, holding assets in Trust for its members.*
>
> *The Scheme Trustee of the pension scheme is for the purposes of the Agreement at all times the Client of the Stockbroker/DFM*
>
> *…the Scheme Trustee is to be treated as a Retail Client, unless otherwise agreed.*
>
> *The Scheme Administrator and Trustee give authority for the risk strategy/investment profile to be agreed between the pension scheme member, the pension scheme Member's appointed Financial Adviser and the Stockbroker/DFM. Authority is also given to the pension scheme Member and/or the pension scheme Member's appointed Financial Adviser to give investment instructions directly to the Stockbroker/DFM.*
>
> …
>
> *Where the Stockbroker/DFM is providing the pension scheme with 'either' execution only or advisory Accounts, the Stockbroker/DFM will be responsible for carrying out any appropriateness test on the pension scheme Member, as required under MiFID where an investment in a complex investment product is taking place. In the event that the duty has been undertaken by an IFA who is non MiFID, the Stockbroker/DFM will obtain a Suitability Declaration.*
>
> *Investments will be made in accordance with the HMRC legislation governing pension schemes and the Scheme Administrators List of Permitted Investments (*Permitted Investments is defined as *"the list of investments permitted by the scheme Administrator and Trustee and which forms part of this Agreement). The Scheme Administrator may update this document from time to time and the most recent version can be obtained from them.*
>
> …

All asset valuations, cash movements, stock and balance, aggregate stock and contract notes will be provided by email to the Scheme Administrator by CSV file if required.

…

The Stockbroker/DFM agrees to provide online access to view client's accounts to the scheme Administrator and to the pension scheme member (or their nominated IFA).

All valuations, transaction statements, Tax Vouchers and consolidated Tax Certificates should be sent to the Scheme Administrator or online access provided as applicable.

…

The Scheme Administrator reserves the right to terminate this Agreement with immediate effect if the Stockbroker/DFM ceases to be to be FCA authorised, or if there is any breach of the conditions set out in this Agreement.

…

Permitted Investments

The following are the allowable investments in respect of SIPPs, Group SIPPs and PPs where Intelligent Money Ltd are the Scheme Administrator and Trustee…"

A series of *"allowable investments"* were listed, the following was stated about Stocks and Shares:

Stocks and Shares

Stocks and Shares can be purchased if they are listed or dealt in on a recognised stock exchange. These can only be purchased and held by a UK based Stockbroker/Custody & Service Provider that is regulated by the FCA.

A recognised stock exchange for these purposes is either:

- The London Stock Exchange or the Alternative Investment Market (AIM), or,
- An overseas exchange recognised by HMRC, or,
- An exchange recognised by the FCA as either a recognised investment exchange or a recognised overseas investment exchange or a designated investment exchange or a regulated market in the European Economic Area (EEA).

This covers most transferable securities, including:

- Shares in Companies (equities),
- Fixed interest securities issued by government and other bodies,
- Debenture stock and other loan stock,
- Permanent Interest Bearing Shares (PIBS)
- Convertible securities,
- Exchange traded funds (ETFs)

And towards the end of the document it was noted that:

"The Stockbroker/DFM may NOT enter any of the following transactions without the prior written authority of Intelligent Money Ltd.

Purchase of shares not listed on a recognised exchange.

Warrants.

Futures.

Options

Contracts for Differences.

Other derivative instruments of any nature.

Geared or leveraged transactions.

Other transactions which could result in a loss greater than the original amount invested.

Purchase of shares that would give the member a controlling interest in a company.

UCIS. Overseas Property."

Our Investigator's view

Having considered what had happened our Investigator thought Mr G had made his complaint too late under the regulator's rules, so it wasn't one our Service could look in to. He thought Mr G would have first become aware of a problem with his SIPP by October 2018, by which time the FCA had taken action against Greyfriars, with the associated negative media coverage about the Greyfriars P6 investment, and Greyfriars had entered administration.

But, although he thought Mr G was aware of a problem, our Investigator didn't think Mr G would have likely linked this problem to IM until after the publication and subsequent publicity of the unsuccessful judicial review challenge in Berkeley Burke SIPP Administration Ltd v Financial Ombudsman Service (BBSAL) which was published on 30 October 2018. Following this publication and the publicity surrounding it, our Investigator thought a reasonable consumer would have worked out the implications for themselves, so it would have been fair for Mr G to have worked out that IM may have some responsibility for the problems with his SIPP by the start of 2019. And as the rules say Mr G needed to make his complaint within three years of this point, and as there were no exceptional circumstances which had prevented him from complaining sooner, Mr G had made his complaint too late.

Mr G did not agree with this. He said that in order to complain, he needed to be aware of a problem which had or might cause him loss, and that IM was responsible. He said it was unlikely even if he had carried out some research that he would have acquired enough understanding of the roles and responsibilities of the SIPP provider to think it was responsible. And in any case, the Carey Pensions case (*Adams)* was more relevant and only became binding on 1 April 2021. And he had complained within three years of that date so was in time.

As no agreement could be reached this complaint has been passed to me to review.

Additional submissions

IM, in response to questions posed by our Service regarding another, but materially similar complaint against IM (that was the subject of a final decision by a different Ombudsman), provided some information, that said, amongst other things:

- Its terms and permitted investments, along with the DFM agreement from Greyfriars, make no reference to Non-Standard Assets as the terminology was not in use at that time.
- In September 2016, when the FCA regulation came which required the categorisation of investments into Standard and Non-Standard Assets. IM did as was required and the assets in P6 were classed as Non-Standard.
- At this time it stopped accepting applications for P6 accounts and Non-Standard Assets in general.
- At the relevant time [November 2015] P6 wasn't classed as Non-Standard, it was a Standard investment and the distinction of unlisted bonds as Non-Standard Assets didn't yet exist.
- The FCA's Standard investments list didn't (and still doesn't) include bonds under the same category as shares.
- The FCA's Standard Assets at the time [November 2015] included (subject to Note 1) Corporate Bonds and with no reference to them being unlisted or not.
- Note 1 of the FCA's list of Standard Assets at the time said that:

  "A Standard Asset, and where relevant the underlying assets, must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required. Valuations should be undertaken in accordance with the generally accepted standards used in the relevant sector for the asset.

  The Standard Asset list includes assets which would normally meet the Standard Asset criteria."

- In December 2015 the FCA [as I understand it in Handbook Notice 28], in response to consultation feedback on DFM portfolios and Standard Assets, said that:

  "Standard assets

  3.23 Respondents asked for clarification as to whether discretionary fund management (DFM) portfolios are standard assets. Our Handbook provisions suggest that an asset can be considered standard if it is on the standard asset list (first condition), and is capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required (second condition).

  3.24 Provided the second condition is met, a DFM portfolio can be standard when the SIPP operator has arrangements in place to ensure that the portfolio comprises standard assets only. These arrangements may vary across different firms and business models, and therefore we cannot prescribe any regulatory preference: it should be the choice and responsibility of the firm.

  3.25 The most commonly cited arrangement by the industry was the reliance on contractual agreements with the investment manager around the classes of assets that make up the portfolio. We think these arrangements can achieve the regulatory purpose given that SIPP operators can themselves rely on and prove the effectiveness of such arrangements."

Further, IM said, amongst other things:

- The DFM Agreement didn't prohibit unlisted bonds being held within IM SIPPs at the time of Mr G's investment.
- Unlisted bonds weren't on IM's prohibited investment list because, at this time, [November 2015] the FCA didn't class them as Non-Standard Assets.
- It enquired about the liquidity of P6 with Greyfriars (which as an FCA authorised and regulated firm IM was able to rely upon under COBS rules) and IM was told that Greyfriars had a secondary market that would allow for redemption within 30 days.
- IM wasn't in breach of its own rules.

IM went on to tell us:

> "(A P6 document the investigator had referred to) *states that valuations will be provided every six months and that liquidity is provided via the portfolio having one dealing date per month.*
>
> *We are also satisfied that the portfolio was capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days due to the monthly dealing facility.*
>
> *We therefore did not need to follow these points up further as this satisfied our rules at the time.*
>
> *The only further enquiries we made of Greyfriars were conducted over the telephone. These related to statements on liquidity and valuations that we considered were inconsistent with the core contents above.*
>
> *We were informed that these did not apply to P6 as it stood at the time (as it only held standard assets) and the inclusion of such terms was simply to provide Greyfriars with sufficient future investment scope, should they require this, to manage the portfolio as they saw fit.*
>
> *Greyfriars further informed us that in any event they would not include any such holdings within Intelligent Money schemes without our written consent (which would never have been forthcoming) as per the terms of our DFM agreement which they had signed up to."*

And in response to a request from our Service for copies of any records IM had on file of telephone discussions it held with Greyfriars around statements on liquidity and valuations, it said, in summary:

- All communication on this matter with Greyfriars was undertaken by its then compliance director. Sadly, the director has since died.
- IM's CEO worked closely with IM's former compliance director and the CEO verbally reported the findings to the team at a regular manager meeting.
- Any telephone recordings with Greyfriars would since have been deleted.
- There are no contemporaneous records or recorded phone calls in relation to IM's enquiries into P6.
- IM doesn't carry out any due diligence at a client level, only at a product level.
- Its enquiries into P6 were first conducted in 2014, when it received the first application for investment.

- The only documentary record it had was a link to a P6 status document, which was by definition a regulated financial promotion - http://www.greyfriars.co.uk/content/uploads/2015/05/Portfolio-Six-Product-Status-1.pdf - however, Greyfriars' website no longer exists and the link no longer works.
- During the relevant period it was being approached on a regular basis by financial advisers about non-mainstream investments. It became usual for IM to check out anything that concerned it online and to make an instant decision as to whether it was a Standard Asset or not.
- P6 was, at that time, a Standard Asset as it held Corporate Bonds and offered 30 day liquidity.
- It established a quick initial method of screening that virtually always arrived at a decision to reject an investment, on the basis of it being Non-Standard.
- It was very easy for IM to say yes or no to *"assets/investments without making detailed files, on the basis of them either being standard or not."*
- With P6, it was able to quickly ascertain that the portfolio invested in Standard Assets (corporate bonds) and it made further enquiries regarding liquidity before accepting the investment (including sourcing the now inactive status document) which confirmed 30 day liquidity.
- IM regularly reported firms to the FCA who were offering Non-Standard Assets and advisers who were recommending Non-Standard Assets.
- IM's CEO had raised 'gut feeling' concerns about the activities of AW to the FCA, despite IM having no evidence of any wrongdoing. And the FCA quickly stopped AW from writing new business as a direct result of IM's actions.

Novia has previously told our Service, amongst other things, that:

"

1. *Novia did not provide a warehouse facility for the P6 investments*
2. *Best International did not procure liquidity from Novia for the P6 investments, or for any other investment*
3. *We have no record of being asked by any SIPP provider regarding a warehouse facility or a guarantee/confirmation that investors would be able to redeem their investments in P6*
4. *Other comments:*
    - *Greyfriars Asset Management were set up as a discretionary fund manager on the Novia platform…*
    - *…The account holder, SIPP operator or otherwise, would not normally have questioned individual trades made within the account with us directly as this would have been processed and instructed on the platform by the DFM...*
    - *We…operate on an execution-only basis on the instructions received by appointed FCA regulated financial advisers or DFMs. All investments are held in the name of our nominee company for safeguarding.*
    - *We have never operated a warehouse facility for any investment nor conducted business as a market maker*
    - *The P6 investments were traded monthly. We submitted our aggregated deal instructions to Best International on the 27th of every month for purchases and redemptions, trades settled on T+4.*

- *We have never provided any literature or information with regards to Non-Standard Investments to any SIPP operator or account holder and would have directed them to the DFM, Bond company, or financial adviser to obtain the Investment Memorandum and any other investment literature. Whilst we did obtain copies of such documentation in the course of the due diligence process we conducted to satisfy ourselves before allowing the underlying mini-bonds onto our platform, these were for internal use only and not shared with any external parties"*

Further Novia said:

> "*We did not consider any of the P6 investments as FCA standard assets. Novia classified them as Non-Standard Investments from outset and as a result performed enhanced due diligence before we allowed the underlying mini-bonds to be made available on our platform...We have never made any suggestion or representation that they met the criteria for FCA standard assets, and P6 investments have…always been treated as Non-Standard Investments on our platform"*

Novia's comments above were shared with IM in the case that was the subject of the previous final decision, and IM provided a detailed response to Novia's points and the provisional decision of the Ombudsman in that case. Below is a *summary* of what I consider to be the main points made in IM's response. The response contained both generic information, and information specific to the complainant (Mr S) in that case. However, given the similarities in the complaints I feel it is entirely relevant to include IM's response here. The list isn't exhaustive, and before making this decision I have carefully considered IM's response in full:

- IM understood the P6 investments qualified as Standard Assets because, amongst other things, Greyfriars represented that they were. These representations constituted regulated financial promotions by an FCA-authorised and regulated firm, and stated that:
  - The P6 investments were available on Novia's platform.
  - They were traded monthly on Novia's platform.
  - Through the *"monthly dealing facility on the Novia Platform",* they qualified as *"standard investments as referenced by the Financial Conduct Authority Policy Statement 14/12. They are therefore available through many Self-Invested Personal Pensions, including the Novia option*".
  - They benefited from "*a warehouse facility for facilitating trades*" meaning that investors would not be "*locked-in to the Portfolio for any pre-defined period*."
- When considering whether to accept the P6 investments IM reasonably understood, on the basis of Greyfriars' representations, that Novia didn't simply provide the investment trading venue, but also provided the monthly dealing facility.
- IM was aware Novia couldn't provide the monthly dealing facility without adequate liquidity to facilitate trades. IM understood from Greyfriars' statements that a warehouse facility would be provided. Given Novia's role, as represented by Greyfriars, IM reasonably assumed that Novia would provide that warehouse facility.
- That Novia has now stated that it didn't provide a warehouse facility demonstrates that IM was misled by Greyfriars' misrepresentations.
- The reasonableness of IM's decision-making must be assessed according to what it knew or ought reasonably to have appreciated at the relevant time.

- P6 was not a portfolio, it was a strategy where the underlying investments were selected by Greyfriars on a case-by-case basis.
- IM ensured Greyfriars signed its SIPP Terms of Business, this was a year prior to Greyfriars selecting Mr S' investments in December 2015. During this period IM experienced no liquidity issues with assets Greyfriars had selected for its P6 strategy.
- There weren't ongoing red flags that ought to have caused IM to question Greyfriars' statements
- While Greyfriars' DFM Agreement contained risk warnings regarding its discretion to select Non-Standard Assets, IM understood this was generic and made allowances for any potential eventuality Greyfriars may have to cover. IM had no reason to consider this applied to the investments Greyfriars selected for Mr S.
- Novia has confirmed the P6 investments were traded monthly and that it submitted aggregated deal instructions to Best International on the 27th of every month, with trades settling on T+4. This complied with the relevant time limit established by the FCA in its definition of Standard Assets. And Novia hasn't indicated liquidity problems prevented or delayed those trades.
- This is consistent with IM's transactional analysis which demonstrates that there was sufficient liquidity to facilitate trades on a monthly basis up to the point when the FCA's rules changed in September 2016 (and indeed thereafter).
- IM was unaware of Novia's own classification of the investments as Non-Standard.
- IM didn't rely upon suggestions or representations by Novia about the nature of the P6 investments. It relied upon Greyfriars' statements.
- If Novia classified the P6 investments as Non-Standard from the outset, IM questions why Novia contacted it in September 2016 (following the FCA's amendment to the Standard Asset list) to notify it that the P6 investments were now Non-Standard. It's difficult to understand why Novia would have done this unless it understood that IM had been led to believe that the P6 assets were Standard Assets.
- Novia facilitated the purchase of assets into SIPPs without notifying IM that it had classified the assets as Non-Standard.
- Novia bought the P6 investments on instruction from Greyfriars, listed the investments on its platform, and executed the trades. Without Novia there would have been no P6 strategy, Greyfriars used Novia exclusively to hold P6 investments.
- It's unfair to hold IM responsible for the failings of now-insolvent entities, where those entities had central roles in determining investment strategy, assessing suitability, and facilitating and executing trades.
- Novia has set aside money for compensation relating to legacy investments. Novia wouldn't have done so had it not considered that it faced regulatory liabilities arising from the investments. In this context, the decision to hold IM liable for the entirety of Mr G's loss is all the more disproportionate and unreasonable.
- It's implausible that Novia was unaware of statements Greyfriars was making in its P6 marketing materials. Novia must have known about Greyfriars' representations, but it took no steps to notify IM that it didn't agree with these representations.
- Greyfriars and Novia were responsible for effecting trades. And AW and Greyfriars had the delegated authority to authorise trades.
- Novia has said it wouldn't have expected IM to question individual trades as responsibility for instructing and processing trades lay with Greyfriars and Novia.

- Novia indicates that due to its classification of the P6 investments as Non-Standard it conducted enhanced due diligence. IM didn't see Novia's detailed reports, these were for Novia's internal use only.
- When IM accepted the P6 investments it understood the investments were Standard Assets. In IM's view they were eligible for inclusion under its SIPP Terms of Business and didn't require enhanced due diligence. If IM had appreciated that enhanced measures were required on account of the investments being Non-Standard, it wouldn't have accepted the investments.
- It would have been wholly disproportionate for IM as the SIPP operator to perform the level of due diligence Novia undertook. It's unreasonable and unfair to suggest that the enhanced reporting Novia conducted was the type of information IM would have been able to ascertain about the P6 investments at the time.
- The provisional decision [by the Ombudsman in the complaint made by Mr S] imposes a disproportionate and unreasonable regulatory standard on IM.

On 16 January 2024 I wrote to Mr G asking for some further information. I asked, in summary:

- If he had been written to, or had any recollection of being contacted by AW around November 2016 to discuss some non-standard bonds which were within his Greyfriars P6 portfolio and any changes that were required.
- If he did anything as a result of a letter which IM sent to him in March 2018 informing him that AW had been placed into administration.
- How and when did Mr G become aware of Greyfriars being placed into administration later in 2018?

