DRN-4519835

Financial Ombudsman Service

The complaint

Mr C has a self-invested personal pension (SIPP) with London & Colonial Services Limited, now called Pathlines Pensions UK Limited ("L&C"). Mr C invested in unlisted shares in his SIPP. Mr C says L&C should not have allowed the investments which have since failed causing him loss.

What happened

Mr C says that in 2010 a business contact introduced him to a financial adviser I will call Mr A.

Mr A was a director of the IFA firm. Mr A also had another business I will call investment company 1. This was an unregulated and unlisted company whose business involved secured lending, land/property development and joint ventures with other companies.

Mr C had not been looking to do anything with his pensions. He was nearing 50 and planned to retire at 65. Mr A persuaded Mr C that his existing adviser was not looking after his best interests and that he could do better. Mr A was very confident and persuasive. Mr A advised Mr C to transfer two existing pensions to L&C in order to get a better return and Mr C accepted that advice.

Mr C signed the L&C SIPP application in August 2010. This was sent to L&C by the IFA. In August 2010 around £62,000 was transferred to L&C from the providers of Mr C's pensions.

In September 2010, acting on the IFA's advice, Mr C invested £40,000 in 40,000 shares in investment company 1 and £20,000 in two shares in a company I will call investment company 2.

As mentioned, Mr A at the IFA was connected to investment company 1. As far as I am aware Mr A did not have the same direct connection with investment company 2.
In 2017 the IFA ceased trading and was declared in default by the Financial Services Compensations Scheme (FSCS).

On 5 February 2018 investment company 1 went into administration. The shares are now worthless.

Mr C made a claim to the FSCS in relation to the advice from the IFA. In April 2019 it calculated that Mr C had suffered a loss of almost £95,000. That loss calculation treated the shares in investment company 2 as still worth £20,000.

The FSCS paid Mr C its maximum award of £50,000. As part of the settlement agreement with the FSCS Mr C assigned to the FSCS his right to make claims against third parties in relation to the same matter. The FSCS has since reassigned to Mr C his right to make a claim or complaint to L&C.

Although the FSCS allocated a notional value of £20,000 to the shares in investment company 2, it does not appear to be trading and, while accepting that it is not necessarily easy to value the shares of an unlisted company, it is not clear the shares have any value and are certainly illiquid.

In April 2020 a claims management company ("CMC") made a complaint to L&C. They said L&C had acted in breach of duty in various ways in allowing the investment in the shares in the SIPP.

L&C did not uphold Mr C's complaint. It made a number of points in response in September 2020, including:

- L&C provides an execution only or non-advisory service.
- L&C does not give advice.
- L&C is obliged to follow its client's instructions.
- Mr C was advised by the IFA. It is the IFA's role to consider the suitability of any investment.
- L&C's role is more limited. Its role is to ensure an investment is suitable to be held in a UK registered pension and that good title can be obtained.
- L&C carried out appropriate due diligence on the IFA and on the investment. The investments were of a permitted type and there was no reason not to allow them.

Mr C's CMC referred his complaint (using the same 12-page complaint document as was submitted to L&C) to the Financial Ombudsman Service in March 2021.

Mr C's complaint was considered by one of our investigators. She thought Mr C's complaint should be upheld. She thought that if L&C had carried out reasonable due diligence it would have realised there was an obvious risk of consumer detriment because of points such as:

- It was apparent the shares were a high risk and potentially illiquid investments.
- Mr A was involved in recommending investment in his own company which posed a conflict of interest.
- And L&C should have been aware that all prior introduction from the IFA had involved investment in the unlisted shares of investment company 1 and that such an investment was unlikely to be suitable for most clients.

L&C did not agree with the investigator and made a number of points in response, including:

- The High Court decision in the *Adams v Options* case makes it clear that the scope of the duties on the SIPP operator must be based on the contractual agreement between the parties.
- L&C provides an execution only service. It does not give advice. It does not have regulatory permission to give advice.
- The investigator referred to publications from the regulator that post-date Mr C's investment and so are not relevant.
- Most of the documents referred to by the Financial Ombudsman Service are not formal guidance in any event.
- Nothing in the rules required L&C to reject an investment on the basis it was high risk.

