DRN-4655798

The complaint

Mr T complains that Mattioli Woods PLC (MW) failed to carry out sufficient due diligence when accepting his application to open a Self-Invested Personal Pension (SIPP), and on his subsequent investments in Store First. Mr T says he has suffered a loss from the Store First investment and that MW should compensate him for this loss.

The complaint has been made on Mr T's behalf by a professional representative, but for clarity I'll refer to all actions and submissions as if completed by Mr T himself.

What happened

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

Mattioli Woods PLC

MW is a SIPP provider and administrator, regulated by the Financial Conduct Authority (FCA). MW is authorised, in relation to SIPPs, to arrange and bring about deals in investments, deal in investments as agent and principal, and to establish, operate and wind up personal pension schemes. It's also authorised to advise on investments, pension transfers and opt outs, and P2P agreements with limitations.

MW is a member directed pension scheme provider and it acts on the instruction of its members.

City Pensions Limited was the provider and scheme administrator of the City Private Pension (CPP) branded under the trading name of City Trustees (CT). The professional trustee is City Trustees Limited (CTL). With effect from 31 October 2014, City Pensions Limited (CPL) was formally integrated with MW. From this date, MW replaced CPL as the scheme operator and administrator. CT was a trading brand of MW until 1 October 2018, but it is now fully operational as MW. Although it has undergone these changes, for ease of reference, I'll refer to the SIPP operator as MW throughout.

Blue Horizons/VARone

Blue Horizons and VARone were investment/sales agents for the Store First investment, and Mr T says he was one of its clients. Blue Horizon and VARone were not regulated by the FCA and not authorised to provide investment or pension advice.

Blue Horizons were named by Mr T as the entity that introduced him to the Store First investment and advised him to open a SIPP with MW to facilitate the investment. For clarity, I will refer to the introducer as Blue Horizons throughout my decision.

Store First

The Store First investment took the form of one or more self-storage units, which were part of a larger storage facility in a UK location. Investors bought one or more units in the facility and (based on the information I have seen about the investment) were offered a guaranteed level of income for a set period of time. After that, they could either take whatever income the unit(s) provided, or sell them (assuming there was a market for them).

The Store First investment was marketed as offering a guaranteed 8% return in the first two years, with an indicated return of 10% in the following two years, and 12% in the next two years. It was also marketed as offering a "guaranteed" buy back after five years. However, apart from income of 8% for the first year or two, investors didn't receive the marketed returns. In addition, investors found the investment illiquid and difficult to sell, and those who did manage to sell received very little of what they paid for it.

In May 2014, the Self Storage Association of the UK (SSA UK) issued a press release (amended in January 2015), detailing the outcome of a review it had commissioned Deloitte LLP to undertake of the marketing material made available to potential investors by Store First.

The release recommended that any potential investors in Store First storage units consider the following key points before making any investment decision:

- *What will the impact be on the business model if VAT is charged on the rental of storage units to customers following a review by HMRC?*
- *How is Store First funding guaranteed returns to investors? Is this from operating profits, the proceeds from the sale of other storage pods to investors, or a different source?*
- *Compare the total value being paid for all the units in a Store First self storage site against the price at which stand-alone self-storage businesses have been valued and sold at recently.*
- *Consider if there is a realistic re-sale opportunity for, and exit, from this investment, particularly if Store First exits the business.*
- *Research the performance of investments based on a similar investment model that have been offered primarily in Australia, such as Ikin Self Storage in Townsville, Queensland and Strata Self Storage in Melbourne* (these schemes had failed).

The release refers to a number of misleading and inaccurate statements made by Store First in its marketing material. It also makes the following observations:

> *"SSA UK's investigations indicate that these storage units are being rented to the general public at approximately £18 - £21 per square foot including insurance. Normally the rent paid by a self-storage operator would be at most half of the income per square foot earned through storage fees. Presuming the Store First sites were at industry average occupancy levels, SSA UK believe that they would have to be earning £23.95 per square foot just to pay the guaranteed rent to investors, excluding operating costs such as insurance, staff, business rates, utilities, marketing and management fees for Store First.*
>
> *Furthermore, this does not factor in the losses incurred by each site as it takes some years to reach a mature occupancy level. During this time, Store First is obliged to pay the guaranteed returns to investors, yet there does not appear to be sufficient income from the operations of the business to fund these returns.*
>
> *In addition, the analysis SSA UK has seen indicates that the purchase price being paid per square foot by investors to Store First for these self-storage units taken together equates to a much higher value than they would be worth if the whole sites were sold as stand-alone self- storage stores.*

> *….a very serious question arises over how Store First is funding the guaranteed returns to existing investors, considering the absence of bank funding and the likely level of losses that require funding in each new store. It may yet prove to be the case that the rental returns being paid to investors are in fact being funded from the sale proceeds of new units, and not the operation of the self-storage business."*

On 30 April 2019 the courts made an order shutting down Store First and three of the related companies by consent between those four companies and the Secretary of State. The Official Receiver was appointed as liquidator. At the time, the Chief Investigator for the Insolvency Service said:

> *"These four companies unscrupulously secured millions of pounds worth of investments using a variety of methods that misled investors, particularly those with pension savings.*
>
> *The court rightly recognised the sheer scale of the problem caused by Store First's sales of a flawed business model, based on misrepresentation and misleading information and has shut down these companies in recognition of the damage done to investors retirement plans."*

Currently a company called Pay Store (trading as Store First) manages the Store First sites and rents out the storage units. The Official Receiver sold the freeholds of each Store First site to a company called Store First Freeholds Limited. As a result, the investors were offered the opportunity to transfer their investment to this company, for nil consideration. This opportunity was accepted by Mr T and the ownership of the Store Pods held in his SIPP was transferred away from him for a nil value. Mr T's SIPP remains open.

In the judgment in *Adams v Options SIPP UK LLP (formerly Options Pensions UK LLP) [2020]* EWHC 1299 (Ch) ('*Adams v Options 2020'*), the judge found the value of Mr Adams' six pods, acquired for around £52,000 in July 2012, to be £15,000 as of January 2017. And in the judgement in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 ('*Adams v Options 2021'*) it was stated that, in February 2020, Options had said it was valuing Storepods at £430 each following (then) recent sales of Store First storage units at auction and the Court used that value in assessing the redress due to Mr Adams.

What happened

Mr T says that during 2013 he was 'cold called' by Blue Horizons offering him a pensions review. As part of this review he says he was introduced to the Store First investment proposition whereby he would transfer the funds held in his existing pension provision into a SIPP held with MW, and then invest the funds into Store Pods.

Mr T completed a Store First application form on 21 November 2013, which was apparently prior to any contact with MW. In this he stated to Store First that he wished to purchase 41 storage pods, each costing £3,750 with a total cost of £153,750.

On 9 December 2013 Mr T completed an application to open a SIPP with MW, in which he named Store First as the investment he intended to hold within it. He indicated he wished to transfer the value of two personal pensions into the SIPP once it was established, and to then immediately take some income from it.

In February 2014 a total of £159,413.96 was transferred into the newly established SIPP from Mr T's personal pension plans.

On 7 March 2014 Mr T completed a MW '*Property Purchase Questionnaire'.* In this he applied to hold in his SIPP Storage Pods located in Manchester, which he intended to purchase on a leasehold basis from the vendor Store First Limited, for a total of £116,250. This application to hold Storage Pods within its SIPP was approved by MW on 9 April 2014, and the purchase was completed on 29 April 2014.

