DRN-4376465

The complaint

Mr M complains that London & Colonial Services Limited ('L&C') didn't undertake sufficient due diligence on the firm, 1 Stop Financial Services ('1 Stop'), that introduced him to L&C. Mr M also complains that L&C didn't undertake sufficient due diligence on investments he made through his L&C Self-Invested Personal Pension ('SIPP'). Further, that as a result of this he's suffered losses.

What happened

Involved parties

L&C

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 Resort Group ('TRG')

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

Green Oil Plantations Australia Limited

Green Oil Plantations Australia Limited was founded in May 2010. Green Oil Plantations Australia Limited offered land leases for land pre-planted with green oil producing trees in Queensland Australia. Green Oil Plantations Australia Limited wasn't regulated by the financial services regulator.

Future Assets

Future Assets was an unregulated introducer, Mr P worked for Future Assets. Future Assets wasn't regulated by the financial services regulator.

1 Stop Financial Services ('1 Stop')

At the time of the events in this complaint, 1 Stop was an independent financial adviser ('IFA') authorised by the then regulator – the Financial Services Authority ('FSA'), which later became the Financial Conduct Authority ('FCA').

We've been provided with a copy of pages from 1 Stop's entry on the FSA Register. This says that 1 Stop's permissions included advising on investments (except on Pension Transfers and Pension Opt Outs). Other permissions 1 Stop held included arranging (bringing about) deals in investments.

In an April 2014 publication on its website, updated the following month, the FCA explained that:

> *"*(Mr R) *and* (Mr H)*, partners at 1 Stop Financial Services (1 Stop), have been banned by the Financial Conduct Authority (FCA) from performing any significant influence function in relation to any regulated activity.* (Mr R) *and* (Mr H) *had advised customers to switch into self-invested personal pensions (SIPPs), which enabled those customers to invest in unregulated and often high risk products, regardless of whether those products were suitable for the customers."*

It was noted in the FCA's Final Notice of 17 April 2014 for Mr R that:

- Mr R was one of two partners at 1 Stop, a firm that provided advice to customers seeking to transfer their pension to make unregulated investments via SIPPs.
- Between 1 October 2010 and 10 November 2012, Mr R failed to take reasonable steps to ensure that the business of 1 Stop complied with the relevant requirements and standards of the regulatory system. Specifically, Mr R failed to take reasonable steps to ensure that 1 Stop assessed the suitability of the underlying investment for the customer. Instead, 1 Stop's business model focussed solely on providing advice on the most suitable SIPP wrapper for the underlying investment.
- Mr R failed to take reasonable steps to ensure that 1 Stop gathered sufficient information to be able to assess the suitability of the underlying investment for its customers.
- In particular, Mr R failed adequately to take reasonable steps to ensure that 1 Stop:
  - established customers' investment aims and objectives;
  - assessed customers' attitude to risk; and
  - ascertained customers' knowledge and experience in relation to financial products.
- Mr R also failed to take reasonable steps to ensure that 1 Stop's customers understood the information provided to them, and therefore understood the key features of their investment, including both the operation of the SIPP that they were investing in (and the risks associated with that SIPP) and the underlying investment.
- As a result of Mr R's actions, 1,959 of 1 Stop's customers during the Relevant Period (the *"Relevant Period"* in the context of the contents of the Final Notice means the period from 1 October 2010 to 10 November 2012 inclusive) were at risk of having invested a total of £112,331,229, mostly from pension funds including some final salary schemes, into SIPPs which may not have been suitable for them.
- Prior to and during the Relevant Period, 1 Stop shifted the focus of its business from advising on a mix of mortgage, insurance and standard retail investment products to providing advice in relation to SIPPs. In April 2010, mortgage and insurance advice accounted for 52% of the revenue earned by 1 Stop. By October 2012 97% of 1 Stop's revenue was derived from its SIPP business.
- As a result of the risks posed by non-standard investments within the SIPPs, it was especially important that 1 Stop ensured that when making investment decisions, customers understood how their SIPPs operated and the potential increased risks associated with the underlying investments within them.
- It was also essential that 1 Stop assessed both the suitability of the SIPP wrapper and the proposed underlying investment for the customer, to ensure that customers only invested in investments which were suitable for them.
- The FCA had reviewed investments made by some of 1 Stop's customers who received advice on SIPPs. This review included, but was not limited to, a review of the documentation recorded on 15 of 1 Stop's customer files.
- *"1 Stop's SIPP advisory process*

A 1 Stop customer seeking advice on moving their pension would typically be one looking to invest their pension into an unregulated product such as an overseas property investment. Such customers would typically have been introduced to the investment product by an unregulated Introducer…who would, on behalf of the underlying investment company, present marketing materials and/or provide presentations to the customer on which the customer based their decision to invest. The customer would then be introduced by the Introducer to 1 Stop in order to obtain advice on using their pension to facilitate the investment via a SIPP. During the Relevant Period, every customer was referred to 1 Stop by an Introducer."

- Upon referral to 1 Stop, the customer would:
  - Complete a brief fact find/pension profiler questionnaire document that included high level questions about their investment aims, objectives, attitude to risk ('ATR'), knowledge and experience of financial products. In some cases, the fact find would be completed by the Introducer for the customer with no input from 1 Stop.
  - Receive 1 Stop's complimentary pension review report, setting out details of consumers existing pensions and projected yield.
  - At the same time as the pension review report, or shortly thereafter, receive 1 Stop's suitability report, which contained 1 Stop's recommendation for the most suitable SIPP wrapper for the proposed investment. Typically, when selecting the most suitable SIPP for the customer, 1 Stop assessed, amongst other things, the set up and ongoing fees of the SIPP provider, the standard of administrative assistance and whether the SIPP was able to invest into the underlying investment product.
  - Receive a SIPP application pack that would enable the customer to purchase a SIPP from the SIPP Operator recommended by 1 Stop. This application pack would be submitted to the SIPP Operator, processed and then the customer's pension funds would be transferred. Those funds would then be used to purchase the underlying investment.
- Typically, 1 Stop would send the documents outlined above to the customer without providing any further explanation and/or clarification.
- The advisory model established at 1 Stop by Mr R and his partner didn't take into account any consideration of the suitability for the customer of the underlying investment within the SIPP.
- 1 Stop's customer documentation contained numerous disclaimers that as a business, 1 Stop didn't advise on, or have any involvement in considering, the underlying investment. Mr R himself confirmed that, *"…all we would be doing is looking at a suitable SIPP… that they could transfer their pension into a SIPP that would accept that particular investment."*
- As a result of this deficient business model, all 1,959 of 1 Stop's SIPP customers were at risk of investing their monies into an investment which may not have been suitable for them.
- Mr R confirmed that 1 Stop's customers were stated as having a *"High"* ATR because of the types of underlying investment that the customers were investing into through their SIPPs. A customer's ATR was inferred from their proposed underlying investment, as opposed to 1 Stop taking steps to confirm that the customer was willing to accept a high level of risk in their investment/to confirm whether that investment was suitable for the customer.
- Mr R confirmed that he didn't establish a customer's knowledge and understanding of financial services products. Similarly, Mr R confirmed that he didn't take any steps to establish the customer's knowledge and understanding of the underlying investment product beyond the fact that the customer had confirmed they wanted to invest into it.

Further, the business model established required no further steps to be taken to confirm the customer's knowledge and experience of financial products.
- At the FCA's request, 1 Stop voluntarily varied its permissions, such that with effect from 10 November 2012, 1 Stop was no longer permitted to carry on any regulated activities. On 14 March 2013, 1 Stop voluntarily applied to cancel its permissions.

A number of similar points to those I've mentioned above were also referenced in Mr H's FCA Final Notice of 17 April 2014. It was also noted in Mr H's Final Notice that Mr H confirmed statements in the suitability report regarding the customer's *"high level of understanding"* of financial services products related solely to the customer's understanding of the underlying investment. Mr H also confirmed that the customer's understanding of that underlying investment product would be what he perceived to be as 'high', based on the customer having received promotional material from the Introducer. However, the business model established required no further steps to be taken to confirm the customer's knowledge and experience of financial products, including taking no further steps to confirm whether the customer actually understood the promotional material they'd been given.

What happened?

We've been provided with a signed copy of a 1 Stop client agreement, the agreement is a version from March 2011 and it's been signed by Mr M on 12 July 2011. It's noted in the agreement that, unless confirmed in writing to the contrary, 1 Stop would assume that the client didn't wish to place any restrictions on the advice it proffered. 1 Stop was an independent adviser and would advise on products from the whole of market.

We've also been provided with a copy of a 1 Stop Keyfacts document, this is a version from January 2010. It's noted in the Keyfacts document that 1 Stop is authorised and regulated by the FSA. The document explains that 1 Stop offered investment products from the whole of market and that it would advise and make recommendations for clients after it had assessed their needs.

A 1 Stop Personal Financial Questionnaire for Mr M was completed by Mr R, this is dated 12 July 2011. Amongst other things, it's noted in this document that:

- Mr M was looking to plan for a secure retirement.
- Mr M *"had an external investment opportunity presented to him for the purchase of a hotel room style investment in Cape Verde and also investments into alternative investments."*
- Mr M was unhappy with the charges and lack of growth on his existing pension plans and they didn't allow investments *into "self chosen investments which is they* (sic) *key objective seeing their chosen choice of their external alternative investments path".*
- 1 Stop had been asked to conduct research and give recommendations on a suitable SIPP that would accept such investments.
- *"Clients are…aware that the investment which has been self chosen to sit within the SIPP to be arranged are unregulated and not covered by the Financial Services Compensation Scheme."*
- Mr M accepted a high degree of risk for his pension planning.
- The investments that are to be chosen for the SIPP are not the responsibility of 1 Stop and no advice has been given on investments that will be held in the SIPP in any way or form.
- *"The clients wanted a flexible SIPP contract that would allow full access to funding alternative investments….Advice issues were conducted around available SIPP companies that will allow these investment areas."*

Mr M signed a declaration at the end of the Personal Financial Questionnaire on 12 August 2011.

A 1 Stop Pension Review report dated 12 July 2011, and prepared for Mr M by Mr R, records, amongst other things, that:

- Mr M had four existing pension plans without guarantees and with a combined transfer value of a little under £105,000.
- 1 Stop's fee was a one off fee, deductible from the fund value at the outset, to cover the set up advice, recommendations and liability for advising on the course of action and a suitable SIPP provider.
- Due to the volume of new business it had introduced to L&C, 1 Stop had been able to negotiate lower fees on Mr M's behalf.
- It had chosen L&C has a suitable SIPP provider based on the funds that Mr M had to transfer and the type of investment portfolio he'd chosen.
- The L&C SIPP offered full access to alternative investments.
- There were strong indications that switching to a SIPP would be more advantageous for Mr M.
- The switch would allow Mr M to invest into the investments that he'd chosen, and which his former schemes wouldn't allow.
- Moving the monies to the SIPP would give Mr M flexibility, control and a choice of future investments, including alternative investments.
- If Mr M decided to transfer a full report would be provided covering the advantages and disadvantages of doing so.