- L&C did not cause Mr C's loss.

A different investigator set out why he thought the complaint had not been made too late under the applicable rules and could be considered. L&C did not disagree with what the investigator had said had such but it thought the investigator had not gathered enough information to form a view on the point about whether or not the complaint had been made out of time.

As L&C did not agree with the investigator this complaint was referred to me to decide. I am sorry for the length of time this has taken.

What I've decided – and why

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

Jurisdiction - time bar:

Before deciding what is fair and reasonable I've considered whether this complaint is not within the jurisdiction of the Financial Ombudsman Service on the basis it was made too late under the applicable rules. This point is decided on the basis of what the jurisdiction rules provide, not on the basis of what is fair and reasonable in all the circumstances.

An initial point to note is that L&C did not argue that the complaint had been made late but one of our investigators considered the point. It was reasonable to do so as the complaint has the potential to be time barred as it relates to events back in 2010. But having considered the point the investigator thought the complaint had not been made too late and could be considered.

I have considered the evidence and arguments in order to decide whether we can consider Mr C's complaint.

We cannot consider all the complaints referred to us. We may only consider those complaints that are within our jurisdiction and our jurisdiction rules are set out in the DISP section of the Financial Conduct Authority's Handbook. The relevant time limits are set out in DISP2.8.2R and they provide:

> "The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:
>
> > (1) more than six *months* after the date on which the *respondent* sent the complainant its *final response …* or
> >
> > (2) more than:
> >
> > > (a) six years after the event complained of; or (if later)
> > >
> > > (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;
> >
> > unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received;
>
> unless:

(3) in the view of the *Ombudsman*, the failure to comply with the time limits in *DISP 2.8.2 R* …. was as a result of exceptional circumstances; or

…

(5) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limits in *DISP 2.8.2 R* … have expired..."

In this complaint:

- The complaint was made to L&C under cover of a letter dated 8 April 2020. L&C responded to the complaint by letter dated 7 September 2020 and Mr C's CMC referred his complaint to the Financial Ombudsman Service (just) within six months by email on 6 March 2021.
- The complaint relates to acts or omissions by L&C in 2010 when it considered and accepted Mr C's application to open a SIPP and instructions to invest in the shares of investment companies 1 and 2.
- L&C does not consent to the complaint being considered.
- So the issue is whether Mr C first referred his complaint to L&C more than three years from the date on which he became aware (or ought reasonably to have become aware) he had cause for complaint. Or put another way, whether Mr C was aware (or ought reasonably to have been aware) he had cause for complaint before 7 September 2017 (i.e. more than three years before Mr C first made his complaint to L&C).

The material points required for Mr C to have awareness of cause for complaint include:

- awareness of a problem
- awareness that the problem has, or is likely to have, caused him loss, and
- awareness that the problem was or may have been caused by an act or omission of L&C (the respondent in this complaint).

The complaint made by Mr C's solicitors is that L&C breached the obligations on it in various ways. In essence Mr C's complaint is that L&C failed to carry out sufficient checks (due diligence) on the investments and on the introducer of the business, the IFA, and that these failings have caused him to suffer losses in his pension which L&C should make good.

The investigator thought Mr C would not have had awareness of a problem causing him to suffer loss until 2018 when the shares in investment company 1 went into administration in 2018.

L&C has not suggested any alternative date for relevant awareness. Rather it says that further enquiries should be made. I do not however consider that necessary in this case. Mr C made a claim to the FSCS promptly in 2019 after investment company 1 went into administration in 2018. There is no reason to think or suspect he was aware he had or might suffer a loss before then.

Mr C did not immediately follow up the FSCS claim in 2019 with a complaint to L&C. Mr C has said this was because he was not aware he had cause for complaint about L&C, rather than the IFA, until he saw some advertising by his CMC. This was the point when Mr C had *actual* awareness on that point and he made his complaint to L&C on 7 September 2020 which is within three years even if time runs from the failure of investment company 1 in 2018. And I cannot see that there was or, is likely to be, any trigger for *reasonable* awareness of cause for complaint before 8 September 2017 i.e more than three years before Mr C's complaint was first referred to L&C by his CMC.

