DRN-4801573

Financial Ombudsman Service

The complaint

Mr D has complained that Intelligent Money Ltd failed to act fairly and reasonably in its dealings with him. And that it failed to carry out sufficient due diligence on the companies he invested with.

What happened

I've outlined the key parties involved in Mr D's complaint below.

Involved parties

Intelligent Money Ltd ('IM')

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

Better Retirement Group trading as Fiducia Prosperity ('BRG')

BRG was an independent financial adviser, regulated by the Financial Conduct Authority (FCA) until May 2022. BRG has been declared in default by the Financial Services Compensation Scheme (FSCS) as it is unable to meet claims against it.

Fiducia Consult

Fiducia Consult was an unregulated introducer that introduced clients to BRG for regulated pensions advice.

SVS Securities Plc ('SVS')

SVS Securities was the Discretionary Fund Manager (DFM) for the investments. SVS was regulated by the Financial Conduct Authority. However the FCA issued a First Supervisory Notice to SVS on 2 August 2019 and it went into special administration on 5 August 2019, dissolving on 10 August 2023. The FSCS is now accepting claims against SVS.

The SVS Model Portfolio ('The Model Portfolio')

The Model Portfolio was a portfolio offered by SVS. It invested in a mixture of equities, fixed income & unit trusts and was to be tailored to meet different client investment objectives. The Model Portfolios were the GIA Income, GIA Mixed, GIA Aggressive Growth, ISA Income, ISA Mixed and ISA Growth. The assets held in each Portfolio were the same with only the proportion changing. The Asset List for the model Portfolio included the following fixed income securities:

Angelfish Plc 7.1% Pref 2021 ('Angelfish')
Corporate Finance Bonds Series 3 to 9 ('CFBL')

Ingard Property Bond Dac & Dac 2 (‘Ingard’)
Queros Capital Partners Plc 8% Redeemable Bonds (‘Queros’)

Leonard Curtis

Leonard Curtis has been the administrator for SVS since 5 August 2018.

ITI Capital Limited (‘ITI’)

ITI took over the management of SVS’s DFM funds.

First Supervisory Notice to SVS

As mentioned above, The FCA issued its First Supervisory Notice to SVS on 2 August 2019. This noted, amongst other things that:

> “…*SVS (whether directly or through its agents) must not, without the prior written consent of the Authority, carry out any regulated activities save that it may carry out the activity of safeguarding and administering custody assets, only to the extent required to facilitate the movement of client money and custody assets as permitted in paragraph 1.10.*
> *…*
> *The Authority considers that SVS has breached a number of the Principles for Businesses (PRIN) and a number of specific rules in the Authority’s Handbook… Several members of SVS’s current senior management appear to the Authority to have been closely involved in some of the conduct which has resulted in these breaches. As a result, and given the Authority’s serious concerns over the integrity of certain SVS directors, and the general lack of proper governance or effective controls at SVS, the Authority considers that SVS is not currently satisfying the Threshold Conditions for Suitability and Appropriate non-financial resources.*
> *…*
> *The Authority is concerned that SVS is conducting its business in a way that creates an ongoing risk to consumers. Further, the scale of the uncertainty over investments promoted and/or managed by SVS creates the potential for a large number of consumers to suffer material investment losses.*
> *…*
> *The real possibility of such an outcome means that the Requirements are necessary to prevent SVS’s regulatory failings leading to a series of events that ultimately cause damage to the integrity of the United Kingdom financial system. This approach is consistent with the Authority’s operational objectives.*
> *…*
> *SVS’s four main services, or business areas, are: …Discretionary – Investment into model portfolios or custom-made portfolios by one of the SVS Discretionary team (“DFM Business”)*
> *…*

Following information provided to the Authority by SVS during 2017, the Authority's Supervision Department ("Supervision") wrote to SVS on 23 January 2018 setting out its concerns over the lack of due diligence, high concentration and liquidity risk in relation to bonds issued by Corporate Finance Bonds Limited ("CFBL"). Supervision asked SVS to consider the risks posed by these investments and to act on the concerns set out its [sic] January 2018 letter. On 1 February 2018, SVS responded giving assurances that its Board would address these concerns.

…

On 13 May 2019, Supervision sent an information request to SVS prompted in part by complaints from its customers about the make-up and transparency of SVS' Model Portfolios. On 16 May, SVS provided the Authority with information, including an explanation of its approach to due diligence on investments in its model portfolios. Specifically, SVS informed the Authority that its due diligence into new bond products included: (a) establishing that those investments were listed on recognised exchanges; (b) open-source searches; and (c) reliance on the due diligence of regulatory bodies.

…

Supervision conducted a review of documents and correspondence obtained during the 2 July site visit. On 19 July 2019, Supervision wrote to SVS setting out a number of regulatory concerns resulting from the visit, and proposing the imposition of voluntary requirements on SVS's Part 4A permission.

…

Supervision's review did not substantiate SVS's description of due diligence steps for prospective investments that SVS provided to the Authority in its written response dated 16 May 2019. For a number of key investments in its model portfolios (notably CFBL bonds and Ingard Property Bond), SVS committed to invest in these products without carrying out any evident relevant and timely due diligence assessment. Instead, for example, SVS provided assistance and support to one bond issuer to help get its new bond listed, committed to purchase of that new bond products to a certain value prior to listing, advanced funds to a bond issuer to help cover the costs of listing the bond on an exchange and secure a rating. SVS also agreed to provide a price on Bloomberg and a secondary market in the CFBL bonds. This would potentially improve the liquidity of the bonds and so attract further investment.

…

On 26 July 2019, following discussions with Supervision, SVS applied to the Authority pursuant to section 55L(5)(a) for the imposition of the Voluntary Requirements on its Part 4A permission, by which SVS agreed: in relation to its DFM Business: not to carry out any regulated activities, not to accept any new client money or new custody assets (without the Authority's consent and with exemptions permitting certain largely administrative activities), and not to accept any new clients into any of its other business areas (Advisory, Execution and FX). SVS also agreed not to invest in any fixed income products across all business areas.

…

During the 2 July site visit, Supervision interviewed [Mr H] and Mr A (a Portfolio Manager), who both stated that SVS had little detailed data regarding the composition of CFBL's book of loans, on which the bonds are based. Both stated that for its ongoing due diligence into the bond products and the performance of the underlying loans, SVS had relied almost entirely upon CFBL's assurances.

…

[Mr H] informed Supervision during the visit that he believed the CFBL bonds to be one of the strongest performing components in SVS's model portfolios. The Authority does not consider this assessment to be supported by evidence. It appears to be based on accepting at face value what limited information SVS is given about the bonds by CFBL, and the fact that the bond coupons get credited, indicating that the bonds are still performing.

…

Supervision's review of documents obtained during the visit indicates that SVS' model portfolios have had a consistently high exposure to CFBL bonds in circumstances in which SVS lacks adequate information about the underlying loan recipients, their financial standing, their potential to meet high interest rates set by CFBL, their ability to repay the principal sum at the end of the loan term, or the performance of the loans. This information is needed to assess the bonds and comply with the rule in PROD 3.3.3R that any investment product must be distributed in accordance with the needs, characteristics and objectives of its target market.

…

By its letter of 23 January 2018, Supervision informed SVS of its concern over the concentration risk which arose given that SVS invested in different series of the CFBL bond within the same SVS model portfolio.

…

Despite the concerns expressed by Supervision in January 2018, SVS has in fact increased the exposure of its model portfolios to CFBL's bonds. From 31 March 2018 to 13 May 2019, CFBL exposure increased in its Income (53% to 78%), Mixed (46% to 61%) and Growth (45% to 51%) portfolios. These also include other illiquid investments with high or unknown risks. SVS increased this exposure in circumstances where it lacked information from CFBL properly to assess the risk of these investments.

…

Furthermore, approximately 90% of SVS' DFM Business customers are invested in SVS's model portfolios as a result of having received pension switching or pension transfer advice. Despite this, SVS does not appear to have taken steps to identify groups of end clients for whose needs, characteristics and objectives the CFBL bonds was not compatible.

…

Supervision has reviewed investment-related emails sent by SVS management between 2016 and the present date. These demonstrate that SVS worked closely with third parties, in particular bond issuers/product providers and professional advisers, to help generate and sustain demand for the investment products offered through SVS, including in its DFM model portfolios.

…

SVS has done this without apparent regard for the investment needs of customers and with the result that these customers were subject to a series of high fees and charges paid to SVS and to other transaction parties.

…

PROD 3.3.10R also required SVS to identify the target market for the CFBL bonds, and provides that when complying with this rule, SVS should consider factors such as how the bonds fit with the needs and risk appetite of end-clients (PROD 3.3.11G (1)) as well as the impact of charges on the end clients (PROD 3.3.11G (2)).

…

Supervision's review has found no documentation recording that SVS had carried out these assessments.

…

SVS has repeatedly failed to properly identify, record and manage conflicts of interest in respect of SVS and its directors' connections to, and interests in, bond issuers whose products SVS included as investments in the DFM model portfolios.

…

SVS's close relationship with one bond provider, Ingard Financial Limited ("Ingard"), included up-front payments for Ingard's professional fees to help Ingard to secure a listing on a recognised exchange (and to apply for a rating). At the time this took place, Mr B was serving as both a director of SVS and shareholder of Ingard. SVS decided to invest funds on behalf of its DFM customers in Ingard's investment products.

…

[Mr F] was the sole CF2 non-executive director of SVS when he introduced Angelfish Investments Plc ("Angelfish") to SVS as a potential investment for the SVS model portfolios in mid-2018. He was also a director of Angelfish. SVS included Angelfish preference shares in its model portfolios.

…

The Authority has also identified financial connections between SVS and Mr C, a senior figure at CFBL. An entity controlled by Mr C has provided SVS with a loan facility of £1,000,000. This appears to be secured by a fixed and floating charge over SVS's business.

…

The Authority is concerned that SVS may have allowed Mr C to influence its investment decisions and strategy, including for the DFM model portfolios. For example, the loan facility provided to SVS by CFBL raises concerns about SVS' ability to take investment decisions on behalf of its DFM Business customers on an independent basis.

…

In addition, email correspondence records that SVS encouraged IFAs to promote SVS's model portfolios as an investment solution specifically for clients who were proposing a defined benefit pension transfer or SIPP switch. Yet SVS increased the proportion of illiquid and high-risk bonds in its model portfolios. This is likely not consistent with the needs and risk appetite of pension investors. In the conduct of its DFM business, and its promotion off high-risk bonds to retail investors, the Authority considers that SVS has failed to show due regard to the interests of its customers, and failed to treat them fairly…"

Background on BRG

BRG initially signed an Introducer Terms of Business agreement with IM on 14 October 2016 and 6 March 2017. The agreement was re-signed electronically in May 2018. Amongst other things, it was stated in this agreement that:

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

…

The introducer agrees to use its reasonable endeavours to provide IM with all necessary documentation in relation to the client's application for a Scheme and to provide reasonable co-operation with IM in the provision of any additional information as necessary in respect of the investment.

The Introducer agrees to, where necessary, provide reasonable co-operation to IM in its reasonable endeavours to adhere to all relevant legal and regulatory rules and guidance.

