DRN-4061193

## The complaint

Mrs C says that she received unsuitable advice to transfer from her defined benefit scheme ('DBS') into a London & Colonial Services Limited ('L&C') Self-Invested Personal Pension ('SIPP'). Mrs C complains that L&C didn't carry out sufficient checks, and didn't meet its obligations, when accepting her business. Mrs C complains that L&C didn't undertake sufficient due diligence on investments that were made and that it should compensate her for the losses that she's suffered.

## What happened

### Involved Parties

*London & Colonial Services Limited*

L&C is 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.

*The Alliance Partnership s.r.o.*

TAP is an EEA authorised financial advisory firm based in the Czech Republic. TAP had passported into the UK under the Insurance Mediation Directive ('IMD') and, at the relevant date, was permitted to carry out some regulated activities in the UK. The Financial Conduct Authority ('FCA') register shows that TAP had passported permissions in the UK from 19 November 2008 and that a supervisory run off has been in place since 6 April 2021.

*Hansard Europe Limited*

Hansard Europe Limited ('Hansard') was registered in Dublin. It provided a product through which investors could invest in a number of holdings.

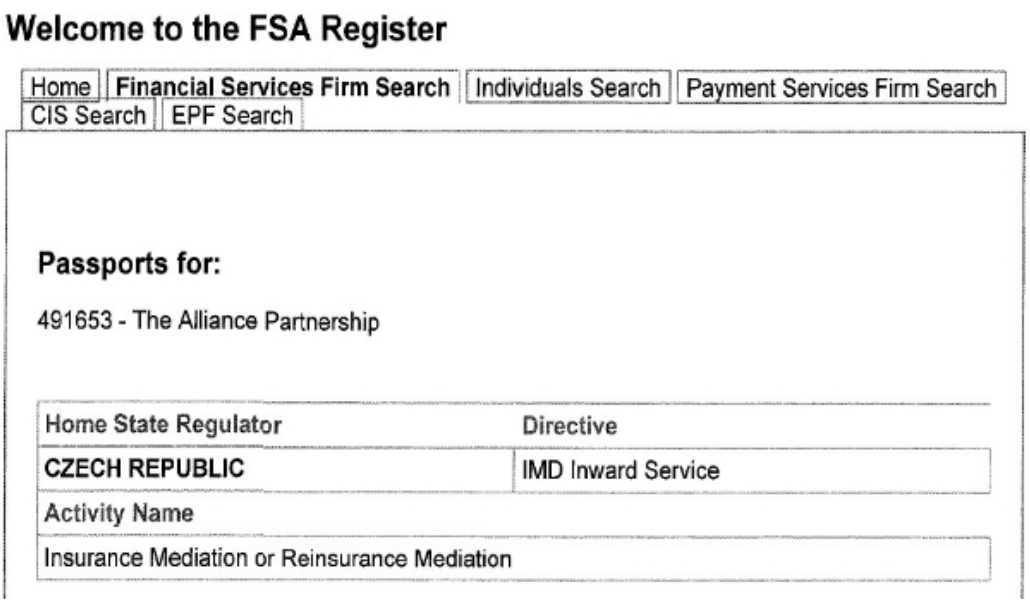
### L&C and TAP's relationship

As part of our investigation, L&C was asked a series of detailed questions about the due diligence it undertook into the introducer (which in this complaint was TAP) and into investments that were made with monies in the SIPP. Some of the questions asked included: details about the levels of business L&C received from the introducer, whether there was an agreement in place between L&C and the introducer, what due diligence it did on the introducer, what its understanding of the introducer's business model was, whether it undertook any ongoing checks on the introducer, why any agreement in effect between it

and the introducer ended, what proportion of business it received from the introducer involved transfers from occupational pension schemes and copies of correspondence relating to any due diligence it conducted on the investments made by the consumer.

Having asked L&C for this information, we subsequently chased it for a reply but we've not received a substantive response to our enquiries from L&C.

So, L&C has provided us with very little information about its relationship with TAP. However, on a previous case L&C provided us with the below screenshot from 26 November 2010, to show us how the register looked when it checked before accepting business from TAP:



**Welcome to the FSA Register**

Home | Financial Services Firm Search | Individuals Search | Payment Services Firm Search | CIS Search | EPF Search

**Passports for:**

491653 - The Alliance Partnership

| Home State Regulator | Directive |
|---|---|
| CZECH REPUBLIC | IMD Inward Service |
| Activity Name | |
| Insurance Mediation or Reinsurance Mediation | |

I think it's likely that that L&C's relationship with TAP began around the date of the above screenshot.

**What happened**

Mrs C says that she was contacted by phone and given advice on her pension monies. Mrs C says that the adviser she spoke to seemed confident that her monies would grow in a SIPP and that she had felt she was getting sound financial advice from an expert.

Following this, TAP wrote to L&C and noted that it was enclosing an application for Mrs C. It was stated that a revised Hansard application and fund adviser form was also enclosed for completion and forwarding.

Mrs C signed an application form for a L&C SIPP in January 2011. In the form Mr G is recorded as the IFA contact and the IFA firm is recorded as:

> *"THE ALLIANCE PARTNERSHIP LTD*
> *Regulated By The Czech National Bank (26780267)*
> *PO BOX 267, Goole, East Yorkshire, DN14 4AX."*

The application form records the remuneration to be paid to the adviser as 6% initial and 1% ongoing. Further, that TAP was to the be the investment manager. It was also stated in the form that £40,000 was to be invested in a Hansard Capital Builder arrangement.

On 17 January 2011, L&C wrote to Mrs C's pension scheme and noted that it was enclosing a copy of Mrs C's authority to transfer monies to L&C. The enclosed Transfer Request form was signed by Mrs C on 11 January 2011.

L&C wrote to TAP and Mrs C on 1 June 2011 to confirm that Mrs C's SIPP had been established.

A transaction history shows that a little over £35,000 was transferred into the newly established SIPP on 1 June 2011. With adviser fees of a little over £2,100 being paid to TAP. A little under £31,000 was then invested into a Hansard Capital Builder investment on 9 June 2011.

We've seen the Hansard Proposal Form for Mrs C's investment. This records the fund adviser as Mr G of TAP with a UK address. The form was signed on 9 June 2011 and it's noted that this is *"For and on behalf of London & Colonial Services Ltd direction of* (Mrs C)*."* The Fund choice in the application form was 100% Hansard Multi Asset Protector.

It's noted that the country of point of sale was the UK and that the selling broker was Mr G. Mr G signed the form on 2 June 2011 and it's recorded that he's regulated/authorised by the Czech National Bank and an authorisation number of 078159PA is given.

Mr G of TAP also certified a copy of identity documents for Mrs C on 2 June 2011.

On 15 June 2011, Hansard wrote to L&C to confirm that Mrs C's application was being processed, that financial advice had been provided by TAP and that various documents were being enclosed.