I therefore agree with the investigator that this complaint was made within the relevant time limits and can therefore be considered.

The merits of Mr C's complaint:

I've considered all the points made by the parties. I have not however responded to all of them below; I have concentrated on what I consider to be the main issues.

Relevant considerations:

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is 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.

I have taken into account a number of considerations including, but not limited to:

- The agreement between the parties.
- The Financial Services and Markets Act 2000 ("FSMA").
- Court decisions relating to SIPP operators, in particular *Options UK Personal Pensions LLP v Financial Ombudsman Service Limited* [2024] EWCA Civ 541 (*"Options"*) and the case law referred to in it including:
    - *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474 ("*Adams"*)
    - *R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service* EWHC 2878 (*"Berkeley Burke"*)
    - *Adams v Options SIPP UK LLP* [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The Financial Services Authority (FSA) and financial Conduct Authority (FCA) rules including the following:
    - PRIN Principles for Business
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to, or relevant to, SIPP operators and good industry practice.

The legal background:

As highlighted in the High Court decision in *Adams* the factual context is the starting point for considering the obligations the parties were under. And in this case the contractual relationship between L&C and Mr C is a non-advisory, or execution only, relationship.

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. L&C was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

I have considered the obligations on L&C within the context of the non-advisory relationship agreed between the parties.

The case law:

I'm required to determine this complaint by reference to what is in my opinion fair and reasonable in all the circumstances. I am not required to determine the complaint in the same way as a court. A court considers a claim as defined in the formal pleadings and they will be based on legal causes of action. The Financial Ombudsman Service was set up with a wider scope which means complaints might be upheld, and compensation awarded, in circumstances where a court would not do the same.

The approach taken by the Financial Ombudsman Service in two similar complaints was challenged in judicial review proceedings in the *Berkeley Burke* and the *Options* cases. In both cases the approach taken by the ombudsman concerned was endorsed by the court. A number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved.

It is not necessary for me to quote extensively from the various court decisions.

The Principles for Businesses:

The Principles for Businesses ("the Principles"), which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non-advisory basis, in a way appropriate to that relationship.

Principles 2, 3 and 6 are of particular relevance here. They 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 am satisfied that I am required to take the Principles into account (see *Berkley Burke*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

The regulatory publications and good industry practice:

The regulator issued a number of publications which reminded SIPP operators of their obligations, and which set out how they might achieve the outcomes envisaged by the Principles, namely:

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

The 2009 Report included:

> *"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business*

that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…

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."

The Report also included:

"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…"*

Although I have not quoted all the above-mentioned publications, I have considered them all in their entirety.

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter are not formal guidance (whereas the 2013 finalised guidance is). However, all of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is 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 (as did the ombudsmen whose decisions were upheld by the courts in the *Berkeley Burke* and *Options* cases).

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.

- The comments made in the publications apply to SIPP operators that provide a non-advisory service.
- Neither court in the *Adams* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.
- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

L&C's position in broad terms:

In broad terms L&C's position is:

- It carried out due diligence to a degree that was appropriate for its role as non-advisory SIPP operator.
- Its due diligence did not reveal any cause for concern at the time.
- It was not reasonably required to do more.
- It did not cause Mr C to suffer any loss.

L&C's due diligence:

L&C did make various checks on the IFA and the investment company consistent with its understanding of what was appropriate. For example, it checked the IFA was regulated by the FSA. And in early 2009 L&C entered into an Intermediary Agreement with the IFA.

L&C has received a number of complaints relating to the IFA and investment in the shares of investment company 1. It has told us about the checks it made on investment company 1. It has not provided the same type of information in relation to investment company 2.

In relation to investment company 1, L&C also checked the shares in the investment companies were a type of investment permitted by the Trust that governed the SIPP and HMRC's regulations. There is no dispute the investment should not have been permitted on this ground.

