DRN-4061256

The complaint

Mr D complains that London & Colonial Services Limited ('L&C') accepted his Self-Invested Personal Pension ('SIPP') business from The Alliance Partnership s.r.o. ('TAP'). Mr D complains that L&C didn't carry out adequate due diligence on TAP and that TAP didn't have the necessary permissions to advise him on his pension. Mr D also says that L&C didn't carry out adequate due diligence on investments that were made within his SIPP.

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.

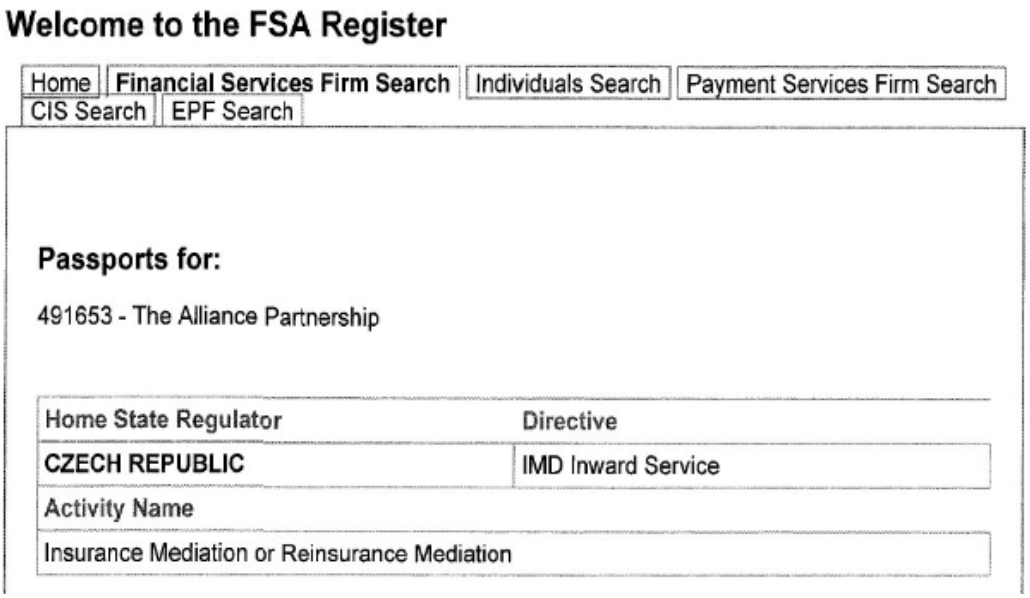
L&C and TAP's relationship

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 it's 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:



I think it's likely that that L&C's relationship with TAP began around the date of the above screenshot. And I think it's likely its relationship with TAP ended towards the end of 2011. I say this because L&C wrote to Mr D in November 2011 and informed him that it no longer had a relationship with TAP and that it wouldn't be able to accept any instructions on Mr D's pension arrangements from Mr G.

What happened

Mr D has explained that he was contacted by Mr G of TAP in early 2011 offering to review his pensions and that consolidating his existing pension arrangements into a SIPP was discussed.

Following this, TAP wrote to L&C in January 2011 and noted that it was enclosing an application for Mr D.

Mr D signed a L&C SIPP application form 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 Financial Services Authority ('FSA') authorisation number given for the firm, 26780267, is an identification number linked to TAP in the Czech Republic.

The application form records the remuneration to be paid to the adviser as 6% initial and 1% ongoing and that TAP was to be the investment manager.

It was also stated in the form that monies were to be transferred in from an existing pension plan and £45,000 was to be initially invested in *"Hansard Capital Builder".*

L&C wrote to Mr D on 15 February 2011 to confirm that his application was being processed. L&C also wrote to TAP on 15 February 2011, enclosing a copy of the letter it had sent Mr D and explaining that it had forwarded transfer paperwork to the ceding scheme. From the paperwork that's been provided I'm satisfied that this related to monies that were to be transferred in from an existing defined contribution scheme.

