DRN-4732777

The complaint

Mr T complains that JAN Investment Marketing (also trading as Jan Kazimierz Pietruszka) (JAN) were involved in transferring his pension funds and they didn't do what they ought to have done, which ultimately meant he was unsuitably invested and he suffered loss.

What happened

Overview

In 2015 and 2016 Mr T spoke to various parties in respect of his pension arrangements. In early 2016 a self-invested personal pension (SIPP) was opened for Mr T and funds were transferred from a personal pension plan (PPP) into this SIPP. This completed in March 2016. The funds held in the SIPP were never invested.

Some months later in 2016 the majority (around 90%) of the funds were transferred into a Small Self-Administered Scheme (SSAS) that had been established in 2014. This SSAS was registered with the name the 'X Retirement Scheme' and is referred to as 'X SSAS' in this decision. Several investments were made through the X SSAS, which it's said went on to fail. It's said Mr R and another directly advised on these investments.

The X stand for the same name/ prefix as a business I am referring to as Business X in this decision. This 'X' name is distinctive and specific and shares a common linked individual (Mr R). Mr R was one of the people who advised Mr T directly.

The remainder of the funds in the SIPP were transferred out in early 2017 and the SIPP closed. It originally appeared the funds were transferred to the X SSAS in early 2017. But it now appears to be more likely that these funds were transferred into a scheme called X Retirement Scheme Regulated Trust, said to be a scheme set up for eight individuals to make investments which JAN say they did advise upon. The 'X' stands for the same specific name.

There is evidence that suggests that in 2019 Mr T's funds in X Retirement Scheme Regulated Trust may have been moved. Mr T being told that was necessary and being instructed on this and investing the funds by Mr R.

Representatives on behalf of Mr T say that JAN are responsible for the financial loss he has experienced. JAN doesn't agree. Mr T accepts that other (unregulated) parties were also involved, and particularly when it came to advising him directly. Mr T has not complained against any other party nor made any claim or started any action elsewhere.

JAN thought it was too late for Mr T to complain and they have not accepted my earlier decision that the complaint was made to JAN within the relevant time limits.

Whilst (although this is not clear) JAN might now accept they knew of Mr T and did facilitate and arrange some matters (it isn't clear exactly what they accept in respect of Mr T), they say they didn't advise him on the investments in the X SSAS.

I have used ‘JAN’ both to represent the business and the individual person Mr T has referred to. It is clear that Mr T associates and refers to them interchangeably. Where anyone else said to be connected to JAN is referred to, this person is identified differently.

Background

Mr T’s PPP was set up by an adviser who later moved to a firm called Jan & Co. (at the time acting as appointed representatives of another firm). It appears the servicing of Mr T’s PPP moved with the adviser. It isn’t suggested Jan & Co. provided any services in respect of this PPP. The adviser who started the PPP was a friend of Mr T and died prior to 2015.

In 2004 Jan & Co Investment Marketing became directly authorised by the regulator. Jan & Co became JAN Investment Marketing in 2010 and retain that as a trading name to date. From February 2023, ‘Jan Kazimierz Pietruszka’ was the alternative trading name for JAN Investment Marketing. Both JAN Investment Marketing and Jan Kazimierz Pietruszka remain the current registered trading names. The Financial Conduct Authority’s register shows email and web contact information for the firm using the domain name jan-cash.co.uk. In July 2022 JAN applied to cancel their authorisation.

Mr T says he was introduced to a person called Mr R in mid-2015 by a friend who had started working for a property company. It’s said the introduction was made due to Mr T’s interest in using his existing PPP to invest in property via this company. Mr T says his interest arose once he’d seen his limited projected potential annual income from the PPP. Mr T and Mr R first spoke by telephone at the property company’s office and Mr T then met with Mr R on 14 October 2015 in Mr R’s office. JAN say that Mr T and Mr R were friends and neighbours.

A business previously linked to Mr R still exists and has an identity similar to one that Mr R is still involved with as a Director, which is located close to where Mr T lives. Both these business’ use a prefix that is the same as the prefix used by the SSAS Mr T’s funds were transferred into. I am representing this prefix throughout this decision with the letter ‘X’.

JAN provided a copy of the fact find document and risk questionnaire it is said Mr R completed with Mr T, signed 22 December 2015. JAN have not explained how they come to have this. The document is branded as coming from Business X.

It is recorded in the fact find that Mr T is employed full-time in technology and the name of his employer is provided. This employer was not Business X and there is nothing that supports any thinking that Mr T worked for or was linked to any employment with Business X.

When Mr T and Mr R met, they discussed investments. We are told Mr R recommended a Small Self-Administered Scheme (SSAS) for the property investment as well as a FX (foreign exchange) investment for Mr T. Mr T says that from his first meeting with Mr R it was made clear JAN was the adviser for the SSAS.

There is no dispute that the documents from when the X SSAS was set up in 2014 show JAN as having been the advisers.

Mr T’s representatives originally suggested that in October 2015 JAN advised Mr T. I haven’t seen anything that makes me think there was any direct contact between JAN and Mr T in 2015.

Information provided by JAN suggests a client relationship between Mr T and JAN was being started around late 2015.

Mr T says there was a second meeting with Mr R on 16 December 2015. And he says that based on the advice he was being given at this time he asked to meet JAN and that Mr R arranged the introduction. This was also to enable Mr T to meet someone Mr H from Company Y who would be involved in investments.

There has been some disagreement about the date of a meeting at JAN's offices in late January. JAN think the fact Mr T and his representatives referred to several different dates undermines the veracity of it happening at all. My understanding is that Mr T now says the meeting took place on 27 January 2016. I have explained previously I don't consider the date material to this decision.

Mr H is shown as a broker (and historically a financial adviser) on Companies House, and as having been involved in a variety of businesses including some using the name 'Y' as part of the name. The registered trading address for Company Y is the same address that was used until recently by Business X of Mr R. Company Y acted in respect of X SSAS and, for example, sent out introductory material under their banner to Mr T.

Of the meeting of Mr T with JAN and Mr H at JAN's offices, Mr T says that after an initial introduction, the principal of JAN left the meeting. It was also suggested that JAN left the general area but remained in earshot. Mr T says he was disappointed with how the meeting was conducted and that JAN handed him over to Mr H to answer questions.
It appears JAN may refute any such meeting took place.

It is suggested on behalf of Mr T that JAN's silence at the meeting and a failure to have interceded, indicates JAN's approbation and reflects their facilitation, of what Mr T was being advised to do.

Mr T says he signed the paperwork in JAN's offices and wrote to Mr R the next day. Mr T says he was assured all investments were in approved pension schemes in the meeting and that was why he signed everything he was told to.

Mr T does not recall seeing a financial planning report and says he relied on Mr R and (indirectly) JAN's advice when it came to entering 'the transaction'. And it is said Mr R and Mr H then directed Mr T which led to the investments later made.

Mr T's representatives say that Mr R and Mr H actively advised Mr T, whilst JAN's role and their link to the advice and what followed, included knowledge, presence, and acquiescence, and was intrinsic to facilitation.

In early 2016 JAN was in contact with Mr T's PPP provider and a SIPP provider on behalf of Mr T. This was in respect of starting a SIPP and the transfer of funds from the PPP into the SIPP that was started for Mr T. Contemporaneous material from both third parties records JAN as being the contact and advisers for Mr T, and whom the third parties were in contact with.

On 3 February 2016 the SIPP provider wrote to Mr T to confirm they had opened his new SIPP. The provider referred any queries to his adviser, (Mr B of JAN), and included a contact phone number which has been used by JAN, both historically and more recently. Mr B was a regulated adviser who worked for JAN at the time.

A person called Mr A contacted Mr T on 3 February 2016. Mr A's email address used the domain name, jan-cash.co.uk, that was used by JAN. The email had the reference 'X Retirement Scheme'. The email sets out that Mr A is sending Mr T documents from the SIPP

provider, and says they are the regulated investment wrapper. The email tells Mr T the portfolio has been established. It appears no investments were made through Mr T's SIPP.

Mr A's details are given as Paraplanner, and a phone number starting 0800 is provided, which is said to be the pension administration contact number and the name JAN and their business confidentiality message follows. Mr A shares a surname with Mr H of Company Y. Mr T believes them to be related. Mr A's name is also used on communications from Company Y.

An email from Mr A to Mr R using the X email address for Mr R was sent on 4 February 2016. It was about Mr T and referred to 'the scheme', without greater detail, and asked Mr R to forward the email to Mr T. The trail shows Mr R did this and Mr T then emailed Mr A to confirm his (Mr T's) email address.

In February 2016 the SIPP provider contacted the PPP provider in respect of Mr T's instruction to transfer funds held in his PPP into his SIPP. The sum of just under £85,000 was transferred on 17 March 2016 into Mr T's SIPP.

In March 2016 the SIPP provider wrote to Mr T confirming they had received the funds and said again that any queries were to be directed to his adviser, Mr B of JAN.
The audit reports prepared by SIPP provider for the period February and November 2016 show Mr T's account had JAN as the attached adviser (and Mr B) with the same JAN contact number.

An email from Mr T of 28 June 2016 to Mr A copies in Mr R and JAN (using the admin email address at the JAN domain name. This email address for JAN is used at various times in respect of JAN and Mr T.

JAN have stressed how important they consider this email to be. The email refers to an earlier query about whether the pension funds had been allocated to investments discussed with Mr R before the Brexit result. It indicates Mr T was pleased to hear the funds remained in cash and confirmed he wanted this to continue whilst Brexit impacted the markets and that he was particularly nervous around foreign investments whilst sterling remained weak. It concludes saying he will wait until Mr R returns from a holiday.

In September 2016 Mr T signed to instruct the transfer of the majority (90%) of his SIPP funds to X SSAS. It is not clear from what JAN say, if they assert another arrangement was also involved. Company P are given as the scheme administrator/ provider for the X Retirement Scheme in respect of the transfer (not Company Y).

JAN have recently stressed the X Retirement Scheme was not the X SSAS but apparently a collective investment scheme they did advise upon when it came to investing, which was provided by the same provider as Mr T's SIPP. JAN appear to be now referring to a scheme which has the full name the X Retirement Scheme Regulated Trust (which was provided by Mr T's SIPP provider).

It originally seemed not to be in issue that the X SSAS must always have been the intended destination for Mr T's pensions funds, albeit JAN had not directly said whether this was known to them at the time. They say it was known to all other parties.
We have been provided with a letter sent to Her Majesty's Revenue & Customs (as it was at the time) (HMRC) in respect of the X SSAS. This letter is dated October 2016 and is stamped, signed, and dated by JAN.

This was to HMRC pension scheme services in respect of Mr T's transfer to the SSAS and in respect of various regulatory matters. It refers to JAN being one of the parties and having

provided (and by implication completed) one of the attached questionnaires as well as being the introducer to the scheme SSAS and that it is regulated.

There is reference to Mr T joining the scheme on 4 November 2016. The X Retirement Scheme (the SSAS) is said to have been established on 9 Sept 2014 and the regulatory number of the regulated financial advisers to the scheme is provided. This is JAN's principal's individual regulatory FCA number.

It is set out in the communications to HMRC that the member is a director of the company, 'X'. There is nothing to suggest Mr T was Director of this or any company.

It says it is expected there will be maximum of two members (and says there is currently just one). This current member is not named but is said to be a director. And it is said the SSAS is only open to employees and confirms this is a SSAS targeted at small business owners. There is nothing to suggest any of the above applied to the circumstances of Mr T as at the time.

After I issued my provisional decision on the merits of this complaint, JAN told us that the X SSAS was started for Mr R. And say they did not introduce the scheme nor advise in respect of Mr R and the SSAS and investments made by the SSAS.

There is reference to the transfer into the SSAS being "*an in-specie transfer"*. I have not seen any reference to Mr T holding the named investments. There was no in-specie transfer from the SIPP. JAN have recently suggested this reference to investments applied to Mr R.