In correspondence L&C has mentioned that:

- In July 2011 it received a letter from a new advisory firm, PSP Wealth Management Ltd ('PSP'), saying it had been appointed by Mrs C as her new financial adviser.
- On 9 August 2011, it received a form signed by Mrs C requesting the purchase of SVS Securities shares.
- On 16 September 2011, it advised Mr G and TAP that they were no longer acting as Mrs C's adviser.
- On 20 September 2011, acting on instructions from Mrs C, it instructed Hansard to surrender Mrs C's policy.

I've not seen a copy of documents mentioned in the bullet points above. But I've seen an application form to subscribe for shares in SVS Securities Plc which is dated 17 October 2011 – this form was signed by Mrs C and L&C.

A transaction history records that a little over £25,300 was realised from the Hansard Capital Builder investment on 6 October 2011. And around £23,200 was invested in SVS Securities Plc on 25 October 2011. With adviser fees being paid to PSP from September 2012.

As I understand it, Mrs C complained to L&C through a representative in October 2018. In response to the complaint L&C said, amongst other things, that:

- TAP introduced Mrs C to it.
- TAP is authorised by the Czech National Bank as an insurance agent and insurance broker. TAP passported into the UK under the European Economic Area ('EEA') IMD and it appears on the FCA website.
- Where a firm like TAP is operating outside of UK jurisdiction but within the EEA, local

home state regulations supersede those of the UK regulator.

- In order to comply with UK regulations at the time, TAP had to take into account the type of investment Mrs C was contemplating in order to provide appropriate suitability recommendations.
- TAP and later PSP provided regulated advice on the suitability of the SIPP and the intended investments.
- Mrs C was responsible for choosing the investments, following investment advice from her adviser.
- It's the responsibility of the regulated adviser to advise the client on the suitability of both the product and the proposed investments.
- It acted on instructions provided by the regulated adviser named in the SIPP application form Mrs C signed.
- It has controls in place to monitor the business introduced, including the source and the volume of that business.
- Where an anomalous investment is identified appropriate action is taken, which may include cessation of such business.
- Its responsibilities, which it fulfilled, included establishing that an investment is acceptable from an HM Revenue & Customs ('HMRC') perspective and taking reasonable skill and care to establish that the seller has good title.
- The L&C SIPP is written under Trust. Clause 6.2 of the Trust Deed sets out the investment powers of the trustee. The trustee exercises its investment powers in accordance with directions given by the member and has limited powers to veto investments.
- Under the Trust rules, it's only the member or their nominated representative who has the power to select the investments to be held within the SIPP.
- The sale of the Hansard Capital Builder investment in October 2011 resulted in a loss of £5,584.71. And L&C assumes that PSP made the recommendation that led to Mrs C realising this loss.

Mrs C decided to refer her complaint about L&C to this service. And, in response to questions from us Mrs C has said, amongst other things, that:

- She was contacted by phone and advised that her pension wouldn't accrue a good interest rate if she left it where it was.
- She hadn't considered changing her pension to a SIPP prior to the telephone call and she had no financial planning experience or knowledge.
- She wouldn't have been confident to make such a financial decision without formal advice.
- She didn't have knowledge of where her monies were being invested or why.
- The introducer appeared confident that the monies would grow in a SIPP and she had felt she was getting sound financial advice from an expert.
- She wasn't concerned for her investment as L&C was a longstanding and reputable firm.
- She thought that her investment would be safe, that she wouldn't lose funds but would gain more than her DBS *"base rate"*.
- She thought the biggest risk would be that her initial investment wouldn't grow as much as anticipated.
- She thought L&C was in charge of her investment and that it would act appropriately so that her initial investment would be safe.
- She thought that if her monies were at risk at any time this would be discussed with her.
- She received a cash payment of approximately £6,000 for moving her pension to L&C. She was advised that this payment was tax-free and that everyone did this

when moving to a SIPP. The money was spent on a small car, anything left over went on day-to-day expenses.
- Any documentation that she signed was issued by the introducer and she trusted its advice.
- If L&C had refused to allow the investment, she would have retained her DBS as she wasn't actively looking to move her pension in the first place.

**Our investigator's view**

One of our investigators reviewed Mrs C's complaint. The investigator explained to the parties that she had identified that Mrs C had made two distinct complaints in her submissions.

The investigator said that the first complaint related to Mrs C's concerns around the transfer of her pension monies into the SIPP along with the investment of the transferred monies into the Hansard investment. And that the second complaint concerned the investment of monies in SVS Securities shares following their realisation from the Hansard investment.

The investigator concluded that the complaint relating to L&C's role in accepting Mrs C's SIPP business and facilitating the investment of the transferred monies into the Hansard investment should be upheld. The investigator said that the complaint had been raised in time and that L&C, as a SIPP operator, should have known that TAP was carrying out activities that it didn't have the necessary permissions to perform in the UK. And that L&C shouldn't have accepted Mrs C's introduction from TAP.

Our investigator also thought there were anomalous features to the business being introduced by TAP which meant that, it wasn't fair and reasonable for L&C to accept business from TAP. Our investigator concluded that it was fair and reasonable for L&C to compensate Mrs C for her financial loss.

In response to the investigator's view Mrs C's representative said that she was happy with the recommendations.

We received no substantive response from L&C to the investigator's view and this complaint was passed to me for review. I issued a provisional decision on this complaint and I concluded Mrs C's complaint should be upheld. In brief, I concluded that:

- Mrs C's complaint had been raised in time and it was one we could consider.
- L&C, as a SIPP operator, should have known that TAP was carrying out activities that it didn't have the necessary permissions to perform in the UK.
- In the circumstances, it's fair and reasonable to conclude that L&C shouldn't have accepted Mrs C's application from TAP.
- It wasn't in accordance with its regulatory obligations and good industry practice for L&C to have accepted Mrs C's business from TAP.
- Additionally, L&C ought to have considered the anomalous features of the business.
- It's fair and reasonable in the circumstances of this case to hold L&C accountable for its failure to comply with the relevant regulatory obligations and to treat Mrs C fairly. And it's appropriate and fair in the circumstances for L&C to compensate Mrs C to the full extent of the financial losses she's suffered due to its failings.

Both parties were invited to let me have any submissions they would like to make in response to my provisional decision by a deadline I set.

L&C has provided no substantive response to my provisional decision.

Mrs C replied and said that she was happy with the recommendations set out in the provisional decision.

**What I've decided – and why**

As a preliminary point, I should emphasise that in this decision I'm considering Mrs C's complaint that L&C didn't carry out sufficient checks, and didn't meet its obligations, when it accepted her SIPP business. And this includes the due diligence undertaken by L&C into the initial investments that were made after Mrs C's SIPP was established.