Mr G of TAP certified a copy of identity documentation for Mr D on 16 April 2011.

Mr D wrote to L&C on 15 May 2011 and explained that he was enclosing a transfer request form for a second pension transfer into the SIPP. From the paperwork that's been provided I'm satisfied that this related to monies that were to be transferred in from an existing defined benefit scheme.

L&C then wrote to TAP on 16 May 2011 to confirm that Mr D's SIPP had been established.

A transaction history shows that a little under £53,000 was transferred into Mr D's L&C SIPP in May 2011, there were then further transfers in totalling a little over £122,500 in July 2011. Around £47,500 was invested into a Signature Bond Plus investment in May 2011, with a further £115,000 being invested in that investment in August 2011. Adviser fees totalling a little over £10,500 were paid to TAP.

We've seen a Hansard Europe Limited Proposal Form for, amongst other things, Signature Bond Plus investments. This records the fund adviser as Mr G of TAP with a UK address given, and the policyholder as L&C with reference to Mr D. The form was signed on 23 May 2011 and a handwritten note below the signatures reads:

"For and on behalf of London & Colonial Services Ltd at the direction of (Mr D)*"*

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

There's also a Supplementary Proposal Form for Trusts, Companies and other Legal Entities. Again Mr G of TAP is recorded as the adviser and the form was signed by representatives of L&C in May 2011.

L&C then sent the forms on to Hansard Europe Limited on 23 May 2011 and confirmed that it had made a payment of a little over £47,500 by CHAPS.

Hansard Europe Limited wrote to L&C on 2 June 2011 to confirm that the proposal for a Signature Bond Plus policy had been processed. A policy schedule was also generated on 2 June 2011, amongst other things this confirmed that the initial payment into the policy was a little over £47,500 and that the allocation rate was 100%.

On 13 June 2011, Mr D sent an email, which was later forwarded on to L&C, confirming that, following discussions with Mr G, he was happy to appoint TAP as his investment manager and understood that it would exercise discretionary powers to make investments.

Email correspondence between TAP and L&C from 29 July 2011 through until 10 August 2011 discussed TAP providing L&C with fund adviser forms (naming TAP as the adviser). L&C confirmed it had received these on 10 August 2011 and that it would forward them on to Hansard Europe Limited.

We've seen a Hansard Europe Limited Appointment of Fund Adviser Form, this records the fund adviser as TAP and the policyholder as L&C with reference to Mr D. It's noted in the form that the adviser's charge would be the maximum permissible of 0.25% of each quarterly valuation of the policy. The form was signed on 25 August 2011 and a stamp (accompanied by handwriting in the additional notes section) reads:

"For and on behalf of London & Colonial Services Ltd at the directions of (Mr D)*."*

Hansard Europe Limited wrote to L&C on 5 September 2011 to confirm that in line with its instructions TAP had been appointed as fund adviser to the policy.

We've also seen some Hansard Portfolio Bond deal instruction forms ('dealing sheets') that were signed by L&C. The dealing sheets are from TAP and a TAP adviser is named in the forms along with details of the investments to be purchased.

On 21 November 2011, L&C wrote to Mr D and informed him that it no longer had a relationship with TAP and that it wouldn't be able to accept any instructions on Mr D's pension arrangements from Mr G.

On 2 March 2012, L&C wrote to Mr D and acknowledged it had received a transfer out form from him. There then followed further email correspondence between Mr D and L&C in which Mr D was chasing for his monies to be realised and transferred to his new pension provider as soon as possible, noting that he had a transaction/payment he was wanting to use his pension monies for.

A Hansard Europe Limited instruction for withdrawal form was completed and the form was signed by L&C on behalf of Mr D on 28 March 2012.

£128,000 was credited back to the L&C SIPP from Mr D's Signature Bond Plus investment on 11 April 2012 and a further payment of around £16,700 was credited to the SIPP on 16 April 2012.

