DRN-5153998

The complaint

Mr S complains that AJ Bell Management Limited ('AJ Bell') failed to carry out sufficient due diligence on the investment he made within his Self-Invested Personal Pension ('SIPP'). Mr S says AJ Bell should've refused to permit the investment, and he experienced a loss to his pension as a result of making it.

What happened

In 2007, Firm B advised Mr S to open a SIPP with AJ Bell (formerly Skandia, then Old Mutual Wealth, but I'll refer to AJ Bell throughout this decision). Mr S says Firm B advised him to transfer three existing personal pensions to the SIPP in order to invest in the Pinder Fry Benjamin Regional Office Fund ('PFB fund').

Firm B was an independent financial adviser authorised at the time by the then Regulator – the Financial Services Authority ('FSA'), which later became the Financial Conduct Authority ('FCA').

Firm B provided Mr S's completed SIPP application form to AJ Bell in May 2007. Mr S's application form showed he was age 35, employed and that he wanted to transfer three existing personal pensions into the SIPP, which had a combined value of around £35,600. No investment details were given, although the application form did not ask for this.

In the 'Adviser Details' section, Firm B's details were given but no adviser fees were specified. Mr S signed the application declaration on 26 April 2007.

AJ Bell says that an application to invest £35,000 in the PFB fund, signed by Mr S and Firm B, was provided with the SIPP application form.

As I understand it, the PFB fund involved investment into commercial property (office units) in the UK.

AJ Bell issued a welcome letter to Mr S on 4 May 2007, enclosing a copy of the Terms and Conditions and explaining his right to cancel his SIPP if he did not think it was suitable for him.

On 14 May 2007 AJ Bell received a further letter from Firm B enclosing a 'Collective Investment Scheme Declaration to invest in non-UK regulated and/or illiquid investments' document, in respect of Mr S's application to invest in the PFB fund. The declaration set out the features and risks of the investment, including the following:

3. *If there is no 'liquid' market in the investment, selling/encashing the investment to pay benefits, or for re-investment may be very difficult. This could result in delays or restrictions on the benefits payable.*

4. *Also, if there is no liquid market in the investment, it may be difficult for us to obtain a valuation for accounting purposes. If we are unable to obtain an up to date market*

value from the manager of the investment, it is our standard policy to value such investments at cost (less any amounts already paid out) for accounting purposes.

Firm B signed this on 9 May 2007 confirming Mr S had been made aware of these issues and still wished to proceed.

Between 18 and 27 May 2007, funds amounting to around £37,000 were received from Mr S's existing personal pensions into the SIPP.

The PFB fund application form was signed on behalf of AJ Bell, as joint trustee with Mr S of his SIPP, and sent to the investment manager on 31 May 2007. AJ Bell sent £35,000 to the PFB fund account for investment on the same day.

AJ Bell wrote to Firm B in June 2009 after being informed by the investment manager that the lender had withdrawn their support and the directors were to place the PFB fund into liquidation. The investment manager advised there was unlikely to be any dividend paid to the creditors.

AJ Bell wrote to Mr S on 29 October 2012 to explain there were unpaid SIPP fees and insufficient funds to cover them. AJ Bell said that as the only investment was the illiquid PFB fund, they were unable to make a partial surrender to cover the outstanding fees. It suggested Mr S contact his adviser to make a payment to his SIPP to cover the fees.

On 5 June 2013, Firm B stopped being authorised to carry on regulated activities.

In October 2018, AJ Bell wrote to Mr S to say the PFB fund investment had been removed from his SIPP as there was little prospect of any recovery, and it would also stop further SIPP charges accruing. As such, it was closed with a nil balance.

In September 2019 Mr S made a claim about Firm B to the Financial Services Compensation Scheme ('FSCS'). The FSCS paid its maximum compensation of £50,000, but calculated his loss at the time to be £68,658.13.

Mr S complained to AJ Bell in February 2020 via a representative. He said AJ Bell had failed to carry out sufficient due diligence checks on the investment before allowing it in the SIPP. Had it done so, he said it would've found it was not appropriate for a SIPP as it was high-risk and unregulated. It was also unsuitable for him as he wasn't a high net-worth individual or a sophisticated investor.

In April 2020, the FSCS gave Mr S a reassignment of rights in which, amongst other things, the FSCS explained it was transferring back to Mr S any legal rights he had against AJ Bell.