***jurisdiction***

L&C didn't respond to the investigator's view or my provisional decision, so it's not apparent whether it agrees with the conclusion that this complaint was made in time. As L&C hasn't clarified this, for completeness, I've first considered jurisdiction.

I've considered all the evidence and arguments in order to decide whether we can consider Mrs C's complaint.

The rules I must follow in determining whether we can consider this complaint are set out in the Dispute Resolution ('DISP') rules, published as part of the FCA's Handbook.

Has the complaint been brought in time?

The section of the rules that applies to this complaint means that, unless L&C consents, we can't look into this complaint if it's been brought:

- more than six years after the event complained of;
- or, if later, more than three years after Mrs C was aware – or ought reasonably to have become aware – she had cause for complaint;
    - unless the complaint was brought within the time limits, and there's a written acknowledgement or some other record of it having been received; or
    - unless, in the view of the Ombudsman, the failure to comply with the time limits was as a result of exceptional circumstances.

L&C first received Mrs C's complaint in October 2018. As I understand it, there were various strands to Mrs C's complaint but, overall, the crux of the complaint was that Mrs C had received advice from *"an unregulated adviser",* Mr G of TAP, to transfer her pension provisions into an L&C SIPP and to invest in *"unregulated investments"* that weren't suitable for her. And that L&C didn't carry out sufficient checks, and hadn't met its obligations, in accepting Mrs C's business. Further, that L&C should compensate Mrs C for the losses that she had suffered.

The SIPP was in force by June 2011 and monies were transferred into the SIPP and invested in the Hansard Capital Builder arrangement shortly thereafter. All of which occurred more than six years before Mrs C had referred her complaint to either L&C or us.

So, I've also gone on to consider whether Mrs C referred her complaint more than three years from the date on which she either was aware, or ought reasonably to have become aware, she had cause for complaint. And when I say here cause for complaint, I mean cause to make this complaint about this respondent firm, L&C, not just knowledge of cause to complain about anyone at all.

There are a number of points that I think are relevant to this discussion:

- In order to be aware of cause for complaint the complainant should reasonably know there's a problem, that they have or may suffer loss, and that someone else is responsible for the problem – and who that someone is. So, to have knowledge of cause for complaint about L&C, Mrs C needs to be aware, or should reasonably be aware, that there's a problem which has caused, or may cause, her loss and that L&C is responsible.

- Mrs C transferred around £35,000 into her SIPP in 2011 and a little under £31,000 was invested into the Hansard Capital Builder arrangement in June 2011. A little over £25,000 was realised from that investment around four months later.

- Having carefully considered all of the submissions that have been made, it's arguable whether the realisation of this modest loss is enough to say that Mrs C was aware, or ought reasonably to have become aware, in or around October 2011, that there was a problem that had caused her some loss or damage. But even if I concluded it was enough, importantly, I don't think there was anything at that time that would have, or ought to have, made Mrs C aware that L&C might have responsibility for the position she was in.

- There's nothing I've seen that was sent to Mrs C more than three years before her complaint was referred to L&C that links L&C to the losses her pension monies had suffered. I think it's worth highlighting that Mrs C wasn't advised by L&C about setting up the SIPP or the suitability of investments. And I think the obvious first thought when losses were suffered would have been that her financial advisers might have given poor advice. In my view, there's nothing in any correspondence we've seen that was sent to Mrs C that would indicate to a reasonable retail investor in Mrs C's position that L&C had responsibility for the position she was in – the position of having a SIPP with investments in it that were performing badly.

- I've seen no evidence that Mrs C had been told by any third party, and more than three years prior to her representative raising a complaint with L&C in October 2018, that L&C may have done something wrong and might be wholly or partly responsible for the position she was in.

- The regulator published reports on the results of two thematic reviews on SIPP operators in 2009 and 2012, issued guidance for SIPP operators in 2013 and wrote to the CEOs of SIPP operators in 2014. A common theme of those communications is that the regulator considered that SIPP operators had obligations in relation to their customers even where they don't give advice, and that many SIPP operators had a poor understanding of those obligations.

- In the circumstances I don't consider that Mrs C should have had an understanding of the obligations SIPP providers were under more than three years before her complaint was made to L&C in October 2018.

I've carefully considered all the evidence we've been provided and, on balance, I don't think Mrs C's individual circumstances were such that a reasonable investor in her position ought to have concluded that her SIPP operator had done something wrong more than three years before Mrs C's complaint was raised with L&C.

I don't think that Mrs C was aware, or ought reasonably to have become aware, that she had cause for complaint against L&C more than three years before her complaint was referred to L&C.

So, I'm satisfied this complaint has been brought in time and that it's one we can consider.

***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.

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 Mrs C 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 Mrs C's complaint is whether it was fair and reasonable for L&C to have accepted Mrs C's SIPP application in the first place. So, I need to consider whether L&C carried out appropriate due diligence checks on TAP before deciding to accept Mrs C's SIPP application from it.

**Relevant considerations**

Having carefully reconsidered all of the evidence, 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 previously been made, I've repeated what I'd said about this point in my provisional decision.

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

In my view, the FCA's Principles for Businesses are of particular relevance. The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (PRIN 1.1.2G – at the relevant date). 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 had upheld a consumer's complaint against it. The ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and 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 BBSAL):

> *"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles-based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."*

The BBSAL judgment also considers section 228 of FSMA and the approach an ombudsman is to take when deciding a complaint. The judgment of Jacobs J in BBSAL upheld the lawfulness of the approach taken by the ombudsman in that complaint, which I'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 Mrs C's case.

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 Mrs C'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 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.

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 Mrs C's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, as HHJ Dight noted, he wasn't asked to consider the question of due diligence *before* Options SIPP agreed to accept the store pods investment into its SIPP. The facts of the case were also different.

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

I think it's also 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; 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. 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 Mrs C on the SIPP and/or the underlying investments. Refusing to accept an application isn't the

same thing as advising on the merits of investing and/or transferring to the SIPP. So, to be clear, I've proceeded on the understanding L&C wasn't obliged – and wasn't able – to give advice to Mrs C on the suitability of its SIPP or the investments Mrs C made within her SIPP. But I'm satisfied L&C's obligations included deciding whether to accept introductions of business from particular businesses and/or whether to accept particular investments into its SIPP.

Having carefully considered the relevant considerations I'm satisfied that, in order to meet the appropriate standards of good industry practice and the obligations set by the regulator's rules and regulations, L&C should have carried out due diligence on TAP to the sort of standard which was consistent with good industry practice and its regulatory obligations at the time. And that L&C should also have carried out due diligence on any investments to be held within the SIPP which was consistent with good industry practice and its regulatory obligations at the time. L&C should have used the knowledge it gained from that due diligence to decide whether to accept or reject a referral of business or a particular investment.

**The regulatory publications**

The FCA (and its predecessor, the Financial Services Authority ('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.

