DRN-4638114

The complaint

Mr L complains that London & Colonial Services Limited ('L&C') put his pension fund into an investment that now has no value. He says L&C should compensate him for his loss.

Both parties are being represented in the complaint. For ease of reference, I have referred to L&C and Mr L throughout this decision.

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.

CIB Life and Pensions Limited ("CIB")

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

RealSIPP LLP ("RealSIPP")

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

Store First

The Store First investment took the form of one or more self-storage units, which were part of a larger storage facility in a UK location. Investors bought one or more units in the facility and were offered a guaranteed level of income for a set period of time. After that, they could either take whatever income the unit(s) provided, or sell them (assuming there was a market for them).

The Store First investment was marketed as offering a guaranteed 8% return in the first two years, an indicated return of 10% in the following two years, and 12% in the next two years. It was also marketed as offering a *"guaranteed"* buy back after five years.

In May 2014, the Self Storage Association of the UK ('SSA UK') issued a press release (amended in January 2015), detailing the outcome of a review it had commissioned Deloitte LLP to undertake of the marketing material made available to potential investors by Store First.

The release recommended that any potential investors in Store First storage units

consider the following key points before taking any investment decision:

- What will the impact be on the business model if VAT is charged on the rental of storage units to customers following a review by HM Revenue & Customs ('HMRC')?

- How is Store First funding guaranteed returns to investors? Is this from operating profits, the proceeds from the sale of other storage pods to investors, or a different source?

- Compare the total value being paid for all the units in a Store First self-storage site against the price at which stand-alone self-storage businesses have been valued and sold at recently.

- Consider if there is a realistic re-sale opportunity for, and exit, from this investment, particularly if Store First exits the business.

- Research the performance of investments based on a similar investment model that have been offered primarily in Australia, such as Ikin Self Storage in Townsville, Queensland and Strata Self Storage in Melbourne (these schemes had failed).

The release refers to a number of misleading and inaccurate statements made by Store First in its marketing material. It also makes the following observations:

> *"SSA UK's investigations indicate that these storage units are being rented to the general public at approximately £18 - £21 per square foot including insurance. Normally the rent paid by a self-storage operator would be at most half of the income per square foot earned through storage fees. Presuming the Store First sites were at industry average occupancy levels, SSA UK believe that they would have to be earning £23.95 per square foot just to pay the guaranteed rent to investors, excluding operating costs such as insurance, staff, business rates, utilities, marketing and management fees for Store First. Furthermore, this does not factor in the losses incurred by each site as it takes some years to reach a mature occupancy level.*
> *During this time, Store First is obliged to pay the guaranteed returns to investors, yet there does not appear to be sufficient income from the operations of the business to fund these returns.*
>
> *In addition, the analysis SSA UK has seen indicates that the purchase price being paid per square foot by investors to Store First for these self-storage units taken together equates to a much higher value than they would be worth if the whole sites were sold as stand-alone self-storage stores.*
>
> *…*
> *…a very serious question arises over how Store First is funding the guaranteed returns to existing investors, considering the absence of bank funding and the likely level of losses that require funding in each new store. It may yet prove to be the case that the rental returns being paid to investors are in fact being funded from the sale proceeds of new units, and not the operation of the self-storage business."*

Store First was the subject of a winding up petition issued by the Business Secretary. On 30 April 2019 the Court made an order to wind-up Store First and three associated companies in the public interest by consent between those four companies and the Secretary of State. The Official Receiver was appointed as liquidator and had responsibility for dealing with the assets and liabilities of the four companies.

Following this the freehold, associated assets and goodwill of 15 storage centres were sold by the Official Receiver to a company called Store First Freeholds Limited. As I understand it, the self-storage units continued to be rented to end users and a company called Pay Store now manages the storage sites trading as Store First. The Official Receiver and Store First Freeholds Limited agreed that the latter would accept any requests from investors to surrender their pods. Store First Freeholds Limited would cover its own costs of the surrender, but investors wouldn't receive any payment.