AJ Bell issued a final response in June 2020. It said its SIPP was an adviser-led SIPP product and it does not provide advice of any kind. So, it wasn't responsible for checking whether the investment was suitable for Mr S. But it ensured the PFB fund investment was an acceptable asset for a pension. Before permitting SIPP investments in the PFB fund, AJ Bell undertook what it considered to be reasonable due diligence which was in line with good industry practice for a SIPP operator at that time to ensure the investment was appropriate for a SIPP.

AJ Bell ultimately didn't uphold the complaint, saying that the investment met HMRC permitted investment rules at the time and it wasn't inappropriate for a SIPP.

Mr S referred his complaint to the Financial Ombudsman Service in August 2020.

Our Investigator thought Mr S had made his complaint too late under the Regulator's Dispute Resolution ('DISP') rules. Mr S disputed this and the case was passed to me to make a decision on whether we had jurisdiction to consider Mr S's complaint.

I ultimately determined the complaint had been made in time and as such, was in our jurisdiction. So, the case was passed back to the Investigator for consideration of the merits.

The complaint was considered by the Investigator, who asked AJ Bell for information about the due diligence checks it had carried out on Firm B and the PFB fund.

AJ Bell said:

- When advisers requested to use AJ Bell's adviser-led SIPP product, they had to be authorised by the FCA and had to agree to the terms of its Adviser Handshake. It provided a copy of the Adviser Handshake agreement.
- Firm B accepted the Adviser Handshake agreement in March 2007 and the agreement was in place until Firm B ceased to be authorised by the FCA in June 2013.
- AJ Bell understood Firm B's business model would involve the provision of a range of advisory services to their customers, including advice on pension trustee bonds, collective investment accounts and other investment product distributed by the Skandia Life group, as well as open market investment products, in connection with the opening of SIPPs, the transfer in of existing pensions, subsequent and ongoing investments.
- There was no expectation as to the number of introductions that AJ Bell would receive, nor did it have any discussions with Firm B about its business model or the number of introductions that it would make.
- It did not have any further discussions with Firm B about its client process or the business which it was referring, as the number of introductions AJ Bell received from Firm B was not material in the context of the advised part of its business.
- AJ Bell didn't request copies of the suitability reports issued by Firm B. AJ Bell isn't responsible for advice given by an authorised firm and its staff don't have the skills to assess such advice. It isn't good industry practice, nor is it reasonable to expect SIPP operators to request copies of suitability reports because by doing so that could give the impression of approval of the advice.
- Firm B was associated with 28 customers until June 2013, either as a result of an introduction or a change of agency.
- Mr S was the 18th customer introduced by Firm B and nine of the customers introduced before Mr S invested their pension in non-mainstream investments as well as mainstream investments.
- From the limited historic data AJ Bell had been able to access, it identified that between 2008 and 2010, when the majority of the investments in non-mainstream investments were made by customers who were clients of Firm B, it represented 0.12% of the business introduced to AJ Bell.
- Before permitting SIPP investments in the PFB fund, AJ Bell undertook what it considered to be reasonable due diligence which was in line with good industry practice for a SIPP operator at that time.
- AJ Bell said it reviewed the related product literature and related application form, and had an information request completed by the manager of the investment. It provided copies of the documents it reviewed.
- On review of the information AJ Bell received, it was satisfied that the investments would be considered an acceptable SIPP investment under HMRC's rules at the time.

- The investment was listed on the Channel Islands Stock Exchange ('CISX'), an HMRC recognised stock exchange, and was regulated by the Guernsey Financial Services Commission so it was considered an acceptable investments for SIPPs to make that would not attract any unexpected tax charges.
- As the investment involved raising funds to finance speculative property purchases, as opposed to an investment in a fund which had an operating history and held existing investments, the extent of the duty imposed on AJ Bell in respect of valuation was not such that it needed to take any specific action in order to satisfy itself that the amount being subscribed by Mr S's SIPP for the investments was fair and reasonable.
- It was fair and reasonable in the circumstances of the case, for AJ Bell to rely on Mr S's financial advisers to ensure that he was satisfied with the valuation and understood the other commercial terms of the investments and the related risks. It was, however, indicated in the product literature that a well-known and respected firm of surveyors, were to be appointed as the property acquisition valuers and retained valuers, and that they had provided comfort about the projected future valuation of the initial property portfolio.
- Mr S signed a Collective Investment Schemes - Declaration for non-UK regulated and/or illiquid investments before investing in the PFB fund.