Mr T's received documents welcoming him to his Company Y Retirement account, (apparently the X SSAS) where the contact information at the end shows the banner and contact information of JAN, named as his appointed adviser to the X SSAS and direct him to JAN for any pension guidance.

In December 2016 a further transfer request was made in respect of the remaining cash sum held in the SIPP, for it to be moved into the X SSAS.

In April 2017 the SIPP provider wrote to Mr T, confirming the closure of his SIPP and that the funds had been transferred into the X Retirement Scheme Regulated Trust's General Investment Account. Any queries about this were again directed to his adviser, Mr B of JAN. JAN have recently made submissions about the X Retirement Scheme Regulated Trust's General Investment Account, which I return to below. They stress this is something distinct from the X Retirement Scheme SSAS (X SSAS).

It isn't clear to me how the money was transferred to the X SSAS after it was moved to the X Retirement Scheme Regulated Trust's General Investment Account. I don't think this is a matter I need to determine.

We have limited information on the investments made within the SSAS. Mr T says he was originally planning to make a property investment, but was then told he needed to make a second investment. There is reference to payments including FX investments. We have not been told when investments were made or how this came about. Mr T's representatives say they have had limited success in obtaining information on the SSAS and investments.

Mr T says Mr R and Mr H told him that at worst he could lose 30% of the FX funds, and Mr T thought such loss would be covered by his property investment profits. We have been told that in August 2018, after Mr T had been phoning Mr R and Mr H, he was told the FX investment element had failed and he had lost the full value involved and that the agreed processes had not been implemented (which Mr T says he was told would have limited loss).

We are told that it was first at the start of October 2018 Mr T decided to cut his losses and cash-in his investments and he wrote to Mr R about this. We have been provided with the email about this. Mr R didn't think Mr T had enough information to make this choice and arranged a meeting with him and Mr H in early October 2018. This took place and Mr T was reassured there was a plan in place to make good the losses.

Mr T says he was told his pension funds were invested for a two-year contract. And that is why it was in November 2018 he wrote to Mr R to arrange for the transfer of his investments into cash, as he remained unhappy with the handling of his pension investments.

In November and December 2018 and into 2019 Mr T says he had ongoing discussions. He says he tried to obtain further information and was provided with purported updates. It is not entirely clear what this involved, or whom. But there is no suggestion JAN answered any attempted contact.

Mr T says that in June 2019 he was again reassured. It is not clear what this involved, but it is not suggested JAN were involved in this. Mr T goes on to set out what he says followed. We've been provided with minutes from a meeting in November 2019 showing Mr T and others as shareholders and Mr H as a Distribution Agent and Mr R as an Introducing Agent.

Overall Mr T says that when it came to JAN, after the initial two-year period was reached (2018), he tried to contact JAN, as well as Mr R and Mr H. But JAN never returned any calls. And he says that whilst JAN's signage remained on the address Mr T held for JAN for several years, it became obvious the address had been abandoned as post built up inside the front door as Mr T observed whenever he visited. JAN don't appear to accept any attempts to contact them, save they accept a contact in 2021.

Mr T says that whilst he did initially have contact with the other two people, over time they increasingly ignored him until they ceased responding. He says they have both vacated the offices they shared.

Mr T says that by December 2020 he had lost trust in Mr R and sought assistance from his present representatives. He went on to contact JAN in March 2021 to request their file and says JAN did not reply.

Mr T told us he complained at the time that he didn't receive regular information and that queries and emails went unanswered. More recently we were provided with some information on who it's said Mr T tried to contact, and when.

In January 2022 representatives on behalf of Mr T complained to JAN. JAN say this happened on 12 January 2022, and this date is agreed. In April 2022 JAN wrote to Mr T and said Mr R was his financial adviser and he ought to address any complaint there.

We are told the X SSAS made a substantial loss, and this included the FX investment which is without value (it seems to be suggested the original investment was £38,000). We were originally told that around £58,000 remained invested in a failing or failed property investment. More recent submissions suggest things have got worse.

We are told Mr T has been trying to obtain the £7,000 he thought remained in cash in the X SSAS but that no one has returned his requests.

The administrators for the X SSAS (Company P) dissolved in 2021.

<u>The Complaint</u>

In general terms it's said JAN are responsible for losses caused to Mr T by starting a SIPP, transferring funds from his PPP into the SIPP, for transferring funds into the X SSAS and making unsuitable investments within the X SSAS.

It's accepted on Mr T's behalf that he never met with JAN where they spoke about any of the arrangements and activities, and JAN were not the sole provider of advice. Nor did they arrange everything. However it is complained that JAN facilitated what happened, they did not do what they ought to have done and knowingly allowed their firm to be used to give an appearance of legitimacy and oversight to the transfer(s) and investments.

In particular Mr T's representatives say JAN knew they were accepting or soliciting Mr T as a retail client for whom a SIPP was unsuitable and where they knew no adequate advice had been provided on the suitability of a SIPP or SSAS (that was to follow) or the investments to follow that. It was their actions, arrangements and involvement and the use of their identity as the regulated firm, that enabled and facilitated the transfers, investments, and allowed other activities to take place.

JAN have continued to repeat it was too late for Mr T to complain and that he ought to be contacting Mr R.

What JAN said prior to my decision on jurisdiction

JAN objected to us looking at the complaint for various different reasons that have expanded over time. Their objections were added to and have included matters relevant to merit and including:

- It was made too late (more than six years after the activity complained about)
- We can't consider the complaint as SSAS' are not a regulated activity and are outside our remit
- The complaint ought to be made to Mr R first
- Mr R never worked for JAN nor represented them
- They don't know Mr T and have not advised him
- JAN never met with Mr T at their offices
- Alternatively, it was said they did not provide ongoing advice to Mr T. It has not been made clear what this refers to, or what period of time.
- JAN said the SIPP was to undertake regulated investment activities. We have not been told how this was known.
- After Mr T emailed JAN requesting that all monies in his SIPP were to be kept in a cash platform as he did not want to invest in June 2016, he did not contact JAN again.
- JAN also said that Mr T instructed his SIPP funds to be transferred in October 2016 to the X SSAS (and after this was completed in November 2016), JAN had no further contact with Mr T.
- JAN said they were only an appointed representative/ adviser for opening Mr T's SIPP/ the transfer from the PPP into a SIPP. JAN have not explained who they say they represented, nor who appointed them.
- Mr R was Mr T's adviser on the transfer to a SIPP and the transfer to the X SSAS

JAN said Mr T and his representatives fabricated their version of events. JAN told us they have stopped trading.

Investigator's view

The Investigator didn't think we were able to look at Mr T's complaint and she explained why. She noted her view the activity had taken place within six years of the complaint being made and it would have been made within time.

Responses to view

Mr T's representatives didn't agree with the view and asked for an Ombudsman to make a decision on jurisdiction.

Jurisdiction decision

On 27 November 2023 I concluded for the same reasons set out in my provisional decision of September 2023, that Mr T's complaint had not been made too late. I have not changed my thinking on this. This is because Mr T's SIPP was opened in February 2016 and the funds transferred into his SIPP in March 2016 from the PPP. (The further transfers into the X SSAS took place some months later in the autumn of 2016, and early 2017, the investments followed through the SSAS).

Mr T complained to JAN by letter on 12 January 2022. This complaint was therefore made within six years of the SIPP being opened and the initial transfer of funds, the activity complained about. I don't accept that any discussions and meetings Mr T had with unregulated parties in 2015 ought to be understood to represent regulated advice, nor to be the start date for jurisdiction purposes for the complaint made about JAN. So Mr T's complaint was made within six years of the first event complained of and thus within the time limits that apply. As such I wasn't required to consider whether Mr T had complained within three years of when he knew, or ought to have known, of his cause for complaint.

Reponses following my jurisdiction decisions from JAN

JAN did not agree with my jurisdiction decision. They stressed the holding of servicing rights does not evidence that advice was provided. They say there was never any contact between themselves and Mr T after JAN received the servicing rights in 1998 [until matters now complained about]. This is agreed and not in issue here.

JAN let us know they had obtained a copy of Mr T's fact find, and provided this, with a copy of the email of June 2016 from Mr T, asking for his funds to be held in cash.

JAN has not acknowledged the existence of Mr A (or Mr B), nor given any explanation as to who they were, their use of JAN's domain email addresses, nor what they say was their relationship with JAN and why and how they came to communicate with Mr T.

JAN said the fact find was signed and dated 22 December 2015, thus prior to Mr T's alleged meeting at the JAN office. They set out submissions in respect of the contents of the document, including asserting Mr T had an intended transfer into a SSAS to enable the selection of non-regulated investments, which they now said was without advice. Such detail does not appear on the fact find. JAN say that Mr T was an adventurous investor.

It is not suggested JAN completed the fact find with Mr T. Nor is it suggested the fact find was completed by an FCA regulated firm.

JAN suggest that if the fact find was completed on 22 December 2015 there was already a formed intention in respect of what was to follow for the pension transfers, and the process of advice had commenced.

JAN didn't think it mattered when the transfer application was signed, or the transfer of funds took place as they thought the date of the fact find ought to be understood as the date Mr T agreed to the transaction and should be the only starting point of advice. So this meant Mr T had not complained within six years. JAN didn't agree the date of the opening of the SIPP in February 2016 is a relevant date when considering jurisdiction, nor the later transfer.

They stressed their thinking that an initial meeting and fact find determine the starting point of advice and refer to the FCA's handbook on the commencement of the advice process. JAN have referred to this being the time 'hard' and 'soft' facts are established, although they say they don't know any 'soft' facts in respect of Mr T.

JAN also suggested Mr T failed to contact JAN when he came to complain. JAN say the complaint was only started after Mr T and Mr R fell out, and by this time, it was too late for Mr T to complain. JAN have not explained what is meant by this assertion.

JAN stress they never advised Mr T and say the letter of complaint was full of errors, any such errors have not been identified. They say the SIPP was opened to undertake regulated investment activities and the SIPP provider did not establish or administer a SSAS. No FX investments were ever made through the SIPP by JAN.

JAN have never met Mr T and not at their offices, and did not give him ongoing advice. Mr T did not contact JAN again after June 2016. JAN has not been involved in Mr T's affairs since November 2016 when his transfer to the SSAS was executed.

<u>From Mr T's representatives</u>

It was said on Mr T's behalf that a fact find prepared by an unregulated individual (Mr R) and unregulated business (X) cannot be regulated advice as suggested.

They provided further documents, including Mr T's account and copies of communications from the time. This included the email sent shortly after the meeting Mr T says took place in January 2016 at JAN's offices and the email refers to meeting the principal of JAN. We were also provided with several letters of welcome from JAN to Mr T, on JAN branded and headed paper.

It is said JAN's model of work and the way they were distanced ought not to remove their liability. It is complained that JAN failed when it came to due diligence and that no competent adviser would have recommended or facilitated Mr T transfer his benefits. In addition they highlighted alleged failures to meet certain requirements set out by COBS (the regulator's Conduct of Business rules).

Mr R has not been regulated since January 2014. Mr T's representatives say JAN was needed to facilitate the original transfer and related activity, investments, and the subsequent transfer to the X SSAS, which was on an unauthorised basis. Mr T's representatives have referred to section 27 of the Financial Services and Markets Act 2000 (FSMA).

It's accepted Mr R played the primary role in advising Mr T. And that it was Company Y and Mr R who played the primary roles overall when it came to the SIPP and SSAS and investments.

We're told Mr R assured Mr T that all products were approved by HMRC and regulated. It's suggested JAN's involvement gave Mr T reassurance on this aspect and that JAN had been present when Mr H had said similar during the January 2016 meeting when Mr T signed the authority to transfer documents.