On 1 May 2014 Mr T took £39,859.69 tax-free cash as a pension commencement lump-sum (PCLS).

Mr T received two payments, both for £9,300 into his SIPP from Store First on 27 May 2014 and 12 May 2015. These represented the initial two years guaranteed rental returns.

On 8 March 2016 Store First wrote to Mr T to tell him it intended to break the lease, in accordance with the contract, from 30 April 2016, and invited him to enter into a lettings agreement with Store First Management Ltd. Mr T signed to agree to this on 16 March 2016.

Mr T's complaint to MW.

On 25 February 2019, via his representative, Mr T complained to MW. In summary he said:

- MW had breached its duties as a trustee by failing to identify that the proposed investments were unsuitable for him.
- MW had breached its duties as a trustee by carrying out an inadequate review of the investments.
- MW was aware he had received no investment advice from an authorised and regulated Independent Financial Adviser (IFA) and had in fact been introduced by an unregulated firm.
- Having considered the investment in combination with the referral from an unregulated firm, MW ought to have refused to facilitate the transfer into the SIPP and the investment.
- Introductions, such as those from Blue Horizons, carried the clear hallmarks of irregular investments, and MW ought to have been monitoring and assessing the relationship with introducers.
- It was clear that Blue Horizons had advised on both the pension transfer and the investments, so there had been a breach of s27 Financial Services and Markets Act 2000 (FSMA).

MW didn't uphold his complaint. In its response letter dated 16 April 2019 it said, in summary:

- Mr T had completed the SIPP application, the execution-only investment authorisation, and an unregulated investment declaration. This demonstrated his awareness that he was bound by the terms of the governing trust deeds and rules, that the forms had been completed correctly, and that he was a co-trustee of his own arrangements.
- He was aware of his cancellation rights.
- He had signed to also agree he hadn't sought or received financial advice from MW and didn't expect MW to be responsible for exercising any judgement on his behalf regarding the merits of the actions he was undertaking.
- He had signed and dated the Store First purchase application several weeks before approaching MW, thereby making his intention to invest clear.

- Mr T had asked MW to re-invest the first rental payment of £9,300 back into further Store Pods, but it had refused.
- Rent from the Store Pods has continued to be paid into Mr T's SIPP, with (to the date of the letter) £26,208.42 having been received.
- Mr T had received £39,859.69 PCLS on 5 May 2014.
- MW had no connection with Blue Horizon or Store First.
- There had been no breach of FSMA 2000 or the Regulated Activities Order.
- Due Diligence and an investment review were carried out to identify whether Store First was an acceptable SIPP asset, based on HMRC rules. It was deemed to be an acceptable asset *at the time* (MW's emphasis).
- MW had urged Mr T to seek regulated financial advice. It didn't know why Mr T had not done this.
- MW refuted as baseless the claim that it accepted introductions "*of potential business from Blue Horizon firm on a regular basis".*
- MW had no relationship with the individual who suggested the investment, or MW's services. There was no agreement so there was no introducer.

Mr T didn't accept MW's response to his complaint so he referred it to our Service where it was considered by an Investigator. And having considered everything, the Investigator thought his complaint should be upheld. He didn't think MW had carried out sufficient due diligence on the Store First investment before allowing it to be held in its SIPP. He said that if MW had completed a more thorough investigation of Store First and the store pod investment it ought to have concluded that allowing it in its SIPP would create a high chance of consumer detriment. And having identified this risk, MW ought to have refused to accept the SIPP application and Store First investment, not put in place a process asking Mr T to sign declarations in an attempt to absolve itself of its responsibilities.

Our Investigator then set out how he thought MW were responsible for redressing Mr T's loss to his pension provision, and how MW ought to calculate what he was due.

But MW did not agree with this outcome. It said that it considered Mr T's complaint should be time-barred as per the three-year part of the regulator's rules under DISP 2.8.2 (2)(b), because it thought Mr T was aware he had cause for complaint in June 2014, August 2015, and March 2016.

In relation to the merits of Mr T's complaint and the Investigator's assessment, it said in summary:

- The case law mentioned by the Investigator bore little reference to the specific facts of Mr T's case.
- Despite stating MW were not responsible for ensuring the investment was suitable for Mr T, the Investigator has gone on to refer to points that are to do with suitability of an investment, rather than the due diligence required.
- MW was not acting as a financial adviser and could not comment on the suitability of the investments, the returns stated or the transfer.
- There is nothing within the 2009, 2012 or Dear CEO letter that evidenced that SIPP operators should be liable for unsuitable transfers from one SIPP to another.
- Constant referencing to suitability is suggesting that SIPP operators have the same

responsibility as advisers for suitability.

- MW had numerous controls, documents and procedures in place to satisfy the regulator's criteria.
- There had been no consideration of Mr T taking responsibility for his own decisions. He had numerous opportunities to stop the process and withdraw his application, and his investment in another non-standard high-risk product with another provider shows his determination to proceed.
- Whilst the investment was unregulated, the Investigator had failed to consider it as a leasehold property purchase. The investment was registered with land registry, with its own property title. MW also reviewed a valuation report and the legal searches conducted.
- Property value goes up and down, and tenant's rent cannot be guaranteed. A SIPP operator cannot be held liable if a tenant went bankrupt.
- The suggestion that persons involved in Store First had been involved in another failed property investment scheme was irrelevant. And any internet articles about one of the directors postdated Mr T's investment.
- Other SIPP operators were accepting Store First investments at the time, so had it declined Mr T's investment he would have just chosen an alternative to continue with his plans.
- The headline statements on the Store First documentation have all shown to be correct.
- As from 2 April 2022 land registry confirms the pods are owned by Store First Self Storage Ltd, so are no longer owned by Mr T.

MW sent some further evidence to support the level of due diligence it had carried out. It also maintained its position that Mr T had made his complaint too late under the regulator's rules, so it wasn't one that our Service could consider. As a result the complaint has come to me for a decision.

In considering whether Mr T's complaint had been made too late, I could see that it had been made on 25 February 2019 (received by MW on 13 March 2019). And the complaint related to the due diligence MW carried out on his SIPP application and set up, and the subsequent investment, which occurred between December 2013 and April 2014. So as it appeared Mr T had made his complaint within six years, it was within the time-limits set out in the regulator's rules. I pointed out these dates to MW and it agreed it had made an oversight, and Mr T's complaint had been made in time.

In regard to the merits of Mr T's complaint, on 25 January 2024 I issued a provisional decision in which I concluded that I thought Mr T's complaint should be upheld. I thought there was a significant risk of consumer detriment associated with the Store First investment when it was to be held within a SIPP, and this was a risk that MW ought to have recognised and acted upon. I thought MW had not carried out sufficient due diligence on the Store First investment and should not have accepted Mr T's SIPP application. And had it not accepted it, Mr T would not have suffered the losses to his pension fund.

I then went on to set out how I thought MW ought to calculate and redress any loss that Mr T had suffered to the value of his pension fund.

Mr T accepted the provisional findings, and gave some information regarding his current state pension income and tax position. He said he was in receipt of the state pension of approximately £907 per month, so was under the basic rate tax threshold.

MW did not accept the provisional findings and provided a detailed response. This included a reiteration of some points raised in earlier correspondence that I've already summarised earlier in this decision. So I've set out below a summary of what I consider to be the main new points in the response to my provisional decision. However, the list isn't exhaustive and before making this decision I carefully considered the response in full.