The Investigator went on to uphold the complaint. This was because she thought AJ Bell ought to have been aware that the business being introduced by Firm B posed a high risk of consumer detriment as most of the consumers introduced went on to invest in high-risk unrelated investments, which AJ Bell ought to have known would only be suitable for a minority of customers. She thought that given the risk of detriment, AJ Bell ought to have checked Mr S's understanding of the investment and if it had done so, it would've found Mr S had been misled about the risk profile of the investment. And as a result, it ought to have refused his SIPP application. The Investigator recommended that Mr S should be compensated based on him having remained with his previous pension providers and that he should receive £300 for the distress and inconvenience caused.

AJ Bell didn't agree, saying it was reasonable for it to rely on the fact that Firm B was regulated. It didn't think it was necessary to investigate the firm's business model given that it hadn't entered into an arrangement with it for the introduction of customers to make specific UCIS or other non-mainstream investments, such that there was an obvious enhanced risk of consumer detriment.

AJ Bell accepted that it had an ongoing duty to monitor the nature and quality of the business being introduced but it didn't consider the volume or nature of the business was such that that it should have caused it to investigate Firm B's business model or undertake any other additional investigations. It said although nine of the customers who were introduced before Mr S invested part of their SIPP funds in non-mainstream investments, some also made mainstream investments, such that a mixture of business was being received. AJ Bell said this was not a situation where a firm of advisers was only introducing non-mainstream business such that there was an obvious risk of enhanced consumer detriment.

Mr S accepted the Investigator's view but as AJ Bell didn't agree, the complaint was referred back to me to make a final decision on the merits of it.

I issued a provisional decision explaining that I was not minded to uphold Mr S's complaint. I said I thought that it was reasonable for AJ Bell to have accepted the introduction of Mr S's SIPP application from Firm B and that it wasn't unreasonable for it to permit the investment in the PFB fund in his SIPP.

AJ Bell accepted my provisional findings. Mr S didn't accept my provisional decision and made the following points:

- He is disappointed and frustrated that I did not uphold his complaint given the FCA upheld his claim and he was paid the maximum compensation for the losses he incurred due to AJ Bell's actions or lack thereof.
- The failure to hold AJ Bell responsible for the remaining loss he has experienced is inconsistent and deeply unjust as this represents a significant loss to his retirement savings.
- It is difficult for him to understand how AJ Bell can be absolved of all responsibility given the impact on his pension and the compensation already awarded.

Mr S's representative added:

- It is unclear how I have reached a different view to the Investigator despite agreeing on the facts of the case and the relevant considerations.
- AJ Bell should have carried out further checks on Firm B and the investment and as it didn't do so there was a breach of the requirements. Whether or not anything would've been found following those checks is irrelevant.

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.

I've also considered the responses received to my provisional decision carefully, but having done so, I'm still not upholding Mr S's complaint. I note Mr S's representative's point that it doesn't understand how I have reached a different outcome to the Investigator, but I'm satisfied that I have explained my reasons for not upholding this complaint, which I have set out again below.

When considering what's fair and reasonable in the circumstances, I need to take account of relevant 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.

I have taken into account the FCA's Principles for Businesses, in particular Principles 2, 3 and 6 which provide:

"Principle 2 – Skill, care and diligence – A Firm Bust conduct its business with due skill, care and diligence.

Principle 3 – Management and control – A Firm Bust take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 6 – Customers' interests – A Firm Bust pay due regard to the interests of its customers and treat them fairly."

I've also considered the relevant law including:

- *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ('BBA');

- *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) which I've already referred to as BBSAL above; and
- The High Court decision in *Adams v Options SIPP* [2020] EWHC 1229 (Ch) and the Court of Appeal decision in the same case *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474.
- The Court of Appeal decision in *Options UK Personal Pensions LLP v Financial Ombudsman Service Ltd* [2024] EWCA Civ 541.

And I have considered the various publications the FCA (and its predecessor, the FSA) issued 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 acknowledge that the 2009 and 2012 reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 Finalised Guidance is). However, the reports and *"Dear CEO"* letter provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect the publications, which set out the Regulators' expectations of what SIPP operators should be doing, also go some way to indicate what I consider amounts to good industry practice.