…
The Introducer agrees that it is responsible for any advice including but not limited to advice as to the suitability or appropriateness of the Scheme services of IM for the client. IM shall not be responsible for any advice or recommendation given by the Introducer in relation to underlying investments."

We asked IM a number of questions about its relationship with BRG and details of any due diligence it completed before agreeing to accept referrals from it. IM has told us the following:

- BRG signed IM's Terms of Business in February 2017 and began submitting business just after that.
- IM only works with regulated introducers.
- In terms of background checks, IM's agreement is detailed and explains its expectations of the firm. It also checked the FCA register to ensure that the firm was authorised and also that the adviser was authorised. G60 certificates and sign off reports were obtained for any additional advisers who were appointed to sign off Defined Benefit (DB) transfers.
- IM doesn't hold any information about BRG's business model/client process. So it wasn't able to provide any information about how introductions were made by BRG to clients, whether any advice was being given by the introducer on the pension transfer and/or the underlying investments and how many introductions IM was expecting per month.
- After the initial agreement was signed, IM didn't have any further discussions with BRG about the client process or the business it was referring.
- After the initial agreement IM carried out periodic checks to ensure BRG was still FCA authorised on the register.
- IM paid BRG initial adviser charges after a fee agreement was received for each client.
- IM didn't request copies of any suitability or pension transfer reports that were provided to clients. But the discharge forms show that the ceding schemes approved any transfers from DB schemes over to IM. Ceding Schemes have their own checks and no business has come to IM that was rejected by the ceding scheme. In addition, IM carried out its own checks (it included the advisers' G60 certificate as evidence the adviser was qualified to advise on such transfers).
- BRG introduced 130 clients to IM.

Background on SVS

IM has said its relationship with SVS started in August 2016 and that numerous IM Asset Holder Terms of Business agreements were signed by SVS. I've seen a copy of an agreement that was signed by SVS and IM in February 2017. Amongst other things, it was stated in this agreement that:

"IM is the Scheme Operator of the Pension Scheme.
Intelligent Money Trustees Ltd as the Scheme Trustee is the sole Trustee and legal owner of all assets held by the pension scheme, holding assets in Trust for its members.
The Scheme Trustee of the pension scheme is for the purposes of the Agreement at all times the Client of the Asset Holder.
…

…the Scheme Trustee is to be treated as a Retail Client, unless otherwise agreed. The Scheme Operator and Trustee give authority for the risk strategy/investment profile to be agreed between the pension scheme member, the pension scheme Member's appointed Financial Adviser and the Asset Holder. Authority is also given to the pension scheme Member and/or the pension scheme Member's appointed Financial Adviser to give investment instructions directly to the Asset Holder.

…

Where the Asset Holder is providing the pension scheme with 'either' execution only or advisory Accounts, the Asset Holder will be responsible for carrying out any appropriateness test on the pension scheme Member, as required under MiFID where an investment in a complex investment product is taking place. In the event that the duty has been undertaken by an IFA who is non MiFID, the Asset Holder will obtain a Suitability Declaration.

Investments will be made in accordance with the HMRC legislation governing pension schemes and the Scheme Operators List of Permitted Investments. The Scheme Operator may update this document from time to time and the most recent version can be obtained from them.

…

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

…

~~*The Asset Holder agrees to provide online access to view client's accounts to the scheme Administrator and to the pension scheme member (or their nominated IFA).*~~ *All valuations, transaction statements, Tax Vouchers and consolidated Tax Certificates should be sent to the Scheme Operator or online access provided as applicable.*

…

The Scheme Operator reserves the right to terminate this Agreement with immediate effect if the Asset Holder ceases to be to be [sic] *FCA authorised, or if there is any breach of the conditions set out in this Agreement.*

…

Permitted Investments

The Asset Holder acknowledges and accepts that IM does NOT permit (and Indeed STRICTLY PROHIBITS) any Non-Standard and/or illiquid assets (as defined and amended from time to time by the FCA) to be held within its scheme.

…

PERMITTED INVESTMENT GUIDANCE

The following are the allowable investments in respect of the Schemes Intelligent Money offers:

(A series of investments were listed).

…

INTELLIGENT MONEY EXPRESSLY PROHIBITS ANY OF THE FOLLOWING TRANSACTIONS IN RESPECT OF OUR SCHEME:

Any investment not listed on the Permitted Investments list above including, but not limited to:

Stocks and shares and other Transferable Securities not listed or traded on a recognised exchange in accordance with the section on Stocks and Shares and other Transferable Securities in Permitted Investments above.
Any other investments that are classed as Non-Standard by the FCA.
Warrants.
Future.
Options.
Contracts for Differences.
Other derivative instruments of any nature.
Geared or leveraged transactions.
Other transactions which could result in a loss greater than the original amount invested.
Purchase of shares that would give the member a controlling interest in a company.
Unregulated Collective Investment Scheme (UCIS).
Overseas
Property.
Residential
Property.

We asked IM a number of questions about its relationship with SVS and for details of any due diligence it completed before agreeing to do business with it. IM has told us the following:

- In terms of due diligence IM carried out into the underlying funds held in SVS's portfolios, it said that it was initially happy but a later spot check raised concerns about the liquidity of some of the investments. After asking for confirmation on this, SVS reassured IM that only standard investments would be included in the portfolios, as per the agreement.
- IM did not receive any product literature about the investments; this would have been discussed between the introducer (BRG) and the client, in this case Mr D.
- When asked how IM satisfied itself that valuations for investments were fair and reasonable, IM explained that it's not authorised to assess a client's suitability and so it would not judge if a valuation was "Fair and Reasonable". IM satisfied itself that the firm was authorised by the FCA and that it only included standard assets on the portfolio. The client's attitude to risk is the adviser's responsibility.
- SVS held the responsibility of communicating details of the underlying investments/positions to the client. This meant that no holding information was provided on the SIPP annual statements.
- IM was not given any online access by SVS to investment values despite its request for this.
- IM has multiple versions of its agreement which were signed by SVS to agree that it would be bound by IM's permitted investments.
- IM received a total of 266 applications between August 2016 and June 2019 to invest in SVS's Model Portfolio.

To support its due diligence checks, IM also provided a number of emails between it and SVS. I've summarised these emails below and included extracts where appropriate.

25 January 2019 - SVS to IM.

SVS provided a list of assets that had been held in the model portfolios on both 10 December 2018 and 18 January 2019. These lists included a number of permitted investments. The lists also included the following fixed income securities:

As at 10 December 2018

Angelfish Plc 7.1% Pref 2021
Corporate Finance Bonds Limited Series 9 Corporate
Finance Bonds Series 3 6.25% Due 2021
Corporate Finance Bonds Series 4 6.25% Due 2021
Corporate Finance Bonds Series 5 5.95% Due 2021
Corporate Finance Bonds Series 6 6.25% Due 2021
Corporate Finance Bonds Series 7 6.25% Due 2021 Ingard
Property Bond 2 Dac
Ingard Property Bond Dac 7% Secured Due 2023 Queros
Capital Partners Plc 8% Redeemable Bonds

The list of assets on 18 January 2019 included all of the above fixed income bonds as well as the Ingard Property Bond 2 Dac, which was also a fixed income bond.

SVS also explained in the email of 25 January 2019 that assets held in each Model Portfolio are the same with only the proportion of assets changing.

20 February 2019 – IM to SVS

> *"We have recently been carrying out further due diligence on funds held by SVS as we do spot check firms from time to time as part of our due diligence process.*
>
> *Having looked at the structure of the investments we need proof of liquidity on all of them please. If no proof can be provided then we would consider these to be non standard investments. As you already know we do not allow these and therefore we would ask you to switch these investments back into standard asset classes.*
>
> *Until we have confirmation on this we will not be able to set any new accounts up."*

25 February 2019 – SVS to IM

> *"Further to your email below we are aware that a number of SIPP Trustees are asking Wealth Manages* [sic] *questions on the liquidity and Permitted Investments, we will be sending the following email out to all SIPP Trustees we deal with at present, however if you have specific questions on any investments we hold please let me know which ones you have concerns about."*

The attached email stated:

> *"The production of a base listing prospectus has allowed SVS to carry out full due diligence on the associated Bond company structure, the method of enabling notes issued under the programme into electronic clearing and settlement and defines the permissible use of capital raised which we can measure against when carrying out continued due diligence.*

In addition we can confirm that prior to the purchasing of any Investments within the Model Portfolio that all Bonds purchased into the Model Portfolios are carefully researched by our firm's analysts and are subject to review and sign off by the SVS Investment Committee…

…

"We would like to confirm that all assets held within any Model Portfolio SIPP at SVS qualify as Permitted Investments & meet the definition of a "Standard Asset" test where the asset must be capable of being accurately valued on an ongoing basis and ready realisable within 30 days when required...

…

In addition we can confirm that prior to the purchasing of any Investments within the Model Portfolio that all Bonds purchased into the Model Portfolios are carefully researched by our firm's analysts and are subject to review and sign off by the SVS Investment Committee. We can also confirm that going forward we will only invest in Bonds that have a minimum Investment grade of BBB+ or above (Standard & Poor's or equivalent)…

…

The following outlines the liquidity conditions for the bonds and how there is a secondary market in them.

- *Matched Bargain Facility*

The Bonds held fund their own internal matched bargain facility between counterparties that can provide access to liquidity. This system matches buyers with sellers before they would take up any primary market allocation. Using a match bargain facility constitutes a secondary market, while not considered as liquid as market maker, it does allow for a degree of liquidity.

- *Market Maker Participation*

The Bonds held have worked with a number of Market Makers, which include, [W] to develop a market in their bonds, this has seen SVS trade in excess of £4m in regular transactions with [W]. This is considered secondary market transactions as [W] are acting as an intermediary for their clients.

- *SVS Principal Permissions*

SVS hold permissions to deal on a principal book and as such are committed to providing liquidity to the Bonds held. In circumstances where there are above normal disinvestments from the portfolios and cash balances within the pooling arrangement do not cover the requirements, SVS are in a position to purchase the assets onto its own book until such a time that the trades could be matched or the investments matured."

27 February 2019 – SVS to IM

Providing a current list of equity holdings in the model portfolios. In addition, SVS said that the fixed income securities (listed above on the model portfolio lists) were last traded as part of the disinvestments on the principal book on the 4th of February 2019.

28 February 2019 – IM to SVS

"It is still not clear if all of the fixed income securities have been disinvested?

All assets which do not comply with our permitted investments need to be disinvested immediately."

4 March 2019 – SVS to IM

"*We can confirm that all fixed income investments have been disinvested and that all investments we hold within the Intelligent Money SIPP & the SVS Model Portfolio are permitted investments."*

7 March 2019 – IM to SVS

"*In order to move forward though we would like a signed letter from you confirming how our agreement was breached and reassurance that this will not happen again. We do not allow non-standard Assets as you know."*

7 March 2019 – SVS to IM

"As requested please find attached a re-signed Intelligent Money (IM) Terms of Business.

We can confirm that all current and future assets held by SVS within the IM SIPP meet the regulatory requirements of Permitted Investment & Standard Asset definition and also as defined in the IM TOB."

9 July 2019 – IM to SVS

"We carry out regular data validation checks and we need your assistance with this please. Would you be able to send over a complete list of all of the clients that we have with SVS?"