On 16 April 2012, Hansard Europe Limited wrote to L&C to confirm that Mr D's policy had been encashed. A transaction history for Mr D's Signature Bond Plus investment shows that an establishment fee was being deducted quarterly. For example, in December 2011 and then again in March 2012 the establishment fees deducted were £812.62. There were also other fees levied quarterly including a management fee of over £400 and an administration fee. When monies were realised from the bond in April 2012 fees levied included an encashment fee of a little over £1,400 and an establishment fee of a little under £7,500.

A transaction history for Mr D's L&C SIPP shows that later in April 2012 a little over £145,000 was transferred away from the SIPP. As I understand it, following this the L&C SIPP closed down.

Mr D complained to L&C through a representative, a claims management company ('CMC'). Mr D's representative sent a complaint letter to L&C dated 1 May 2019 and said, amongst other things, that:

- L&C didn't carry out sufficient due diligence into the investment that was purchased.

- Mr D was advised by TAP. TAP was EEA authorised but didn't have the necessary permissions to advise Mr D on his pension.
- L&C didn't carry out sufficient due diligence on TAP to check that it had the necessary permissions.
- The recommendations Mr D received were misleading.
- Mr D's pension monies were invested into a high risk investment that isn't suitable for a SIPP.
- Charges and fees associated with Mr D's investments were unnecessary.
- Mr D has suffered a financial loss.

L&C wrote to Mr D's representatives on 29 July 2019 and acknowledged receipt of the letter of complaint dated 1 May 2019. L&C explained that it wasn't yet in a position to issue a final response letter and explained that Mr D could proceed to refer his complaint to this service if he wanted to – and Mr D then did this.

In response to questions from us Mr D has said, amongst other things, that:

- He was contacted by Mr G of TAP in early 2011 offering to review his pensions. The possibility of consolidating his existing pension arrangements into a SIPP was discussed.
- He found out in October 2012 that Mr G had received a criminal conviction and a suspended prison sentence. If he had known charges were pending, he wouldn't have proceeded with the discussions.
- He had been considering consolidating his pensions and taking more control of his finances.
- He was neutral about TAP as an introducer but was attracted to L&C as an established and reputable SIPP operator.
- He was told that the Hansard Signature Bond Plus investment would be suitable for long term capital growth, such that he could purchase an annuity at retirement.
- L&C's agreement to accept the instructions from TAP to place his pension monies in a volatile fixed income structure looks negligent.
- This was a very poor investment choice made by TAP and accepted by L&C.
- Within weeks of the transfers the value of his investments were falling and a loss of 17% of the value of his pension occurred in seven months.
- The product was completely wrong for his investment profile and he took prompt action to move his pension elsewhere.
- He hadn't received any written advice or reports about the risks inherent with the investment. He was told by Mr G that the investments were suitable for his pension but the precise risks were never set out to him.
- He understood his monies would be invested in fixed income products.
- He understood that L&C were the SIPP operator and investment manager and would access and make investments with third party funds.
- He received a payment of around £2,000 from TAP. Mr G said this was a rebate of some of the commission TAP had been paid by L&C.
- If L&C had refused the investments, he would have sought an alternative provider to consolidate his existing pension plans and to make further contributions.
- He was contacted in late 2018 and made aware that compensation was potentially available if pensions had been transferred to a new SIPP and the level of risk involved hadn't been adequately explained. He was then introduced to his current representatives. He feels he was let down because L&C didn't undertake adequate due diligence.

Our investigator's view

One of our investigators reviewed Mr D's complaint. The investigator concluded that Mr D's complaint should be upheld. She 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 Mr D'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 Mr D for his financial loss.

In response to the investigator's view Mr D's representatives asked that any compensation be paid directly to them.