We've been provided with a document titled *"Research Notes for:* [Mr M]*"* dated 20 July 2011. From the contents it appears that this was an internal 1 Stop note. Amongst other things, it's recorded in the note that:

- Mr M expressed a wish to invest in a property investment with TRG in Cape Verde, with which 1 Stop had no involvement. The investment was an off plan hotel room style investment.
- Only L&C and one other SIPP provider deemed that investment permissible.
- The duty under best advice rules was to ensure Mr M had a SIPP with a competitive charging structure and L&C was the most competitively priced of the two SIPP providers.

Mr M signed a 1 Stop document declaration form on 12 August 2011 to confirm that he'd received a terms of business letter/client agreement, a Keyfacts document/personal illustration, a Key Facts about our services document and a record of suitability letter.

L&C received a completed application form for Mr M to open a new SIPP. The IFA details section of the application form records the IFA firm as 1 Stop, along with 1 Stop's FSA authorisation number. It's recorded that initial remuneration of £1,495 would be paid to the IFA. It's also stated in the form that around £104,000 would be transferred into the SIPP from policies with other providers, but no initial post-transfer investments are recorded in the form. Mr M signed the form on 12 August 2011.

Amongst other things, it's noted in a L&C *"Investment in Dunas Beach form"* Mr M signed on 12 August 2011 that:

- Mr M wanted to invest in a ground floor Delux Orchid Suite.
- The purchase price was a little under £70,000.

- It was understood that the initial deposit could be lost if, for any reason, there wasn't enough cash available to pay the balance when due.
- L&C wasn't authorised to give financial or investment advice.
- L&C had obtained legal advice in its capacity as trustee, in order to assess the risks of ownership and to ensure that appropriate title was attained.
- Advice L&C had obtained didn't cover the investment merits, marketability or value of the property.
- The investor had reviewed a due diligence report obtained in January 2010 and the promissory contract of purchase and sale.
- The investor had obtained whatever information, reports, legal and other advice they required regarding investments, including the potential income and the associated costs and expenses which may fall to be paid.
- The investor would indemnify L&C in respect of any loss claim action damage L&C incurred or suffered in respect of the investment.
- The investor (here Mr M) wished to proceed with the investment.

A L&C Dunas Beach scheme borrowing form was also signed by Mr M on 12 August 2011. Details of sums to be borrowed, and the lender they'd be borrowed from, were left blank. But it was noted in the form that:

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

We've not been provided with a contract for Mr M's Llana Beach investment that has been signed by the vendor. However, we've previously been provided with a copy of a contract signed by the vendor (in that case Llana Beach Hotel, S.A.) in the complaint that was the subject of published decision DRN-3587366. In that complaint the signed contract explained that a total of 65% (consisting of a 45% 'down payment' and an additional 20%) was paid when the contract is signed. Another 30% was then payable on the conclusion of the construction, with the vendor writing off the final 5%. There'd also be a discount each year, equivalent to 3% of the cost of the 45% down payment, until the earlier of 3 years or the date of delivery of the keys.

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

While we've not seen a copy of the contract the vendor signed in Mr M's case, I think it's more likely than not that a not dissimilar contract would have been completed in respect of Mr M's investment in the Llana Beach Resort.

We've also been provided with a copy of a 5-year project Green Oil Plantation Australia Lease Application and Buyback Contract form that Mr M signed on 12 August 2011 and which L&C signed on 1 November 2011. The form records Mr M as the applicant and the agent as a Mr P of Future Assets. The form records that Mr M wishes to purchase a 5-year land lease and Section 3 of the application records that Mr M is looking to lease plots "*CM, AN, AM",* that this amounts to a land area of *"one and a quarter hectare"* with 2,315 trees for a total amount of £50,000. Further, that an additional £550 would be included for payment of

legal fees. The monies to fund the investment were to come from L&C. It was explained in the form that:

- Details were being provided for those willing to purchase a 5-year land lease pre-planted with green oil producing trees (Millettia Pinnata) in Queensland Australia. Millettia produces green oil and by-products.
- Investors could do what they wished with the land and trees during the lease.
- The company offering land leases, and an optional buyback management contract, was Green Oil Plantations Australia Limited ('GOPA'), a private company limited by shares registered under the laws of England and Wales.
- The land lease was fully registered with the land registry in Australia.
- The leaseholder had the option to enter a buyback management contract for the purposes of having their trees purchased by GOPA, GOPA would buy all the trees back from the leaseholder at the fixed price of £38.88 each. The buyback price for the trees would be paid on the fifth anniversary of the contract date.
- Where a buyback management contract was entered into, GOPA would manage and exploit trees' produce for five years for the purpose of generating a revenue. GOPA would also be responsible for running costs and taxes associated with the land/trees.
- GOPA would take out comprehensive insurance to cover crop reinstatement and loss of income. This also covered the leaseholder's loss of income.
- If investors felt that financial advice was needed, they could contact their IFA.
- The grant of the lease wasn't a regulated investment under the Financial Services and Markets Act 2000. The GOPA lease wasn't an investment regulated by the FSA.

Mr M and L&C also signed a form so as to enter into the buyback management contract. It was noted, amongst other things, in the contract that:

- The risk of loss of, or damage to, the crop would pass to GOPA on the execution of the buyback agreement but title to the crop would only pass to GOPA when the price together with all interest had been paid in full to the owner.
- Until the price and interest had been paid, title to the crop would remain with the owner, provided that GOPA was entitled during the term of the agreement to sell or exploit in any way the produce of the crop and to retain as its own any consideration received.
- The price would be paid in full to the owner by GOPA upon the earliest of a number of provisions set out in the agreement.
- Until the price was paid in full, GOPA would pay annual interest to the owner at the rate of 14% a year, GOPA could defer payment until the determination of the underlease.
- GOPA would insure the payment to the owner throughout the duration of the agreement and until its full payment.

Mr M's representatives provided us with a typed declaration Mr M signed on 12 August 2011, my reading of the typed declaration is that it originated from 1 Stop. The declaration was titled *"Green Oil Investment Purchases via a SIPP".* Amongst other things, this document said that:

- The Green Oil investment had been presented to him as an investment opportunity by Future Assets.
- This was a non-regulated investment which wasn't authorised or regulated by the FSA, so investors might not be able to make a complaint or claim any compensation.
- Responsibility for the investment's success didn't involve 1 Stop.

- 1 Stop hadn't been involved in the decision of proceeding with the investment, the suitability of using pension funds to facilitate the purchase had been deemed appropriate by the investor (here Mr M).
- No comments would be made on the suitability of the investment but it was an investment that was typically suited to sophisticated investors.
- The investment would be deemed to be an instructed investment request and it was recommended that the investor undertake their own full due diligence.
- 1 Stop had researched and advised on a suitable SIPP that the investment could be held in and the reasons for using the chosen SIPP provider were explained in a suitability report.
- It was requested that the investor confirms and agrees that 1 Stop's responsibility was only with assisting with the provision of a suitable SIPP provider.

Mr M's representatives provided us with a second typed declaration Mr M signed on 12 August 2011. This one was titled *"Harlequin Property Investment Declaration Purchases via a SIPP".* The points I've highlighted above from the first declaration were also repeated in the second declaration, but with reference to Harlequin rather than Green Oil. Mr M didn't in fact invest in Harlequin after the SIPP was established.

L&C wrote to Mr M on 31 August 2011 and acknowledged receipt of his application.

L&C wrote to Mr M again on 13 September 2011 to confirm his SIPP was in force. L&C also acknowledged receipt of transfers into the SIPP of a little under £100,000.

We've been provided of a copy of some emails from 6 and 7 October 2011 between 1 Stop and L&C. In the correspondence L&C and 1 Stop discuss an investment into TRG. 1 Stop notes that Mr M had agreed to the Llana Beach Resort investment application it had submitted. 1 Stop says that it's received confirmation for L&C to pay the full deposit to TRG and it asks L&C to send funds to TRG as soon as possible. 1 Stop confirmed that the payment option chosen by Mr M was 65%.1 Stop also asks L&C for a breakdown of the SIPP funds, so it can confirm with Mr M that he's happy for the remainder of available funds to go into Green Oil.

We've been provided with a copy of some emails between 1 Stop and L&C from 14 October 2011 to 1 November 2011. In the emails L&C and 1 Stop discuss the remaining funds available in the SIPP to invest in Green Oil, this results in 1 Stop instructing that £50,000 be invested in Green Oil.

GOPA wrote to Mr M on 9 November 2011 and said that:

- Green Oil Plantations Limited would grant Mr M a 5-year land lease for an area of 1.25 hectares.
- Where an investment was via a SIPP, the SIPP provider would sign and would hold the title of the land and trees for the term of the lease.
- Once the lease was signed it would be forwarded to a solicitor in Australia who would have it officially registered at the land registry. The final lease title would be held by Mr M's SIPP provider and a copy would be sent to him.
- Mr M had indicated that he wanted Green Oil Plantations Limited to manage his trees for the term of the lease and for the purpose of receiving an annual return.
- The plantations and Mr M's returns were fully insured for his protection.
- Mr M's 80% return plus his capital would be paid in 2016 on the anniversary of his investment.

In January 2013 Green Oil Plantations Limited's Management Team wrote to L&C and said that it had decided to halt all sales of the Green Oil Plantations investment.

Green Oil Plantations Limited subsequently entered administration and administrators wrote out to L&C on 17 October 2013, confirming that they were proposing Green Oil Plantations Limited enter into a company voluntary agreement. Further correspondence relating to this was sent by the administrators and, on 15 October 2014, the liquidators made a payment of a little over £1,200 to L&C in respect of Mr M's Green Oil investment.

We've been provided with a document titled *"Consolidation Breakdown for* [Mr M]*".* This records that Mr M had originally purchased a 50% share in a plot at the Llana Beach Resort for a little over £38,500. But looking at the purchase price and the sum paid, it appears that Mr M actually paid 65% of the price (which ties in with the email correspondence I've referenced above between L&C and 1 Stop in which 1 Stop referred to a 65% share). The consolidation breakdown continued to note that the new property would be a 17% share in a different plot at Llana Beach, and the discounted cost of this was shown as being equivalent to the sum Mr M had paid towards his share in the initial plot. I can see that fees were then paid from Mr M's SIPP for property consolidation in August 2015.

A transaction history for Mr M's L&C SIPP records, amongst other things, that:

- A little under £100,000 was transferred into the SIPP from Mr M's previous pension arrangements in September 2011.
- A little under £1,500 was paid as an IFA fee in September 2011.
- A little under £39,000 was invested in TRG in October 2011.
- A little over £50,000 was invested in Green Oil Plantations in November 2011.
- Fees were paid for property consolidation in August 2015 and there was a fractional Dunas/Llana Beach fee paid in January 2017.

Mr M made a claim to the Financial Services Compensation Scheme ('FSCS') about 1 Stop. In a FSCS claim form that Mr M signed on 19 August 2015, it was explained that Mr M was advised to transfer his pension to a SIPP to allow investment in alternative investments. Further, that Mr M wasn't warned about the potential risks with the investments and that if the risks had been explained properly he would never have gone ahead with the transfer.