I'm mindful that the publications listed above were published after Mr S's SIPP was set up and the investment was made. But, like the Ombudsman in the *BBSAL* case, I don't think the fact that the publications post-date the events that took place in relation to Mr S's complaint, mean that the examples of good practice they provide weren't good practice at the time of the relevant events. Although the publications were published after the events subject to this complaint, the Principles that underpin these existed throughout, as did the obligation to act in accordance with the Principles.

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

Overall, in determining this complaint I need to consider whether AJ Bell complied with its regulatory obligations as set out by the Principles to act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regards to the interests of its customers (in this case Mr S), to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the Principles and the publications listed above to provide an indication of what AJ Bell could have done to comply with its regulatory obligations and duties.

Mr S's relationship with AJ Bell and other connected parties

As I understand it, AJ Bell is an execution only SIPP administrator, and the SIPP Mr S opened was only available through financial advisers that had an agency with AJ Bell, and previously Old Mutual Wealth and Skandia. It was not regulated to provide advice.

I accept that AJ Bell didn't provide any advice here, and so it didn't have an obligation to consider the suitability of the investments for Mr S. Nevertheless, I think AJ Bell was required (in its role as an execution only SIPP provider) to consider whether it was appropriate to accept business from Firm B and to consider whether the investment proposed for him was an appropriate investment to make within its SIPP. And overall, I think AJ Bell's duty as a SIPP operator was to treat Mr S fairly and to act in his best interests.

What did AJ Bell's obligations mean in practice?

In this case, the business AJ Bell was conducting was its operation of SIPPs. And I'm satisfied that, to meet its regulatory obligations, when conducting its operation of SIPPs business, AJ Bell 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.

As set out above, to comply with the Principles, AJ Bell 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 S) 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.

It appears that AJ Bell understood it was required to carry out some checks on the introducer and the investment proposal before accepting it into the SIPP because it has explained the process that was followed. But I think that AJ Bell also ought to have understood that its obligations meant that it had a responsibility to also carry out appropriate checks on introducers to check the quality of the business it was introducing.

I also think that it's fair and reasonable to expect AJ Bell to have looked carefully at the investment it was allowing Mr S's pension fund to be invested in. To be clear, for AJ Bell to accept the investment without carrying out a level of due diligence that was consistent with its regulatory obligations, wouldn't in my view be fair and reasonable or sufficient. And if AJ Bell didn't look at an investment in detail, and if such a detailed look would have revealed that the investment might not be secure, might be fraudulent, or that the investment couldn't be independently valued, or that it was impaired, it wouldn't in my view be fair or reasonable to say AJ Bell had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

Mr S's representative says AJ Bell's failure to carry out the type of checks on Firm B and the investment that would've been expected of it under the regulations, guidance and good industry practice should be sufficient to find in Mr S's favour. But I don't think the absence of checks alone means that AJ Bell should not have accepted the business from Firm B or the investment into the SIPP.

As I've said above, it is the information that would've likely been discovered as a result of carrying out those checks that is important here. And whether the information discovered ought to have led AJ Bell to reject the SIPP application or decide that the investment was not an appropriate asset to be held in the SIPP. If the checks would not have revealed anything of concern it would not be fair or reasonable to require AJ Bell to pay compensation; in those circumstances the checks being made would not have made a difference to AJ Bell's decision to accept the applications.

<u>Due diligence checks on Firm B</u>

AJ Bell only dealt with advisers who were FCA regulated and registered with it. Firm B was authorised by the FCA (then known as the FSA) and it was regulated to provide pension and investment advice.

AJ Bell originally told us that Firm B registered with it in March 2007 and it introduced 28 customers between April 2007 and June 2013. And nine of the 18 customers introduced, up to and including Mr S, invested some of their funds in non-mainstream investments alongside mainstream investments.

I asked AJ Bell for some additional details about the investments made by the customers introduced before Mr S so that I could gain a better understanding of the pattern of business received prior to it receiving Mr S's SIPP application form.

AJ Bell explained that Firm B actually first introduced customers to Old Mutual Wealth (before it later became AJ Bell) in 2002. And AJ Bell sent Firm B its SIPP Adviser Handshake in March 2007, in advance of SIPP regulation in April 2007, which it had to agree to in order to place business with it.

