SIPP & SSAS round-up – March 2025

For what comes next
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Introduction

In this edition, we focus on some determinations from the Pensions Ombudsman (TPO) and the Financial Ombudsman Service (FOS) that highlight recurrent issues for SIPP and SSAS schemes, including transfer and adviser due diligence, investment matters, and trustee behaviour. The cases also demonstrate the Ombudsmen's remit and their approach to determining cases.

If you are a SIPP provider, SSAS professional trustee or administrator, or a financial advisor, read more to find out how the Ombudsmen approach certain complaints and how best to apply those outcomes to your own business.

We also review some recent key cases and round up recent and expected developments for SIPPs and SSASs – and give you a heads-up for forthcoming TLT publications and events.

Contents

Developments round up and horizon scan

FCA

- An FCA **'Dear CEO' letter to SIPP operators** has set out its expectations of operators, and the work it intends to do. It is increasing its proactive engagement with firms over 2025, noting that concerns remain, for example, in relation to redress payments being made to consumers for due diligence failings, the handling of scheme money and assets by some firms, and the accuracy of firms' books and records.
- The letter also contains feedback for firms on their implementation of the **Consumer Duty**, covering the FCA's concerns and suggestions for improvements. SIPP Operators should take action to ensure the FCA's expectations are being met.
- In December, the FCA published 'proposals for extra support for millions of UK savers to help them make better decisions about their pensions' – part of the Advice Guidance Boundary Review. The **consultation** suggests firms provide targeted support to customers, free of charge, in set situations. As the FCA notes, 'this… reform to the regulatory framework will set the standards for years ahead'. The consultation closed in February. The FCA plans to consult on detailed requirements with draft rules and guidance by the end of the first half of 2025.
- Through a separate detailed **discussion paper** ('Adapting our requirements for a changing market') the FCA also sought views on whether further changes might be needed to better support consumers, such as the use of digital tools, consolidation of pension pots - and potential changes to the rules around SIPPs. It states that SIPP 'regulation has not always kept pace with the variety of business models. We have also seen instances of poorly run SIPP providers and consumer loss. We propose we should change our framework, so consumers can buy a broad range of SIPP products with confidence'. Among other things, the consultation looked at ensuring adequate due diligence from SIPP operators, that consumers are offered the 'right' SIPP for them, and taking a more prescriptive approach to eg arrangements for trustee bank accounts and scheme assets. The consultation closed in February.
- The FCA, ICO and TPR published a guidance **Joint Statement** aimed at retail investment firms and pension providers on how to ensure customer communications comply with the Consumer Duty and TPR's Code of Practice, and the rules on direct marketing and data protection. The Statement gives practical guidance, but regulated firms will need to take further advice on balancing their various obligations here.

FOS

FOS **specifically named transfers to SIPPs and SSASs** as transactions leading frequently to complaints, as it gave 'top tips' to consumers on avoiding pension pitfalls ('Watch out for investments you don't understand').

It continues its new **'proactive settlement**' approach, aiming to allow financial businesses and their customers resolve complaints more quickly. A case must meet criteria to use the proactive settlement scheme and a formal process applies.

TPO

- TPO has implemented a package of changes with the aim of transforming its service. For more information see our **latest Pensions Ombudsman update**. TPO now **requires** complainants to have exhausted their schemes' formal complaint processes before approaching its service. It has **noted** that 'the industry already shows an appetite for taking greater ownership of dispute resolution processes'. Ensure that you are acting in line with their expectations. Familiarise yourselves with the changes, and consider how they may impact your processes and communications. Be aware of, and make use of TPO's updated **factsheets** and refreshed **signposting** in your documents and on relevant websites. SSASs are exempt from the requirement to put in place an internal dispute resolution procedure, however it is good practice for the trustees to agree a policy on how to seek to resolve disputes between members.