Mr M explained to the FSCS that a Mr P of Future Assets and a Mr R of 1 Stop were present at a meeting to discuss his pension, that he'd told them he didn't want to lose the value of what he had and that he was assured that this wouldn't happen. Mr M said that he was told that he would benefit from better growth than he was receiving and that there was no mention of the fact that he could lose everything.

It was also noted in the FSCS claim form that Mr M had, previously, worked as a protection adviser between 1991 and 1995.

The FSCS upheld Mr M's claim and calculated his losses as a little under £100,000. The FSCS paid Mr M £50,000, which was its compensation limit at the time. The FSCS subsequently gave Mr M a reassignment of rights to enable him to pursue a complaint against L&C.

In his complaint to L&C, Mr M's representatives noted, amongst other things, that:

- L&C had permitted a transfer to an unsuitable pension which then facilitated the purchase of an unsuitable, high risk, illiquid investment.

- Mr M wasn't a sophisticated investor, he had a low risk profile and little investment experience.
- L&C was required to carry out effective due diligence on investments it permitted.
- L&C also had to check the suitability of firms introducing business to it.
- L&C failed to verify the integrity of 1 Stop.
- If L&C had proper controls in place concerns would have been raised, amongst other things, about:
  - High levels of business being introduced by the same firm.
  - The advising firm recommending the same product and similar investments repeatedly.
  - Clients being in a very different location to the adviser.
  - Clear trends appearing.
- If L&C had basic controls in place it should have rejected Mr M's business.

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

- L&C is the sole trustee and administrator of Mr M's SIPP.
- L&C doesn't manage any investments within the SIPP.
- 1 Stop provided Mr M with the initial product, transfer and investment advice.
- L&C accepts SIPP applications submitted by regulated financial advisers. It's the responsibility of the adviser to advise on the suitability of the proposed investments.
- There's no requirement for clients to take advice, or, if they do, to follow it.
- L&C's checks on the FSA's Register showed that 1 Stop was authorised and regulated for the provision of financial advice.
- L&C was entitled to expect that 1 Stop would have given regulated advice on the suitability of the SIPP itself and on the intended investment.
- The member (here Mr M) has the power to choose investments and L&C has only limited powers of veto of any investment.
- L&C is an execution-only SIPP provider.
- The provisions of the SIPP Trust Deed limit the fiduciary duties that might otherwise apply to a trustee. The default statutory duty of care defined in the Trustee Act 2000 is excluded by the terms of the trust as it's inconsistent with the purpose of a SIPP.
- L&C's role is to satisfy itself that the investment is acceptable from an HM Revenue & Customs ('HMRC') point of view and to take reasonable skill and care to establish that the seller has good title.

Amongst other things, Mr M's representatives have said to us that:

- Mr M was introduced to Mr P by a person who had set up some life cover for Mr M previously.
- Mr M was introduced to the investments by Mr P, who it understands was acting as an unregulated introducer.
- Mr M met with Mr P, and a Mr R of 1 Stop, at a hotel. They discussed Mr M's situation and Mr M said that he didn't want to take any risks or lose any value as this was everything he had for the future.
- Mr M invested through L&C on the advice of Mr P and Mr R.
- Mr M didn't carry out any research on the investments, which were presented as safe investments with good, solid returns.
- The investment in TRG was presented as providing growth on the asset and a regular income from the rental of the room, it was sold to Mr M as being a sure thing.
- Mr P and Mr R seemed knowledgeable, and because he'd been referred by someone he knew, Mr M trusted what he was told.

- The business with 1 Stop was as a result of Mr P, Mr M had no other dealings with 1 Stop before or after the transfer.
- Mr P introduced Mr M to Mr R, but Mr P continued to be involved in the transfer and investment discussions.
- Mr M only remembers meeting with 1 Stop on the one occasion.
- Mr M was told that transferring his pension monies would help him to grow his fund better.
- The level of risk associated with investments wasn't disclosed to Mr M, they were sold as a sure thing.
- These monies were Mr M's only provision for his retirement and he didn't have capacity for their loss.
- Mr M believed at the time that L&C's role was to look after the investments and the cash held in his pension.
- There isn't a 1 Stop suitability report within the documents Mr M provided and no suitability report was available in the documents Mr M's representatives obtained from 1 Stop when it made a subject access request.

One of our investigators reviewed Mr M's complaint, the investigator said that L&C shouldn't have accepted Mr M's business from 1 Stop and concluded that the complaint should be upheld.

Mr M accepted the investigator's findings. L&C didn't accept the investigator's findings and its representatives noted, amongst other things, in their response that:

- As far as L&C is aware, 1 Stop advised Mr M on the establishment of the SIPP and the Green Oil investment in 2011.
- L&C also has correspondence indicating that 1 Stop was involved in the Llana Beach Resort investment.
- In his SIPP application form Mr M informed L&C that he'd authorised his financial adviser to act on his behalf in dealing with the investments and correspondence shows that 1 Stop instructed L&C to purchase the investments.
- The Ombudsman may dismiss a complaint if dealing with it would impair the effective operation of the Financial Ombudsman Service.
- The Court would be a more appropriate jurisdiction than the Financial Ombudsman Service for this complaint and Mr M's evidence, including his position on causation, should be tested in Court.
- The wider impact of the findings, on L&C and the wider SIPP industry, are such that the claim should be subjected to full judicial scrutiny.
- Alternatively, the Pension Ombudsman ('TPO') would be a more appropriate jurisdiction given its specialist knowledge of pension complaints. The Memorandum of Understanding between the Financial Ombudsman Service and TPO contains a clause which states that the Financial Ombudsman Service and TPO should take reasonable steps to co-operate and exchange best practice around the resolution of similar complaints.
- The Financial Ombudsman Service largely ignores the disclaimers contained in the SIPP and investment applications.
- The starting point should be to give primacy to the contract agreed between the parties.
- The contract here was made on an execution-only basis; L&C accepted no responsibility for checking the quality of the investment business, much less the decision to transfer and invest.
- The Financial Ombudsman Service is imposing a duty on L&C that goes far beyond what was agreed by the parties and which is not provided for either at law or in guidance or rules.

- The Financial Ombudsman Service states that the regulators' reports and guidance provided examples of good practice observed by the FCA and FSA. This assumes that the examples of good practice would have been known to the wider SIPP industry at the time of the transaction. But they weren't, due to having been published after the event, with the exception of any examples from the 2009 Thematic Review – but these examples didn't constitute formal guidance.
- The examples of good practice didn't have the force of guidance and there was no obligation to follow them.
- The investments were exactly as advertised; the Llana Beach investment was an illiquid investment in real property with no established secondary market. Mr M was aware of this when he made the investment. Good title was obtained, and the investments produced a return. Returns ceased with the onset of the pandemic, however, the Llana Beach Resort is trading again and rooms are available to book.
- The Llana Beach Resort investment's book value has increased and it's continued to provide a return.
- Green Oil was a company registered in England and Wales and represented by a reputable firm of solicitors. Title was obtained in relation to the plots of land and registration took place via an Australian firm of solicitors. A letter from Green Oil to Mr M set out the basis upon which the investment worked and the exit strategy, including the buyback option.
- Mr M was aware the investments were high risk unregulated investments and there was nothing preventing a SIPP provider from accepting such business.
- L&C couldn't reject such business without making a value judgment on its suitability for each individual client, something which fell outside of its expertise and well outside of the terms of the contract.
- An execution-only SIPP provider cannot reject such business without completing a full suitability assessment. In the alternative, no SIPP provider could ever accept high risk investments into a SIPP.
- The introduction to L&C was from a regulated adviser, but there was no restriction on business being accepted from an unregulated introducer.
- It was the responsibility of 1 Stop as the financial adviser to advise Mr M on the suitability of both the product and the proposed investment.
- In compliance with COBS 11.2.19R, L&C acted on Mr M's written instructions.
- L&C did have an obligation to conduct due diligence on 1 Stop prior to accepting business from it and L&C carried out the following in 2010:
    - A review of the FSA Register to confirm that 1 Stop was regulated by the FSA to provide advice on pension transfers and investments.
    - A review of 1 Stop's publicly available information on Companies House (including checks on the individual directors as well as the legal entity).
    - Checks on directors which amounted to internet searches of publicly available information on 1 Stop and its key personnel.
- 1 Stop's original agency application was made in December 2009 which also contained the following information:
    - 1 Stop had been in business since November 2004.
    - The key individuals were Mr R and Mr H, they were regulated to provide financial advice. Mr H had 19 years of experience of advising on pensions and Mr R had 11 years of the same.
- L&C wasn't aware of the changes in 1 Stop's business model, since the original application was made in 2009 and it wasn't unreasonable that L&C was unaware of this.
- The October 2013 FCA guidance on SIPPs and the FCA Final Notice against 1 Stop dated April 2014 were both published after the fact and the Financial Ombudsman Service is using the benefit of hindsight.

- Had the October 2013 FCA guidance and the FCA Final Notice been available at the date that the due diligence was conducted, L&C may have come to a different conclusion regarding 1 Stop's involvement. At the time, there was no requirement for a SIPP provider to broaden the scope of its due diligence to include an understanding of an adviser's business model and, even if it did, the information identifying 1 Stop retail clients as investing primarily in high risk, esoteric investments, was only made available in the FCA Final Notice in April 2014.
- The investigator said that Mr M's introduction was likely the tenth introduction L&C received from 1 Stop. But it's clear that the Financial Ombudsman Service doesn't have accurate information on the number of introductions L&C received from 1 Stop ahead of Mr M's application.
- The Pension Review Report stating that 1 Stop didn't provide advice on the underlying investment is at odds with Mr M's submission that 1 Stop provided him with investment advice and this was also the conclusion reached by the FSCS.
- Mr M was offered advice on the pension transfer and investment, if he maintains that advice wasn't provided then he refused that advice.
- L&C considers that 1 Stop did advise on the investment, and that this is evidenced by 1 Stop supplying L&C with a copy of the investment application form alongside the SIPP application form.
- The level of due diligence imposed by the Financial Ombudsman Service goes far beyond what was agreed between the parties, and beyond any expectations that Mr M had of L&C.
- There's no reason why L&C should have had any concerns about accepting business from 1 Stop. 1 Stop was an FSA regulated entity and L&C was able to take comfort from that.
- A SIPP provider's role isn't to make a value judgement on the investment, it's to obtain good title to the investment and hold it within a pension wrapper.
- There was nothing requiring L&C to request information (or copies) of advice that had been provided and, in any event, L&C couldn't comment on this without potentially putting itself in breach of its permissions.
- In *Adams* the Store First investment being high risk didn't make it manifestly unsuitable and the same is true of the Llana Beach/Green Oil investments.
- The standard that L&C should be held to in looking to ascertain whether there was a breach of duty is that of a reasonably competent SIPP provider, not whether it followed the best possible practice.
- The Financial Ombudsman Service cherry picks from the case law.
- A breach of the Principles cannot, of itself, give rise to any cause of action at law.
- The Financial Ombudsman Service makes no attempt to explain why the Principles have been relied on rather than the High Court decision in *Adams*, despite this decision forming a much more solid foundation for any consideration of a complaint against a SIPP provider.
- The Principles fall to be construed in light of the COBS rules applicable to L&C, L&C's regulatory permissions, L&C's contractual arrangements and the statutory objective that consumers should take responsibility for their decisions.
- Using any examples of guidance from publications that were published after the transactions complained about runs contrary to common sense and the position in *Adams.*
- Regulatory publications can't alter the meaning, or the scope, of the obligations imposed by the Principles.
- Many of the matters which the 2009 Thematic Review Report invites firms to consider are directed at firms providing advisory services.
- Even if the 2009 Thematic Review Report had been statutory guidance made under the Financial Services and Markets Act ('FSMA') S.139A (which it wasn't), the breach

of such statutory guidance wouldn't give rise to a claim for damages under the FSMA.