11 July 2019 – SVS to IM

"Please see attached a list of accounts for the Model Portfolios and advisory."
Included with this email was a further model portfolio list. As well as a number of authorised investments, this included all 10 of the fixed income securities listed in the previous Model Portfolio lists, as well as Innovation Capital Finance Limited, a further fixed income bond.

18 July 2019 – IM to SVS

"As part of our ongoing checks please can you send over the following:

- *Confirmation that all funds within your portfolios are liquid*
- *Confirmation that all funds within your portfolios are standard assets*
- *A full detailed breakdown of your portfolios which are held within our SIPP"*

22 July 2019 – SVS to IM

"I can confirm all securities in the portfolios are standard assets and liquid."

The transaction

Mr D says his details were passed on to Fiducia Consult by a colleague at work. Mr D says he now understands that Fiducia Consult was not regulated to provide financial advice. However, he only ever dealt with Fiducia Consult, it gave him advice and completed the paperwork, before forwarding this on to BRG.

Mr D signed a Fiducia Prosperity (a trading name of BRG) Client Instruction form on 16 August 2018. On 7 November 2018, Mr D signed BRG's client agreement and a transfer suitability report was produced by BRG on the same date.

The report noted that Mr D had a defined benefit (DB) occupational pension scheme (OPS) with cash equivalent transfer value of just over £113,248. And he had two defined contribution (DC) plans.

The suitability report also noted that Fiducia had assessed Mr D's attitude to risk as 5 on a scale of 1-10. And had advised Mr D to transfer his pensions and invest through SVS. BRG also recommended that Mr D transfer his DB and both DC pensions to a SIPP with IM. And it recommended that the SIPP funds be invested through SVS, in SVS's bespoke income portfolio. Mr D signed an IM adviser charging form on 7 November 2018. This form confirmed that BRG was the adviser and it would be charging Mr D £5,879.96, which was to be paid from funds being transferred into his IM SIPP. Mr D accepted BRG's recommendation on 14 November 2018.

We haven't been provided with a copy of Mr D's IM SIPP application nor have we received a copy of the letter that IM would have issued to Mr D after it received his application. I'm aware from other complaints that I've seen involving the same parties, that Mr D would likely have been asked to sign confirming his agreement to the statement below.

> *"I agree that I, and my financial adviser if I sought advice, are solely responsible for all the decisions relating to the purchase, retention and sale of the investments within my [sic] and hold the Operator and Plan Trustee jointly indemnified against any claim in respect of such decisions. This does not affect the Plan Trustee and Operator's right to refuse to action or to dispose of any investment which does not fall within the list of permitted investments as amended from time to time."*

IM has provided us with a copy of the IM SIPP Terms and Conditions and Key features on another complaint this Service is considering. These terms were effective as of 1 January 2015 so are likely to have also applied to Mr D's SIPP. The terms and conditions stated, amongst other things, that:

- The Terms and Conditions set out the contract between the member and IM and should be read in conjunction with the Key Features of the IM SIPP.
- IM undertook to operate the SIPP in accordance with the SIPP Rules and the Terms and Conditions Agreement.
- The Provider (IM), Operator (IM) and the Trustee (IM or Intelligent Money Trustees Limited) didn't offer and weren't authorised to give advice on transfers.
- The Operator didn't check transfers for suitability.
- It was investors' responsibility to decide whether the IM SIPP was suitable.
- Details of transactions undertaken by Investment Managers on an investor's behalf would only be available from the Investment Managers. The Investment Manager must provide valuations at least monthly to the Operator.

- Neither the Provider, Trustee nor the Operator provided financial advice or accepted any liability for the performance or choice of investments.
- The Operator will not be liable for any loss arising from an investor's investment instructions.
- Neither the Trustee, nor the Operator accepted liability for any loss occasioned by any Investment Manager or other person or body which is responsible for any fund management or ancillary connected service.
- The FCA publishes a list of Standard Assets for SIPPs. IM strictly prohibits the investment of any SIPP funds into any asset that doesn't meet the FCA's definition of a Standard Asset.
- A Standard Asset must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required. Any investment that doesn't meet the definition of a Standard Asset, as detailed in the document, is classed as a Non-Standard Asset.
- IM strictly prohibits the holding of Non-Standard Assets within IM SIPPs and investors aren't permitted to make any instruction to any party to hold Non-Standard Assets within the SIPP.
- IM instructed investors' Financial Advisers/Discretionary Fund Managers to also agree not to hold any Non-Standard Assets within investors' plans.
- Investors acknowledged, agreed and undertook that Intelligent Money, Intelligent Money Trustees, Intelligent Money Group and their individual Directors and employees have no liability should an investor, their financial adviser or their Discretionary Fund Manager (where relevant) breach the plan rule and access Non- Standard Assets.
- Investors acknowledged and agreed that IM's rule to strictly prohibit the holding of Non-Standard Assets within the SIPP satisfies and discharges IM's duty of care to investors in relation to Non-Standard Assets within their SIPP. And investors agreed to waive any rights to make any claim against these IM entities should the investor, their Financial Adviser or their DFM breach IM's rule on Non-Standard Assets and to keep IM fully indemnified against any claim in relation to Non-Standard Assets.

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

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

Mr D signed an SVS Model Portfolio SIPP application form on 7 November 2018. It was noted that he was applying for the Income portfolio. This application was also signed twice by IM, as the SIPP Trustee, on 20 November 2018. IM received funds from Mr D's DC schemes on 13 and 16 November 2018, and funds from his DB scheme on 11 December 2012. A total of £117,656.66 was then forwarded to SVS for investment on 13 December 2018.

An SVS account statement on file from Leonard Curtis shows that Mr D's SVS portfolio held a number of fixed income securities with CFBL, Angelfish, Queros Capital Partners Plc, Ingard and Innovation Capital Finance Limited.

In August 2019, following the FCA's First Supervisory Notice against SVS, SVS went into administration. In June 2020, the SIPP funds were transferred to ITI following an agreement between Leonard Curtis and the FCA.

Mr D complained to IM in February 2021 that it had failed to carry out sufficient due diligence on BRG and SVS. IM rejected the complaint, stating that the main part of Mr D's complaint related to the advice he was given to go into the investment, and this was not something IM was responsible for. Unhappy with IM's response Mr D referred his complaint to this Service for consideration.

One of our Investigators reviewed the complaint against IM. The Investigator didn't think IM had acted fairly in accepting Mr D's business so the complaint was upheld. In summary, the Investigator said that IM shouldn't have allowed Mr D's investment into SVS, especially when it did not carry out enhanced due diligence checks prior to accepting his application. Had it done so, the Investigator thought it was likely it would have discovered some issues with SVS earlier.

IM didn't accept the Investigator's findings. It said it didn't think it had been given an opportunity to make its representations and it didn't think all the information it had provided had been properly considered. IM said that it would be providing further submissions but failed to do so at that stage.

I issued a provisional decision in March 2024. In summary I said I was minded to uphold the complaint because I thought that, in the circumstances of this case, it's fair and reasonable for me to conclude that:

- IM should have decided not to accept business from BRG.
- IM should have stopped permitting its SIPP members to invest with SVS and declined to permit the Model Portfolio in its SIPPs before it received Mr D's business from BRG.
- If IM hadn't accepted Mr D's introduction from BRG and/or hadn't continued permitting its SIPP members to invest with SVS in the Model Portfolio in its SIPPs, before it received Mr D's application, that Mr D wouldn't have established and transferred monies into an IM SIPP, or invested with SVS in the Model Portfolio.
- IM should compensate Mr D for the loss he's suffered as a result of IM accepting his business from BRG and permitting him to invest his IM monies with SVS in the Model Portfolio.

Mr D accepted the provisional decision but commented that IM imposed a £1,000 surcharge on his SIPP for holding non-standard assets, which he thought was unfair.

IM didn't accept my provisional decision. In summary it said:

- The due diligence IM carried out on BRG, SVS and the Model Portfolio was proportionate and discharged its regulatory obligations pursuant to Principle 6 of the FCA's Principles for Businesses, and the regulator's guidance.

- BRG and SVS were FCA authorised and regulated when IM accepted the investments into its SIPP.

- The introductions from BRG were not in significant volumes.

- BRG had identified IM as a partner with whom it could build a supportive working relationship.

- It was not unusual for most of a regulated firm's introductions to transfer and invest in the same portfolio, as pension transfers were one of BRG's niche specialisms, and it held the required regulatory permissions.
- BRG's introductions only represented 0.32% of the total introductions in 2018, so this is not "significant volumes…"
- IM conducted proportionate due diligence on BRG – checking it was regulated and authorised to give financial advice, obtaining a copy of the adviser's G60 certificate, and entering into Introducer Terms of Business in October 2016.
- The provisional decision did not take into account the change in broader market developments following the Pension Schemes Act 2015, and it was not unusual for investors such as Mr D to access tax-free lump sums earlier than they would have done under their existing arrangements.
- The Provisional Decision also ignores the fact that Mr D's SIPP portfolio was not exclusively made up of fixed income securities. This also has a potentially significant impact on how the ombudsman can fairly approach the quantum of compensation payable in the event the Provisional Decision is upheld. It would not be fair, just, or reasonable to apply a blanket requirement to compensate for the entirety of the complainant's portfolio.
- All of the investments identified in the provisional decision, at the time they were accepted into the SIPP, complied with the FCA's definition of "standard assets" and were therefore "permitted investments" for the purposes of IM's own SIPP Terms and Conditions and the FCA's list of standard assets as it then applied.
- IM considered the Model Portfolio investments to be appropriate for its SIPP for two reasons. First, corporate bonds listed on recognised stock exchanges were, at the time Mr D's SIPP monies were invested, listed as asset categories capable of being standard assets, subject to liquidity requirements. Second, IM understood that the Model Portfolio investments also satisfied the FCA's liquidity requirement for standard assets i.e., that they were capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required.
- The investments were all publicly listed securities at the point of acceptance into the SIPP. Liquidity is the primary function of a recognised stock exchange and IM operated with the reasonable expectation that any listed bond would have sufficient liquidity to satisfy the FCA's standard asset requirements. To expect IM to have performed enhanced due diligence on the liquidity of listed bonds is wholly unreasonable and disproportionate.
- The IM SIPP "Permitted Investments" list was taken directly from the FCA's own list of standard assets as it then applied.
- Whilst SVS was the subject of FCA enquiries regarding the liquidity and concentration risks of its Model Portfolio in January 2018 (risks that, according to the First Supervisory Notice issued against SVS, appear only to have become apparent to the FCA following regulatory disclosures received from the firm), the FCA permitted the company to continue making the portfolio available to retail consumers until it intervened in the business in August 2019.