AJ Bell clarified that only seven of the 17 customers introduced prior to Mr S invested in non-mainstream investments. It also provided me with a breakdown of the proportions of mainstream to non-mainstream investments made by those customers. This showed that Firm B had been introducing customers to AJ Bell since May 2002, and the proportion of investment in non-mainstream assets as a percentage of the SIPP funds held was as follows:

- 0% - nine customers
- 1% - 30% - four customers
- 31% - 60% - three customers
- 61% - 99% - zero customers
- 100% - one customer

So, of the 17 customers introduced by Firm B before Mr S, eight customers actually invested some of their funds in non-mainstream assets. And four customers invested a relatively high proportion of their pension funds in non-mainstream assets, with one of those customers investing the entirety of their funds in a non-mainstream investment.

AJ Bell said that although some of Firm B's customers invested in non-mainstream assets, it didn't believe that the volume of business overall was significant, nor was it anywhere near the level where it could reasonably have given rise to any concerns about Firm B's business model.

It doesn't appear that AJ Bell carried out checks beyond ensuring that Firm B was regulated and asking it to agree to the Adviser Handshake. However, even if AJ Bell had carried out additional checks, such as asking for information about Firm B's business model or checking whether there were any obvious conflicts of interest or whether Firm B had a clear disciplinary history, I'm not persuaded it would have made a difference to things here. I think it still would've been reasonable to accept the introduction of Mr S's SIPP from Firm B.

Firm B was regulated to provide pensions and investment advice and it had been doing business with it since 2002 – so I think AJ Bell was entitled to take comfort from that.

By the time Mr S's SIPP application was sent to AJ Bell, less than half had made investments in non-mainstream assets. And I don't think the volume or nature of this pattern of business was such that it should have given AJ Bell cause for concern. That's particularly the case given that customers being introduced by Firm B invested in a mix of assets, with the majority not investing any of their funds at all in non-standard assets, and only four investing in proportions that might be considered to be high. And there wasn't any change in the pattern of business received, for example, customers suddenly only investing large proportions of their pension funds in non-mainstream assets; the two customers introduced before Mr S invested 0% and 22% in non-mainstream investments.

I've considered whether AJ Bell ought to have refused the instruction it received from Firm B on the basis of Mr S's investing all of his pension in the PFB fund. Although the PFB fund was not a UCIS, this would've been considered as non-mainstream investment. And while I accept that investing all of a consumer's funds in one non-mainstream investment may not be a suitable strategy for most retail investors, AJ Bell wasn't required to check the suitability of the advice given to Mr S. In my view, in the circumstances of this case, it was reasonable for AJ Bell not to make further enquiries.

Based on what I've seen, the proportion of investment in non-mainstream assets varied between customer, without any pattern emerging that was leaning towards favouring non-mainstream assets. So, I don't think there was any pattern up to and including Mr S's introduction that might have given rise to a concern about the business being introduced by Firm B overall, such that AJ Bell ought to have wider concerns about the potential for unsuitable advice. So, on receipt of Mr S's SIPP and investment application, I don't think AJ Bell should've reasonably had any concerns about the potential for consumer detriment associated with introductions from Firm B.

Mr S wished to transfer existing personal pensions to the SIPP – he wasn't, for example, looking to transfer a defined-benefit occupational pension in order to make the investment. So, it wasn't the case that Mr S would be losing guaranteed pension benefits by making the transfers. And I don't think there were any other concerning features about Mr S's application such that AJ Bell should've carried out further checks on this occasion before accepting it.

Lastly, I haven't been able to find any adverse information about Firm B or the individuals involved with it at the time Mr S made his application and investment. So, I don't think there was any information in the public realm, at the time Mr S made his SIPP application and investments that ought reasonably to have given AJ Bell cause for concern about accepting the introduction of Mr S's business from Firm B.

Overall, I haven't seen sufficient evidence to persuade me that AJ Bell ought to have refused to accept Firm B's introduction of Mr S's SIPP business. So, I think Mr S's SIPP would've ultimately been opened and his pensions would've been transferred to it for investment.

As I've said above, AJ Bell also needed to carry out appropriate due diligence checks on the investment in the PFB fund before allowing Mr S's application to invest in it to proceed. So, I've thought about the due diligence checks that AJ Bell ought to have carried out on the investment before it should've accepted it as an appropriate investment for a SIPP. And whether the information it ought to have gathered should have led it, if acting in line with the Principles and guidance, to decline to accept the investments into the SIPP.