Mr G responded, in summary:

- He had not received any correspondence from AW concerning the bonds at that time [November 2016]. And had he done so he would certainly have acted to move those bonds and it would have raised concerns regarding the rest of his investment. The valuations he had been sent had given him no reason to be concerned.
- He had no record of receiving any letters or emails from IM regarding the liquidation of AW or Greyfriars. He confirmed he would not have known who Greyfriars' administrators were and had received no correspondence from them either.
- He did not know anything about Greyfriars entering administration and saw no press coverage. He had received no correspondence from either IM or Novia so was totally ignorant to Greyfriars going into liquidation in late 2018. The only reason he progressed a claim with the FSCS was because a CMC had cold called him and said he may have a claim against AW as it may have done something wrong as he'd transferred a DB pension. He thought at this point his pension was not at risk.

I wrote to IM and shared with it Mr G's responses. I told IM that when considering whether Mr G had made his complaint too late, I needed to establish when Mr G had first become aware of a problem with his SIPP, and/or the investments held within it, and when he ought reasonably to have connected IM to those problems. And Mr G was saying he only became aware of a problem, and that IM might have some responsibility for that problem, after he engaged with the CMC in November 2019. And it appeared that he had complained within three years of that date.

So I asked IM if it consented to our Service considering the merits of Mr G's complaint, and that if IM maintained Mr G had made his complaint too late under the regulator's rules, then it should provide evidence to support this.

IM did not provide any further evidence but maintained that it did not consent to our Service considering the merits of Mr G's complaint.

I issued a provisional decision on this complaint. In my provisional decision I concluded that I thought the complaint was in the jurisdiction of our Service and so was one I could consider, and that I thought the complaint should be upheld. I said that IM should have decided not to accept business from AW, not to permit its SIPP members to invest with Greyfriars and not to accept P6 in its SIPPs *before* it received Mr G's business from AW.

IM did not accept my provisional findings and made detailed submissions on a number of points. I've set out a summary of what I consider to be the main points made in IM's response to my provisional findings. I have however carefully considered IM's response in full.

- The due diligence IM carried out on AW, Greyfriars and P6 was proportionate and discharged its regulatory obligations pursuant to Principle 6 of the FCA's Principles for Businesses, and the regulator's guidance.
- AW, Greyfriars and Novia were FCA authorised and regulated when IM accepted the investments into its SIPP.
- The introductions from AW were not in significant volumes; and
    - AW had identified IM as a partner with whom it could build a supportive working relationship.
    - It was not unusual for most of a regulated firm's introductions to transfer and invest in the same portfolio, as pension transfers were one of AW's niche specialisms, and it held the required regulatory permissions.
    - AW's introductions only represented 5.9% of the total introductions to IM during the period, so this is not "*significant volumes…"*
    - The provisional decision did not take into account the change in broader market developments following the Pension Schemes Act 2015, and it was not unusual for investors such as Mr G to access tax-free lump sums earlier than they would have done under their existing arrangements.
    - IM conducted proportionate due diligence on AW – checking it was regulated and authorised to give financial advice, obtaining a copy of the adviser's G60 certificate, and entering into Introducer Terms of Business in February 2015.
- All of the investments identified in the provisional decision, at the time they were accepted into the SIPP, complied with the FCA's definition of "standard assets" and were therefore "permitted investments" for the purposes of IM's own SIPP Terms and Conditions and the FCA's list of standard assets as it then applied.
- IM sat within an investment chain that included three authorised and regulated firms; an IFA (AW), a DFM (Greyfriars), and an investment platform (Novia). The provisional decision to saddle IM with the entirety of Mr G's losses is perverse given the involvement of other firms in the investment chain;
    - IM's role was largely administrative, providing and administering the wrapper into which the investments, which were advised by an IFA and managed by a DFM, were placed.

  - IM charged customers between £150 and £180 per year for these administrative services, which was less than the IFAs and DFMs charged.
  - It is perverse to impose such a high compliance bar on a SIPP administrator, disproportionate to its role in the investment chain and also to how the entire sector is structured and remunerated.
- The findings on causation were misplaced, and IM did not agree that it is appropriate for it to compensate Mr G for the full extent of his losses;
  - The assumption in the provisional decision that Mr G wouldn't have invested in P6, had IM not permitted it, ignores that not every SIPP operator applied a Standard Assets only policy. SIPP operators weren't prevented from accepting Non-Standard Assets into their SIPPs and numerous providers did so. And one must assume, for the purposes of the relevant counter-factual scenario, they did so in full compliance with their regulatory obligations and good industry practice.
  - It is overwhelmingly probable that another SIPP provider would have permitted the investments.
- It is unfair that the pivotal role of other parties in the investment chain has not been properly acknowledged when assessing culpability for loss. The provisional decision does not provide any detailed reasons for disregarding the contribution by other parties to the losses suffered.

Mr G accepted my provisional findings and made no further submissions.

What I've decided - Jurisdiction

I've reconsidered all the evidence provided and arguments made in order to decide whether we can consider Mr G's complaint.

IM has stated that it believes Mr G has made his complaint too late under the regulator's rules as he submitted it more than six years after the event he is complaining about, and more than three years after the point he knew there was a problem.

The rules I must follow in determining whether we can consider this complaint are set out in the Dispute Resolution (DISP) rules, published as part of the FCA's Handbook.

The section of the rules that are relevant to this complaint means that, unless IM consents (it does not), we can't look into this complaint if it's been brought:

- more than six years after the event complained of;
- or, if later, more than three years after Mr G became aware – or ought reasonably to have become aware – he had cause for complaint;

IM says that Mr G's complaint was raised on 11 May 2022. Having seen the complaint letter, I'm satisfied that this is the case. I can also see that the crux of the complaint was that IM didn't treat Mr G fairly in its handling of his SIPP, and as a result of this, he's suffered losses that IM should compensate him for. Although Mr G didn't specifically mention initially that he thought IM didn't undertake sufficient due diligence on AW, nor the Greyfriars investments themselves, it's clear from his submissions to our Service that his complaint also incorporates these issues.

The application for the IM SIPP was completed, and accepted by IM on 19 November 2015. Mr G's pension funds were transferred into it during December 2015 and £300,000 was

transferred to Novia for investment in Greyfriars P6 on 7 January 2016. All of this occurred more than six years before Mr G had referred his complaint to either IM or us.

So I've gone on to consider whether Mr G referred his complaint more than three years from the date on which he either was aware, or ought reasonably to have become aware, he had cause for complaint. And when I say here cause for complaint, I mean cause to make this complaint about this respondent firm, IM, not just knowledge of cause to complain about anyone at all.

And having considered everything that has happened, I do not think Mr G had, or ought reasonably to have had, cause for complaint against IM until after he engaged his first representative, in November 2019.

I've come to this conclusion having considered everything, including the correspondence from IM to Mr G that I have seen since the inception of the SIPP, what both Mr G and IM have said happened, what Mr G says he thought at the time, and the SIPP valuation statements Mr G was sent.

IM has said it wrote to AW on 15 November 2016, following the FCA's intervention and apparent reclassification of some of the bonds in the P6 portfolio to 'non-standard' assets. In this letter IM said that AW had confirmed it would be contacting all the investors concerned (of which Mr G was one) with a view to them making alternative platform arrangements. IM has said this showed that Mr G would have been made aware of a problem with his SIPP.

But I've not seen any evidence to show AW did contact the investors concerned. And Mr G has said he was not contacted by AW. And I find this account credible.

I have also considered whether the fact that IM wrote to Mr G in March 2018, to inform him that AW had been placed into administration, ought reasonably to have made Mr G think there may be a problem with his SIPP. Mr G has said he doesn't have any record or memory of being told this by IM, but I think whether or not he was told is immaterial in any event. I don't think the contents of this letter, a copy of which I have been provided by IM, would have likely caused Mr G concern. I say this because I've not seen anything to suggest there was an ongoing advisory relationship between Mr G and AW, and following the inception of the SIPP and the P6 application I can't see AW has had any further involvement or contact with Mr G. Mr G's pension monies weren't invested into AW and the fact that AW was being placed into administration wouldn't, in my view, have given a reasonable investor in Mr G's position cause to think there was, or may be, a problem with the IM SIPP or the investments held within it.

So other than being informed of AW's status, with whom he had no ongoing relationship, I can't see this would likely have had any effect on Mr G. So I do not think this would have caused, or ought reasonably to have caused him any concern or to question the status of his SIPP or investments.

The Investigator has placed some weight on Mr G being aware that Greyfriars was placed into administration later in 2018, and Mr G knowing this would have caused him to realise there was a problem with his SIPP. But I've not seen anything to suggest Mr G was informed of the Greyfriars administration process by any party. And when I have asked him what he knew about it at the time, he has said he was unaware of it, and had no concerns about his funds at that time. And in the absence of any evidence to the contrary, I find Mr G's testimony on this point credible.

And Mr G's testimony that he had no concerns about his funds at that time is supported by the valuations of Mr G's pension sent to him. They showed the total value of his pension (which included P6) held on the Novia platform as follows:

19/11/16	£561,094.09
19/11/17	£567,153.00
19/11/18	£568,832.18
19/11/19	£590,743.58
19/11/20	£596,942.85
19/11/21	£318,142.85
02/11/22	£315,385.13

So, from these valuations, I can't see Mr G would have likely thought there was a problem with his pension fund held in the IM SIPP more than three years before he complained to IM or our Service. I am persuaded that Mr G was unconcerned by the news that AW had gone into administration, and that he was unaware that the same had happened to Greyfriars later in 2018. So, based on the available evidence, I don't think Mr G was aware, or ought reasonably to have become aware, that there was a problem which had caused, or may cause, him loss more than three years before his complaint was made to IM. Mr G has told our Service, via his representatives, that he engaged a CMC in November 2019 after being 'cold called' by it. The CMC told him he may have a claim against AW as he'd been advised to transfer the benefits of a DB pension, but even at that stage Mr G says he didn't think his pension was at risk. Mr G says it was only when a claim to the FSCS was submitted on his behalf sometime after this date, and in January 2021 when the FSCS showed Mr G that he'd suffered considerable losses as a result of the pension transfer advice, he became aware of a problem and that he'd suffered a loss. And Mr G's view on this is supported by the statements, which only showed a significant fall in the value of his funds between November 2020 and November 2021.

So, I think it likely that the earliest time that Mr G was aware there was a problem which had caused, or may cause, him loss, was after he engaged the CMC in in November 2019.

As I've said above, if a complaint is made more than six years after the event the complaint concerns, the DISP rules require a consumer to complain within three years of when he became aware, or ought reasonably to have become aware, of cause for complaint. But cause for complaint requires him to be aware of a problem which has, or may cause him loss. And as I've said, I've not seen anything which I think would have, or ought reasonably to have made him aware of a problem, and that problem had or may cause him a loss, until after he engaged the CMC in November 2019. So it follows that November 2019 is the earliest point Mr G ought reasonably to have known he may have cause for complaint about anyone at all. And as Mr G made his complaint to IM in May 2022, this was within three years.

So although Mr G has made his complaint more than six years after the events he is complaining about, I am satisfied that he complained to IM within three years of when he became aware, or ought reasonably to have become aware he had cause for complaint.

As I remain satisfied this complaint is one we're able to consider, I've gone on to reconsider the merits of the complaint below.

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.

The parties to this complaint have provided detailed submissions to support their position, both initially, and IM in response to my provisional decision, and I'm grateful to them for doing so. I've considered these submissions in their entirety. However, I trust that they won't take the fact that my final decision focuses on what I consider to be the central issues as a discourtesy. To be clear, the purpose of this decision isn't to comment on every individual point or question the parties have made, rather it's to set out my findings and reasons for reaching them.

Given the general nature of Mr G's complaint, in deciding what's fair and reasonable in the circumstances, it's appropriate to take an inquisitorial approach. And, ultimately, what I'll be looking at here is whether IM took reasonable care, acted with due diligence and treated Mr G fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issues in Mr G's complaint is whether it was fair and reasonable for IM to have accepted Mr G's SIPP business in the first place and also whether it was fair and reasonable for IM to have accepted Mr G's application to invest with Greyfriars in P6. So, I need to consider whether IM carried out appropriate due diligence checks on AW, Greyfriars and P6 before deciding to accept Mr G's applications.

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 – at the relevant date).

PRIN 1.1.9G at the relevant date stated that:

> *"Some of the other rules and guidance in the Handbook deal with the bearing of the Principles upon particular circumstances. However, since the Principles are also designed as a general statement of regulatory requirements applicable in new or unforeseen situations, and in situations in which there is no need for guidance, the appropriate regulator's other rules and guidance should not be viewed as exhausting the implications of the Principles themselves."*

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 161:

> *"The Principles are the overarching framework for regulation, for good reason. The FSA has clearly not promulgated, and has chosen not to promulgate, a detailed all-embracing comprehensive code of regulations to be interpreted as covering all possible circumstances…The overarching framework would always be in place to be the fundamental provision which would always govern the actions of firms, as well as to cover all those circumstances not provided for or adequately provided for by specific rules."*

At paragraph 162 Ouseley J said:

> *"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 requirements 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."*

At paragraph 77 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."*

And at paragraph 184 Ouseley J said:

> *"The width of the Ombudsman's duty to decide what is fair and reasonable, and the width of the materials he is entitled to call to mind for that purpose, prevents any argument being applied to him that he cannot decide to award compensation where there has been no breach of a specific rule, and the Principles are all that is relied on."*

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 *BBSAL*):

> *"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."

And at paragraph 107:

"The passages in the judgment of Ouseley J. discussed above were essentially directed at the question of whether the FSA could use the Principles to augment the rules. The answer to that question was that it could and there is no suggestion that the concept of augmentation was to be limited in the manner for which BBSAL contended. However, it is also important that the present case concerns the decision of an Ombudsman, rather than the FSA. In that connection, it is clear from the judgment of Ouseley J. that the Ombudsman can permissibly take an even broader approach than the regulator."

And then, after citing more passages from the BBA case, Jacobs J at paragraph 109 stated:

"I consider that these passages, too, are fatal to BBSAL's attempts to put limits on the extent to which the Ombudsman was entitled to use the Principles in order to augment existing rules or duties. The Ombudsman has the widest discretion to decide what was fair and reasonable, and to apply the Principles in the context of the particular facts before him."

The *BBSAL* judgment also considers section 228 of the Financial Services and Markets Act ('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 G's case.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case and 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 G'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 G'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 G's complaint, amongst other things, I'm considering whether IM ought to have identified that the introductions from AW involved a significant risk of consumer detriment and, if so, whether it ought to have ceased accepting introductions from AW *before* entering into a contract with Mr G. And I'm also considering whether IM ought to have identified that the P6 investment involved a significant risk of consumer detriment and, if so, whether it ought to have declined to accept applications to invest in P6 *before* it received Mr G's P6 application.

The facts of Mr Adams' and Mr G's cases are also different. I make that point to highlight that there are factual differences between *Adams v Options SIPP* and Mr G's case. And I need to construe the duties IM owed to Mr G under COBS 2.1.1R in light of the specific facts of Mr G's case.

So I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr G's case, including IM's role in the transactions.

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 IM was under any obligation to advise Mr G on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr G 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 G'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 Businesses ('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

The introduction to the 2012 Thematic Review Report explains that it was undertaken to investigate concerns that the regulator had about poor firm conduct and the potential for significant consumer detriment, and to determine the extent to which SIPP operators had adapted processes and procedures to reduce risks following the 2009 Report. The regulator stated in the introduction that the findings of the review confirmed its concerns. The 2012 Report states that all SIPP operators should review their business in light of the contents of the report.

Findings from the review included:

- Inadequate risk identification processes and risk mitigation planning underpinned by poor quality management information ('MI').
- An increase in the number of non-standard investments held by some SIPP operators, with often poor monitoring of this.

- A lack of evidence of adequate due diligence being undertaken for introducers and investments.

The Report stated that:

> *"In our 2009 report we identified that there was a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, as this is the responsibility of clients and client's advisers…*
> *…*
> *As we stated in 2009, we are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Business: a firm must pay due regard to the interests of its customers and treat them fairly', in so far as they are obliged to ensure the fair treatment of their members."*

And, under the heading *"Non-standard investments, due diligence and financial crime"* the Report stated that:

> *"Some SIPP operators were unable to demonstrate that they are conducting adequate due diligence on the investments held by their members or the introducers who use their schemes, to identify potential risks to their members or to the firms itself."*

The review set out the regulator's expectation that SIPP operators review their business, paying particular attention to, amongst other things:

- Whether their risk identification and risk mitigation planning was sufficiently robust to ensure that the firm has safeguarded its customer's interests.
- The level of non-standard investments held within their schemes.

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."*

Under the heading *"Management Information (MI)"* the finalised SIPP operator guidance stated that:

> *"Principle 6 of the FCA's Principles for Businesses requires all firms to pay due regard to the interest of its customers and treat them fairly. SIPP operators are not responsible for the SIPP advice given by third parties such as financial advisers. We would expect SIPP operators to have procedures and controls in place that enable them to gather and analyse MI that will enable them to identify possible instances of financial crime and consumer detriment."*

The guidance goes on to give examples of MI firms should consider which includes:

- Collection of MI to identify trends in the business submitted by introducers.
- The ability to identify the number of investments, the nature of those investments, the amount of funds under management, spread of introducers and the percentage of higher risk or non-standard investments.

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. In the letter the FCA said that in a Thematic Review it had recently conducted it had focused on the due diligence procedures SIPP operators used to assess non-standard investments, and how well firms were adhering to the relevant prudential rules.

The letter went on to say that during the Review it found a significant number of SIPP operators were still failing to manage the risks and ensure customers were protected appropriately. The FCA encouraged SIPP operators to review the key findings in its Thematic Review, which were summarised in an annex to the letter, and asked them to take action to ensure their businesses were able to demonstrate an appropriate degree of protection for consumers' pension savings.