  A December **blog** reflected on the changes, including the expedited decision-making process for cases TPO has assessed as having a clear outcome, and 'lead cases' (see more on page 5).
- TPO's most recent **Annual Report** features a case study on the cyber fraud failure that we reviewed in last **Spring's SIPP & SSAS Round Up**. This should serve as reminder that schemes need to continue to be alert on a daily basis for cyber-attacks and scams as these grow in complexity and spread, and ensure they are prepared for the challenge.

FSCS

- **FSCS' Annual Report and Accounts 2023/24** uses SIPPs in several of its case studies, including in relation to mis-selling cases.

  It remarks on a rise in 'larger and more multi-faceted SIPP operator failures that require more documentation, time, expertise and resource to investigate.' **FSCS' Outlook November 2024** notes that the levy forecast for 2025/6 takes into account increased compensation costs in relation to SIPP operator claims.

- The FSCS has also noted that, following the decision of the Court of Appeal in Adams v Options and in the High Court in a claim for judicial review brought against the service (see more on pages 3 and 7), it is now reviewing SIPP claims that it had to date decided upon on an interim decision basis since 1 April 2021. It is processing customer claims on a case-by-case basis, with an initial focus on assessing claims where Avacade (an unauthorised introducer affecting a large number of customers) was involved. It is working to identify other relevant unauthorised introducers that may have played a similar role to Avacade in relation to potentially impacted customers.

Other

- Economic Crime and Corporate Transparency Act 2023 requirements may apply to SIPPs and SSASs, including for example registered office and contact details requirements. See **TLT's resources** for more.
- From 6 April 2026, all scheme administrators of registered pension schemes must be resident in the UK. Where SSAS member trustees are appointed as the scheme administrators, you should ensure they understand that they will need to be and remain UK resident.
- **HMRC's Newsletters** have reminded administrators that scheme returns must be submitted via its 'Managing pension schemes service', with a different return applying for SIPPs.
- Inheritance Tax: The industry looks forward to clarity on aspects of the **Inheritance Tax on Pensions consultation** (to which TLT has responded). Speak to us for actions you should be taking in light of the announcement, to ensure your scheme documentation is appropriate and SIPP and SSAS clients are aware of the changes and prepared.
- Lifetime Allowance: for more information on correcting regulations following the **Finance Act 2024 changes to the Lifetime Allowance**, see **HMRC's guidance notes and newsletters**.

Keep on your radar

- Pension Dashboards: Schemes **must ensure they are prepared for connection**, with robust governance in place to manage risks and ensure data quality. (SSASs are not yet caught but may be brought into scope in the future.)
- General Code: Schemes should be well underway in their progress towards General Code compliance. The Code, which came into force in March 2024, is designed to show schemes 'how to approach governance and administration', and to provide 'consistent expectations' across different types of scheme at the level TPR considers appropriate for 'well-run schemes.' Elements of the Code apply to different types and sizes of schemes, and so not all requirements are relevant to SSASs and SIPPs. Our **Insight summarises the key considerations for SSAS trustees and SIPP operators**. A webinar at our SIPP & SSAS Festival (see below) will unpick how the Code applies to SSASs and some key considerations.

Recent and Forthcoming from TLT's SIPP & SSAS and Pensions team

- TLT's SIPP & SSAS team is holding its annual **SIPP & SSAS Festival** in March, featuring a variety of sessions including on fraud and financial crime in pensions and financial services, appealing HMRC assessments, and Tech and AI in SIPP & SSAS. You can book **here**.
- See our Pensions Ombudsman updates for a round up of general pensions determinations. Our **most recent edition** includes an overpayments update and a review of cases relating to delays.
- Catch us at the AMPS Annual Conference at IET Savoy Place, London in May 2025.

