DRN-3587366

The complaint

Miss S' representative complains about the due diligence London & Colonial Services Limited ('L&C') undertook before accepting Miss S' application.

Miss S' representative complains that L&C didn't have adequate procedures, systems and controls in place. And that this resulted in L&C accepting Miss S' Self-Invested Personal Pension ('SIPP') application when it shouldn't have done, and allowing her to invest in The Resort Group's ('TRG's) Llana Beach Hotel Resort ('Llana Beach'). Further, that Miss S has suffered loss as a result of this.

What happened

I've outlined the key parties involved in Miss S' complaint below.

Involved parties

L&C

L&C's a regulated pension provider and administrator. It's authorised to arrange deals in investments, deal in investments as principal, establish, operate or wind up a personal pension scheme and to make arrangements with a view to transactions in investments.

C.I.B (Life & Pensions) Limited ('CIB')

At the time of the events in this complaint, CIB was authorised by the regulator – the Financial Services Authority ('FSA'), which later became the Financial Conduct Authority ('FCA') - to advise on regulated products and services including giving investment advice and arranging deals in investments such as pensions. In May 2015, CIB went into liquidation, and has since been dissolved.

Real SIPP LLP ('RealSIPP')

RealSIPP was an appointed representative of CIB from April 2010 to June 2015.

The Resort Group ('TRG')

TRG was founded in 2007. TRG owns a series of luxury resorts in Cape Verde. TRG sold luxury hotel rooms to UK consumers, either as whole entities or as fractional share ownership in a company. TRG wasn't regulated by the financial services regulator. This case involves investments in TRG's Llana Beach holdings.

What happened?

I've briefly summarised what's happened below.

After she'd attended a will conference, TRG contacted Miss S to invite her to a pension presentation in London. Miss S says that, following the presentation, TRG facilitated

everything and explained that she'd be referred to CIB, RealSIPP and L&C as part of a transfer package.

Miss S had a Defined Benefit Scheme ('DBS') with her former employer.

On 14 October 2011, the administrator of Miss S' DBS wrote to TRG to provide transfer information TRG had requested. It was explained that Miss S would have to sign an enclosed waiver form to proceed with a transfer. And, on 10 November 2011, Miss S signed the deferred pension waiver form for her DBS. This confirmed, amongst other things, that she'd had the opportunity to take independent financial advice on the transfer.

On 10 November 2011, Miss S also completed a RealSIPP branded application form to open a SIPP with L&C and transfer in her DBS. This form was sent to L&C by RealSIPP. The Independent Financial Adviser ('IFA') details are on page 3 of the form. Details for both RealSIPP and CIB, including their FSA authorisation numbers, are noted. Mr H is the named contact and a RealSIPP email address is given. In the section immediately below these details, a box that says *"Advice not given at point of sale to client"* has been ticked. And it's recorded that initial remuneration of £2,550, and ongoing annual remuneration of £300, would be paid to the IFA.

Elsewhere in the form a ticked box confirms that Miss S wants to manage the fund herself. And on the initial investment instruction page, it's noted that a little under 342,000 euros is to be invested in Llana Beach.

RealSIPP branded L&C 'Investment request' forms were also signed by Miss S for the Llana Beach investments in November 2011 and January 2012. The forms explained that with staged payments the initial deposit and interim payments could be lost if the balance couldn't be paid when due. The forms said that L&C wasn't authorised to give financial or investment advice. But that it had obtained legal advice in its capacity as trustee, in order to assess the risks of ownership and to ensure the appropriate title was attained.

Scheme borrowing forms were also signed by Miss S in January 2012. Details of sums to be borrowed, and the lender they'd be borrowed from, were left blank. But it was noted in the forms that:

- This was an unusual investment structure involving property in a foreign jurisdiction, with a long period between the contract being entered into and completion, when the balance (including any scheme borrowing) would be due.
- There were no standard or previously agreed terms with any potential lender.
- Where scheme borrowing was needed, it was for the investor to choose a lender and obtain an offer. And this would then be sent to L&C to review.

Miss S' SIPP application was accepted by L&C and a little under £300,000 was transferred into the SIPP from Miss S' DBS on 29 November 2011.

L&C's New Business Checklist for Miss S' application records RealSIPP as the IFA and that no advice had been given. Questions about investment instructions having been received and ensuring that transfers weren't from a DBS if the IFA wasn't authorised on DBS transfers, were both recorded as not applicable.

Miss S called L&C in December 2011 to ask when the Llana Beach deposits could be paid and was told that this wouldn't happen until after her cooling off period. Miss S then wrote to L&C to say that she wouldn't be cancelling. She asked for the investments to proceed as soon as possible, as the return she'd receive annually from them was greater than the interest being earned while monies were in cash.

As I understand it, on 6 December 2011 £2,550 was paid to RealSIPP from Miss S' SIPP.

Contracts for Miss S' Llana Beach investments were signed by the vendor (Llana Beach Hotel, S.A.) towards the end of December 2011. These explained that a total of 65% (consisting of a 45% 'down payment' and an additional 20%) was paid when the contract is signed. Another 30% was then payable on the conclusion of the construction, with the vendor writing off the final 5%. There'd also be a discount each year, equivalent to 3% of the cost of the 45% down payment, until the earlier of 3 years or the date of delivery of the keys.

The contracts explained that the established date for the conclusion of the construction was no later than 31 December 2014. And that if the purchaser didn't make any instalment payment that's due the vendor may (at their discretion and amongst other options), sixty days after the due date, terminate the contract and retain all amounts paid under its terms.

A little over £187,000 was then invested into Llana Beach over 20 December 2011 and 21 December 2011. Followed by a further investment of a little over £79,000 on 23 January 2012.

L&C wrote to Miss S on 14 August 2015 and said that when the investments in Llana Beach were made, it understood that scheme borrowing would be made available. But that the developer hadn't been able to find a lender willing to lend to investors. L&C explained that if Miss S couldn't provide the funds required to complete the purchase, she risked losing the sums invested. And to avoid the risk of defaulting on the contracts, the developer had offered investors the opportunity to consolidate their holdings. L&C said it understood that TRG had explained the consolidation arrangements and that Miss S wanted to proceed with these. In September 2015 Miss S signed a form to proceed with the consolidation.

Additional background information

Having explained what's happened above, I've mentioned some of the additional documentation we've been provided by the parties below, before then going on to summarise what's happened in Miss S' complaint to date.

L&C's provided us with a third-party investment due diligence document it obtained. The document sets out some details about the Llana Beach investment, including that:

- The investment appeared to be a genuine hotel operation and TRG had completed one previous development in Cape Verde.
- The investment involved acquiring hotel rooms off plan, with annual income being generated through room rental. Ownership and rental income weren't pooled.
- TRG said that the investment wasn't an Unregulated Collective Investment Scheme ('UCIS'). But as the investment was still unregulated there'd be no Financial Services Compensation Scheme ('FSCS') protection.
- Management of the hotel would be covered by an operator agreement; the hotel operator would be an established operator listed on the Spanish stock exchange.
- First Resort Property Services Limited was promoting the investments under licence from TRG.
- Web searches reveal no adverse history for those involved in the arrangement.
- Where used by administrators, a *"high risk/illiquid"* disclaimer could be considered.

L&C's said that by applying to be an intermediary, RealSIPP agreed to be bound by the terms of The Intermediary Agreement for Non-Insured Contracts. I've seen copies of the L&C intermediary applications that CIB and RealSIPP signed on 13 September 2010 to

confirm this, and I've also seen a copy of the agreement.

L&C's also provided us with copies of print outs from the FSA Register. These record that, as at November 2011, RealSIPP was an appointed representative of CIB. And CIB's permissions included advising on Pension Transfers and Pension Opt Outs.

I've also seen L&C's SIPP *'Open Pension Brochure'* document. Amongst other things, this says that, *"the L&C Open Pension is not appropriate for everybody and it is essential that you obtain financial advice before entering into one"*. The brochure also explains that L&C has no responsibility for investment decisions. But that it'll ensure assets are correctly registered and comply with HM Revenue & Customs ('HMRC') rules and regulations.

Miss S' representative sent us RealSIPP's client agreement and Keyfacts document, titled *"about our services for our Resort Group SIPP package."* RealSIPP's client agreement describes it as an *"administrator and packager"* of pension solutions to clients of various alternative investment providers, and says that:

> *"We are not, however, financial advisers as defined by the Financial Services and Markets Act 2000 and we will not provide financial advice as to whether the SIPP is the right product for you, nor will we recommend or advise upon any investment strategy you should follow. You should seek advice from a suitably qualified and regulated firm or individual."*

Further, that:

> *"RealSIPP LLP does not make specific investment recommendations, nor will we confirm your objectives and any restrictions on the types of product that you wish to buy. We act upon your instructions."*

The Keyfacts document says that RealSIPP only offers products from a single company and that clients wouldn't receive advice or recommendations from RealSIPP. It's also explained that for clients establishing a SIPP (this included setting up the SIPP and arranging the transfers in) there'd be an initial £2,550 fee and an annual ongoing fee of £300 for administration and correspondence.

During our investigation into this complaint L&C was asked whether it had clarified the service RealSIPP would provide to its clients and if it obtained a copy of RealSIPP's client agreement/Keyfacts document. L&C acknowledged receipt of our request but didn't provide a substantive response to it.

In response to Miss S' complaint L&C's said, amongst other things, that:

- Its role is to make sure that investments are allowed within the trust rules and that they don't breach HMRC regulations. It isn't authorised to provide financial advice.
- It establishes liabilities and responsibilities it would have as owner of an asset.
- Consumers are encouraged to seek financial advice from a regulated adviser, but L&C doesn't require advice to have been given.
- It was for RealSIPP to advise Miss S on her DBS transfer. If RealSIPP hadn't considered it suitable, it wouldn't have submitted Miss S' application form to L&C.
- Its relationship with RealSIPP was that it permitted RealSIPP to introduce SIPPs, and it paid RealSIPP the fees agreed by the client.
- The only relationship it had with TRG was liaising with it during the purchase process, and on ongoing matters relating to the administration of investments.
- It accepts business submitted by regulated financial advisers who've an intermediary

agreement with it.