**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 Businesses ('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.

I acknowledge that the 2009 report (and the 2012 report and the *"Dear CEO"* letter) aren't formal guidance (whereas the 2013 finalised guidance is). However, in my view the fact that the reports and *"Dear CEO"* letter didn't constitute formal (i.e. statutory) guidance doesn't mean their importance or relevance should be underestimated.

The publications 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 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'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.

And 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 Mrs C'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.

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.

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.

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 industry 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.

To be clear, I don't say the Principles or the publications obliged L&C to ensure the SIPP and subsequent investments were suitable for Mrs C. It's accepted L&C wasn't required to give advice to Mrs C, 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.

Further, even if I considered 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 Mrs C's introduction from TAP.

Ultimately, in determining this complaint, I need to consider whether L&C complied with its regulatory obligations as set out by the Principles to act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regards to the interests of its customers, to treat them fairly, and to act honestly, fairly and professionally. And, in doing that, I'm looking to the Principles and the publications listed above to provide an indication of what L&C could have done to comply with its regulatory obligations.

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

Having carefully reconsidered all of the evidence, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have previously been made, I've repeated what I'd said about this point in my provisional decision.

In this case, the business L&C was conducting was its operation of SIPPs. I'm satisfied that meeting its regulatory obligations when conducting this business would include deciding whether to accept or reject particular investments and/or referrals of business.

The regulatory publications provided some examples of good industry practice observed by the FSA and FCA during their work with SIPP operators including being satisfied that a particular introducer is appropriate to deal with.

As I explain further below, I think L&C ought to have identified that TAP was more likely than not carrying out regulated activities relating to arranging and advising on investments.

**TAP's regulatory status**

Under Article 2 of the Insurance Mediation Directive 2002/92/EC, *"insurance mediation"* and *"reinsurance mediation"* are defined as:

> *"3. 'insurance mediation' means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.*
> *…*
> *4. 'reinsurance mediation' means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim."*

In the FSA's consultation paper 201, entitled *"Implementation of the Insurance Mediation Directive for Long-term insurance business"* it's stated (on page 7):

*"We are implementing the IMD for general insurance and pure protection business… from January 2005 (when they will require authorisation).*

*Unlike general insurance and pure protection policies, the sale of life and pensions policies is already regulated. Life and pensions intermediaries must be authorised by us and are subject to our regulation."*

Chapter 12 of the FCA's Perimeter Guidance Manual ('PERG') offers guidance to persons, such as L&C, running personal pension schemes. The guidance in place at the time the application was made for Mrs C's SIPP confirms that a personal pension scheme, for the purpose of regulated activities (PERG 12.2):

*"…is defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the Regulated Activities Order) as any scheme other than an occupational pension scheme (OPS) or a stakeholder pension scheme that is to provide benefits for people:*

- *on retirement; or*
- *on reaching a particular age; or*
- *on termination of service in an employment".*

It goes on to say:

*"This will include self-invested personal pension schemes ('SIPPs') as well as personal pensions provided to consumers by product companies such as insurers, unit trust managers, contractual scheme managers or deposit takers (including free-standing voluntary contribution schemes)".*

So, under the Regulated Activities Order, a SIPP is a personal pension scheme. Article 82 of the Regulated Activities Order (Part III Specified Investments) provides that rights under a personal pension scheme are a specified investment.

L&C itself had regulatory permission to establish and operate personal pension schemes – a regulated activity under Article 52 of the Regulated Activities Order.

At the time of Mrs C's application, SUP App 3 of the regulator's Handbook set out guidance on passporting issues and SUP App 3.9.7G provided the following table of permissible activities under Article 2(3) of the Insurance Mediation Directive in terms of the attendant Regulated Activities Order Article number:

| **Table 2B: Insurance Mediation Directive Activities** | | **Part II RAO Activities** | **Part III RAO Investments** |
|---|---|---|---|
| 1. | Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance. | Articles 25, 53 and 64 | Articles 75, 89 (see Note 1) |
| 2. | Concluding contracts of insurance | Articles 21, 25, 53 and 64 | Articles 75, 89 |
| 3. | Assisting in the administration and performance of contracts of insurance, in particular in the event of a claim. | Articles 39A, 64 | Articles 75, 89 |

The guidance in SUP 13A.1.2G of the Handbook at the time of Mrs C's application for the SIPP explains that an EEA firm wishing to carry on activities in the UK which are outside the

scope of its EEA rights (i.e. its passporting rights) will require a *"top-up"* permission under Part IV of the Act (the Act being FSMA). In other words, it needs *"top-up"* permissions from the regulator to carry on regulated activities which aren't covered by its IMD passport rights.

The relevant rules regarding *"top-up"* permissions could be found in the Handbook at SUP 13A.7. SUP 13A.7.1G states (as at June 2011):

> *"If a person established in the EEA:*
>
> *(1) does not have an EEA right;*
>
> *(2) does not have permission as a UCITS qualifier; and*
>
> *(3) does not have, or does not wish to exercise, a Treaty right (see SUP 13A.3.4 G to SUP 13A.3.11 G);*
>
> *to carry on a particular regulated activity in the United Kingdom, it must seek Part IV permission from the FSA to do so (see the FSA website "How do I get authorised": http://www.fsa.gov.uk/Pages/Doing/how/index.shtml). This might arise if the activity itself is outside the scope of the Single Market Directives, or where the activity is included in the scope of a Single Market Directive but is not covered by the EEA firm's Home State authorisation. If a person also qualifies for authorisation under Schedules 3, 4 or 5 of the Act as a result of its other activities, the Part IV permission is referred to in the Handbook as a top-up permission."*

In the glossary section of the regulator's Handbook EEA authorisation is defined (as at June 2011) as:

> *"(in accordance with paragraph 6 of Schedule 3 to the Act (EEA Passport Rights)):*
>
> *(a) in relation to an IMD insurance intermediary or an IMD reinsurance intermediary, registration with its Home State regulator under article 3 of the Insurance Mediation Directive;*
>
> *(b) in relation to any other EEA firm, authorisation granted to an EEA firm by its Home State regulator for the purpose of the relevant Single Market Directive."*

The guidance at SUP App 3 of the FSA Handbook (which I've set out above) was readily available in 2011 and clearly illustrated that EEA-authorised firms may only carry out specified regulated activities in the UK if they have the relevant EEA passport rights.

In this case the regulated activities in question didn't fall under IMD passporting, and they required FSA permission for TAP to conduct them in the UK. L&C, acting in accordance with its own regulatory obligations, should have ensured it understood the relevant rules, guidance and legislation I've referred to above, (or sought advice on this, to ensure it could gain the proper understanding), when considering whether to accept business from TAP, which was an EEA firm passporting into the UK. It should therefore have known – or have checked and discovered – that a business based in the Czech Republic that was EEA-authorised needed to have *"top-up"* permissions to give advice and make arrangements in relation to personal pensions in the UK. And that *"top-up"* permissions had to be granted by the the UK regulator, then the FSA.