SIPP & SSAS Key Cases review

- In 2024, the **Court of Appeal upheld FOS' decision and dismissed** Options UK Personal Pensions LLP's (previously Carey Pensions) **claim for judicial review**. This related to judicial review of a FOS decision on SIPP operators' due diligence obligations in 'execution only' scenarios. The Court held that FOS' findings were not irrational, that it had explained its reasoning adequately, and that it had been entitled to reach the conclusions it had. The judgment explores FOS's remit, giving a useful reminder of its wide and flexible decision-making powers. In general terms, FOS is not required to determine a complaint in accordance with the common law – but is required to reach an opinion about what is fair and reasonable in the circumstances of the particular complaint; it may consider both legal and non-legal standards, and can uphold a complaint based on a breach of the FCA principles. See page 7 for further detail on FOS' remit and considerations.

The case clarifies the extent to which SIPP operators may be held liable for a failure to conduct due diligence on SIPP investments that are entered into on an 'execution only' basis. SIPP operators should not use their terms to avoid responsibility for unsuitable investments, nor attempt to rely on carve-outs from liability where this may be unfair to customers: negative findings from ombudsmen are likely to result. Given the breadth FOS is permitted in its review of cases, operators should ensure their procedures and policies follow all guidance and best industry practice. SIPP operators should also look at whether their own practices would stand up to scrutiny: does their due diligence clearly identify red flags against unregulated introducers and specific investments, and then take appropriate action based on their findings?

Since the case, FOS has upheld many more complaints against Options, for example **Decision 5127479**.

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- In January, the **High Court dismissed claims** for judicial review of decisions taken by the FSCS concerning compensation for pensions misselling. The claimants had lost money after being advised by an unregulated adviser to transfer funds from occupational schemes into a SIPP provided by a firm that then failed. Following Adams v Options, the claimants lodged appeals against the FSCS's original awards, arguing that they were entitled to higher compensation. The FSCS closed their claims because they were out of time. The court agreed, finding that the FSCS' correspondence with the claimants following Adams did not give rise to an expectation that any particular outcome would be achieved or that the FSCS would reopen its earlier compensation decisions. (The court did however note in passing that it was 'troubled' by the FSCS' 'arbitrary' policy on compensation claims and its decision to prevent appeal by those who had launched their appeals after March 2021.)

- In **Trachtenberg v Revenue and Customs Commissioners**, the FTT held that where a taxpayer made loans out of a SIPP to people who then loaned the monies back to him, those arrangements gave rise to an unauthorised payments tax charge, plus a surcharge under the Finance Act 2004. The loans were not on commercial terms and the taxpayer had knowingly given false statements in his returns, leading to a loss of income tax for HMRC. The FTT held that there was deliberate behaviour for the purpose of the discovery assessment provisions, which entitled HMRC to engage extended time limits for raising the assessments.

- The Court of Appeal handed down judgment in Manolete Partners plc v White in November, overturning the High Court's decision that a judgment debtor could be ordered to exercise a right to draw down assets from his SSAS (or the trustees' ordered to agree to the member doing so) so that the funds could be used to pay the debt against him. Mr White was the only member and one of the trustees of the SSAS, but, while he was accused of having breached his fiduciary duties, he was not guilty of fraud. **The Court of Appeal held** that such an order would infringe s.91(2) of the Pensions Act 1995, which provides that 'no order can be made by any court the effect of which would be that he would be restrained from receiving' a pension under an occupational pension scheme (except under precise exceptions). The Court held that, under the legislation 'a member's entitlement or right to future benefits … should remain available to provide support to that member in retirement', and not to pay a judgment debt. (The position for SIPPs is unchanged, as s.91 only applies to occupational schemes.) The judgment is a reminder that the rules governing a scheme should be considered – in this case, as is fairly common with a SSAS, Mr White had no right to any immediate pension payment from the scheme without the agreement of the trustees. The High Court's decision took no account of the separate legal identity of the trustees and that in accordance with their fiduciary duties they could decide not to agree to provide further drawdown pension.