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 Mr D's complaint should be upheld. In brief, I concluded that:

- Mr D'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 Mr D's application from TAP.
- It wasn't in accordance with its regulatory obligations and good industry practice for L&C to have accepted Mr D'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 Mr D fairly. And it's appropriate and fair in the circumstances for L&C to compensate Mr D to the full extent of the financial losses he'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.

Mr D replied to my provisional decision and said that he was happy to accept the recommendations set out in the provisional decision. He also wanted to highlight that he didn't currently have a pension plan and would like any redress to be paid directly to him.

What I've decided – and why

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 Mr D'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 Mr D was aware – or ought reasonably to have become aware – he 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.

As I understand it, Mr D's representative sent a complaint letter dated 1 May 2019 to L&C. The earliest correspondence I've seen about the complaint from L&C is dated 29 July 2019, in which it apologises for its delay in responding to the complaint. So, from the evidence provided to date, it's not clear when L&C received the 1 May 2019 letter, but it seems more likely than not that it would have been received at some point in May 2019.

There are various strands to the complaint set out in the 1 May 2019 letter but, overall, the crux of the complaint is that L&C didn't carry out sufficient checks when it accepted Mr D's business from TAP and that insufficient due diligence was undertaken on investments made within the SIPP.

The SIPP was in force by May 2011, and monies were transferred into the SIPP and invested in the Hansard Signature Bond Plus wrapper shortly thereafter – the latest investment into the Hansard Signature Bond Plus wrapper was in August 2011. All of which occurred more than six years before Mr D had referred his complaint to either L&C or us.

So, I've also gone on to consider whether Mr D referred his complaint more than three years from the date on which he either was aware, or ought reasonably to have become aware, he 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, Mr D needs to be aware, or should reasonably be aware, that there's a problem which has caused, or may cause, him loss and that L&C is responsible.

- Mr D had transferred around £175,000 into his SIPP by July 2011 and around £162,500 of this was invested into the Hansard Signature Bond Plus investment. A little over £144,700 was realised from that investment in April 2012. Mr D transferred a little over £145,600 away from the L&C SIPP later in April 2012 and, as I understand it, the L&C SIPP was then closed down.

- Mr D has said that this product was completely wrong for his investment profile and he took prompt action to move his pension elsewhere. So, on his own evidence, I think the level of losses suffered in a year was disconcerting to Mr D and that it

wasn't what he was expecting, or what he thought was reasonable, for his investments. And I think that Mr D was aware by April 2012 that there was a problem with his pension and that he had been caused some loss or damage.

- There's nothing I've seen that was sent to Mr D more than three years before his complaint was referred to L&C that links L&C to the losses his pension monies had suffered. I think it's worth highlighting that Mr D 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 his financial adviser might have given poor advice. In my view, there's nothing in any correspondence we've seen that was sent to Mr D that would indicate to a reasonable retail investor in Mr D's position that L&C had responsibility for the position Mr D was in – the position of having a SIPP with investments in it that were performing badly.

- I've seen no evidence that Mr D had been told by any third party, and more than three years prior to his CMC raising a complaint with L&C in May 2019, that L&C may have done something wrong and might be wholly or partly responsible for the position he 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 Mr D should have had an understanding of the obligations SIPP providers were under more than three years before Mr D referred his complaint to L&C.

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

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

So, I'm satisfied this complaint's 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.

And, ultimately, what I'll be looking at here is whether L&C took reasonable care, acted with due diligence and treated Mr D fairly, in accordance with his best interests. And what I think's fair and reasonable in light of that. And I think the key issue in Mr D's complaint is

whether it was fair and reasonable for L&C to have accepted Mr D'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 Mr D'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 Mr D'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 Mr D'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 Mr D'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 Mr D'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 Mr D 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 Mr D on the suitability of its SIPP or the investments Mr D made within his 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 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 Mr D'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 Mr D. It's accepted L&C wasn't required to give advice to Mr D, 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 Mr D'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 Mr D'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 Mr D'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 Mr D'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 May 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 May 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, the transfers into the SIPP and the initial investment of monies post-transfer.