- The FCA's Enforcement Guide says that *"Guidance is not binding on those to whom the FCA's rules apply. Nor are the variety of materials (such as case studies showing good or bad practice, FCA speeches and generic letters written by the FCA to Chief Executives in particular sectors) published to support the rules and guidance in the Handbook. Rather, such materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant rules."*
- Duties imposed by the COBS can't all apply to all firms in all circumstances.
- The COBS rules contain some provisions and obligations that don't apply to execution-only SIPP providers.
- The Principles must necessarily be applied within the context of the specific duties imposed by the Rules, not the other way around.
- L&C didn't have permissions to carry on the regulated activity of advising on investments and it hasn't provided advice on whether consumers should open, or transfer monies, into SIPPs or on the underlying investments.
- The relationships in this case are similar to those in *Adams*.
- At all times, Mr M was aware that L&C would act on an execution-only basis and would accept no responsibility for the quality of the investment business.
- Amongst other things, the judge in *Adams* held that in order to identify the extent of the regulatory duties imposed on Carey, "*one has to identify the relevant factual context"* and that *"the key fact...in the context is the agreement into which the parties entered, which defined their roles in the transaction"*.
- The judge also said that *"a duty to act honestly, fairly and professionally in the best interests of the client, who is to take responsibility for his own decisions, cannot be construed...as meaning that the terms of the contract should be overlooked, that the client is not to be treated as able to reach and take responsibility for his own decisions and that his instructions are not to be followed."*
- In *Adams* the FCA agreed that the function of a firm, as determined by contract, would govern what it had to do to comply with its duties under the FCA Handbook.
- Insufficient weight has been given to contractual arrangements and the demarcation of roles and responsibilities.
- In suggesting that, notwithstanding the clear terms of the relevant contractual arrangements, L&C owed obligations of due diligence under the Principles, the reasoning of the investigator's view runs wholly contrary to that in *Adams*.
- Regardless of when due diligence was completed, *Adams* considered the duties of a SIPP provider under COBS at length and the findings of that case should be applied.
- At the time of the transaction complained of there was no obligation on a customer to take advice on the transfer of a pension. And there was no obligation on L&C to ensure that advice was taken. It's not fair or reasonable to use the Principles to artificially impose a duty that goes beyond that accepted and agreed by the parties.
- The Financial Ombudsman Service is attempting to circumvent the *Adams* decision.
- The investigator should have concluded that L&C's duties to Mr M extended no further than those owed to the claimant in *Adams*.
- The investigator's view fails to have regard to the general principle that consumers should take responsibility for their decisions, the fundamental principle of freedom of contract and to the authority of *Adams* and *Kerrigan v Elevate Credit International Ltd* [2020] C.T.L.C. 161.
- It was common practice for SIPP providers to accept investments such as those this complaint concerns, and another SIPP provider would have accepted Mr M's application.
- L&C is left to *"carry the can"* as it's the last entity standing, this isn't fair or reasonable.
- The Financial Ombudsman Service has contacted Mr M to ask a series of questions.

It's procedurally irregular, and highly inappropriate, that a fact-sensitive matter such as this should be decided on the papers.
- Important questions have been put to, and answers received from, Mr M without the Financial Ombudsman Service having had the opportunity to hear directly the responses to those questions or L&C having been invited to be part of the process.
- It requests that the Financial Ombudsman Service holds an oral hearing or, as a minimum, we should provide copies of all communications passing between us and Mr M.

Following the investigator's view on the case, L&C provided us with further documents relating to the due diligence it had undertaken. I've referenced the contents of some of these below.

A copy of an L&C intermediary application form has been signed and dated on 6 December 2009. It's noted, amongst other things, in the form that the IFAs at 1 Stop who would sell or supervise sales of pension were Mr H (who had a little under 20 years' experience of selling/advising on pensions) and Mr R (who had a little over 10 years' experience of selling/advising on pensions).

A printout from the FSA Register, the printout appears to be from 16 December 2009. It's noted in the printout that 1 Stop had been authorised since November 2004. It's been handwritten towards the bottom of the printout *"not authorised for pension transfers & opt outs."*

A letter from L&C to 1 Stop from 22 December 2009, in which L&C confirms that it's approving 1 Stop's agency application and that it's enclosing intermediary agreements to be signed and returned.

An intermediary agreement between L&C and 1 Stop dated 22 December 2009. The copy we've been provided hasn't been signed by 1 Stop but, amongst other things, it's noted in the agreement that:

- The Intermediary complies with the requirements of the UK Financial Services and Markets Act 2000 and is regulated for this purpose by the FSA.
- The Intermediary agrees to comply with the regulatory and legal obligations for its continued authorisation, will comply with all appropriate rules of any self-regulatory organisation or professional body of which it is a member and agrees to inform L&C of any failure to do so. The Intermediary undertakes to inform L&C if its authorisation lapses or is suspended or withdrawn.
- L&C reserves the right at any time to cease to accept business from the Intermediary, or to refuse any particular business proposed without giving reason.

A *"Vetting of Intermediary Applications"* form for 1 Stop, this recorded, amongst other things, that:

- An FSA check had been completed.
- The date an agreement had been received from 1 Stop was 11 January 2010 (I've read this as referring to a completed copy of the intermediary agreement).

Following the investigator's view we put some questions to Mr M. This included questions about his time as an adviser which, as mentioned above, Mr M had referenced in his claim form to the FSCS. Amongst other things, it was noted in the responses that:

- Mr M was previously employed as a tied agent and was only able to advise on a limited product range, including simple pension or life insurance products with premiums typically around £20-£50 per month.
- Mr M was also able to give investment advice but this had limits, when advising risk was assessed by the numbers 1, 2 and 3. 1 was low risk, 2 was medium risk and 3 was high risk. Mr M was only able to recommend products in category 1.
- Mr M then had a career change and moved into a different area of work where he has remained since.
- Due to his limited knowledge and lack of experience, Mr M had clearly stated that he was only interested in low risk investments.
- It was explained to Mr M that the values of any investment can go down or up, but he was told that this was a *"barn door"* or *"no brainer"* investment.
- It was mentioned that the Australian Government had made a commitment to investing in greener energy, such that the Green Oil investment would be safe and well supported.
- While the TRG investment didn't have the same reassurances, it was deemed as safe as investing in property.
- Before signing the final documents Mr M was reassured that his pension transfer would be low risk and that 1 Stop had done the same for a number of clients with much larger funds.
- Mr M doesn't have a copy of a suitability report from 1 Stop and he's provided all documents held in relation to 1 Stop.
- Mr M isn't aware of any guarantees being given up when transferring away from his existing pension plans.
- Mr M only met Mr R once, it's believed this was on 12 August 2011, and this was to answer any questions he might have and then to complete the necessary paperwork.
- The pension transfer had been well discussed before this point and the meeting was purely to get the necessary paperwork completed and the pension transfer underway, previous conversations had taken place with Mr P.
- The paperwork wasn't given to Mr M to take away for reading or sent to him for review, it was just presented for the necessary signatures to allow the transfer to proceed.
- He didn't receive any payment when transferring his pensions to the SIPP or when proceeding with any of the investments.
- Mr M believed that Mr R was there to give him suitable financial advice for his circumstances.
- Mr M was presented with numerous documents for signature. All were marked where signature was required. No time was given for him to read or review the documents. And Mr M had no reason to believe that what he was being told didn't correspond with the documents he was signing.
- Mr M said that he'd not knowingly signed any indemnity forms. Further, that if he'd read a form detailing that any of the investments were high risk, he wouldn't have proceeded.
- The process adopted by 1 Stop was for its financial gain and showed no concern for the welfare of clients.
- If L&C had refused to allow the TRG/Green Oil investments to go through *"It is very likely that I would have kept the funds in the current pensions as I didn't consider myself savvy enough to explore further options."*
- Mr M doesn't remember anything to do with Harlequin. He only remembers discussions on the Green Oil and TRG investments.

As agreement couldn't be reached the complaint was passed to me for review. I issued a provisional decision on this complaint and I concluded Mr M's complaint should be upheld. In brief, I concluded that:

- I don't consider that it would be more suitable for this complaint to be determined by TPO and I've decided not to exercise my discretion to refer it to them.
- I'm not required to dismiss this complaint and I'm not exercising my discretion to dismiss it.
- I'm satisfied that I'm able to fairly determine Mr M's complaint without convening a hearing.
- L&C should have been conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.
- There *was* a significant risk of consumer detriment associated with the introductions L&C received from 1 Stop.
- L&C didn't undertake appropriate steps, or draw reasonable conclusions, mindful of the information that would have been available to it had it undertaken adequate due diligence.
- L&C didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr M fairly by accepting his business from 1 Stop.
- L&C didn't meet its obligations or good industry practice at the relevant times, and allowed Mr M to be put at significant risk of detriment as a result.
- It's fair and reasonable for L&C to compensate Mr M for the loss he's suffered as a result of L&C accepting his business from 1 Stop.

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

- Mr M's knowledge and expertise of pensions, investments and financial services has been given insufficient weight and has been unreasonably dismissed by the ombudsman.
- The ombudsman has failed to consider that, irrespective of whether Mr M was only authorised to advise on low-risk products, he would have needed to complete comprehensive training in order to be granted permission to provide investment advice.
- Just because Mr M was advising on low-risk investments doesn't mean that he wasn't involved in SIPPs, or had no awareness of their structure or SIPP providers' due diligence obligations.
- The ombudsman has incorrectly concluded that Mr M wasn't a sophisticated investor, that he had a low risk profile and little investment experience. Further, that due to his limited knowledge and lack of experience, Mr M had stated that he was only interested in low risk investments.
- It's been assumed in the provisional decision that Mr M didn't know that the investment was unregulated and high risk, that Mr M wasn't aware of the downsides of failing to obtain full regulated advice, that it wasn't fair or reasonable to rely on indemnities signed by Mr M and that it wasn't fair or reasonable to say that Mr M's actions meant that he should bear the loss arising as a result of L&C's failings.
- The ombudsman says that he has no reason to doubt Mr M when he says that he didn't receive an explanation of the risks involved, and that he was led to believe that transferring his pension monies would help him to grow his fund. Further, the ombudsman says that he isn't satisfied that Mr M proceeded, knowing that the investments he was making were high risk and speculative, in order to take advantage of a cash incentive.
- Mr M was a sophisticated investor and therefore would have read and understood the risk warnings in the literature provided to him by 1 Stop and L&C.