- In **McHale v Dunlop**, a claim (arising from the loss of pension assets transferred into a SSAS and invested in an overseas investment scheme) for damages in respect of the alleged provision of negligent financial advice failed, but a claim for breach of fiduciary duty succeeded. Mr Dunlop's duties of care were defined by the roles he had undertaken. Duty of care questions are fact-sensitive: the existence and scope of a duty of care will depend upon what the defendant said and did and how that ought reasonably to have been understood by the claimant; whether the defendant has undertaken to act for or on behalf of the claimant in circumstances which gave rise to a relationship of trust and confidence. Here, Mr McHale had approached Mr Dunlop to execute his investment decisions, rather than for financial advice. However, by offering to share commission with Mr McHale, Mr Dunlop had taken on an agent role and had a fiduciary duty to account honestly to Mr McHale in respect of the total commission payable, which he had failed to do.

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Mr N – TPO applies its ‘lead case’ approach

A SSAS case is one of TPO’s new style ‘lead cases’.

As noted on page 1, TPO announced a raft of changes starting in 2024. A later blog on its progress noted that its new ‘lead case’ approach has been a ‘standout success’. Where TPO identifies an appropriate industry-wide issue, or a scheme-specific issue affecting multiple members, it will now be able in some cases to select a representative ‘lead case’ to accelerate through its processes. This allows it to set out its position ‘clearly and quickly in a comprehensive determination, which in turn supports the timely resolution of other complaints’. TPO may achieve that by taking on a single case while the others remain in the scheme’s own complaint process, and so TPO’s determination then informs the trustee’s approach in other cases going through the scheme’s complaints system. Alternatively, where cases have already completed a scheme’s formal complaints process and applications have been submitted to TPO, if the material facts of a group of cases are very similar, TPO’s findings and directions in the lead case may be able to be applied equally to all the linked cases. This was the approach it took in a **recent transfer due diligence case** concerning Rowanmoor Trustees Limited.

The case

Mr N complained that Rowanmoor failed to perform sufficient due diligence in relation to his proposed investments in The Resort Group (TRG). He argued that the investments were high risk and not suitable for him, and asked that Rowanmoor put him back into the position he would have been in had the investments never occurred. The complaint was not upheld against Rowanmoor as administrator, because it was not its responsibility to carry out the level of due diligence suggested by Mr N, and because it fulfilled the duties it did have in relation to the Scheme adequately. However, the complaint was upheld against the Rowanmoor trustee (RTL) because it had legal and professional duties as the independent trustee of the Scheme: it had a responsibility to consider whether the investment was appropriate in the circumstances. It failed to do so, the investment was not appropriate, and thereby its actions caused the financial loss incurred by Mr N.

As Mr N was also a member trustee in this case, TPO directed RTL to return 80% of the loss to the scheme, reflecting the co-trustees’ shared responsibility. RTL was also directed to pay £1,000 for the serious distress and inconvenience Mr N suffered.

As TPO notes, the earlier determination PO-25984 (which also dealt with an investment in TRG, and which we featured in our **Spring SIPP & SSAS round-up**) set out its detailed analysis of the role and responsibilities of Rowanmoor and RTL as administrator and trustee respectively, in relation to the correct approach to a decision to make an investment in accordance with the rules of that scheme, overriding legislation and relevant case law.

It was one of a number of complaints TPO received in relation to SSASs where Rowanmoor and RTL acted as administrator and trustee. As a result, TPO held that a considerable number of cases shared key material facts, so that a decision to uphold the complaint in one would mean that the others in that category would also be upheld. The outcome of this case also applies to those listed by TPO in the Appendix to the determination.

Other groups of cases exist against Rowanmoor / RTL but with different underlying investments: **CAS-45541-T0B3** acts as one such lead case – with the same analysis and outcome – for investments in the Akbuk Resort Group, for example.

Take action

In relation to its new ‘lead cases’ approach, TPO recommends that trustees should:

- ensure their disputes or complaints process is robust and well-communicated
- ensure signposting to TPO is clear and up-to-date
- if schemes have an issue affecting multiple members, they should contact TPO to let it know at an early stage, so it can explore whether a lead case approach is appropriate.