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, from his submissions, I'm also satisfied that Mr D understood TAP to be acting as his financial adviser.

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 its SIPP, in addition to advising on investments post-transfer. It's difficult to see otherwise how clients introduced to it by TAP 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 Signature Bond Plus wrapper/or the investments within it. That advice was only made possible by way of the establishment of the SIPP and the transfer of Mr D's pension monies into the SIPP. That was the source of the monies in respect of which the Hansard Signature Bond Plus investment advice was being given, *but for* the transfers 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.

So, based on the evidence that's been provided, I think L&C's understanding at the time of the transaction that's the subject of this complaint either was, or ought to have been, that TAP was giving advice on the establishment of the SIPP, the transfers into the SIPP and the initial investment of monies post-transfer.

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.

So, I'm satisfied that TAP was appointed as Mr D's financial adviser in respect of his SIPP as noted on the SIPP application form. And that it was providing him 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 Mr D'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

So, to summarise, I think that TAP carried on activities for which it didn't have regulatory permissions in the UK. I think it advised Mr D 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.

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 them. 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 Mr D 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 Mr D's pension monies were potentially high.

These anomalous features were further factors relevant to L&C's acceptance of Mr D'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 Mr D) 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 Mr D'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 that I've outlined above. These were further factors relevant to L&C's acceptance of Mr D's application which emphasised the need for adequate due diligence to be carried out on TAP.

I'm therefore satisfied it's fair and reasonable to conclude that L&C shouldn't have accepted Mr D'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 Mr D'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 Mr D's application from TAP in the first place. So in my opinion, Mr D'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 Mr D'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 Signature Bond Plus 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 Mr D's application even though he 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 Mr D sign an indemnity declaration wasn't an effective way for L&C to meet its regulatory obligations to treat him fairly, given the concerns L&C ought to have had about accepting business from TAP.

L&C knew that Mr D had signed a form intended to indemnify it against losses that arose from acting on his instructions. And, in my opinion, relying on such an indemnity when L&C knew, or ought to have known, Mr D's dealings with TAP were putting him 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 Mr D's application.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr D signed meant that L&C could ignore its duty to treat him 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 Mr D's application from TAP. If that had happened, I think it's more likely than not the contractual obligations between L&C and Mr D under the newly established SIPP would never have arisen. And it wouldn't be fair or reasonable to say the contract between Mr D and L&C meant L&C could ignore all red flags and proceed with Mr D's business regardless.

So, I'm satisfied that Mr D'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 Mr D's application.

Is it fair to ask L&C to pay Mr D 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?

Mr D went through a process with TAP that culminated in him completing paperwork to set up a new L&C SIPP and with the expectancy that monies from his existing pension plans 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 his pension monies weren't then transferred to L&C, that Mr D 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 Mr D that his 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 Mr D wouldn't then have continued to accept or act on pensions advice provided by TAP.

Further, I'm satisfied that but for TAP's involvement, it's more likely than not that Mr D's monies wouldn't then have been invested in/through the Hansard Signature Bond Plus wrapper.

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."*

Mr D says he did receive a payment of around £2,000 from TAP. Mr D says that Mr G said this was a rebate of some of the commission TAP had received from L&C. But, in this case,

I'm not satisfied that Mr D proceeded in the knowledge that the investment he would be making was high risk and speculative, and that he was determined to move forward with the transaction in order to take advantage of the payment offered by TAP.

Mr D says that he was told by his adviser that the investment would be suitable for long term capital growth, such that he could purchase an annuity at retirement. And, on balance, I think it's more likely than not that he was assured by what he had been told by the adviser he was dealing with.

Overall, and having carefully considered all the submissions that have been made, I am satisfied that Mr D, unlike Mr Adams, wasn't eager to complete the transactions this complaint concerns for reasons other than securing the best pension for himself.