- This investment was the purchase of a leasehold property, which was registered at the land registry and had its own property title.
- There were two other professional bodies in the transaction – a chartered surveyor (GW) and a qualified legal professional (HP).
- GW completed a valuation of the store pods in January 2014 and found their value to be higher than the price Store First was seeking.
- No SIPP provider would require a direct investment into a leasehold property to be advised on as they are property investments.
- In leasehold property purchases SIPP providers are not expected to undertake reviews and checks on sellers as this is the role of the solicitors. There was nothing more MW could have done in this regard.
- It was irrelevant that there were newspaper articles for Mr Harvey and the failed property investment, because the Store First investment was for a leasehold where title deeds were produced, and investors were paid the guaranteed 8% for the first two years, and rent was received for the subsequent years until the sale.
- The unregulated introducers mentioned were similar to estate agents, who are also unregulated. The brochure produced was similar to that of an estate agent's brochure of a property, which would outline the premises, terms and current rent in place.
- A SIPP provider should not be held liable for rent not being paid in accordance with the lease, or if the property value falls.
- A SIPP provider should not be required to carry out due diligence on the sellers of a property asset before it can be purchased by the SIPP.
- The provisional decision was reached with the benefit of hindsight, using current rules retrospectively.
- Store pods were being widely accepted at the time by other SIPP operators, so it was incorrect to assume that another operator would not have accepted Mr T's application had MW refused it.
- MW believes Mr T would have placed the investment with another provider had MW refused. Mr T had a history of investing in high-risk investments, without taking financial advice, even when it was recommended he take such advice.
- HP have subsequently been found to have acted dishonestly. MW were not responsible for a bona fide leasehold property purchase, where other professional parties were advising/involved in the process.

MW then made some points about the proposed redress calculation:

- The store pods should not be given a £nil value.
- The pods retained some value and should be subject to a valuation by a qualified surveyor.
- MW should not be held responsible for Mr T's wishes to sell the store pods under market value.

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.

And in doing so I have fully considered MW's submissions in response to my provisional decision. But whilst I have considered all the submissions made by both parties, I've focussed here on the points I believe to be key to my final decision on what is fair and reasonable in the circumstances.

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.

In light of Mr T's complaint, what I'll be looking at here is whether MW took reasonable care, acted with due diligence and treated Mr T fairly, in accordance with his best interests, and what I think's fair and reasonable in light of that. And I think the key issues in Mr T's complaint are whether it was fair and reasonable for MW to have accepted Mr T's SIPP application in the first place, and whether MW carried out sufficient due diligence on the Store First investment before allowing it to be held in its SIPP.

Mr T has said, as part of his complaint, that MW knew that he had been advised and introduced to it by a firm (Blue Horizons) which was not authorised or regulated by the FCA, and MW had failed to carry out sufficient due diligence on Blue Horizons. And further to that, in accepting the business from Blue Horizons, MW may have been in beach of Section 27 FSMA 2000.

Section 27 FSMA 2000 states, as far as is relevant here:

> *An agreement that … is made by an unauthorised person ("the provider") in the course of carrying on a regulated activity…not made in contravention of the general prohibition, but…in consequence of something said or done by another person ("the third party") in the course of a regulated activity carried on by the third party in contravention of the general prohibition…is unenforceable against the other party".*

I have considered this argument, but ultimately I haven't reached any findings on this point as I consider this unnecessary. As I go on to explain below, I don't think that Mr T's application to open a SIPP for investment in Store First ought to have been accepted by MW at all.

Relevant considerations

Having carefully reconsidered all of the evidence, including the submissions in response to my provisional decision, I remain of the view that the relevant considerations in this case are those that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have been made, I've largely repeated what I said about this point in my provisional decision.

I have carefully taken account of the relevant considerations to decide what is fair and reasonable in the circumstances of this complaint.

In my view, the FCA's Principles for Businesses are of particular relevance. The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the* *fundamental obligations of firms under the regulatory system"* (PRIN 1.1.2G). Principles 2, 3 and 6 provide:

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

I have carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) (BBA) Ouseley J said at paragraph 162:

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

And at paragraph 77 of BBA Ouseley J said:

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

In *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) (BBSAL), Berkeley Burke brought a judicial review claim challenging the decision of an Ombudsman who had 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 had not 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."*

The BBSAL judgment also considers s228 of 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 have 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 is 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 am 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 2020'*. 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 2021'*. I've taken account of both these judgments when making this decision on Mr T's case.

I note that the Principles for Businesses did not form part of Mr Adams' pleadings in his initial case against Options SIPP. And HHJ Dight did not 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 do not say this means *Adams* is not a relevant consideration *at all.* As noted above, I have taken account of both judgments when making this decision on Mr T's case.

I acknowledge that COBS 2.1.1R (*A firm must act honestly, fairly and professionally in accordance with the best interests of its client)* overlaps with certain of the Principles, and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R a breach of which, he argued, was actionable pursuant to s138(D) of 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 did not 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 2020'*, 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."*

There are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr T's complaint. The breaches alleged by Mr Adams were summarised in paragraph 120 of the Court of Appeal judgment. In particular, as HHJ Dight noted, he was not asked to consider the question of due diligence before Options SIPP agreed to accept the store pods investment into its SIPP.

The facts of this case are also different, and I need to construe the duties MW owed to Mr T under COBS 2.1.1R in light of the specific facts of Mr T's case.

To confirm, I have considered COBS 2.1.1R - alongside the remainder of the relevant considerations, and within the factual context of Mr T's case, including MW's role in the transaction.

However, I think it is 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 am 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 MW was under any obligation to advise Mr T on the SIPP and/or the underlying investments under the circumstances. Deciding to not accept an application because it was being set up to invest in a product that MW considered unsuitable for its SIPP, isn't the same thing as advising Mr T on the merits of the SIPP and/or the underlying investments.

Overall, and having considered closely MW's submissions both initially and in response to my provisional decision, I am 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 T's case.

The regulatory publications

The FCA (and its predecessor, the FSA) has issued a number of publications which remind 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.

Whilst all are a good indication of the type of things a SIPP operator should have been doing to act in the best interests of their clients, I acknowledge that the 2009 thematic review report was mainly focussed on the relationship between introducers/intermediaries and SIPP providers.

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

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

All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a 'client' for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes."

The October 2013 finalised SIPP operator guidance reminded SIPP operators of what the FCA considered good practice when it came to adviser/introducer and SIPP operator relationships. It also went on to say the following:

"Due diligence

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

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

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

The *"Dear CEO"* letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence, and these are of particular relevance in this complaint. It says those obligations could be met by:

- *Correctly establishing and understanding the nature of an investment*
- *Ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation*
- *Ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)*
- *Ensuring that an investment can be independently valued, both at point of purchase and subsequently*
- *Ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc)*

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

I acknowledge that the 2009 and 2012 reports and the *"Dear CEO"* letter are not formal *"guidance"* (whereas the 2013 finalised guidance is). However, the fact that the reports and *"Dear CEO"* letter did not constitute formal guidance does not 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 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 am, therefore, satisfied it is appropriate to take them into account.

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

I'm also satisfied that MW, at the time of the events under consideration here, thought the October 2013 finalised SIPP operator guidance was relevant, and thought that it set out examples of good industry practice. MW *did* carry out some due diligence on Store First, so it clearly thought it was good practice to do so, at the very least.