In the judgment in *Adams v Options SIPP UK LLP (formerly Options Pensions UK LLP) [2020]* EWHC 1299 (Ch) ('*Adams v Options'*), the judge found the value of Mr Adams' six pods, acquired for around £52,000 in July 2012, to be £15,000 as of January 2017. And in the judgement in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 it was stated that, in February 2020, Options had said it was valuing Storepods at £430 each following (then) recent sales of Store First storage units at auction and the Court used that value in assessing the redress due to Mr Adams.

The transaction

On 22 November 2011 Mr L signed a Platinum Bay Ventures (PBV) Storepod Reservation Form. This noted the value of the units to be purchased as £45,000. It was noted at the bottom of the form that "*Platinum Bay do not offer any financial advice and information is published solely to help clients make their own investment decisions. It does not constitute a recommendation in any way whatsoever. Should you have any doubt as to the suitability of an investment for your circumstances you should contact your Advisor".*

On 23 February 2012 Mr L signed an L&C SIPP application form.

The form listed his financial advisers as RealSIPP and CIB and it provided FSA authorisation numbers for both. Boxes were ticked on the application form to say that Mr L hadn't been given advice at the point of sale and that he would manage the fund himself. It said fees of £1,000 upfront plus £200 per year would be paid to RealSIPP.

Elsewhere on the form it recorded that Mr L was looking to transfer two existing pensions he held into SIPP, worth £77,577.75 and £15,660.70. And he wanted to invest £81,750 in the Store First investment.

A further PBV Storepod Reservation Form was signed by Mr L on 6 March 2012, noting a further investment of £36,750.

On 14 March 2012, L&C wrote to Mr L to confirm that it was processing his SIPP application. L&C said the SIPP was formerly opened on 21 March 2012 and funds were received from Mr L's previous pension plans. Mr L has said these were both former employer pension schemes, with at least one of these being a defined benefit arrangement.

Mr L signed an Investment Purchase Request form on 7 June 2012. It doesn't appear we have been provided with a full copy of this form. But from what we have, I can see that a box had been ticked to confirm that Mr L was neither a Certified nor Self Certified

Sophisticated Investor.

It also contained a typed member declaration section that consumers signed to confirm, amongst other things, that unregulated investments may not be protected by the Financial Services Compensation Scheme (FSCS), that Mr L indemnified L&C against any liabilities arising from the investment and that responsibility for assessing the risks and merits of the investment rested with the consumer and any investment adviser they'd appointed.

L&C wrote to the solicitors who were involved in the Store First purchase process, the Hetherington Partnership (Hetherington), on 16 June 2012, requesting that they act for L&C in the purchase of the investment. It also included a copy of Mr L's signed investment application and reservation forms.

Mr L's first investment in Store First was made in July 2012, with a further investment in August 2012.

Additional background information

The evidence I've considered in reaching this decision includes information provided to this service by L&C as part of our investigation of another complaint (which was the subject of published decision reference DRN-3587366) in which RealSIPP introduced a consumer to L&C. I've summarised this evidence below.

L&C told us that by applying to be an intermediary, RealSIPP agreed to be bound by the terms of The Intermediary Agreement for Non-Insured Contracts. I've seen copies of the L&C intermediary applications that CIB and RealSIPP signed on 13 September 2010 to confirm this, and I've also seen a copy of the agreement.

L&C also gave us copies of print outs from the FSA register showing, as at November 2011, that RealSIPP was an appointed representative of CIB. And CIB's permissions included advising on pension transfers and pension opt outs.