Due diligence checks on the investment

As the Regulator has made plain, SIPP operators have a responsibility for the quality of the SIPP business that they administer. So, SIPP operators should undertake appropriate independent enquiries about the nature or quality of an investment proposed before determining whether to accept or decline it into its SIPP, which would mean making checks that go beyond simply reviewing the investment literature.

I've considered what would constitute reasonable due diligence checks before accepting the investment in the PFB fund into the SIPP. AJ Bell was asked to provide evidence of the due diligence checks it carried out at the time of Mr S's application to invest in the PFB fund. It said it undertook what it considered to be reasonable due diligence which was in line with good industry practice for a SIPP operator at that time in order to establish:

- the nature and legal structure of the investment;
- that it was a genuine investment and not a scam, or linked to fraudulent activity, money laundering or pensions liberation;
- that appropriate custody arrangements were in place in order to ensure that the investment was safe and secure; and
- that it could obtain valuations at the point of purchase and subsequently.

AJ Bell said its normal custom and practice at the time in relation to the approval of UCIS was to review the related product literature and related application form, and to have an information request completed by the manager of the investment. On review of the information AJ Bell received, it said it was satisfied that the investments would be considered an acceptable SIPP investment under HMRC's rules at the time. This was because the investment was listed on the CISX, an HMRC recognised stock exchange, and was regulated by the Guernsey Financial Services Commission.

AJ Bell has referred to the PFB fund as UCIS. However, having considered the prospectus provided, I don't think the fund qualified as UCIS. That's because the fund was described as a closed-ended investment company, and a body corporate that is not an open-ended investment company cannot be a collective investment scheme ('CIS') or a UCIS. That's because of an exemption in the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001.

The FCA has made it clear that the due diligence required on SIPP investments will vary depending on the nature of the intended investments. Even though the fund was not likely to be classified as UCIS, I think it could still reasonably be described as an unusual/non-mainstream investment. And it's evident that AJ Bell treated the investment as such, asking Firm B to complete its 'Collective Investment Schemes – Declaration for non-UK regulated and/or illiquid investments' form.

The PFB fund was listed on CISX, a recognised stock exchange and Mr S held shares in the fund which was a closed ended investment company established under the laws of the Island of Guernsey. So, I think AJ Bell could take some comfort from the fact that the investments met the listing requirements of CISX.

I've reviewed the prospectus, dated 12 April 2007, to determine whether there were any grounds for AJ Bell to believe that the investment could've been a scam. I've also considered whether any of the information contained therein could've been misleading, or inaccurate, such that it increased the risk of detriment and ought to have been considered an inappropriate investment for a SIPP.

Where I've quoted parts of the prospectus, any text that is in bold is text that is emphasised in the original document, not emphasis I have added myself.

The prospectus it described the investment as follows in the first section entitled, 'A message from the Promoter':

"The investment described in this Prospectus involves, initially, the acquisition, for about ***£44 million****, of a portfolio of around* ***52 new, unlet, small and medium sized office units across North West England*** *from a specialist in this sector and this region…("CDP"). Having been acquired, the intention is to let these units: this should allow the portfolio to be expanded through further acquisitions…*

…The developer, CDP, is ***an experienced specialist in speculative office development*** *and, at least initially, it* ***will be responsible for finding tenants*** *for the units owned by the Fund.* ***Active management*** *of the portfolio, including such tactics as optimising the mix of tenants, managing rents on individual sites upwards over time, providing flexibility in lease terms where appropriate and selectively selling office units and reinvesting, will play an important role in maximising Fund returns.*

The strategy to be adopted by the Fund may be expressed simply: ***buy well, let efficiently and manage actively****.*

On the basis of a set of assumptions that we call the ***"realistic scenario"****, we have calculated that the opportunity we have put together may produce* ***a return on your cash investment of between 15% pa and 17% pa*** *(after all costs but before any tax payable by you) over a holding period of* ***around seven years*** *(although there is absolutely no guarantee of this). This return will derive, it is anticipated, both from a growing rental stream from tenants and from enhancement of the capital value of the Fund's portfolio. However, no regular distributions of income are expected to be made.*

The investment utilises a substantial level of ***non-recourse borrowing*** *(or "gearing") and the cost of this borrowing should be deductible in computing the Fund's taxable income. The* ***minimum investment is £35,000*** *(which should give an investor an effective interest in the initial property portfolio of about £107,000 – and more as the portfolio grows – because of the gearing in the Fund)."*

So, at the point Mr S was investing, the fund was seeking investment in order to acquire a portfolio of office units.