Like the Ombudsman in the BBSAL case, I do not think the fact that the 2014 'Dear CEO' letter post-dates the events that took place in relation to Mr T's complaint, mean that the examples of good practice it provided were not good practice at the time of the relevant events. Although the later publication was published after the events subject to this complaint, the Principles that underpin it existed throughout, as did the obligation to act in accordance with the Principles.

It is also clear from the text of the 2009 and 2012 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 is clear the standards themselves had not changed.

That doesn't mean that in considering what is fair and reasonable, I will only consider MW's actions with these documents in mind. The reports, Dear CEO letter and guidance gave non-exhaustive examples of good practice. They did not 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.

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 T's SIPP application, MW 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 MW should've done to comply with its regulatory obligations and duties.

And in doing this I am not using hindsight, or applying current rules retrospectively. I remain satisfied that MW had to comply with the regulatory obligations at the time. And these were set out in the Principles and the publications listed above.

So having done this, and taking into account the factual context of this case, it's my view that in order for MW to have met its regulatory obligations, (under the Principles and COBS 2.1.1R), it needed to treat Mr T fairly in its decision whether to accept his application for the SIPP whilst knowing that he had not received regulated advice and that he was intending to invest the majority of his pension fund in Store First.

Ultimately, what I'll be looking at here is whether MW took reasonable care, acted with due diligence and treated Mr T 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 T's complaint is whether it was fair and reasonable for MW to have accepted his SIPP application and Store First application in the first place. So, I need to consider whether MW carried out adequate due diligence checks on the Store First investment before deciding to accept Mr T's applications.

MW says it carried out due diligence on Store First before accepting it as an investment in its SIPP. And from what I've seen I accept that it undertook some checks. However, the questions I need to consider are whether MW undertook sufficient due diligence and whether MW ought to have, in compliance with its regulatory obligations, identified that consumers investing in Store First were being put at significant risk of detriment as a result. And, if so, whether MW should therefore not have accepted Mr T's SIPP application.

Ultimately, I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And to do this I have taken into account all of the relevant considerations I've mentioned earlier in this decision. I'd also like to reassure MW that I have closely considered all the material it has sent to support its position, including that sent in response to my provisional decision, that it undertook due diligence on Mr T's proposed investment.

What did MW's obligations mean in practice?

In this case, the business MW was conducting was its operation of SIPPs. I'm satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject particular investments. The regulators' reports and guidance provided some examples of good practice observed by the FSA and FCA during their work with SIPP operators. This included being satisfied that a particular investment is appropriate to accept. That involves conducting checks – due diligence – on investments to make informed decisions about accepting business. This obligation was a continuing one.

I am satisfied that, in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, MW should have carried out due diligence on the Store First Investment which was consistent with good industry practice and its regulatory obligations at the time. And in my opinion, MW should have used the knowledge it gained from its due diligence, including more information about Store First's company structure, business model and sales and marketing processes, to decide whether to accept or reject the Store First investment.

And this obligation was a continuing one, and one that it seems MW was aware of. I say this because MW has confirmed that it [CPP] decided that due to early industry concerns a business decision was taken not to allow any new investments [in Store First] from around June/July 2014. MW has been unable to tell me why CPP made this decision as the records no longer exist. However, given the timing of this decision I think it most likely that it was taken in response to the May 2014 SSA UK press release about Store First that I've mentioned above.

As I go on to explain below, I don't think MW undertook sufficient due diligence, and that if it had, it ought to have concluded that it shouldn't accept Mr T's application. In my view, the contract between MW and Mr T does not mean that MW should not be held responsible for failing to comply with its regulatory obligations to carry out adequate due diligence on the Store First investment, which ultimately led to Mr T losing a significant part of his pension. This is especially true when MW had obtained information about the Store First investment before it facilitated Mr T's application, which later led it to significantly tightening its acceptance criteria (which, as I will set out below, Mr T did not meet). It would not be fair and reasonable to say MW could ignore all red flags and proceed with Mr T's business regardless.

Investment due diligence

I think that it's fair and reasonable to expect MW to have looked carefully at the Store First investment *before* permitting it into its SIPPs. For MW to accept the Store First investment without carrying out a level of due diligence that was consistent with its regulatory obligations, while asking its customer to accept warnings absolving it of the consequences, wouldn't in my view be fair and reasonable or sufficient. And if MW didn't look at the investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure or might be fraudulent, it wouldn't in my view be fair or reasonable to say MW had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

<u>What did MW do?</u>

MW has shown that in January 2013 it undertook an '*Unregulated Investment Review'* of the Store First investment. It said this was completed:

"*…as part of a review process on a proposed investment to assess its capability of being held within a SSAS or SIPP. We look to identify whether the investment is likely to be acceptable based on H M Revenue & Customs rules…*"

So this shows that MW understood that its due diligence obligations included ensuring an investment met HMRC rules. This document then described the type of property the investment contained and spelled out some more of the details including the proposed investment return, who was involved, and how the investment could be disposed of. This document was completed before the Store First investment was accepted by MW as suitable for being held within its SIPP.

MW says it also obtained copies of Store First's marketing material. It has provided us with copies of this, and I think this was a reasonable step for it to take. In order to correctly understand the nature of the investment, I think it's fair and reasonable to say MW should have reviewed how Store First was marketed to investors – particularly as it was proceeding on the basis that these investments were being made by consumers, such as Mr T, without regulated advice being provided. Clearly MW thought it was important to obtain this material at the time too.

MW has also provided the results of some local searches which were undertaken between November 2013 and January 2014, and in response to my provisional decision MW has provided evidence that it obtained valuations of the Store Pods from a qualified surveyor in January 2014 which it says shows they were actually worth more than Store First were selling them for.

<u>Was this sufficient due diligence in the circumstances?</u>

Given the circumstances involved here, I don't think the above alone was reasonable or sufficient to meet MW's regulatory obligations and good industry practice. Crucially, I don't think MW took appropriate steps or drew reasonable conclusions from the information that was available to it. To be consistent with its regulatory obligations, MW should not *only* have obtained the material, it should have given careful consideration to it.

The marketing material included, amongst others, the following prominent statements:

- *"You will receive guaranteed returns from a 6 year lease already in place upon completion, making this a high yielding, hassle-free investment which has been specifically designed to meet the needs of today's astute investor."*
- *"You will receive a 6 year lease in place upon completion. The lease produces an excellent return of 8% (guaranteed for the first 2 years) rising to over 12% in years 5 and 6. The lease contains upward- only rental reviews and break clauses for both parties every two years."*
- *"Guaranteed exit route option."*

Following some pictures of various storage facilities it was marketing across the UK, the marketing material then goes on to set out in a table the returns payable in years 1&2, 3&4 and 5&6 at 8%, 10% and 12% respectively. In the question-and-answer section of the marketing material the following is included:

What rental income can I expect? **"**

Storepod rental starts at £17 per Sq/Ft per annum. The 6 year tenancy/lease in place on your Storepod has fixed upwards only rental reviews and break clauses (for both parties) every 2 years. This produces an 8% yield on your investment *within the first two years, this then is predicted to rise to over 10% return in years 3&4 and then surpass 12% return in years 5&6.*

Can I easily re-sell my Storepod?

Yes. You can re-sell your Storepod at any time and selling your Storepod couldn't be simpler. Store First Ltd can market your Storepod upon your request. We believe that because Storepods are so competitively priced when new, they will make a very attractive sale proposition in the future. We also expect that many tenants will wish to purchase the Storepod they are using. For example, other self storage PLCs usually achieve rent of between £20.00 - £25.00 per square foot. Our Storepods are costed at a rent of only £17.00 per square foot; once higher rents are achieved the capital value of the Storepod will increase.