The annex to the *"Dear CEO"* letter states, amongst other things, that the Thematic Review identified significant failings in due diligence procedures to assess non-standard investments and that:

> *"Principle 2 of the FCA's Principles for Business requires all firms to conduct their business with due skill, care, and diligence. SIPP operators should ensure that they conduct and retain appropriate and sufficient due diligence, for example, assessing*

that assets allowed into a scheme are appropriate for a pension scheme. Our thematic review found that most SIPP operators failed to undertake adequate due diligence on high risk, speculative and non-standard investments…"

The annex also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. Such 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.)*

Further, the annex states that:

"We found that most firms do not have the expertise or resources to assess this type of business, but were still allowing transactions to go ahead. This increases the risk that a pension scheme may become a vehicle for high risk and speculative investments that are not secure assets, many of which could be scams. It is not acceptable for firms to put consumers at risk this way.

Although our thematic review focussed on non-standard investments, it is important to note that guidance on due diligence applies to all investments.

Findings from our review included firms failing to:

- *understand the nature of an investment, especially contracts for rights to future income, and sale and repurchase agreements*
- *check that money was being paid to legitimate businesses, and*
- *to independently verify that assets were real and secure, or that investment schemes operated as claimed.*

We found that, typically, firms had difficulty completing due diligence for non-standard overseas investment schemes where firms did not have access to local qualified legal professionals or accountants. Also, since the last review of SIPP operators, we noted an increase in the number of opaque investment structures, such as special purpose vehicles and limited companies, created to pool investment monies and finance other businesses. Firms had difficulty establishing where money was being sent, and whether underlying investment propositions were genuine.

We also found that many SIPP operators accepted investments into their schemes without adequate consideration of how investments could be valued or realised.

Finally, we found many firms continuing to rely on marketing and promotional material produced by investment providers as part of due diligence processes, despite previous guidance highlighting the need for independent assessment of investments."

The annex refers to the proposed definition of Non-Standard Assets as set out in the FCA's Consultation Paper - CP12/13. The proposed definition was by way of a list of Standard Assets with all assets not on the list being categorised as Non-Standard Assets.

The Standard Assets list included Corporate Bonds but also included the following criteria for Standard Assets:

> *"Standard assets must be capable of being accurately and fairly valued on an ongoing basis, readily realised whenever required (up to a maximum of 30 days), and for an amount that can be reconciled with the previous valuation."*

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

I acknowledge that 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 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 2009 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 IM, at the time of the events under consideration here, thought the regulatory publications were relevant. In the Business Agreement it entered into with AW, IM referenced, in general terms, at least some of the publications:

> *"The Introducer agrees to co-operate with Intelligent Money in its reasonable endeavours to adhere to the guidance previously provided by the FSA in respect of SIPP & PP operators."*

Further, IM says it did carry out some due diligence on AW, Greyfriars and P6. 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 IM'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.

The publications make frequent reference to introducers but not execution only stockbrokers or discretionary investment managers. However, given the non-exhaustive nature of the guidance and its purpose to make clear to non-advisory SIPP operators that they have a responsibility for the quality of the SIPP business they administer, I'm satisfied that the points made could be borne in mind in relation to other businesses SIPP operators deal with such as execution only stockbrokers and discretionary investment managers.

In this regard I note that on 18 April 2013, so well before Mr G' SIPP application was accepted by IM, the FCA published a Final Notice relating to Mr W who had been a director of a SIPP operator called Montpelier Pension Administration Services ('MPAS').

The FSA conducted a supervisory visit of MPAS in October 2010 as part of the SIPP Thematic Review. A number of findings were made against Mr W arising out of that visit including, amongst other things, that he'd failed to exercise due skill, care, and diligence in managing the business of MPAS in breach of Principle 6. The findings of fault included findings relating to:

- Due diligence and monitoring of introducers.
- Due diligence of new assets to be accepted into MPAS' schemes.
- Due diligence and monitoring of discretionary fund managers.

It was noted, amongst other things, in the Final Notice that:

> *"4.29. MPAS' due diligence on the Introducers from whom it accepted new business consisted only of a search on the Financial Services Register each time an application for new business was received to ensure that the introducing firm was still authorised. MPAS did not carry out any other monitoring, such as identifying and*

analysing referral trends, which would have enabled it to be satisfied that Introducers were recommending SIPP investments only where it was suitable to members and only where the investment type was suitable to MPAS...

…

4.31. After the Authority had communicated its concerns to MPAS in January 2011 regarding the firm's lack of due diligence and monitoring of Introducers, Compliance conducted an audit which identified a trend of exclusively high-risk business being referred by certain Introducers, indicating that those Introducers were not referring investors to MPAS according to suitability alone, and importing significant risk to members and MPAS alike. Compliance identified two Introducers as having habitually referred an unacceptably high volume of high-risk investments, or as having advised clients who were not sophisticated investors to place the entirety of their SIPP funds into high-risk investments…

…

4.37. MPAS did not have adequate systems and controls in place to monitor and administer SIPP assets on an ongoing basis. (Mr W) *did not ensure that there was an appropriate system in place by which MPAS could identify the exact assets held for individual members, nor was there a system in place by which MPAS could instantaneously ascertain the current value of those assets (for example through real-time price feeds). Instead, MPAS relied on obtaining delayed valuations upon request to the relevant investment platforms.* (Mr W) *did not make reasonable effort during the Relevant Period to identify and implement a method by which MPAS could regularly and closely monitor the value of assets held for individual members…*

…

4.39. MPAS did not routinely gather management information and was thereby unable to identify areas of risk to both itself and to members. Regular collation and analysis of management information should have enabled the Board to have a clear understanding of vital aspects of the business, such as the effectiveness of its compliance procedures, its adherence to service standards and trends indicating risk in the types of business being referred and accepted.

…

5.4. (Mr W) *failed to exercise due skill, care and diligence by giving insufficient consideration to compliance and to the safety of members' investments, including failing to understand the consequences and risks of accepting a high volume of illiquid non-standard investments into the MPAS schemes. By failing to ensure MPAS could identify such issues,* (Mr W) *caused scheme members to be exposed to additional risks such as formulaic selling by introducers, unsuitable recommendations for illiquid or volatile investments, or the potential imposition of a range of tax charges.*

…

5.18. (Mr W) *did not take steps to ensure that MPAS made adequate use of management information so as to enable it to identify areas of risk to both members and to MPAS' itself.* (Mr W) *should have ensured that Compliance and the Board in particular had ready access to management information reports at its quarterly meetings in order to allow it to govern the firm effectively. MPAS did not utilise management information to identify and mitigate areas of risk, with the effect that it only acted upon key areas of risk (such as certain Introducers recommending unacceptably high volumes of risky investments to some members) after they were highlighted by the Authority following its supervisory visit in October 2010…*

…

5.19. As both managing director and MPAS' liaison with Introducers, (Mr W) *failed to take reasonable steps to ensure that MPAS conducted adequate due diligence and continued monitoring on those firms.* (Mr W) *concentrated his efforts on fostering business opportunities for Introducers without taking reasonable steps to ensure that those Introducers were advising scheme members in relation to suitable SIPP*

> *investments only, in satisfaction of MPAS' regulatory obligation as a SIPP operator to ensure that its members were being properly advised…*
> *…*
> *5.21. Accurate identification and monitoring of SIPP assets should have been of particular concern to* (Mr W) *during the Relevant Period given the large proportion of non-standard, investments under MPAS' administration. However,* (Mr W) *failed to take reasonable steps to ensure that MPAS was able to identify and monitor assets accurately on behalf of members. He did not ensure that MPAS had access to regular and accurate asset information, which would have been easily obtainable via software providing regular and live price feeds.* (Mr W) *thereby failed to ensure that MPAS was able to satisfy its basic obligation to SIPP members to maintain proper control over the assets it held for their benefit…"*

Specifically, on the discretionary fund managers point, the FCA said:

> *"4.38 A proportion of the assets administered by MPAS were managed by discretionary fund managers during the Relevant Period, and MPAS typically entered into agreements with those discretionary fund managers upon recommendation by MPAS' Introducers. However, no due diligence was undertaken in relation to the recommended fund managers, nor was any ongoing monitoring undertaken to ensure that those with responsibility for management of members' assets were doing so properly…"*

And

> *"5.6. Additionally,* (Mr W) *did not understand the significance of certain systems and controls, including the use of management information to identify and mitigate areas of risk in the business, and due diligence and continued monitoring of Introducers and discretionary fund managers and the SIPP assets, which would have reduced the risk of members being unsuitably advised or their assets unsafely managed."*

And

> *"5.22.* (Mr W) *failed to ensure that any controls were in place in relation to discretionary fund managers, in the form of agreements setting out the terms on which SIPP assets were to be managed. By failing in this regard,* (Mr W) *exposed members to the risk that their assets would be mismanaged without detection by MPAS, and especially given that no other procedures were in place for continuous monitoring of discretionary fund managers.*
>
> *5.23. The Authority therefore considers that in having failed to take reasonable steps to ensure that systems and controls were in place in key areas of MPAS' business, in breach of Statement of Principle 7,* (Mr W) *has demonstrated a serious lack of competence and capability as a significant influence function holder."*

To be clear, I don't say that the Final Notice mentioned above was regulatory guidance that I'm required to take into account. But I'm satisfied the above does help to demonstrate that the obligations on SIPP operators, as discussed in the guidance and other publications referred to above, wouldn't necessarily be satisfied *only* by carrying out due diligence on introducers and investments.

I also don't say the Principles or the publications obliged IM to ensure the transactions were suitable for Mr G. It is accepted IM wasn't required to give advice to Mr G, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But, as I've said above, 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. And so it's fair and reasonable for me to take them into account when deciding this complaint.

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 G's SIPP application from AW and in permitting Mr G's monies to be invested with Greyfriars and in P6, IM 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 IM 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 IM to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into AW/the business AW was introducing and undertaken sufficient due diligence into Greyfriars/the P6 investment *before* deciding to accept Mr G's applications.

Ultimately, what I'll be looking at is whether IM took reasonable care, acted with due diligence and treated Mr G 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 G's complaint is whether it was fair and reasonable for IM to have accepted Mr G's applications in the first place. So, I need to consider whether IM carried out appropriate due diligence checks before deciding to accept Mr G's applications.

And the questions I need to consider are whether IM ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by AW and/or investing with Greyfriars in P6 were being put at significant risk of detriment. And, if so, whether IM should therefore not have accepted Mr G's applications for the IM SIPP and/or P6 investment.

The contract between IM and Mr G

This decision is made on the understanding that IM acted purely as a SIPP operator. I don't say IM should (or could) have given advice to Mr G or otherwise have ensured the suitability of the SIPP or the P6 investments for him. I accept that IM made it clear to Mr G 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 forms Mr G signed confirmed, amongst other things, that losses arising as a result of IM acting on his instructions were his responsibility.

I've not overlooked or discounted the basis on which IM was appointed. And my decision on what's fair and reasonable in the circumstances of Mr G's case is made with all of this in mind. So, I've proceeded on the understanding that IM wasn't obliged – and wasn't able – to give advice to Mr G on the suitability of the SIPP, using Greyfriars as an investment manager or the P6 investment.

What did IM's obligations mean in practice?

In this case, the business IM was conducting was its operation of SIPPs. And I'm satisfied that, to meet its regulatory obligations, when conducting its operation of SIPPs business, IM 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 is appropriate to deal with and that a particular investment is appropriate to 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, IM 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 G) 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 IM understood this to some degree at the time too, as it did more than just check the FCA entries for AW and Greyfriars to ensure they were regulated – it also entered into agreements with those parties.

So, and well before the time of Mr G's application, I think that IM ought to have understood that its obligations meant that it had a responsibility to carry out appropriate checks on AW to ensure the quality of the business it was introducing.

And I think IM also ought to have understood that its obligations meant that it had a responsibility to carry out appropriate due diligence on investments to be held/being held in its SIPPs. I think IM's submissions on the fact it did undertake some due diligence prior to allowing the P6 holdings within its SIPPs reflect this. So, I'm satisfied that, to meet its regulatory obligations when conducting its business, IM was also required to consider whether to accept or reject a particular investment (here P6), with the Principles in mind.

Further, in addition to P6 I think IM should have carried out appropriate due diligence on Greyfriars. And in my opinion, IM should have used the knowledge it gained from its due diligence to decide whether to accept or reject any application that involved a request to involve Greyfriars as investment manager.

IM's due diligence on AW

IM has told our Service, in response to this complaint and others that are with our Service, that it wouldn't have accepted SIPP business unless the business had been recommended by an FCA authorised and regulated financial adviser. And IM appears to have carried out some checks before it accepted business from AW, which included:

- Checking that AW was regulated and authorised by the FCA to give financial advice.
- Checking the Companies House records.
- Obtaining a copy of Mr R's G60 Certificate.
- Entering into a Business Agreement with AW.

From the information that has been provided, I'm satisfied that IM did take *some* steps towards meeting its regulatory obligations and good industry practice. However, I don't think those steps that we've seen evidence of went far enough, or were sufficient, to meet IM's regulatory obligations and good industry practice.

I think IM was aware of, or should have identified potential risks of, consumer detriment associated with business introduced by AW *before* it accepted Mr G's application.

As I explain below, based on the available evidence, I think it's more likely than not that the majority of the SIPP business introduced to IM by AW prior to it receiving Mr G's application was business where consumers would be investing with Greyfriars post-transfer to invest in P6. In other words, it was mostly high-risk business where consumer's monies were ending up invested in unregulated and esoteric investments post-transfer.

I think IM should have taken steps to address this potential risk. And I think such steps should have included getting a fuller understanding of the business that AW was introducing through asking questions and through independent checks.

Further, I'm satisfied such steps would have confirmed there was a significant risk of consumer detriment associated with introductions of business from AW. And I think IM should have concluded it shouldn't continue to accept introductions from AW *before* it accepted Mr G's SIPP application.

So, based on the evidence provided to us, I'm of the view IM failed to conduct sufficient due diligence on AW *before* accepting Mr G's business from it, or draw fair and reasonable conclusions from what it did know, or ought to have known, about the business it was receiving from AW. And that IM ought reasonably to have concluded it should not continue to accept business from AW, and have ended its relationship with it before it received Mr G's application. I've set out some more detail about this below, the points I make below overlap to a degree, and should have been considered by IM cumulatively.

<u>Volume of business and the type of investments being made by AW-introduced consumers</u>

We've asked IM in this complaint about the number of introductions it received from AW, what number Mr G was amongst the introductions IM received from AW, and what percentage of the business introduced by AW involved DB transfers.

On this complaint IM has confirmed to us that:

- It received 375 introductions from AW.
- Mr G's application was number 131.
- 51.46% of AW-introduced business involved DB transfers.

On another case involving AW and IM that was referred to our Service, IM has provided details of where all the AW-introduced consumers had invested their funds. IM provided us with the following breakdown:

> *"The percentages that you asked for are as follows:*
>
> *Greyfriars - 49%*
>
> *Strand Capital - 20%*
>
> *Gallium - 17%*

Property Purchase - 0.26%

Prudential - 0.26%

Stocktrade - 0.26%

No Investment Made - 13%"

So it seems from the information IM has given to this Service that there were 375 consumers introduced to IM by AW, and that 49% of these invested in Greyfriars P6. IM has also previously told us that all the consumers introduced to IM by AW who invested with Greyfriars, invested in P6.

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."*

I think IM either had, or ought to have had, access to information about the number and type of introductions that AW made. I say that because IM has, when asked by us, been able to provide us with information about the volume and type of business that AW was introducing to it.

But I don't think simply keeping records about the number and nature of introductions that AW made, without scrutinising that information, would have been consistent with good industry practice and IM'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.

As I've mentioned above, IM has said 375 members were introduced by IM and 49% of these invested with Greyfriars (so, a little over 180) and that the only investment made with Greyfriars was P6. IM has also said that 51.46% of the introductions it received from AW involved consumers who effected transfers in from DB schemes. And, in another case with our Service, IM has told us that the first SIPP application it accepted for an AW-introduced customer who invested in Greyfriars was dated 18 March 2015.

So, I'm satisfied from the information provided that most of the introductions IM received from AW before it accepted Mr G's business were in respect of consumers who invested in Greyfriars. I'm also satisfied that IM had received a number of introductions from AW, where consumers had invested in P6, before it received Mr G's introduction.

As I explain elsewhere in this decision, if IM had undertaken adequate initial and ongoing due diligence into P6 it ought to have identified, and prior to accepting Mr G's business, that Greyfriars was investing P6 investors' monies in speculative high risk and potentially highly illiquid unlisted Corporate Bonds.

So, I think IM either was aware, or ought reasonably to have been aware before it received Mr G's SIPP application, that a significant proportion of the business AW was introducing was high risk, with consumers' pension monies ending up invested in high-risk unlisted Corporate Bonds via P6, and that this business carried a potential risk of consumer detriment.

I think it's highly unusual for most of a regulated advice firms' introductions to a SIPP provider to involve pension transfers/switches so as to invest in the same high-risk portfolio which was investing largely, or wholly, in high risk, potentially illiquid unlisted Corporate

Bonds. I think it's fair to say that most advice firms certainly don't transact this kind of business in significant volumes. And I think it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of the population.

Having regard to the volume of high-risk business I think it's more likely than not that IM received from AW prior to Mr G's business being accepted, I think that IM should have been concerned that the volume of introductions, relating mainly to consumers investing in the same Greyfriars portfolio (and with their monies then being invested in higher-risk esoteric investments), was unusual – particularly from a small IFA business. And it should have considered how a small IFA business introducing this volume of higher risk business was able to meet regulatory standards. I think this was a further clear and obvious potential risk of consumer detriment.

While I've carefully considered what IM has said about this point including about The Pension Schemes Act 2015, I still think this concern ought to have been even greater in light of the volume of cases involving DB transfers IM says it received from Active Wealth. At the date Active Wealth first became an introducer of IM COBS 19.1.6G stated:

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

COBS 19.1.6G was amended prior to IM accepting Mr G's business:

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

While I acknowledge COBS 19.1.6G aimed to define the expectation of a regulated financial adviser when determining the suitability of a pension transfer, it emphasises the regulator's concern about the potential detriment such a transaction could expose a consumer to. Given the nature of its business and regulatory status, I'd expect IM to have been familiar with the guidance contained in COBS – even if it didn't apply directly to it.