In a section entitled, 'The investment proposition', it explained how returns would be achieved:

"It is expected that returns for Investors will arise upon the sale of the Office Units after an investment term of around seven years (although some may be sold before this). Those returns are not certain and will depend on various factors such as the success with which Office Units are let, rental growth, the level of debt within the Fund and sale prices achieved. However, ***returns for Investors of between 15% pa and 17% pa over the term of the investment*** *are currently thought to be a realistic indication."*

The prospectus went on to provide detailed information about the property portfolio, including the locations and size of the office units, plans for the development of unfinished units and rental expectations. It also gave details of the developer and surveyor appointed by the fund to oversee the developments.

In terms of how the fund would be financed, the prospectus said:

"As well as funding part of the acquisition cost of the Office Units, the equity raised from Investors by the Fund will also go to meet initial costs and to provide adequate working capital and cash reserves for the Fund.

At least initially, the balance of the Fund's financial resources will be in the form of debt to be drawn down under a committed ***non-recourse loan facility arranged with nabCapital*** *– a division of National Australia Bank Limited. Following the last payment to acquire the initial Property Portfolio, it is expected (based on current interest rates and £14.6 million of cash being raised from Investors) that the Fund's financial resources will have been sourced as follows:*

Source of funds
Cash from Investors - £14.6 million
Non-recourse bank loan - £37.8 million"

It further stated:

"The ***loan will be non-recourse to Investors****: this means that, if the Fund defaults in its obligations to pay interest on and to repay the debt,* ***the Lender cannot look to Investors to make good the shortfall.****"*

The prospectus explained that the fund was expected to have a term of around six or seven years from when the necessary equity was raised, at which point the office units would be sold and the fund would be wound up. It described the potential returns as follows:

"The level of positive returns for Investors (if any) and, indeed, the ultimate return to Investors of their Cash Investment will depend on the performance of the Fund's investments and the overall return that that delivers…

…The Fund's performance will depend on numerous factors that cannot be forecast with complete accuracy. However, based on ***reasonable assumptions*** *(detailed in the following section) about such factors as rental growth, exit yields, letting terms, time taken to secure Occupational Tenants, interest rates and the extent to which the portfolio of Office Units is expanded through further debt following letting of the Office Units in the initial Property Portfolio,* ***an annualised return in the range of about 15% pa to 17% pa over the expected term of around seven years is considered realistically achievable****. It is expected that this return will be realised for Investors principally through Distributions made at or towards the end of the anticipated term.*

On the basis of a Cash Investment of £35,000, this level of return corresponds to ***a return of capital after the investment term of between £93,100 and £105,000 (including the initial £35,000 investment).***

These returns are not a forecast but are believed to be realistic indications of what is achievable given certain assumptions based on current assessments of the office property market (in the relevant local areas, in the North West region and nationwide) and its future prospects. The returns are stated ***after taking into account all costs and the Investment Manager's Carried Interest****, but before allowing for any tax payable by Investors.*

Although very attractive returns are believed to be realistically achievable, Investors should realise that the returns are in no way guaranteed. For example, if occupational lettings take longer to secure than is anticipated, returns would be adversely affected. The Fund will have a high level of non-recourse debt and, at worst, Investors could lose their entire investment."

The prospectus also included a lengthy Questions and Answers section, which included the following:

"Q17 How much might I lose if things go badly?
A17 You could lose your entire Cash Investment.
Just as the Debt Finance may (and is intended to) enhance returns (see Q19), so it may also increase losses as a proportion of Investors' equity if, for example, property values or rental income decline below anticipated levels.

You should consider an investment in the Fund as part of your overall investment portfolio and taking into account your personal financial circumstances. You should not invest without first taking appropriate professional advice."

"Q38 Should I seek advice before making this investment?
A38 Yes. The Fund is a complicated investment which involves risks. Before you invest you should make sure that you understand what an investment in the Fund involves and determine whether it is a suitable investment for you. It is, therefore, strongly recommended that you consult your independent financial adviser before investing."