Guaranteed exit route?

In year 5, investors have the option to enter the guaranteed buy-back scheme. In this scheme, Store First Management Ltd will guarantee to buy the Storepod back off the investor for the original price paid within the next 5 years. This is a unique offer in the market place and we are happy to be able to offer this exit route to our investors.

Most investors are driven to keep the property investment they have purchased and carry on receiving the rental yield produced for years to come, this means only a very limited number of Storepods per centre will ever come onto the resale market, this creates a high sale value and demand for the future".

The material says the following: "*All sales subject to contract, terms and conditions apply. Figures shown are for illustration purposes*". But it does not contain any type of risk warning, or illustrations of any other returns. No explanation of the guarantees was offered, or the basis of the projected returns – other than Store First's own confidence in its business model and the self-storage marketplace.

I think this all gave an unfair and inaccurate impression to potential investors of a secure investment which would provide a good return with little risk to their capital. Store First appeared to be presenting the investment as one that was assured to provide high and rising returns, was underwritten by guarantees, and offered a high level of liquidity together with a strong prospect of a capital return - despite the fact that there was no investor protection associated with the investment.

MW, in its response to my provisional decision, has said the brochure was similar to an estate agents brochure of a property. But as I've said, MW had distinct regulatory responsibilities, and those included to prevent consumer detriment. And I remain satisfied that MW ought to have closely considered the contents of the brochure with these obligations in mind, and so ought to have concluded that it gave an unfair and inaccurate impression of the investment.

And having considered the results of the local searches that were undertaken I can see these would have been useful to show the investment site had a viable local infrastructure, but I can't see it went very far to assist MW to understand more of the nature of the investment, and who was involved in the business and marketing, before MW decided that Store First would be acceptable to be held in its SIPPs.

I've seen no evidence that MW, or any third party on its behalf, carried out company searches on Store First and the businesses linked to it, such as its promoter, Harley Scott Holdings Ltd. Although there is nothing to suggest this promotor had any direct involvement with Mr T's specific investment, they had significant links to the investment itself. Company searches would have given MW a better understanding of the investment and Store First's structure and business model (including how it was being promoted). And consistent with its regulatory obligations, MW should not have only carried out the searches but also given careful consideration to what they revealed.

Had searches on Harley Scott Holdings Ltd been completed, they would have revealed it had a website address "dylanharvey.com", and had changed its name three times having previously been called Dylan Harvey Group Ltd, Dylan Harvey Ltd and Grangemate Ltd. The searches would also have revealed County Court Judgments (CCJs) were recorded against the business and that auditors had made adverse comments in the previous three reporting years.

I think this is the sort of important information MW could have obtained had it conducted sufficient due diligence to meet its regulatory requirements. And it is reasonable in my view to conclude that this information, had it been obtained, ought to have prompted MW to have conducted some further basic searches, given there were factors which ought to have been of concern – namely the adverse comments for the previous three years, the CCJs, and the fact the business had recently changed its name.

A simple internet search at the time of the events (i.e. in January 2013 when the investment review was carried out) would have revealed that Dylan Harvey and one of its directors, Toby Whittaker, were the subject of a number of national press reports, online petitions and proposed legal action, as a result of a failed property investment. It was reported that hundreds of investors had invested money in a scheme to develop flats, but the flats had not been built and the investors had been unable to recover their money. Those investors were behind the online petitions and proposed legal action.

To be clear, I am not saying that MW are, or would be at fault because the rental income was not what was illustrated in the brochure, or because the Store Pods lost value. I am saying that MW had 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.

And in order to meet those regulatory obligations MW needed to conduct due diligence on the proposed investment, and this included making checks on the seller of the investment. So I remain satisfied that the fact that there were recent negative reports and proposed legal action against the director of one of the investment promotors, and that there were recent CCJs, ought to have been discovered by MW, and it ought to have taken this information seriously.

Given the circumstances involved here, I don't think what MW did was reasonable or sufficient to meet its regulatory obligations. Crucially, I don't think MW took appropriate steps or drew reasonable conclusions from the information that was available to it before accepting Mr T's application.

<u>If MW had completed sufficient due diligence on Store First, what ought it reasonably to have concluded?</u>

As set out above, if MW had undertaken due diligence in line with its obligations, under the circumstances I think it ought to have become aware that:

- The trading history of Store First's marketing partner was a cause for concern.
- The marketing material being provided to prospective investors, such as Mr T, by Store First appeared to be unfairly presenting the investment as one that was assured to provide high and rising returns, was underwritten by guarantees, and offered a high level of liquidity together with a strong prospect of a capital return.
- Store First had little proven track record for investors.
- Store First was being sold and marketed by an unregulated business.

The failure of the previous scheme which Dylan Harley/Harley Scott Holdings had been involved in may have been entirely down to market forces, but there were aspects of the press reports which I think ought to have given MW cause for concern. And I think the information that Store First's marketing partner company had recently been involved in a property investment scheme which had failed, had recently changed its name, and had been subject to a number of adverse comments in succession, following audit, ought to have given MW significant cause for concern. Particularly when it considered the marketing material for Store First.

As I've said above, in my view there were a number of things about the marketing material which ought to have given MW significant cause for concern and to have led it to have drawn similar conclusions to those later drawn by SSA UK (on the basis of a report by Deloitte LLP) and the Insolvency Service. Namely, that there was a significant risk that potential investors were being misled by the marketing material. I think, as it had regard to this material, it wouldn't have been fair and reasonable for MW to overlook the fact that Store First appeared to be presenting the investment as one that was assured to provide high and rising returns, whilst being underwritten by guarantees, and offering a high level of liquidity together with a strong prospect of a capital return - despite the fact that there was no investor protection associated with the investment, and the investment was potentially illiquid.

Store First had little proven track record for investors at the time, so under the circumstances I think it was particularly important that MW undertook sufficient due diligence. MW couldn't be certain that the investment operated as claimed, and MW should also have been concerned about a guarantee offered by a new business with little track record (and promoted by a business with a questionable one).

I think, in light of this, MW should have been concerned that consumers may have been misled or did not properly understand the investment they intended to make. Consumers could easily have been given the impression, from the marketing material, that they were assured of high returns with little or no risk and would easily be able to sell their investment when they wished to. Such an impression was clearly misleading, and I think these were concerns MW ought to have identified at the time.

I think all of this should have been considered alongside the fact the investment was being sold and marketed by an unregulated business. MW has said that the firms marketing the Store Pods investment were no different to estate agents, who are themselves not regulated. But I think this was very different. MW needed to ensure the Store Pods were suitable to be held within its SIPP as an investment within its client's pension fund. And being the operator of the SIPP, as I've said above, meant MW had distinct regulatory obligations to treat its customers fairly and prevent consumer detriment. In my opinion MW ought, acting fairly and reasonably and in line with its obligations, to have concluded there was an obvious risk of consumer detriment, so the Store First investment ought not to have been accepted by MW as suitable for its SIPP.

From the evidence I've seen, I think the information Store First was publishing *before* Mr T's MW monies were invested with it, including marketing material available through its website, gave rise to a significant risk that potential investors were being misled by Store First. And I think that MW ought to have identified this *before* permitting the Store First investment into its SIPPs. This is a clear point of concern, which I think MW ought reasonably to have identified *before* it accepted Mr T's application to invest in Store First.