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

And I've seen archived versions of RealSIPP's website (www.realsipp.com) from 3 February 2011 and 3 January 2012, which said RealSIPP didn't provide advice on investments and instead only provided '*generic information on the considerations and risks associated with property investment*'. It said:

> '*If you are in any doubt over your chosen investment and it's suitability to your needs and circumstances you should seek professional advice from a suitably qualified Independent Financial Adviser.'*

Mr L's complaint

In May 2018, Mr L received £50,000 compensation from the FSCS following a successful claim against CIB. This was the maximum award he could receive under the FSCS's award limits. This didn't cover the full extent of Mr L's loss so he submitted a complaint to L&C. The FSCS provided Mr L a reassignment of rights to enable him to pursue a complaint against L&C.

In his letter to L&C, dated 8 May 2019, Mr L complained that:

- The SIPP, which had been used as a wrapper for the Store First investment, was unsuitable for him. And he said he'd suffered a loss as the Store First investment has no transfer value.

- The Store First purchase documentation included an Option to Purchase Agreement which provided that he had 5 years and one month to serve notice on Store First and if Store First so wished, it could purchase the unit back for the sum paid without any increase in value. This was subject to Store First's absolute discretion. However,

  Mr L said he'd not been made aware of Hetherington's advice to L&C that there was no guarantee Store First would be in existence after the time period and that the agreement would be unenforceable.

- In light of Hetherington's advice, L&C should have declined the purchase and advised him to decline to proceed with the purchase, as no reasonable buyer would have proceeded with the purchase as the Option Agreements which were relied upon as securing the value of the transferred pension funds were worthless and provided no guarantee to L&C nor Mr L.

- Had he been advised as to the effect of the Option Agreement and that it was absolutely discretionary and therefore of no value, he would not have proceeded with the purchase of the storage units.

L&C replied in October 2019 and confirmed that it was rejecting the complaint. In summary it said:

- It acted as an execution only SIPP Administration Service; it was not authorised to give advice to Mr L. Mr L had received regulated financial advice from an FCA regulated firm, RealSIPP LLP/CIB (Life & Pensions) Ltd at the time of his application. Mr L had continued to use RealSIPP as his financial advisor until August 2015.

- L&C's role was to satisfy itself that the investment was genuine, that good title could be obtained and in accepting the investment Mr L wouldn't fall foul of any HMRC tax rules.

- Mr L used the services of RealSIPP when selecting his investment as evidenced in his completed investment application, which stated he wished to invest £81,750 into Store First following RealSIPP's advice.

- Store First was a permitted investment in that it was the ownership of the Leasehold Title of storage units which was classed as UK Commercial Property and there was nothing found in the due diligence conducted by L&C that gave it cause for concern. So there was no legitimate reason for L&C to refuse the application or to refuse to fulfil Mr L's instruction to invest in Store First.

- L&C instructed Hetherington, in accordance with Mr L's express instruction to complete the property transaction. It wasn't for L&C to advise Mr L about the Option Agreement relating to the storage pods. The Option Agreement was a part of the investment package as such, this information formed part of the investment information available to RealSIPP when it was considering its

advice to Mr L.

- It's wrong to say that Mr L would have behaved differently if Hetherington's comments had been passed on to him. This Option Agreement should have been considered and commented on by Mr L's financial adviser in the suitability report. The word 'Option' means that it's not a guarantee of one thing or another, but a choice. Mr L chose to proceed with his investment on an execution only basis with L&C following the advice he received from RealSIPP.

- Mr L would have proceeded on exactly the same basis, had he been notified of Hethrington's comments on the basis that his adviser had already considered that the Option was not a guarantee when he considered that this investment was suitable for Mr L.

Unhappy with L&C's response, in January 2020, Mr L referred his complaint to this

service.

Our investigator's opinion

One of our investigators reviewed the complaint and thought that it should be upheld. In summary the investigator said:

- L&C hadn't treated Mr L fairly in accepting his application and it did not comply with good industry practice, act with due skill, care and diligence. This was because the investigator thought the marketing literature ought to have raised concerns which, had L&C had made appropriate enquiries, it would have realised was misleading and could lead to consumer detriment.