Trustees and administrators should also stay aware of the ‘lead case’ examples being published by TPO, and TPO’s updates on its approach generally.

As a SSAS professional trustee or administrator you should be clear on the roles and responsibilities you have in relation to a SSAS and have policies in place to ensure the trustees comply with their investment duties.

Mr N – an unacceptable lack of cooperation

Mr N complained to TPO that the administrator (Administrator) of his SSAS had incorrectly calculated his share of the scheme funds, which led to his transfer value being undervalued, and then that the other member trustees (Member Trustees) refused to authorise the corrective payment being made.

The Administrator accepted it had made an error in the valuation and split of the fund, resulting in negligent misstatement of Mr N's share. The Adjudicator agreed that Mr N was entitled to a larger share of the fund than he had then been given (the higher figure being the correct benefit under the rules). It also found that there had been maladministration, including a delay of over 12 months in the request for a new calculation being actioned.

Mr N and the Administrator accepted the Adjudicator's decision. However, the other Member Trustees failed to cooperate or engage with the Adjudicator. The complaint was passed over to TPO who agreed with the Adjudicator's opinion.

TPO also made several attempts to obtain a response from the other Member Trustees, but failed: 'Without a response from the other Member Trustees I have no reason to doubt [the Administrator's] account of its dealings with them, or of the need to pay an additional sum to Mr N. I can only conclude that [the Administrator] has tried to resolve the position but that, for whatever reason, the other Member Trustees have failed to cooperate. This is unacceptable and cannot be allowed to continue.'

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The Rules in this case required a quorum to make a decision – which included a majority of the member trustees; further, decisions had to be unanimous. While the rules directed that an independent expert should be (unanimously) appointed to determine on a matter that could not be unanimously decided upon by the trustees, TPO did not find this necessary or (we assume) likely to be able to be brought about in the circumstances, and proceeded to make a direction himself. Alongside the corrective payment, TPO ordered payments for 'serious' distress and inconvenience both from the Administrator, and the independent trustee together with the Member Trustees.

Useful lessons

- As we have noted in previous updates, the nature of both SIPPs and SSASs (with members – and often family members or business associates – acting together as trustees) can lead to issues of, for example, conflict and obstructive action arising. Such schemes should therefore ensure they have policies and processes in place to manage the inherent conflicts, and to avoid, and if not, sensibly manage, any disagreements that might arise.
- In addition, regulatory requirements such as TPR's General Code mean that all schemes need to ensure their governance is in order, with the necessary policies and practices put in place, followed, and kept under review.
- SSAS rules requiring trustee decisions to be made by unanimous agreement of the member trustees can risk leading to an impasse, making provisions for the management of conflicts of interest particularly important. While the rules here did sensibly allow the appointment of an independent expert if the trustees as a whole could not reach a unanimous decision on a matter, the appointment of that expert also needed to be unanimous – and so therefore unworkable in the circumstances.
- As here, a failure or refusal to engage with TPO is usually fatal. While there is no implication here that the other Member Trustees avoided contact deliberately in an attempt to deprive Mr N of his due transfer value, TPO could see 'no justifiable reason' not to. Our recent **Pensions Ombudsman briefing** discusses TPO's expectations of how respondents should engage with it, and we have generally noted that failures on the part of respondents to engage with TPO continue to attract criticism and high penalties.

Mr H – detailed learnings from FOS

A post-Adams case, Mr H, contains a number of interesting observations about FOS' remit and approach, with important takeaways for SIPP operators.

Mr H submitted that a SIPP operator (the Operator), which acted as trustee and scheme administrator, failed in its duty of care towards him when accepting his application for a SIPP. Mr H's investments did not perform well and he complained. The Operator understood that Mr H's adviser was (at the time of the application) an appointed representative of Joseph Oliver, based in Portugal, and argued that it took all reasonable steps to verify Joseph Oliver's permissions.