In my opinion, the issues I've identified above should have, when considered objectively, put MW 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 MW shouldn't have accepted the Store First investment.

In my opinion it's fair and reasonable to say that MW ought to have concluded there was an obvious risk of consumer detriment here. All in all, I am satisfied that MW ought to have had significant concerns about the Store First investment from the beginning. And I think such concerns ought to have been a red flag for MW when it was considering whether to accept the Store First investments into its SIPPs. Such concerns emphasise the importance of sufficient due diligence being undertaken *before* investments are accepted and *before* SIPP investors monies are invested.

Had MW 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 there was a significant risk of consumer detriment if it accepted the Store First investment into its SIPPs, and that the Store First investment wasn't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think MW 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 Store First investment *before* it accepted that investment into its SIPPs. I don't think MW met its regulatory obligations and, in accepting Mr T's application to invest in Store First, it allowed Mr T's funds to be put at significant risk.

I don't say MW should have identified all the issues the SSA UK press release set out, or to have foreseen the issues which later came to light with Store First. I only say that, based on the information available to MW at the relevant time, it should have drawn a similar overall conclusion – that there was a significant risk that potential investors were being misled. I'm satisfied, on a fair and reasonable basis, that a significant risk of consumer detriment ought to have been apparent from the information available to MW at the time. And I do think that appropriate checks would have revealed issues which were, in and of themselves, sufficient basis for MW to have declined to accept the Store First investment in its SIPPs *before* Mr T invested in it. And it's the failure of MW's due diligence that's resulted in Mr T 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 in this case MW wasn't expected to give advice to Mr T on the suitability of the SIPP and/or Store First investment for him personally. To be clear, I'm not making a finding that MW should have assessed the suitability of the SIPP or Store First investment for Mr T. And I'm also not saying that MW shouldn't have allowed the Store First investment into its SIPPs because it was high risk. My finding isn't that MW should have concluded that Mr T wasn't a candidate for high risk investments or that an investment in Store First was unsuitable for him. Instead, it's my fair and reasonable opinion that there were things MW knew or ought to have known about the Store First investment, and how it was being marketed, which ought to have led MW to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that MW failed to act with due skill, organise and control its affairs responsibly, or treat Mr T fairly by accepting the Store First investments into his SIPP.

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

Acting fairly and reasonably to investors (including Mr T), MW should have concluded that it wouldn't permit the Store First investment to be held in its SIPPs *at all*. And I'm satisfied that Mr T's pension monies were only transferred to MW so as to effect the Store First investment. So, I think it's more likely than not that if MW hadn't permitted the Store First investment to be held in its SIPPs at all, that Mr T's pension monies wouldn't have been transferred to MW. Further, that Mr T wouldn't then have suffered the losses he's suffered as a result of transferring to MW and investing in Store First.

And it follows that Mr T's application for a SIPP to invest in Store First ought to have been refused. I think it was clear from the outset that Mr T would be investing significant sums in Store First. I think this because the intended investments were noted in the SIPP application form, and an email chain provided to me by MW shows there appeared to have been a conversation between MW and Mr T prior to the application being submitted, where his proposed investment was discussed.

So in summary, by the time Mr T submitted his application to MW to open a SIPP, had MW complied with its regulatory requirements to conduct sufficient due diligence on Store First, it ought to have come to the conclusion that Store First was not a suitable investment to be held in its SIPP. So it should not have accepted his application at all.

But in addition to my conclusions above, it is clear that around the same time as Mr T's application to open a SIPP was submitted, MW had significant concerns about the Store First investments, and whether they should be accepted into its SIPPs at all without restriction. MW hasn't said anything further about this in response to my provisional decision, so, while taking into account all of the submissions that have been made, I've largely repeated what I said about this point in my provisional decision.

MW has provided me with a copy of an internal email chain, dated 19 December 2013. This was from MW's Business Development Manager team head (EC) and is worded as follows:

> *"We have been in lengthy dialogue with Store First about creating a high volume strategic partnership. As part of our due diligence we asked for lots of information about advice processes, client money and the second hand market for these commercial storage pods. After reviewing the Store First response to these and after a discussion with their CEO yesterday we have agreed to **NOT** to pursue this any further.*
>
> *I am aware we have a number of these cases in the pipeline and I wanted to clarify what I have agreed with [x] this morning.*
>
> *All cases in pipeline can be processed without the 50% min non standard rule applying.*
>
> *Any cases received from the 1st January must be advised and are subject to the 50% min non standard rule."*

This email shows that there had been a high-level discussion with Store First and as part of MW's due diligence into their relationship, it had asked lots of questions. Store First's responses appear to have led MW to conclude that it shouldn't establish the sought high volume strategic partnership with it. It also appears that some restrictions on Store First and the type of business MW was willing to accept were brought in by MW at that time. MW has told me there is no record of the reasons the above decision was made as the original business, CTL, no longer exists, so I can't say for certain why this was decided. But it is clear that there was high-level concern about the Store First investment itself and/or the manner in which it was being sold, to such an extent that MW decided not to enter into the discussed relationship and to change its acceptance criteria, and would only accept Store First investment if clients had been both advised, and were investing less than 50% of their funds in Store First.

This restriction was specific to Store First – not across the board. This most likely showed MW had concerns about the possibility of clients investing large proportions of their pension funds into Store First specifically, without them having received advice. So I think it likely that MW had identified there was a risk of consumer detriment from the Store First investment. And it was putting restrictions in place to try and mitigate that risk.

Mr T's application form was dated 9 December 2013. The strategic decision to limit the types of Store First applications was made on 19 December 2013, and, as I've said, it is likely this decision was to reduce the risk of consumer detriment caused by the Store First investment. So I think it is clear that MW was aware there was a risk of consumer detriment from investment in Store First by clients like Mr T.

I don't think that processing the application and subsequent investment simply because it was already in the pipeline was treating Mr T fairly under the circumstances. Mr T's application was not initially processed until 20 December 2013, which was one day after the decision, and his SIPP was not set up until 16 January 2014. It is also noteworthy that Mr T didn't formally complete his Store First questionnaire until 7 March 2014, and it wasn't finally approved until 7 April 2014. So, MW had identified risks with Store First and put in place some measures to help mitigate that risk before any aspect of Mr T's application had proceeded/been approved, but it did not apply these measures to Mr T's application.

As I've said before, it is clear that the risk MW had identified and communicated in its internal emails dated 19 December 2013, was connected to the investment in Store First. And it was known by MW when the SIPP was established, that Mr T wished to invest in Store First, and MW also knew he did not meet the minimum requirements (<50% value and having received advice), yet Mr T's application was approved.

In my opinion, once the facts were known to MW it was fair and reasonable for it to have either refused to permit the application, or to have explained the minimum requirements it had put in place to Mr T as soon as possible. In either event this would have put a stop to the application as Mr T had not received advice. And even though Mr T had submitted his application just prior to the changes being put in place, it hadn't been processed. So in order to treat Mr T fairly MW ought to have refused the application as Mr T did not meet the required criteria.

As I've said above, looking beyond MW's initial due diligence – which, for the reasons I have set out, ought to, had it been conducted to a level reflective of its regulatory obligations, have led to MW concluding the Store First investment was not suitable for its SIPP – the available evidence shows that MW was aware of other causes for concern in relation to Store First around the time it accepted Mr T's SIPP application. MW has been unable to say what these concerns were, but it has said it was Store First's unsatisfactory answers to its questions, namely, about its "*advice processes, client money and the second hand market for these commercial storage pods.*"

It is, in my view, most likely that the answers, or the absence of answers Store First provided gave MW cause for concern. This concern was sufficiently significant for a strategic decision by its Operations Director to be made "*with immediate effect*" to make changes to its acceptance criteria for the Store First investment.