I'm also satisfied that it wouldn't be fair to say Mr D's actions mean he 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 Mr D'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 Mr D.

L&C might argue that another SIPP operator would have accepted Mr D'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 Mr D for his 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 Mr D's application from TAP.

Further, and in any eventuality, even if another SIPP provider had been willing to accept Mr D's application from TAP, that process would still have needed Mr D to be willing to continue to do business with TAP after L&C had rejected his application for another application to proceed. And, for the reasons I've given above, I'm not satisfied that Mr D 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 Mr D's application from TAP, the transaction wouldn't still have gone ahead.

The involvement of TAP

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

The starting point therefore, is that it would be fair to require L&C to pay Mr D compensation for the loss he'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 Mr D for his loss. And I'm satisfied it's appropriate and fair in the circumstances for L&C to compensate Mr D to the full extent of the financial losses he'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 Mr D'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 Mr D wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

If it wishes, L&C can have the option to take an assignment of any rights of action Mr D has against TAP in respect of the events this complaint concerns *before* compensation is paid. And the compensation can be made contingent upon Mr D's acceptance of this term.

The key point here is that but for L&C's failings, Mr D wouldn't have suffered the loss he's suffered. So, even if an assignment of action against TAP 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 Mr D to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by TAP. And, taking into account the combination of factors I've set out above, I'm not persuaded that it would be appropriate or fair in the circumstances to reduce the compensation amount that L&C's liable to pay to Mr D.

Mr D taking responsibility for his 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 Mr D's actions mean he should bear the loss arising as a result of L&C's failings.

Mr D 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 Mr D'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 Mr D for the losses he's suffered, including any charges that were suffered as a result of realising monies from the Hansard Signature Bond Plus investment. But for L&C's failings in accepting the business from TAP, I think it's more likely than not that Mr D wouldn't have invested through the Hansard Signature Bond Plus wrapper in the first place. And I don't think it would be fair to say in the circumstances that Mr D should suffer the loss because he ultimately instructed those investments that I'm considering here 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 Mr D to the position he would now be in but for what I consider to be L&C's failure to carry out adequate due diligence checks before accepting his SIPP application.

As I've explained above, 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 Mr D's business from TAP.

Further, I think it's fair to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr D's application from TAP. And, in any eventuality, even if another SIPP provider had been willing to accept Mr D's application from TAP, that process would still have needed Mr D to be willing to continue to do business with TAP after L&C had rejected his application for another application to proceed. And, for the reasons I've given above, I'm not satisfied that Mr D would have continued to accept or act on pensions advice from TAP in such circumstances.

So, on balance, I think it's more likely than not that if L&C hadn't accepted Mr D's business from TAP that Mr D's monies wouldn't have been transferred into the L&C SIPP and invested in/through the Hansard Signature Bond Plus wrapper.

What would have happened in the alternative if L&C hadn't accepted Mr D's business from TAP? On his own evidence Mr D has submitted that if the L&C business hadn't proceeded, he would have instead sought an alternative provider to consolidate his existing pension plans with.

So, having carefully considered all of the circumstances of this complaint, including the submissions that have been made on this point, I think it's more likely than not that if L&C hadn't accepted Mr D's business from TAP that Mr D's pension monies would still have been transferred, consolidated and invested elsewhere and without TAP's involvement.

However, I can't be certain of what funds, and in what proportions, those monies would have been invested if they hadn't been transferred into the L&C SIPP and invested in the Hansard Signature Bond Plus wrapper.

Given the lack of certainty on this point, and having carefully considered this issue, for the purposes of quantifying redress in this case I think the fair and reasonable approach is to assume that half the monies in question would have experienced a return, from the date they were transferred into the L&C SIPP through until the date they were transferred away from

the L&C SIPP, equivalent to the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return index). And that the other half of the monies would have experienced a return over that same period equivalent to the average rate from fixed rate bonds. I'm satisfied that's a fair and reasonable proxy for the type of return that could have been achieved over the period in question.

