

FCA v Avacade in the Court of Appeal

Nick Vineall KC, leading Adam Temple, represented the FCA in the recent pension misselling case of *FCA v Avacade*. The CA has just delivered judgment dismissing various Defendants' appeals and upholding the decision of Adam Johnston KC (sitting as a Deputy High Court Judge).

More than 2000 consumers had transferred £91.8 million from their pensions into SIPPS and approximately £68 million of that had been invested in high risk products promoted by Avacade and from which the introducers had received commissions of over £10.5 million.

The Judgment of Popplewell LJ deals with the application of exceptions to the Regulated Activities Order, in particular RAO 25, 'making arrangements'. He held that the arrangements made to transfer out of existing pensions, into a SIPP and the investments purchased within the SIPP should be looked at as an indivisible and seamless whole for the purpose of considering those exceptions. The Court considered the test for causation under FSMA s382 and stated that the words "as a result of" in s382 should be equated with the common law test in negligence, namely that the contravention must be an efficient cause but need not be the sole or dominant cause.

The judgment also deals with implications of the CA decision in *Adams v Options SIPP* (in which Nick Vineall represented the FCA as interveners).

The judgment was handed down on 4 August 2021 and can be found [here](#) and the FCA press release can be found [here](#).

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