All in all, I am satisfied that MW ought to have had a significant cause for concern about the nature of the Store First investment from the beginning, had it conducted sufficient due diligence. And I think these concerns, in themselves, should have led it to conclude that it would not accept Store First investments to be held within its SIPPs. In addition, by the time Mr T's application to open a MW SIPP with a proposed investment in Store First was processed, MW had become sufficiently concerned with the Store First investment that it had put in place restrictive criteria on the type of applications it accepted. And Mr T's application for the investment did not meet these criteria, but MW still allowed it to proceed.

Given the circumstances at the time of Mr T's application, and what MW knew, and what it ought to have known about Store First, I think a fair and reasonable conclusion is that MW should not have accepted Mr T's application for a SIPP to invest in Store First. In my opinion, it ought to have concluded that it would not be consistent with its regulatory obligations to do so.

<u>Was it fair and reasonable in all the circumstances for MW to proceed with Mr T's application?</u>

For the reasons given above, I think MW shouldn't have been accepting the Store First investment into its SIPPs by the time it received Mr T's application. So things shouldn't have got beyond that. And, as I've explained above, I'm satisfied that Mr T's monies were only transferred to MW so as to effect the Store First investment.

Further, in my view it's fair and reasonable to say that just having Mr T sign declarations, wasn't an effective way for MW to meet its regulatory obligations to treat him fairly, given the concerns MW ought to have had about the Store First investment.

MW knew that Mr T had signed forms intended to acknowledge, amongst other things, his awareness of some of the risks involved with investing and to indemnify MW against losses that arose from acting on his instructions. And, in my opinion, relying on the contents of such forms when MW knew, or ought to have known, that allowing the Store First investment to be held within its SIPPs would put investors at significant risk, 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 MW to do would have been to decline to accept Mr T's applications.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr T signed meant that MW could ignore its duty to treat him fairly. To be clear, I'm satisfied that indemnities contained within the contractual documents don't absolve MW of its regulatory obligations to treat customers fairly when deciding whether to accept or reject investments or business.

So, I'm satisfied that Mr T's MW SIPP shouldn't have been established and his monies shouldn't have been invested in the Store First holdings. And that the opportunity for MW to execute investment instructions to invest Mr T's monies in Store First 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 MW to accept Mr T's applications.

The involvement of other parties

In this decision I'm considering Mr T's complaint about MW. However, I accept that other parties were involved in the transactions complained about – including Blue Horizons and/or VARone.

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 MW accountable for its own failure to comply with its regulatory obligations, good industry practice and to treat Mr T fairly.

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

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

I want to make clear that I've taken everything MW has said into consideration. And it's my view that it's appropriate and fair in the circumstances for MW to compensate Mr T to the full extent of the losses he's suffered due to MW'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 MW is liable to pay to Mr T.

To be clear, I'm not making a finding that MW should have assessed the suitability of the SIPP or the Store First holdings for Mr T. Rather, I'm looking at MW's separate role and responsibilities – and for the reasons I've explained, I think it failed in meeting those responsibilities.

Mr T taking responsibility for his own investment decisions

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

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

MW needed to carry out appropriate initial and ongoing due diligence on the Store First investment and reach the right conclusions. I think it failed to do this. And just having Mr T sign forms containing declarations wasn't an effective way of MW meeting its obligations, or of escaping liability where it failed to meet its obligations.

I've no reason to doubt Mr T when he says that he didn't understand the risks involved in the Store First investment. And I wouldn't consider it fair or reasonable for MW to have concluded that Mr T had received an explanation of the risks involved with the overall proposition, given what MW knew, or ought to have known, about Store First's business and marketing model by the time it received his application.

Mr T used the services of MW - a regulated personal pension provider, who had regulatory obligations to check and confirm that any proposed investment was suitable to be held in its SIPP. And I don't think it would be fair or reasonable to say in the circumstances that Mr T's pension fund should suffer the loss because he ultimately instructed the transaction be effected. Overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair and reasonable to say MW should compensate Mr T to the full extent of the financial losses he suffered due to MW's failings.

Is it fair to ask MW to pay Mr T compensation in the circumstances?

I acknowledge that in some of the forms Mr T signed and/or received there was reference to him having the opportunity of seeking independent financial advice. And that Mr T also signed forms containing disclaimers that explained he would be liable for losses arising from instructions he gave. But I don't think that it would be fair or reasonable to simply say that MW should have no responsibility for Mr T's losses because he signed the documents he did. As I've highlighted earlier, MW's regulatory obligations meant that it needed to consider whether it was acting fairly in accepting Mr T's application for a SIPP to invest in Store First. This is different from providing investment advice. MW needed to consider whether, in all the circumstances, accepting the application was consistent with those regulatory obligations.

MW needed to carry out appropriate due diligence on Store First and reach an appropriate conclusion as to whether or not to permit the investment in line with its regulatory obligations. And I think it failed to do this. Just confirming that the investment was 'SIPP able' under HMRC rules, obtaining a valuation, reviewing the sales brochure, ensuring local infrastructure was in place, and having Mr T sign forms containing declarations wasn't an effective way of MW meeting its obligations, or of escaping liability where it failed to meet those obligations.

I've no reason to doubt Mr T when he says that he didn't receive an explanation of the risks involved in the Store First investment, and that he was led to believe there would be little or no risk. And I wouldn't consider it fair or reasonable for MW to have concluded that Mr T had received an explanation of the risks involved with the overall proposition, given what MW knew, or ought to have known, about Store First's business and marketing model by the time it received Mr T's application.

I don't think it would be fair to say in the circumstances that Mr T should suffer the loss because he ultimately instructed the transaction be effected. I say this because Mr T used the services of MW - a regulated personal pension provider, who had regulatory obligations to check and confirm that any proposed investment was suitable to be held in its SIPP, and wouldn't cause a high risk of consumer detriment. And I confirm that I do not consider this to be the same as giving Mr T advice, which I accept MW was not doing in these circumstances.

So overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair to say MW should compensate Mr T for the loss he's suffered.

Had MW declined Mr T's business, would the transactions complained about still have been effected elsewhere?

MW has contended that Mr T would likely have proceeded with the transfer and investments regardless of the actions it took. MW has highlighted that other SIPP providers were accepting such investments at the time, and it's most likely the transactions would've been effected through another provider. But I don't agree.

As I've said, I'm satisfied that MW, in meeting its regulatory obligations, ought to have declined Mr T's application to open a SIPP to invest in Store First. And I think it likely that had it done so Mr T would have asked for an explanation, and MW would have told him that it did not consider the Store First investment suitable to be held in its SIPP. I accept that MW would have been under no obligation to explain its reasons in detail, but this would probably have been enough to have caused Mr T to rethink his decision, and he would probably have left his pension provision with his existing provider. Alternatively, he may have sought regulated advice about the Store First investment, but I think it's very unlikely that advice from a regulated and authorised business would have resulted in Mr T taking the same course of action. I think it's reasonable to say that an authorised and regulated business, taking into account the risk involved, would have given suitable advice. And given that there is nothing to suggest Mr T was unhappy with the performance of his existing pension provision, nor that it didn't suit his circumstances and objectives at the time, that advice would likely have been for Mr T to leave his pensions where they were.