- Its controls included ensuring that business was submitted by a regulated financial adviser, whose responsibilities included advising on the suitability of the transfer, the SIPP and the underlying investments.
- Miss S completed 'investment request' and 'loan application' forms. These included details about the Llana Beach investment, the units Miss S wished to acquire and the selected payment basis. The forms drew attention to the extent of L&C's role and some features of the investment. Miss S signed these to confirm her understanding.
- The rules of the SIPP are set out in a trust deed. They state that L&C would only, subject to a small number of exceptions including where it was of the opinion doing so would be otherwise improper or inappropriate, exercise its investment powers in accordance with directions given by the member.
- It had checked the FSA register; this showed that CIB was regulated and authorised to give financial advice and that RealSIPP was an appointed representative of CIB.
- It's entitled to rely on the presumption that advice was given by CIB on the DBS transfer, this is consistent with the remuneration agreement.
- In February 2012, Miss S tried to purchase Global Forestry holdings with her SIPP. Investment Agreements were sent by Global Forestry Investments to L&C directly. Miss S then chased L&C about the investments and was told that their acceptance was suspended pending further enquiries. Miss S later decided not to invest.
- L&C decided that *"provided clients had had pensions and investment advice made available, even if that available advice were not taken up or followed"* that it would allow the Llana Beach investment to be held in its SIPP.
- It appointed solicitors to advise on property purchases in Cape Verde and on the associated contracts. A solicitors' report, a draft copy of the promissory contract, draft management/rental agreements and an investor pack were available to Miss S. And she confirmed that she'd taken any advice she needed on the investment.
- At the time of Miss S' application, many advisers were claiming to advise on the SIPP but not on the underlying investments. The FSA later clarified that advisers must consider the merits of the investment proposition when recommending a SIPP. Following this L&C changed its application form, and applications where an adviser indicated they'd not given advice at the point of application would be declined.
- It's reasonable to assume that Miss S didn't walk into RealSIPP's offices and state that she wanted an L&C SIPP and to invest in Llana Beach. If Miss S had done this it would have been an execution-only case, and L&C didn't accept execution-only cases.
- Execution-only cases wouldn't have involved an adviser fee, as was charged here.

It's been submitted on Miss S' behalf that:

- She didn't receive an incentive payment.
- She wasn't an experienced or sophisticated investor, or a high net worth client.
- She didn't understand her pension and wanted professional advice. She'd thought her DBS was worth £30,000, rather than £30,000 a year.
- She'd no intention of moving her pension until TRG/CIB convinced her to transfer.
- She was offered the chance to take control of her pension, receive advice and dramatically improve her benefits. She'd no idea of the risks involved.
- TRG said what it was going to do, but didn't explain that there were any risks involved. If the risks had been explained, she wouldn't have proceeded with the transactions.
- TRG said that it wasn't able to give advice, but RealSIPP/CIB advised her to move the DBS to L&C so as to invest in Llana Beach.
- She was told that transferring and investing in Llana Beach would generate better returns than her DBS, and her children would get a lump sum if she died.

- With Llana Beach, she understood that she'd own a property abroad but couldn't use it. She was led to believe there'd be little or no risks with the investments and that there were guarantees.
- She understood that the investments required a final payment, TRG implied it would provide the lending for this. And the repayments for the borrowing would then be covered from the rental payments.
- She can't remember trying to purchase Global Forestry holdings in 2012, but after the SIPP was setup then she received marketing from lots of different companies.
- RealSIPP and TRG told her to write letters and sign documents, and she trusted them. She was told to write to L&C to waive her cancellation rights. And application and investment forms were pre-populated, she just signed highlighted pages.
- Miss S had the impression that RealSIPP was working with L&C, and both firm's logos were on some of the forms.
- CIB is in default and Miss S' FSCS claim hasn't been upheld (I've seen the letter the FSCS sent to Miss S explaining that it was rejecting her complaint against CIB while this complaint against L&C's ongoing).

An investigator reviewed Miss S' complaint and concluded it should be upheld. They said that L&C knew no advice was given and processed the application on that basis. And that L&C should have stopped the transaction as, according to its own policy, it didn't accept execution-only business. Alternatively, if L&C did accept execution-only business, it should have questioned RealSIPP's involvement due to the fees being charged and made sure Miss S was aware of the risks of proceeding without advice. Further, and due to the inconsistencies and conflicting evidence about whether advice had previously been given by RealSIPP/CIB, if L&C had insisted that Miss S receive regulated advice before proceeding it's *most likely* the transactions complained about wouldn't then have occurred.

L&C didn't agree with the investigator and, amongst other things, it said that:

- Miss S acted without advice and it proceeded on that basis. Notwithstanding its previous comments, it hadn't relied on an assumption that Miss S was advised.
- L&C would only have accepted applications from a firm authorised by the FSA.
- There'd been a misunderstanding about its policy, and:

> *"The policy in place at the time was to ensure that* (Miss S) *had advice made available to her, in this case through RealSIPP. However, she had chosen not to take up this advice. The fact that* (Miss S) *chose not to take up this advice was her own decision.*
>
> *We recognise that it is unfortunate that this was not made clear earlier. However, L&C went through a change of ownership in October 2016 and this can make confirming the processes in place prior to the change of ownership difficult. The position has, however, now been confirmed with directors from the relevant period."*

- It satisfied itself that Miss S had the opportunity to obtain advice in accordance with its policy. And Miss S signed a deferred pension waiver form with her transferring scheme, confirming that she'd had the opportunity to take independent advice.
- L&C didn't have a policy of not accepting execution-only business. But it wouldn't accept DBS transfers where the client didn't have the opportunity to take advice.
- L&C obtained a due diligence report from Cape Verde solicitors in January 2011 showing good title (the January 2011 report L&C sent to us appears to relate to the Salinas Sea project), and a third-party report showing that Llana Beach investments were capable of being held in a SIPP.

- The inter-relation between a retainer and a firm's duties, as discussed in *Denning v Greenhalgh Financial Services Ltd* [2017] EWHC 143 (QB), is relevant here. The retainer between Miss S and L&C stated that L&C provided no advice on the investment, and that Miss S was liable for any losses arising from instructions she gave. The duties imposed by the retainer didn't extend to L&C assessing the suitability of Miss S' investment decisions or making enquiries about them.
- The FSA's 2009 Thematic Review Report is relevant to how L&C conducts its business and highlights some areas of good practice. But it didn't impose a duty on L&C to ensure that Miss S' investment decisions were suitable.
- Published after Miss S' application, the FSA's 2012 Thematic Review Report highlights the FSA's expectations of SIPP operators and L&C met its obligations.

A second investigator reviewed Miss S' complaint, they also said it should be upheld. Amongst other things, they highlighted that the pattern of business being introduced by RealSIPP presented a high risk of consumer detriment. Because of this, L&C should have taken steps to understand RealSIPP's business model and to make sure clients were being offered advice. L&C should have done this prior to receiving Miss S' application, and L&C should have concluded it was likely that the business introduced by RealSIPP might produce unsuitable SIPPs and that there was a high risk of consumer detriment. L&C should then have declined Miss S' business from RealSIPP. And, had it done so, it's *most likely* Miss S wouldn't then have opened a SIPP, transferred her DBS or invested in Llana Beach.

Solicitors for L&C replied to the second investigator. Amongst other things, they said that:

- The wording in the investment request forms confirmed that Miss S had obtained any reports, legal or other advice that she required on the investments.
- This complaint has similar facts to the *Adams v Options SIPP UK LLP (formerly Carey Pensions UK LLP)* [2020] EWHC 1229 (Ch) case, but the investigator's view doesn't explain why we've reached a different conclusion to that arrived at in *Adams*.
- The Financial Ombudsman Service is attempting to use the Principles to circumvent the *Adams* decision.
- Consideration of the Principles must be via the appropriate Conduct of Business Sourcebook ('COBS') rules applying to the transaction.
- L&C didn't have to ensure advice had been given. But there's some evidence advice was given in this case.
- Miss S was employed by Firm A, a business offering a pension review service. This brings into question the expertise and familiarity Miss S had with pension matters.
- Miss S had decided to transfer her DBS before contacting L&C, and there's nothing to indicate that she wouldn't have still gone ahead if L&C had refused the business. Other SIPP providers were accepting such investments at the time, and it's *most likely* the transactions would have been effected with another provider.
- L&C requested an oral hearing.

Following L&C's submissions, we asked Miss S about her role at Firm A. Miss S said that she'd *"never personally gained regulated status"* and that:

> *"…the trading history of* (Firm A) *shows the lack of trading history and was dissolved and was never regulated.*
>
> *The idea I would work for a regulated company, pay for regulated advice and then invest my entire company pension worth over £30,000 a year into an unregulated scheme is completely illogical. I don't know a single regulated firm would allow this transaction. The undue pressure to invest came from The Resort Group, they arranged my financial review (FCA regulated firm went into forced closure) and the*

Sipp Company. London and Colonial was provided to me as an investment 'package'."

Miss S has explained that Firm A was looking for recruitment advice on its setup and she provided it with *"initial recruitment advice on invoice on effective recruitment practices for Customer Service Roles and Office Administration. Again none of these roles were regulated, I have neither the qualification nor expertise to advice on any regulated matters."*

Miss S says that as she wasn't paid fully for her work by Firm A, she terminated her relationship with it and Firm A was later dissolved.