**The activities undertaken by TAP**

Having carefully reconsidered all of the evidence, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have previously been made, I've repeated what I'd said about this point in my provisional decision.

I think the available evidence indicates TAP was carrying out regulated activities. Rights under a personal pension scheme are a security and relevant investment. Under Article 25(1) of the Regulated Activity Order ('RAO'), making arrangements for another person to buy and sell these types of investments is a regulated activity. And under Article 25(2) of the RAO, making arrangements with a view to a person who participates in the arrangements buying and selling these types of investments is also a regulated activity.

In my view, TAP was carrying out regulated activities within Article 25 of the RAO – and this ought to have been clear to L&C at the time.

The regulator's Perimeter Guidance Manual says the following about Article 25(1):

> *"The activity of arranging (bringing about) deals in investments is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, arrangements that bring it about)."*

It then says the following about Article 25(2):

> *"The activity of making arrangements with a view to transactions in investments is concerned with arrangements of an ongoing nature whose purpose is to facilitate the entering into of transactions by other parties. This activity has a potentially broad scope and typically applies in one of two scenarios. These are where a person provides arrangements of some kind:*
>
> 1. *to enable or assist investors to deal with or through a particular firm (such as the arrangements made by introducers); or*
>
> 2. *to facilitate the entering into of transactions directly by the parties (such as multilateral trading facilities of any kind …exchanges, clearing houses and service companies (for example, persons who provide communication facilities for the routing of orders or the negotiation of transactions))."*

I think TAP's activities here amounted to the regulated activity of *"making arrangements"* for the SIPP under one or other or both of the Article 25 provisions.

But even if I thought that TAP wasn't acting beyond its permissions by making arrangements (which I don't), I think it was also undertaking another regulated activity for which it didn't have the requisite permissions. I say this because I think TAP was advising on the establishment of the SIPP and the transfer of Mrs C's pension monies into the SIPP.

Under the RAO, a SIPP is a personal pension scheme. Article 82 of the RAO (Part III Specified Investments) provides that rights under a personal pension scheme are a specified investment. Article 82 investments aren't covered by the IMD.

At the point of the SIPP application, TAP was listed as being the *"IFA"* and an *"investment manager"*. The stated remuneration in the form was to be paid to the *"financial adviser"*.

Further, I'm satisfied that Mrs C understood TAP to be acting as her financial adviser. And I think that L&C also understood this to be the case. I say that because in its final response

letter to Mrs C, L&C said that TAP provided Mrs C with regulated advice on the suitability of the SIPP and the intended investments.

So, I think L&C's understanding at the time was that TAP was giving advice on all of the establishment of the SIPP, the transfer of pension monies into its SIPP and the investment of SIPP monies. And that L&C believed it was permitted to do so. L&C should reasonably have understood the applicable regulations and, therefore, have readily identified that TAP was carrying out regulated activities without the requisite permissions from the regulator and that there was a clear risk of consumer detriment in accepting introductions in these circumstances. Because TAP, holding only IMD permissions, was advising on article 82 investments.

I think L&C should have been aware that TAP was giving advice on the establishment of the SIPP and the transfer of pension monies into the L&C SIPP, in addition to advising on investments. It's difficult to see otherwise how people were ending up in its SIPP. I haven't seen any evidence to show L&C took steps to understand how the business was coming about in the alternative.

I don't find it plausible that TAP's advice was limited to advising on the Hansard Capital Builder arrangement. That advice was only made possible by way of the establishment of the SIPP and the transfer of Mrs C's pension monies into the L&C SIPP. That was the source of the monies in respect of which the Hansard Capital Builder arrangement advice was being given, *but for* the SIPP being established and the monies being transferred into the SIPP then the investment advice wouldn't have been possible because there wouldn't have been funds available for investment – any separation of the two under the circumstances would be artificial.

I'm satisfied that TAP was appointed as Mrs C's financial adviser in respect of her SIPP as noted on the SIPP application form. And that it was providing her with advice in respect of this transaction. Taking everything into account I'm satisfied that TAP was advising on the establishment of the SIPP, the transfer of pension monies into the SIPP and the investment of monies within the SIPP. Further, that L&C understood this to be the case, or would have understood this to be the case if it had undertaken sufficient due diligence into TAP.

All in all, I think it's fair and reasonable to say that L&C, had it acted in accordance with its regulatory obligations and the standards of good practice at the time, ought to have known TAP was carrying out regulated activities relating to arranging and advising in relation to personal pensions in the UK, for which it didn't have the requisite permissions. In turn, taking everything into account, it wasn't fair and reasonable for L&C to accept Mrs C's application in such circumstances.

**Checks L&C undertook on TAP**

Having carefully reconsidered all of the evidence, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have previously been made, I've repeated what I'd said about this point in my provisional decision.

As mentioned earlier, as part of our investigation L&C was asked a series of questions about the due diligence it undertook into TAP but we've not received a substantive response from L&C to those enquiries.

Under DISP 3.5.9 (3) R I may *"reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested."*

I think the regulatory publications I've referenced earlier in this decision show that it was good practice to confirm both initially, and on an ongoing basis, that introducers that advise clients have the appropriate regulatory permissions. And I think that's applicable whether an advisory firm is UK based or else if it's passporting into the UK.

On a previous case L&C provided us with a 26 November 2010 screenshot of a page from TAP's entry on the FSA register. But that page wasn't *all* that L&C should have checked, as that page wouldn't have been sufficient for L&C to be able to conclude that TAP had the required *"top-up"* permissions to advise on, or arrange, personal pensions in the UK. So I think it's fair to say L&C ought to have checked TAP's Permission page. Had it done so I'm satisfied it's more likely than not that it would have discovered that TAP didn't have the necessary top-up permissions.

In the unlikely eventuality that the register didn't make it clear whether TAP had the necessary top-up permissions. For example, if the Permission page had erroneously been left blank, L&C ought to have taken further steps to independently verify what the correct position was – for example by contacting the FSA. And I think the FSA would have confirmed whether TAP held any *"top-up"* permissions.

Alternatively, if L&C was unable to independently verify TAP's permissions, I think it's fair and reasonable to say that L&C should have then concluded that it was unsafe to proceed with accepting business from TAP in those circumstances. In my opinion, it wasn't reasonable, and it wasn't in-line with L&C's regulatory obligations, for it to proceed with accepting business from TAP if the position wasn't clear.

**Summary**

I think TAP advised Mrs C on the establishment of the SIPP, the transfer of existing pension monies into the SIPP and on the subsequent investment of the SIPP monies. I also think that TAP made arrangements for this to take place. And I think that TAP carried on activities for which it didn't have regulatory permissions in the UK.