This was a further clear and obvious potential risk of consumer detriment.

What fair and reasonable steps should IM have taken in the circumstances?

IM could simply have concluded that, given the potential risks of consumer detriment from the pattern of business being introduced to it by AW – which I think should have been clear and obvious at the time – it should not continue to accept applications from AW. That would have been a fair and reasonable step to take in the circumstances. Alternatively, IM could have taken fair and reasonable steps to address the potential risks of consumer detriment, such as those I've set out below.

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

Given the potential risk of consumer detriment, I think that IM ought to have found out more about how AW was operating before it received Mr G's application. And, mindful of the type of introductions I think that it's more likely than not that IM was receiving from AW from the outset, I think it's fair and reasonable to expect IM, in-line with its regulatory obligations, to have made some specific enquiries and carried out independent checks.

As set out above, 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, also 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 IM, and long before it received Mr G's SIPP application, should have checked with AW and asked about things like:

- how it came into contact with potential clients,
- what agreements it had in place with its clients,
- what agreements it had in place with Greyfriars,
- how and why such a significant proportion of the retail clients it was introducing were interested in investing specifically in P6,
- how a firm of its size was able to meet with or speak with all its clients given the volume of business being introduced,
- what material was being provided to clients by it, and
- what it was telling its clients about P6.

I think it's more likely than not that if IM had checked with AW and asked the *type* of questions I've mentioned above that AW would have provided a response. In the alternative, if AW had been unwilling to answer such questions if they'd been put to it by IM, I think IM should simply then have declined to accept introductions from AW.

I think this was a fair and reasonable step to take, in the circumstances, to meet its regulatory obligations and good industry practice.

<u>Making independent checks</u>

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."* (bold my emphasis)

Given the potential risks of consumer detriment from the pattern of business being introduced to it by AW – which I think should have been clear and obvious at the time – I think it would have been fair and reasonable for IM, 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 AW. And, given the unusual pattern of business it was receiving from AW, I think it would have been fair and reasonable for IM to speak to some applicants, like Mr G, directly.

And I think it's more likely than not that if IM had done this IM would have been told by some applicants, like Mr G, that they had been told by AW they could get a better return by transferring to IM and investing in P6 and that this would involve little risk. I also think it's more likely than not it would have become clear to IM that there was a risk that the consumer-specific paperwork being submitted by AW to IM, in respect of the P6 applications, might not have provided an accurate summary of at least some of those consumers' circumstances and/or assets and/or experience and/or risk profile.

I accept IM 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 IM with further insight into AW's business model and what it was telling consumers. This was a fair and reasonable step to take in reaction to the clear and obvious risks of consumer detriment from AW-introduced business that I've mentioned above.

<u>Had it taken these fair and reasonable steps, what should IM have concluded?</u>

As mentioned above, premised on the pattern of AW-introduced business alone I think IM could simply have concluded that, given the clear and obvious potential risks of consumer detriment, it should not continue to accept business from AW. I think that would have been a fair and reasonable conclusion for IM to have reached. But I also think it's more likely than not that if IM had undertaken *independent* checks into the business it was receiving from AW, such checks would only have served to further reinforce the clear and obvious potential risks of consumer detriment associated with introductions from AW. If IM had undertaken adequate independent checks, I think it's more likely than not that it would have identified, amongst others, the following risks and before it received Mr G's application:

- AW was explaining to some consumers, like Mr G, that they could get a better return by transferring to IM and investing in P6 and that this would involve little risk.

(To be clear, I don't think this would have accorded with what AW would have said it was telling consumers if asked by IM. Mindful of what's stated in the FCA notices referenced earlier in this decision, I accept that AW might not have given a full and honest response to questions IM asked. This I think only serves to highlight the importance of undertaking adequate ongoing due diligence, including independent checks, when receiving such an unusual pattern of predominantly high-risk business from a single introducer.)

- Consumer-specific paperwork being submitted by AW to IM in respect of the P6 applications might not have provided an accurate summary of some consumers' circumstances and/or assets and/or experience and/or risk profile.

Either of these points would have been significant in isolation and should have further demonstrated that there was a significant risk of consumer detriment associated with

introductions from AW. I think either ought to have been a clear red flag to IM, especially when considered alongside the pattern of business it was receiving from AW.

I think IM ought to have viewed this as a serious cause for concern which raised serious questions about the motivation and competency of AW. And if IM had undertaken adequate initial and ongoing due diligence into AW and the business being received from it, I think IM should have concluded, and *before* it accepted Mr G's business from AW, that it shouldn't continue to accept introductions from AW. I therefore conclude that it's fair and reasonable in the circumstances to say that IM shouldn't have accepted Mr G's application from AW.

In my view IM didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr G fairly by accepting his application from AW. To my mind, IM didn't meet its obligations or good industry practice at the relevant time, and allowed Mr G to be put at significant risk of detriment as a result.

To be clear, I'm not saying here that IM should have been aware of, or identified, everything that has subsequently come to light about AW and/or those working for it. And I'm not saying that IM should have been aware of, or identified, everything that was mentioned about AW and/or those working for it in the FCA notices. I only say, based on the information I think would have been available to IM at the relevant time had it undertaken adequate due diligence, that it ought to have been apparent that there was a significant risk of consumer detriment associated with AW-introduced business. And that it's more likely than not that the *type* of independent checks it would have been fair and reasonable for IM to undertake in the circumstances would have revealed issues which were, in and of themselves, sufficient basis for IM to have declined to continue to accept introductions from AW before IM had accepted Mr G's business. Further, that it's the failure of IM's due diligence that's resulted in Mr G being treated unfairly and unreasonably.

IM may say that it was entitled to draw some comfort from AW's regulatory status, and was able to both assume AW would comply with its regulatory obligations, and be able to rely on AW's written statements. But, as I've explained above, I'm satisfied that IM didn't comply with its regulatory obligations, good industry practice or treat Mr G fairly by failing to undertake adequate due diligence on AW. And I'm satisfied that had it undertaken adequate due diligence, IM ought reasonably to have been aware of facts that should have caused it to decline to accept business from AW before it accepted Mr G's application. In other words, I'm satisfied that if IM had undertaken adequate due diligence on AW it ought to have been privy to information which didn't reconcile with what IM says AW represented to it. And, in failing to take this step, I think it's fair and reasonable to conclude that IM didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr G fairly.

For the reasons given above, IM shouldn't have accepted Mr G's business from AW. And even if I thought IM had undertaken adequate due diligence on Greyfriars and P6 (which, as I explain elsewhere in this decision, I don't), I'd still consider it fair and reasonable to uphold Mr G's complaint on the basis that IM didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr G fairly, by accepting his business from AW. To my mind, IM didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr G to be put at significant risk of detriment as a result.

IM's due diligence on P6

I'm satisfied that, to meet its regulatory obligations when conducting its business, IM was required to consider whether to accept or reject a particular investment (here P6), with the Principles in mind.

I think that it's fair and reasonable to expect IM to have looked carefully at the P6 investment both initially and on an ongoing basis *before* permitting consumers like Mr G to invest in it through their IM SIPPs. For IM to accept applications from consumers to invest in P6 without carrying out a level of due diligence that was consistent with its regulatory obligations and good industry practice, while asking its customers to accept warnings absolving it of the consequences, wouldn't in my view be fair and reasonable or sufficient. And if IM didn't look at the investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure, it wouldn't in my view be fair or reasonable to say IM had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

Regarding the due diligence it undertook on P6, amongst other things, at various points IM has told our Service that:

- It carried out due diligence on the investment which wasn't classified as Non-Standard at the time and the funds weren't illiquid at the point of investment. It didn't conduct its own independent review of the investment or rely on reports by a third party.
- The P6 investments remained standard assets until the FCA changed its own rules in September 2016, at which point they became non-standard. And IM moved to ensure all IFAs of clients which held the investment, migrate them to other providers.
- It satisfied itself that valuations were fair and reasonable due to the prices all being quoted on a recognised exchange, or else by a regulated fund manager.
- IM first conducted enquiries into P6 in 2014. It has provided us copies of some pages from the Greyfriars website (accessed through an internet archive) that it relied on at the time.
- With P6, it was able to quickly ascertain that the portfolio invested in Standard Assets (Corporate Bonds) and it made further enquiries regarding liquidity before accepting the investment (including sourcing the now inactive status document) which confirmed 30 day liquidity.
- It had online access to Novia's platform, this would have allowed it access to information on the underlying investments being made.
- It enquired about the liquidity of P6 with Greyfriars (which it was able to rely upon under COBS rules) and was told that Greyfriars had a secondary market that would allow for redemption within 30 days.
- It understood from Greyfriars that P6 benefitted from a monthly dealing facility, achieved by way of a 'warehouse facility', facilitated by Novia. IM believed that the monthly dealing facility provided by Novia and underpinned by the warehouse facility was sufficient to satisfy the FCA's definition of Standard Assets.
- It was satisfied that the portfolio was capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days due to the monthly dealing facility.
- It made further enquiries of Greyfriars by telephone about liquidity and valuations. And, in respect of P6, as I understand it, it was reassured by Greyfriars' responses.
- There are no contemporaneous records of IM's enquiries with Greyfriars about P6.
- As Greyfriars had agreed to IM's terms, IM believed that P6 wouldn't have exposure to unregulated investments as making such investments was at Greyfriars' discretion.

- IM accepted the P6 investments into its SIPPs in reliance on, and believing, Greyfriars' statements.
- The P6 investments and unlisted corporate bonds were permissible within IM's SIPPs if they were specifically authorised.
- IM’s process when accepting the P6 investments and opening SIPPs in November 2015 included:
    - IM's CEO approved P6 for IM's SIPPs in principle in September 2014.
    - IM’s Compliance team conducted checks on the referring IFA and other relevant parties against Companies House records and the FCA's Register. Any compliance issues arising from these checks were raised with IM’s CEO.
    - In such cases, the CEO was the ultimate decision-maker. He assessed the information provided, performed his own searches (including websites and press articles), and confirmed whether he approved the investments.
- P6 was not a portfolio, it was a strategy where the underlying investments were selected by Greyfriars on a case-by-case basis.
- When IM accepted the P6 investments it understood the investments were Standard Assets. In IM's view they were eligible for inclusion under its SIPP Terms of Business and didn’t require enhanced due diligence.

IM has provided our Service with the above comments, but it’s provided us with very little in the way of contemporaneous documentation to demonstrate the due diligence it undertook into P6.

Having carefully considered all of the evidence that’s been made available to us, and having reconsidered everything in light of IM’s response to my provisional decision, I am not satisfied that IM undertook sufficient due diligence on the P6 investment *before* it decided to accept Mr G’s application to invest in P6. As such, in my view, IM didn’t comply with its regulatory obligations and good industry practice, and it didn’t act fairly and reasonably in its dealings with Mr G, by not undertaking sufficient due diligence on the P6 investment *before* it accepted Ms G’s application to invest in P6.

Further, as I explain in more detail below, based on what it knew, or ought to have known, had it undertaken sufficient due diligence, I think IM failed to draw a reasonable conclusion before it accepted Mr G’s application to invest in P6 about whether it should continue to permit consumers to invest in P6 through their IM SIPPs.

If IM had completed sufficient due diligence on P6, what ought it reasonably to have discovered?

In IM’s submissions in another complaint, it has referred to a link from Greyfriars’ website that can no longer be accessed. Greyfriars’ website doesn’t exist in the same format(s) as existed between 2014 and 2016. However, a few pages from Greyfriars’ website have been archived and are accessible through an internet archive. I think the contents of Greyfriars’ website from around the date of Mr G’s investment are helpful in building up a picture of what Greyfriars was saying to investors about the P6 investment at that time. And I also think they help to illustrate the *type* of things a reasonably competent SIPP provider, undertaking adequate due diligence at the relevant time, should have been able to discover about how Greyfriars was marketing P6.

An archived page from Greyfriars’ website from August 2014 states, amongst other things, that:

"Although designed for a typical holding period of greater than five years, the presence of one dealing date per month and a warehouse facility for facilitating trades, doesn't mean investors are locked-in to the Portfolio for any pre-defined period."

And an archived page from Greyfriars' website from November 2015 states, amongst other things, that:

"…handling funds of £10,000 upwards, Greyfriars Discretionary Fund Management (DFM) manages five risk-graded portfolios – moving money between equities, property, fixed interest securities and cash – to match a preferred risk profile and, of course, secure the very best returns.
Alongside Open-Ended Investment Companies (OEICs), Greyfriars increasingly looks at Investment Trusts and Exchange Traded Funds (ETFs) to shape portfolios. We host all portfolios on the Novia Platform, allowing us to be more responsive and dynamic in our approach.
We have also developed a passive offering for clients and launched Portfolio Six, a unique product ***delivering a secure, low-risk investment with high level of income"*** (bold my emphasis).

A second archived page from Greyfriars' website, again from November 2015, contains more detailed information about P6 and, amongst other things, states that:

"Placing capital in mainstream investments exposes investors and savers to the vagaries of the economic cycle. However, Non-Correlated Investments are isolated from such cycles, which means investors sidestep the risk, and instead access niche asset classes and enjoy the benefits of diversification.

PORTFOLIO SIX

With interest rates at historic lows, it's impossible to generate annual returns of over 2% without taking some investment risk.

Generating annual returns of over 5% requires investment into the equity market, which can be volatile – a shift in the market can severely reduce the fund's value, which in turn impacts the level of withdrawal.

Our solution is Portfolio Six, a secure investment with low risk and a high level of income.

Available on the Novia Platform, Portfolio Six is a unique portfolio management service introduced as a 'first in the market place' by Greyfriars Asset Management LLP and Best International.

- *Portfolio Six comprises non-correlated investments that are less volatile because they do not track the market.*
- *It provides a monthly dealing opportunity, enabling investors to inject cash into the managed portfolio, which is sustainable over the medium to long term.*
- *The underlying investments are traded monthly on the platform – allowing investors to exit completely or in part – to produce a one-off supplement to regular income, for example.*

- *Although annual income returns vary depending on the underlying investments selected, Portfolio Six distributions are in the region of 6% per year (net of charges), providing a higher return compared to other market opportunities, and are also sustainable over a longer term.*
- *The underlying investments are usually unquoted Corporate Bonds, secured on real assets, providing security and high-income yield.*
- *Through the monthly dealing facility on the Novia Platform, the investments qualify as 'standard' investments as referenced by the Financial Conduct Authority Policy Statement 14/12. They are therefore available through many Self-Invested Personal Pensions, including the Novia option.*" (bold my emphasis).

In a Citywire article dated 25 June 2015, a representative of Greyfriars had also said the following about P6:

> *"We launched Portfolio Six in April of last year, a full managed portfolio of non-correlated investments using varied asset classes with the objective of generating all-round returns to investors. It allows investors to gain exposure to both non-correlated and niche investment propositions.*
>
> *Portfolio Six is a rapidly growing part of the business. £5.1 million came in this month, taking total assets under management of the portfolio to £20 million. What makes Portfolio Six different are the mini bonds it holds. Many of these are provided by Best International Group and they are bonds that help raise money for entrepreneurs and smaller businesses and generate income for investors."*

The P6 application form completed as part of Mr G's application process, and which IM had seen, recorded, amongst other things, that:

> **"***Portfolio Six may wholly consist of non-pooled investments…and our discretion extends to investments in unregulated investments such as…unquoted corporate bonds."*

Further, that

> **"***Given the nature of the underlying investments, the liquidity of the portfolio may be restricted, but we will endeavour to facilitate trades via the single dealing point each month, where necessary."*

And the P6 DFM (non-advice) agreement which IM had received, stated amongst other things that:

- Greyfriars would manage the investment portfolio on a discretionary basis. Its discretion extended to some unregulated investments including unquoted corporate bonds.
- Exposure to non-UCIS and non-NMPI unregulated investments may be 100% in P6.
- The portfolio would have one dealing date per month. It may be difficult or impossible to sell some investments at a reasonable price or in some circumstances at any price. Greyfriars' parent company "*Best International"* would endeavour to provide liquidity to facilitate trades, but investors may be locked into an investment for an indefinite period.

I'm satisfied that IM would have received similarly worded P6 application forms and P6 DFM (non-advice) agreements for other consumers before IM accepted Mr G's SIPP business.

As I've explained above, I think IM ought to have understood that its obligations meant that it had a responsibility to carry out sufficient due diligence on investments before accepting consumers' applications to invest in those investments. And I think with an investment like P6 this would have involved reviewing the type of investments held in P6 both initially (i.e. before IM first accepted the P6 investment into any of its SIPPs) and on an ongoing basis (i.e. after first accepting the P6 investment into its SIPPs).

I'm aware of other complaints we've received against IM where consumers' monies were invested in P6 prior to Mr G's investment and I'm satisfied that it's more likely than not that, while not identical to all earlier P6 investments, the Corporate Bonds which Mr G's P6 monies were invested into were typical of the sort of Corporate Bonds that Greyfriars had been investing consumers' monies into in P6 for some time. That this was the case also doesn't appear to be inconsistent with the transactional analysis IM has provided of disinvestments its members effected from P6 investments from October 2015 until November 2017, which analysis includes some members who invested in P6 before Mr G. The P6 disinvestments that were effected in the full transactional analysis through until November 2017 appear to relate primarily, if not exclusively, to various Olmsted, Uavend, Enviroparks, Eco Parks, Coefficient Care and Oasis Atlantico Corporate Bonds.

We've obtained example/draft copies of the invitation documents for each of the Corporate Bonds that Mr G's P6 monies were invested into, copies of which have previously been provided to IM. These are fairly lengthy documents, but there are a number of common themes in them.