A search for individuals with Miss S' name on the FCA Register returns no results. And the filing history for Firm A (of which Miss S was a director), as detailed on the Companies House services website, records that Firm A wasn't incorporated until March 2012. A search for Firm A on the FCA register shows that Firm A wasn't a regulated firm in its own right, but it was an 'introducer appointed representative' of another firm for a little over a year from February 2013. Limits on the scope of appointment of introducer appointed representatives can be found at SUP 12.2.8 G in the FCA Handbook, and I've not repeated them here.

More recently L&C's said that Miss S was also a director of other entities that L&C says appear to be offering similar review services. A search for Miss S' name on the Companies House services website only show directorships that post-date both the transactions complained about here and Miss S being appointed as a director of Firm A.

As agreement couldn't be reached the case was passed to me to review. I considered the request for an oral hearing and explained to both parties why I was satisfied that I'm able to fairly determine this complaint without convening a hearing.

Following this I issued a provisional decision on this complaint and I concluded Miss S' complaint should be upheld. In brief, I concluded that:

- I was satisfied that L&C's policy from the relevant date, as confirmed by its directors, was to only accept applications from a firm authorised by the FSA and *"to ensure that* (Miss S) *had advice made available to her, in this case through RealSIPP."*
- L&C should have been conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.
- The evidence provided of the due diligence undertaken by L&C into RealSIPP wasn't sufficient in the circumstances to have met L&C's obligations.
- L&C didn't take appropriate steps or draw reasonable conclusions from the information that was available to it before accepting Miss S' application.
- L&C had some reasons to be concerned about the type of business RealSIPP was introducing. The introductions had anomalous features – high-risk business for unregulated overseas property developments and other esoteric investments. And, even though L&C believed that RealSIPP had the necessary permissions to give full advice on the business it was introducing, a large proportion of the introduced business was execution-only.
- L&C knew all of this, or else ought to have known it from the information available, but it didn't then make further appropriate checks of RealSIPP's business model.
- Had L&C made reasonable checks prior to receiving Miss S' application, it would have realised that some introductions from RealSIPP involved a significant risk of consumer detriment.
- L&C should have ceased to accept introductions from RealSIPP before it accepted Miss S' application.

- In the circumstances, it was fair and reasonable for L&C to compensate Miss S to the full extent of the financial losses she's suffered due to L&C's failings.

L&C didn't accept my provisional decision and solicitors for L&C provided a detailed response. I set out below a summary of what I consider to be the main points made in the response. However, the list isn't exhaustive and before making this decision I carefully considered the response in full:

- The provisional decision imposes a duty on L&C beyond that envisaged by the parties. And imposes additional duties on L&C to those provided for under the COBS.
- L&C only offered an execution-only service, Miss S knew and accepted this.
- The introduction was from a FCA regulated entity and COBS 2.4.4 provides for division of responsibility in such circumstances. Insufficient weight has been given to contractual arrangements and the demarcation of roles and responsibilities.
- No regard's been paid to the respective duties of the parties under the contract. The entities who brought about the transaction should be held responsible.
- As RealSIPP/CIB are no longer extant, we've concluded that L&C's responsible.
- The Financial Ombudsman Service may dismiss a complaint. The Pensions Ombudsman ('TPO') or Court would be a more appropriate forum for this complaint.
- The provisional decision quotes at length from *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) but gives only a passing reference to *Adams.*
- The provisional decision doesn't properly address using the Principles as the basis for finding against L&C in preference to the COBS rules or established case law.
- A breach of the Principles cannot, of itself, give rise to any cause of action at law.
- The Principles fall to be construed in light of the COBS rules applicable to L&C, L&C's regulatory permissions, L&C's contractual arrangements and the statutory objective that consumers should take responsibility for their decisions.
- Publications issued after the transactions shouldn't have a bearing on this complaint.
- Regulatory publications can't alter the meaning, or the scope, of the obligations imposed by the Principles.
- Many of the matters which The 2009 Thematic Review Report invites firms to consider are directed at firms providing advisory services.
- The provisional decision assumes examples of good practice observed by the regulators would have been known to the wider SIPP industry at the time.
- By linking findings to good practice instead of the interpretation of the COBS rules as set out in case law, L&C's held to an unreasonable standard. The standard that L&C should be held to is that of a reasonably competent SIPP provider.
- L&C wasn't required to request information or copies of advice. And L&C couldn't comment on advice without potentially being in breach of its permissions.
- Duties imposed by the COBS can't all apply to all firms in all circumstances.
- The COBS rules contain some provisions and obligations that don't apply to execution-only SIPP providers.
- The relationships in this case are similar to those in *Adams*, the distinguishing factor is that RealSIPP wasn't an unauthorised introducer.
- Amongst other things, the judge in *Adams* held that in order to identify the extent of the regulatory duties imposed on Carey, "*one has to identify the relevant factual context"* and that *"the key fact ... in the context is the agreement into which the parties entered, which defined their roles in the transaction"*.
- The judge also said that *"a duty to act honestly, fairly and professionally in the best interests of the client, who is to take responsibility for his own decisions, cannot be construed...as meaning that the terms of the contract should be overlooked, that the*

client is not to be treated as able to reach and take responsibility for his own decisions and that his instructions are not to be followed."

- In *Adams* the FCA agreed that the function of a firm, as determined by contract, would govern what it had to do to comply with its duties under the FCA Handbook.
- L&C acted in accordance with the contract and in full satisfaction of its duty.
- The provisional decision should have found that L&C's duties extended no further than those owed in *Adams*. But the conclusion reached is effectively that the scope of L&C's duties is the same as the position advanced by the claimant in *Adams*.
- The provisional decision runs contrary to *Adams* by suggesting that, notwithstanding the clear contractual terms, L&C owed due diligence obligations under the Principles.
- The provisional decision fails to have regard to the general principle that consumers should take responsibility for their decisions, the fundamental principle of freedom of contract and to the authority of *Adams* and *Kerrigan v Elevate Credit International Ltd* [2020] C.T.L.C. 161.
- We're enabling recovery of losses flowing from non-contractual obligations, which were inconsistent with express obligations in the parties' contractual arrangements.
- There was no restriction on L&C accepting business from RealSIPP without advice having been given. And at the time there was no requirement that a member had to take advice before transferring a DBS, or for L&C to ensure that advice was taken.
- L&C wasn't in breach of any rule, guidance or law in accepting the investment.
- Miss S signed a waiver form confirming that she'd had the opportunity to take independent financial advice on the DBS transfer.
- In practice, any requirement that Miss S be offered advice was met in full, even if the offer didn't come from RealSIPP. So, Miss S was offered (and refused) advice.
- Making a value judgment on advice wasn't within L&C's role.
- Insisting advice be offered to Miss S would have made no practical difference, as the decision to transfer was made before the SIPP/investment applications were signed.
- Miss S knew that the TRG investments were illiquid holdings in property and that this was high-risk business. Further due diligence wouldn't have unearthed information that Miss S wasn't already aware of when she invested.
- Good title was obtained and the investments produced a return before the pandemic.
- In *Adams* the Store First investment being high-risk didn't make it manifestly unsuitable and the same's true of the Llana Beach investment.
- Miss S was more than capable of making her own decisions. Miss S' submission that she was told there was little or no risk as the investment had guarantees runs contrary to the literature. And the submission that if the risks had been explained she wouldn't have proceeded runs contrary to the evidence.
- Miss S looked to make high-risk investments, such as Global Forestry. And the unreliability of memory is supported by Miss S' inability to recall trying to do this.
- The case of *Gestmin SGPS v. Credit Suisse* [2013] EWHC 3560 emphasises the importance of contemporaneous documents when making factual findings.
- The starting point should be the documents and any recollection that runs contrary to the contents of these should be discarded.
- A SIPP provider can't reject business without completing a full suitability assessment.
- L&C couldn't reject business without making a value judgment on suitability for each individual client, this fell outside of its expertise and the terms of the contract.
- L&C hasn't ever had permission to advise on investments.
- A consumer who requested (and received) an execution-only service, after signing numerous disclaimers should be responsible for the consequences of their actions.
- Firm A was offering a pension review service, it's inconceivable Miss S wouldn't have had some knowledge of pensions, even if she wasn't an authorised person. Miss S was also a director of other entities who appear to be offering similar review services.
- The information it's seen indicates that investment material was provided by

RealSIPP. While it's not seen any evidence of direct promotion by TRG, there was no restriction on an unregulated entity promoting an unregulated investment.
- It was common practice for SIPP providers to accept such investments in 2011. If L&C had rejected the application, it would have proceeded with a different SIPP provider.
- Had L&C rejected the investment it wouldn't have been able to give reasons for this without breaching its permissions.
- It's procedurally irregular that a fact-sensitive matter like this should be decided on the papers, and it requests an oral hearing.

Miss S had nothing substantive to add in response to my provisional decision.

I carefully considered L&C's second request for an oral hearing and explained to both parties why I was satisfied that I'm able to fairly determine this complaint without convening a hearing. L&C was also provided with a copy of any information I relied on in reaching my provisional decision that it might not previously have seen and it was invited to let us have any further submissions it wished to make on that information.

What I've decided – and why

In response to my provisional decision, amongst other things, L&C's said that it believes the complaint is better suited to be considered by TPO or a Court. It's appropriate to address this issue before I reconsider my provisional decision.

Having carefully considered L&C's submissions on this point, I'm satisfied that Miss S' complaint is one we can and should consider. We've a statutory duty to resolve complaints referred to us which are within our jurisdiction, subject to certain discretions which are set out in our rules. Regarding L&C's submission about TPO; the rules set out in the FCA Handbook, at DISP 3.4.1R, say:

"The Ombudsman may refer a complaint to another complaints scheme where:

(1) he considers that it would be more suitable for the matter to be determined by that scheme; and
(2) the complainant consents to the referral."

L&C's argued that Miss S' complaint should be referred to TPO. And I could now refer the complaint to TPO on the basis of DISP 3.4.1R if I take the view it's more suitable for TPO and if, in the light of that view, Miss S consents to a referral to TPO.