- IM questions the fairness and proportionality of expecting IM as a mere contractual counterparty to have identified issues with the Model Portfolio investments when it required the exercise of statutory powers by the FCA. These were all represented as listed securities by another FCA-authorised and regulated firm, upon whose written statements and financial promotions IM was entitled to rely under COBS 2.4.6R(2), 2.4.7E(1), and 2.4.8G, IM reasonably understood that they met the FCA's definition of standard asset.
- IM accepts the FCA is responsible for its own actions and can regulate its own processes, if IM is to be criticised for having accepted SVS's written confirmations (again despite being entitled to do so under COBS 2.4.6R(2), 2.4.7E(1), and 2.4.8G) it would respectfully submit that this is precisely what the FCA did following receipt of the SVS Board's written submissions in February 2018.
- The Provisional Decision's findings on causation are misplaced and IM does not agree it is appropriate for it to compensate Mr D for the full extent of his losses.
- The assumption in the provisional decision that Mr D wouldn't have invested in the Model Portfolio, had IM not permitted it, ignores that not every SIPP operator applied a Standard Assets only policy. SIPP operators weren't prevented from accepting Non-Standard Assets into their SIPPs and numerous providers did so. And one must assume, for the purposes of the relevant counter-factual scenario, they did so in full compliance with their regulatory obligations and good industry practice.
- The provisional decision to saddle IM with the entirety of the complainant's losses is perverse given the involvement of other firms in the investment chain. The Ombudsman does not provide any detailed reasons for disregarding the "potential contribution made by other parties to the losses suffered".

IM provided some additional information requested in the provisional decision. It confirmed that all consumers introduced by BRG to IM were invested in SVS portfolios. 88% of BRG introductions involved transfers from DB schemes, with Mr D being the 35th introduction from BRG. It also confirmed that it had not been granted access to SVS's valuation or transactions portal at any time. And it provided information on four of the fixed income securities, including a prospectus for the Ingard investment and the CFBL & Innovation Capital Finance listing particulars.

What I've decided – and why

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

When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

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

In deciding what's fair and reasonable in the circumstances of this complaint, what I'll be looking at here is whether IM took reasonable care, acted with due diligence and treated Mr D fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issues in Mr D's complaint is whether it was fair and reasonable for IM to have accepted Mr D's SIPP business from BRG in the first place and also whether it was fair and reasonable for IM to have accepted Mr D's application to invest with SVS in its Income Model Portfolio. So, I need to consider whether IM carried out appropriate due diligence checks on BRG and SVS before deciding to accept Mr D's application.

Relevant considerations

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

In my view, the FCA's Principles for Businesses are of particular relevance. The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (PRIN 1.1.2G – at the relevant date).

PRIN 1.1.9G at the relevant date stated that:

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

Principles 2, 3 and 6 provide:

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

I've carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ('BBA') Ouseley J said at paragraph 161:

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

At paragraph 162 Ouseley J said:

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

At paragraph 77 Ouseley J said:

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

And at paragraph 184 Ouseley J said:

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

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

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

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

And at paragraph 107:

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

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

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

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

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

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

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

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

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

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

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

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

And in Mr D's complaint, amongst other things, I'm considering whether IM ought to have identified that SVS's Model Portfolios involved a significant risk of consumer detriment and, if so, whether it ought to have declined to accept applications to invest through SVS *before* it received Mr D's SVS application.

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

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

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

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

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

The regulatory publications

The FCA (and its predecessor, the FSA) issued a number of publications which reminded SIPP operators of their obligations and which set out how they might achieve the outcomes envisaged by the Principles, namely:

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

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

The 2009 Thematic Review Report

The 2009 Report included the following statement:

> *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.*
>
> *It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.*
> *…*
> *We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to clients.*

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

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

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

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

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

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

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

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

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

The later publications

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

Findings from the review included:

- Inadequate risk identification processes and risk mitigation planning underpinned by poor quality management information ('MI').

- An increase in the number of non-standard investments held by some SIPP operators, with often poor monitoring of this.

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

The Report stated that:

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

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

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

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

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

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

> *"This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.*
>
> *All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a 'client' for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes."*

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

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

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

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

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

> "**Relationships between firms that advise and introduce prospective members and SIPP operators**
>
> *Examples of good practice we observed during our work with SIPP operators include the following:*
>
> - *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un-authorised business warnings.*
> - *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*
> - *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*
> - *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*
> - *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers. Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*
- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*
- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non- regulated introducers*

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

*"**Due diligence***

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*
- *periodically reviewing the due diligence the firm undertakes in respect of introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*
- *having checks which may include, but are not limited to:*
    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*
    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*
- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*
- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*

- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax- relievable investments and non-standard investments that have not been approved by the firm"*

The July 2014 *"Dear CEO"* letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles. In the letter the FCA said that in a Thematic Review it had recently conducted it had focused on the due diligence procedures SIPP operators used to assess non-standard investments, and how well firms were adhering to the relevant prudential rules.

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

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

> *"Principle 2 of the FCA's Principles for Business requires all firms to conduct their business with due skill, care, and diligence. SIPP operators should ensure that they conduct and retain appropriate and sufficient due diligence, for example, assessing that assets allowed into a scheme are appropriate for a pension scheme. Our thematic review found that most SIPP operators failed to undertake adequate due diligence on high risk, speculative and non-standard investments…"*

The annex also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. Such obligations could be met by:

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

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

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

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

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

Further, the annex states that:

> *"We found that most firms do not have the expertise or resources to assess this type of business, but were still allowing transactions to go ahead. This increases the risk that a pension scheme may become a vehicle for high risk and speculative investments that are not secure assets, many of which could be scams. It is not acceptable for firms to put consumers at risk this way.*
>
> *Although our thematic review focussed on non-standard investments, it is important to note that guidance on due diligence applies to all investments.*
>
> *Findings from our review included firms failing to:*
>
> - *understand the nature of an investment, especially contracts for rights to future income, and sale and repurchase agreements*
> - *check that money was being paid to legitimate businesses, and*
> - *to independently verify that assets were real and secure, or that investment schemes operated as claimed*
>
> *We found that, typically, firms had difficulty completing due diligence for non-standard overseas investment schemes where firms did not have access to local qualified legal professionals or accountants. Also, since the last review of SIPP operators, we noted an increase in the number of opaque investment structures, such as special purpose vehicles and limited companies, created to pool investment monies and finance other businesses. Firms had difficulty establishing where money was being sent, and whether underlying investment propositions were genuine.*
>
> *We also found that many SIPP operators accepted investments into their schemes without adequate consideration of how investments could be valued or realised.*
>
> *Finally, we found many firms continuing to rely on marketing and promotional material produced by investment providers as part of due diligence processes, despite previous guidance highlighting the need for independent assessment of investments."*

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

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

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

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

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

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

At its introduction, the 2009 Thematic Review Report says:

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

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

So, I'm satisfied that the 2009 Report is a *reminder* that the Principles apply and it gives an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So I'm satisfied it's relevant and therefore appropriate to take it into account.

The remainder of the publications also provide a *reminder* that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I'm therefore satisfied it's appropriate to take them into account too.

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

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

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

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

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

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

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

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

> *"4.29. MPAS' due diligence on the Introducers from whom it accepted new business consisted only of a search on the Financial Services Register each time an application for new business was received to ensure that the introducing firm was still*
>
> *authorised. MPAS did not carry out any other monitoring, such as identifying and analysing referral trends, which would have enabled it to be satisfied that Introducers were recommending SIPP investments only where it was suitable to members and only where the investment type was suitable to MPAS...*
> *…*
> *4.31. After the Authority had communicated its concerns to MPAS in January 2011 regarding the firm's lack of due diligence and monitoring of Introducers, Compliance conducted an audit which identified a trend of exclusively high-risk business being referred by certain Introducers, indicating that those Introducers were not referring investors to MPAS according to suitability alone, and importing significant risk to members and MPAS alike. Compliance identified two Introducers as having habitually referred an unacceptably high volume of high-risk investments, or as having advised clients who were not sophisticated investors to place the entirety of their SIPP funds into high-risk investments…*
> *…*

4.37. MPAS did not have adequate systems and controls in place to monitor and administer SIPP assets on an ongoing basis. (Mr W) *did not ensure that there was an appropriate system in place by which MPAS could identify the exact assets held for individual members, nor was there a system in place by which MPAS could instantaneously ascertain the current value of those assets (for example through real-time price feeds). Instead, MPAS relied on obtaining delayed valuations upon request to the relevant investment platforms.* (Mr W) *did not make reasonable effort during the Relevant Period to identify and implement a method by which MPAS could regularly and closely monitor the value of assets held for individual members…*
…
4.39. MPAS did not routinely gather management information and was thereby unable to identify areas of risk to both itself and to members. Regular collation and analysis of management information should have enabled the Board to have a clear understanding of vital aspects of the business, such as the effectiveness of its compliance procedures, its adherence to service standards and trends indicating risk in the types of business being referred and accepted.
…
5.4. (Mr W) *failed to exercise due skill, care and diligence by giving insufficient consideration to compliance and to the safety of members' investments, including failing to understand the consequences and risks of accepting a high volume of illiquid non-standard investments into the MPAS schemes. By failing to ensure MPAS could identify such issues,* (Mr W) *caused scheme members to be exposed to additional risks such as formulaic selling by introducers, unsuitable recommendations for illiquid or volatile investments, or the potential imposition of a range of tax charges.*
…
5.18. (Mr W) *did not take steps to ensure that MPAS made adequate use of management information so as to enable it to identify areas of risk to both members and to MPAS' itself.* (Mr W) *should have ensured that Compliance and the Board in particular had ready access to management information reports at its quarterly meetings in order to allow it to govern the firm effectively. MPAS did not utilise management information to identify and mitigate areas of risk, with the effect that it only acted upon key areas of risk (such as certain Introducers recommending unacceptably high volumes of risky investments to some members) after they were highlighted by the Authority following its supervisory visit in October 2010…*
…
5.19. As both managing director and MPAS' liaison with Introducers, (Mr W) *failed to take reasonable steps to ensure that MPAS conducted adequate due diligence and continued monitoring on those firms.* (Mr W) *concentrated his efforts on fostering business opportunities for Introducers without taking reasonable steps to ensure that those Introducers were advising scheme members in relation to suitable SIPP investments only, in satisfaction of MPAS' regulatory obligation as a SIPP operator to ensure that its members were being properly advised…*
…

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

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

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

And

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

And

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

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

I also don't say the Principles or the publications obliged IM to ensure the transactions were suitable for Mr D. It is accepted IM wasn't required to give advice to Mr D, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But, as I've said above, they're evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles. And so it's fair and reasonable for me to take them into account when deciding this complaint.

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

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

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

Ultimately, what I'll be looking at is whether IM took reasonable care, acted with due diligence and treated Mr D fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issue in Mr D's complaint is whether it was fair and reasonable for IM to have accepted Mr D's applications in the first place. So, I need to consider whether IM carried out appropriate due diligence checks before deciding to accept Mr D's applications.

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

The contract between IM and Mr D

This decision is made on the understanding that IM acted purely as a SIPP operator. I don't say IM should (or could) have given advice to Mr D or otherwise have ensured the suitability of the SIPP or the SVS Model Portfolio investments for him. I accept that IM made it clear to Mr D that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that forms Mr D may have signed forms confirming, amongst other things, that losses arising as a result of IM acting on his instructions were his responsibility.

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

What did IM's obligations mean in practice?

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

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

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

And I think that IM understood this to some degree at the time too, as it did more than just check the FCA entries for BRG and SVS to ensure they were regulated – it also entered into agreements with both parties.

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

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

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

IM's due diligence on BRG

IM has explained to us that it wouldn't have accepted SIPP business unless the business had been recommended by an FCA authorised and regulated financial adviser. And IM appears to have carried out some checks before it accepted business from BRG, amongst other things, I'm satisfied this included:

- Checking that BRG was regulated and authorised by the FCA to give financial advice.