The following was explained in these promotional invitation documents for the Corporate Bonds that Mr G's monies were invested into (some of the points below were referred to in all of the invitation documents, others just in the majority):

- The Corporate Bonds were only available to individuals who have taken independent financial advice or who are Certified High-Net-Worth Investors, Certified Sophisticated Investors, Self-Certified Sophisticated Investors, Certified Restricted Investors and/or Professional Investors.
- All of the invitation documents for the Corporate Bonds Mr G's monies were invested in had been approved as a financial promotion for UK publication by Greyfriars. And the documents for all five of the Corporate Bonds Mr G's monies were invested into explained something akin to "*Greyfriars is acting exclusively for the Company* (the "Company" was the bond issuer) *in connection with the issue of the Corporate Bonds and no one else, and will not regard any other person as its customer or be responsible to any other person for providing the protections afforded to customers of Greyfriars or for advising that any investment be made on the basis of the Invitation and the Instrument."*
- Whilst the investment in the Corporate Bonds would represent a secured debt of the Issuer, there was no certainty or guarantee that the Issuer would be able to repay them.
- Investments in the Corporate Bonds was speculative.
- The Issuers' ability to meet their payment obligations to the holders of the Corporate Bonds would be wholly linked to, contingent on, highly sensitive to and dependent on, the performance of Loan Note Instruments.

- If the Operating Company didn't perform as expected then it may default on the payment of interest or capital repayment pursuant to the Loan Note Instrument. This in turn may result in the Issuer defaulting on the payment of interest or principal of the Corporate Bonds on the due dates.
- Whilst transferrable, there was no secondary market for the Corporate Bonds on which the Corporate Bonds could be bought and sold.
- There would be a redemption date for the Corporate Bond investments, for some Bonds there would also be a second earlier specified redemption date (for example, The Resort Group Bond offered redemptions around the fifth- and tenth-year anniversaries).
- Outside of the redemption dates, requests to redeem would be at the absolute discretion of the directors.
- If a SIPP member's death was the sole reason for an early redemption request, then the directors would use reasonable endeavours to secure redemption within 24 months of a request for redemption.
- Greyfriars was the registrar for all the Bonds that Mr G's monies were invested into.
- There are significant risks associated with investing in the Corporate Bonds. And where risks specified in the prospectuses materialised investors could lose part or all of their investment.
- In the terms of every bond invitation document something akin to the following was explained *"Potential investors should…be aware that an investment in the Company involves a high degree of risk."*
- Sums equivalent to those being raised from the Corporate Bonds for the specified purpose wasn't available to the Operating Companies from banks at an acceptable cost.
- The security offered for the bonds wasn't a guarantee from a third-party or financial institution. If the Company and/or Operating Company, and/or any other members of the Group/associated firms that had granted security, were wound-up or liquidated and their assets/security were worth less than the value of the outstanding Corporate Bonds, Bondholders would not get back all, or possibly any, of the monies invested.
- Best Asset Management Ltd may receive a commission and/or administration fee in respect of Corporate Bonds that were issued.

Amongst other things, the following was also included in the promotional invitation documents for the Corporate Bonds that Mr G's monies were invested into:

Olmsted V Bond

This was an invitation to apply for secured Corporate Bonds paying a minimum yield of 6.75% per year. A maximum of £3,900,000 of the Corporate Bonds would be issued. Investors would have the option to redeem their Olmsted V Corporate Bonds after three years or could choose to remain invested for five years.

Olmsted Properties V Ltd would lend the funds raised to Olmsted U.S. V, LLC. Olmsted U.S. V LLC intended to use the funds to acquire properties in the South-Eastern United States, and then to make energy efficiency, upgrades, refurbishments and let the properties.

A Security Trustee for the Bondholders would be given an all assets debenture over Olmsted Properties V Ltd. The all assets debenture would include security over the loan book (being

the loans made to Olmsted U.S. V LLC pursuant to the Loan Note Instrument). In addition, Olmsted U.S. V LLC would guarantee the performance of Olmsted Properties V Ltd, this would be secured by first ranking U.S. law security over real estate assets and personal property assets granted in favour of the Security Trustee.

There was £11,750,634 already invested in the Group (this was a group of affiliated companies known as the Palmetto group, which included Olmsted Properties V Ltd and Olmsted U.S. V LLC) via the issue of Corporate Bonds.

The Bond Instrument contained a covenant whereby Olmsted Properties V Ltd agreed not to lend monies from the Bondholders to Olmsted U.S. V LLC unless Olmsted U.S. V LLC had granted security over assets in combination valued at a minimum of the nominal value of the Olmsted V Corporate Bonds in issue (taking into account any other security granted over those same assets).

There were significant risks associated with investing in Olmsted V Corporate Bonds. And the Corporate Bonds were considered to be Non-Readily Realisable Securities.

Olmsted U.S. V LLC was a recently formed start-up company and shared the additional risks inherent to any new venture.

Enviroparks IV Bond

This was an invitation to apply for Corporate Bonds paying a minimum of 7.73% a year. A maximum of £3,600,000 of the Corporate Bonds would be issued by Enviroparks Bond IV Limited. The Corporate Bonds would be issued for an initial term of five years. Unless investors chose to redeem their Corporate Bonds after five years they would automatically continue for two more years. Investors would receive an increased interest rate of 9.73% for the additional two years of the term.

Funds raised by the issue of Corporate Bonds would be loaned to Enviroparks (Wales) Limited under a Loan Note Instrument and, together with additional funds to be sourced by Enviroparks (Wales) Limited, would be used for development.

The objective was to produce sustainable energy and export this energy to the National Grid. Enviroparks (Wales) Limited obtained planning permission in 2010 for a 20-acre site at Hirwaun. Funds raised through the issue of the Corporate Bonds would be used to fund the development of the Hirwaun Site.

A debenture would be issued by Enviroparks Bond IV Limited in favour of a person acting as Security Trustee for the Bondholders for the purposes of securing all liabilities and obligations of Enviroparks Bond IV Limited to the Bondholders – this would include security over the loan book (being the loans made to Enviroparks (Wales) Limited pursuant to the Loan Note Instrument). A guarantee would also be issued by Enviroparks (Wales) Limited in favour of the Security Trustee secured by a first fixed charge over a bank account operated by Enviroparks (Wales) Limited. And a guarantee would be issued by Enviroparks (Hirwaun Properties) Limited in favour of the Security Trustee secured by a legal charge over the Hirwaun Site.

The Hirwaun Site had already been charged to creditors (a mix of corporate bond holders and high net worth investors) who were owed £15,287,076 plus interest and costs. Under the previous corporate bond issue there may be further investment of approximately £250,291.

Previous investors had been offered a mix of 150% and 127% security cover. And the Bond Instrument contained a covenant whereby Enviroparks Bond IV Limited agreed not to lend monies from the Bondholders to Enviroparks (Wales) Limited unless Enviroparks (Wales) Limited had granted security over assets in combination valued initially at a minimum of 150% of the value of Corporate Bonds in issue. Once the development of the material recycling facility at the Hirwaun Site was complete and operational, and a valuation had been received, the security cover would reduce to 127% of the value of Corporate Bonds in issue.

Investors who ranked ahead of the investors in the Enviroparks IV Corporate Bonds would take priority in relation to the principal amount they had invested and all outstanding interest and costs. This could result in an overall security cover of less than 150% or 127% for Enviroparks IV Bondholders, who might not be able to recover all capital invested.

Raising funds by further bond issues may be required. And Enviroparks (Wales) Limited might also seek funds via loans directly from high net worth individuals. Security over the Hirwaun Site would be granted to these investors as and when further funds were raised.

There were significant risks associated with investing in the Enviroparks IV Bond.

If Enviroparks (Wales) Limited didn't perform as expected then it may default on the payment of interest or capital repayment pursuant to the Loan Note Instrument. This in turn may result in Enviroparks Bond IV Limited defaulting on the payment of interest or principal of the Corporate Bonds.

Eco Parks Bond

This was an invitation to apply for Corporate Bonds paying 8.52% per year. A maximum of £3,500,000 of Bonds would be issued by Eco Parks Bonds IV Ltd for a fixed term of 15 months, with all interest being paid on redemption at the end of the term.

Funds raised by the issue of Corporate Bonds would be loaned to Lateral Eco Parks Limited under a Loan Note Instrument.

Lateral Eco Parks Limited's objective was to develop a combined food and power ('CFP') business. Lateral Eco Parks Limited wanted four core CFP businesses producing sustainable aquaculture, vegetables and packaging with a renewable electricity producing energy centre at its core. Each CFP business (called Eco Parks) would have a hierarchal cascading stream of energy and resource consumption. Biomass power energy centres produce waste thermal energy. And Lateral Eco Parks Limited wanted to capture a proportion of this waste heat and distribute it for use by other businesses at the Eco Park.

Lateral Eco Parks Limited wanted to develop its first Eco Park on the Island of Anglesey. The site had consent for a biomass fuelled power station, access to a port, jetty and sea water.

A debenture would be issued by Eco Parks Bonds IV Ltd in favour of a person acting as Security Trustee for the Bondholders for the purposes of securing all liabilities and obligations of Eco Parks Bonds IV Ltd to the Bondholders – this would include security over the loan book (being the loans made to Lateral Eco Parks Limited pursuant to the Loan Note Instrument). Guarantees would also be issued by Lateral Eco Parks Limited and the Anglesey Land Company for the Security Trustee, secured by a fixed charge over at least 90% of the funds invested by Bondholders held in a blocked account in Lateral Eco Parks Limited's name. Following the acquisition by Lateral Eco Parks Limited of the Anglesey Land

and the Anglesey Land Company, this would be replaced with security/legal charges to the value of at least the nominal amounts invested in the Bonds.

The Bond Instrument contained a covenant whereby Eco Parks Bonds IV Ltd agreed not to lend monies from the Bondholders to Lateral Eco Parks Limited unless Lateral Eco Parks Limited had granted security over assets in combination valued at a minimum of 90% (rising to 100% following completion of the acquisitions of the Anglesey Land and the Anglesey Land Company) of the nominal value of the Eco Parks IV Corporate Bonds in issue.

There were significant risks associated with investing in Eco Parks IV Corporate Bonds.

Lateral Eco Parks Limited had incurred significant debt from other entities, some of which was also secured against assets of Lateral Eco Parks Limited. If Lateral Eco Parks Limited wasn't able to pay all of its debt, this could cause an insolvency event and impact upon Lateral Eco Parks Limited's ability to service its obligations to Eco Parks Bonds IV Ltd under the Loan Note Instrument.

If Lateral Eco Parks Limited didn't perform as expected then it may default on interest or capital repayments pursuant to the Loan Note Instrument. This in turn may result in Eco Parks Bonds IV Ltd defaulting on the payment of interest or principal of the Corporate Bonds.

There had been three previous issues of Corporate Bonds and £10,090,454 was raised. These earlier investors would be granted security that ranked ahead of the security granted to Eco Parks IV Corporate Bondholders. This could result in an overall security cover of less than 100% and investors in Eco Parks IV Corporate Bonds might not be able to recover all capital invested.

Resort Group V Bond

This was an invitation to apply for Corporate Bonds paying a minimum of 7% per year. A maximum of £3,500,000 of the Corporate Bonds would be issued by TRG Bonds V Ltd. Investors would have the option to redeem their Bonds after five years. Investors remaining invested for a ten-year term would receive a loyalty bonus of 5% of the amount invested.

Funds raised by the issue of Corporate Bonds would be loaned to The Resort Group Plc under a Loan Note Instrument.

The funds raised by the issue of the Bonds would be used to:

- Repay borrowings by the Group (meaning The Resort Group Plc and its subsidiary companies) from a bank.
- Provide working capital during the construction phase of ongoing and future projects.
- Reduce reliance on pre-sales to meet construction and furniture fixtures and equipment costs.
- Increase cash balances to allow The Resort Group Plc to take advantage of other development opportunities and joint venture projects.

A Security Trustee for the Bondholders would be given an all assets debenture over TRG Bonds V Ltd. The all assets debenture would include security over the loan book (being the loans made to The Resort Group Plc pursuant to the Loan Note Instrument). In addition, security may be granted over monies (to the value of at least 100% of the debt being

secured) held in a blocked bank account and/or over real estate assets where the value of such assets would be at least 110% of the value of the debt being secured.

The first real estate asset to be used as security was Dunas Commercial Property. A third-party bank was owed around €19,025,000, that was secured by the Dunas Beach Resort Property. This security would be first ranking. However the Bank had confirmed that upon repayment of €5,000,000 it would release this security. The Resort Group Plc intended to use the first €5,000,000 of funds raised by the Corporate Bonds issue (and under other instruments) to repay the Bank, so that security could be granted over Dunas Commercial Property in favour of Resort Group V Corporate Bondholders (as well as third party investors).

The Group would continue to seek to raise funds from third party investors under alternative investment structures and third-party investors might also benefit from security over the same assets that are secured for investors in the Resort Group V Corporate Bonds. All security would rank equally.

The Bond Instrument contained a covenant whereby TRG Bonds V Ltd agreed not to lend monies from the Bondholders to The Resort Group Plc unless the initial value of the Bonds issued was secured in favour of the Security Trustee against monies (of at least 100% of the initial value of the Corporate Bonds being issued) held in a Resort Group Plc blocked account and/or security over real estate assets of the Group (of at least 110% of the initial value of the Corporate Bonds being secured) together with a guarantee from the owners of the real estate assets in favour of the Security Trustee.

The Security Trustee would also act for other investors, in accordance with an agreed order of priority that reflects the date on which security was created with the earliest security ranking first.

There were significant risks associated with investing in Resort Group V Corporate Bonds.

Additional finance was necessary for The Resort Group Plc to pursue its business plan and achieve its objectives.

The Resort Group Plc had borrowed around £31,000,000 from third parties. The existing debt might impede The Resort Group Plc's ability to be able to afford interest payments and/or repay creditors when due, and might impede its ability to repay investors in the Resort Group V Corporate Bonds.

The fact that additional debt was secured against the same assets increased the risk that investors in Resort Group V Corporate Bonds V wouldn't be repaid in full.

If The Resort Group Plc didn't perform as expected then it may default on the payment of interest or capital repayment pursuant to the Loan Note Instrument. This in turn may result in TRG Bonds V Ltd defaulting on the payment of interest or principal of the Corporate Bonds.

Any enforcement of the security could take a considerable amount of time and the Security Trustee may not be able to recover a sum adequate to repay all sums owed.

Uavend Bond

This was an invitation to apply for secured Corporate Bonds issued by Uavend Bonds Ltd paying a minimum yield of 7% per year. A maximum of £3,800,000 of the Corporate Bonds would be issued. Investors would have the option to redeem their Bonds after four years or

could remain invested for the full five-year term. Investors who remained invested for the full term would receive a loyalty bonus of 3%.

Funds invested in the Corporate Bonds would be loaned to Uavend Investments LLP to further that firm's objective of developing a Marina on the Isle of Wight into a family accommodation leisure facility.

Investors would benefit from security over the loan book of Uavend Bonds Ltd. And either security over the funds invested (by way of a fixed charge over a blocked bank account) to the value of 100% of the funds invested and/or security over real estate assets to the value of at least 110% of the amount invested in the Corporate Bonds. And a debenture would be issued by Uavend Bonds Ltd in favour of a person acting as Security Trustee for the Bondholders for the purposes of securing all liabilities and obligations of Uavend Bonds Ltd to the Bondholders – this would include security over the loan book (being the loans made to Uavend Investments LLP pursuant to the Loan Note Instrument).

The Bond Instrument contained a covenant whereby Uavend Bonds Ltd agreed not to lend monies from the Bondholders to Uavend Investments LLP unless Uavend Investments LLP had granted security over either 100% of the funds invested (by way of a fixed charge over a blocked account) and/or security over real estate assets in combination valued at over 1.1 times the nominal value of the Corporate Bonds in issue.

There were significant risks associated with investing in the Uavend Corporate Bonds.

The intention was to fund the repayment of the Corporate Bonds at the end of the five-year term. This was by either re-financing the borrowings of Uavend Investments LLP by seeking a term loan to repay the debt incurred by Uavend Investments LLP to fund the cost of the development or by selling apartments at the Island Harbour Resort.

Investors should be aware that there was no certainty that Uavend Investments LLP would be able to obtain a loan to re-finance its debt or to sell apartments in which case some or all of the funds invested in the Corporate Bonds may not be repaid.

If Uavend Investments LLP didn't perform as expected then it may default on the payment of interest or capital repayment pursuant to the Loan Note Instrument. This in turn may result in Uavend Bonds Ltd defaulting on the payment of interest or principal of the Corporate Bonds.

The total amount of funding required to complete the first phase of development was more than the total amount to be raised by the issue of the Corporate Bonds. There was no guarantee that additional funding would be obtained and there was a risk that Uavend Investments LLP wouldn't be able to complete the development. If development wasn't completed the value of the Island Harbour Resort may not be sufficient to enable all the Corporate Bond investors to be repaid.

Additional details

Amongst other things, IM has previously told our Service that the investments were provided via a regulated third-party platform/DFM who agreed to be bound by IM's terms to only invest in Standard Assets. And that if our Service required any further information we could contact Novia.

Novia did, in fact, obtain reports from a third party about a number of Corporate Bonds that were held in P6, and Novia has provided us with the third-party due diligence reports it obtained, and these included all of the bonds Mr G's monies were invested into. Typically, it was explained towards the end of these reports that the contents of the reports were based

on a combination of things including documents like the Information Memorandum for the Bonds, questionnaires completed by employees of Greyfriars and/or the Best International Group of companies and legal opinions from a law firm that was engaged by the Bond Issuer and/or Operating Company.

I'm satisfied that the *type* of information contained within these reports, much of which was also provided for in the invitation documents, includes some of the *type* of information a reasonably competent SIPP provider would have been able to ascertain about the bonds in question at the pertinent time if undertaking sufficient due diligence into them.

Further, and as I've noted above, I'm satisfied that it's more likely than not that the Corporate Bonds which Mr G's P6 monies were invested into were typical of the type of Corporate Bonds that Greyfriars had been investing consumers' monies into in P6 for some time.