Mr T's representatives provided a document from the X SSAS administrator, this being confirmation dated 10th November 2016 of Mr T's appointment as a trustee of the X retirement scheme.

Mr T said nothing about a SIPP was ever mentioned to him and the paperwork he signed in the office must have been the SIPP application form, but he wasn't aware of this. Mr T doesn't appear to know anything much about the SIPP or whether anything was right or wrong in opening the SIPP. Nor did he know what JAN and Mr R had done or if they had mentioned the SIPP or not. He thought that if they had, it was possible he had not understood.

Mr T has also told us that his salary in April 2015 was around £46,500 a year. He was receiving a small work based monthly pension income that had become payable from the age of 55. At the time he had been married for a significant time and had only one financially dependent child. Mr T paid off his mortgage in 2014. His wife did not have any private pension arrangements, she was not working and had not worked for any meaningful period of time. Mr T let us know that at the time he and his wife had no savings or other investments because they were living on one income, and it was not possible to save. He understood that investing did involve some risk.

Mr T told us that one of the main drivers for what he thought he was doing was that his PPP information suggested only a limited annuity income and so he thought a property investment might be a safer idea to grow his value. And it is understood he was reassured about this. We are not told of any other pension arrangements and Mr T's only previous investment/ property experience was in purchasing his house with a mortgage.
Mr T was told the X SSAS had better death benefits than his PPP arrangement. He understood one of Mr R's team to specialise in estate planning and so the proposal seemed a good idea to Mr T.

Mr T says he was told that a special purpose vehicle (SPV) would be used for the property purchase, and this would include a loss protection stop arrangement, which meant he thought his capital would be protected. I previously noted that whilst a SPV might be associated with a property investment, it might be more usual to expect to see a stop loss order when it comes to an FX arrangement. Nothing turns on this.

Mr T says Mr R and Mr H told him a SSAS required him to have more than one investment so that was why he made the FX investment. And he only agreed on the understanding his property investment capital sum would be protected.

In summary Mr T felt he'd been mis-sold his pension arrangement. He says the loss prevention safety nets that were supposed to be in place to protect Mr T's capital within the SPV's, weren't enacted by JAN, Mr H or Mr R, and they have never explained why not. It is not clear whether Mr T has understood loss prevention safety nets, stop loss orders and SPVs and whether they formed any part of investments made. Nothing turns on this.
Mr T says that 10% of his investment was to always be held in cash. The other 90% was to be split into two investments of 45% each. Mr T was told this was an explicit HMRC requirement. He doesn't know if that's true, but it reinforced his understanding that HMRC had oversight of everything.

Mr T understands the property investment, which involved bridging loans as part of a finance plan, is illiquid, and thus he understands he is stranded in a failed scheme. To Mr T this means he was misled on the effectiveness of the SPV he thinks was designed to protect his capital.

Over the 10 years from 2015 to 2025 Mr T understood the property investment (if it had worked out) would have provided the capital to provide the modest pension income of £12,000 a year that he sought.

The second investment was the TempleFX scheme. Mr. T understood this to be a more speculative investment but says he was assured it was HMRC approved and the most he could lose was 30%. As Mr T believed the property scheme would meet his financial goals, Mr T told us he felt he was in a position to take a calculated risk so far as the risks had been explained to him. Mr T thinks it was Company Y who lost 100% of the investment because they did not put a 30% stop loss in place as they had promised to do.

Mr T explained that even after losing the FX money he would not have complained if JAN, Mr H and Mr R had allowed him to cash out what was left of his property investment. But he says they would not return his money at the end of the first two-year period when he understood he was contractually allowed to cash out. Nor have they yet done so. He provided us with screenshots of emails about this. And has told us that he suspects they might have tried to rescue the TempleFX investment by accessing cash in his cash pot. Mr T says that although this is speculation, he notes they tell him he has a balance of £7,000 but they will not provide this to him. As such he has no confidence this money is still available to him.

Mr T believed he had done his own due diligence to minimise the risk involved. For example he says that if Mr R had not arranged the meeting for him with JAN at their own office, he would not have proceeded. However having met JAN's principal, Mr H and Mr R he wasn't concerned. He thought everything seemed in order and they had good answers to all of his questions.

Mr T says that due to what happened he and his wife have suffered loss and are now significantly worse off. Mr T says he is now intending to work until he is aged 70.

Further submissions on behalf of JAN

JAN have told us they consider the matters very complex. At the end of January 2024 JAN provided further submissions and attached three documents. In summary they continued to say Mr T's complaint is brought too late.

They attached an email from Mr T in August 2018 showing (they said) Mr T knew of the losses in the TempleFX fund then. They said Mr T's representatives' submissions were wrong to suggest the fund had been launched in January 2016.

JAN noted (and have continued to stress) that screenshots provided on behalf of Mr T included documents where disclaimers have been repeatedly omitted from the bottom of pages which would have reminded the reader of the importance of seeking independent financial and legal advice. JAN say Mr T never approached JAN for this.

JAN says the meeting of 27 January 2016 did not take place. JAN suggest this date has been selected to match the Transact SIPP application signature date and the email confirming a meeting sent at the time. They say they are bewildered by any suggestion, that every subsequent step (apparently including after Mr T met with Mr R) in pension transfers and investment selections would be considered regulated advice.

JAN seemed to think the complaint made against them was that their involvement and advice arose was from a single meeting where a JAN adviser was within hearing distance of the alleged meeting between Mr T and Mr H.

JAN appeared at this stage to accept they were the X SSAS scheme advisor. But noted Mr T never contacted them for pension guidance in this capacity. And said it was Company Y's Pension Administration that supported the SSAS trustees with information such as fund allocations. JAN say that Company Y have confirmed that Mr T received annual statements from the SSAS for the periods 2018 to 2022. JAN say that of eight statements provided, it was only the 2018 statement that said JAN was the X SSAS scheme consultant. And this is not evidence that JAN approved investments in the X SSAS. JAN say they did not and were not aware of any of the investment selections made by Mr T within the X SSAS. JAN have not told us how they came to speak to Company Y or come to have these statements; nor have they provided them to this Service. I have seen that someone with the same first name as Mr H of Company Y has been provided with emails from this Service to JAN.

JAN say it's wrong for Mr T to suggest that he would not have signed and invested in the X SSAS if he had not met with JAN, and had JAN not been present when he signed paperwork. JAN say the Company X fact find dated December 2015 sets out that a decision had already been made to invest in X SSAS.

Documents sent to us by JAN included:

- A purported fee agreement between JAN and Mr T, which they say shows it was signed by Mr T on 22 December 2015.

  The document is headed 'JAN Investment Marketing' with JAN's address which sets out in capital letters "*this document is supplementary to our 'client agreement' and 'service proposition and engagement'*". There is a typed date of 22 December 2015 and Mr T's name is handwritten against the details of the client. A signature and date are handwritten at the bottom agreeing for charges to be taken from his fund and JAN say this is Mr T's signature.

  It starts off saying the £500 cost for the financial review and recommendation has been waived as it is offset against the amounts below.

  The information below sets out that the final transfer of Mr T's fund is not known but will be notified in their suitability report and they expect their charge to be 2% of the fund, albeit JAN have not completed the spaces to provide approximate values.

  It also sets out that there will be an annual charge for ongoing reviews and changes to existing investments of 0.5% of the fund value.

  We have not been provided with any statements or other information demonstrating when and to whom any payments were made.

- An e-mail from July 2017 apparently from someone at TempleFX to Mr H. In this there is an explanation that every client will need a trading account. Mr H is asked to provide the applications and associated documents and risk assessments for each client. There is then comment about what needs to be done to ensure pension funds can be accepted and a query about what Company Y have done. TempleFX go on to consider whether existing applications can be used and explain they assume they are discussing SSAS' not SIPPs.

- Emails between Mr T and Mr R on 3 and 4 October 2018.

  In one Mr T replies expressing dissatisfaction with the lack of communication. He says "*It's painfully clear I am not getting the updates other investors are getting*." He

gives instructions to liquidate two holdings, including TempleFX as soon as possible and to transfer the balance of his pension funds into an HMRC approved pension cash deposit. He explained his lack of knowledge and understanding about his holdings, failures in explanations being provided and feeling misled. He said he felt TempleFX was too volatile for him and asked if Mr R had any less risky investments or whether he ought to transfer out completely.

Mr R's response was that he was concerned Mr T was making a decision without all of the information and might be putting himself in a position of unnecessary loss. He asked Mr T to meet with him and Mr H, which Mr T agreed to.

In March 2023 Mr R emailed Mr T forwarding a message from Company Y Commercial Real Estate. This referred to the fund loaning money to a developer. And a plan for a different fund within the Company Y family to offer refinancing and shareholdings.

We have not been told how JAN comes to have these emails.

For completeness

I previously summarised other material provided that I thought relevant to my decision. I am doing so again and particularly highlight:

- A written client agreement provided more recently by JAN, between themselves and Mr T, signed by Mr T in December 2015. It sets out at the start that JAN is authorised and regulated. It goes on to say they can act on the client's behalf when it comes to investments. And that unless JAN notify their client to the contrary, they will treat their client as a retail client. They note this means that the client is afforded the highest level of protection under the regulatory system. It goes on to say that with very few exceptions they will confirm to their client in writing the basis of their recommendations along with details of any special risks associated.

  They go on to say that JAN might advise on other financial products not regulated but this will be confirmed in writing to their client. And that under the terms of this agreement they might if appropriate advise their client on investments which are not readily realisable, but would draw the client's attention to the risks associated with such investments given the restricted market.

  Later in the agreement JAN note they conduct business in the client's best interest under the client's best interest regulation, and note that where there may be a conflict of interest they will write and obtain a client's consent before proceeding.

- An undated letter on JAN headed branded paper to Mr T's SIPP provider in respect of a new application for Mr T. It is signed using the first name of Mr A.

  There is a further letter on JAN headed paper to the SIPP provider containing the discharge paperwork for the PPP.

- There is an email from the SIPP provider addressed to 'office administration' at a jan-cash.co.uk email address and to an email address using Mr A's first name also using the jan-cash email address identity, asking for a call to update them on Mr T's SIPP transfer.

- Mr T's SIPP statement dated October 2016 shows Mr B as the attached adviser.

- A letter dated 4 April 2022 where JAN provided a formal response to Mr T's complaint, is on the same JAN branded, headed paper, with the name of JAN and contact information as seen in all the other JAN correspondence provided. This included the same phone numbers and email and website addresses using the same domain name.

- There is an undated letter from JAN to Mr T to welcome him to JAN. This letter says that they are working in partnership with Company Y Pension Administration.
- There is a document from Company Y welcoming Mr T to the X Retirement Scheme (the SSAS). He is referred to as being member number six. It confirms he joined the scheme in early November 2016. This document confirms that if he has any questions in respect of the SSAS administration he should contact Company P. And that if he has any questions in respect of pension guidance, he should contact the appointed IFA to the SSAS, this being JAN and full information is given of JAN's contact information.

  The welcome information is not dated but shows a current fund value of just over £86,680, with a cash balance in the SSAS of £78,040. And note that the funds are held in cash and awaiting allocation.
- An email trail in April and June 2019 involves Mr T and Mr R. Mr R tells Mr T that as part of the investment strategy for his pension within the X Retirement Scheme, an element had been held in a liquid form with a regulated provider. Mr R names the provider. [It is the same provider who originally held Mr T's SIPP].