But I don't consider this is a complaint that would be more suitable for determination by TPO. This complaint requires consideration to be given to the rules and principles set down by the FCA. In my view, these are matters which the Financial Ombudsman Service is particularly well placed to deal with. I'm also satisfied we possess the necessary knowledge and expertise to fairly determine the complaint. Our investigation is also well advanced. So I don't think it would be more suitable for the subject matter of this complaint to be considered by TPO.

In reaching this conclusion I've considered the Memorandum of Understanding ('MoU') between our service and TPO. The MoU is a document about practical cooperation where there's remit overlap between the two organisations – however the MoU doesn't determine the jurisdiction of either organisation. Ultimately, DISP 3.4.1R says that I may refer the complaint to another complaints scheme, not that I must. So I've discretion to decide what I'll do in the circumstances. And, for the reasons I've given above, I've decided to exercise my discretion not to refer Miss S' complaint to TPO.

For similar reasons, I'm satisfied that I don't need to exercise my discretion to dismiss the complaint under DISP 3.3.4 AR on the basis it would significantly impair our effective operation, as it is more suitable to be dealt with by a Court or a comparable ADR entity. As I've explained, I'm satisfied the complaint's well suited to the work of the Financial Ombudsman Service. We have significant experience of dealing with complaints of this type and are well-placed to consider them. Considering Miss S' complaint would not in my view seriously impair our effective operation.

So, overall:

- I don't consider that it would be more suitable for this complaint to be determined by TPO and I've decided not to exercise my discretion to refer it.
- I'm not required to dismiss this complaint, and for the reasons I've given, I'm not exercising my discretion to dismiss it.

As such, I've gone on to reconsider the merits of this complaint below.

Merits

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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.

As a preliminary point, I should also say the purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point by point response to every submission made by the parties to the complaint. And so whilst I have considered all the submissions made by both parties, and have reconsidered all the points covered in my provisional decision, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

Relevant considerations

I've carefully taken account of the relevant considerations to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully reconsidered all of the evidence, including the submissions in response to my provisional decision, I'm still 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'd said about this point in my provisional decision.

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've 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'd 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 hadn't treated its client fairly.

Jacobs J, having set out some paragraphs of *BBA* including paragraph 162 set out above, said (at paragraph 104 of *BBSA*L):

> *"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 section 228 of the 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've 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's 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'm 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 SIPP* [2020] EWHC 1229 (Ch). 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 UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both these judgments when making this decision on Miss S' case.

I've reconsidered whether *Adams* means that the Principles should not be taken into account in deciding this case. And, I remain of the view that it doesn't. I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight didn't 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 don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of both judgments when making this decision on Miss 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 section 138(D) of the 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 didn't 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 SIPP*, 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."*

I note that there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Miss S' complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened *after* the contract was entered into. And he wasn't asked to consider the question of due diligence *before* Options SIPP agreed to accept the store pods investment into its SIPP.

And in Miss S' complaint, amongst other things, I'm considering whether L&C ought to have identified that the introductions from RealSIPP involved a significant risk of consumer detriment and, if so, whether it ought to have ceased accepting introductions from RealSIPP *before* entering into a contract with Miss S.

The facts of Mr Adams' and Miss S' cases are also different. And I need to construe the duties L&C owed to Miss S under COBS 2.1.1R in light of the specific facts of Miss S' case.

So I've considered COBS 2.1.1R - alongside the remainder of the relevant considerations, and within the factual context of Miss S' case, including L&C's role in the transaction.

However, I think it's 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'm 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 L&C was under any obligation to advise Miss S on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Miss S on the merits of the SIPP and/or the underlying investments.

Overall, I'm 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 Miss S' case.

The regulatory publications

The FCA (and its predecessor, the FSA) issued a number of publications which reminded SIPP operators of their obligations and which set out how they might achieve the outcomes envisaged by the Principles, namely:

- The 2009 and 2012 Thematic Review Reports.
- The October 2013 finalised SIPP operator guidance.
- The July 2014 *"Dear CEO"* letter.

I've again considered the relevance of these publications. And I've set out material parts of the publications here, although I've considered them in their entirety.

The 2009 Thematic Review Report

The 2009 Report included the following statement:

"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.

It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.
…

We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to clients.

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their customers' interests in this respect, with reference to Principle 3 of the Principles for Business ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*

- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*

- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*

- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*

- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*

- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*

- *Identifying instances of clients waiving their cancellation rights, and the reasons for this."*

The later publications

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

"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 also set out the following:

"Relationships between firms that advise and introduce prospective members and SIPP operators

Examples of good practice we observed during our work with SIPP operators include the following:

- *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un-authorised business warnings.*

- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*

- *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*

- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns.*

- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers. Examples of good practice we have identified include:

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*

- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*

- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non-regulated introducers*

In relation to due diligence, the October 2013 finalised SIPP operator guidance said:

*"**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. 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, and*

- *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 referred to selected parts of the publications, to illustrate their relevance, I've considered them in their entirety.

In its response to my provisional decision L&C said the 2009 thematic review isn't statutory guidance. That's a point I acknowledged in my provisional decision. And I again acknowledge here that the 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However, I remain of the view that the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't 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's 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, and I'm therefore satisfied it's appropriate to take them into account.

It's 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.

L&C's also said that the 2009 Thematic Review Report didn't provide 'guidance' in any meaningful sense. At its introduction the Report says:

> *"In this report, we describe the findings of this thematic review, and make clear what we expect of SIPP operator firms in the areas we reviewed. It also provides examples of good practices we found."*

And, as referenced above, the report goes on to provide "…*examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms."*

So, I'm satisfied that the Report is a *reminder* that the Principles apply and it gives 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. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So I remain satisfied it's relevant and therefore appropriate to take it into account.

In its response to my provisional decision, including when making its points about the regulatory publications, L&C's referenced the *R. (on the application of Aviva Life and Pensions (UK) Ltd) v Financial Ombudsman Service* [2017] EWHC 352 (Admin) case. However, whilst the judge in that case made some observations about the application of our statutory remit, that remit remains unchanged. And, as noted above, in considering what's fair and reasonable in all the circumstances of a case, I'm required to take into account (where appropriate) what I consider to have been good industry practice at the relevant time.

L&C's also said that many of the matters which the Report invites firms to consider are directed at firms providing advisory services. It's not specified which parts of the Report it thinks are directed at such firms but, to be clear, I think the Report's also directed at firms like L&C acting purely as SIPP operators. The Report says that *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses…"* And it's noted prior to the good practice examples quoted above that *"We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs."*

I'm also satisfied that L&C, at the time of the events under consideration here, thought the 2009 Thematic Review Report was relevant. L&C's acknowledged in its submissions that the Report's relevant to how it conducts its business and highlights some areas of good practice. And L&C *did* carry out some due diligence on RealSIPP. So, it clearly thought it was good practice to do so, at the very least.

The remainder of the publications also 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 to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I therefore remain satisfied it's appropriate to take them into account too.

I've carefully considered what L&C's said about publications published after Miss S' SIPP was set up. But I remain of the view stated in my provisional decisional that, like the ombudsman in the BBSAL case, I don't think the fact the publications, (other than the 2009 Thematic Review Report), post-date the events that took place in relation to Miss S' complaint, mean that the examples of good practice they provide weren't good practice at the time of the relevant events. Although the later publications were published after the events subject to this complaint, the Principles that underpin them existed throughout, as did the obligation to act in accordance with the Principles.

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

I note L&C's point that the judge in the *Adams* case didn't consider the 2012 Thematic Review Report, 2013 SIPP operator guidance and 2014 *"Dear CEO"* letter to be of relevance to his consideration of Mr Adams' claim. But it doesn't follow that those publications are irrelevant to my consideration of what's fair and reasonable in the circumstances of this complaint. I'm required to take into account good industry practice at the relevant time. And,

as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

That doesn't mean that in considering what's fair and reasonable, I'll only consider L&C's actions with these documents in mind. The reports, *"Dear CEO"* letter and guidance gave non-exhaustive examples of good practice. They didn't 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.

The regulator also issued an alert in 2013 about advisers giving advice to consumers on SIPPs without consideration of the underlying investment to be held in the SIPP. The alert *("Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP"*) set out that this type of restricted advice didn't meet regulatory requirements. It said:

> *"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes).*
> *…*
> *Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.*
>
> *The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes."*

The alert post-dates the events in this complaint – but, again, it didn't set new standards. It highlighted that advisers using the restricted advice model discussed in the alert generally weren't meeting *existing* regulatory requirements and set out the regulator's concerns about industry practices at the time.

To be clear, and as I confirmed in my provisional decision, I don't say the Principles or the publications obliged L&C to ensure the transactions were suitable for Miss S. It's accepted L&C wasn't required to give advice to Miss S, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But they're evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles. As L&C notes from the FCA's Enforcement Guide, publications of this type "*illustrate ways (but not the only ways) in which a person can comply with the relevant rules".* And so it's fair and reasonable for me to take them into account when deciding this complaint.

I'd also add that, even if I agreed with L&C that any publications or guidance that post-dated the events subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time (which I don't), that doesn't alter my view on what I consider to have been good industry practice at the time. That's because I find that the 2009 Report together with the Principles provide a very clear indication of what L&C could and should

have done to comply with its regulatory obligations that existed at the relevant time before accepting Miss S' introduction from RealSIPP.

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 Miss S' SIPP application from RealSIPP, L&C 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 L&C should have done to comply with its regulatory obligations and duties.

Submissions have been made about breaches of the Principles not giving rise to any cause of action at law, and breaches of guidance not giving rise to a claim for damages under the FSMA. I've carefully considered these submissions but, to be clear, it's not my role to determine whether something that's taken place gives rise to a right to take legal action. I'm making a decision on what's fair and reasonable in the circumstances of this complaint – and for all the reasons I've set out above I'm satisfied that the Principles and the publications listed above are relevant considerations to that decision.

