

ADAMS V OPTIONS - APPROVED JUDGMENT (CA)

1 Apr, 2021

The Court of Appeal has today handed down judgment in *Carey v Options* allowing the appeal on the claim advanced under section 27 of FSMA. The case is a highly significant test case concerning the duties and potential liabilities imposed on execution-only SIPP providers and there are a number of other cases which will be affected by the outcome of the appeal. In allowing the appeal, the Court of Appeal determined that the SIPP was unenforceable as a consequence of advice given and arrangements made by an unregulated introducer and that it was not just and equitable to exercise its discretion under section 28 to allow the SIPP to be enforced. In doing so, the Court of Appeal rejected the contractual fundamentalism which had infected the heavily delayed (26 months) judgment at first instance and gave primacy to the statutory scheme and consumer protection. Along with being highly significant to the SIPP industry, the decision has much wider significance owing to its consideration of 'advising', 'arranging' and the interplay between sections 27 and 28 of FSMA, and is an important reminder to regulated entities of the risks of doing business with unregulated entities.

Jay Jagasia acted as junior counsel for the successful Appellant and was led by Professor Gerard McMeel QC, and was the only non-silk involved as counsel on the appeal.

A full copy of the judgment can be accessed [here](#).

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