  Mr R goes to say the provider no longer offers the service so funds of just over £8,500 would shortly back be transferred back into Mr T's pension account and that Mr T needed to now consider how this money should be invested. Mr R goes on to propose what he calls a "*suitable replacement product to meet the criteria*" which is the Company Y fund. Mr R says that the scheme statement of investment principles require an element of the pension fund to be held in a liquid form and the Company Y funds meets this need. Mr R says that if Mr T chooses to invest in the fund his funds are below the entry level for an investment in his own pension account name and so he will need to be part of a group investment made by the X Retirement Scheme of which he is a member. It is clear Mr R then speaks to Mr T who then agrees to do what Mr R has said.
- At the end of February 2019 Mr R emailed Mr T. He is told that the client who is invested with Mr T has a small fund they wish to withdraw. The value of Mr T's share said to be $63,600. Mr R says they are in a position to return the funds to cash. Mr R then warns Mr T that as they have previously discussed, if he no longer holds an investment with a preference share in a specific type of product then he will lose access to the FX protected recovery fund and in other words he will lose a certain type of protection. Mr R then suggests he has a compromise to put which involves splitting some of the money from the Company Y investment. Mr R chased Mr T and spoke to him to gain his agreement.
- We have been provided with SIPP documents for Mr T with the names JAN and Mr B on them. There are documents apparently signed by Mr B including in respect of Mr T's transfer of funds from the PPP to the SIPP in January 2016 and to HMRC in respect of the X SSAS.

Provisional (merits) decision

On 19 March 2024 I issued a provisional decision on the merits of Mr T's complaint. In it I set out that I intended to uphold the complaint and why and what JAN would be required to do.

Responses to provisional decision on the merits by JAN

JAN told us the X SSAS was originally established for Mr R using his pension funds. And that Company Y proposed Company P administered and managed the X SSAS.

Previously I noted we had been provided with a letter from a Corporate Trustee to a branch of the SIPP provider dated 24 March 2017 which was said to accompany a transfer warranty from the scheme trustees to facilitate a transfer from a portfolio to the X Retirement Scheme Regulated Trust.

I set out that I did not understand why this document was said to be relevant to Mr T's complaint, and I requested assistance on what it was said to relate to and why it was said to be relevant.

JAN say the X Retirement Scheme Regulated Trust was completely separate as an entity to the X Retirement Scheme (the SSAS). JAN assert the X Retirement Scheme Regulated Trust was an Occupational Pension Scheme and it was set up for eight members of which Mr T was one. JAN also appear to suggest that the X Retirement Scheme Regulated Trust was a General Investment Account (GIA). And that Mr T's SIPP provider provided/ managed the X Retirement Scheme Regulated Trust. JAN stress the X Retirement Scheme Regulated Trust was set up to make regulated investments and was different to the X SSAS. They say they advised on investments made by the regulated trust account.

JAN assert that the emails sent from their email address are in respect of the X Retirement Scheme Regulated Trust and not the X SSAS. And they say the letter of 24 March 2017 to Mr T's SIPP provider was from the Corporate trustee acting on behalf of all of the trustees of the X Retirement Scheme Regulated Trust in respect of an internal transfer from the portfolio GIA to the X Retirement Scheme Regulated Trust. There is also reference to an April 2017 communication.

JAN also suggest the email from Mr T in June 2016 to themselves and others about Mr T's SIPP being held in cash was referring to the funds in the SIPP provider's GIA. JAN continue to suggest to this Service (as they have done more recently) that they consider this email amounted to an instruction to remain in cash. JAN say that after receiving this no investments were made within the GIA. And they say they could not prevent or block any trustee transferring to an alternative pension arrangement. They say Mr T directed the transfer from the GIA to the X SSAS and they were not involved in this, or any investments made by X SSAS. JAN now assert that X Business as the sponsoring employer of the X SSAS occupational pension scheme directed all investments on the advice of Mr R the Director of X Business and trustee of X SSAS.

JAN were invited to provide more information on a number of assertions and given a date on which they needed to do so. I highlighted areas which did not appear to be consistent or relevant and which I did not understand.

More recently JAN tell us Mr T wanted to invest in the unregulated property investment (the same one as his friend who had introduced him originally to Company Y). It was because he couldn't do this within the regulated trust account (X Retirement Scheme Regulated Trust) that he transferred to the X Retirement Scheme (X SSAS). It is not clear where JAN say this information came from.

JAN think they are wrongly being held responsible for the failures of Mr R and Mr R's actions in recommending esoteric investments.

Further representations and submissions were provided by an email address not previously used by JAN to this Service. JAN have gone on to let us know these were from them.

Amongst other material JAN sent us, we received:

- A further form said to have been signed and dated by Mr T in December 2015 which

highlighted the risks that could be associated with pensions including the involvement of an unregulated party.

JAN say Mr T ignored these risks and continued to work with Mr R and never tried to contact them.

- the application form in respect of X Retirement Scheme Regulated Trust which set out that JAN's address, email and phone number were provided as the contact details for the trust as applicant. We were also provided with member declarations for a number of people including Mr T instructing the provider to transfer sums from personal pensions held with the provider into the trust at various times in 2016 and 2017

  JAN it was set up to make regulated investments. But Mr T instructed he wanted his funds held in cash so JAN didn't arrange any investments for him. And they say Mr T elected not to make regulated investments instead choosing to instruct a transfer to the X SSAS.

- JAN reiterate they can't explain why HMRC was told information about the X SSAS as they were not involved in setting it up. It appears they do not accept their name ought to have been attached and included and used on original documents by implication.

JAN don't think Mr T has complained about the SIPP being set up or funds being transferred out of his PPP.

Responses from Mr T

Mr T accepted by provisional decision on the merits of his complaint. He told us he had no knowledge of an X Retirement Scheme Regulated Trust and whether this was different to the X Retirement Scheme. He said JAN, Mr R and Mr H always just referred to 'scheme'. He says if there was more than one plan, scheme or trust, Mr T didn't know this. He did think he would be part of a wider group which included a friend, but he didn't know how many others or who they were. And he had never made any kind of overseas investment previously. Mr T confirmed he had never been in an occupational scheme with Mr R nor had he ever worked for or with him. Mr T has never been a director of any company.

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.

Having done so I have not changed my thinking from that set out in my provisional decision. I am upholding Mr T's complaint. JAN did not do everything they were required to do when they dealt with Mr T and his pension arrangements. They played an intrinsic and necessary role, which included the opening of Mr T's SIPP and the transfer of Mr T's pension benefits from the PPP into the SIPP. But for JAN the SIPP would not have been started and the original transfer would not have proceeded.

I don't consider JAN have explained to me sufficiently or reasonably how they came to complete these actions on Mr T's behalf, nor that they acted reasonably when they did so. I am not persuaded if they had done what they ought to have done, Mr T would be in the position he now is.

For completeness I am not persuaded the transfer and SIPP were necessary or suitable, nor that JAN had done what they ought to have done before facilitating these pension activities. I think there is sufficient evidence to conclude JAN were involved in activities impacting Mr T's

pension funds after the funds from his PPP were transferred into the SIPP, and that JAN had greater knowledge of what was intended to happen to the placement of Mr T's funds and what did happen from the start, than they have disclosed to this Service.

Mr T was a client of JAN and entitled to a service that was not adequately provided. Given what they did and the failures involved, I am in no doubt that it is fair and reasonable that JAN bear responsibility for the activities and losses that I consider arise and flow from the original transfer and opening of the SIPP.

JAN were intrinsically involved as apparently the only regulated party with the necessary permissions. Their work enabled the transfer to complete, particularly when it came to instructing third parties. And through their involvement and activity as a regulated adviser thus giving the appearance of oversight, which I have no doubt was intended to provide reassurance and did to Mr T. I have reached my decision on the basis of what I consider to be fair and reasonable.

I don't consider Mr T had sufficient information to make an informed choice as he ought to have been. Nor am not persuaded Mr T had a sufficient understanding of what was happening in his name including the number of different pension and investment arrangements his funds moved through. The existence of the X Retirement Scheme Regulated Trust and the X Retirement Scheme (the X SSAS), with near identical names, and both having JAN as the attached/ scheme adviser supports my thinking on this. I consider it is a reasonable to conclude, given the circumstances that the similarity of the names was not coincidental.

I am not persuaded Mr T fully understood he had a SIPP, nor that he understood he had transferred funds in 2016 from the SIPP to a completely different type of pension arrangement, the X SSAS, and what either of these arrangements were. I am not persuaded Mr T knew that some of his funds were then apparently held elsewhere when his SIPP was closed in 2017. And the way the work was completed by JAN (and the other parties) meant it would not be reasonable to have expected him to have understood. I note the support provided to my thinking on this from the 2019 emails.

I have found no sensible reason as to why Mr T started a SIPP at the time. I haven't seen anything that makes me think it was in his best interests, or that consideration was given by JAN to who Mr T was or this area (or for example that it met his objectives and circumstances). There is nothing to persuade me JAN acted on an execution only basis or that Mr T was anything but a retail customer, (and this has not been asserted).

I am satisfied that as early as 2015 Mr T was persuaded to agree to use his pension funds to make a property investment without sufficient or informed understanding it was unregulated. He was then shown information and taken to places that provided Mr T with reassurance that a regulated firm was involved. He signed documents as directed without any sufficient understanding of what he authorised. And but for JAN's involvement Mr T would not now be in the position he is in.

I previously explained that the way in which parties have provided information, and the content of such information, including inconsistencies is something I can take into account where I conclude it is fair and appropriate to do so. Here I consider there is a relevance when it comes to how I approach the issue of credibility about what has been said and provided. I have ensured material and submissions have been shared.

I previously included fuller summaries of submissions and in a chronological order of submission. This was because matters and assertions had changed and developed over time and I wanted to assist parties in focusing their minds on the issues, disputes and

providing relevant material. I have not included all material provided nor in the same order in my final decision, I am not required to and I have explained I would not.

I find the main thrust of the information provided by Mr T and on his behalf is sufficiently clear, credible and reliable. I have found it is supported by independent sources and when it comes to assessing everything providing and concluding what is more likely to have happened. I tend to think any potential inconsistencies including around dates and later discussions about investments and choices once he became a member of the SSAS, reflect Mr T's understandable lack of understanding about the arrangements and what took place.

I do not consider JAN provided clear, consistent and reliable information on what they did at the time. At times it has been challenging to identify what was being said and why. They repeatedly failed to answer queries and to provide this Service with a real understanding of their position in respect of their knowledge of Mr T and his pension affairs, in addition to their work with the PPP, the SIPP provider and the SSAS; and how any of these things came about.

I have been told recently about some historic personal problems experienced by someone at JAN some years ago. I was sorry to hear that things were difficult. However this complaint was first referred to this Service in March 2022. I consider parties, including JAN, have had more than sufficient time to consider the complaint and provide relevant material, explanations and submissions.

In reaching my thinking I have taken into account inconsistent submissions made by JAN where it is fair to do so and is relevant in deciding an area in apparent dispute.
JAN think the complaint is made too late. But I have explained my thinking on this on a number of occasions and reminded them that it was in their interests to set out their position and understanding on the wider complaint, its merits and their work for Mr T.

In reflecting on the changes in what JAN have said about whether they had any knowledge of Mr T or not, and in respect of what happened, and the areas which have not been addressed by JAN, I am left with the impression that JAN's account seeks to be evasive and lacks credibility and consistency when it comes to understanding what JAN knew and did and why.

It's not our role to say whether a business has acted unlawfully or not, that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances.

In reaching my decision, I've taken into account the relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the regulator's Principles for Business (PRIN) and the Conduct of Business Sourcebook (COBS). Where the evidence is incomplete, inconclusive, or contradictory, I reach my conclusions on the balance of probabilities, that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of JAN's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

COBS 2.1.1R: A firm must act honestly, fairly, and professionally in accordance with the best interests of its client (the client's best interests' rule).

It is trite law to set out that an adviser must carry out his service and the tasks associated with it with reasonable skill, care and diligence, but worth repeating here. And with the

degree of skill, care and diligence that would be exercised in the ordinary and proper course of a similar business.