In the circumstances, I think L&C should have known what activities TAP was carrying out and that it didn't have the regulatory permissions to undertake these. Acting fairly and reasonably, I think that L&C should have rejected this business. I think it's fair and reasonable to uphold this complaint on this basis alone. However, for completeness, I've also gone on to consider what other conclusions L&C should have drawn if acting fairly and reasonably.

**The nature of the introduction from TAP (anomalous features)**

Having carefully reconsidered all of the evidence, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have previously been made, I've largely repeated what I'd said about this point in my provisional decision.

There were anomalous features in the business TAP introduced to L&C that ought to have given rise to concerns about the risk of significant consumer detriment.

**The domicile of TAP:**

Pension business from a UK client, advised by a Czech advisory firm despite no obvious connection with the country, going into a SIPP to invest through a wrapper based offshore (in this case in Dublin) is anomalous in and of itself.

The fact that TAP was domiciled *outside the United Kingdom* was a conspicuous and anomalous feature, in light of the business it referred to L&C. In my view that fact ought to have highlighted the need to make sure the EEA firm had the correct permission to conduct the business being proposed – i.e. a heightened check on the firm's permissions (as above).

**Adviser remuneration:**

TAP received an initial payment of 6% of the monies Mrs C invested with L&C. On top of this, TAP would also receive an annual investment adviser fee of 1% of the policy value.

I consider the level of remuneration paid to TAP in this case to have been an anomalous feature. While there's no absolute benchmark for reasonable adviser charging, it's my view that a 6% initial, and 1% ongoing, fee in these circumstances was higher than what I'd consider to be reasonable. And, at the very least, I think that L&C ought to have flagged at outset that the initial charges imposed on Mrs C's pension monies were potentially high.

These anomalous features were further factors relevant to L&C's acceptance of Mrs C's application. And, at the very least, they emphasised the need for adequate due diligence to be carried out on TAP, so as to independently check that TAP wasn't undertaking regulated activities beyond the scope of its permissions when introducing consumers (like Mrs C) to L&C.

**Summary**

In summary, I'm satisfied L&C either knew, or ought to have known if it acted fairly and reasonably to meet its regulatory obligations that:

- TAP was undertaking regulated activities beyond the scope of its permissions.
- The domicile of TAP, as opposed to the consumer TAP introduced to L&C, was an anomalous feature.
- The high level of remuneration TAP was taking was an anomalous feature.

And I don't think it was fair and reasonable for L&C to accept Mrs C's application in such circumstances.

**In conclusion**

L&C ought to have identified that TAP needed *"top-up"* permissions to advise on and make arrangements for personal pensions in the UK, and taken all the steps available to it to independently verify that TAP had the required permissions to give advice or make arrangements for personal pensions in the UK.

Had it done so, I'm satisfied that L&C would have established TAP didn't have the permissions it required, or that it was unable to confirm whether TAP had the required permissions.

In either event, it wasn't in accordance with its regulatory obligations or good industry practice for L&C to proceed to accept business from TAP.

Additionally, L&C ought to have considered the anomalous features of this business I've outlined above. These were further factors relevant to L&C's acceptance of Mrs C's application which emphasised the need for adequate due diligence to be carried out on TAP.

It's fair and reasonable in the circumstances of this case to conclude that none of the points L&C raised in its response to Mrs C's complaint are factors which mitigate its decision to accept Mrs C's application from TAP.

I'm therefore satisfied it's fair and reasonable to conclude that L&C shouldn't have accepted Mrs C's application from TAP.

**Due diligence on the underlying investments**

In light of my conclusions about L&C's regulatory obligations to carry out sufficient due diligence on introducers, and given my finding that in the circumstances of this complaint L&C failed to comply with these obligations, I've not considered L&C's obligations under the Principles in respect of carrying out sufficient due diligence on the underlying investments. It's my view that had L&C complied with its obligations under the Principles to carry out sufficient due diligence checks on TAP, then this arrangement wouldn't have come about in the first place.

**Was it fair and reasonable in all the circumstances for L&C to proceed with Mrs C's application?**

Having carefully reconsidered all of the evidence, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have previously been made, I've repeated what I'd said about this point in my provisional decision.

It wasn't fair and reasonable, for L&C to have accepted Mrs C's application from TAP in the first place. So in my opinion, Mrs C'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.

***COBS 11.2.19R***

In a previous complaint involving business introduced by TAP, L&C made the point that COBS 11.2.19R obliged it to execute investment instructions. It effectively said that once the SIPP has been established, it's required to execute the specific instructions of its client.

However, in the circumstances it's my view that the crux of the issue in this complaint is whether L&C should have accepted the SIPP application from TAP and established Mrs C's SIPP in the first place.

An argument about having to execute the transaction as a result of COBS 11.2.19R was considered and rejected by the judge in BBSAL. In that case Jacobs J said:

> *"The heading to COBS 11.2.1R shows that it is concerned with the manner in which orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2 as a whole, namely: "Best execution". The text of COBS 11.2.1R is to the same effect. The expression "when executing orders" indicates that it is looking at the moment when the firm comes to execute the order, and the way in which the firm must then conduct itself. It is concerned with the "mechanics" of execution; a conclusion reached, albeit in a different context, in Bailey & Anr v Barclays Bank [2014] EWHC 2882 (QB), paras [34] – [35]. It is not addressing an anterior question, namely whether a particular order should be executed at all. I agree with the FCA's submission that COBS 11.2 is a section of the Handbook concerned with the method of execution of client orders, and is designed to achieve a high quality of execution. It presupposes that there is an order being*

*executed, and refers to the factors that must be taken into account when deciding how best to execute the order. It has nothing to do with the question of whether or not the order should be accepted in the first place."*

And I don't think that L&C's argument on this point is relevant to its obligations under the Principles to decide whether to accept an application to open a SIPP in the first place or to make the initial Hansard Capital Builder arrangement investment.

**Indemnity**

Having carefully reconsidered all of the evidence, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have previously been made, I've repeated what I'd said about this point in my provisional decision.

I think L&C ought to have been cautious about accepting Mrs C's application even though she had signed an indemnity. L&C had to act in a way that was consistent with the regulatory obligations I've set out in this decision.

My remit is to make a decision on what I think is fair and reasonable in all the circumstances. And my view is that it's fair and reasonable to say that just having Mrs C sign an indemnity declaration 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 accepting business from TAP.

L&C knew that Mrs C had signed a form intended to indemnify it against losses that arose from acting on her instructions. And, in my opinion, relying on such an indemnity when L&C knew, or ought to have known, Mrs C's dealings with TAP were putting her at significant risk wasn't the fair and reasonable thing to do. Having identified the risks I've mentioned above, it's my view that the fair and reasonable thing to do would have been to refuse to accept Mrs C's application.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mrs C 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.