I've noted what Mr D has said in response to my provisional decision about not currently having a pension plan. It's possible that position might have changed by the time that L&C has calculated the redress to be paid. But even if that position hasn't changed, the directed redress steps already provide for an alternative in the instance that L&C is *unable* to pay the compensation into a pension plan for Mr D.

What must L&C do?

To compensate Mr D fairly, London & Colonial Services Limited must:

- Compare the performance of Mr D's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

  If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- L&C should add interest as set out below.

- If there's a loss, L&C should, if possible, pay into a pension plan for Mr D so as to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

- If L&C is unable to pay the compensation into a pension plan for Mr D, it should pay that amount direct to him. But had it been possible to pay into a plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HM Revenue & Customs ('HMRC'), so Mr D won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr D's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr D's likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%. However, if Mr D 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%.

- Pay £500 to Mr D directly. In addition to the financial loss that Mr D's experienced as a result of the problems with his pension, I think the losses suffered to the portion of Mr D's pension provisions that this decision concerns has caused Mr D distress. And I think that it's fair for L&C to compensate him for this as well.

Income tax may be payable on any interest paid. If L&C deducts income tax from the interest, it should tell Mr D how much has been taken off. L&C should give Mr D a tax deduction certificate in respect of interest if Mr D asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Monies transferred into the L&C SIPP from Mr D's previous pension plans.	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Last date in April 2012 when Mr D's monies were transferred away from his L&C SIPP.	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, L&C should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum that Mr D paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. To be clear this doesn't include SIPP charges or fees paid to third parties like TAP. But it would, for example, include any earlier transfers away that were effected before the *end date.*

If there is a large number of regular payments, to keep calculations simpler, I'll accept if L&C totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

L&C should also make a notional allowance in its calculation to allow for the payment that Mr D said he received from TAP. Mr D said that he received a payment of around £2,000 from TAP and was told this was a rebate of some of the commission TAP had been paid by L&C. I'm satisfied that these are monies that Mr D wouldn't have received if L&C hadn't accepted Mr D's business from TAP. And, as such, I'm satisfied it's fair and reasonable for L&C to make an allowance for a notional deduction of these monies in this redress calculation.

Given the passage of time, I appreciate it might be difficult for Mr D to access historic records to evidence the payment he received from TAP, but if Mr D is able to provide records of the payment (including, for example, emails or bank statements confirming the payment) he 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 about the payment, including the date of payment, when allowing for the notional deduction in its calculation.

Alternatively, if Mr D 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 Mr D's testimony of the sum he received. L&C should then proceed on the basis that Mr D received a payment of £2,000 from TAP. Further, if Mr D is unable to provide evidence of the payment received to L&C within 14 days of acceptance of this final decision, I also think it's fair and reasonable for the notional deduction for the payment Mr D received from TAP to be treated as having occurred on the start date of the calculation, so that the monies that were paid to Mr D then cease to accrue any return in the calculation from that point on.

Why is this remedy suitable?

I've chosen this method of compensation because I'm satisfied that the mix and diversification provided by using the benchmark set out in the table above would be a fair measure for comparison for what Mr D's monies might have been worth if they had not been transferred and invested in the Hansard Signature Bond Plus wrapper but had instead been transferred and invested elsewhere.

My final decision

For the reasons given, my final decision is that I uphold Mr D's complaint against London & Colonial Services Limited. And I require London & Colonial Services Limited to pay Mr D 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 £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, 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 must pay the amount produced by that calculation up to the maximum of £160,000 (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 £160,000, I recommend that London & Colonial Services Limited pays Mr D 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 Mr D has against TAP in respect of the events this complaint concerns before paying compensation, it must first provide a draft of the assignment to Mr D for his 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 Mr D could accept a decision

and go to court to ask for the balance and Mr D may want to get independent legal advice before deciding whether to accept a decision.

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

Alex Mann
Ombudsman