- L&C couldn't have assessed suitability, nor could it have given advice. But it shouldn't have accepted the application.

- Although Mr L had signed an indemnity, he wouldn't have proceeded with the investment through another SIPP provider if L&C hadn't accepted the application. And another SIPP provider wouldn't have accepted the application if it had followed good industry practice and made decisions with its regulatory obligations in mind.

- Mr L wouldn't have continued with the SIPP (and the investment in Store First) but for L&C's failing and he would have remained with his existing scheme.

L&C's response to the investigator's opinion

L&C didn't accept the investigator's opinion. It provided detailed submissions which I've summarised below.

- Mr L complained more than six years after the application. And he ought to have been aware of the cause for complaint prior to 8 May 2016 (being three years before the complaint was received) because investors didn't receive the forecasted returns on the StorePod investment.

- There's no contemporaneous evidence to support that Mr L wouldn't have proceeded had L&C rejected the application. The documentary evidence shows he was aware of the risks and decided to proceed. L & C conduct was not

causative of any loss and no redress should be payable. If this position is maintained, the Financial Ombudsman Service should permit L&C a hearing to question Mr L as he is taking a position contrary to what he said at the time.

- The Financial Ombudsman Service must take into account the relevant case law and, if this is deviated from, must set out why – R. (on the application of Aviva Life and Pensions (UK) Ltd) v Financial Ombudsman Service [2017] EWHC 352 (Admin) and Jay J's comments at paragraph 73 of that judgment were referenced.

- The investigator has considered the decision in Adams v Options SIPP UK LLP (formerly Carey Pensions UK LLP) [2020] EWHC 1229 (Ch), but they've departed from it, on the basis that Mr L has said he didn't know the investment wasn't high risk and he wouldn't have gone ahead with if he'd known. But this has been based on Mr L's hypothetical and reactionary responses.

- There's no justification for using the Principles as a basis for finding against L&C as a breach of these can't give rise to any cause of action at Law. The application of the Principles, and such duties as may be imposed on L&C by these, fall to be construed in light of the Conduct of Business Sourcebook ('COBS') rules, L&C's regulatory permissions, L&C's contractual arrangements and the statutory objective that consumers should take responsibility for their decisions.

- The publications the investigator referred to are of no bearing. It was said in *Adams* that reports, guidance and correspondence issued after the events at issue couldn't be applied to Options' conduct at the time. The only publication which could have any bearing is the 2009 Thematic review. However the contents of this document can't found a claim for compensation of itself.

- Regulatory publications can't alter the meaning, or the scope, of the obligations imposed by the Principles. Thus, if there was no obligation imposed on L&C by the Principles to consider and act on the suitability of the SIPP or the underlying investment, the publications referred to in the investigator's opinion can't impose such a duty.

- The 2009 thematic review doesn't provide "guidance"; and is not statutory guidance under FSMA s.139A. Even if it was, the breach of such statutory guidance wouldn't give rise to a claim for damages under FSMA S.138D. *Guidance is not binding on those to whom the FCA's rules apply.*

- *Adams* held that duties imposed by COBS can't all apply to all firms in all circumstances. The obligations under COBS 14.2.3R and COBS 14.3 to provide clients with product information, and the obligation under COBS 19.1.2R to provide clients with pension product information, don't apply to execution-only SIPP providers. The investigator seeks to impose on L&C a duty of due diligence that it doesn't in fact owe and which goes far beyond the scope of any duty envisaged by the parties.

- L&C hasn't at any time had permission to advise on investments but the investigator finds that it was under an obligation to safeguard consumers against facilitating SIPPs that are unsuitable or detrimental to them.

- The investigator accepts L&C was not responsible for assessing suitability, which remained the responsibility of Mr L's financial adviser. Despite this, the

investigator finds that there was an obligation on L&C to complete extensive due diligence on the Store First investment.