In *ICS Ltd v West Bromwich Building Society (No2) [1999] Lloyds Rep PN 496 at 504* Evans-Lombe J said that in carrying out its tasks for a client, an adviser:

"…owed to its clients contractual duties to exercise the care and professional skills appropriate to an organisation presenting itself as an expert independent financial adviser; to provide its clients with independent advice in their best interests and not to allow its own interests to conflict with those of its clients…"

The standard of skill, care and diligence required to discharge that duty is that exercised by the reasonably competent adviser.

Of course this is the legal position, and whilst my ambit is to consider what is fair and reasonable in the circumstances of a complaint, I take the law into account.

JAN stress that Mr T was otherwise being dealt with and advised by unregulated individuals. It is agreed that JAN did not provide direct advice to Mr T at any stage, as they did not speak to him about his pension arrangements directly, let alone discuss the opening of the SIPP nor the transfer from the PPP to the SIPP. As such I can't understand why this alone would not have sensibly raised concerns for JAN.

The FCA does not require the named adviser to have been paid by their client. I accept a direct invoice or payment for services rendered can often be considered a characteristic of a customer relationship, but this isn't a necessity. I have not seen anything that demonstrates a direct payment to JAN from Mr T. Given what they did on Mr T's behalf, this is unusual and raises a concern about why they would have done it and how they were recompensed.

I do note I have not been provided with any accounts or statements from the X Retirement Scheme Regulated Trust. This is the scheme which JAN said had eight members and which they advised on. It appears it might have been this scheme that held funds from Mr T's SIPP when it was closed until 2019 when it appears Mr T was told funds needed to be moved. I do not think Mr T had any knowledge of this. I think he thought all his funds were being held in the same pension arrangement just some was held in cash and some way invested. It has only been very recently JAN have said enough to make this clearer. I am left wondering whether payments were made to parties from funds held in cash in the X Retirement Scheme Regulated Trust. I note Mr T has come wonder whether funds he thought were in cash were used to prop up investments (the potentially the appearance of liquidity), and I can understand why this might be considered a reasonable and logical conclusion here.

Jurisdiction

Whilst JAN continue to dispute Mr T's complaint has been made within the time limits that apply, I have not changed my thinking from that previously set out. I am not providing a further decision on this, and I am not required to do so. I don't consider JAN have provided any substantively new submissions on this. I have considered whether the provision of a signed client agreement along with the previously supplied signed client fee form (both dated December 2015 impacts my thinking). But it doesn't. Such a form might be something that is often seen at the start of a client and adviser relationship, as I have indicated before.

However it would be wrong to conclude this ought to be the start date to be used when considering what is complained about for jurisdiction purposes. I consider it well established that even at the start of the usual process when onboarding a client, the process involves activity before advice is provided, accepted and acted upon. The more recent provision of a

purported further signed document on pension risks from December 2015, does not change my thinking.

It appears JAN might have only recently understood that the date the complaint was made to themselves was made within the six-year period and so their representations about the date of complaint to this Service made no difference here. But this was clearly set out a number of times previously.

JAN have again more recently reverted to stressing that Mr T wanted to cash in his investments in 2018 and that this was more than three years before he complained to them. For the reasons I have explained previously, because Mr T complained within the six year party of the relevant rules, I have not needed to consider the three year element of the relevant rules.

We have explained before that this Service has not looked into any complaints about the administration and operation of the SSAS.

The merits of Mr T's complaint about JAN

Mr T was a client of JAN and entitled to a service that was not adequately provided. JAN said initially that Mr T was not their client, never had been and they had never advised him. It also appeared they might be suggesting they did not know him or of him. However their position changed. A time was reached where it looked like JAN might accept Mr T had been their client when it came to starting the transfer from the PPP and starting the SIPP. Albeit some of their submissions referred to the X Retirement Scheme Regulated Trust, and Mr T's funds potentially and not the SIPP. More recently JAN appear to have reverted and stress Mr T was never their client. I don't agree.

JAN provide and rely upon their own signed client agreement and a separate signed fee agreement with Mr T in December 2015. I appreciate they consider this supports their position on jurisdiction, in other words Mr T was advised in December 2015. I've explained before why these documents don't constitute advice. It is reasonable logic to understand such submissions would mean JAN thought Mr T was their client.

It might be said these documents don't, on their own, necessarily evidence a client relationship. I am satisfied Mr T signed them thinking he was becoming a client of JAN and he had been told at the time they were his regulated advisers. When Mr T signed these documents, there is no suggestion JAN had yet met or acted for Mr T. Mr T signed them on direction and on the basis he understood JAN would be his regulated advisers for the anticipated pension transfer and intended property investment. It is clear JAN completed actions for Mr T as if he was their client, when it came to instructing third parties.

The client agreement and fee agreement have been provided by JAN, without any explanation as to how JAN think Mr T came to sign them and without explanation as to how JAN came to be provided with them (given JAN's claim to have never met, acted for or advised Mr T). JAN also provided the fact find document (signed on the same day in December 2015) which gives the completing agents details as being X Company and explains that X Company can introduce clients to qualified firms for advice. I think this is what this activity was intended to look like.

All the paperwork involving the SIPP provider and the setting up of the SIPP, references JAN as Mr T's adviser. JAN signed the application and there are communications between JAN and the SIPP provider about the SIPP.

I am in no doubt that by the time JAN were in contact with the PPP and the SIPP provider on Mr T's behalf, Mr T was, and was intended to be understood to be JAN's client. And Mr T was intended to understand this was the position. JAN write to Mr T several times and it is reasonable for Mr T to have understood the contents of these letters to have been communications from his regulated financial adviser, and there was nothing that might have led him to think otherwise.

JAN acted on behalf of Mr T and caused pension arrangements to be closed and opened and a transfer to be completed. JAN were authorised and regulated at the time in respect of pension business and would have known what they were doing and the obligations and duties that came with such work.

It is reasonable for me to understand this relationship existed and fair for me to expect JAN to have acted in accordance with the duties and obligations such a relationship brings. I don't think this is what they did. To have acted in the way JAN did without any direct contact (save at most an introduction in their office) with Mr T was a significant failure. They did not know their client, understand his best interests or demonstrate what I consider would have been the most cursory attempt to exercise care, skill or diligence.

They appear to have relied on information provided by an unregulated party on Mr T. They did not ascertain anything from him directly in respect of his circumstances, understanding, intentions, objectives, and whether these were his instructions. Nor did they advise or confirm the nature of their relationship and any restrictions with Mr T. None of the hallmarks of what would usually be seen and expected when completing such work adequately were present.

As I have said, from what JAN more recently said, they appeared to accept advising Mr T in respect of the opening of his SIPP and the transfer of funds from PPP. And it was the suggestion of ongoing advice they disputed. I appreciate this seems to have now. But even if they do not accept Mr T was their client when they arranged and facilitated these activities, there is sufficiently persuasive information from the time that supports my finding they presented themselves and sought to ensure Mr T thought he was their client, and sought to act and be dealt with as his adviser by others. And as such sought to be understood in this way.

Some of the JAN communications involved the use of the name Mr A at JAN. I accept from Mr T this person was Mr H's son. JAN have not given any information on who this person was. There is more than enough to connect him with using JAN credentials to act and for those contacting him to have reasonably believed they were contacting JAN. In the same way that JAN have not made any comment on the involvement of Mr B as a representative of JAN. Nevertheless this name was directly connected to JAN and was also used to formally act for Mr T and under the auspices of JAN.

As far as I can see no fees or commission were paid to JAN by the SIPP provider from inception in March 2016 until the closure of the SIPP (from Mr T's SIPP account). This might be considered surprising given the significant involvement of JAN when it came to arranging the setting up of the SIPP and the transfer in from PPP, and what one would often expect to see in such circumstances. And given the contents of the fee agreement that JAN rely on.

Based on what has been provided to this Service, there is nothing to show JAN were paid for anything they did for Mr T, which seems unusual and unlikely. That in itself might reasonably raise some concern about how things were done. I have not been provided with any information on fees paid to JAN by the X Retirement Scheme Regulated Trust (or GIA) or the X Retirement Scheme (SSAS), given JAN's link to both. JAN stress they did advise the X Retirement Scheme Regulated Trust and say Mr T was a member.

It is agreed and clear that Mr T's initial, primary and direct advice came from unregulated parties (JAN do not seem to dispute some knowledge around this). I previously identified it was agreed Mr T intended from the start to invest in property like his friend. There is some potential inconsistency with other submissions made by JAN. For example that Mr T had to join the SSAS to make the property investment like his friend. Should that have been the case, then this undermines any suggestion Mr T needed to open the SIPP. Ultimately I think it's more likely there was a pre-determined process, (unknown to Mr T) ensuring that pension funds were deposited into one arrangement (the SIPP) and then split. The majority being moved into the X SSAS to invest in unregulated and high risk schemes. The remainder staying within the SIPP (before as appears being moved into the X Retirement Scheme Regulated Trust to be managed by others). I note the 'scheme information' provided by Company Y when Mr T joined the SSAS identified a sum representing the full amount originally transferred from Mr T's PPP. It then identifies approximately 90% and 10% being held in different ways. I think this was the approximate 10% that in 2017 apparently moved from Mr T's SIPP to the X Retirement Scheme Regulated Trust, when Mr T's SIPP was closed.

It is unlikely Mr T would have reasonably understood this to have been the position at any stage. JAN were advisers to both schemes and Mr T's SIPP, as such it's reasonable to expect them to have knowledge about what was happening at these times too. In reaching my thinking on this I have taken into account the totality of what has been provided, including the letter from JAN to Mr T welcoming him and letting him know they were working together with Company Y.

JAN also say they didn't advise on the transfer of funds to the SIPP and think Mr R did, to whom they assert they have no connection. I don't think this is submission is credible to the extent the submission seeks to suggest they were not involved in the opening of the SIPP and the transfer of funds from the PPP. It is not credible for JAN to say they have no connection to Mr R. There might be limited evidence of direct contact between Mr R and JAN, but inferentially there is a wealth of material.

I consider there are multiple examples of links between the parties, including email trails in which they both appear in respect of Mr T's arrangements. In addition JAN were the registered advisers to the X SSAS when it was set up, and they tell us it was set up for Mr R. I do not accept the official documentation from the time inaccurately recorded them in this way.

They must have been introduced to Mr T, and his credible evidence is this was effected by Mr R. And they accept being the advisers for the X Retirement Scheme Regulated Trust. The 'X' is a distinctive name linked to Mr R.

Whilst JAN have not provided any explanation as to how they came to have any knowledge of Mr T and came to act on his behalf in respect of opening the SIPP and the PPP transfer, I am persuaded they knew Mr T was being directly advised by Mr R, an unregulated party on what he ought to do with his pension funds. This very activity ought to have raised concern for JAN and caused them concern. It is a logical that JAN must have got the information on Mr T and causing them to act in early 2016 from someone. Mr R was the person who it is agreed met with Mr T and who completed the fact find and directed Mr T to sign the JAN client and fee agreements. It is a logical inference that Mr R provided this information to JAN and I accept from Mr T he asked Mr R to arrange a meeting with JAN which took place in January 2016.

If, as appears to be the case, JAN invite me to conclude they relied on a fact find that was prepared by an unregulated party, I reject any assertion it was reasonable for them to do so

here. I am not clear this is their assertion since they also suggested there is no link between themselves and Mr R, and they have never explained how they came to arrange the PPP transfer or setting up the SIPP. It is incredible if they suggest they relied on a fact find from an unregulated party they had no knowledge of. I don't accept it would have been reasonable for JAN to have relied on the fact find here and I don't accept the contents of the fact find to be reliable. They are in any event, inconsistent with information provided by Mr T about his circumstances at the time (which I prefer and find credible).

JAN appear to also suggest Mr T's SIPP was set up for regulated investments. They have not provided any basis for this assertion. There is nothing provided that persuades me Mr T expressed this objective or that JAN can demonstrate or document this being something they knew to be Mr T's objective, his instructions or in his best interests.