For the reasons I've explained above, I'm satisfied L&C ought to have rejected Mrs C's application from TAP. If that had happened, I think it's more likely than not that the contractual obligations between L&C and Mrs C under the newly established SIPP would never have arisen. And it wouldn't be fair or reasonable to say the contract between Mrs C and L&C meant L&C could ignore all red flags and proceed with Mrs C's business regardless.

So, I'm satisfied that Mrs C's SIPP shouldn't have been established and the opportunity to execute the initial 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 Mrs C's application.

**Is it fair to ask L&C to pay Mrs C compensation in the circumstances?**

Having carefully reconsidered all of the evidence, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have previously been made, I've repeated what I'd said about this point in my provisional decision.

*Would the business have still gone ahead if L&C had refused the application?*

Mrs C went through a process with TAP that culminated in her completing paperwork to set up a new L&C SIPP and with the expectancy that monies from her existing pension scheme would be transferred into the newly established SIPP. Having gone to the time and effort of doing this, I think it's more likely than not that if the L&C SIPP wasn't then established, and if her pension monies weren't then transferred to L&C, that Mrs C would have wanted to find out why from TAP and L&C.

And I think it's fair and reasonable to conclude that one or more of the parties involved would have explained to Mrs C that her application hadn't been accepted as TAP didn't have the necessary permissions it needed to provide the advice, or alternatively as L&C wasn't satisfied that TAP had the necessary *"top-up"* permissions to provide the advice. And that Mrs C wouldn't then have continued to accept or act on pensions advice provided by TAP.

Further, I think it's very unlikely that advice from a business that did have the necessary permissions would have resulted in Mrs C taking the same course of action. I think it's reasonable to say that a business that had the necessary permissions would have given suitable 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."*

Mrs C says she did receive a payment of around £6,000 from TAP and that she was told that everyone got such a payment when moving to a SIPP.

On balance, in this case, I'm not satisfied that Mrs C proceeded in the knowledge that the investment she would be making was high risk and speculative, and that she was determined to move forward with the transaction in order to take advantage of the payment offered by TAP.

Mrs C says that she was told her pension wouldn't *"accrue a good interest"* if left where it was and that her adviser seemed confident that her monies would grow in the SIPP. Mrs C also says she understood that by transferring her investment would be safe, that she wouldn't lose money and that she would gain more than her DBS *"base rate"*.

So, overall, and having carefully considered all the submissions that have been made, I'm satisfied that Mrs C, unlike Mr Adams, wasn't eager to complete the transactions this complaint concerns for reasons other than securing the best pension for herself.

I'm also satisfied that it wouldn't be fair to say Mrs C's actions mean she should bear the loss arising as a result of L&C's failings. Had L&C acted in accordance with its regulatory obligations and best practice, it shouldn't have accepted Mrs C's business from TAP *at all*. That should have been the end of the matter. And had this occurred I'm satisfied the payment from TAP wouldn't have been made to Mrs C.

L&C might argue that another SIPP operator would have accepted Mrs C's application from TAP, had it declined it. But I don't think it's fair and reasonable to say that L&C shouldn't compensate Mrs C 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 Mrs C's application from TAP.

Further, and in any eventuality, even if another SIPP provider had been willing to accept Mrs C's application from TAP, that process would still have needed Mrs C to be willing to continue to do business with TAP after L&C had rejected her application for another application to proceed. And, for the reasons I've given above, I'm not satisfied that Mrs C would have continued to accept or act on pensions advice from TAP in such circumstances.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if L&C had refused to accept Mrs C's application from TAP, the transaction wouldn't still have gone ahead.

*The involvement of TAP*

In this decision I'm considering Mrs C's complaint about L&C. While it may be the case that TAP gave unsuitable advice to Mrs C, L&C had its own distinct set of obligations when considering whether to accept Mrs C's application for a SIPP.

TAP had a responsibility not to conduct regulated business that went beyond the scope of its permissions. L&C wasn't required to ensure TAP complied with that responsibility. But L&C had its own distinct regulatory obligations under the Principles. And this included to check that firms introducing advised business to it had the regulatory permissions to be doing so. In my view, L&C has failed to comply with these obligations in this case.

I'm satisfied that if L&C had carried out sufficient due diligence on TAP, and acted in accordance with good practice and its regulatory obligations by independently checking TAP's permissions before accepting business from it, L&C wouldn't have done any SIPP business with TAP in the first place.

I'm also satisfied that if Mrs C had been told that TAP was acting outside its permissions in giving pensions advice, or alternatively that L&C wasn't satisfied that TAP had the necessary *"top-up"* permissions to provide such advice, she wouldn't have continued to accept or act on advice from it. And, having taken into account all the circumstances of this case, it's my view that it's fair and reasonable to hold L&C responsible for its failure to identify that TAP didn't have the required *"top-up"* permissions to be giving advice and making arrangements on personal pensions in the UK.

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 relevant regulatory obligations and to treat Mrs C fairly.

The starting point therefore, is that it would be fair to require L&C to pay Mrs C compensation for the loss she's suffered as a result of L&C's failings. I've considered whether there's any reason why it wouldn't be fair to ask L&C to compensate Mrs C for her loss. And I'm satisfied it's appropriate and fair in the circumstances for L&C to compensate Mrs C to the full extent of the financial losses she's suffered due to its failings.

I accept that it may be the case that TAP is responsible for initiating the course of action that led to Mrs C's loss. However, it's also the case that if L&C had complied with its own distinct

regulatory obligations as a SIPP operator, the arrangement for Mrs C wouldn't have come about in the first place, and the loss she's suffered could have been avoided.

If it wishes, L&C can have the option to take an assignment of any rights of action Mrs C has against TAP, or any other third party, in respect of the events complained about *before* compensation is paid. And the compensation can be made contingent upon Mrs C's acceptance of this term.

The key point here is that but for L&C's failings, Mrs C wouldn't have suffered the loss she's suffered. So, even if an assignment of action against TAP, or any other third party, proves worthless, this wouldn't lead me to change my overall view on this point. And I'm satisfied that it's appropriate and fair in the circumstances for L&C to compensate Mrs C to the full extent of the financial losses she's suffered due to its failings, and notwithstanding any failings by TAP or any other third party. 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 is liable to pay to Mrs C.

**Mrs C taking responsibility for her own investment decisions**

Having carefully reconsidered all of the evidence, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have previously been made, I've repeated what I'd said about this point in my provisional decision.

I'm satisfied that it wouldn't be fair or reasonable to say Mrs C's actions mean she should bear the loss arising as a result of L&C's failings.

Mrs C took advice from an authorised adviser (albeit one acting outside the permissions it held) and used the services of a regulated personal pension provider, L&C.

I'm satisfied that if L&C had undertaken reasonable due diligence measures and drawn appropriate conclusions about the business TAP was undertaking (acting beyond its permission) that L&C shouldn't have accepted Mrs C's business from TAP.