The case

FOS states that the test is this: in accepting Mr H's SIPP application from Joseph Oliver, did the Operator comply '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?'

FOS concluded that it was 'fair and reasonable' to conclude that the Operator did not undertake sufficient due diligence to ensure Joseph Oliver had the required permissions, and had not taken all steps available to it to verify the position. It wasn't in accordance with its regulatory obligations or good industry practice to accept the business, and it should have declined to.

In FOS view, the Operator also ought to have identified an increased risk of consumer detriment here, given the overseas adviser, different overseas investments, and very specialised investments for a retail investor. It should have been aware that the adviser was important in such circumstances, and therefore the need for proper due diligence on it. While the Operator didn't have a duty to assess or advise on the suitability of the SIPP or the investments, it should have recognised the unusual proposition carried significant risks of consumer detriment. 'So, it ought to have taken particular care in its due diligence – it had to do so to treat Mr H fairly and act in his best interests'.

FOS found it 'more likely than not' that if the Operator had refused to accept Mr H's application and explained why, Mr H wouldn't have continued to act on Joseph Oliver's advice. FOS distinguished the case from Adams v Options, where it was found that Mr Adams would have proceeded with the transaction regardless (because of a cash incentive). Here, there was no evidence that Mr H understood that the investments were high risk, nor that he was determined to invest in order to take advantage of an incentive. While an earlier FOS decision involving an EEA firm that had acted outside its permissions had apportioned compensation costs between the SIPP provider and adviser on a 50/50 basis, the facts here were very different, and FOS was happy that here it was fair to ask the Operator to compensate Mr H to the full extent of the financial losses he suffered due to its failings.

Learning points

SIPP operators should be aware of statements FOS makes in this case about what it takes into account, and its expectations:

- FOS is an informal dispute resolution forum. A complaint need not be 'made out with the clarity of formal legal pleadings' and consumers don't need to bring a fully formed complaint to it. Here, although due diligence was only raised part way through the process, FOS could accept that element.
- A decision may focus on what FOS sees as the central issues, and need not comment on every individual point or question the parties have raised.
- FOS will consider all available evidence and arguments to decide what's fair and reasonable in the circumstances of a complaint. When doing so, it takes account of relevant law and regulations, regulators' rules, guidance, codes of practice and, where appropriate, what it considers to have been good industry practice at the time.
- The FCA issues various publications reminding SIPP operators of their obligations, including Thematic Review reports, SIPP operator guidance, and 'Dear CEO' letters. While not all formal guidance, this 'doesn't mean their importance should be underestimated'. They are (non exhaustive) indications of what a SIPP operator might do to ensure it treats customers fairly and produces the outcomes envisaged by the FCA, and help assess good industry practice. SIPP operators should be aware that FOS will take them into account, and ensure their systems and controls are in line with them.

TLT's SIPP & SSAS Practice

Your 'one stop shop' for all legal matters affecting SIPP & SSAS schemes.

Our national team understands the issues facing SIPP and SSAS providers. We provide a responsive service, delivering clear solutions based on commercial and practical reality, to help clients achieve their aims.

> Knowledge of the SSAS marketplace, legislation, and regulation and interpretation thereof in real world scenarios make this firm a go-to for professional firms.
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Why TLT

- Experienced team with deep SIPP & SSAS expertise.
- We understand how SIPPs & SSASs are structured and the relevant legal issues.
- Able to advise on all three regulators: HMRC, The Pensions Regulator and the FCA.
- We understand the commercial needs of our clients and the nuances of the pensions market, so we adapt our strategic advice on dealing with complaints and tactical approach to find the best fit.
- We have unrivalled experience of running outsourced complaints projects in financial services – we can deliver a cost-effective and efficient resolution to portfolio complaint risks for clients.
- We work to resolve complaints and disputes at an early stage where appropriate, minimising cost and management time for clients.

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