And it contained a separate section detailing the risk factors, which included:

"The Fund has no previous operating history and investment in commercial property, in which the Fund will be engaged, involves significant risk. For example, commercial property values are affected by such factors as the level of interest rates, economic growth, fluctuation in property yields and tenant default. Although the Fund will be operated so as to minimise such risks, it is possible that an Investor will not get back a part of, or any of, his investment in the Fund. There can be no assurance that the Fund will achieve the Investment Objective. Investors could lose their entire investment."

Overall, considering the information available, I think AJ Bell could be satisfied that the assets behind the investment fund were genuine and not a scam; the office units existed and an agreement for their acquisition had already been drawn up. Reputable businesses had also been appointed to oversee the developments. Because the investment lay in UK property, I think AJ Bell could be satisfied that the assets could be independently valued. I think it would've also been satisfied Mr S's investment in the fund was safe and secure, as it was listed on the CISX. And although it was unlikely that a secondary market for the shares would emerge, they could be sold via the CISX.

I accept that the prospectus did seem to give investors an expectation of high returns and said that those returns were realistically achievable, and had been based on reasonable assumptions. But on balance, I think that there was sufficient corresponding warnings throughout the prospectus that the returns weren't guaranteed, that they depended on a number of factors and that Mr S could lose his entire investment. So, I think the investment materials Mr S would've likely seen were clear about the risks involved in the investment. And it was reiterated several times that investors could lose the money they had invested.

As such, I haven't seen sufficient evidence to persuade me that AJ Bell should have refused to accept the PFB fund investment into its SIPPs when Mr S's application to invest in it was made.

Mr S says that AJ Bell shouldn't have allowed him to invest his pension in the PFB fund because it was high-risk and illiquid. But the fact that the investment was speculative and carried a high degree of risk does not mean that AJ Bell or any other SIPP operator acting in line with the Principles and guidance should not have permitted the investment to be held in the SIPP, particularly as the investment prospectus was transparent about the risks involved. The prospectus set out the risk factors in full, including that it was conceivable investors may not receive any return on their investment or that it could be lost entirely. The structure of the investment was also not an unusual one in view of its aim. The risks, too, were generally akin to those that should reasonably be expected with an investment of this nature.

I appreciate that the investment in the PFB fund subsequently failed and that this has had significant consequences for Mr S. But I don't think AJ Bell should've reasonably refused to permit the investments in this case on the basis that it might fail in the future; that is an inherent risk of all investments.

Mr S has said that the FCA compensated him for AJ Bell's failings and as such, my decision not to hold AJ Bell responsible for his remaining loss is inconsistent and frustrating. Based on the evidence I've seen in this case I think Mr S is referring to the compensation he received from the FSCS in 2020. The FCA is the Regulator; it does not consider individual claims brought by consumers and I've seen no evidence to support that the FCA considered a claim for Mr S about AJ Bell and paid him compensation.

Mr S provided our Service with copies of the correspondence he received from FSCS and its decision to pay him compensation. The decision letter of 20 January 2020 demonstrates that the FSCS did not consider a claim against AJ Bell; instead the FSCS considered the claim Mr S made about the advice he received from Firm B. While the FSCS agreed that Mr S had a valid claim against Firm B, that doesn't automatically mean he has a valid claim against AJ Bell. Firm B and AJ Bell are separate businesses and performed different roles here, and were subject to different regulations and expectations. I've explained above what was expected of AJ Bell when considering whether to accept Mr S's applications, and for the reasons given I don't think it was unreasonable for AJ Bell to accept them and allow the investment to proceed.

Summary

Overall, I'm satisfied that AJ Bell carried out some due diligence checks into Firm B and the PFB fund investment it made for Mr S. And I think AJ Bell could take comfort from the fact that a regulated adviser was involved and that the investments were listed on a recognised stock exchange.

I think AJ Bell needed to carry out further checks in accordance with the Regulator's rules, Principles and good industry practice before accepting the introduction from Firm B and the investment application. But as I have explained above, even if AJ Bell had carried out further independent checks, I haven't found anything that would've been discoverable to AJ Bell at the time that ought to have led it to refuse the investments to be made within its SIPP.

So, based on all the evidence I've seen, I'm not upholding Mr S's complaint. I appreciate that this is not what he was hoping to hear.

My final decision

For the reasons set out above, I'm not upholding Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 December 2024.

Hannah Wise
Ombudsman