- Mr M would have known that a SIPP provider had due diligence obligations.
- Given Mr M's knowledge and experience, it's unclear how the ombudsman has arrived at the conclusion that Mr M had no awareness of the high risk, unregulated nature of the investment and didn't think to query the process (despite the fact that he was likely familiar with the process, having been an adviser himself).
- Mr M clearly intended to invest in a high risk, unregulated investment and was fully aware of the consequences of doing so and therefore should take responsibility for his investment decisions.
- This case isn't very different to that of Mr Adams in *Adams v Options SIPP*.
- Mr M's recollection of events doesn't represent the best evidence of what he either was or ought to have been aware of at the time.
- *Gestmin v Credit Suisse* comprehensively set out the fallibility of memory and how recollection is subject to bias.
- The contemporaneous documents should take precedence over Mr M's recollections as a record of events as a consequence.
- L&C's position, contained in its earlier submissions, remained the same.

In response to my provisional decision Mr M's representatives said, amongst other things, that:

- Mr M is in agreement with the provisional decision.
- If redress monies are paid into Mr M's pension fund this could potentially cause an issue with regards paying the £50,000 back to the FSCS. If not paid in time the client could start to encounter interest penalties.
- It could also be deemed as a withdrawal of pension funds which could impact on tax levied if Mr M needs to make a further withdrawal for personal use.
- If the funds have to be paid into the pension it requests that L&C repay the first £50,000 directly to the FSCS.
- Mr M would prefer for the monies not to be paid into his pension.

What I've decided – and why

Better suited to be considered by TPO or a Court

L&C has said that it believes the complaint is better suited to be considered by TPO or a Court. Following on from my provisional decision, and as part of my review of this complaint, I've reconsidered this issue. Having done so I've reached the same conclusions on this issue as those I'd set out in my provisional decision. For completeness, my conclusions on this issue are set out below.

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

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

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

L&C has argued that Mr M's complaint should be referred to TPO. And I could now refer the complaint to TPO on the basis of DISP 3.4.1R if I take the view it's more suitable for

TPO and if, in the light of that view, Mr M consents to a referral to TPO.

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

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

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

So, overall:

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

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

Oral hearing

As I've referenced above, in its response to the investigator's view on the complaint L&C's representatives noted, amongst other things, that they were requesting an oral hearing on this case. I explained in my provisional decision why I was satisfied that I'm able to fairly determine Mr M's complaint without convening a hearing. Following on from my provisional decision, and as part of my review of this complaint, I've reconsidered this issue. Having done so I've reached the same conclusions on this issue as those I'd set out in my provisional decision. For completeness, my conclusions on this issue are set out below.

The DISP rules on hearings

> As a preliminary point, the Financial Ombudsman Service provides a scheme under which certain disputes may be resolved quickly and with minimum formality (see section 225 of the Financial Services and Markets Act 2000 ('FSMA')). And, the Dispute Resolution rules found in the FCA Handbook under which we operate ('the DISP rules') provide the following in relation to the resolution of complaints by the ombudsman and hearings:

DISP 3.5.5R

"If the Ombudsman considers that the complaint can be fairly determined without convening a hearing, he will determine the complaint. If not, he will invite the parties to take part in a hearing. A hearing may be held by any means which the Ombudsman considers appropriate in the circumstances, including by telephone. No hearing will be held after the Ombudsman has determined the complaint."

DISP 3.5.6R

"A party who wishes to request a hearing must do so in writing, setting out:

(1) the issues he wishes to raise; and
(2) (if appropriate) any reasons why he considers the hearing should be in private;

so that the Ombudsman may consider whether:

(3) the issues are material;
(4) a hearing should take place; and
(5) any hearing should be held in public or private."

DISP 3.5.7G

"In deciding whether there should be a hearing and, if so, whether it should be in public or private, the Ombudsman will have regard to the provisions of the European Convention on Human Rights."

Given my statutory duty under FSMA to resolve complaints quickly and with minimum formality, I'm satisfied that it would normally not be necessary for me to hold a hearing in most cases (see the Court of Appeal's decision in *R (Heather Moor & Edgecomb Ltd) v Financial Ombudsman Service* [2008] EWCA Civ 642).

The key question for me to consider in making my decision on a hearing request is whether or not *"the complaint can be fairly determined without convening a hearing".*

My consideration of the hearing request

In accordance with my duties under FSMA and the relevant DISP provisions as set out above, I've carefully considered the request for a hearing on this complaint. And, I'm satisfied that a hearing would only be required in this case if I thought the complaint couldn't be fairly determined without convening one.

As L&C will be aware, we don't operate in the same way as the Courts. Unlike a Court, we have the power to carry out our own investigation. And, if particular information is required to decide a complaint fairly, in most circumstances we're able to request this information from either party to the complaint, or even from a third party.

DISP 3.5.8R provides:

"The Ombudsman may give directions as to:

(1) the issues on which evidence is required;
(2) the extent to which evidence should be oral or written; and
(3) the way in which evidence should be presented."

This means I, as the ombudsman determining this complaint, am able to decide the issues on which evidence is required and how that evidence should be presented. And I'm not restricted to oral cross-examination to further explore points or to test the veracity of information that's been provided to me.

There are a number of issues that are in dispute in this complaint, but it is not uncommon for us to deal with complaints where the parties involved disagree as to what has happened and/or with the findings we've reached. But this doesn't necessarily mean that a hearing is required to fairly determine the complaint.

We generally decide complaints on the basis of the paperwork and submissions made either in writing or over the phone. We've received written responses and documentary evidence from both parties during our investigation of this complaint, and I'm able to consider that evidence fully. A number of written submissions have been made over the course of this complaint and I don't consider a hearing will necessarily make a difference or cause Mr M's recollections of events that occurred many years ago to change.

I also want to emphasise that a hearing is only an opportunity for me to ask the parties to provide oral evidence. A hearing wouldn't normally provide L&C with the opportunity to cross-examine evidence/testimony provided. Our hearings don't follow the same format as a Court. We're inquisitorial in nature and not adversarial. The purpose of any hearing would be for me to obtain any further information from the parties that I require in order to fairly determine the complaint.

Where I considered further evidence was needed on any point, I've been able to ask the relevant party for the evidence I required. And the parties to this complaint have been given ample opportunity to make submissions at every stage of the process. Each party has had the benefit of seeing the material submissions made by the other party and been afforded the opportunity to respond.

Further, and more broadly, L&C has been invited to make submissions to us on a number of occasions during our investigation of this complaint.

We initially wrote out to L&C to ask for its submissions on this complaint on 28 February 2017. And an investigator issued a provisional assessment on this complaint on 10 March 2022. Later the same investigator wrote to L&C on 6 May 2022 and invited it to submit any further points or information it would like the ombudsman to consider. I also gave L&C an opportunity to make further representations for me to consider in response to my provisional decision. So, L&C has been given a number of opportunities to make representations and has made several sets of representations.

DISP 3.5.4R provides:

> *"If the Ombudsman decides that an investigation is necessary, he will then:*
>
> > *(1) ensure both parties have been given an opportunity of making representations;*
> > *(2) send both parties a provisional assessment, setting out his reasons and a time limit within which either party must respond; and*
> > *(3) if either party indicates disagreement with the provisional assessment within that time limit, proceed to determination"*

I'm satisfied this procedure has been followed in this case.

Having taken all of the evidence and arguments into account, I remain satisfied that I'm able to fairly determine Mr M's complaint without convening a hearing. In deciding this, I have had regard to the parties' rights under the European Convention on Human Rights.

Merits

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

When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

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

Relevant considerations

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

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 requirements they cover. The*

general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."

And at paragraph 77 of BBA Ouseley J said:

"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."

In *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ('BBSAL'), Berkeley Burke brought a judicial review claim challenging the decision of an ombudsman who'd upheld a consumer's complaint against it. The ombudsman considered the FCA Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and hadn't treated its client fairly.

Jacobs J, having set out some paragraphs of *BBA* including paragraph 162 set out above, said (at paragraph 104 of *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 the FSMA and the approach an ombudsman is to take when deciding a complaint. The judgment of Jacobs J in *BBSAL* upheld the lawfulness of the approach taken by the ombudsman in that complaint, which I've described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

As outlined above, Ouseley J in the *BBA* case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what's fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in *BBSAL*. I'm therefore satisfied that the Principles are a relevant consideration that I must take into account when deciding this complaint.

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both these judgments and the judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 when making this decision on Mr M's case.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case and I'm of the view that it doesn't. I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight didn't consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither of the judgments say anything about how the Principles apply to an ombudsman's consideration of a complaint. But, to be clear, I don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of the *Adams* judgments when making this decision on Mr M's case.

I acknowledge that COBS 2.1.1R (*A firm must act honestly, fairly and professionally in accordance with the best interests of its client)* overlaps with certain of the Principles, and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of the FSMA ('the COBS claim'). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

The Court of Appeal rejected Mr Adams' appeal against HHJ Dight's dismissal of the COBS claim, on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal didn't so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

I note that in *Adams v Options SIPP*, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at paragraph 148:

> *"In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction."*

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

And in Mr M's complaint, amongst other things, I'm considering whether L&C ought to have identified that the introductions from 1 Stop involved a significant risk of consumer detriment and, if so, whether it ought to have ceased accepting introductions from 1 Stop *before* entering into a contract with Mr M.

The facts of Mr Adams' and Mr M's cases are also different. I make that point to highlight that there are factual differences between *Adams v Options SIPP* and Mr M's case. And I need to construe the duties L&C owed to Mr M under COBS 2.1.1R in light of the specific facts of Mr M's case.

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

However, I think it's important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And, in doing that, I'm required to take into account relevant considerations which include: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This is a clear and relevant point of difference between this complaint and the judgments in *Adams v Options SIPP*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I also want to emphasise that I don't say that L&C was under any obligation to advise Mr M on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr M on the merits of the SIPP and/or the underlying investments.

Overall, I'm satisfied that COBS 2.1.1R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of Mr M's case.

The regulatory publications

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

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

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

The 2009 Thematic Review Report

The 2009 Report included the following statement:

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

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

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their customers' interests in this respect, with reference to Principle 3 of the Principles for 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.

L&C's representatives have said that the 2009 Thematic Review isn't statutory guidance. And I acknowledge that the 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However, I'm of the view that the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't mean their importance should be underestimated. They provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it's treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account.

It's relevant that when deciding what amounted to 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.

At its introduction, the 2009 Thematic Review Report says:

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

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

So, I'm satisfied that the 2009 Report is a *reminder* that the Principles apply and it gives an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So I'm satisfied it's relevant and therefore appropriate to take it into account.

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

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

management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs."

I'm also satisfied that L&C, at the time of the events under consideration here, thought the 2009 Thematic Review Report was relevant. L&C did carry out some due diligence on 1 Stop. So, it clearly thought it was good practice to do so, at the very least.

The remainder of the publications also provide a *reminder* that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I'm therefore satisfied it's appropriate to take them into account too.