- Obtaining a copy of an BRG adviser's G60 Certificate.
- Entering into a Business Agreement with BRG.

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

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

IM has confirmed that all of the SIPP business introduced to IM by BRG, both before and after, receiving Mr D's application was business where consumers would be investing with SVS in the Model Portfolio. In other words, it was mostly high risk business where a significant proportion of consumer's monies were ending up invested in illiquid investments, which for the reasons explained later in my decision, I'm satisfied didn't appear on IM's permitted investment list, or meet or meet the definition of standard assets provided for in IM's terms and conditions.

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

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

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

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

We've previously asked IM in this complaint about the number of introductions it received from BRG and what number Mr D was amongst the introductions IM received from BRG. IM has confirmed that it received 130 introductions from BRG, all for investment in SVS's Model Portfolio. Mr D's was around the 27th application it received.

IM has said that it didn't obtain any information about BRG's business model.

BRG has previously told us that it initially provided pension transfer advice for clients of Fiducia Wealth Services (FWS), who were investing through SVS. However, in 2017, BRG concluded that offering specialist third party pension transfer analysis was not going to meet with the FCA's best practice at that time. So BRG stopped providing recommendations to FWS in May 2017 and spent from May to October 2017 putting in place a full BRG proposition, which launched under the trading style Fiducia Prosperity (FP). BRG carried out due diligence on several DFMs but ultimately decided to enter into a relationship with SVS, with clients investing in the Model Portfolio.

In response to the provisional decision, IM has confirmed that 88% of BRG referrals involved transfers from DB schemes but it has previously said on another complaint that we are considering against it - involving BRG and SVS - that 49 of the 249 applications it received were transfers from DB schemes. So the figures we've received are inconsistent. But I appreciate the information provided most recently follows on from a detailed consideration of my provisional decision by IM. So, I've proceeded on the basis that the information IM has provided about this in response to my provisional decision contains the correct figures.

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

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

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

I don't think simply keeping records about the number of introductions that BRG made without scrutinising that information would have been consistent with good industry practice and IM's regulatory obligations. As highlighted in the 2009 Thematic Review Report, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

IM has said 130 members were introduced by BRG and, as I've said above, the only investment made was with SVS was in its Model Portfolio. And it's now been confirmed that IM had received a number of introductions from BRG, where consumers had invested in the Model Portfolio, before it received Mr D's introduction.

And, as I explain elsewhere in this decision, if IM had undertaken adequate initial and ongoing due diligence into the Model Portfolio it ought to have identified, and prior to accepting Mr D's business, that SVS was investing a significant proportion of Model Portfolio investors' monies in potentially highly illiquid fixed income securities which didn't comply with its permitted investment list.

So, I think IM either was aware, or ought reasonably to have been aware before it received Mr D's SIPP application, that the business BRG was introducing involved consumers investing in high risk, potentially illiquid fixed income securities and that this business carried a potential risk of consumer detriment.

BRG told us that it stopped providing specialist pension transfer analysis for FWS in early 2017 and decided to enter into an agreement directly with SVS in late October 2017. IM has now confirmed that 88% of the referrals to IM involved transfers from DB schemes.

I note IM has said that these types of pension transfers were one of BRG's niche specialisms, and that BRG's introductions represented only 0.32% of total introductions for IM in 2018. But I think it's highly unusual for all of a regulated advice firms' introductions to a SIPP provider to involve pension transfers/switches so as to invest in the same high risk portfolio which was investing largely in potentially illiquid fixed income securities. I appreciate these referrals may have only represented a small percentage of IM's overall business but I think it's fair to say that most *advice firms*, including small IFAs like BRG, certainly don't transact this kind of business in these volumes.

And I think it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of the population – sophisticated and/or high net worth investors.

While I've carefully considered what IM has said about this point and about broader market developments following the Pension Schemes Act 2015, I still think this concern ought to have been even greater in light of the level of DB transfers IM says it received from BRG. At the date BRG first became an introducer of IM COBS 19.1.6G stated:

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

The wording in COBS 19.1.6G was then added to prior to IM accepting Mr D's business.

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

I think that IM should have been concerned that the volume of introductions - relating mainly to consumers transferring out of DB scheme and investing in the same SVS Model Portfolio (and with their monies then being invested in illiquid investments), was unusual – particularly from a small IFA business. And it should have considered how a small IFA business introducing this volume of higher-risk business was able to meet regulatory standards. I think this was a further clear and obvious potential risk of consumer detriment.

So on the pattern of BRG-introduced business alone I think IM should simply have concluded that, given the clear and obvious potential risks of consumer detriment, it should not continue to accept business from BRG. I think that would have been a fair and reasonable conclusion for IM to have reached, *before* it accepted Mr D's business from BRG. I therefore conclude that it's fair and reasonable in the circumstances to say that IM shouldn't have accepted Mr D's application from BRG.

For the reasons given above, IM should not have accepted Mr D's business from BRG. And even if I thought IM had undertaken adequate due diligence on SVS and the Model Portfolio (which, as I explain elsewhere in this decision, I do not), I would still consider it fair and reasonable to uphold Mr D's complaint on the basis that IM did not act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr D fairly, by accepting his business from BRG. To my mind, IM didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr D to be put at significant risk of detriment as a result. In my view IM didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr D fairly by accepting his application from BRG. And it's the failure of IM's due diligence that's resulted in Mr D being treated unfairly and unreasonably.

IM's due diligence on the Model Portfolio

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

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

Regarding the due diligence it undertook on the Model Portfolio, IM has said that SVS signed IM's Asset Holder's Terms of Business agreement. And SVS understood, and agreed, that investments were to be FCA regulated standard assets. It doesn't appear that IM carried out any further checks on the Model Portfolio before allowing its SIPP members to invest in it. IM has told us that it didn't have sight of any promotional material for the Model Portfolio so it didn't know what its SIPP members were being told about the investments. Nor did it ask SVS how it conducted its own due diligence into investments in the Model Portfolio. In fact it doesn't appear IM was provided with (or requested) a copy of the Asset list for the Model Portfolio, at the start of its relationship with SVS and certainly not before allowing Mr D to invest with SVS in the Model Portfolio.

The relationship between IM and SVS started in August 2016 but it was only in early 2019 that IM sought confirmation from SVS on the investments held within its SIPPs. At this point, IM was provided with an Asset List for the Model Portfolio.

Shortly after receiving this Asset list for the Model Portfolio, IM requested proof of liquidity from SVS on all of the investments within the Model Portfolio. And its email dated 20 February 2019 said that "*If no proof can be provided then we would consider these to be non standard investments. As you already know we do not allow these and therefore we would ask you to switch these investments back into standard asset classes*". And IM put a temporary stop on any new business where the intention was to invest with SVS. From the email issued around this time, IM's concerns were focused on the fixed income securities within the Model Portfolio.

After SVS told IM that "*all fixed income investments had been disinvested and that all investments held within the IM SIPP & the SVS Model Portfolio are permitted investments",* IM asked SVS to re-sign its Asset Holder Terms of Business agreement and confirmed that it was happy to proceed to do business with SVS again. It seems that, despite SVS having breached the Asset Holder Terms of Business agreement, IM took what SVS told it at face value. IM doesn't appear to have carried out any independent checks to verify what SVS had told it. And IM has also explained that, despite its requests, it wasn't given access to online values by SVS. So it was unaware of the investment holdings within its SIPPs where SVS was acting as the DFM.

Having carefully considered all of the evidence that's been made available to us to date, I'm not satisfied that IM undertook sufficient due diligence on the Model Portfolio investment *before* it decided to accept Mr D's application to invest in the Model Portfolio. As such, in my view, IM didn't comply with its regulatory obligations and good industry practice, and it didn't act fairly and reasonably in its dealings with Mr D, by not undertaking sufficient due diligence on the Model Portfolio investment *before* it accepted Mr D's application to invest in the Model Portfolio.

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

If IM had completed sufficient due diligence on the Model Portfolio before agreeing to allow its SIPP members to invest, what ought it reasonably to have discovered?

I'm satisfied that had IM had undertaken adequate due diligence into the Model Portfolio, it's likely that it would have discovered some of the issues the FCA highlighted in its First Supervisory Notice, issued to SVS in August 2019.

As detailed in the Supervisory Notice, the main investments held within the Model Portfolio that the FCA had concerns about were the CFBL and Angelfish fixed income securities, and the Ingard Property Bond. It's not clear when these investments were first held in the Model Portfolio. But given the FCA's enquiries into SVS started during 2017, I think it's very likely that if IM had obtained details of the Model Portfolio at the start of its business relationship with SVS, or at least prior to when it received Mr D's SIPP application in 2018, it would have discovered SVS's intention to invest in these fixed income securities. And of course, IM had a responsibility to conduct adequate due diligence on an ongoing basis, which IM seems to have understood because it did conduct some due diligence after the relationship with SVS started.

I appreciate the FCA may have used its Statutory Powers to obtain some of the information it discovered about the way SVS was operating. So I accept it's unlikely IM would have discovered all the issues the FCA identified when it visited SVS's offices. But I'm satisfied IM would still have discovered some of the issues, had it conducted sufficient due diligence before agreeing to do business with SVS and certainly before accepting Mr D's Model Portfolio application.

The FCA expressed concern about high concentration and liquidity risks in relation to bonds issued by CFBL. And as demonstrated by the emails between IM and SVS, concerns about the liquidity of certain investments in the Model Portfolio seem to have been shared by IM after it received the Asset List in early 2019.

After receiving the Asset List, IM requested that SVS disinvest all the fixed income securities as these didn't comply with IM's Permitted Investment list. The reasons for not complying appear to have been discussed between IM and SVS over the phone, so these aren't noted in the emails I've seen. But what is clear from the emails is that IM had concerns about the liquidity of the fixed income bonds.

IM's Terms and Conditions specified that a Standard Asset must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required. And that any investment that didn't meet the definition of a Standard Asset, as detailed in the IM SIPP Terms and Conditions, would be classed as Non-Standard and these weren't permitted in the IM SIPP.

Almost as soon as IM was provided with the Asset List for the Model Portfolio, it raised concerns about the liquidity of the fixed income securities and said that it wouldn't continue to introduce SIPP members to SVS until it received confirmation that these investments had been disinvested.

In response to the provisional decision, IM has said the Model Portfolio investments were standard assets at the point they were accepted into IM's SIPPs. It believes this was a fair and reasonable conclusion for it to reach on the basis of the information available to it and it said it wasn't required to perform enhanced due diligence and the checks that it did perform were adequate to discharge its regulatory obligations.

In particular it said that, subject to liquidity requirements, Corporate Bonds listed on recognised stock exchanges were, at the time Mr D's SIPP monies were invested, listed as asset categories capable of being standard assets. It has also said IM operated with the reasonable expectation that any listed bond would have sufficient liquidity to satisfy the FCA's standard asset requirements. IM has also provided various documents to support its position, which I've considered in their entirety but I have only referenced what I consider most relevant to my decision.