I've set out a brief summary of some of the points noted in the third-party due diligence reports into each of the Corporate Bonds that Mr G's monies were invested into below:

Olmsted Properties V Report

- Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.
- Issuer – Olmsted Properties V Ltd, owned by Olmsted U.S. V LLC.
- Operating Company – Olmsted U.S. V LLC.
- Registrar – Greyfriars.
- Security trustee – Greyfriars Administration Services Ltd, directors of whom were Mr L and Greyfriars. And owners of whom were Mr L and Mr H.
- There was an initial distributor/adviser charge/commission of up to 13%.
- Best Asset Management Ltd may receive an administration and/or commission fee.
- The underlying business proposition has received numerous negative articles in the press, mainly linked to investors losing funds in the Detroit property market.
- Experian credit checks revealed Olmsted Properties V Ltd as "Maximum Risk".
- The investment was in an unlisted bond and no protection was offered through the FSCS.
- If not an NMPI, this was a non-readily realisable security.
- Investors should enjoy a first ranking charge over the properties and it was unlikely that any senior bank debt would be sought. In the absence of senior bank debt investors should enjoy some capital protection, but if the Issuer were to default a capital loss would be likely.
- The group of companies had £11,750,634 secured against it in favour of previous Bondholders.
- The Bond was illiquid for at least three years from its issue.
- The entire investment was at risk.

Enviroparks IV Report

- Administrator & Consultant/Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.

- Issuer – Enviroparks Bond IV Ltd, directors of whom were Mr L and Best Asset Management Ltd. The issuer was owned by Enviroparks (Wales) Ltd.
- Operating Company – Enviroparks (Wales) Ltd, the owners of which were Zeus Renewables Ltd (95%) and Enviroparks Ltd (5%).
- Registrar – Greyfriars.
- Security Trustee – Greyfriars Services Administration Ltd, directors of whom were Mr L and Greyfriars.
- There was an initial distributor/adviser charge/commission of up to 13%.
- Best Asset Management Ltd may receive an administration and/or commission fee.
- There would be a second charge on freehold over a site (Hirwaun). The site had debts of £15,287,076 plus interest registered against it and a charge for *"establishing a secured Euro Medium Term Note Programme" for* an undetermined amount.
- Experian credit checks revealed Enviroparks Bonds IV Ltd and Enviroparks Ltd as "High Risk" and Zeus Renewables Ltd as "Maximum Risk".
- If not a NMPI, this was a non-readily realisable security.
- Further funds could be borrowed reducing the capital protection on offer to investors. The investors' charge was ranked behind senior debt and may be reduced further.
- This investment should be considered illiquid for at least five years.
- The investment was in an unlisted bond and no protection was offered through the FSCS.
- The entire investment was at risk.

Eco Parks IV Report:

- Consultant/Product Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.
- Issuer – Eco Parks IV Bonds Ltd, directors of whom were Mr L and Best Asset Management Ltd. The owner of the Issuer was Lateral Eco Parks Ltd.
- Borrower – Lateral Eco Parks Ltd.
- Promoter & Registrar – Greyfriars.
- Security trustee – Mr V. (Mr V was an individual authorised by the FCA who at the relevant time also carried out controlled functions for a firm authorised by the FCA)
- Best Asset Management Ltd may receive an administration and/or commission fee.
- The planned 15 month redemption timeframe was predicated on the Borrower sourcing institutional investors for the project to repay Bondholders.
- Even if the bonds were fully subscribed this wouldn't be sufficient for the project to proceed.
- Experian credit checks on Eco Parks Bonds IV Ltd showed a credit assessment of "High Risk".
- As the investment is an unlisted bond, no protection was offered through the FSCS.
- If not a NMPI, this was likely to be a non-readily realisable security.

- It wasn't clear whether the Borrower would take out (or was prohibited from taking out) any senior debt during the investment period. This was the third such offer of bonds, so the Borrower already had substantial borrowing from previous investors.
- The Bond was illiquid for at least 15 months from its issue and potentially much longer if institutional investors weren't found.
- The entire investment could be at risk.

Resort Group V Report

- Administrator & Consultant/Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.
- Issuer – TRG Bonds V Ltd, directors of whom were Mr L and Best Asset Management Ltd. The owner of the Issuer was The Resort Group Plc.
- Operating Company – The Resort Group Plc.
- Registrar – Greyfriars.
- There was an initial distributor/adviser charge/commission of up to 13%.
- Funds raised through the issue of the bonds would be used to repay bank finance with any remainder to be used as working capital. £3.5 million was being raised and the amount to be repaid to the bank was five million euros.
- The investment may take on unlimited borrowing secured against the same assets as the bonds.
- Experian credit checks revealed TRG Bonds V Ltd as "High Risk".
- As the investment is an unlisted bond, no protection was offered through the FSCS.
- If not a NMPI, the investment is a non-readily realisable security.
- It is likely that if the Operating Company got into financial difficulties that investors would suffer a capital loss given the amount of current and future debt secured against its assets.
- The bond is illiquid for at least 5 years.

Uavend Report

- Provider – Best Asset Management Ltd, the directors and owners of whom were Mr L and Mr H.
- Issuer – Uavend Bonds Ltd, owned by Uavend Investments LLP.
- Operating Company – Uavend Investments LLP.
- Registrar – Greyfriars, one director of which was Best Asset Management Ltd and the owners of which were Mr L and Mr H.
- Security Trustee – Mr V.
- There was an initial distributor/adviser charge/commission of up to 13%.
- Experian credit checks revealed Uavend Bonds Ltd as "High Risk".
- The investment was unregulated and no protection was offered through the FSCS.
- If not a NMPI, this was a non-readily realisable security.

- The Operating Company was intending to fund the development of the resort with a combination of the bond proceeds, third party (including bank) debt and further issues of corporate bonds. A debenture secured against the assets of the Issuer and Operating Company in favour of the Security Trustee should provide an element of capital protection. However any third party debt, especially superior bank debt, would reduce this security.
- The investment should be considered illiquid for at least four years.
- The entire investment was at risk.

Summary

If IM had completed sufficient due diligence on P6 *before* it accepted Mr G's business I'm satisfied it ought reasonably to have discovered that:

- Greyfriars appeared to be presenting P6 as an investment that was low risk, would provide high levels of income, was secure, and offered a high level of liquidity with P6 being tradable monthly.
- Greyfriars was predominantly investing P6 investors' monies in speculative high risk and potentially highly illiquid unlisted Corporate Bonds.
- Bonds being purchased promised high returns. It appears from the FCA notices referred to earlier in this decision that different bonds held within P6 promised returns of between 6% and 15%. All of the bonds that Mr G's P6 monies were invested into promised a return in excess of 6%. The Bank of England base rate at the time was 0.5%.
- There was no secondary market for the Corporate Bonds.
- Bond Issuers were typically recently incorporated businesses that were owned wholly, or largely, by an Operating Company, specifically for the purpose of raising finance via the issue of the Corporate Bonds.
- Sums equivalent to those being raised from the Corporate Bonds wasn't available from banks, for the intended purpose, at an acceptable cost to the Operating Companies that the monies would be lent to.
- The companies issuing the bonds had high risk credit ratings.
- Greyfriars' parent company was involved in, at the very least, a significant proportion of the unlisted Corporate Bonds Greyfriars was investing P6 investor's monies into (it was involved in all of the bonds in Mr G's case). And it was apparent from invitation documents that, in at least some instances, Best International may receive a commission and/or administration fee in respect of Bonds that were issued.
- There were initial distributor/adviser charges/commissions payable from a number of the bonds and no suggestion consumers were being made aware of this.
- The invitation documents for the Corporate Bonds Mr G's monies were invested in had been approved as a financial promotion for UK publication by Greyfriars and Greyfriars had agreed to act exclusively for the Bond Issuer *"in connection with the issue of the Corporate Bonds and no one else, and would not regard any other person as its customer or be responsible to any other person for providing the protections afforded to customers of Greyfriars or for advising that any investment be made on the basis of the Invitation and the Instrument."*
- In addition to investing consumers' P6 monies into the bond Greyfriars was also acting as registrar for the bonds being issued.

If IM had completed sufficient due diligence on P6, what ought it reasonably to have concluded?

In my view there were things about the way in which P6 was being marketed by Greyfriars which ought to have given IM significant cause for concern and to have led it to have concluded that there was a significant risk that potential investors were being misled.

P6 didn't have a long and proven track record for investors, so IM couldn't be certain that the investment operated as claimed. And Greyfriars appeared to be presenting the P6 investment as one that was low risk, would provide high levels of income, was secure and offered a high level of liquidity being tradable monthly. This was despite the fact that the underlying unlisted Corporate Bond investments which were being made with P6 investors' monies were noted as being high risk in all of the invitation documents I've seen, all of which also highlighted the potential for partial or complete loss of sums invested. It also ought to have been clear and obvious that the unlisted Corporate Bond investments were also potentially highly illiquid.

I think, in light of this, and had it undertaken sufficient due diligence, IM should have been concerned that consumers may have been misled or didn't properly understand the investment they intended to make. Consumers could easily have been given the impression, from statements akin to those that Greyfriars was making on its website, that they were assured of high returns with little or no risk and would easily be able to sell their investment when they wished to. Such an impression was clearly misleading.

From the evidence I've seen I think the information Greyfriars was publishing *before* Mr G's monies were invested in P6, including marketing material available through its website, gave rise to a significant risk that potential investors were being misled. And I think that IM ought to have identified this *before* permitting Mr G's monies to be invested in P6. This is a clear point of concern, which I think IM ought reasonably to have identified *before* it accepted Mr G's application to invest in P6.

In my opinion, the issues I've identified above should have, when considered objectively, put IM on notice that there was a significant risk of consumer detriment. And, without more evidence to ensure the investment was an appropriate one to permit within its SIPPs, I'm satisfied that IM should not have been accepting the P6 investment in its SIPPs *before* it accepted Mr G's business.

In my opinion it's fair and reasonable to say that IM ought to have concluded there was an obvious risk of consumer detriment here. All in all, I am satisfied that IM ought to have had significant concerns about the P6 investment from very early on and certainly before it accepted Mr G's business. And I think such concerns ought to have been a red flag for IM when it was considering whether to continue accepting P6 investments into its SIPPs. Such concerns emphasise the importance of sufficient due diligence being undertaken initially and on an ongoing basis.

Had IM done what it ought to have done, and drawn reasonable conclusions from what it knew or ought to have known, I think that it ought to have concluded from very early on, and certainly before it accepted Mr G's business, that there was a significant risk of consumer detriment if it continued accepting the P6 investments into its SIPPs and that the P6 investment wasn't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think IM undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the P6 investment. I don't think

IM met its regulatory obligations and good industry practice, and in accepting Mr G's application to invest in P6 it allowed Mr G's funds to be put at significant risk.

To be clear, I don't say IM should have identified all the issues which later came to light. I only say that, based on the information that was available at the relevant time had it undertaken sufficient due diligence, IM should have identified that there was a significant risk that potential investors were being misled. I'm satisfied, on a fair and reasonable basis, that a significant risk of consumer detriment ought to have been apparent from the information available to IM from very early on and certainly before it accepted Mr G's investment. And I do think that appropriate checks would have revealed issues which were, in and of themselves, sufficient basis for IM to have declined to accept the P6 investment in its SIPPs *before* Mr G invested in it. And it's the failure of IM's due diligence that's resulted in Mr G being treated unfairly and unreasonably.

There's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. I accept that IM wasn't expected to, nor was it able to, give advice to Mr G on the suitability of the SIPP and/or P6 investment for him personally, and I'm not making a finding that IM should have done that here. I accept IM had no obligation to give advice to Mr G, or to ensure otherwise the suitability of an investment for him.

And I'm also not saying that IM shouldn't have allowed the P6 investment into Mr G's SIPP because it was high risk. My finding isn't that IM should have concluded that Mr G wasn't a candidate for high-risk investments or that an investment in P6 was unsuitable for him personally. Instead, it's my fair and reasonable opinion that from very early on, and certainly before it accepted Mr G's business, there were things IM knew, or ought to have known about the P6 investment and how it was being marketed, which ought to have led IM to conclude it wouldn't be consistent with its regulatory obligations or good practice to continue to allow it into its SIPPs. And that IM failed to act with due skill, organise and control its affairs responsibly, or treat Mr G fairly by accepting the P6 investment into his SIPP.

I think the fair and reasonable conclusion based on the evidence available is that IM shouldn't have accepted Mr G's application to invest in P6. In my opinion, it ought to have concluded that it would not be consistent with its obligations to do so. To my mind, IM didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr G to be put at significant risk of detriment as a result.

Acting fairly and reasonably to investors (including Mr G), IM should have concluded – and prior to it accepting Mr G's business – that it wouldn't continue to permit the P6 investment to be held in its SIPPs *at all*. I'm satisfied that Mr G's pension monies were only transferred to IM so as to effect the P6 investment. So, I think it's more likely than not that if IM hadn't permitted the P6 investment to be held in its SIPPs before it accepted Mr G's business, that his pension monies wouldn't have been transferred to IM. And it follows that Mr G wouldn't then have suffered the losses he's suffered as a result of transferring to IM and investing in P6.

For the reasons given above, IM shouldn't have accepted Mr G's application to invest in P6. And, even if I thought IM had undertaken adequate due diligence on AW and Greyfriars (which, as I explain elsewhere in this decision, I don't), I'd still consider it fair and reasonable to uphold Mr G's complaint solely on the basis that IM didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr G fairly, by permitting his SIPP monies to be invested in P6. And to my mind, IM didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr G to be put at significant risk of detriment as a result.

IM's due diligence on Greyfriars

I'm satisfied that, in order to meet its regulatory obligations and good industry practice, IM should have carried out sufficient due diligence on Greyfriars, as the investment manager, in addition to its due diligence checks on AW and P6. And in my opinion, IM should have used the knowledge it gained from that due diligence to decide whether to accept or reject any application that involved a request to involve Greyfriars as investment manager.

Regarding the due diligence it undertook on Greyfriars, amongst other things, IM has told our Service at various points that:

- It carries out due diligence on all firms that it works with. And it won't accept business that isn't placed with an FCA authorised and regulated investment manager in Standard Assets.
- It entered into an agreement with Greyfriars on 10 September 2014.
- Greyfriars agreed to IM's terms – it understood and agreed that investments were to be made in accordance with HMRC legislation governing pension schemes and in accordance with IM's list of Permitted Investments.
- As Greyfriars had agreed to IM's terms, IM believed that P6 wouldn't have exposure to unregulated investments as making such investments was at Greyfriars' discretion.
- IM accepted the P6 investments into its SIPPs in reliance on, and believing, Greyfriars' statements that they were Standard Assets.
- IM was entitled to rely upon Greyfriars' statements and representations.
- IM understood from Greyfriars' statements that the P6 investments benefited from a monthly dealing facility designed to satisfy the FCA's criteria for Standard Assets, and that this would be achieved by way of a warehouse facility.
- IM didn't have a detailed understanding of how the warehouse facility for P6 worked, but was aware of how such facilities worked in principle.
- Novia provided both the trading venue (the investment platform) and the liquidity (warehouse facility) to facilitate trades on the monthly trading days.
- As Best International procured liquidity via Novia, it's understandable that Greyfriars/Best International shouldn't have guaranteed performance by a third party but stipulated a best endeavours obligation for itself.
- IM was aware Novia couldn't provide the monthly dealing facility without adequate liquidity to facilitate trades. IM understood from Greyfriars' statements that a warehouse facility would be provided. Given Novia's role, as represented by Greyfriars, IM reasonably assumed that Novia would provide that warehouse facility.
- That Novia has now stated that it didn't provide a warehouse facility demonstrates that IM was misled by Greyfriars' misrepresentations.
- IM had no reason to doubt the veracity of Greyfriars' characterisation of the P6 investments prior to September 2016. The P6 portfolio had adequate liquidity to facilitate monthly trades up to the time the FCA's rules changed in September 2016. And P6 investments were sufficiently liquid to qualify as Standard Assets from the point Mr G invested until the FCA's rule change.
- Novia has confirmed the P6 investments were traded monthly and that it submitted aggregated deal instructions to Best International on the 27th of every month, with trades settling on T+4. Novia hasn't indicated liquidity problems prevented or delayed those trades.

- This is consistent with IM's transactional analysis which demonstrates that there was sufficient liquidity to facilitate trades on a monthly basis up to the point when the FCA's rules changed in September 2016 (and indeed thereafter).

IM has previously made some points to our Service about the contents of Handbook Notice 28, which was issued by the regulator in December 2015. Having carefully considered the notice and what IM has said about it, there are a number of points that I consider relevant:

- The section from Handbook Notice 28 issued in December 2015 that I've quoted earlier in this decision didn't address the issue of due diligence as such. It was written in relation to a new capital requirement framework for SIPP operators which was to come into force in September 2016.
- The Handbook Notice is not therefore formal guidance in relation to SIPP due diligence. I do however think that the points made are of interest and I have taken them into account.
- The regulator had started consulting on the new regulatory capital framework for SIPP operators in 2012. The proposal was for firms to hold a minimum amount of capital based on the amount of assets under administration by the firm with a higher capital requirement for firms that held Non-Standard Assets. The FCA proposed a list of types of assets that would be classed as standard subject to some additional requirements. The additional requirements included that the underlying assets must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days whenever required. The above point from the regulator, in effect, removes the requirement for the investment to be on the non-standard investment list if it is selected by an investment manager but only when the additional requirements are met.
- IM's SIPP Terms and conditions at the relevant time explained that IM prohibited the investment of any SIPP funds into any asset that didn't meet the FCA's definition of a Standard Asset.
- The Terms and Conditions also specified that *"A Standard Asset must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, **whenever required**"* (bold my emphasis). And that any investment that didn't meet the definition of a Standard Asset, as detailed in the IM SIPP Terms and Conditions, was to be classed as a Non-Standard Asset.
- Further, that IM SIPPs and investors aren't permitted to make any instruction to any party to hold Non-Standard Assets within the SIPP and that IM had instructed investors' Financial Advisers/Discretionary Fund Managers to agree not to hold any Non-Standard Assets within investors' plans. And IM says that Greyfriars agreed not to invest in any Non-Standard Assets.
- The Greyfriars Discretionary Fund Management Service P6 application form that AW sent to IM, and which was subsequently signed by Intelligent Money Trustees Limited, explained that, **"***Portfolio Six may wholly consist of non-pooled investments…and our discretion extends to investments in unregulated investments such as…unquoted corporate bonds."* Further, that **"***Given the nature of the underlying investments, the liquidity of the portfolio may be restricted, but we will endeavour to facilitate trades via the single dealing point each month, where necessary."*
- Declarations contained elsewhere in the form confirmed, amongst other things, that:
    - The Trustees had placed no restrictions on the investments that could be held within the Scheme.