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

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

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

That doesn't mean that in considering what's fair and reasonable, I'll only consider L&C's actions with these documents in mind. The reports, *"Dear CEO"* letter and guidance gave non-exhaustive examples of good practice. They didn't say the suggestions given were the limit of what a SIPP operator should do. As the annex to the *"Dear CEO"* letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

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

> *"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in*

high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes).

…

Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.

The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes."

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

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

I'd also add that, even if I agreed with L&C that any publications or guidance that post-dated the events subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time (which I don't), that doesn't alter my view on what I consider to have been good industry practice at the time. That's because I find that the 2009 Report together with the Principles provide a very clear indication of what L&C could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting Mr M's introduction from 1 Stop.

It's important to keep in mind the judge in *Adams v Options* didn't consider the regulatory publications in the context of considering what's fair and reasonable in all the circumstances bearing in mind various matters including the Principles (as part of the regulator's rules) or good industry practice.

And in determining this complaint, I need to consider whether, in accepting Mr M's SIPP application from 1 Stop, L&C complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what L&C should have done to comply with its regulatory obligations and duties.

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

I've set out above I'm satisfied that the Principles and the publications listed above are relevant considerations to that decision.

And taking account of the factual context of this case, it's my view that in order for L&C to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into 1 Stop and the business 1 Stop was introducing, both initially and on an ongoing basis, *before* deciding to accept Mr M's application.

Ultimately, what I'll be looking at whether L&C took reasonable care, acted with due diligence and treated Mr M fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issue in Mr M's complaint is whether it was fair and reasonable for L&C to have accepted Mr M's SIPP application in the first place. So, I need to consider whether L&C carried out appropriate due diligence checks on 1 Stop before deciding to accept Mr M's SIPP application.

And the questions I need to consider are whether L&C ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by 1 Stop were being put at significant risk of detriment. And, if so, whether L&C should therefore not have accepted Mr M's application from 1 Stop.

The contract between L&C and Mr M

L&C has made some submissions about its contract with Mr M and I've carefully considered what has been said about this.

My provisional decision was made on the understanding that L&C acted purely as a SIPP operator and this final decision is made on the same basis. I don't say L&C should (or could) have given advice to Mr M or otherwise have ensured the suitability of the SIPP or the Llana Beach/Green Oil investments for him. I accept that L&C made it clear to Mr M that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that forms Mr M signed confirmed, amongst other things, that losses arising as a result of L&C acting on his instructions were his responsibility.

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

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

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

The regulators' reports and guidance provided some examples of good practice observed by the FSA and FCA during its work with SIPP operators. This included being satisfied that a particular introducer is appropriate to deal with and that a particular investment is appropriate to accept. That involves conducting checks – due diligence – on introducers and

investments to make informed decisions about accepting business. This obligation was a continuing one.

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

And I think that L&C understood this to some degree at the time too, as it did more than just check the FSA entries for 1 Stop to ensure they were regulated to give advice. It also entered into intermediary agreements with 1 Stop.

So, and well before the time of Mr M's application, I think that L&C ought to have understood that its obligations meant that it had a responsibility to carry out appropriate checks on 1 Stop to ensure the quality of the business it was introducing.

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

L&C's due diligence on 1 Stop

Having carefully reconsidered all of the evidence on this point, including the submissions in response to my provisional decision, 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 been made, I've largely repeated what I'd said about this point in my provisional decision.

L&C explained to us in a previous complaint (that was the subject of published decision DRN-3587366) that at the date of the SIPP application in that case, which was towards the end of 2011, it wouldn't have accepted applications from a firm that wasn't authorised by the FSA.

And L&C appears to have carried out some checks before it accepted business from 1 Stop, amongst other things, I'm satisfied this included:

- Checking the FSA register to ensure that 1 Stop was regulated and authorised to give financial advice.
- Entering into intermediary agreements with 1 Stop.

From the information that has been provided, I'm satisfied that L&C did take *some* steps towards meeting its regulatory obligations and good industry practice. However, I don't think those steps that we've seen evidence of went far enough, or were sufficient, to meet L&C's regulatory obligations and good industry practice.

I think L&C was aware of, or should have identified potential risks of, consumer detriment associated with business introduced by 1 Stop *before* it accepted Mr M's application.

As I explain below, based on the available evidence, I think it's more likely than not that the SIPP business introduced to L&C by 1 Stop was all, or mostly, very high risk business where consumer's monies were ending up invested in unregulated and

esoteric investments post-transfer. I think L&C should have taken steps to address this potential risk. And I think such steps should have included getting a fuller understanding of 1 Stop's business model – through asking questions of/requesting information from 1 Stop and through independent checks.

Further, I'm satisfied such information, had it been requested, would have confirmed there was a significant risk of consumer detriment associated with introductions of business from 1 Stop. In the alternative 1 Stop might have been unwilling to answer, or fully answer, questions it received from L&C. In either event I think L&C should have concluded it shouldn't accept introductions from 1 Stop and *before* it accepted Mr M's SIPP application.

So, based on the evidence provided to us to date, I'm of the view L&C failed to conduct sufficient due diligence on 1 Stop *before* accepting Mr M's business from it, or draw fair and reasonable conclusions from what it did know, or ought to have known, about 1 Stop. My view is that L&C ought reasonably to have concluded it should not accept business from 1 Stop, and have ended its relationship with it, *before* it received Mr M's application. I've set out some more detail about this below, the points I make below overlap, to a degree, and should have been considered by L&C cumulatively.

The type of investments being made by 1 Stop-introduced consumers

We've previously asked L&C in this complaint about the number of introductions it received from 1 Stop, the percentage of introductions it received from 1 Stop where applicants invested in non-mainstream investments and what number Mr M was amongst the introductions L&C received from 1 Stop. L&C hasn't provided a full response to our questions about this.

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."*

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

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

I think L&C either had, or ought to have had, access to information about the number and type of introductions that 1 Stop made. I say that because, as can be seen in the complaint that was the subject of published decision DRN-3587366, L&C has previously been able to provide similar information to us about a different firm that was introducing business to it.

And I don't think simply keeping records about the number and nature of introductions that 1 Stop made without scrutinising that information would have been consistent with good industry practice and L&C's regulatory obligations. As highlighted in the 2009 Thematic Review Report, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

In the absence of a response from L&C to our questions about this, and having regard to other due diligence complaints we've received against L&C where 1 Stop was the introducer, it appears that in these complaints the consumers also ended up with SIPP monies invested in higher risk unregulated holdings. Based on the evidence available to me, I think it's more likely than not that this was reflective of the pattern of total business L&C received from 1 Stop. And I think it's more likely than not that either all of, or the vast majority of, consumers introduced to L&C by 1 Stop ended up with SIPP monies invested in higher risk unregulated assets.

This finding also appears to be consistent with what the FCA's Final Notices for Mr R and Mr H say about the type of investments 1 Stop clients' pension monies were being invested into.

So, based on the evidence that's been provided to us to date, I think it's more likely than not that the introductions L&C received from 1 Stop were for applicants intending to invest in high risk non-standard esoteric holdings, such as the unregulated holdings in Llana Beach/Green Oil that Mr M's SIPP monies were invested into. I think it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of the population. The risks are multiplied where the property is *"off plan"* and further funding is necessary from investors to complete the purchases, as was the case with many of the deposit based TRG investments, including the one Mr M made.

I also think it's more likely than not that L&C had received a number of introductions from 1 Stop, where consumers had invested in unregulated holdings, before it received Mr M's introduction.

So, I think L&C either was aware, or ought reasonably to have been aware and prior to receiving Mr M's SIPP application, that the type of business 1 Stop was introducing was high risk, with consumers' pension monies being invested in unregulated holdings, and carried a potential risk of consumer detriment.

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

L&C could simply have concluded that, given the potential risks of consumer detriment from the pattern of business being introduced to it by 1 Stop – which I think should have been clear and obvious at the time – it should not continue to accept applications from 1 Stop. That would have been a fair and reasonable step to take, in the circumstances. Alternatively, L&C could have taken fair and reasonable steps to address the potential risks of consumer detriment, such as those I've set out below.

<u>Requesting information directly from 1 Stop</u>

Given the potential risk of consumer detriment I think that, as part of its due diligence on 1 Stop, L&C ought to have found out more about how 1 Stop was operating before it received Mr M's application. And, mindful of the type of introductions I think that it's more likely than not that L&C was receiving from 1 Stop from the outset, I think it's fair and reasonable to expect L&C, in-line with its regulatory obligations, to have made some specific enquiries and obtained information about 1 Stop's business model.

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

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

> *"Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they*

recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with."

And I think that L&C, and long before it received Mr M's SIPP application, should have checked with 1 Stop and asked about things like: how it came into contact with potential clients, what agreements it had in place with its clients, whether all of the clients it was introducing were being offered advice, what its arrangements with any unregulated businesses were, how and why retail clients were interested in making these esoteric investments, whether it was aware of anyone else providing information to clients, how it was able to meet with or speak with all its clients, and what material was being provided to clients by it.

The advisory process in Mr M's case appears to be very similar to the analysis in the FCA's Final notice for Mr R, quoted towards the start of this provisional decision of *"1 Stop's advisory process"*. And I think it's more likely than not this would also have been the case for a number of other consumers introduced to L&C by 1 Stop before it received Mr M's application.

The FCA Final Notice also highlighted that, much as in Mr M's case, 1 Stop's customer documentation contained numerous disclaimers that as a business, 1 Stop didn't advise on, or have any involvement in considering, the underlying investment. And that Mr R himself confirmed that, *"…all we would be doing is looking at a suitable SIPP … that they could transfer their pension into a SIPP that would accept that particular investment."*

The contents of the documentation we've seen on this complaint that was being completed and retained by 1 Stop doesn't suggest 1 Stop was trying to mask what it was doing. For example, in 1 Stop's notes in the questionnaire it completed with Mr M and in investment purchase declarations it was asking investors like Mr M to sign, 1 Stop was recording that it wasn't advising on the suitability of investments transfers were being effected to make. And that no advice had been given on investments by 1 Stop in any way or form. The investment purchase declarations 1 Stop was asking customers like Mr M to sign, also appear to make it clear that another firm (in Mr M's case the unregulated firm Future Assets) presented the investment opportunity to the consumer.

And, on balance, I think it's more likely than not that if L&C had checked with 1 Stop and asked the *type* of questions I've mentioned earlier on in this section that 1 Stop would have provided a full response to the information sought.

In the alternative, if 1 Stop had been unwilling to answer such questions if they'd been put to it by L&C, I think L&C should simply then have declined to accept introductions from 1 Stop.

L&C might say that it didn't have to obtain this information from 1 Stop. But I think this was a fair and reasonable step to take, in the circumstances, to meet its regulatory obligations and good industry practice.

Making independent checks

I think, in light of what I've said above, it would also have been fair and reasonable for L&C, to meet its regulatory obligations and good industry practice, to have taken independent steps to enhance its understanding of the introductions it was receiving from 1 Stop. For example, it could have asked for copies of correspondence in which applicants were being offered advice.

The 2009 Thematic Review Report said that:

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

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

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

So I think it would have been fair and reasonable for L&C to speak to some applicants, like Mr M, directly and/or to seek copies of the suitability reports.