More recently JAN's submissions have stressed the regulated work they said they did for X Retirement Scheme Regulated Trust, including advising on regulated investments. It might be thought they are suggesting the Trust was by implication interchangeable with Mr T's SIPP. Whilst I accept the same provider was involved, the information provided including the documents from the provider don't suggest to me these were the same arrangements.

I remain unconvinced there was any proper attempt by JAN to do what they ought to have done for their client, Mr T. Including any objective or meaningful process to assess whether Mr T ought to transfer out of his PPP and open a SIPP, thus incurring potentially (and likely) higher charges for no discernible (or evidenced) purpose or benefit.

There does not appear to be any suggestion that Mr T could have ever made the intended property investment through the SIPP or any other account with the same provider.

JAN were intrinsically involved as the regulated party and their role was important and involved arranging the SIPP for Mr T, the transfer from his PPP and providing the reassurance that came with the appearance of a regulated firm being involved in all areas. As such it is fair and reasonable for JAN to be found responsible for what followed. But for their involvement Mr T would not now be in the position he is in. This does not prevent JAN seeking to pursue other parties.

JAN told us they were the appointed adviser for the transfer of funds to the SIPP platform. I previously identified that I did not understand this submission. It is clear JAN were not authorised as appointed representatives at the time according to the regulator's register. I see that more recently they have referred to this being a role they provided for investments for the X Retirement Scheme Regulated Trust / the GIA. JAN acted in a similar way for X SSAS (albeit JAN have not positively accepted this was their role, despite their appearance on formal documents relating to the SSAS). I am not persuaded either of these roles that JAN provided to either of the X schemes I have heard about has any determinative relevance to the complaint I have needed to decide. Although I tend to think what is shown in respect of JAN's links to both arrangements, supports a logical inference when it comes to knowledge and responsibility.

There is an opaqueness at times as to whether the X Retirement Scheme (the X SSAS) or the X Retirement Scheme Regulated Trust is being referred to, particularly in correspondence from the time. Certainly this will not have made it reasonably clear for Mr T to follow what had been set up and where his funds were held.

For example there is an undated letter from JAN to Mr T thanking him for his "*recent interest*" in the X Retirement Scheme. And letting him know that for them to be able to proceed with him application they need him to sign and return the enclosed documents said to be the X Retirement Scheme application and the (SIPP provider's) Regulated Portfolio Application.

One might think it would have made it easier for others who did know there were different arrangements with collective characteristics and similar names to manage and move funds (without Mr T knowing). But that is not something I think I need to determine here.

I am satisfied JAN agreed (logic suggests with Mr R and Mr H) to arrange the transfer of funds from Mr T's PPP and to set up a SIPP for Mr T knowing that he intended to invest in a property scheme arranged by a third party. JAN being provided with information on Mr T by others. JAN have referred to the property investment and adviser not being regulated. Albeit there also seem to have been submissions referring to the adviser being regulated (which cannot be accurate).

I tend to think JAN must have been involved in moving funds from Mr T's SIPP into the X Retirement Scheme Regulated Trust/ GIA (based even on what they say); and I find it hard to accept they weren't aware of the transfer from the SIPP to the SSAS. And I note that at one stage JAN said they had been in contact with Mr T about this.

I am not persuaded Mr T ought reasonably to have understood he had a SIPP or any type of distinct formal pension arrangement from the SSAS. Nor that he ought to have known X Retirement Scheme Regulated Trust was separate to the X Retirement Scheme. I think he would have known he had moved his funds into a new pension arrangement, and after that his interest and knowledge was directed to the investments themselves, in so far as he was kept informed.

By way of example, on 3rd of February 2016 JAN emailed Mr T about the 'X Retirement Scheme'. They said they were attaching documentation for his records. They refer to the provider by name (which was the SIPP provider) but only referred to the product as the regulated investment wrapper and said this was just confirming that Mr T's portfolio had been established.

I don't think Mr T ever knew there was more than one distinct scheme that had 'X Retirement Scheme' as part of the name. It appears to me that the SIPP was always described as a portfolio or an investment wrapper to Mr T by parties and this includes JAN.

It seems to me that some of JAN's submissions are based on an understanding that by the autumn of 2015 there was already a formed intention that the funds were destined for the SSAS and the intended investments. On that basis I have found no sensible or appropriate reason as to why the SIPP was required, or that JAN had done what they ought to have done before instructing the establishment of the SIPP and the PPP transfer.

I am not persuaded Mr T had a sufficiently informed or settled intention that specifically involving a SSAS or any named funds. Nor do I understand whether any investments discussed in 2015 were the ones that then followed using the funds held in the SSAS. I accept from Mr T he wanted to use funds from his PPP to invest in property having spoken to a friend and Mr R.

I think it's more likely there was a settled intention and shared knowledge involving Mr R and JAN (and Mr H) in respect of Mr T's funds. This involved Mr T's funds being transferred out of his PPP and ultimately invested in high-risk arrangements. And JAN played an important role also in ensuring this happened.

I have not needed to go on to consider a complaint whether JAN failed to do what they ought to have done in respect of the SSAS and the investments that followed. I have focussed on their initial relationship with Mr T and the events in early 2016 when it came to them acting unreasonably on Mr T's behalf. The fact that his funds later moved elsewhere and were

invested is not what I am decided when it comes to whether JAN did something wrong. I think it is fair and reasonable to conclude that the events and losses thereafter can reasonably considered to have flowed from the failures of JAN in early 2016 when they dealt with Mr T. I think it is more likely than not that had they done what they ought to have done, Mr T would not have proceeded.

I note for completeness that JAN also told us that after they dealt with the opening of the SIPP and the transfer of funds from the PPP they did not have contact with Mr T again. This can't be right. There is material from the time to demonstrate some contact. In any event JAN contradicted this through similar assertions that to their last contact with Mr T also having been in June and November 2016.

I accept there is nothing to demonstrate direct meaningful contact between Mr T and JAN after funds from the SIPP were transferred into the SSAS in the autumn of 2016 and the SIPP closed. It is likely there might have been further contact if Mr T's funds from his SIPP in 2017 were transferred into the X Retirement Scheme Regulated Trust. But I have seen nothing to suggest this and nothing in respect of this decision turns on this.

I accept Mr T tried to contact JAN on more than one occasion after June 2016 and later as his concerns increased. I find Mr T's description of trying to contact parties and the appearance of JAN's premises and its increasing signs of abandonment persuasive and credible. This doesn't mean he was able to successfully contact JAN, or that JAN returned any calls or emails, until their response to the formal complaint. I can see there was ongoing contact with Mr R and Mr H at different times and even more recently. It may be we have not been provided with all contact that took place between these parties, but that does not change my overall thinking on this complaint.

Given what was known by JAN at the time and the failures in what they did, I am in no doubt that it is fair and reasonable that JAN are understood to be responsible for the original transfer of PPP funds and opening of the SIPP, which I am not persuaded ought to have proceeded or that JAN ought to have facilitated in the circumstances. And as such they are responsible for the consequences that flowed from this.

Mr T was made aware at the time that JAN, a regulated financial advice firm was involved in the process and thus he reasonably understood and believed they were involved in the advice he was given, what he was told to do which included the transfer and various pension arrangements being made on his behalf. He used the knowledge of JAN's involvement and relied on it when assessing whether he ought to go ahead and whether things were being done as they ought to be, and it was reasonable for him to have done so. And JAN had sufficient knowledge or failed to reasonably make ensure they understood the position, such as to appreciate their role, assess their actions and know their client.

As early as 2009 the Financial Services Authority (the regulator at the time) published a report and checklist for pension switching that is still meaningful here. That checklist identified four main areas of concern where consumers lost out. It seems to me the following three are of relevance to Mr T's complaint and JAN's activity:

- They had been switched to a pension that is more expensive than their existing one (because of exit penalties and/or initial costs and ongoing costs) without good reason.
- They had switched into a pension that does not match their recorded attitude to risk (ATR) and personal circumstances.
- They had switched into a pension where there is a need for ongoing investment reviews, but this was not explained, offered or put in place.

Having considered only the switch from the PPP to the SIPP, there is nothing that suggests to me JAN ensured these areas were considered, let alone properly addressed with Mr T. And there is nothing to suggest JAN were acting on an execution-only or properly restricted basis. This ought to have been a basic and well-established starting point for JAN for their client. Even putting aside what it might reasonably be inferred JAN knew was the intended destination for the funds and where they would be invested.

I think the most basic enquiry would have demonstrated to JAN, that Mr T did not understand what was being done and why, nor the nature of the products involved and the inherent risks. Even (and again) putting to one-side any question about suitability.
The fact that JAN did not put anything in writing to Mr T about why they were doing things on his behalf is surprising and not what I would expect to see.

I find it hard to understand how JAN explain their relationship with Mr T. They have provided client documents from themselves signed by Mr T, but there is nothing to suggest they did what would be expected when it came to providing regulated advice, such as a written record or written advice or consideration of what the SIPP funds would be used for (intended investment). However they acted on his behalf in respect of several pension arrangements. They also say they took an instruction from him not to invest in the summer of 2016. It is fair here having assessed what happened to conclude JAN ought to be understood to have failed in providing services to a client when they were presenting themselves as the client's regulator adviser using their pension work permissions.

As I have explained, I find it hard to understand why JAN considered it appropriate to open a SIPP for Mr T (and then move funds into a SSAS within such a short period). After around 2013 SSAS' started to take over from SIPPs as a means to get unregulated and high-risk investments into people's pension arrangements. This, not coincidentally, was around the time that the FCA expressed wider concerns in its thematic reviews about the 'due diligence' it expected SIPP providers to carry out into high-risk investments before allowing those investments to be made.

This was a well-publicised industry issue at the time so JAN as advisers authorised and regulated in the pensions field would have been aware and ought to have ensured they satisfied themselves and made proper enquiry into the circumstances of Mr T and what was intended.

Since SSAS practitioners/administrators aren't regulated by the FCA, they were often perceived as being less likely to take into account the regulator's thematic reviews when they decided what investments to allow in their schemes at the time. As a result it has been identified that a regulated adviser or unregulated introducer often thought it easier to introduce those investments into a SSAS than a SIPP. They may also have done so in the mistaken belief that as the SSAS wrapper isn't regulated, their actions wouldn't be subject to the regulator's rules. If they were a regulated adviser, they may also have mistakenly thought the member/trustee wouldn't be covered by this Service for any of the associated advice.

I am not satisfied that I understand enough here about the SSAS, but I don't think I need to. This SSAS seems to have been set up in 2014 and it appears JAN were involved in doing this, despite their more recent submissions. Where a SSAS was set up entirely for the purposes of making unregulated investments, and I think there is material to support this inference here, often the consumer would have had to create a limited company to act as the employer, and become a director of that company so that it 'employed' them, and with the help of the SSAS practitioner draw up a trust deed and rules that complied with the law. Although unlikely to be in many consumers' interests, this wasn't unlawful: the employer

didn't actually have to trade or pay the member earnings, providing they had earnings from employment somewhere.

I have taken into account that JAN were the professional and regulated adviser to the X SSAS, this being a statutory requirement under the Pensions Act 1995. JAN assert they were removed as advisers to the X SSAS subsequent to Mr T joining the SSAS. And refer to their name being removed from SSAS documentation after 2018. Whilst we have not been provided with SSAS statements, I don't consider JAN ceasing to be advisers to the SSAS after Mr T joined, to be relevant to what I have needed to determine. I note for completeness I haven't seen information provided from Company P or HMRC, including on the current position of the SSAS.

JAN tell us Company Y have confirmed to them that Mr T received pension annual statements from 2018 to 2022. JAN say that of the eight statements provided, it was only the 2018 statement that contained JAN's name. JAN have not explained how they come to have statements if they ceased to act as the SSAS advisers.