- Insufficient weight has been given to contractual arrangements between the parties involved and the demarcation of roles and responsibilities. The documents setting out the contractual relationship between the parties make it clear that L&C was acting on an execution-only basis. And Mr L was aware of this at all times. The investigator's view runs contrary to *Adams* by suggesting that, notwithstanding the clear contractual terms, L&C owed due diligence obligations under the Principles. L&C has referenced several documents which it says set out the contractual relationship between the parties.

- The Financial Ombudsman Service is trying to circumvent the *Adams* decision, which not fair or reasonable. Consideration of the Principles must be via the appropriate COBs rules.

- The investigator fails to have regard to FSMA s.5(2)(d), and to the authority of *Adams* and Kerrigan & Others v Elevate Credit International Limited (t/a Sunny) (in administration) [2020] EWHC 2169 (Comm) in this respect, and offers no justification for this failure. The position taken by the investigator would enable Mr L to recover against L&C for losses flowing from non-contractual obligations which were inconsistent and contrary to the express obligations in the parties' contractual arrangements.

- Mr L signed disclaimers confirming that he knew of the high-risk nature of the investment and that it was illiquid and may be difficult to sell. He was also made fully aware that L&C would take no responsibility for his decision to purchase it.

- The investigator concludes that L&C breached its duty in respect of the due diligence it completed on Store Pods. L&C contests this. The suitability of a high-risk investment depends on the particular financial circumstances of the customer. Even if it was unsuitable for Mr L as an execution-only SIPP provider, L&C was under no regulatory obligation to ascertain these details.

- The level of due diligence expected by the investigator goes far beyond what would be expected of an execution only SIPP provider. It's not fair to hold that an execution only SIPP provider should have completed due diligence in respect of the commercial viability of the investment or how returns would be generated – that was a financial advisor's role.

- The Financial Ombudsman Service is suggesting L&C should have rejected whole categories of investment en masse because such categories of investment may not have been suitable for certain individuals

- A number of SIPP providers at the time were accepting such investments (and doing so on a wholly legitimate basis) and the most likely conclusion is that, had L&C rejected this, the transaction would have completed via another provider.

- Mr L received advice from RealSIPP. The FSCS has paid out on a claim against RealSIPP, which clearly demonstrates that it was advising on the investment and that the FSCS believes that they are liable for any losses suffered. Any complaint or claim in respect of the merits or viability of the investment would be the responsibility of the financial advisor, not the SIPP provider.

- Mr L must bear responsibility for his decisions, in particular in the light of the

member declaration and indemnity which he signed. Any compensation awarded should therefore be reduced to nil reflect that responsibility.

- If the complaint is upheld, Mr L should be put back in the position he would have been in

  had he not transferred his existing pensions. L&C accepts that the correct basis for calculating the compensation is as set out under in the investigator's opinion. But in terms of the payment for trouble and upset, no evidence has been provided to support Mr L having suffered any degree of upset.

- If the investigator's view is maintained, the wider consequences will be serious, both for consumers and for execution-only SIPP providers. From the perspective of the execution-only SIPP provider, there is also a real unfairness if it is liable for the poor investment choices of consumers, since its business is structured on the basis that it is not investigating the quality of the underlying investments (other than to ascertain that they are capable of being held within a UK registered pension scheme such as its SIPP). Its business is structured on the basis that it is not warning or advising clients as to whether a SIPP or the underlying investment is suitable or appropriate for the client.

My provisional decision dated 16 January 2024

I issued a provisional decision in January 2024. I explained that the complaint had been referred in time and so this service has jurisdiction to consider it. And I said I was satisfied I could fairly determine Mr L's complaint without convening a hearing. I also explained my intention to uphold the complaint and I set out how I intend to direct L&C to settle this matter.

Mr L responded and confirmed that he accepted my findings and had no further submissions to make.

Despite being chased for a response, L&C hasn't provided any further comments or submissions.