L&C continued monitoring the activities of the IFA and the investment company after its initial due diligence. L&C has provided copies of internal email correspondence. The first emails we have received are from 2011. At that time some employees of L&C started expressing some concerns about the investment company. L&C was thinking about the amount being invested in the investment company, the fixed nature of the share price, the connection between the adviser and the investment company, and its creditworthiness. For example, in October 2011 an email from one of L&C's directors included:

> *"I'm a bit uncomfortable about the connection between the IFA and the investment companies. IFAs advising their clients to put money into our SIPP and then invest in their associated companies might be the sort of trend that the FSA are expecting us to identify, monitor and possibly report on? I'm not saying I think there's anything untoward going on but we should probably consider, decide and document etc etc."*

In a letter to the investment company in September 2012, L&C said it was asking questions having noted a recent very large investment request, and large amounts of money being placed with the investment company, so it was asking for more information "*as a matter of* *good governance"*. (I note here that this thinking about matters of "good governance" was after the first FSA Report referred to above and before the second was published in 2012.)

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

I'm satisfied that to meet its regulatory obligations when conducting its non-advisory SIPP business, L&C was required to consider whether to accept or reject particular investments and/or referrals of business with the Principles in mind. I say this based on the overarching nature of the Principles (as is clear from the case law) and based on good industry practice.

I am satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business a SIPP operator should for example reasonably refuse an investment if the SIPP operator had serious concerns about *"possible instances of financial crime and consumer detriment such as unsuitable SIPPs".* Or, for example if the SIPP operator had concerns that the investment might not be genuine, or not be secure or might be impaired in some way.

I am satisfied that a non-advisory SIPP operator could decide not to accept a referral of business or a request to make an investment without giving advice. And I am satisfied that in practice many non-advisory SIPP operators did refuse to accept business and/or refuse to make investments without giving advice.

I am satisfied that in order to comply with its regulatory obligations, a non-advisory SIPP operator should have due diligence processes in place to check any firms introducing business to them and the investments they are asked to make on behalf of members or potential members. And L&C should have used the knowledge it gained from its due diligence checks to decide whether to accept such business and/or allow a particular investment.

My view about the due diligence carried out by L&C:

L&C's due diligence on the IFA before accepting introductions from it, consisted of L&C asking Mr A, the director of the IFA, to complete an Intermediary Application which asked a number of questions. L&C then entered an Intermediary Agreement with the IFA following completion of the application. The FSA Register was also checked to ensure the IFA and Mr A were appropriately authorised (which they were).

From around June 2009 Mr A told L&C that he (or the IFA) wanted to introduce prospective L&C SIPP clients to the investment in shares in the investment company. L&C then carried out some checks on the investment company to ensure its shares could be held in its SIPP and that it met HMRC requirements.

L&C requested, and received, information from both Mr A and the investment company's accountant about its business activities. The documents and information provided to L&C showed that the investment company's principal trading activity was in *"secured lending and property development".*

So L&C did carry out some relevant checks in relation to investment company 1. However, I don't think L&C went far enough to meet its regulatory obligations and good industry practice since it was too narrowly focused on whether the investment was permitted by HMRC or not genuine.

As is now known, the investment company went into administration in 2018 which was some time after the investment was made by Mr C in 2010. And I accept the failure of the investment and its timing could not have been foreseen in 2010 as such. However, that does not mean that it was unforeseeable that such a problem could or even might well happen (given the high-risk nature of the investment) or that the investment could reasonably have been viewed as giving no cause for concern in the circumstances in 2010, before Mr C's SIPP application was received.

To be clear I do not say the investment should not have been allowed because it was high risk. SIPP investors may choose to invest in high-risk investments. The issue here is not about investment risk (as normally understood).

L&C was aware of, or should reasonably have identified, potential risks of consumer detriment associated with the business the IFA was proposing to introduce. And I consider these risks should have been identified before L&C accepted Mr C's application.

In particular, I do not think there were sufficient systems and controls put in place to manage the clear conflict of interest between Mr A and the investment he was introducing clients to. Mr A was an IFA who was recommending to clients that they transfer their pensions to L&C SIPPs and invest in unquoted shares in a company he was sole director of. He also owned shares in that company. L&C was aware of this set up from the outset. And it ought to have had serious concerns about this from the start. This is particularly so given that the investment was in the form of unlisted shares which are difficult to value and to sell; and are a form of investment that is not suitable for most retail investors even where there is no connection between the adviser and the SIPP member.