<u>Corporate Finance Bonds Limited</u>

These were corporate bonds, series 3 - 9 were held within SVS's Model Portfolio. The base listing particulars, dated 21 June 2016, provided the following overview of the programme:

> *"The Issuer will create separate Series of Notes from time to time to enable Notes to be issued with varying terms and interest rates…*
> *…*
> *The Borrower Loans will broadly comprise secured or unsecured loans to small and medium sized companies. In each case, where the Borrower Loans are secured, the security may take the form of tangible commercial or residential property but other security types will be considered including receivables, stock and work-in-progress, chattels, insurance contracts, securities and similar assets where appropriate security is available."*

The particulars also stated:

> *"**RISKS RELATED TO THE MARKET GENERALLY***
>
> *Set out below is a brief description of the principal market risks, including liquidity risk, exchange rate risk, interest rate risk and credit risk:*
>
> ***The secondary market generally***
>
> *Notes may have no established trading market when issued, and one may never develop. If a market does develop, it may not be liquid. Therefore, investors may not be able to sell their Notes easily or at prices that will provide them with a yield comparable to similar investments that have a developed secondary market. This is particularly the case for Notes that are especially sensitive to interest rate, currency or market risks, are designed for specific investment objectives or strategies or have been structured to meet the investment requirements of limited categories of investors. These types of Notes generally would have a more limited secondary market and more price volatility than conventional debt securities. Illiquidity may have a severely adverse effect on the market value of Notes."*

<u>Queros Capital Partners Plc</u>

This was a 10 year bond paying a minimum yield of 8% per year, with a minimum investment of £5,000. Queros Capitals Partners' website states that *"Queros bond has been admitted on the Frankfurt exchange in **2019*** [bold is my emphasis]*".*

The bond-listing document stated, stated that:

> "*The Company's investment policy is to focus on sourcing investments and loan opportunities in businesses or companies in the UK and Europe which have potential to generate strong cash flows, profits and investment growth. The cash flows generated from these investments will be used to pay the interest on the Company's Bonds and to enable the redemption of the Bonds at the end of their ten year term. The Company's investment policy will be focused in two specific areas – Social Housing and bridge financing".*

Under the "*Risk Factors*" section, it noted that:

> "*Bondholders may receive less than the original amount invested. Investment in a security of this nature, being an illiquid investment, is speculative, involving a degree of risk. It may not be possible to redeem the bond prior to the redemption date. There may not be buyers willing to purchase the Bond in the market.…*
> *…*
> *Set out below is a brief description of the principal market risks of the Bond:*
>
> ***ISDX Growth Market***
> *The Bonds will be traded on ISDX Growth Market and no application is being made for the admission to the ISDX Main Board. Admission to the ISDX Growth Market should not be taken to imply that there is or will be a liquid market in the Bonds. ISDX Growth Market is a market designed for small and growing companies. Both types of company carry higher than normal financial risk and tend to experience lower levels of liquidity than larger companies. Any changes to the regulatory environment, in particular the Rules could, for example, affect the ability of the Company to maintain a trading facility for the Bonds on the ISDX Growth Market.*
>
> ***The secondary market generally***
> *The Bonds may have no established trading market when issued, and one may never develop. If a market does develop, it may not be liquid. Therefore, investors may not be able to sell their Bonds easily or at prices that will provide them with a yield comparable to similar investments that have a developed secondary market. The Bonds are designed for specific investment objectives or strategies. As such, the Bonds generally will have a more limited secondary market and more price volatility than conventional debt securities. Illiquidity may have a severely adverse effect on the market value of the Bonds."*

The bond listing particulars state that the information contained in the document was correct as at 5 July 2015.

<u>Ingard Property Bond Designated Activity Company</u>

These were corporate bonds, DAC 7% secured and DAC 2, offering interest of 7% per annum. The Prospectus, dated 21 December 2016, said:

> *"The Notes will be placed with qualified investors, on a reasonable endeavours basis, in four tranches, commencing with the first tranche of £1,750,000 already placed on 19 December, 2016. The three subsequent tranches will follow, with a tranche being issued approximately every four weeks thereafter*."

Under the Risk factors section it stated:

> *"Investment in a security of this nature, being an illiquid investment, is speculative, involving a degree of risk. It may not be possible to redeem the Notes prior to the redemption date. There may not be buyers willing to purchase the Note in the market."*

The above information was available to IM prior to its decision to accept the Model Portfolio investment into its SIPPs. So had it conducted sufficient due diligence initially, it ought to have discovered that several of the securities within the Model Portfolio were illiquid.

It therefore seems likely that had IM taken fair and reasonable steps and identified the type of investments into which its members monies would be invested before allowing its SIPP members to invest in the SVS Model portfolio, and certainly before receiving Mr D's SVS application, it would have recognised much sooner that some of the investments in the Model Portfolio didn't meet the requirements of IM's Terms and Conditions, which specified that a Standard Asset must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required. And that any investment that didn't meet the definition of a Standard Asset, as detailed in the IM SIPP Terms and Conditions, was to be classed as a Non-Standard Asset. This is information that IM ought to have obtained prior to allowing its SIPP members to invest in the Model Portfolio. If IM had undertaken adequate due diligence before permitting its members to invest in the SVS Model Portfolio and/or had an effective monitoring system in place (and I discuss this in more detail later on in this decision) I think IM should have identified at the outset, or certainly very early on and before it received Mr D's application, that IM's members' SIPP monies in the Model Portfolio were being invested by SVS in holdings that were not in accord with IM's terms and conditions. I think this ought to have been a red flag for IM.

SVS's email to IM on 25 February 2019, provided an explanation as to how there was a secondary market for the bonds held in the Model Portfolio. And it set out that in circumstances where there were above normal disinvestments from the portfolios and cash balances within the pooling arrangement did not cover the requirements, SVS said it was in a position to purchase the assets onto its own book until such a time that the trades could be matched or the investments matured. But I think IM ought to have understood that this was not guaranteed and so it ought to have further queried what measures were in place to guarantee liquidity within 30 days.

The email from SVS to IM on 27 February 2019 said that the following fixed income securities were last traded as part of the disinvestment on the principal book on 4 February 2019. Included in the email was a list of the following fixed income securities:

> Angelfish Plc 7.1% Pref 2021
> Corporate Finance Bonds Limited Series 9 Corporate
> Finance Bonds Series 3 6.25% Due 2021
> Corporate Finance Bonds Series 4 6.25% Due 2021
> Corporate Finance Bonds Series 5 5.95% Due 2021
> Corporate Finance Bonds Series 6 6.25% Due 2021
> Corporate Finance Bonds Series 7 6.25% Due 2021
> Ingard Property Bond 2 Dac
> Ingard Property Bond Dac 7% Secured Due 2023
> Queros Capital Partners Plc 8% Redeemable Bonds

It seems from the above email these were the investments IM had raised concerns about with SVS. And these were the same investments the FCA noted concerns about in its First Supervisory notice.

The October 2013 finalised SIPP operator guidance required SIPP operators to ensure "*all third-party due diligence that the firm uses or relies on has been independently produced and verified".* And there was a later reminder of this in the 2014 Dear CEO letter where the FCA said that it had "f*ound many firms continuing to rely on marketing and promotional material produced by investment providers as part of due diligence processes, despite previous guidance highlighting the need for independent assessment of investments."*

I can see that in SVS's email of 25 February 2019, which included another email it was going to send to all SIPP Trustees it was dealing with at that time, SVS said *"we can confirm that prior to the purchasing of any Investments within the Model Portfolio that all Bonds purchased into the Model Portfolios are carefully researched by our firm's analysts and are subject to review and sign off by the SVS Investment Committee*". I think IM could have requested information on this due diligence, both at the start of its relationship with SVS and on an ongoing basis.

Had it done so, certainly in terms of SVS's due diligence into CFBL, it ought to have been clear to IM – as it was to the FCA - that SVS was relying almost entirely upon CFBL's assurances and was accepting at face value what limited information it was given about the bonds by CFBL. And SVS' reliance on CFBL's assurances should have highlighted to IM the importance of sufficient *independent* due diligence being undertaken by IM *before* permitting its SIPP investors monies to be invested into the Model Portfolio. I've not seen anything to suggest IM had asked about CFBL's underlying loan recipients, their financial standing, their potential to meet high interest rates set by CFBL, their ability to repay the principal sum at the end of the loan term, or the performance of the loans. This is all information that IM ought to have been able to obtain by asking appropriate questions.

Had IM asked appropriate questions and carried out sufficient checks, including a check of Companies House records, it also ought to have discovered that one of SVS's Directors was also a Director in Angelfish, an investment in the Model Portfolio. So IM ought to have been concerned about SVS's ability to correctly manage conflicts of interest and the risk of this adversely affecting the interest of investors in the Model Portfolio.

IM needed to undertake sufficient due diligence in order to satisfy itself that the investment was an appropriate one to permit within its SIPPs. I'm not satisfied it did so. Further, I think IM should simply have declined to allow its SIPP members to invest in the Model Portfolio, if the information available to it wasn't sufficient to ensure IM could correctly establish and understand the nature of an investment.

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

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

All in all, I am satisfied that IM ought to have had significant concerns about the Model Portfolio investment from very early on and certainly before it accepted Mr D's business.

And I think there were red flags that IM ought to have discovered when it was considering whether to accept the Model Portfolio investment into its SIPPs in the first place. Such concerns emphasise the importance of sufficient due diligence being undertaken initially and on an ongoing basis.

Had IM done what it ought to have done, and drawn reasonable conclusions from what it knew or ought to have known, I think that it ought to have concluded from very early on (if not right at the start of its relationship with SVS), and certainly before it accepted Mr D's business, that there was a significant risk of consumer detriment if it continued accepting the Model Portfolio investment into its SIPPs and that the Model Portfolio investment wasn't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think IM undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the Model Portfolio investment. I don't think IM met its regulatory obligations and good industry practice, and in accepting Mr D's application to invest in the Model Portfolio it allowed Mr D's funds to be put at significant risk.

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

There's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. I accept that IM wasn't expected to, nor was it able to, give advice to Mr D on the suitability of the SIPP and/or the Model Portfolio investment for him personally. I'm not making a finding that IM should have assessed the suitability of the Model Portfolio investment for Mr D.

And I'm also not saying that IM shouldn't have allowed the Model Portfolio investment into Mr D's SIPP because it was high risk. My finding isn't that IM should have concluded that Mr D wasn't a candidate for high risk investments or that an investment in the Model Portfolio was unsuitable for Mr D. Instead, it's my fair and reasonable opinion that from very early on, and certainly before it accepted Mr D's business, there were things IM knew, or ought to have known, about the Model Portfolio investment, including that elements of members' Model Portfolio investments were being invested into potentially highly illiquid fixed income securities, that couldn't be readily realised within 30 days *whenever required* and which therefore, didn't meet the definition of Standard Assets as detailed in IM's SIPP Terms and Conditions and weren't permitted, which ought to have led IM to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that IM failed to act with due skill, organise and control its affairs responsibly, or treat Mr D fairly by accepting the Model Portfolio investment into his SIPP.

I think the fair and reasonable conclusion based on the evidence available is that IM shouldn't have accepted Mr D's application to invest in the Model Portfolio. IM didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr D to be put at significant risk of detriment as a result.