From the correspondence I've seen, I'm satisfied that Mr T's pension monies were only transferred to MW to make the Store First investment and that MW was aware of this. MW has argued that another SIPP operator would've accepted Mr T's application had it declined it and he had gone elsewhere without obtaining advice. But as I've said above, I don't think he would have. But I also don't think it's fair and reasonable to say that MW shouldn't compensate Mr T for his loss on the basis of speculation that another SIPP operator would've made the same mistakes that I've found MW did.

MW has reiterated its point that there were other SIPP operators at that time which were accepting the Store First investment into their SIPPs. But I am considering a complaint about what MW did, not what other SIPP operators may have done. SIPP operators were regulated, and the regulator required them to act in accordance with its rules and the Principles. So, whilst taking into account MW's submissions on this point, I'm satisfied that it's fair to assume that had Mr T gone to another provider, that SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr T's application for a SIPP to invest in Store First in such circumstances.

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."*

Importantly, there's no evidence to show that Mr T understood he was making a high-risk investment. It appears Mr T understood that his pension monies were being moved into a little to no risk pension arrangement with guaranteed returns which would out-perform his existing arrangement. I've also not seen any evidence to show Mr T 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 T, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself.

MW has said that it is likely that Mr T would have continued with the investment without taking financial advice, even if MW had recommended that he seek advice. It has pointed to another investment that Mr T made into a different high-risk asset. But I think MW ought to have refused Mr T's application for Store First in the first place. And as I've said I think it likely that had it done so Mr T would have asked for an explanation, and MW would have told him that it did not consider the Store First investment suitable to be held in its SIPP. And

I think it more likely than not that would have been enough to have caused Mr T to rethink his decision and to not invest in Store First.

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 MW had refused to accept Mr T's application, the transactions this complaint concerns would not have still gone ahead.

I acknowledge that Mr T received a little under £40,000 as PCLS as a result of the transfer into the MW SIPP. But transferring to into the MW SIPP specifically or investing in Store First wasn't necessary to obtain this PCLS payment. These were pension monies he was entitled to withdraw if he wished, and could have accessed without switching into the MW SIPP and making the Store First investment had they been needed. And in any event there is no evidence that this was a priority for him or that Mr T needed this money urgently.

So, overall, I do think it's fair and reasonable to direct MW to pay Mr T compensation in the circumstances. I consider that MW failed to comply with its own regulatory obligations and didn't, when it had the opportunity and obligation to do so, decline Mr T's application. And I'm satisfied that Mr T wouldn't have established the SIPP, transferred monies in from his existing pension plans, or invested in Store First if it hadn't been for MW's failings.

MW didn't have to carry out an assessment of Mr T's needs and circumstances in order to meet its regulatory requirements, but it did have to treat Mr T fairly and act in accordance with the Principles. I'm satisfied that in the circumstances, and for all the reasons given, it's fair and reasonable to conclude that MW should compensate Mr T for the loss he's suffered.

In conclusion

- Obtain the current notional transfer value of Mr T's previous pension plans,

Obtain the current notional transfer value of Mr T's previous pension plans, if they hadn't been transferred to the SIPP.

Obtain the actual transfer value of Mr T's SIPP, including any outstanding charges.

Pay an amount into Mr T's SIPP, if it remains open, so as to increase the transfer value to equal the notional value established. This payment should take account of any available tax relief and the effect of charges.

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

Pay Mr T £500 to compensate him for the distress and inconvenience he's been caused.

Taking all of the above into consideration, and having reconsidered my findings in the light of MW's submissions in response to my provisional decision, I remain satisfied that in the circumstances of this case it's fair and reasonable for me to conclude that MW shouldn't have accepted Mr T's application to open a SIPP. For the reasons I've set out, I also think it's fair to ask MW to compensate Mr T for the loss he's suffered.

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

Putting things right

I consider that MW failed to comply with its own regulatory obligations and didn't put a stop to the transactions. My aim in awarding fair compensation is to put Mr T back into the position he would likely have been in had it not been for MW's failings. Had MW acted appropriately, I think it's *most likely* that Mr T would've remained a member of the pension plans he transferred into the SIPP.

In light of the above, MW should:

- Obtain the current notional transfer value of Mr T's previous pension plans, if they hadn't been transferred into the SIPP.

- Obtain the actual transfer value of Mr T's SIPP, including any outstanding charges. If it has been closed then the value it held at the time of closure should be used.

- Pay an amount into Mr T's SIPP, if it remains open, so as to increase the transfer value to equal the notional value established. This payment should take account of any available tax relief and the effect of charges.

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

- Pay Mr T £500 to compensate him for the distress and inconvenience he's been caused.

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

Calculate the loss Mr T has suffered as a result of making the transfer

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

The PCLS that Mr T received should be allowed for in this redress calculation to avoid Mr T being overcompensated. To do this, MW should calculate the proportion of the total PCLS taken that it's reasonable to apportion to each transfer into the SIPP, this should be proportionate to the actual sums transferred in. And MW should then ask the operator of Mr T's previous pension plans to make a notional deduction equivalent to the respective calculated apportionments, so as to allow for the monies that were taken as PCLS. The total notional deductions allowed for shouldn't equate to any more than the actual PCLS taken, and the notional deductions should be deemed to have occurred on the date on which the PCLS was actually paid to Mr T.

Any contributions or withdrawals Mr T has made 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've enjoyed is allowed for.

If there are any difficulties in obtaining a notional valuation from the previous provider, then MW 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. 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 T's existing plan if monies hadn't been transferred (established in line with the above) less the current value of the SIPP (as at date of calculation) is Mr T's loss. If the SIPP has been closed, as MW has stated, then its value on the date of its closure should be used in the calculation.

Pay an amount into Mr T's SIPP so that the transfer value is increased by the loss calculated above.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into the SIPP, should it still be open. 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 T as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. As Mr T is in receipt of the state pension, I am satisfied that it is likely that Mr T would have been a basic rate tax payer had he retained his original pension plans, so a notional deduction of 20% is fair. As Mr H has already taken his full 25% tax-free allowance there should be no adjustment to this figure.

Interest

The compensation resulting from this loss assessment must be paid to Mr T or into his SIPP within 28 days of the date MW receives notification of his acceptance of my final decision. The calculation should be carried out as at the date of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation is not paid within 28 days.

If MW considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Distress & inconvenience

I think the loss of a significant portion of his pension provision due to the failings of MW has caused Mr T significant distress, and this is in addition to the problems he experienced with the Store First investment. MW has made no submissions on this point, so I see no reason to depart from the level of compensation I set out in my provisional decision. I'm satisfied that it is fair and reasonable that MW should pay Mr T £500 to compensate him for this.

My final decision

For all the reasons above, my final decision is that this complaint is upheld, and Mattioli Woods PLC must calculate and pay fair redress to Mr T 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 Mattioli

Woods PLC pays the balance.

Decision and award

I uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that Mattioli Woods PLC must pay Mr T the amount produced by that calculation - up to the maximum of £160,000 (including distress and 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 Mattioli Woods PLC pay Mr T the balance plus any interest on the balance as set out above.

As the recommendation isn't part of my determination or award Mattioli Woods PLC doesn't have to do what I recommend. It's unlikely that Mr T could accept my decision and go to court to ask for the balance so Mr T may want to get independent legal advice before deciding whether to accept a final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 April 2024.

Chris Riggs
Ombudsman