I appreciate that L&C might say that it couldn't comment on advice without potentially being in breach of its permissions. Again, I confirm that I accept L&C couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view such steps included addressing a potential risk of consumer detriment by speaking to applicants and/or having sight of advice letters, as this could have provided L&C with further insight into 1 Stop's business model. This was a fair and reasonable step to take in reaction to the clear and obvious risk of consumer detriment I've mentioned.

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

Having carefully reconsidered all of the evidence on this point, including the submissions in response to my provisional decision, 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 been made, I've largely repeated what I'd said about this point in my provisional decision.

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

- 1 Stop was explaining to consumers like Mr M that 1 Stop would give no advice on unregulated investments to be held within a SIPP. And that 1 Stop's role was to research and advise on a suitable SIPP that the investment could be held in.
- Consumers were being introduced to L&C without having been offered full regulated advice on the overall proposition.
- 1 Stop was having business referred to it by third parties, including unregulated introducers like Future Assets, and it was then introducing business to L&C.
- Some consumers might have been sold on the idea of transferring pension monies so as to invest in unregulated investments before the involvement of any regulated parties.

Each of these in isolation is significant, but cumulatively I think they demonstrate that there was a significant risk of consumer detriment associated with introductions from 1 Stop. I think that L&C ought to have concluded 1 Stop had a complete disregard for its consumers' best interests, and wasn't meeting many of its regulatory obligations.

As I've mentioned above, the contemporaneous documentation, such as the 1 Stop questionnaire and investment purchase declarations, suggests that 1 Stop was being open about the limited service it was offering to consumers like Mr M. And had L&C carried out the

due diligence I've mentioned above, I'm satisfied it's more likely than not that it would have identified that consumers introduced by 1 Stop hadn't been offered, or received, full regulated advice from 1 Stop on their transactions.

The approach 1 Stop was taking was a highly unusual role for an advisory firm to take. 1 Stop was stating it wouldn't discuss the specific risks associated with unregulated investments with consumers like Mr M and it wasn't advising on the suitability of the overall proposition for consumers (i.e. including advice about the intended post-transfer unregulated investments). This raises significant questions about the motivations and competency of 1 Stop – particularly where consumers were being introduced by an unregulated business like Future Assets.

Had L&C taken appropriate steps in reaction to this, such as seeking clarification from some applicants introduced by 1 Stop at the time, like Mr M, and/or requesting copies of some suitability reports for 1 Stop-introduced consumers, I think it's more likely than not that the information L&C obtained would have accorded with what 1 Stop was stating in the contemporaneous documentation we've seen in Mr M's complaint, and with what Mr R is quoted as saying in the FCA's 14 April 2014 Final Notice. Namely, that 1 Stop wasn't offering consumers it was introducing to L&C any advice on investing in high risk unregulated investments, like Llana Beach/Green Oil, which investments consumers' pension monies were being transferred to L&C so as to effect.

I therefore think L&C ought to have concluded Mr M – and applicants before him – didn't have full regulated advice on the overall proposition made available to them by 1 Stop. And I think that L&C ought to have viewed this as a significant point of concern. As retail consumers, like Mr M were transferring pension monies to L&C to invest in higher-risk esoteric investments like Llana Beach/Green Oil, without the benefit of having been offered full regulated advice on those investments, by an advisory business which appeared to be actively avoiding its responsibility to give advice on the intended investments.

1 Stop was a regulated business that had permissions to advise on the establishment of a SIPP, the switch of monies into that SIPP and where monies would be invested post-transfer. But I think that from very early on L&C was aware, or ought to have been aware, that 1 Stop wasn't a firm that was doing things in a conventional way.

It's unusual for regulated advice firms to be involved in transactions involving transfers to a SIPP to invest in high risk esoteric investments, such as the Llana Beach/Green Oil holdings, where no advice is being given by that firm on the esoteric investments. That's because the risks involved in such investments are unlikely to be fully understood by most people, without obtaining regulated advice. I think it's fair to say that most advice firms decline to be involved in such transactions.

I think this ought to have been a red flag for L&C in its dealings with 1 Stop. And I think L&C ought to have identified that there was a risk that 1 Stop was choosing to introduce consumers without their having been offered full regulated advice. I think L&C ought to have viewed this as a serious cause for concern – this was a clear and obvious potential risk of consumer detriment in this case.

I also think that if L&C had carried out the due diligence I've mentioned above, it should have identified that some consumers introduced by 1 Stop, like Mr M, who were investing in unregulated investments were likely being 'sold' on those investments by third parties, including unregulated introducers like Future Assets.

Although the promotion of some unregulated investments, including Llana Beach/Green Oil, might not have been a regulated activity, this was nonetheless another clear and obvious

potential risk of consumer detriment – particularly where pension investors were being targeted, as appears to be the case here. L&C should have been alive to the risks associated with an unregulated firm(s) promoting unregulated investments for SIPPs, which investments were unlikely to be suitable for the vast majority of retail clients. And I think that's particularly the case where full regulated advice wasn't being offered to consumers by the introducer L&C was dealing with – here 1 Stop.

I think that L&C should have identified that the business it was receiving from 1 Stop, whereby 1 Stop was arranging the transfer of pension monies for consumers into a SIPP, so as to invest in unregulated investments and without those consumers receiving any assessment from 1 Stop about the suitability, or otherwise, of those investments raised serious questions about the motivation and competency of 1 Stop.

And I think L&C should have concluded, and *before* it accepted Mr M's business from 1 Stop, that it shouldn't accept introductions from 1 Stop. I therefore conclude that it's fair and reasonable in the circumstances to say that L&C shouldn't have accepted Mr M's application from 1 Stop.

I appreciate that L&C's representatives have submitted that, as far as L&C is aware, 1 Stop advised Mr M on the establishment of the SIPP, the Green Oil investment and was also involved in the Llana Beach Resort investment. Further, that the fact advice was given on the investment is evidenced by 1 Stop supplying L&C with a copy of the investment application form alongside the SIPP application form. L&C's representatives have also highlighted that in his SIPP application form Mr M informed L&C that he'd authorised his financial adviser to act on his behalf in dealing with investments and correspondence shows that 1 Stop instructed L&C to purchase the investments.

Having carefully considered all of the submissions that have been made, including the contemporaneous documentation from the point of sale and Mr M's testimony, I think it's more likely than not Mr P/Future Assets promoted the unregulated investments Mr M's SIPP monies were invested in and that 1 Stop didn't advise Mr M on these investments. I'm satisfied that conclusion is supported by the weight of evidence in this specific case.

But, in any event this is a secondary point because, as I've mentioned above, I'm satisfied that if L&C had undertaken adequate due diligence on 1 Stop it should have stopped accepting introductions from 1 Stop *before* it received Mr M's application. I think L&C should have declined to accept Mr M's application from 1 Stop. So things shouldn't have got beyond that.

L&C didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr M fairly by accepting his application from 1 Stop. To my mind, L&C didn't meet its obligations or good industry practice at the relevant time, and allowed Mr M to be put at significant risk of detriment as a result.

Due diligence on the underlying investments

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

However, given what I've said about L&C's due diligence on 1 Stop and my conclusion that it failed to comply with its regulatory obligations and good industry practice at the relevant time, I don't think it's necessary for me to also consider L&C's due diligence on the Llana Beach/Green Oil investments at this stage. I'm satisfied that L&C wasn't treating Mr M fairly

or reasonably when it accepted his introduction from 1 Stop, so I've not gone on to consider the due diligence it may have carried out on the Llana Beach/Green Oil investments and whether this was sufficient to meet its regulatory obligations. And I make no findings about this issue.

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

Having carefully reconsidered all of the evidence on this point, including the submissions in response to my provisional decision, 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 been made, I've largely repeated what I'd said about this point in my provisional decision.

For the reasons previously given above, I think L&C should have declined to accept Mr M's application from 1 Stop. So things shouldn't have got beyond that.

Further, in my view it's fair and reasonable to say that just having Mr M sign declarations, 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 the business being introduced by 1 Stop.

L&C knew that Mr M had signed forms intended to indemnify it against losses that arose from acting on his instructions. And, in my opinion, relying on such indemnities when L&C knew, or ought to have known, Mr M's dealings with 1 Stop 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 for L&C to do would have been to decline to accept Mr M's business from 1 Stop.

Amongst other things, the Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr M 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.

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

COBS 11.2.19R

L&C's representatives have made the point that L&C complied with COBS 11.2.19R in executing Mr M's written instructions.

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 1 Stop and established Mr M'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 representatives' argument on this point is relevant to L&C's obligations under the Principles to decide whether to accept Mr M's application to open a SIPP in the first place.

Is it fair to ask L&C to pay Mr M compensation in the circumstances?

Having carefully reconsidered all of the evidence on this point, including the submissions in response to my provisional decision, 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 been made, I've largely repeated what I'd said about this point in my provisional decision.

The involvement of other parties

In this decision I'm considering Mr M's complaint about L&C. However, I accept that other parties were involved in the transactions complained about, including 1 Stop and Future Assets. L&C has contended that it's 1 Stop that's really responsible for Mr M's losses. The Financial Ombudsman Service won't look at complaints against 1 Stop as it's been dissolved and no longer exists as a regulated business. And we also can't look at complaints about Future Assets.

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 regulatory obligations, good industry practice and to treat Mr M fairly.

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

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

I accept that it may be the case that 1 Stop and/or Future Assets might have some responsibility for initiating the course of action that led to Mr M's loss. However, I'm satisfied that it's also the case that if L&C had complied with its own distinct regulatory obligations as a SIPP operator, the arrangement for Mr M wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

I want to make clear that I've carefully taken everything L&C has said into consideration. And it's my view that it's appropriate and fair in the circumstances for L&C to compensate Mr M to the full extent of the financial losses he's suffered due to L&C's failings. And, taking into account the combination of factors I've set out above, I'm not persuaded that it would be appropriate or fair in the circumstances to reduce the compensation amount that L&C's liable to pay to Mr M.

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

Mr M taking responsibility for his own investment decisions

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

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

In my view, if L&C had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr M's application from 1 Stop to open a SIPP *at all*. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr M wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

As I've made clear, L&C needed to carry out appropriate due diligence on 1 Stop and reach the right conclusions. I think it failed to do this. And just having Mr M sign forms containing declarations wasn't an effective way of L&C meeting its obligations, or of escaping liability where it failed to meet its obligations.

1 Stop was a regulated firm with the necessary permissions to advise Mr M on his pension provisions. I'm satisfied that in his dealings with it, Mr M trusted 1 Stop to act in his best interests. Mr M also then used the services of a regulated personal pension provider in L&C.

I've carefully considered what L&C has said about Mr M being aware the investments were high risk.

As part of our investigation of this complaint we asked Mr M about his time working as an adviser. Alongside my provisional decision, L&C was provided with details of the questions we'd asked along with Mr M's responses. It was also provided with the FSCS claim form in which Mr M had disclosed that, a little over 15 years prior to the transactions this complaint concerns, he'd worked as an adviser between 1991 and 1995. A summary of some of Mr M's answers to the questions we'd asked were set out in my provisional decision and have been repeated above in the *"What happened"* section of this decision.