So taking account of the factual context of this case, it remains my view that in order for L&C to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into RealSIPP and the business RealSIPP was introducing, both initially and on an ongoing basis.

In deciding what's fair and reasonable in the circumstances, it's appropriate to take an inquisitorial approach. And, ultimately, what I'll be looking at here is whether L&C took reasonable care, acted with due diligence and treated Miss S fairly, in accordance with her best interests. And what I think's fair and reasonable in light of that. And I think the key issue in Miss S' complaint is whether it was fair and reasonable for L&C to have accepted Miss S' SIPP application in the first place. So, I need to consider whether L&C carried out appropriate due diligence checks on RealSIPP before deciding to accept Miss S' SIPP application.

L&C says it carried out due diligence on RealSIPP before accepting business from it. And from what I've seen I accept that it undertook some checks. However, the questions I need to consider are whether L&C ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by RealSIPP were being put at significant risk of detriment. And, if so, whether L&C should therefore not have accepted Miss S' application from RealSIPP.

The contract between L&C and Miss S

In its response to my provisional decision, L&C's made a number of references to its contract with Miss S. I've carefully considered what L&C's said about this.

My provisional decision was made on the understanding that L&C acted purely as a SIPP operator and this final decision is made on the same basis. I don't say L&C should (or could) have given advice to Miss S or otherwise have ensured the suitability of the SIPP or Llana

Beach investment for her. I accept that L&C made it clear to Miss S that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in her SIPP investments. And that forms Miss S signed confirmed, amongst other things, that losses arising as a result of L&C acting on her instructions were her responsibility.

I've not overlooked or discounted the basis on which L&C was appointed. And my decision on what's fair and reasonable in the circumstances of Miss S' case is made with all of this in mind. So, I've proceeded on the understanding that L&C wasn't obliged – and wasn't able – to give advice to Miss S on the suitability of the SIPP or Llana Beach investment. But I remain satisfied that, to meet its regulatory obligations when conducting its operation of SIPPs business, L&C had to decide whether to accept introductions of business with the Principles in mind. And I don't agree that it couldn't have rejected introductions or applications without contravening its regulatory permissions by giving investment advice.

What did L&C's obligations mean in practice?

In this case, the business L&C was conducting was its operation of SIPPs. And I remain satisfied that, to meet its regulatory obligations, when conducting its operation of SIPPs business, L&C had to decide whether to accept or reject particular investments and/or referrals of business with the Principles in mind.

The regulators' reports and guidance provided some examples of good practice observed by the FSA and FCA during its work with SIPP operators. This included being satisfied that a particular introducer/investment is appropriate to deal with/accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.

As set out above, to comply with the Principles, L&C needed to conduct its business with due skill, care and diligence; organise and control its affairs responsibly and effectively; and pay due regard to the interests of its clients (including Miss S) and treat them fairly. Its obligations and duties in this respect weren't prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

And I think that L&C understood this at the time too, as it did more than just check the FSA entries for RealSIPP and CIB to ensure they were regulated to give advice. It also entered into intermediary agreements with those firms. And it's apparent that L&C had access to some information about the type and volume of introductions it was receiving from RealSIPP, as it's been able to provide us with information about this when requested.

So, and well before the time of Miss S' application, I think that L&C ought to have understood that its obligations meant that it had a responsibility to carry out appropriate checks on RealSIPP to ensure the quality of the business it was introducing.

And I think L&C also ought to have understood that its obligations meant that it had a responsibility to carry out appropriate due diligence on investments before accepting them into a SIPP. I think L&C's submissions on the due diligence it undertook prior to allowing Llana Beach holdings within its SIPPs reflect this. So, I'm satisfied that, to meet its regulatory obligations when conducting its business, L&C was also required to consider whether to accept or reject a particular investment (here Llana Beach), with the Principles in mind.

L&C's due diligence on RealSIPP

L&C appears to have carried out the following checks before it accepted business from RealSIPP:

- It checked the FSA register to ensure that RealSIPP and its principal were regulated and authorised to give financial advice.
- It entered into intermediary agreements with RealSIPP and its principal.

And, prior to accepting Miss S' application, it also had access to some information about the type and volume of introductions it was receiving from RealSIPP.

L&C's also explained that at the date of Miss S' application, it wouldn't have accepted applications from a firm that wasn't authorised by the FSA. And L&C also says its directors from the relevant period have confirmed its policy was that applicants effecting a pension transfer, like Miss S, had to have had advice made available to them which would, as L&C put it, *"in this case* (have been) *through RealSIPP."* And that it was then for the applicant to choose whether to take up the intermediary's offer of advice.

Clarity on the specifics of L&C's policy at the relevant time hasn't been helped by L&C's comments about this changing during our investigation. But L&C's directors' recollections appear to align with the questions and answers about DBS transfers contained in L&C's New Business Checklist for Miss S' application. And, on balance, I think it's *most likely* that the position confirmed by L&C's directors from the relevant period is the correct one.

These steps go some way towards meeting L&C's regulatory obligations and good industry practice. But I remain of the view L&C failed to conduct sufficient due diligence on RealSIPP before accepting business from it or draw fair and reasonable conclusions from what it did know about RealSIPP. My view remains that L&C ought reasonably to have concluded it should *not* accept business from RealSIPP, and have ended its relationship with it, before Miss S' application was made. I say this because:

- L&C was aware of or should have identified potential risks of consumer detriment associated with business introduced by RealSIPP at the outset of its relationship with RealSIPP, and certainly by the time of Miss S' application:
    - There was insufficient evidence to show RealSIPP (or any other regulated party) was offering or giving full regulated advice (that is advice on the transfer or switch to the SIPP *and* the intended investment).
    - The introductions had anomalous features – high-risk business, in relatively high volumes, for unregulated overseas property developments and other esoteric investments. And, even though RealSIPP had the necessary permissions to give full advice on the business it was introducing, it wasn't giving advice on a large proportion of that business.
    - TRG or an unregulated business associated with it (First Resort Property Services Limited) was promoting the Llana Beach investments.

- L&C should have taken steps to address these risks (or, given these risks, have simply declined to deal further with RealSIPP).

- Such steps should have involved getting a full understanding of RealSIPP's business model – through requesting information from RealSIPP and through independent checks.

- Such understanding would have revealed there *was* a significant risk of consumer detriment associated with introductions of business from RealSIPP.

- In the alternative RealSIPP would have been unwilling to answer or fully answer the questions about its business model.

- In either event L&C should have concluded it shouldn't accept introductions from RealSIPP.

I've set out below some more detail on the potential risks of consumer detriment L&C either knew about or ought to have known about at the time of Miss S' application. These points overlap, to a degree, and should have been considered by L&C cumulatively.

The availability of advice

L&C entered into intermediary agreements with RealSIPP and its principal, CIB. As part of this process, it was open to L&C to mention to RealSIPP any policy requirements it had for full regulated advice to be made available to applicants where introduced business involved pension transfers. L&C could have highlighted this in the intermediary application form, The Intermediary Agreement for Non-Insured Contracts, or in supplementary correspondence with RealSIPP.

However, no correspondence I've seen between L&C and RealSIPP mentioned this. Miss S' SIPP application also made it clear that advice hadn't been given at the point of sale.

In its response to my provisional decision L&C's made further submissions about a waiver form. As I've mentioned previously, the administrator of Miss S' DBS had enclosed a waiver form alongside a letter it sent to TRG on 14 October 2011. Miss S subsequently signed and returned a waiver form to the same administrator. And it was stated, amongst other things, in the form that she'd had the opportunity to take independent financial advice on the transfer.

It's not stated in the waiver form that a regulated firm had offered advice to Miss S on the transfer and that she'd refused that advice. So, I'm not in agreement with L&C's submission that Miss S was offered and refused advice. And, having carefully considered all of the available evidence, I think it's *most likely* that Miss S wasn't ever offered full regulated advice by a regulated advisory firm with the necessary permissions.

L&C's solicitors have suggested that there's some evidence that advice might have been given to Miss S by RealSIPP/CIB, highlighting comments about a fee agreement. But I don't agree this is evidence that advice was given by RealSIPP/CIB; the annual fee of £300 wasn't for advice, as the Keyfacts document explains it's for ongoing administration and correspondence. So, I've seen no evidence that Miss S was ever offered full regulated advice on the transactions this complaint concerns by RealSIPP or its principal (or any other regulated advisory firm). As its client agreement and Keyfacts document make clear, RealSIPP wasn't offering clients like Miss S the option of *any* regulated advice on the proposed transactions, let alone *full* regulated advice.

So, based on the available evidence, I think there was insufficient basis for L&C to reasonably assume that advice had been given to Miss S or had been made available to Miss S and declined.

The possibility no regulated advice had been given or made available was a clear and obvious potential risk of consumer detriment here. Miss S was transferring around £300,000 from a DBS to invest (entirely) in an overseas property development – a move which was highly unlikely to be suitable for the vast majority of retail clients.

Anomalous features

<u>RealSIPP was introducing consumers who were all investing in high risk non-standard assets</u>

The introductions L&C received from RealSIPP were for applicants looking to invest in high-risk non-standard esoteric holdings, such as the unregulated overseas property development Llana Beach Miss S was investing in. As mentioned, I think it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of the population – sophisticated and/or high net worth investors. The risks are multiplied where the property is "off plan" and further funding is necessary from investors to complete the purchases, as was the case with many of the deposit based TRG investments, including those Miss S made.

So, I think L&C either was aware, or ought reasonably to have been aware, that the type of business RealSIPP was introducing was high-risk and therefore carried a potential risk of consumer detriment on this basis too.