L&C should have realised it was unlikely the IFA was acting in the best interests of its clients when L&C was first made aware the IFA intended to recommend to its clients that they invest shares in the investment company. It should therefore have decided not to do further business with the IFA when the potential investment in the shares of the connected investment company was first discussed.

Further, by the time of Mr C's SIPP application in August 2010 and investment in early September 2010, it should have been clear that all (or most) of the IFA's clients with L&C SIPPs were investing in the same connected high risk, esoteric investment.

In my view, L&C should have concluded, given the potential risks of consumer detriment from the pattern of business being introduced to it by the IFA (if not before) that it should not continue to accept SIPP applications from the IFA. And in my view that should have been a refusal to accept any and all applications not just applications that were known to involve the connected shares at the outset. This is because L&C should reasonably have had concerns about the IFA and its willingness or ability to act reasonably and in its clients' best interests. This would have been the fair and reasonable step to take in the circumstances.

It is therefore my view that if L&C had acted appropriately it would not have accepted Mr C's SIPP application from the IFA and his application to invest in the unlisted shares investment company 1 and investment company 2.

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

I accept that the IFA had some responsibility for initiating the course of action that led to Mr C'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 non-advisory SIPP operator, the arrangement for Mr C would not have come about in the first place.

L&C's failure to act in accordance with its regulatory obligations and good industry practice has caused Mr C to suffer financial loss in his pension and to suffer distress and inconvenience.

L&C might say that if it hadn't accepted Mr C's business from the IFA, the transfers and investment would still have been effected with a different SIPP provider. I don't think it's fair and reasonable to say that L&C shouldn't compensate Mr C for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found L&C 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 introductions from the IFA that involved investment in investment company 1.

Distress and inconvenience:

As a result of L&C's errors Mr C suffered considerable loss in his pension in his 50s when there was little time to make good that loss – although I note that Mr C was able to recover some of that loss from the FSCS in 2019. Nevertheless, Mr C will have suffered distress and inconvenience as a result of the avoidable problems in his pension.

I consider that L&C's errors have materially contributed to what, overall, will have been a worrying time for Mr C. I consider that a payment of £500 is appropriate for the distress and inconvenience L&C has caused Mr C.

Putting things right

I consider L&C failed to comply with its own regulatory obligations and good industry practice in not refusing Mr C's SIPP and investment applications. My aim in awarding fair compensation will be to put Mr C back into the position he would likely have been in had it not been for L&C's failings.

It's my view that had L&C acted appropriately, it's *most likely* that Mr C would have remained a member of the pension plans he transferred into the SIPP.

In light of the above, L&C should:

- Obtain the notional transfer values of Mr C's existing pensions that were switched to the L&C SIPP.
- Calculate the actual transfer value of Mr C's SIPP, including any outstanding charges.
- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).
- Pay an amount into Mr C's SIPP so as to increase the transfer value to equal the notional values established. These payments should take account of any available tax relief and the effect of charges.
- If the SIPP needs to be kept open only because of any illiquid investments and is used only or substantially to hold these investments, then any future SIPP fees should be waived until the SIPP is closed.
- If Mr C has paid any fees or charges from funds outside his pension, L&C should also refund these to Mr C. And interest at the rate of 8% simple per year from the date of payment to the date of refund should be added to this.
- Pay Mr C £500 to compensate him for the distress and inconvenience he's been caused.

I've set out below in more detail how L&C should go about calculating compensation.

Treatment of the illiquid assets held in the SIPP:

I think it would be best if any illiquid shares (that is the shares in investment company 1 and/ or investment company 2 if still held) could be removed from Mr C's SIPP. Mr C would then be able to close the SIPP if he wishes. That would then allow him to stop paying or incurring fees for the SIPP. The calculation of the value of illiquid investments may prove difficult, as there is no market for them. For calculating compensation, L&C should establish an amount it's willing to accept for the investments as a commercial value. It should pay the sum agreed plus any costs and take ownership of the investment.

If L&C is able to purchase the illiquid investments, then the price to buy the holding will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding). If L&C is unable, or if there are any difficulties in buying Mr C's illiquid investment, it should give the holding a nil value for the purposes of calculating compensation.