I've reconsidered Mr M's responses to the questions we asked him and I've also carefully considered the submissions L&C has made about those responses.

Having done so, and having carefully considered all of the evidence that's been provided to us to date, I'm still satisfied that Mr M's testimony that he didn't receive an explanation of the

risks involved, and that he was led to believe that transferring his pension monies would help him to better grow his fund, is credible.

And I wouldn't consider it fair or reasonable for L&C to have concluded that Mr M *had* received an explanation of the risks involved with the overall proposition from 1 Stop given what L&C knew, or ought to have known, about 1 Stop's business model by the time it received Mr M's application.

But, in any eventuality, in my view this is a secondary point. That's because, as mentioned above, I'm satisfied that if L&C had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr M's application from 1 Stop to open a SIPP *at all*. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr M wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

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

Had L&C declined Mr M's business from 1 Stop, would the transactions complained about still have been effected elsewhere?

I think that Mr M's pension monies were transferred to L&C so as to effect unregulated investments. I'm satisfied that position is supported by the contents of the contemporaneous documentation that's available, including the contents of 1 Stop's Personal Financial Questionnaire for Mr M, 1 Stop's *"Research Notes for:* [Mr M]*"* and the 1 Stop investment purchase declarations.

L&C might say that if it hadn't accepted Mr M's application from 1 Stop, that the transfer and investments would still have been effected with a different SIPP provider. But I don't think it's fair and reasonable to say that L&C shouldn't compensate Mr M 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 M's application from 1 Stop.

Further, if L&C had declined to accept Mr M's business from 1 Stop and Mr M had then sought advice from a different adviser, I think it's unlikely that another adviser, acting properly, would have advised Mr M to transfer away from his existing pension plans and to invest in unregulated holdings in a SIPP.

Alternatively, if L&C had declined to accept Mr M's business from 1 Stop, Mr M might have simply decided not to seek pensions advice elsewhere from a different adviser and still then retained his existing pension plans.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if L&C had declined to accept Mr M's application from 1 Stop, the transactions complained about wouldn't still have gone ahead and Mr M would have retained his monies in his existing pension plans.

In *Adams v Options SIPP*, the judge found that Mr Adams would have proceeded with the transaction regardless. HHJ Dight says (at paragraph 32):

> *"The Claimant knew that it was a high risk and speculative investment but nevertheless decided to proceed with it, because of the cash incentive."*

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

Mr M says that he was told that transferring his pension monies would help him to better grow his fund and that he wasn't told the investments were high risk. I've not seen any evidence to show Mr M was paid a cash incentive, it therefore cannot be said he was *incentivised* to enter into the transaction in this way. On balance, I'm satisfied that Mr M, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this case is very different from that of Mr Adams. And having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that if L&C had refused to accept Mr M's application from 1 Stop, the transactions this complaint concerns wouldn't still have gone ahead.

So, overall, I do think it's fair and reasonable to direct L&C to pay Mr M compensation in the circumstances. While I accept that 1 Stop and/or Future Assets might have some responsibility for initiating the course of action that's led to Mr M's loss, I consider that L&C failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining Mr M's application from 1 Stop when it had the opportunity to do so. And I'm satisfied that Mr M wouldn't have established the SIPP, transferred monies in from his existing pension plans or invested in Llana Beach/Green Oil if it hadn't been for L&C's failings.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr M. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against L&C that requires it to compensate Mr M for the full measure of his loss. 1 Stop was reliant on L&C to facilitate access to Mr M's pension. And but for L&C's failings, I'm satisfied that the transactions this complaint concerns wouldn't have occurred in the first place.

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

The key point here is that but for L&C's failings, Mr M wouldn't have suffered the loss he's suffered. And, as such, I'm of the opinion that it's appropriate and fair in the circumstances for L&C to compensate Mr M to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by 1 Stop.

I acknowledge that Mr M has received a sum of compensation from the FSCS. However, the terms of his reassignment of rights require him to return compensation paid by the FSCS in the event this complaint is successful, and I understand that the FSCS will ordinarily enforce the terms of the assignment if required. So, I think it's fair and reasonable to make no deduction in the redress calculation for the sum of compensation Mr M received from the FSCS. It will be for Mr M to make the arrangements to make any repayments he needs to make to the FSCS.

I've considered the submissions Mr M's representative has made about Mr M's preference being for redress monies not to be paid into his pension arrangement. And the request that L&C repay the first £50,000 directly to the FSCS.

Mr M was previously paid money by the FSCS and has subsequently entered into a reassignment of rights agreement with the FSCS. As part of that process Mr M would have been aware, or ought to have been aware, that the terms of his reassignment of rights would require him to return compensation paid by the FSCS in the event this complaint is successful. It was, and is, Mr M's responsibility to make any arrangements needed to ensure he can fulfil that agreement he entered into. Mr M's pension monies suffered the loss this complaint concerns and I remain satisfied that, subject to what I've said below about existing protections or allowances, if possible redress monies should be paid back into Mr M's SIPP. So, I remain satisfied that the approach to redress I've set out below is the fair and reasonable approach to redress in this case.

In conclusion

Taking all of the above into consideration, I think that in the circumstances of this case it's fair and reasonable for me to conclude that L&C shouldn't have accepted Mr M's application from 1 Stop. For the reasons I've set out, I also think it's fair to ask L&C to compensate Mr M for the full losses he's suffered.

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

Putting things right

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

As I've already mentioned above:

- I don't think it's fair and reasonable to say that L&C shouldn't compensate Mr M 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 M's application from 1 Stop.
- If L&C had declined to accept Mr M's business from 1 Stop and Mr M had then sought advice from a different adviser, I think it's unlikely that another adviser, acting properly, would have advised Mr M to transfer away from his existing pension plans and to invest in unregulated holdings in a SIPP.
- Alternatively, if L&C had declined to accept Mr M's business from 1 Stop, Mr M might have simply decided not to seek pensions advice elsewhere from a different adviser and still then retained his existing pension plans.

In light of the above, I think it's fair and reasonable for L&C to calculate fair compensation by comparing the current position to the position Mr M would be in if he hadn't transferred from his existing pension plans. In summary, L&C must:

1) Obtain the current notional value, as at the date of this decision, of Mr M's previous pension plans, if they hadn't been transferred to the SIPP.

2) Obtain the actual current value of Mr M's SIPP, as at the date of this decision, less any outstanding charges.

3) Deduct the sum arrived at in step 2) from the sum arrived at in step 1).

4) Pay a commercial value to buy any investments in Mr M's L&C SIPP that cannot currently be redeemed.

5) Pay an amount into Mr M's SIPP, so that the transfer value of the SIPP is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.

6) Pay Mr M £500 for the distress and inconvenience the problems with his pension have caused him.

I've explained how L&C should carry out the calculation, set out in steps 1 - 6 above, in further detail below:

1) *Obtain the current notional value, as at the date of this decision, of Mr M's previous pension plans, if they hadn't been transferred to the SIPP.*

   L&C should ask the operators of Mr M's previous pension plans to calculate the current notional value of Mr M's plans, as at the date of this decision, had he not transferred into the SIPP. L&C must also ask the same operators to make a proportionate notional allowance in the calculations, so as to allow for any additional sums Mr M has contributed to, or withdrawn from, his L&C SIPP since outset. To be clear this doesn't include SIPP charges or fees paid to third parties like an adviser. Further, the total notional contributions or withdrawals to be allowed for shouldn't be any more than the total contributions or withdrawals Mr M actually made/took.

   Any notional contributions or notional withdrawals to be allowed for in the calculations should be deemed to have occurred on the date on which monies were actually credited to, or withdrawn from, the L&C SIPP by Mr M.

   If there are any difficulties in obtaining a notional valuation from an operator of Mr M's previous pension plans, L&C should instead calculate a notional valuation by ascertaining what the monies transferred away from the plans would now be worth, as at the date of this decision, had they achieved a return from the date of transfer 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).

   I'm satisfied that's a reasonable proxy for the type of return that could have been achieved over the period in question. And, again, there should be a notional allowance in this calculation for any additional sums Mr M has contributed to, or withdrawn from, his L&C SIPP since outset.

2) *Obtain the actual current value of Mr M's SIPP, as at the date of this decision, less any outstanding charges.*

   This should be the current value as at the date of this decision.

3) *Deduct the sum arrived at in step 2) from the sum arrived at in step 1).*

   The total sum calculated in step 1) minus the sum arrived at in step 2), is the loss to Mr M's pension provisions.

4) *Pay a commercial value to buy any investments in Mr M's L&C SIPP that cannot currently be redeemed.*

As I understand it, Mr M's L&C SIPP might still have illiquid investments held within it. And that but for these investments Mr M's monies could be transferred away from L&C. In order for the SIPP to be closed and further SIPP fees to be prevented, any remaining illiquid investments need to be removed from the SIPP.

To do this L&C should reach an amount it's willing to accept as a commercial value for any investments that cannot currently be redeemed, and pay this sum into the SIPP and take ownership of the relevant investments.

If L&C is unwilling or unable to purchase the investments, then the actual value of any such investments it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include their being given a nil value for the purposes of ascertaining the current value of Mr M's SIPP in step 2).

If L&C doesn't purchase the investments, it may ask Mr M to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from these investments. That undertaking should allow for the effect of any tax and charges on the amount Mr M may receive from the investments, and any eventual sums he would be able to access from the SIPP. L&C will need to meet any costs in drawing up the undertaking.

5) *Pay an amount into Mr M's SIPP, so that the transfer value of the SIPP is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.*

The amount paid should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into a pension plan if it would conflict with any existing protections or allowances.

If L&C is unable to pay the compensation into Mr M's SIPP, or if doing so would give rise to protection or allowance issues, it should instead pay that amount direct to him. But had it been possible to pay into the 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.

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

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

6) *Pay Mr M £500 for the distress and inconvenience the problems with his pension have caused him.*

In addition to the financial loss that Mr M has suffered as a result of the problems with his pension, I think that the loss suffered to Mr M's pension provisions has caused Mr M distress. And I think that it's fair for L&C to compensate him for this as well.

SIPP fees

If there remain illiquid investments that can't be removed from the SIPP, and it hence cannot be closed after compensation has been paid, then it wouldn't be fair for Mr M to have to continue to pay L&C annual SIPP fees to keep the SIPP open. As such, if the L&C SIPP needs to be kept open only because of an illiquid investment(s), and is used only or substantially to hold the illiquid investment(s), then any future L&C annual SIPP fees must be waived by L&C until the SIPP can be closed.

Interest

The compensation resulting from this loss assessment must be paid to Mr M or into his SIPP within 28 days of the date L&C receives notification of Mr M's acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation isn't paid within 28 days.

My final decision

For the reasons given, it's my final decision that Mr M's complaint should be upheld and that London & Colonial Services Limited must pay fair redress as set out above.

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

determination and award: I 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 £150,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that London & Colonial Services Limited pay Mr M the balance plus any interest on the balance as set out above.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 October 2023.

Alex Mann
Ombudsman