I have seen what is now said about the SSAS being started for Mr R and his pension funds. It was not clear before if JAN were saying that Mr R was the named person setting up the SSAS in 2014, but given his link to 'X' and that the name of the SSAS was 'X', there is some evidential basis. I had seen a reference at some stage to 'X2', so it might be thought there were other SSAS' with similar names. However these again are not issues I need to determine. There is nothing that makes me think Mr T was Director of a company in respect of the X SSAS. Nor that he was involved in drawing up the deed and rules.

I considered this issue carefully as it might have been persuasively said, that to consider a complaint about the SSAS I would need to have the permission of all trustees. I would have also needed to consider whether this Service was able to consider the complaint.

It is well-established that we can consider a complaint about the suitability of a transfer if the SSAS member was advised by a regulated firm to transfer from their own privately held arrangement such as a SIPP. And we would take into account what the adviser knew (or should have found out) about the intended investment within the SSAS, even if someone else, often an unregulated introducer, went on to recommend that.

We also see cases where unregulated introducers advised consumers to transfer to a SSAS. This may be a breach of the Financial Services and Markets Act 2000 if the advice involved the merits of leaving a regulated type of pension such as a SIPP. The unregulated introducer may then refer the consumer, who is now a trustee of their recently-established SSAS, to a regulated firm in order to obtain the 'proper advice' on investments that they're required to consider as a trustee under the Pensions Act 1995. I have not needed to conclude if this is what happened here and who was involved, albeit the basic background bears some similarity to this position.

From around 2013 onwards SSAS' started to take over from SIPPs as a means to get unregulated and high-risk investments into people's pension arrangements. This reflected greater regulatory concern on how SIPPs were being unsuitably used and how individuals were not being as well protected as they ought to be by certain advisers and unregulated parties in the pension sphere. In due course the increased use of SSAS' came under greater scrutiny.

I consider the historic regulatory position is of relevance when it came to my thinking about whether JAN did what they ought to have done and what they ought to have taken into account when acting. I found that some of the contents of the alert issued by the regulator in

2013 were relevant to my thinking, particularly when looking at what happened with Mr T's arrangements in 2016 (and thereafter).

It had been brought to the regulator's attention that some financial advisers were giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, financial advisers moving customers' retirement savings to SIPPs to invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes). Examples of these unregulated investments included overseas property developments among other non-mainstream propositions.

And in the cases the regulator identified, they tended to operate under a similar advice model. An introducer would pass customer details to an unregulated firm, which markets an unregulated investment (e.g. an overseas property development). When the customer expresses an interest in the unregulated investment, the customer is introduced to a regulated financial adviser to provide advice on a SIPP capable of holding the unregulated investment. The financial adviser did not give advice on the unregulated investment, and would then say it was only providing advice on a SIPP capable of holding the unregulated investment and would arrange for the SIPP to be started.

Sometimes the regulated financial adviser would also assist the customer to unlock monies held in other investments (e.g. other pension arrangements) so that the customer is able to invest in the unregulated investment. At the time the regulator went on to say that:

"*financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.*

The [regulator's]… view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes. It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating.

For example, where a financial adviser recommends a SIPP knowing that the customer will transfer out of a current pension arrangement to release funds to invest in an overseas property investment under a SIPP, then the suitability of the overseas property investment must form part of the advice about whether the customer should transfer into the SIPP. If, taking into account the individual circumstances of the customer, the original pension product, including its underlying holdings, is more suitable for the customer, then the SIPP is not suitable. This is because if you give regulated advice and the recommendation will enable investment in unregulated items you cannot separate out the unregulated elements from the regulated elements.

There are clear requirements under the regulator's Principles and Conduct of Business rules and also in established case law for any adviser, in the giving of advice, to first take time to familiarise themselves with the wider investment and financial circumstances. Unless the adviser has done so, they will not be in a position to make recommendations on new products".

This was reinforced in the alert issued by the Regulator in April 2014:

"*We are alerting firms to our requirements when they give advice on self-invested personal pensions (SIPPS), giving our view and key messages. We also set out the failings we have encountered, which firms in this market should carefully consider…*
Customers have a right to expect an authorised firm to act in their best interests, yet the serious and ongoing failings found at firms have placed a substantial number of customers' retirement savings at risk.

We believe pension transfers or switches to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers. Firms operating in this market need to be particularly careful to ensure their advice is suitable.

Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable.

If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole.

The failings outlined in this alert are unacceptable and amount to conduct that falls well short of firms' obligations under our Principles for Businesses and Conduct of Business rules. In particular, we are reminding firms that they must conduct their business with integrity (Principle 1), due skill, care and diligence (Principle 2) and must pay due regard to the interests of their customers and treat them fairly (Principle 6).

The initial alert outlined our view that where advice is given on a product (such as a SIPP) which is intended as a wrapper or vehicle for investment in other products, provision of suitable advice generally requires consideration of the overall transaction, that is, the vehicle or wrapper and the expected underlying investments (whether or not such investments are regulated products).

Despite the initial alert, some firms continue to operate a model where they purportedly restrict their advice to the merits of the SIPP wrapper. We think advising on the suitability of a pension transfer or switch cannot be reasonably done without considering both the customer's existing pension arrangement and the underlying investments intended to be held within the SIPP.

In the cases we have seen, customers' existing arrangements were invariably traditional pension plans invested in mainstream funds or final salary schemes, with the customer generally having no experience of non-mainstream propositions and many having very limited experience of standard investments. The new arrangements firms proposed were to transfer or switch the customers' pension funds to a SIPP, with a view to investment in non-mainstream propositions, which were typically unregulated, high risk and highly illiquid investments. Some examples of these investments are overseas property developments... Such transfers or switches are unlikely to be suitable for the vast majority of retail customers.

Generally speaking, we found very poor standards of advice. Firms typically failed to carry out an adequate assessment of the customer's overall financial position, needs, attitude to risk and objectives in relation to the switch or transfer as a whole (including the characteristics and risk of the wrapper and of the underlying investments). Advisers' understanding of non-mainstream propositions was also typically very poor, at least in part because of inadequate due diligence on the products and on the product provider.

We found that many firms had inadequate PII cover in place or had failed to disclose to their insurers the true nature of their business model. Firms should be open and honest with their insurers and take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems appropriate to their business (Principle 3)…

We have also seen a number of firms adapting their business model to advise customers to take out Small Self-Administered Schemes in an attempt to avoid FCA scrutiny. However, advice to switch or transfer from pension arrangements is a regulated activity regardless of the funds' destination."[My emphasis].

These were live issues for the pension industry at the time, and ought to have informed what JAN did or did not do for their client and more generally, and how they did it. Even if JAN sought to distance themselves from direct contact and allowed unregulated individuals to direct Mr T, as I think happened here, this does not remove their responsibility to understand they had a client relationship with Mr T, were acting on his behalf in respect of his pension arrangements and needed to do what was expected. And when they did this, they ought to have reflected on the very live issues in the pensions environment and they would, or ought to have understood that even where there might be distanced from direct contact with a client party, this did not discharge their obligations or remove their potential liability.

I thought JAN had ultimately accepted Mr T was their client and had thought they were right to do so previously. Now JAN seem to have reverted to stressing he was not. For all the reasons set out above, I conclude he was. They can only have instructed the PPP and SIPP providers in the way they did whilst acting on behalf of Mr T, as their client. They presented themselves as being his adviser to both parties. They also presented themselves to Mr T as being his adviser. JAN ought to have been acting under his instructions, albeit there is enough here to persuade me, Mr T followed instructions and signed documents as he was directed by all the various parties involved here, both regulated and otherwise. And by logical inference JAN must have had some form of arrangement or agreement in place with other parties.

Whilst we have been provided with a fee agreement that makes reference to other documents, and an investment client agreement, we have not been provided with any written basic agreement, such as terms of business or a client agreement that covers what was done here. This doesn't absolve JAN of responsibility, but does further demonstrate the missing hallmarks of what one would expect to see when things were done as they ought to have been. In addition there is no written mandate setting out what service JAN are providing to Mr T and its scope. As such in considering JAN's mandate, in addition to their knowledge, I have needed to look at the surrounding circumstances and material from the time.

I set out the commentary provided by Evans-Lombe J in *ICS Ltd v West Bromwich Building Society (No2) [1999]* above. I am not persuaded JAN met the most basic of expectations and obligations when it came to knowing their client and acting in Mr T's best interests. I have considered Mr T's knowledge and actions and whether what is said now is credible and/ or reasonable. For example how likely it is that Mr T thought attending JAN's offices and speaking to JAN and the other persons involved was sufficient due diligence, particularly given he suggests through his evidence he was signing documents without reading them. In addition, I have also seen Mr T was provided with information that did also give some information about the SIPP and SSAS.

The people who dealt with Mr T and directed him provided the appearance of professionalism and expert knowledge. I have taken into account the available communications from the time and after funds arrived in the SIPP, and the generally consistency and credibility in what Mr T says. Ultimately Mr T was entitled to rely on JAN as

a regulated adviser and they didn't act as they ought to have done. These failures were significant and but for JAN's actions here, Mr T would not have had a SIPP, transferred funds from the PPP, nor would any of the other events that followed, have occurred.
In the contemporaneous emails when Mr T tells Mr R he felt there had been failures in the explanations provided and that he felt misled, he still trusted and relied on Mr R to tell him what to do. As such I tend to think the evidence supports the conclusion that Mr T did trust others who he considered expert.

It has not been suggested to me, that if JAN had refused to act, or advised against what was happening, things would still have proceeded. And JAN have suggested there was a determined intention formed for what followed by the time (if not before) by the time Mr T signed the fee agreement with them. As I've explained I agree to the extent Mr T wanted to use his pension funds to invest in what he thought was a property investment that came with certain guarantees. I don't think there's enough to say his intention was informed with any detail about what that meant was needed.

If it were being suggested that Mr T would have proceeded even if JAN had acted differently, I don't agree. I think the evidence suggests otherwise and any such assertion is too remote and speculative. I don't think it can be said that had JAN refused or advised against what followed, this was not likely to have impacted the thinking and decision making of a retail client such as Mr T. Such input from coming from a regulated adviser would reasonably have been likely to have held weight with Mr T.

In considering JAN's role I have noted that over time JAN have provided various documents that they might not have been expected to hold were it not for their involvement being more significant and of greater duration than they have accepted, and no explanation has been provided as to how these documents have been obtained, nor their level of knowledge.

For completeness I am persuaded there was a meeting at JAN's premises in January 2016. I don't think the actual date is of meaningful importance, it may be more likely to have been 27 January 2016, but I don't consider anything turns on the date. JAN have recently returned to their submission there never was a January 2016 meeting and they weren't present. I don't find this persuasive. I find Mr T credible and reliable in general terms and his evidence on the event and the material from the time is significantly supportive.

I consider the use of JAN's offices and the presence of JAN's principal were relevant to influencing Mr T in his thinking this was a legitimate, well organised and considered process that he ought to trust. I don't think it matters whether the principal actually heard what was discussed or not on that day. JAN had sufficient knowledge and even if they attempted to close (or give the impression of closing) their eyes to procedures not being properly followed and duties completed, this did not discharge their liability for what followed. It is clear the documents and next steps to set up the SIPP and instruct the transfer from PPP came from JAN, using their identity and sufficiently with their knowledge, and underlying this was the fact they were also the advisers to the SSAS.

JAN have not said how their client and fees agreements came to be signed by Mr T when he met with Mr R in 2015. JAN have not said how they came to act for Mr T and who introduced him and his work to them. JAN say the SIPP was opened to undertake regulated investment activities. I don't know why they say they know this. There is nothing provided that persuades me of this, and no investments followed in the SIPP.