And I think that in the circumstances, for all the reasons given, it's fair to say L&C should compensate Mrs C for the losses she's suffered, including any charges that were suffered as a result of realising monies from the Hansard Capital Builder arrangement. But for L&C's failings, Mrs C wouldn't have transferred away from the DBS to the L&C SIPP or invested in the Hansard Capital Builder arrangement, or any other investments she subsequently made in her L&C SIPP, in the first place. And I don't think it would be fair to say in the circumstances that Mrs C should suffer the loss because she ultimately instructed those investments to be effected.

**Putting things right**

Having carefully reconsidered all of the evidence, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have previously been made, I've largely repeated what I'd said about this point in my provisional decision.

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

Prior to transferring to L&C, Mrs C's monies were in a DBS, but for TAP contacting Mrs C and L&C accepting Mrs C's business from TAP I think Mrs C would simply have remained invested in that DBS.

Similarly, if Mrs C had sought advice from a different adviser, who had the necessary permissions, I think it's more likely than not that the advice would have been to stay in her existing DBS. I think it's unlikely that another adviser, acting properly, would have advised Mrs C to transfer into the L&C SIPP and invest in the Hansard Capital Builder arrangement.

So, if L&C hadn't accepted Mrs C's application, I think Mrs C would have remained within her DBS.

**What must L&C do?**

**Putting things right**

My aim is to return Mrs C to the position she would now be in but for what I consider to be L&C's failure to carry out adequate due diligence checks *before* accepting Mrs C's business from TAP.

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

1. Take ownership of any illiquid investments currently held in the SIPP if possible.
2. Calculate and pay compensation for the loss Mrs C's pension provisions have suffered as a result of L&C accepting her application.
3. Pay Mrs C £500 for the trouble and upset she's suffered.

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

1. Take ownership of any illiquid investments currently held in the SIPP if possible.

   In order for the SIPP to be closed and further SIPP fees to be prevented, if there are any illiquid investments currently held in Mrs C's SIPP these would need to be removed from the SIPP. To do this, L&C should calculate an amount it's willing to accept as a commercial value for any illiquid investments currently held in Mrs C's SIPP and pay that sum into Mrs C's SIPP and take ownership of those illiquid investments. The sums paid into the SIPP to purchase the illiquid investments will then make up part of the current actual value of the SIPP.

   If L&C's unable to purchase any illiquid investments currently held in Mrs C's SIPP, then the actual value of any illiquid 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 Mrs C's SIPP.

   Provided Mrs C is compensated in full then, if L&C doesn't purchase any illiquid investments that might be held in Mrs C's SIPP, it may ask Mrs C 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 Mrs C 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 there are illiquid investments currently held in Mrs C's SIPP, and if L&C doesn't take ownership of these investments, and they continue to be held in Mrs C's SIPP, there will then be ongoing fees in relation to the administration of the SIPP. Mrs C wouldn't be responsible for those fees if L&C hadn't accepted her application from TAP. As the SIPP wouldn't have been established and the investments wouldn't have been made. So, if the SIPP needs to be kept open only because of a currently held illiquid investment/s, and is used only or substantially to hold that investment/s, then I think it's fair and reasonable for L&C to waive its SIPP fees until such time as Mrs C can dispose of that investment/s and close the SIPP.

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

   On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

   In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

   A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

   The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

   We've previously asked Mrs C whether she preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect.

   Mrs C didn't make a choice, so as set out previously I've assumed in this case that she doesn't want to wait for the new guidance to come into effect.

   I'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mrs C.

   A fair and reasonable outcome would be for L&C to put Mrs C, as far as possible, into the position she'd now be in if it hadn't accepted her application from TAP. As explained above, had this occurred I consider it's more likely than not Mrs C 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 FCA 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 Mrs C's acceptance of the decision.

L&C may wish to contact the Department for Work and Pensions ('DWP') to obtain Mrs C'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 Mrs C's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs C'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 Mrs C as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid.

It's reasonable to assume that Mrs C is likely to be a basic rate taxpayer at her selected retirement age, so the reduction would equal 20%. However, if Mrs C would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

The compensation amount must where possible be paid to Mrs C 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 Mrs C.

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.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect L&C to carry out a calculation in line with the updated rules and/or guidance in any event.

As part of the calculation L&C should make an allowance, in the form of a deduction to the redress that would otherwise be payable, for the payment that Mrs C has said she received from TAP. Mrs C says she received a payment of around £6,000 and was told that everyone got such a payment when moving to a SIPP. I'm satisfied that these are monies that Mrs C wouldn't have received if L&C hadn't accepted her business from TAP. And, as such, I'm satisfied it's fair and reasonable for L&C to make an allowance for a deduction of these monies in the redress calculation.

Given the passage of time, I appreciate it might be difficult for Mrs C to access

historic records to evidence the payment she received from TAP, but if Mrs C is able to provide records of the payment (including, for example, emails or bank statements confirming the payment) she should provide these to L&C promptly and certainly within 14 days of acceptance of this final decision. L&C should then use the information provided. If Mrs C is unable to provide evidence of the payment received to L&C within 14 days of acceptance of this final decision, I'm satisfied a fair and reasonable alternative is for L&C to make an allowance for the payment based on Mrs C's testimony of the sum she received. And that L&C should then proceed on the basis that Mrs C received a payment of £6,000 from TAP.

L&C should then deduct the payment received from the overall loss position established at the end of the calculation.

3. Pay Mrs C £500 for the trouble and upset she's suffered.

   In addition to the financial loss that Mrs C 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 Mrs C 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 Mrs C's complaint against London & Colonial Services Limited. And I require London & Colonial Services Limited to pay Mrs C the compensation amount as set out in the steps above.

Where I uphold a complaint, I can make an award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend that London & Colonial Services Limited pays the balance.

**Determination and award:** I uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that London & Colonial Services Limited should pay the amount produced by that calculation up to the maximum of £150,000 (including distress or inconvenience but excluding costs) plus any interest on that amount as set out above.

**Recommendation:** If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that London & Colonial Services Limited pays Mrs C the balance plus any interest on the balance as set out above.

If London & Colonial Services Limited pays the full calculated redress, and elects to take an assignment of any rights of action Mrs C has against TAP, or any other third party, in respect of the events complained about before paying compensation, it must first provide a draft of the assignment to Mrs C for her consideration and agreement. Any expenses incurred for the drafting of the assignment should be met by London & Colonial Services Limited.

The recommendation isn't part of my determination or award. London & Colonial Services Limited doesn't have to do what I recommend. It's unlikely that Mrs C could accept a decision and go to court to ask for the balance and Mrs C may want to get independent legal advice before deciding whether to accept my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 28 April 2023.

Alex Mann
**Ombudsman**