L&C may ask Mr C to provide an undertaking to account to it for the net amount of any further payment the SIPP may receive from the investments thereafter. The undertaking should allow for the effect of tax and charges on the amount Mr C may receive from the investment from that point, 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.

Calculate the loss Mr C has suffered as a result of making the transfer:

L&C should contact Mr C's former pension providers. It should ask the providers to calculate the notional value for the policies as at the date of my final decision. For the purposes of the notional calculation the provider should assume no money would have been transferred away from the pension, and the money in the policy would have remained invested in an identical manner to that which existed prior to the transfer.

Any contributions or withdrawals Mr C has made will need to be taken into account whether the notional value is established by the former pension providers or calculated as set out below.

Any withdrawal out of the SIPP should be deducted at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. The same applies for any contributions made, these should be added to the notional calculation from the date they were actually paid, so any growth they would have experienced is allowed for.

If there are any difficulties in obtaining a notional valuation from the former pension providers, then L&C should instead arrive at a notional valuation by assuming the monies would have experienced a return in line with the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return index). That is a reasonable proxy for the type of return that could have been achieved over the period in question.

I acknowledge that Mr C has received a sum of compensation from the FSCS, and that he has had the use of the monies received from the FSCS. The terms of Mr C's 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 *permanent* deduction in the redress calculation for the compensation Mr C received from the FSCS. And it will be for Mr C to make the arrangements to make any repayments he needs to make to the FSCS. However, I do think it's fair and reasonable to allow for a *temporary* notional deduction equivalent to the payment Mr C actually received from the FSCS for a period of the calculation, so that the payment ceases to accrue any return in the calculation during that period.

As such, if it wishes, L&C may make an allowance in the form of a notional deduction equivalent to the payment Mr C received from the FSCS following the claim about the IFA, and on the date the payment was actually paid to Mr C. Where such a deduction is made there must also be a corresponding notional addition, at the date of my final decision equivalent to all FSCS payment notionally deducted earlier in the calculation.

To do this, L&C should calculate the proportion of the total FSCS payment(s) that it's reasonable to apportion to each transfer into the SIPP, this should be proportionate to the actual sums transferred in. And L&C should then ask the providers of Mr C's previous pension plans to allow for the relevant notional deduction in the manner specified above. The total notional deductions allowed for shouldn't equate to any more than the actual payment from the FSCS that Mr C received. L&C must also then allow for a corresponding notional addition as at the date of my final decision, equivalent to the accumulated FSCS payment notionally deducted by the operators of Mr C's previous pension plans.

Where there are any difficulties in obtaining notional valuations from the previous operators, L&C can instead allow for both the notional deduction and additions in the notional calculation it performs, provided it does so in accordance with the approach set out above.

The notional value of Mr C's former pensions (established in line with the above) less the current value of the SIPP is Mr C's loss.

Pay an amount into Mr C's SIPP so that the transfer value is increased by the loss calculated above:

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr C's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid direct to Mr C as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate. This should be taken to be 20% making a notional deduction of 15% overall from the loss to reflect this.

SIPP fees:

If the investments can't be removed from the SIPP, and because of this it can't be closed after compensation has been paid, then it wouldn't be fair for Mr C to have to continue to pay annual SIPP fees to keep the SIPP open. So, if the SIPP needs to be kept open only because of the illiquid investments and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

Interest:

The compensation resulting from the loss assessment above must be paid to Mr C or into his SIPP within 28 days of the date L&C receives notification of his acceptance of my final decision. The calculation should be carried out as at the date 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 payment if the compensation is not paid within 28 days.

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

Calculations:

L&C should provide Mr C with details of its calculations of fair redress as set out above in a straightforward manner which should be understandable to a lay person rather than a pensions or finance expert.

My final decision

My final decision is that I uphold Mr C's complaint against Pathlines Pensions UK Limited and consider that it should pay fair compensation to Mr C as set out above.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out above. My decision is that Pathlines Pensions UK Limited should pay Mr C the amount produced by that calculation – up to a maximum of £160,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Pathlines Pensions UK Limited pays Mr C the balance.

This recommendation is not part of my determination or award. Pathlines Pensions UK Limited doesn't have to do what I recommend. It's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 May 2025.

Philip Roberts
Ombudsman