JAN more recently submit that once Mr T transferred away from the X Retirement Scheme Regulated Trust they had no influence, nor were they involved in any investment advice or decisions made thereafter. I find this submission flawed and unreliable. It seems to me the submission seeks to distance JAN from the SSAS, but until 2018 at least JAN remained the

advisers to the SSAS. The submission also implies investment advice to Mr T when he was a member of X Retirement Scheme Regulated Trust, which is inconsistent with what they say about never having advised Mr T and him never having been a client.

The submission might be reasonably thought to be a conflation of the X Retirement Scheme Regulated Trust with the SIPP. It is clear funds were from transferred from Mr T's SIPP in 2016 (and 2017 when the SIPP was closed), whether he understood this was what happened or not. It also appears Mr T has funds transferred into the X Retirement Scheme Regulated Trust in at least 2017. And there is some evidence that suggests he had funds held in the X Retirement Scheme Regulated Trust until 2019, which were being invested (presumably by JAN on their submissions). In any event, I am not persuaded the submission is of any meaningful relevance to what I have needed to decide here. I have not been focussing on a complaint about what happened to the funds when they left the SIPP or what investments were made and how they came about.

For completeness

Our Service is an alternative to the courts. I am not required to include and comment on everything that has been said and provide in respect of a complaint. I have included matters I consider relevant to my thinking on this case. I have seen JAN have repeatedly suggested that I ought not to accept evidence as being accurate and why. I am satisfied all parties have had the opportunity to comment on evidence and provide information to this Service over a very significant period of time. I am not persuaded that the historic documentary material provided has been tampered with, and certainly not in any way that impacts my finding in this matter. I have found what has been said by Mr T to be consistent and credible. It is supported by independent evidence from third parties.

I note what JAN said very recently about the X Retirement Scheme Regulated Trust being different to the X SSAS. And I have reflected on the letter from the provider of Mr T's SIPP to the X Retirement Scheme Regulated Trust (at JAN's postal address) on 13 April 2017 enclosing the PIN and Portfolio number so that the portfolio could be operated online. It is clear these were two separate arrangements, which had links at a minimum through the use of the distinctive 'X' name and the involvement of JAN. As I have explained I am satisfied both schemes were distinct arrangements to Mr T's SIPP. 90% of Mr T's SIPP funds were transferred out around six months before this letter was sent and in April 2017 Mr T's SIPP was closed.

In reflecting on how Mr T's funds were managed and moved, I tend to think there is evidence of a careful management of the two schemes JAN were linked to which shared the 'X Retirement Scheme' name as part of their identity. And that this leant itself to the appearance of a lack of transparency, and certainly a lack of understanding (for good reasons) on Mr T's part. I have seen the email trail in April and June 2019 where Mr R tells Mr T that as part of the investment strategy for his pension within the X Retirement Scheme, an element had been held in a liquid form with a regulated provider. When Mr R named the provider, it was the SIPP provider, (and as such I think he is referring to the X Retirement Scheme Regulated Trust without saying so). Mr R goes on to say the provider no longer offers the service, so funds of just over £8,500 would shortly back be transferred back into Mr T's pension account and that Mr T needed to now consider how this money should be invested. In other words, Mr T is told the funds need to be moved. I am in no doubt this is an intended (by others not Mr T) transfer of funds into the SSAS. I am also in no doubt Mr T would not have easily understood any of this, nor that he was intended to have understood. This isn't of significant relevance to the matters I have needed to decide. I have focussed primarily on Mr T's transfer from his PPP and the opening of his SIPP and what JAN did to cause these events to proceed and whether they did what they ought to have done.
For the reasons given I am upholding Mr T's complaint.

Putting things right

What JAN are required to do

But for the actions of JAN, Mr T would not have opened a SIPP, nor would he have transferred his pension funds from his PPP into the SIPP, (and then onwards into the SSAS in a short space of time, and then made the investments that followed, which, based on limited information, appear to have been high risk ventures that ultimately failed).

From everything I have been told, I understand the PPP to have been a defined contribution personal scheme and thus there were no defined benefits involved, nor any other guarantees lost on transfer.

My aim in awarding fair compensation is to put Mr T in the position he would have been in had he not gone ahead with starting a SIPP, transferred his PPP funds into the SIPP; and then the X SSAS (some of the funds potentially remaining in the X Retirement Scheme Regulated Trust for a time).

I have approached this complaint and my thinking on the basis of Mr T as a retail client of JAN's in respect of the opening of the SIPP and the transfer from the PPP. And I think it is likely this was done with the knowledge and intention of JAN that the transfer into the X SSAS of the majority of the funds within a few months and the investments would follow. As such, the loss will be suffered by Mr T as a member of the X SSAS when he draws his benefits. This doesn't mean he hasn't suffered a loss as a trustee too here. He was (and may still be) the owner of the investments because they will have been held under the trusts of the X SSAS, the trusts of an occupational pension scheme. When the member draws benefits, these are still payable on the direction of the trustee (which highlights the importance of Mr T and his representatives in establishing the trustees).

So, I could have said that Mr T, the trustee, has complained about a loss the pension scheme trust has suffered in the first instance. However I have not approached this complaint as a complaint about the X SSAS being brought by a trustee. I have approached it as a member and the complaints brought in respect of the SIPP and the transfers, which takes account of what followed. Had this been in a complaint brought solely as the trustee there might be a necessity to ensure all trustees agreed for this complaint to be considered.

Here I am making an award for the loss, and I am able to include a direction that the loss is paid directly to the member (with any adjustment for future income tax), on the basis that I'm satisfied this is how the trustee would have directed the benefits to be paid.

JAN must therefore contact Mr T's original PPP provider to obtain a *notional value* as at the date of my final decision, assuming that it continued to be invested in the same funds but was subject to any of the same gross withdrawals Mr T has directly received. Albeit I have not been made aware of any wihdrawals. As a condition of accepting this decision, Mr T will need to give JAN his authority to obtain this information.

The exercise

The *actual value* of Mr T's X SSAS as at the date of my final decision should be deducted from the *notional value* to arrive at Mr T's *initial loss amount*.

(Any currently outstanding administration charges yet to be applied to the X SSAS should be removed from the *actual value* first.)

The *actual value* is difficult to determine where an investment is illiquid (meaning it cannot be readily sold on the open market). That seems to be the case with the holding in the X SSAS. Therefore as part of calculating compensation in respect of the X SSAS value:

Usually I would say that as a starting point JAN should agree an amount with the SSAS as a commercial value for this investment, then pay the sum agreed to the SSAS plus any costs, and take ownership of it. The *actual value* used in the calculations should include anything JAN has paid to the SSAS.

The fractional ownership company, as a member of which Mr T holds any investment, should be consulted to achieve this. It is not clear to me if this applies or not.
But I am not convinced this overall and usual approach is practical here and as such I require JAN to do the following.

- I think it unlikely JAN will be able to buy the investment(s) from X SSAS and so they should value it as nil, as part of determining the *actual value*. In that event it's also fair that Mr T should not be disadvantaged while he is unable to close down the SSAS and move to a potentially cheaper arrangement. So to provide certainty to all parties, I think it's fair that JAN adds five years' worth of future SSAS administration fees at the current tariff to the *initial loss amount*, to give a reasonable period of time for the SSAS to be closed.

- JAN has made no proposals to this service about potentially being able to use independent valuers for an investment or to agree a value with the SSAS (which is more than nil value), even if it's not actually buying the investment from the SSAS. As it appears there may be no market for the investment, I don't consider it's fair to use a value that is the opinion of someone who is not actually buying the investment from the SSAS.

- I also cannot anticipate whether any investment and/ or the fractional membership company will be permitting changes of ownership because clearly legal processes would be involved. But to the extent that this is possible, JAN would benefit from any value they might think remains in the investment by buying it out of the SSAS. So if JAN is unable to take ownership of the investment, they may ask Mr T instead to provide an undertaking in return, to account to them for the net amount of any payment he may receive from the investment in future.

- The aim of this undertaking is to avoid double-recovery of Mr T's losses. If JAN wishes to do this, the undertaking should be drawn up after compensation is paid and JAN will need to meet any associated costs.

  It is not my role to set the terms of the assignment and undertaking, but rather to explain its aim in achieving overall fairness for both parties. If JAN asks Mr T to provide this undertaking, payment of the compensation awarded may be made dependent upon provision of that undertaking.

Payment of compensation

As a starting point I would usually say that if there is an overall loss, JAN should pay into the SSAS, to increase its value by the initial loss amount. The payment should allow for the effect of charges and any available tax relief. And usually JAN shouldn't pay into the SSAS if this would conflict with any tax protections or allowances.

However here I am not persuaded JAN is able, or ought to be required to pay the compensation into the SSAS, and so they should pay it directly to Mr T.

But had it been possible to pay into the SSAS, it would have provided a taxable income. Therefore the initial loss amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age. Here, it's reasonable to assume that Mr T is likely to be a basic rate taxpayer at the selected retirement age.

Details of the calculation should be provided to Mr T in a clear, simple format.

JAN must also pay Mr T £450 for his distress and inconvenience.

If Mr T's original PPP provider cannot provide a notional value

In this eventuality, JAN will need to use a benchmark to provide a *fair value* for this policy and exchange that for the *notional value* specified above. As I said above, Mr T seems to have been willing to take some risk to get a higher return, and whilst I tend think there was a potential limit in the timeframe until 2018 when he thought he would be able to review the investment, I consider the same as I thought before, the bench mark will be calculated as if the PPP funds remained invested in the PPP up until the date of my final decision.

I consider that a composite benchmark based on 50% invested at the FTSE UK Private Investors Income Index on a Total Return basis, and 50% at the monthly average rate for one-year fixed rate bonds, would be appropriate here.

The Income index is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

The average rate for fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital. The rate for each month is that published by the Bank of England as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

I consider that Mr T's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. It doesn't mean that Mr T would specifically have made investments that exactly mirrored the return on this composite benchmark. For that reason JAN should not be deducting investment costs or other charges from the benchmark.

The view I'm taking is on how the *sort of* funds Mr T would have remained invested in, in his original PPP (***if*** a notional value is unavailable) would typically have performed; notwithstanding the charges (which would have been lower than the SSAS in any event). It is a proxy that is being used for the purposes of compensation.

The gross amount of any withdrawals made from the SSAS will also need to be deducted from the *fair value* at the point they were taken, so that they cease to feature in the calculation of growth.

I have not been told of withdrawals and whether any have been made under the guise of another trustee for example.

In all of the circumstances above I think it's fair and reasonable for me to hold JAN responsible for 100% of Mr T's loss. It's a matter for JAN whether they wish to attempt to recover any of the compensation I'm requiring them to pay from other parties. They may take an assignment of Mr T's rights to pursue those parties as a further part of the above-mentioned undertaking, if they wish to do so. Again JAN will need to pay all associated costs with any such assignment.

I have considered carefully what has become clearer about the potential for approximately 10% of Mr T's PPP funds being transferred into X Retirement Scheme Regulated Trust when his SIPP was closed, and whether that ought to change my calculation. Having considered the evidence and in particular the 2019 emails, I consider it is more likely that whilst the funds may have moved into the Trust, they were later transferred into the X SSAS. I consider my loss calculation remains fair here, even were the funds held elsewhere for a time. It is the original SIPP and transfer from the PPP that have been at the heart of what I have considered and what enabled later activity to take place.

My final decision

For the reasons given I uphold Mr T's complaint about JAN Investment Marketing, also trading as Jan Kazimierz Pietruszka. JAN will be required to complete the loss calculation set out above and pay all sums due to Mr T. In addition to £450 for his distress and inconvenience as a consequence of their inadequate, unreasonable and unsatisfactory service and activity.

Payment should be made to Mr T within 28 days of JAN being informed of Mr T's acceptance of my decision. If it is not interest at 8% simple a year ought to be added to any sum outstanding that arises from the loss calculation from the date payment was due by until payment is completed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 July 2024.

Louise Wilson
Ombudsman