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

And, even if I thought IM had undertaken adequate due diligence on BRG and SVS (which, as I explain elsewhere in this decision, I do not), I would still consider it fair and reasonable to uphold Mr D's complaint solely on the basis that IM didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr D fairly, by permitting his SIPP monies to be invested in the Model Portfolio. And to my mind, IM did not meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr D to be put at significant risk of detriment as a result.

IM's due diligence on SVS

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

Regarding the due diligence it undertook on SVS, IM has said that it checked SVS was authorised by the FCA and it entered into an agreement with SVS whereby SVS agreed to IM's terms – it understood and agreed that investments were to be made in accordance with HMRC legislation governing pension schemes and in accordance with IM's list of Permitted Investments.

I've thought about the terms of the agreement between IM and SVS and whether it was reasonable to for IM to have relied on this, without undertaking any further due diligence. I've set out the relevant terms of the agreement earlier in my decision and I'm satisfied that by signing the agreement SVS agreed not to invest in non-standard investments.

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

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

And COBS 2.4.8G says:

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

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

While SVS's regulatory status and the agreement between the parties go some way towards meeting IM's regulatory obligations and good industry practice, I think IM needed to do more in order to satisfy itself that it was fair and reasonable to allow its SIPP members to invest with SVS, in its Model Portfolio. However, IM doesn't appear to have carried out any further due diligence before agreeing to do business with SVS. And it didn't have systems in place to monitor what SVS was doing or where it was investing its SIPP members funds. I note that IM says it was not given any online access by SVS to investment values despite its request for this. In fact IM doesn't appear to have had any adequate systems and controls in place to monitor and administer SIPP assets on an ongoing basis.

If IM had completed sufficient due diligence on SVS (and its Model Portfolio) before agreeing to allow its SIPP members to invest through SVS, what ought it reasonably to have discovered?

As I've explained above, I think IM ought to have understood that its obligations meant that it had a responsibility to carry out sufficient due diligence on SVS (and the Model Portfolio) before accepting consumers' applications to invest through SVS.

In terms of checks on SVS, I think this ought to have included IM looking into the background of SVS and its directors on Companies House. And asking appropriate questions to SVS about things like its business model, the investments held within Model Portfolio and its investment approach. Had IM asked appropriate questions before agreeing to do business with SVS, it may have discovered that another SIPP operator had stopped doing business with it as early as 2012 due to concerns about the risk of consumer detriment.

I've also thought about the agreement SVS signed with IM, only agreeing to invest monies in Standard Assets. But I'm satisfied that IM ought reasonably to have been aware of facts that should have given it reasonable grounds to question any information it was relying on from SVS about this. I think this should have been the case from the start of the relationship, had IM requested the Asset List for the Model Portfolio. I think at this point IM ought to have seen that SVS was investing in potentially illiquid fixed income securities which didn't meet the definition of Standard Assets as detailed in IM's SIPP Terms and Conditions and weren't permitted by IM. And I'm satisfied IM ought to have known this well before it accepted Mr D's SIPP business.

I'm aware that in December 2015 the FCA (in Handbook Notice 28), in response to consultation feedback on DFM portfolios and Standard Assets, said that:

> *"Standard assets*
>
> *3.23 Respondents asked for clarification as to whether discretionary fund management (DFM) portfolios are standard assets. Our Handbook provisions suggest that an asset can be considered standard if it is on the standard asset list (first condition), and is capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required (second condition).*
>
> *3.24 Provided the second condition is met, a DFM portfolio can be standard when the SIPP operator has arrangements in place to ensure that the portfolio comprises standard assets only. These arrangements may vary across different firms and business models, and therefore we cannot prescribe any regulatory preference: it should be the choice and responsibility of the firm.*

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

This section from Handbook Notice 28 didn't address the issue of due diligence as such. It was written in relation to a new capital requirement framework for SIPP operators which was to come into force in September 2016.

The Handbook Notice is not therefore formal guidance in relation to SIPP due diligence. I do however think that the points made are of interest and I have taken them into account.

The regulator had started consulting on the new regulatory capital framework for SIPP operators in 2012. The proposal was for firms to hold a minimum amount of capital based on the amount of assets under administration by the firm with a higher capital requirement for firms that held Non-Standard Assets. The FCA proposed a list of types of assets that would be classed as standard subject to some additional requirements. The additional requirements included that the underlying assets must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days whenever required. The above point from the regulator, in effect, removes the requirement for the investment to be on the non-standard investment list if it is selected by an investment manager but only when the additional requirements are met.

IM entered into an agreement with SVS about monies only being invested into Standard investments. But, even allowing for this, I still think that very soon after SVS first invested IM's members' monies in high risk, potentially highly illiquid fixed income securities, that IM ought to have identified that some of the investments being made didn't meet the definition of Standard Assets as detailed in IM's SIPP Terms and Conditions.

Clearly then the existence of the agreement between IM and SVS was not, on its own, enough to prevent the investment in holdings that weren't Standard Assets within the definition of that term provided for in IM's Terms and Conditions. In other words, IM's permitted investment list and the agreement it entered into with SVS alone were not, in fact, an effective arrangement.

Handbook Notice 28 doesn't say that the existence of a contractual agreement and an agreed list alone are adequate. It referred to:

- *"…arrangements… **to ensure** that the portfolio comprises standard assets only."*
- *"These arrangements may vary across different firms and business models, and therefore **we cannot prescribe any regulatory preference**: it should be the choice and responsibility of the firm."*
- *"We think these arrangements can achieve the regulatory purpose given that SIPP operators can themselves rely on and **prove the effectiveness** of such arrangements."* (bold is my emphasis)

It is an obvious point that rules alone are not enough. Relevant behaviour must be observed or monitored to ensure that only permitted behaviour occurs. The Handbook Notice clearly implies the obvious point that an arrangement has to be monitored to ensure its effectiveness. It says SIPP operators should be able to prove the effectiveness of the arrangements. I'm satisfied this can only be done through effective monitoring. And I'm satisfied this is the case even if the party being monitored is a regulated firm authorised to act as an investment manager.

This same point is also clear from the Final Notice relating to Mr W that I quoted above, this was published before Mr D's business was accepted by IM.

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

Even if IM was satisfied about SVS's initial representations about the Model Portfolio, and the type of investments that would be made for IM SIPP members investing in it, *before* IM permitted its members to invest with SVS, I'm not satisfied from the evidence provided that IM then followed this up by carrying out effective monitoring of SVS and the investments that were being made with IM's members monies.

IM has said it was not given any online access by SVS so it was unable to view its SIPP members' investments or their values. I think IM should have ensured a system to assist with effective monitoring was available and accessible to IM *before* it permitted any of its members' SIPP monies to be invested with SVS. So, it seems that prior to accepting Mr D's business IM had not ensured a system to assist with effective monitoring was accessible by it.

I say that because had effective monitoring been in place, and had adequate due diligence been undertaken by IM into investments that were being made then, if not from outset then certainly from very early on, I think it should have been readily apparent that SVS was investing IM's SIPP member monies into investments that didn't meet the definition of Standard Assets as detailed in IM's SIPP Terms and Conditions and weren't permitted by IM. Had effective monitoring been in place, I think that what IM identified in its email to SVS of 20 February 2019 about the type of investments SVS was making ought to have been identified by IM on the first occasion one of IM's members' monies were invested in such investments, and well before IM accepted Mr D's business.

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

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

- IM should have had a system in place for the effective monitoring of SVS's compliance with any agreement about only making investments that were Standard Assets, in accordance with the IM SIPP Terms and Conditions, and it failed to do so.

- IM ought to have been able to identify the first occasion on which SVS invested one of IM's SIPP members' monies into potentially non-Standard Assets.

- IM should have taken steps to satisfy itself about the nature and type of investments that SVS was making with IM member's monies – including whether the type of investments being made within the Model Portfolio aligned with what IM says SVS had agreed to.

- Mindful of what IM ought to have discovered had it undertaken adequate due diligence into the investments that SVS was making with Model Portfolio investors' monies, and mindful also of what SVS told it about the liquidity of certain fixed income securities within the Model Portfolio, I think IM ought to have taken steps to clarify exactly how such investments could be readily realised within 30 days whenever required. And, by extension, how its members' Model Portfolio Investment(s) could be readily realised within 30 days whenever required.

- Mindful of the IM SIPP Terms and Conditions, I think IM should have taken steps to act in its customers' best interest. This should reasonably have included declining to permit its members' monies to be invested with SVS, while it made further enquiries pending it being reasonably satisfied that all was in order. Rather than failing to request adequate information in the first place and then, even after SVS had breached its agreement with IM, just accepting SVS's statement that investments would be made only into investments that could be readily realised within 30 days whenever required.

- Given the nature of the underlying holdings being made, the presumption ought to have been that many of the investments held in the Model Portfolio could not be readily realised within 30 days whenever required until SVS could show otherwise. I think it's more likely than not that SVS wouldn't then have been able to demonstrate how the Model Portfolio investments could be readily realised within 30 days whenever required. I accept that in its email dated 25 February 2019 to IM, SVS said it was in a position to purchase the assets if there were above normal disinvestment. But this was far from being any form of guarantee. And I wouldn't consider it fair or reasonable for IM to have concluded that Model Portfolio investment(s) could, in fact, be readily realised within 30 days whenever required on account of the reference to this endeavour, and without evidence of there being mechanisms in place to assure liquidity.

- If IM had undertaken adequate due diligence into SVS, and the Model Portfolio and if IM had effectively monitored SVS' compliance in respect of only making investments in investments on IM's Permitted Investment list/in Standard Assets, I'm satisfied that IM ought to have identified very early on, and well before it accepted Mr D's business, that SVS wasn't abiding by what IM states that SVS had agreed to. Further, that SVS was investing its members monies in fixed income securities that couldn't be readily realised within 30 days whenever required and that there was no effective system in place for assuring that all of the Model Portfolio investments could be readily realised within 30 days whenever required. And that SVS was failing to adequately manage conflicts of interest and there was a risk of this adversely affecting the interest of investors in the Model Portfolio.

- I think this ought to have been a red flag for IM in its dealings with SVS and I think IM should have declined to continue to permit IM SIPP monies to be invested with SVS before it accepted Mr D's SIPP business. And in failing to take this step, I think it's fair and reasonable to conclude that IM didn't act with due skill, care and diligence, organise and control its affairs responsibly.

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

I make this point again here to emphasise that while I've concluded that IM shouldn't have accepted Mr D's business from BRG, and that IM shouldn't have still been permitting investors to invest with SVS by the time it received Mr D's SIPP business, and also that IM shouldn't have accepted Mr D's application to invest in the Model Portfolio, had I only reached the conclusions I've set out above on one of those aspects and not also gone on to reach findings on the other aspects for completeness, I'd still consider it fair and reasonable in all the circumstances to uphold this complaint.

That's because, for the reasons I've set out at length above, IM didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr D fairly by accepting his business from BRG. And because, separately, IM also didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr D fairly, by permitting Mr D to invest with SVS. And because, separately, IM also didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr D fairly, by accepting the Model Portfolio investment into his SIPP. And, as mentioned previously, IM didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr D to be put at significant risk of detriment as a result.

I think it's important to point out here that IM's obligations were ongoing. So not only was it required to complete adequate due diligence at the start of the relationship with SVS, it was required to do this on an ongoing basis. By early 2019, IM knew SVS had breached its agreement with it. But it took what SVS told it on face value and didn't carry out any independent checks to verify what SVS had told it.