<u>High proportion of execution-only business</u>

In addition to the possibility no advice had been given or made available to Miss S, the available evidence also shows L&C was, or should have been, aware that not offering or giving advice was something RealSIPP was doing routinely.

It's clear that L&C had access to information about the number and nature of introductions that RealSIPP made, as it's been able to provide us with details about this when requested.

An example of good practice identified in the FSA's 2009 Thematic Review Report was:

> *"Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified."*

So I don't think simply keeping records without scrutinising that information would be consistent with good industry practice and L&C's regulatory obligations. As highlighted in the 2009 Thematic Review Report, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

From the figures L&C's provided, a little under half the introductions from RealSIPP were transacted as execution-only business (i.e. with no advice being given by RealSIPP). That's a large proportion of the total business RealSIPP introduced, and I think it's likely that RealSIPP had introduced business to L&C without providing advice on a number of occasions before Miss S' introduction.

So I think that, from very early on, L&C was on notice that RealSIPP, although the appointed representative of a regulated business that had permissions to advise on the business being introduced, wasn't a firm that was doing things in a conventional way. And I think L&C ought to have recognised that there was a risk that RealSIPP might be choosing to introduce some consumers not only without them being given full regulated advice but also without having been *offered* full regulated advice.

I think this ought to have been a red flag for L&C in its dealings with RealSIPP. It's highly unusual for regulated advice firms to be involved in execution-only transactions involving pension transfers to invest in high-risk esoteric investments, such as unregulated overseas property developments. That's because the risks involved in such transactions are unlikely to be fully understood by most people, without obtaining regulated advice. I think it's fair to say that most advice firms decline to be involved in such transactions and certainly don't transact this kind of business in significant volumes.

I think L&C ought to have viewed this as a serious cause for concern – this was a further clear and obvious potential risk of consumer detriment.

Volume of business

L&C's said 153 members were introduced by RealSIPP and over a quarter of these had an Occupational Pension Scheme. Prior to Miss S' application, RealSIPP had introduced 44 applications in about 9 months. I think that L&C should have been concerned that such a volume of introductions, relating exclusively to consumers investing in higher-risk esoteric investments was unusual – particularly from a small IFA business. And it should have considered how a small IFA business introducing this volume of higher-risk business was able to meet regulatory standards.

And I think this concern ought to have been even greater in a case like Miss S' where a DBS was involved. At the relevant date COBS 19.1.6G stated:

> *"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interest".*

While I acknowledge this aims to define the expectation of a regulated financial adviser when determining the suitability of a pension transfer, it emphasises the regulator's concern about the potential detriment such a transaction could expose a consumer to. Given the nature of its business and regulatory status, I'd expect L&C to have been familiar with the guidance contained in the COBS – even if it didn't apply directly to it.

This was a further clear and obvious potential risk of consumer detriment.

The involvement of an unregulated business

I think it's *most likely* from the available evidence that an unregulated party was involved with the promotion of the TRG investment to some consumers introduced to L&C (including Miss S) and that this ought to have been known by L&C.

The third-party due diligence report L&C obtained on Llana Beach explained that TRG was promoting its products in the UK through First Resort Property Services Limited. Neither TRG nor First Resort Property Services Limited were regulated by the FSA.

Following my provisional decision L&C was provided with any information it might not have previously seen that I'd relied on, including testimony from Miss S on TRG's role in proceedings. Miss S' recollections show it was likely TRG, or an unregulated business working with TRG, was involved in promoting the TRG investment as an investment for her pension.

In its early submissions, L&C said it's reasonable to assume that Miss S didn't walk into RealSIPP's offices and state that she wanted an L&C SIPP and to invest in Llana Beach. As I explained in my provisional decision, I agree with L&C about this; it's unlikely Miss S decided to transfer her pension to a SIPP in order to invest in TRG of her own volition. And I think that's consistent with the testimony Miss S has provided on this issue.

L&C's inference is that it was RealSIPP who gave advice. But that wasn't reflected in the content of Miss S' application form. That form clearly stated *"Advice not given at point of sale to client."* L&C's confirmed that it processed the application on that basis. And, as noted

above, Miss S' application involved transferring around £300,000 from a DBS to invest solely in TRG. So if L&C's view (which I share) was that it was unlikely Miss S made the decision to transfer to the SIPP and invest in TRG of her own volition it ought to have been alive to the risk TRG or an unregulated business working with it was involved in promoting the TRG investment as an investment for Miss S' pension, and that Miss S might have been 'sold' on the idea of transferring her pension so as to invest in Llana Beach before the involvement of any regulated parties.

Although the promotion of TRG wasn't in itself a regulated activity, this was nonetheless another clear and obvious potential risk of consumer detriment – particularly where pension investors were being targeted, as appears to be the case here. L&C should have been alive to the risks associated with an unregulated firm promoting an investment for SIPPs which was unlikely to be suitable for the vast majority of retail clients, particularly so where full regulated advice wasn't being received by consumers, and TRG may have effectively been promoting its own investment, without being subject to regulatory controls.

What fair and reasonable steps should L&C have taken, in the circumstances?

L&C could simply have concluded that, given the potential risks of consumer detriment – which I think were clear and obvious at the time – it should not accept applications from RealSIPP. That would have been a fair and reasonable step to take, in the circumstances. Alternatively, L&C could have taken fair and reasonable steps to address the potential risks of consumer detriment. I've set these out below.

Requesting information directly from RealSIPP

Given the significant potential risk of consumer detriment I think that, as part of its due diligence on RealSIPP, L&C ought to have found out more about how RealSIPP was operating long before it received Miss S' application. And mindful of the type of introductions it was receiving from RealSIPP from the outset, I think it's fair and reasonable to expect L&C, in-line with its regulatory obligations, to have made some specific enquiries and obtained information about RealSIPP's business model.

As set out above, the 2009 Thematic Review Report explained that the regulator would expect SIPP operators to have procedures and controls, and for management information to be gathered and analysed, so as to enable the identification of, amongst other things, *"consumer detriment such as unsuitable SIPPs".* Further, that this could then be addressed in an appropriate manner *"…for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification."*

The October 2013 finalised SIPP operator guidance gave an example of good practice as:

> *"Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with."*

And I think that L&C, before accepting further applications from RealSIPP, should have checked with RealSIPP about: how it came into contact with potential clients, what agreements it had in place with its clients, whether all of the clients it was introducing were being offered advice, what its arrangements with any unregulated businesses were, how and why retail clients were interested in making these esoteric investments, whether it was aware of anyone else providing information to clients, how it was able to meet with or speak with all its clients, and what material was being provided to clients by it.

I think it's *most likely* if L&C had asked RealSIPP for this information that RealSIPP would have provided a full response to the information sought. And that, amongst other things, L&C would have then been provided with copies of client agreements and Keyfacts documents that RealSIPP was providing to different consumers it was introducing to L&C. Including a copy of the *"about our services for our Resort Group SIPP package"* document.

L&C's said it didn't *have* to obtain copies of Keyfacts documents or client agreements from RealSIPP. But I think this was a fair and reasonable step to take, in the circumstances, to meet its regulatory obligations and good industry practice.

Making independent checks

I think, in light of what I've said above, it would also have been fair and reasonable for L&C, to meet its regulatory obligations and good industry practice, to have taken independent steps to satisfy itself that full regulated advice was being offered to applicants like Miss S. For example, it could have asked for copies of correspondence in which applicants were being offered advice.

The 2009 Thematic Review Report said that:

> *"*"…*we would expect* (SIPP operators) *to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way,* ***for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification****."* (bold my emphasis)

The 2009 Thematic Review Report also said that an example of good practice was:

> *"Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely."*

So I think it would have been fair and reasonable for L&C to speak to some applicants, like Miss S, directly and to ask whether they'd been offered full regulated advice on their transactions and seek copies of the suitability reports.

L&C's said it couldn't comment on advice without potentially being in breach of its permissions. Again, I confirm that I accept L&C couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view such steps included addressing a potential risk of consumer detriment by speaking to applicants and having sight of advice letters, as this could have provided L&C with further insight into RealSIPP's business model, and helped to clarify to L&C whether full regulated advice on the overall proposition was being offered/given. This was a fair and reasonable step to take in reaction to the clear and obvious risks of consumer detriment I've mentioned.

Had it taken these fair and reasonable steps, what should L&C have concluded?

If L&C had undertaken these steps I think it ought to have identified, amongst others, the following risks before it received Miss S' application:

- RealSIPP was explaining to consumers like Miss S that its role was solely as *"administrator and packager"* of the SIPP.

- Consumers were being introduced to L&C without having been offered full regulated advice.
- RealSIPP was having business referred to it by TRG, and it was then introducing business to L&C.
- Some consumers might have been 'sold' on the idea of transferring pension monies so as to invest in Llana Beach before the involvement of any regulated parties.
- The other anomalous features I've mentioned *did* carry a significant risk of consumer detriment.

Each of these in isolation is significant, but cumulatively I think they demonstrate that there *was* a significant risk of consumer detriment associated with introductions from RealSIPP. L&C ought to have concluded RealSIPP had a complete disregard for its consumers' best interests, and wasn't meeting many of its regulatory obligations.

Had L&C carried out the due diligence I've mentioned above, I think it should have identified that consumers introduced by RealSIPP hadn't been offered, or received, full regulated advice from RealSIPP on their transactions.

As previously stated, RealSIPP wasn't offering clients like Miss S the option of *any* regulated advice on the proposed transactions, let alone *full* advice. It was acting as *"administrator and packager"* of the SIPP – an unusual role for an advisory firm to take. This raises significant questions about the motivations and competency of RealSIPP – particularly where consumers were being introduced to it by unregulated businesses.