    - The information contained in the application form was accurate.
    - The P6 DFM (non-advice) agreement had been read and understood.
- The P6 DFM (non-advice) agreement said, amongst other things, that:
    - The agreement gave Greyfriars discretion to manage funds within the parameters set out in the agreement. And other than those specified in the agreement, there were no restrictions to the management of the portfolio or the transactions Greyfriars arranged.
    - Greyfriars' discretion extended to unregulated investments including unquoted Corporate Bonds. Exposure to unregulated investments may be 100% in P6.
    - The portfolio would have one dealing date per month and it may be difficult **or impossible** to sell some investments at a reasonable price **or in some circumstances at any price at all**. Greyfriars' parent company "*Best International"* would endeavour to provide liquidity to facilitate trades, **but investors may be locked into an investment for an indefinite period** (bold my emphasis).
    - Given the nature of the underlying holdings, which are often unquoted, it may be difficult to get an accurate valuation of investments at any period in time.
- I'm satisfied that many of the unlisted Corporate Bonds that Greyfriars was investing P6 investors' monies into were illiquid investments. I certainly think that's true of all of the bonds Mr G's monies were invested into. Investors' redemption requests outside of specified redemption dates would be at the directors' discretion and, while transferrable, there was no secondary market for the bonds. I'm also satisfied that it was clearly stated in the combination of P6 applications/agreements completed by AW-introduced consumers (like Mr G), which IM was sent, and which were completed *after* IM and Greyfriars' September 2014 agreement, that due to the nature of the underlying investments, the liquidity of the portfolio may be restricted and that investors may be locked into an investment for an indefinite period.
- I appreciate it was stated that Greyfriars' parent company would *endeavour* to provide liquidity, but this was far from being any form of guarantee it would be able to. And I think it ought to have been very clear at the time from the promotional documents for the Corporate Bonds that they weren't investments that were readily realisable within 30 days *whenever required*.
- Further, mindful of the fact that significant proportions of IM's consumers' P6 investor's monies were being invested in high risk, potentially highly illiquid and unlisted Corporate Bonds (as I'm satisfied was the case), I also think it ought to have been very clear and obvious at the time that investors' overall P6 investments were unlikely to be readily realisable within 30 days *whenever required*.
- IM has said it understood from Greyfriars' statements that the P6 investments benefited from a monthly dealing facility designed to satisfy the FCA's criteria for Standard Assets, and that this would be achieved by way of a warehouse facility.
- As I set out earlier in this decision, the annex to the July 2014 *"Dear CEO"* letter set out how a SIPP operator might meet its obligations in relation to investment due diligence, suggestions made include "*correctly establishing and understanding the nature of an investment".* The annex also states that:

    " Although our thematic review focussed on non-standard investments, it is important to note that guidance on due diligence applies to all investments. Findings from our review included firms failing to:

- *understand the nature of an investment, especially contracts for rights to future income, and sale and repurchase agreements*

  …

- *to independently verify that assets were real and secure, or that investment schemes operated as claimed…"*

Further that:

> *We also found that many SIPP operators accepted investments into their schemes without adequate consideration of how investments could be valued or realised.*
>
> *Finally, we found many firms continuing to rely on marketing and promotional material produced by investment providers as part of due diligence processes, despite previous guidance highlighting the need for independent assessment of investments."*

- I've already explained earlier in this decision that, having carefully considered all of the evidence that's been made available to us, I'm not satisfied that IM undertook sufficient due diligence on P6 *before* it accepted Mr G's application to invest in P6.
- IM, on its own evidence, says it didn't have a detailed understanding of how the warehouse facility for P6 worked, but IM also acknowledges that it was aware Novia couldn't provide the monthly dealing facility without adequate liquidity to facilitate trades. And IM says it understood that Novia provided both the trading venue (the investment platform) and the liquidity (warehouse facility) to facilitate trades on the monthly trading days.
- It's not stated in the Greyfriars Discretionary Fund Management Service P6 application or the P6 DFM (non-advice) agreement that Novia would provide the warehouse facility. But it does say in the P6 DFM (non-advice) agreement that *"The portfolio will have one dealing date per month (as close as possible to the 15th day) and it may be difficult or impossible to sell some investments at a reasonable price or in some circumstances at any price at all. Our parent company "Best International" will endeavour to provide liquidity to facilitate trades via a warehousing system where appropriate, but investors may be locked into an investment for an indefinite period."*
- I've carefully considered the contents of the archived pages from Greyfriars' website, both those we provided to IM and those that IM provided to us alongside its response to the provisional decision in another complaint. Some of those pages mention a warehouse facility, but none of them set out the details of how that facility would operate, nor do they state such a facility would be provided by Novia.
- In any event, I think how any warehouse facility would operate, who provided it and whether it would ensure the P6 investments were readily realisable within 30 days *whenever required*, were all things IM should have been taking fair and reasonable steps to correctly establish *before* permitting the P6 investment in its SIPP. And I'm not satisfied IM did this.
- Novia has confirmed that it didn't provide a warehouse facility for the P6 investments, it has never operated a warehouse facility for any investment and Best International didn't procure liquidity from it for the P6 investments.
- I'm satisfied that had IM undertaken sufficient due diligence on the P6 investment, IM would have identified that Novia didn't provide a warehouse facility for P6 *before* IM accepted that investment into its SIPPs. And I think this would have been a significant concern for IM given that it now submits it was misled by Greyfriars

representations about this and that it was aware Novia couldn't provide the monthly dealing facility for P6 without adequate liquidity to facilitate trades.

- IM's transactional analysis when regarded as a whole (through until November 2017), demonstrates there have been periods when investors have been able to disinvest from P6. I don't think that's surprising; potentially highly illiquid investments, or investments in portfolios consisting of potentially highly illiquid investments, can still enjoy periods of liquidity. But that doesn't mean such investments are readily realisable within 30 days *whenever required*, or that it would be fair or reasonable for IM to have assumed that this was the case given what it ought to have known about the P6 investment had it undertaken adequate due diligence.
- I don't think the P6 investment(s) met the definition of Standard Assets provided for in IM's Terms and Conditions. I appreciate IM has submitted that Greyfriars provided reassurances to IM around this *before* IM permitted any of its members to invest in P6. But, even allowing for this, I still think that very soon after Greyfriars first started investing significant proportions of IM's members' monies in high risk, potentially highly illiquid and unlisted Corporate Bonds, that IM ought to have identified that P6 investment(s) being made didn't meet the definition of Standard Assets as detailed in IM's SIPP Terms and Conditions.
- Clearly then the existence of the agreement between IM and Greyfriars – and by this I mean both the September 2014 agreement and the points IM says it discussed with Greyfriars over the phone were not, on their own, enough to prevent the investment in holdings that weren't Standard Assets within the definition of that term provided for in IM's Terms and Conditions. In other words, the combination of IM's permitted investment list and the agreement it entered into with Greyfriars alone were not, in fact, an effective arrangement.
- Handbook Notice 28 doesn't say that the existence of a contractual agreement and an agreed list alone are adequate. It referred to:
    - *"…arrangements… <u>to ensure</u> that the portfolio comprises standard assets only."*
    - *"These arrangements may vary across different firms and business models, and therefore <u>we cannot prescribe any regulatory preference</u>: it should be the choice and responsibility of the firm."*
    - *"We think these arrangements can achieve the regulatory purpose given that SIPP operators can themselves rely on and <u>prove the effectiveness</u> of such arrangements."* (my emphasis)
- 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. The Handbook Notice clearly implies the obvious point that an arrangement has to be monitored to ensure its effectiveness. It says SIPP operators should be able to prove the effectiveness of the arrangements. 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 authorised to act as an investment manager.
- This same point is also clear from the Final Notice relating to Mr W that I quoted above, this was published before Mr G's business was accepted by IM.
- It's not reasonable to take so much comfort from an investment manager'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.

- IM entered into an agreement with Greyfriars and IM says that it also had discussions with Greyfriars about, amongst other things, liquidity and valuations.
- Even if IM was satisfied about Greyfriars' initial representations about P6, and the type of investments that would be made for IM SIPP members investing in P6, *before* IM permitted its members to invest with Greyfriars, I'm not satisfied from the evidence provided that IM then followed this up by carrying out effective monitoring of Greyfriars and the investments that were being made with IM's members monies.
- IM has acknowledged that it had access to Novia's online platform and that this would have given it access to the investments being made. So, I think a system to assist with effective monitoring was available to IM. However, it seems either it wasn't used or, if it was used, IM didn't then draw reasonable conclusions from the information available to it on the platform.
- I say that because had effective monitoring been in place, and had adequate due diligence been undertaken by IM into investments that were being made then, if not from outset then certainly from very early on, I think it should have been readily apparent that AW-introduced consumers investing with Greyfriars were all investing in P6. Further, that Greyfriars was largely, if not wholly, investing those same investors' P6 monies in high risk, and potentially highly illiquid, unlisted Corporate Bonds. And that IM ought to have identified that P6 investment(s) being made didn't meet the definition of Standard Assets as detailed in IM's SIPP Terms and Conditions.

IM has said it was able to rely on what Greyfriars told it under the COBS rules. 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 IM to rely on information provided to it in writing by Greyfriars, unless IM was aware or ought reasonably to have been aware of any fact that would give reasonable grounds to question the accuracy of the information.

Regarding the phone discussions IM says it had with Greyfriars, IM has confirmed that there are no contemporaneous records of the discussions. However, IM now seeks to rely, in part, on these discussions to evidence some of the due diligence it undertook into Greyfriars and/or P6. In my opinion, if these discussions were the way IM was intending to evidence some of the due diligence it undertook either before permitting its members to invest with Greyfriars and/or permitting its members to invest in P6, then, in order to comply with its regulatory obligations, in particular Principle 2, (to conduct its business with due skill, care and diligence), and Principle 3, (to take reasonable care to organise and control its affairs responsibly and effectively), IM should have had processes in place to ensure that it was able to evidence this aspect of the due diligence it had carried out on Greyfriars and/or P6.

Further, I don't think any discussions IM had with Greyfriars over the telephone amounts to Greyfriars providing something *in writing* on which it may have been reasonable for IM to rely, as it appears to have been a verbal exchange only. The corollary of this is that I don't therefore think COBS 2.4.6R (2) applies to the phone discussions.

Regarding the September 2014 agreement; firstly, the wording of that agreement doesn't expressly specify that monies can't be invested in holdings that aren't Standard Assets within the definition of that term provided for in IM's SIPP Terms and Conditions. But the agreement did provide for a list of permitted investments. As I understand it, the (then) permitted investment list, and also the list of investments that weren't permitted without prior written authority from IM, were either set out at the end of the agreement with Greyfriars or else were provided alongside it (they appear at the end of the agreement that's been provided to us). Some investments on the list DFMs could make without recourse to IM and other investments required prior written authority from IM. The permitted investment list doesn't expressly specify that monies can't be invested in holdings that aren't Standard Assets within the definition of that term provided for in IM's SIPP Terms and Conditions.

Secondly, and more importantly, even if I was satisfied that Greyfriars had, at some point, agreed only to invest monies in Standard Assets, I'm satisfied that IM ought reasonably to have been aware of facts that should have given it reasonable grounds to question any information it was relying on from Greyfriars about this. And I think this should have been the case from around the point in time when Greyfriars first started investing significant proportions of IM members' P6 monies in high risk, potentially highly illiquid and unlisted Corporate Bonds. And I think that IM ought to have identified that P6 investment(s) being made didn't meet the definition of Standard Assets as detailed in IM's SIPP Terms and Conditions well *before* IM accepted Mr G's SIPP business.

In other words, I'm satisfied that if IM had undertaken adequate initial and ongoing due diligence into P6 investments and Greyfriars, and if any agreements it had put in place were being effectively monitored, it ought to have been privy to information which didn't reconcile with what IM says Greyfriars represented to it about the investments that would be made. So, in failing to take this step, I think it's fair and reasonable to conclude that IM didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr G fairly. And to my mind, IM didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr G to be put at significant risk of detriment as a result.

I'm satisfied that IM was at fault in one or more of the following respects:

- IM should have had a system in place for the *effective* monitoring of Greyfriars' compliance with any agreement about only making investments that were Standard Assets, in accordance with the IM SIPP Terms and Conditions, and it failed to do so.
- IM should also have been alert to any anomalous investments, such as investments that were unusually small or large or more esoteric investments such as the *type* of unlisted Corporate Bonds that Greyfriars invested P6 investor's monies into.
- IM ought to have been able to identify the first occasion on which Greyfriars invested in unlisted Corporate Bonds on behalf of one of its SIPP members. And upon doing so, IM should have taken steps to satisfy itself about the nature and type of investments that Greyfriars was making with IM member's monies – including whether the type of investments being made within P6 aligned with what IM says Greyfriars had agreed to.
- Mindful of what IM ought to have discovered had it undertaken adequate due diligence into the investments that Greyfriars was making with P6 investors' monies, and mindful also of what IM says Greyfriars had told it about the liquidity of P6, I think

very shortly after the first occasion on which Greyfriars invested in unlisted Corporate Bonds on behalf of one of IM's SIPP members, IM ought to have taken steps to clarify exactly how such investments could be readily realised within 30 days *whenever required*. And, by extension, how its members' P6 investment(s) could be readily realised within 30 days *whenever required*.

- Mindful of the IM SIPP Terms and Conditions, I think IM should have taken immediate steps to act in its customers' best interest after Greyfriars first invested one of its members monies into unlisted Corporate Bonds. This should reasonably have included suspending any further investments with Greyfriars while it made further enquiries pending it being reasonably satisfied that all was in order. Rather than, say, just accepting any further assurance from Greyfriars that investments would be made only into investments that could be readily realised within 30 days whenever required.
- Given the nature of the underlying holdings being made, the presumption ought to have been that the P6 investment(s) could not be readily realised within 30 days whenever required until Greyfriars could show otherwise. I think it's more likely than not that Greyfriars wouldn't then have been able to demonstrate how the P6 investment(s) could be readily realised within 30 days *whenever required*. As noted above, I accept Greyfriars might have referred, generally, to the fact that its parent company would *endeavour* to provide liquidity, but this was far from being any form of guarantee. And I wouldn't consider it fair or reasonable for IM to have concluded that the P6 investment(s) could, in fact, be readily realised within 30 days *whenever required* on account of the reference to this endeavour, and without evidence of there being mechanisms in place to assure liquidity.
- If IM had undertaken adequate due diligence into Greyfriars, P6 and the investments being made and if IM had *effectively* monitored Greyfriars' compliance in respect of only investing in Standard Assets, I'm satisfied that IM ought to have identified very early on, and well before it accepted Mr G's business, that Greyfriars wasn't abiding by what IM states that Greyfriars had agreed to. Further, that Greyfriars was investing its members monies in unlisted Corporate Bonds that couldn't be readily realised within 30 days *whenever required* and that there was no effective system in place for assuring that the P6 investment(s) could be readily realised within 30 days *whenever required*.
- I think this ought to have been a red flag for IM in its dealings with Greyfriars and I think IM should have declined to continue to permit IM SIPP monies to be invested with Greyfriars *before* it accepted Mr G's SIPP business. And in failing to take this step, I think it's fair and reasonable to conclude that IM didn't act 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 G) and treat them fairly.

For the reasons given above, IM should have declined to continue to permit IM members' SIPP monies to be invested with Greyfriars *before* it accepted Mr G's SIPP business. And, even if I thought IM had undertaken adequate due diligence on AW and P6 (which, as I've explained elsewhere in this decision, I don't), I'd still consider it fair and reasonable to uphold Mr G's complaint solely on the basis that IM didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr G fairly, by permitting his SIPP monies to be invested with Greyfriars. To my mind, IM didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr G to be put at significant risk of detriment as a result.

I make this point again here to emphasise that while I've concluded that IM shouldn't have accepted Mr G's business from AW, and that IM shouldn't have still been permitting investors to invest with Greyfriars by the time it received Mr G's SIPP business, and also that

IM shouldn't have accepted Mr G's application to invest in P6, had I only reached the conclusions I've set out above on one of those aspects, and not also gone on to reach findings on the other aspects, for completeness, I'd still consider it fair and reasonable in all the circumstances to uphold this complaint.

That's because, for the reasons I've set out at length above, and having reconsidered everything, including the response to my provisional decision, I'm satisfied that IM didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr G fairly by accepting his business from AW. And because, separately, IM also didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr G fairly, by permitting Mr G to invest with Greyfriars. And because, separately, IM also didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr G fairly, by accepting the P6 investment into his SIPP. And, as mentioned previously, IM didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr G to be put at significant risk of detriment as a result.

Was it fair and reasonable in all the circumstances for IM to proceed with Mr G's application?

For the reasons given above, I think IM shouldn't have accepted Mr G's business from AW and I also think it shouldn't have been allowing its members to invest their SIPP monies with Greyfriars and/or in the P6 investment by the time it received Mr G's application. So things shouldn't have got beyond that.

Further, in my view it's fair and reasonable to say that just having Mr G sign declarations wasn't an effective way for IM to meet its regulatory obligations to treat him fairly, given the concerns IM ought to have had about the business being introduced by AW, about Greyfriars and about the P6 investment.