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

For the reasons given above, I don't think IM should have accepted Mr D's application to invest SIPP monies with SVS in the Model Portfolio. And so things shouldn't have got beyond that.

IM may argue that Mr D signed a declaration on the SIPP application form indemnifying it against losses as a result of any investment decisions made by Mr D or his Financial Adviser. But in my view it's fair and reasonable to say that just having Mr D sign declarations, wasn't an effective way for IM to meet its regulatory obligations to treat him fairly, given the concerns IM ought to have had about BRG, SVS and the Model Portfolio.

In my opinion, relying on the contents of such indemnities when IM knew, or ought to have known, that the type of business it was receiving from BRG, and that investing with SVS in the Model Portfolio, would put investors at significant risk of detriment, wasn't the fair and reasonable thing to do. Having identified the risks I've mentioned above, it's my view that the fair and reasonable thing for IM to do by the time it received Mr D's application would have been to decline to accept Mr D's business from BRG and to decline to permit Mr D to invest with SVS and in the Model Portfolio.

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

So, I'm satisfied that Mr D's IM SIPP shouldn't have been established and his IM monies shouldn't have been invested in SVS' Model Portfolio holdings. And that the opportunity for IM to execute investment instructions to invest Mr D's monies with SVS and in the Model Portfolio, or proceed in reliance on an indemnity and/or risk disclaimers, shouldn't have arisen at all. I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for IM to accept Mr D's business from BRG or for it to accept his application to invest with SVS and in the Model Portfolio.

I appreciate IM has said about the Model Portfolio not being exclusively made up of fixed income securities. But this doesn't alter my decision. The Model Portfolio contained investments which didn't meet the definition of Standard Assets as detailed in IM's SIPP Terms and Conditions and weren't permitted by IM. So I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for IM to accept Mr D's application from BRG to invest with SVS in the Model Portfolio.

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

The involvement of other parties

In this decision I'm considering Mr D's complaint about IM. However, I accept that other parties were involved in the transactions complained about – including BRG, and SVS.

I also accept that Mr D raised a complaint with this service against BRG. But this is now with the FSCS, who has confirmed that it won't consider Mr D's BRG complaint until the complaint against IM has been resolved.

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

In my opinion it's fair and reasonable in the circumstances of this case to hold IM accountable for its own failure to comply with its regulatory obligations, good industry practice and to treat Mr D fairly.

The starting point therefore, is that it would be fair to require IM to pay Mr D compensation for the loss he's suffered as a result of its failings. I've carefully considered if there's any reason why it wouldn't be fair to ask IM to compensate Mr D for his loss.

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

It's my view that it's appropriate in the circumstances for IM to compensate Mr D to the full extent of the financial losses he's suffered due to IM's failings. And, having carefully considered everything, I don't think that it would be appropriate or fair in the circumstances to reduce the compensation amount that IM's liable to pay to Mr D.

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

Mr D taking responsibility for his own investment decisions

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

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

In my view, if IM had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr D's business from BRG, or accepted his application to invest with SVS in the Model Portfolio at all. That should have been the end of the matter – if those things had happened, I'm satisfied the arrangement for Mr D wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

As I've made clear, IM needed to carry out appropriate initial and ongoing due diligence on BRG, SVS and the Model Portfolio and reach the right conclusions. I think it failed to do this. And just having Mr D sign forms containing declarations wasn't an effective way of IM meeting its obligations, or of escaping liability where it failed to meet its obligations.

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

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

Had IM declined Mr D's business from BRG, would the transactions complained about still have been effected elsewhere?

From the evidence provided to me to date, I think it's more likely than not that Mr D's pension monies were transferred to IM specifically so as to effect the Model Portfolio.

I accept that not every SIPP operator applied a standard assets only policy and some SIPP operators weren't prevented from accepting non-standard assets into their SIPPs. So I've considered what IM has said in response to my provisional decision about it being overwhelmingly probable that another SIPP provider would have permitted the transactions this complaint concerns.

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

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

So, while IM might say that if it hadn't accepted Mr D's application from BRG and/or permitted members to invest with SVS in its Model Portfolio, that the transfer and investment would still have been effected with a different SIPP provider, I don't think it's fair and reasonable to say that IM shouldn't compensate Mr D for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found IM did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr D's business from BRG.

In the circumstances, I remain satisfied it's fair and reasonable to conclude that if, and before it received Mr D's applications, IM had declined to accept business from BRG and/or hadn't continued to permit its members to invest with SVS in its Model Portfolio, Mr D's monies wouldn't still have transferred into a SIPP so as to invest into SVS' Model Portfolio. In Adams v Options SIPP, the judge found that Mr Adams would have proceeded with the transaction regardless. HHJ Dight says (at paragraph 32):

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

But, in this case, I'm not satisfied that Mr D proceeded knowing that the investments he was making were high risk and potentially illiquid, and that he was determined to move forward with the transactions in order to take advantage of a cash incentive.

I've also not seen any evidence to show Mr D was paid a cash incentive. It therefore cannot be said he was incentivised to enter into the transaction. And, on balance, I'm satisfied that Mr D, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this case is very different from that of Mr Adams. And having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that if IM had refused to accept Mr D's application from BRG and/or hadn't continued to permit its members to invest with SVS and/or hadn't continued to allow the Model Portfolio investment in its SIPPs, the transactions this complaint concerns wouldn't still have gone ahead.

<u>Summary</u>

So, overall, I do think it's fair and reasonable to direct IM to pay Mr D compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to Mr D's loss, I consider that IM failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining to accept Mr D's applications when it had the opportunity to do so.

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

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

What would have happened if Mr D's pension monies hadn't been transferred to IM so as to effect the Model Portfolio investment?

As I've mentioned above, I'm satisfied that Mr D's monies were only transferred to IM so as to effect the Model Portfolio investment. And I'm also satisfied that IM should have decided not to accept business from BRG, not to permit its SIPP members to invest with SVS and not to accept the Model Portfolio in its SIPPs *before* it received Mr D's business from BRG.

Not every SIPP operator applied a standard assets only policy and some SIPP operators weren't prevented from accepting non-standard assets into their SIPPs. So I've considered what IM has said in response to my provisional decision about it being overwhelmingly probable that another SIPP provider would have permitted the transactions this complaint concerns.

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

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

So, while IM might say that if it hadn't accepted Mr D's application from BRG and/or permitted members to invest with SVS in its Model Portfolio, that the transfer and investment would still have been effected with a different SIPP provider, I don't think it's fair and reasonable to say that IM shouldn't compensate Mr D for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found IM did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr D's business from BRG.

In the circumstances, I remain satisfied it's fair and reasonable to conclude that if, and before it received Mr D's applications, IM had declined to accept business from BRG and/or hadn't continued to permit its members to invest with SVS in its Model Portfolio, Mr D's monies wouldn't still have transferred into a SIPP so as to invest into SVS' Model Portfolio. Further, I remain of the view that it's very unlikely advice from another regulated adviser would have resulted in Mr D taking the same course of action. I think it's unlikely that another advisor, acting properly, would have advised Mr D to transfer away from his existing pension plans. Alternatively, Mr D might have simply decided not to seek pensions advice elsewhere from a different advisor and still then retained his existing pension plan.

In conclusion

Taking all of the above into consideration, I think that in the circumstances of this case it's fair and reasonable for me to conclude that IM should have decided not to accept business from BRG, not to continue permitting its SIPP members to invest with SVS and the Model Portfolio in its SIPPs before it received Mr D's business from BRG. And I also think it's fair and reasonable for me to conclude that if IM hadn't accepted Mr D's introduction from BRG and/or hadn't continued permitting its SIPP members to invest with SVS in the Model Portfolio in its SIPPs before it received Mr D's application that Mr D wouldn't have established and transferred monies into an IM SIPP, or invested with SVS in the Model Portfolio.

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

I say this having given careful consideration to the Adams v Options judgments but also bearing in mind that my role is to reach a decision that's fair and reasonable in the circumstances of the case having taken account of all relevant considerations.

Putting things right

I consider that IM failed to comply with its own regulatory obligations and didn't put a stop to the transactions that are the subject of this complaint.

My aim in awarding fair compensation is to put Mr D back into the position he would likely have been in had it not been for IM's failings. Had IM acted appropriately, I think it's *more likely than not* that Mr D would have remained a member of the DB pension scheme that was transferred into the SIPP.

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

In light of the above, IM should:

- Obtain the actual transfer value of Mr D's SIPP, including any outstanding charges.
- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).
- Undertake loss calculations as set out below in respect of each of the schemes from which monies were transferred into the SIPP and pay any redress owing in line with the steps set out below.
- If the SIPP needs to be kept open only because of the illiquid investment/s and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

- If Mr D has paid any fees or charges from funds outside of his pension arrangements, IM should also refund these to Mr D. Interest at a rate of 8% simple per year from date of payment to date of refund should be added to this.

- Pay to Mr D £500 to compensate him for the distress and inconvenience he's been caused.

In response to the provisional decision Mr D raised concerns about the fee IM had charged for his SIPP holding non-standard assets. It's not clear if this charge was taken directly from the SIPP or if Mr D had to pay it separately. But either way the redress methodology I've set out above will take this charge into account so it will be included in the loss calculation.

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

Treatment of the illiquid assets held within the SIPP

I think it would be best if any illiquid assets held could be removed from the SIPP. Mr D would then be able to close the SIPP, if he wishes. That would then allow him to stop paying the fees for the SIPP. The valuation of the illiquid investment/s may prove difficult, as there is no market for it. For calculating compensation, IM should establish an amount it's willing to accept for the investment/s as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investment/s.

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

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

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

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

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

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

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

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

Redress paid to Mr D as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, IM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr D's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

If either IM or Mr D dispute that this is a reasonable assumption, they must let me know as soon as possible so that the assumption can be clarified and Mr D receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

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

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

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

Any withdrawal out of the SIPP should be deducted at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. The same applies for any contributions made, these should be added to the notional calculation from the date they were actually paid, so any growth they would have enjoyed is allowed for.

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

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

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

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr D as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

If either party disagrees with the presumed income tax rate, they'll need to let us know as soon as possible and, if agreement can't be reached at this stage, certainly before a final decision is issued after which the redress can't be amended.

SIPP fees

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

Distress & inconvenience

I think the loss of the pension provision that is the subject of this complaint caused Mr D significant distress, and this is clear from his submissions to this service, and IM should pay him £500 to compensate him for this.

IM must also provide the details of its redress calculation to Mr D in a clear, simple format.

My final decision

For the reasons given, it's my final decision that Mr D's complaint is upheld and that Intelligent Money Ltd must pay fair redress as set out above.

Where I uphold a complaint, I can make an award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate.

If I consider that fair compensation exceeds £160,000, I may recommend that Intelligent Money Ltd pays the balance.

Determination and award: My final decision is to uphold the complaint. I consider that fair compensation should be calculated as set out above.

My final decision is that Intelligent Money Ltd should pay the amount produced by that calculation up to the maximum of £160,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Intelligent Money Ltd pay Mr D the balance plus any interest on the balance as set out above.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 June 2024.
Lorna Goulding
Ombudsman