I'm aware that in some cases RealSIPP *did* refer some consumers to CIB for advice. But in those instances I'm aware of where CIB did advise consumers to consider establishing a L&C SIPP, it didn't offer full regulated advice; it restricted its advice to the transfer of existing pension scheme(s) to the SIPP, referencing generic risks and without the specific TRG investment being named or discussed. As CIB explained in its client agreement:

> *"In this particular instance we are restricting our services to the establishment and set-up of a specific SIPP to enable commercial property purchase. We will not be providing any advice on the suitability of this package to your own personal circumstances and you should seek professional advice where necessary."*

So, in these instances, CIB wasn't discussing the specific risks associated with the TRG investment or advising on the suitability of the overall proposition for the consumer (i.e. including the intended TRG investment). This raises significant questions about the motivations and competency of CIB.

I think that if L&C had made enquiries with some applicants introduced by RealSIPP at the time, like Miss S, their responses would have been consistent with what RealSIPP (and, where relevant, CIB) had disclosed to them in relation to the extent of its role.

I therefore think L&C ought to have concluded Miss S – and applicants before her – didn't have full regulated advice made available to them by *any* route. And have viewed this as a significant point of concern. As retail consumers, like Miss S, were transferring their existing pension monies to L&C to invest entirely in higher-risk esoteric investments, including unregulated overseas property developments such as Llana Beach without the benefit of having been offered full regulated advice, by a business which appeared to be actively avoiding any responsibility to give advice.

I also think L&C should have concluded that consumers introduced by RealSIPP who were investing in TRG were likely being 'sold' on the TRG investments by an unregulated

business. As mentioned, the third-party due diligence report L&C obtained on Llana Beach discloses the involvement of an unregulated business. And I think, if asked, Miss S would have explained how her application came about – which, as I mention, was likely the result of the involvement of an unregulated business or businesses.

With the above in mind, L&C should also have concluded that the overall volume of business and the proportion of consumers who weren't apparently receiving *any* advice asked further serious questions about the motivation and competency of RealSIPP.

As such, I think L&C should have concluded – certainly by the time of Miss S' application and long before it – that it wasn't in accordance with its obligations, or its own policy requirements, to accept introductions from RealSIPP. I therefore conclude that it's fair and reasonable in the circumstances to say that L&C shouldn't have accepted Miss S' application from RealSIPP.

L&C didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Miss S fairly by accepting her application from RealSIPP. To my mind, L&C didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Miss S to be put at significant risk of detriment as a result.

Due diligence on the underlying investments

L&C had a duty to conduct due diligence and give thought to whether an investment itself is acceptable for inclusion into a SIPP. That's consistent with the Principles and the regulators' publications as set out earlier in this decision. It's also consistent with HMRC rules that govern what investments can be held in a SIPP.

I accept that the Llana Beach investment doesn't appear to be fraudulent or a scam. But this doesn't mean that L&C did all the checks it needed to do. However, given what I've said about L&C's due diligence on RealSIPP and my conclusion that it failed to comply with its regulatory obligations and good industry practice at the relevant time, I don't think it's necessary for me to also consider L&C's due diligence on the Llana Beach investment at this stage. I'm satisfied that L&C wasn't treating Miss S fairly or reasonably when it accepted her introduction from RealSIPP, so I've not gone on to consider the due diligence it may have carried out on the Llana Beach investment and whether this was sufficient to meet its regulatory obligations. And I make no findings about this issue.

Was it fair and reasonable in all the circumstances for L&C to proceed with Miss S' application?

For the reasons previously given above, I think L&C should have refused to accept Miss S' application from RealSIPP. So things shouldn't have got beyond that.

L&C's referred to forms Miss S signed. In my view it's fair and reasonable to say that just having Miss S sign indemnity declarations, or relying on a waiver form she signed for the administrator of her DBS, wasn't an effective way for L&C to meet its regulatory obligations to treat her fairly, given the concerns L&C ought to have had about her introduction.

L&C knew that Miss S had signed forms intended to indemnify it against losses that arose from acting on her instructions. And, in my opinion, relying on such indemnities when L&C knew, or ought to have known, Miss S' dealings with RealSIPP were putting her at significant risk wasn't the fair and reasonable thing to do. Nor was placing any reliance on the waiver form when, as I've set out, it didn't clearly show full regulated advice had been offered. Having identified the risks I've mentioned above, it's my view that the fair and reasonable thing to do would have been to refuse to accept Miss S' application.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Miss S signed meant that L&C could ignore its duty to treat her fairly. To be clear, I'm satisfied that indemnities contained within the contractual documents don't absolve, nor do they attempt to absolve, L&C of its regulatory obligations to treat customers fairly when deciding whether to accept or reject business.

I'm satisfied that Miss S' SIPP shouldn't have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity shouldn't have arisen at all. And I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for L&C to proceed with Miss S' application.

Is it fair to ask L&C to pay Miss S compensation in the circumstances?

The involvement of other parties

In this decision I'm considering Miss S' complaint about L&C. However, I accept that other regulated parties were involved in the transactions complained about – RealSIPP and CIB. L&C's contended that it's RealSIPP/CIB that's really responsible for Miss S' losses. CIB would be the respondent for complaints about activities RealSIPP undertook as an appointed representative of CIB. And the Financial Ombudsman Service won't look at complaints against CIB, as it's been dissolved and no longer exists as a regulated business. We also can't look at complaints about TRG.

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).

As I set out above, in my opinion it's fair and reasonable in the circumstances of this case to hold L&C accountable for its own failure to comply with the its regulatory obligations, good industry practice and to treat Miss S fairly.

The starting point therefore, is that it would be fair to require L&C to pay Miss S compensation for the loss she's suffered as a result of its failings. I've carefully considered if there's any reason why it wouldn't be fair to ask L&C to compensate Miss S for her loss, including whether it would be fair to hold another party liable in full or in part.

And, for the following reasons, I consider it appropriate and fair in the circumstances for L&C to compensate Miss S to the full extent of the financial losses she's suffered due to L&C's failings.

I accept that it may be the case that TRG, RealSIPP or CIB might have some responsibility for initiating the course of action that led to Miss S' loss. However, I'm satisfied that it's also the case that if L&C had complied with its own distinct regulatory obligations as a SIPP operator, the arrangement for Miss S wouldn't have come about in the first place, and the loss she's suffered could have been avoided.

If L&C agrees to pay the calculated redress in full then, if it wishes, and before compensation is paid, L&C could have the option to take an assignment of any rights of action Miss S has against any other parties involved in the transactions this complaint concerns.

I want to make clear that I've carefully taken everything L&C's said into consideration. And it's my view that it's appropriate and fair in the circumstances for L&C to compensate Miss S to the full extent of the financial losses she's suffered due to L&C's failings. And, taking into

account the combination of factors I've set out above, I'm not persuaded that it would be appropriate or fair in the circumstances to reduce the compensation amount that L&C's liable to pay to Miss S.

To be clear, I'm not making a finding that L&C should have assessed the suitability of the SIPP or the Llana Beach holdings for Miss S. I accept that L&C wasn't obligated to give advice to Miss S, or otherwise to ensure the suitability of the pension wrapper or investments for her. Rather, I'm looking at L&C's separate role and responsibilities – and for the reasons I've explained, I think it failed in meeting those responsibilities.

Miss S taking responsibility for her own investment decisions

It's been submitted that in construing L&C's obligations, regard should be had to section 5(2)(d) of the FSMA (now section 1C). This section requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the general principle that consumers should take responsibility for their own investment decisions.

I've considered this point carefully and I'm satisfied that it wouldn't be fair or reasonable to say Miss S' actions mean she should bear the loss arising as a result of L&C's failings.

In my view, if L&C had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Miss S' application from RealSIPP to open a SIPP *at all*. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Miss S wouldn't have come about in the first place, and the loss she's suffered could have been avoided.

As I've made clear, L&C needed to carry out appropriate due diligence on RealSIPP and reach the right conclusions. I think it failed to do this. And just having Miss S sign forms containing declarations wasn't an effective way of L&C meeting its obligations, or of escaping liability where it failed to meet its obligations.

Further, I don't think L&C could have taken any meaningful comfort from the declarations contained in the forms Miss S signed that she had, in fact, been offered full regulated advice on the SIPP, the DBS transfer in and the investment in Llana Beach. In response to my provisional decision L&C's said it understands this to mean that regulated advice being offered couldn't give comfort to L&C. And that advice being offered negates any of the criticism of L&C's conduct. That's a misunderstanding of what I've said.

I accept L&C's misunderstanding might have arisen from my phrasing. So, to be clear, what's stated in the passage isn't that Miss S had been offered and refused advice – as I've explained in my provisional decision and repeated in this final decision I'm satisfied from the available evidence that RealSIPP wasn't offering clients like Miss S the option of *any* regulated advice on the proposed transactions, let alone *full* advice.

I'm satisfied that if L&C had carried out adequate due diligence on RealSIPP prior to receiving Miss S' application it ought reasonably to have been aware of this fact. And, once aware of this, I don't think L&C could have reasonably taken any meaningful comfort from declarations contained in forms that were contrary to the information L&C had obtained.

In other words, once it was apparent to L&C that RealSIPP wasn't, in fact, offering clients like Miss S the option of *any* regulated advice on the proposed transactions, let alone *full* advice, I don't think it would have been fair or reasonable for L&C to have taken any meaningful comfort from a statement in a form that ran contrary to something L&C already knew, or ought to have known, had it undertaken adequate due diligence.

I've carefully considered what L&C's said about Miss S being aware of the risks. But, from the evidence I've seen I've no reason to doubt Miss S when she says that she didn't receive an explanation of the risks involved, and that she was led to believe there'd be little or no risk. I don't agree with L&C that Miss S' submissions on this point run contrary to the available evidence. And I wouldn't consider it fair or reasonable for L&C to have concluded that Miss S *had* received an explanation of the risks involved with the overall proposition from RealSIPP and/or CIB given what L&C knew, or ought to have known, about RealSIPP's business model by the time it received Miss S' application.