IM knew that Mr G had signed forms intended to acknowledge, amongst other things, his awareness of some of the risks involved with investing and to indemnify IM against losses that arose from acting on his instructions. And, in my opinion, relying on the contents of such forms when IM knew, or ought to have known, that the type of business it was receiving from AW, and that investing with Greyfriars in P6, 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 IM to do by the time it received Mr G's application would have been to decline to accept Mr G's business from AW and to decline to permit Mr G to invest with Greyfriars and in the P6 investment.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr G signed meant that IM could ignore its duty to treat him fairly. I'm satisfied that indemnities contained within the contractual documents don't absolve, nor do they attempt to absolve, IM of its regulatory obligations to treat customers fairly when deciding whether to accept or reject investments or business.

So, having carefully reconsidered everything, I remain satisfied that Mr G's IM SIPP shouldn't have been established and his IM monies shouldn't have been invested in the P6 holdings. And that the opportunity for IM to execute investment instructions to invest Mr G's monies with Greyfriars and in P6, or proceed in reliance on an indemnity and/or risk disclaimers, shouldn't have arisen at all. I remain firmly of the view that it wasn't fair and reasonable in all the circumstances for IM to accept Mr G's business from AW or for it to accept his application to invest with Greyfriars and in P6.

Is it fair to ask IM to pay Mr G compensation in the circumstances?

The involvement of other parties

I have carefully considered the submissions that IM made on this point initially and in response to my provisional decision. In this decision, I'm considering Mr G's complaint about IM, notwithstanding that I accept that other parties were involved in the transactions complained about – including AW, Greyfriars and Novia.

I also accept that Mr G pursued a complaint against AW with the FSCS. The FSCS upheld Mr G's complaint and paid him some compensation. Following this the FSCS provided Mr G with a reassignment of rights.

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 IM accountable for its own failure to comply with its regulatory obligations, good industry practice and to treat Mr G fairly. The starting point therefore, is that it would be fair to require IM to pay Mr G compensation for the loss he's suffered as a result of its failings.

I've carefully reconsidered if there's any reason why it wouldn't be fair to ask IM to compensate Mr G for his loss.

I accept that other parties, including AW, Greyfriars and/or Novia, might have some responsibility for initiating the course of action that led to Mr G's loss. However, I remain satisfied that it's also the case that if IM had complied with its own distinct regulatory obligations as a SIPP operator, the arrangement for Mr G wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

Taking everything into consideration, it is my decision that it's appropriate in the circumstances for IM to compensate Mr G to the full extent of the financial losses he's suffered due to IM'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 IM's liable to pay to Mr G.

I'm not making a finding that IM should have assessed the suitability of the SIPP or investing with Greyfriars, or the P6 holdings for Mr G. I accept that IM wasn't obligated to give advice to Mr G, or otherwise to ensure the suitability of the pension wrapper, investment manager or investments for him. Rather, I'm looking at IM's separate role and responsibilities – and for the reasons I've explained, I think it failed in meeting those responsibilities.

Mr G taking responsibility for his own investment decisions

In reaching my conclusions in this case I've thought carefully about section 5(2)(d) 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.

And having considered it, I'm satisfied that it wouldn't be fair or reasonable to say Mr G's actions mean he should bear the loss arising as a result of IM's failings.

As I've made clear, IM needed to carry out appropriate due diligence on AW, Greyfriars and the P6 investment and reach the right conclusions. And I think it failed to do this. Just having

Mr G sign forms that contained declarations wasn't an effective way of IM meeting its obligations, or of escaping liability where it failed to meet its obligations.

In my view, if IM had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr G's application from AW, or accepted his application to invest with Greyfriars in P6. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr G wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

I'm satisfied that Mr G's testimony is credible when he says he thought his pension was to be invested in low to medium risk funds, and across multiple funds to protect the investments, and that he was never told the Greyfriars [P6] portfolio was riskier than other investments. He said he was shown graphs by Mr R of AW which illustrated the past performance of the investments was better than his current pension arrangement.

I don't think it would be fair to say in the circumstances that Mr G should suffer the loss because he ultimately instructed the transactions be effected. AW was a regulated firm with the necessary permissions to advise on the transactions this complaint concerns. Mr G then used the services of IM – a regulated personal pension provider. I'm satisfied that in his dealings with these parties, Mr G 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 is fair to say IM should compensate Mr G for the loss he's suffered.

<u>Had IM declined Mr G's business from AW, would the transactions complained about still have been effected elsewhere?</u>

From the evidence provided to us, Mr G has said he reviewed his pension provision due to a change to the administrator of his occupational pension. But I can't see that he was unhappy about his current arrangements, and only transferred to IM on the advice of AW and on the understanding the selected funds were to be low or medium risk. So I think it's more likely than not that AW arranged Mr G's pension monies to be transferred to IM specifically so as to effect the P6 investment, without Mr G understanding the risks associated with the investments, or the significance of the loss of the protected benefits linked to his occupational pension.

I've considered what IM has said in response to my provisional decision about it being overwhelmingly probable that another SIPP provider would have permitted P6.

Amongst other things, I've set out clearly, and in separate sections above, what I think IM should have discovered and concluded about business introduced by AW and the P6 investment if it had undertaken sufficient due diligence prior to accepting Mr G's business.

I've referenced in my findings the type of things IM, if undertaking adequate due diligence at the relevant time, should have been able to discover about P6, including about how Greyfriars was marketing P6. Further, I've explained why this information should, when considered objectively, have put IM on notice that there was a significant risk of consumer detriment. And why I'm satisfied that IM should not have been accepting the P6 investment in its SIPPs *before* it accepted Mr G's business. And, given the clear and obvious risk of consumer detriment associated with the P6 investment and/or AW-introduced business where consumers were investing in P6, I don't agree with IM's contention that it should be *presumed* that other operators who permitted such business did so in compliance with their regulatory obligations and good industry practice.

So, while IM might say that if it hadn't accepted Mr G's application from AW and/or permitted members to invest with Greyfriars and/or permitted the P6 investment in its SIPPs, that the transfer and investment would still have been effected with a different SIPP provider, I don't think it's fair and reasonable to say that IM shouldn't compensate Mr G for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found IM 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 G's business from AW or permitted the P6 investment into its SIPPs.

In the circumstances, I remain satisfied it's fair and reasonable to conclude that if, and *before* it received Mr G's applications, IM had declined to accept business from AW and/or hadn't continued to permit its members to invest with Greyfriars and/or hadn't continued to permit its members to invest in P6, Mr G's monies wouldn't still have been transferred into the IM SIPP or been invested into P6.

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, in this case, as I've said above, I'm not satisfied that Mr G proceeded knowing that the investments he was making were high risk and speculative. And I've not seen any evidence that he was determined to move forward with the transactions in order to take advantage of a cash incentive.

Mr G says he understood his pension monies would be invested in low to medium risk funds. And, based on the evidence I've seen, I'm not satisfied that Mr G knew he was making a high-risk investment. I've also not seen any evidence to show Mr G was paid a cash incentive.

It therefore cannot be said he was incentivised to enter into the transaction. And, on balance, I'm satisfied that Mr G, 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 IM had refused to accept Mr G's application from AW and/or hadn't continued to permit its members to invest with Greyfriars and/or hadn't continued to allow the P6 investment in its SIPPs, the transactions this complaint concerns wouldn't still have gone ahead.

As I've said, there is no evidence to show that Mr G was unhappy with his pension arrangements at the time. He thought he would take the opportunity to review them as the administrator of his occupational scheme was changing. But his occupational scheme was a defined benefit (DB) scheme, which is likely to have had valuable guaranteed benefits associated with it. And as I've said, at the time of Mr G's application COBS 19.1.6G made it clear, when advising on pension transfers which involved DB schemes, the starting assumption should be that the transfer would not be suitable.

If Mr G had sought advice from a different adviser, I think it's more likely than not that the advice would have been not to establish a SIPP and transfer his pension monies so as to effect the P6 investment. And I think it's more likely than not that Mr G would have acted in accordance with that advice. Alternatively, if IM hadn't accepted his business from AW, Mr G might have simply decided not to seek pensions advice elsewhere from a different adviser and still then retained his existing pension plans.

Summary

So, overall, I do think it's fair and reasonable to direct IM to pay Mr G 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 G's loss, I consider that IM failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining to accept Mr G's applications when it had the opportunity to do so.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr G. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against IM that requires it to compensate Mr G for the full measure of his loss. IM accepted Mr G's business from AW, continued to permit its members to invest with Greyfriars and continued to permit the P6 investments into its SIPPs. But for IM's failings, I'm satisfied that Mr G's pension monies wouldn't have been transferred to IM and invested in P6.

As such, I'm not asking IM 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 G's right to fair compensation from IM for the full amount of his loss. The key point here is that but for IM's failings, Mr G 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 IM to compensate Mr G 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.

In conclusion

Taking all of the above into consideration, I think that in the circumstances of this case it's fair and reasonable for me to conclude that IM should have decided not to accept business from AW, not to continue permitting its SIPP members to invest with Greyfriars and not to continue to accept P6 in its SIPPs *before* it received Mr G's business from AW.

I also think it's fair and reasonable for me to conclude that if IM hadn't accepted Mr G's introduction from AW and/or hadn't continued permitting its SIPP members to invest with Greyfriars and/or hadn't continued to accept P6 in its SIPPs *before* it received Mr G's application, that Mr G wouldn't have established and transferred monies into an IM SIPP, or invested with Greyfriars in P6.

For the reasons I've set out, I also think it's fair and reasonable to direct IM to compensate Mr G for the loss he's suffered as a result of IM accepting his business from AW and permitting him to invest his IM monies with Greyfriars and in P6.

I say this having given careful consideration to the *Adams v Options* 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.

Putting things right

My aim is to return Mr G to the position he'd now be in but for what I consider to be IM's failure to carry out adequate initial and ongoing due diligence checks before accepting Mr G's applications. Had IM acted appropriately, I think it's *more likely than not* that Mr G would have remained a member of the pension schemes that he transferred into the SIPP.

Mr G transferred monies from a number of different pension schemes into the SIPP, including monies from both defined contribution and defined benefit schemes. To put things

right IM will need to undertake different types of loss calculations; one in relation to the monies that originated from the defined benefit scheme and another in relation to monies that originated from the defined contribution schemes. As part of doing this IM will need to calculate the portion of Mr G's current SIPP value that's attributable to each of the respective transfers and apply them to the relevant calculations.

In light of the above, IM should:

- Obtain the actual transfer value of Mr G's SIPP, including any outstanding charges.
- Pay a commercial value to buy Mr G's share in any residual P6 holdings in his SIPP that cannot currently be redeemed.
- Undertake loss calculations as set out below in respect of each of the schemes from which monies were transferred into the SIPP and pay any redress owing in line with the steps set out below.
- If the SIPP needs to be kept open only because of 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.
- If Mr G has paid any fees or charges from funds outside of his pension arrangements, IM should also refund these to Mr G. Interest at a rate of 8% simple per year from date of payment to date of refund should be added to this. Income tax may be payable on any interest paid. If IM deducts income tax from the interest, it should tell Mr G how much has been taken off. And IM should also then give Mr G a tax deduction certificate in respect of interest if Mr G asks for one.
- Pay to Mr G £500 to compensate him for the distress and inconvenience he's been caused.

I've set out how IM should go about calculating compensation in more detail below.

FSCS payment

I acknowledge that Mr G 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 G'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 G received from the FSCS. And it will be for Mr G to make the arrangements to make any repayments he needs to make to the FSCS. However, I do think it's fair and reasonable for some allowance to be made for the sum(s) Mr G actually received from the FSCS and has had the use of for a period of the time covered by the calculation.

If IM wishes to make such an allowance, it must first calculate the proportion of the total FSCS' payment(s) Mr G received that it's fair and reasonable to apportion to each individual transfer into the SIPP – this *must* be proportionate to the value of the actual sums transferred in. The total FSCS payment(s) allowed for *must* be no more than the total FSCS payment(s) Mr G actually received. Having done this, IM can then make the allowance by following the steps set out in the sections below.

Treatment of the illiquid assets held within the SIPP

I think it would be best if any illiquid assets held could be removed from the SIPP. Mr G would then be able to close the SIPP and transfer away from IM if he wishes. That would

then allow him to stop paying the fees for the SIPP. To do this IM should reach an amount it's willing to accept as a commercial value for any illiquid P6 holdings that remain within Mr G's IM SIPP, and pay this sum into the SIPP and take ownership of the relevant investments.

If IM is able to purchase the illiquid investment, then the price paid to purchase the holding will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding).

If IM is unable, or if there are any difficulties in buying Mr G's illiquid investment, it should give the holding a nil value for the purposes of calculating compensation. To be clear, this would include the investment being given a nil value for the purposes of ascertaining the current value of Mr G's SIPP.

If IM doesn't purchase the investments, and if the total calculated redress in this complaint is less than £170,000, IM may ask Mr G 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 G 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. IM will need to meet any costs in drawing up the undertaking.

If IM doesn't purchase the investments, and if the total calculated redress in this complaint is greater than £170,000 and IM doesn't pay the *recommended* amount, Mr G 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 IM (excluding any interest) equates to the total calculated redress amount in this complaint. IM may ask Mr G 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 G 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. IM will need to meet any costs in drawing up the undertaking.

Calculate the loss Mr G has suffered as a result of making the transfer in relation to monies originating from the defined benefit scheme

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

For clarity, Mr G has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

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

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

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

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

For the purposes of the calculation that's being carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4, if it wishes, IM *may* notionally, for the period from the point of their payment through until the valuation date (as per the DISP App 4 definition of that term), allow for that proportion of the payment(s) Mr G received from the FSCS following the claim about Active Wealth (UK) Ltd, that it's fair and reasonable to apportion to monies transferred in from the defined benefit schemes and in accordance with what's stated earlier in this decision, as an income withdrawal payment. Where such an allowance is made then IM must also, at the end of the calculation, allow for a corresponding notional addition to the overall calculated loss that's equivalent to the relevant notional income withdrawal payments allowed for. The effect of this notional addition will be to increase the overall loss calculated using the most recent financial assumptions in line with PS22/13 and DISP App 4, by a sum that's equivalent to the proportion of the payment(s) Mr G received from the FSCS accounted for in this part of the calculation.

Redress paid to Mr G as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, IM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension.

Redress paid to Mr G as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, IM may make a notional deduction to cash lump sum payments to take account of tax that Mr G would otherwise pay on income from his pension. It's reasonable to assume that Mr G is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%. However, if Mr G would have been able to take a *further* tax-free lump sum, the reduction should only be applied to that portion of the compensation that couldn't have been taken as a tax-free lump sum. For example, if Mr G would have been able to take a tax-free lump sum of 25%, the reduction should be applied to 75% of the compensation

Calculate the loss Mr G has suffered as a result of making the transfer in relation to monies originating from defined contribution schemes

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

Any contributions or withdrawals Mr G has made from the SIPP will need to be taken into account whether the notional value is established by the ceding provider or calculated as set out below.

Any withdrawal out of the SIPP should be deducted at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. The same applies for any contributions made - these should be added to the notional calculation from the date they were actually paid, so any growth they would have enjoyed is allowed for. To be clear withdrawals here doesn't include SIPP charges or fees paid to third parties like an adviser. But it would include any pension commencement lump sum or pension income Mr G actually took after his pension monies were transferred to IM.

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

If it wishes, IM *may* make an allowance in the form of a notional withdrawal (deduction) equivalent to that proportion of the payment(s) Mr G received from the FSCS following the claim about Active Wealth (UK) Ltd, that it's fair and reasonable to apportion to monies transferred in from the defined contribution schemes in accordance with what's stated earlier in this decision, and on the date the payment(s) was actually paid to Mr G. Where such a deduction is made there must also be a corresponding notional contribution (addition), as at the date of my final decision, equivalent to the total relevant notional withdrawal(s) accounted for in this part of the calculation.

To do this, IM should ask the operators of Mr G's previous defined contribution pension plan(s) to allow for the relevant notional withdrawal(s) in the manner specified above. IM must also then allow for a corresponding notional contribution (addition) as at the date of my final decision, equivalent to the accumulated FSCS payment(s) notionally deducted by the operators of Mr G's previous defined contribution pension plan(s).

Where there are any difficulties in obtaining notional valuations from the previous operators, IM can instead allow for both the notional withdrawal(s) and contribution(s) in the notional calculation it performs, provided it does so in accordance with the approach set out above.

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

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

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr G as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid.

It's reasonable to assume that Mr G is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%. However, if Mr G would have been able to take a further tax-free lump sum, the reduction should only be applied to that portion of the compensation that couldn't have been taken as a tax-free lump sum. For example, if Mr G would have been able to take a tax-free lump sum of 25%, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Interest

If payment of compensation is not made within 90 days of IM receiving Mr G's acceptance of my final decision, interest must be added to the compensation that relates to monies originating from defined contribution schemes at the rate of 8% per year simple, from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If IM deducts income tax from the interest, it should tell Mr G how much has been taken off. IM should give Mr G a tax deduction certificate in respect of interest if Mr G asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

SIPP fees

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

Distress & inconvenience

In addition to the financial loss that Mr G has suffered as a result of the problems with his pension, I think the loss of a significant portion of his pension provision caused Mr G distress. I think it is fair and reasonable that IM should pay Mr G £500 to compensate him for this.

My final decision

For the reasons given, I find this complaint is one we can consider, and my final decision is that I uphold Mr G's complaint and Intelligent Money Ltd must pay fair 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 £170,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £170,000, I may recommend that Intelligent Money Ltd pays the balance.

Determination and award: My final decision is to uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that Intelligent Money Ltd should pay the amount produced by that calculation up to the maximum of £170,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £170,000, I recommend that Intelligent Money Ltd pay Mr G the balance plus any interest on the balance as set out above.

The recommendation isn’t part of my determination or award and Intelligent Money Ltd doesn’t have to do what I recommend. It’s unlikely that Mr G could accept a decision and go to court to ask for the balance and Mr G may want to get independent legal advice before deciding whether to accept a decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 10 May 2024.

Chris Riggs
Ombudsman