I've also carefully considered what L&C's solicitors said regarding the level of knowledge that might be attributable to Miss S. Including what L&C's said about Miss S, Firm A, and other entities she was a director of, in response to my provisional decision.

The Companies House services website suggests these directorships were held *after* the transactions this complaint concerns. Miss S has previously explained that her role at Firm A didn't involve her giving any advice or information to others about pensions or investments, and Miss S' response to a number of questions we put to her about Firm A and her work history were shared with L&C. On balance, and having carefully reconsidered everything, I remain satisfied that as at the date of the transactions complained about that Miss S wasn't a financially sophisticated retail client and that she wanted professional advice.

CIB was a regulated firm with the necessary permissions to advise on the transactions this complaint concerns. And RealSIPP was an appointed representative of CIB. I'm satisfied that in her dealings with it, Miss S trusted RealSIPP to act in her best interests. Miss S also then used the services of a regulated personal pension provider in L&C.

So, overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair to say L&C should compensate Miss S for the loss she's suffered. I don't think it would be fair to say in the circumstances that Miss S should suffer the loss because she ultimately instructed the transactions be effected.

Had L&C declined Miss S' business from RealSIPP, would the transactions complained about still have been effected elsewhere?

L&C's contended that Miss S would likely have proceeded with the transfer and investments regardless of the actions it took. L&C's highlighted that other SIPP providers were accepting such investments at the time, and it's *most likely* the transactions would have been effected with another provider.

L&C's argued that another SIPP operator would have accepted Miss S' application, had it declined it. But I don't think it's fair and reasonable to say that L&C shouldn't compensate Miss S for her loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found it did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Miss S' application from RealSIPP.

L&C's highlighted that Miss S later showed interest in a further esoteric investment in Global Forestry. Miss S didn't end up investing in that arrangement. And I'm not satisfied that Miss S was so keen on the Llana Beach investments, or other esoteric investments, that she'd have sought to submit her application to L&C, or any other provider, through a different regulated firm. Miss S has been clear that it was TRG, RealSIPP and CIB driving the transfer and that she'd had no intention of transferring before their involvement. And also says that if the risks had been explained to her that she wouldn't have proceeded with the transactions.

So, overall, I think it's far more likely than not that if Miss S had approached another regulated advisory firm she'd have been told in no uncertain terms that she should leave her DBS as it was, and I think it's *most likely* that Miss S would have listened to that advice.

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."*

But, in this case, I'm not satisfied that Miss S proceeded knowing that the investments she was making were high-risk and speculative, and that she was determined to move forward with the transactions in order to take advantage of a cash incentive.

I'm not satisfied that Miss S understood she was making a high-risk investment. It appears Miss S understood that her pension monies were being moved into a little to no risk pension arrangement with guarantees. And Miss S says she was told that transferring and investing in Llana Beach would generate better returns than her DBS, and her children would get a lump sum if she died.

I've also not seen any evidence to show Miss S was paid a cash incentive. It therefore cannot be said she was *"incentivised"* to enter into the transaction. And, on balance, I'm satisfied that Miss S, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for herself. 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 L&C had refused to accept Miss S' application from RealSIPP, the transactions this complaint concerns wouldn't still have gone ahead.

So, overall, I do think it's fair and reasonable to direct L&C to pay Miss S compensation in the circumstances. While I accept that TRG, RealSIPP and CIB might have some responsibility for initiating the course of action that's led to Miss S' loss, I consider that L&C failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining Miss S' application from RealSIPP when it had the opportunity to do so. And I'm satisfied that Miss S wouldn't have established the SIPP, transferred monies in from her DBS or invested in Llana Beach if it hadn't been for L&C's failings.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Miss S – including RealSIPP and CIB. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against L&C that requires it to compensate Miss S for the full measure of her loss. RealSIPP was reliant on L&C to facilitate access to Miss S' pension. And but for L&C's failings, I'm satisfied that Miss S' pension transfer wouldn't have occurred in the first place.

As such, I'm not asking L&C to account for loss that goes *beyond* the consequences of its failings. I'm satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for *that same loss* is a distinct matter, which I'm not able to determine. However, that fact shouldn't impact on Miss S' right to fair compensation from L&C for the full amount of her loss.

In response to the provisional decision L&C's highlighted that RealSIPP/CIB are no longer in existence. I accept that may be true. However, the key point here is that but for L&C's failings, Miss S wouldn't have suffered the loss she's suffered. As a result, the trading/financial position of RealSIPP/CIB, and the fact that any assignment of any action against RealSIPP/CIB from Miss S to L&C might be worthless, doesn't lead me to change

my overall view on this point. And, as such, I remain of the opinion that it's appropriate and fair in the circumstances for L&C to compensate Miss S to the full extent of the financial losses she's suffered due to its failings, and notwithstanding any failings by RealSIPP/CIB.

In conclusion

Taking all of the above into consideration, I think that in the circumstances of this case it's fair and reasonable for me to conclude that L&C shouldn't have accepted Miss S' application from RealSIPP. For the reasons I've set out, I also think it's fair to ask L&C to compensate Miss S for the loss she's suffered.

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

Putting things right

My aim's to return Miss S to the position she'd now be in but for what I consider to be L&C's failure to carry out adequate due diligence checks before accepting Miss S' SIPP application.

L&C should calculate fair compensation by comparing the current position to the position Miss S would be in if she'd not transferred from her DBS. In summary, L&C should:

1. Take ownership of the Llana Beach investments if possible.
2. Calculate and pay compensation for the loss Miss S' pension provisions have suffered as a result of L&C accepting her application from RealSIPP.
3. Pay Miss S £500 for the trouble and upset she's suffered.

In order to be fair to L&C, if it agrees to pay the calculated redress in full, it should then have the option of payment of the full calculated redress being contingent upon Miss S assigning any claim she may have against any other third party involved in the transactions this complaint concerns to L&C. L&C would need to meet any costs in drawing up the assignment.

I explain how L&C should carry out these steps in further detail below.

1. Take ownership of the Llana Beach investments if possible.

   In order for the SIPP to be closed and further SIPP fees to be prevented, the TRG investments need to be removed from Miss S' SIPP. To do this, L&C should calculate an amount it's willing to accept as a commercial value for Miss S' TRG investments and pay that sum into Miss S' SIPP and take ownership of the TRG investments. The sums paid into the SIPP to purchase the TRG investments will then make up part of the current actual value of the SIPP.

   If L&C's unwilling or unable to purchase the TRG investments, then the actual value of any TRG investments it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include their being given a nil value for the purposes of ascertaining the current value of Miss S' SIPP.

   Provided Miss S is compensated in full then, if L&C doesn't purchase the TRG investments, it may ask Miss S to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from these investments. That undertaking should allow for the effect of any tax and charges on the amount Miss S

may receive from the investments, and any eventual sums she would be able to access from the SIPP. L&C will need to meet any costs in drawing up the undertaking.

If L&C doesn't take ownership of the TRG holdings, and they continue to be held in Miss S' SIPP, there'll then be ongoing fees in relation to the administration of the SIPP. Miss S wouldn't be responsible for those fees if L&C hadn't accepted her application from RealSIPP. So, I think it's fair and reasonable for L&C to waive any SIPP fees until such time as Miss S can dispose of the TRG investments and close the SIPP.

2. Calculate and pay compensation for the loss Miss S' pension provisions have suffered as a result of L&C accepting her application from RealSIPP.

   A fair and reasonable outcome would be for L&C to put Miss S, as far as possible, into the position she'd now be in if it hadn't accepted her application from RealSIPP. As explained above, had this occurred then I consider it's most likely Miss S would have remained in her DBS. L&C must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

   This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Miss S' acceptance of the decision.

   L&C may wish to contact the Department for Work and Pensions ('DWP') to obtain Miss S' contribution history to the State Earnings Related Pension Scheme ('SERPS or S2P').

   These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Miss S' SERPS/S2P entitlement.

   If the redress calculation demonstrates a loss, the compensation should if possible be paid into Miss S' pension plan. 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 plan isn't possible or has protection or allowance implications, it should be paid directly to Miss S as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Miss S' likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

   The compensation amount must where possible be paid to Miss S within 90 days of the date L&C receives notification of her acceptance of my final decision. Further 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 for any time, in excess of 90 days, that it takes L&C to pay Miss S.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

3. Pay Miss S £500 for the trouble and upset she's suffered.

   In addition to the financial loss that Miss S has suffered as a result of the problems with her pension, I think that the loss of a significant portion of her pension provisions has caused Miss S distress. And I think that it's fair for L&C to compensate her for this as well.

My final decision

For the reasons given, my final decision is that I uphold Miss S' complaint against London & Colonial Services Limited.

Where I uphold a complaint, I can award fair compensation of up to £150,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £150,000, I may recommend that the business pays the balance.

Determination and award: I require London & Colonial Services Limited to pay Miss S the compensation amount as set out in the steps above, up to a maximum of £150,000.

Where the compensation amount does not exceed £150,000, I additionally require London & Colonial Services Limited to pay Miss S any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £150,000, I only require London & Colonial Services Limited to pay Miss S any interest as set out above on the sum of £150,000.

Recommendation: If the compensation amount exceeds £150,000, I also recommend that London & Colonial Services Limited pays Miss S the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Miss S.

If Miss S accepts my decision, the award is binding on London & Colonial Services Limited. My recommendation is not part of my determination or award. London & Colonial Services Limited doesn't have to do what I recommend. Further, it's unlikely that Miss S can accept my decision and go to Court to ask for the balance. Miss S may want to consider getting independent legal advice before deciding whether to accept this decision.

If London & Colonial Services Limited agrees to pay the full calculated redress, and elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Miss S for her consideration and agreement. Any expenses incurred for the drafting of the assignment should be met by London & Colonial Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 5 August 2022.

Alex Mann

Ombudsman