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.

Having done so, and given that neither party has provided any further comments, I'm not departing from the findings reached in my provisional decision. So my final decision largely repeats what I said in my provisional decision.

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.

The parties to this complaint have provided detailed submissions to support their position and I'm grateful to them for doing so. I've considered these submissions in their entirety. However, I trust that they won't take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. To be clear, the purpose of this decision isn't to comment on every individual point or question the parties have made, rather it's to set out my findings and reasons for reaching them.

Relevant considerations

In my view, the FCA's Principles for Businesses are of particular relevance. The Principles for Businesses, which are set out in the FCA's Handbook "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G). Principles 2, 3 and 6 provide:

> "Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.
>
> Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
>
> Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly."

I've carefully considered the relevant law and what this says about the application of the FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ('BBA') Ouseley J said at paragraph 162:

> "*The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular 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 L's case.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case, 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 L'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 L'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 Storepods investment into its SIPP.

In Mr L's complaint, amongst other things, I'm considering whether L&C ought to have identified that the Store First investment involved a significant risk of consumer detriment and, if so, whether it ought to have declined to accept applications to invest in Store First before it received Mr L's application.

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

So I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr L'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 L on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr L 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 L'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 Business ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').*
>
> *The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:*

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*
- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*
- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*
- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*
- *Routinely identifying instances of execution-only clients who have signed disclaimers taking responsibility for their investment decisions, and gathering and analysing data regarding the aggregate volume of such business.*
- *Identifying instances of clients waiving their cancellation rights, and the reasons for this."*

The later publications

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

> *"This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.*
>
> *All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a 'client' for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes."*

The October 2013 finalised SIPP operator guidance also set out the following:

> ***"Relationships between firms that advise and introduce prospective members and SIPP operators***
>
> *Examples of good practice we observed during our work with SIPP operators include the following:*

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

The July 2014 "*Dear CEO*" letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The "*Dear CEO"* letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *correctly establishing and understanding the nature of an investment*
- *ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation*
- *ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)*
- *ensuring that an investment can be independently valued, both at point of purchase and subsequently, and*
- *ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc.)*

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

I acknowledge that the 2009 and 2012 Thematic Review Reports and the "*Dear CEO*" letter aren't formal guidance (whereas the 2013 finalised guidance is). However, 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 "t*he 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 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 response to the investigator's view, including when making its points about the regulatory publications, L&C's referenced the *R. (on the application of Aviva Life and Pensions (UK) Ltd) v Financial Ombudsman Service* [2017] EWHC 352 (Admin) case. 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 also said that many of the matters which the Report invites firms to consider are directed at firms providing advisory services. It's not specified which parts of the Report it thinks are directed at such firms but, to be clear, I think the Report's also directed at firms like L&C acting purely as SIPP operators. The Report says that "*We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses…"* And it's noted prior to the good practice examples quoted above that "*We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs.*"

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

I've carefully considered what L&C's said about publications published after Mr L's SIPP was set up. 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 L'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 L. It's accepted L&C wasn't required to give advice to Mr L, 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. 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 L's application.

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 L's application to establish a SIPP and to invest in Store First, L&C complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what L&C should have done to comply with its regulatory obligations and duties.

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

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 RealSIPP/the business RealSIPP was introducing and the Store First investment before deciding to accept Mr L's application.

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

And the questions I need to consider include whether L&C ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by RealSIPP and/or investing in Store First were being put at significant risk of detriment. And, if so, whether L&C should therefore not have accepted Mr L's application for the L&C SIPP and/or Store First investment.

The contract between L&C and Mr L

This final decision is made on the understanding that L&C acted purely as a SIPP Operator. I don't say L&C should (or could) have given advice to Mr L or otherwise have ensured the suitability of the SIPP or Store First investment for him. I accept that L&C may have made it clear to Mr L 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 L 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 L'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 L on the suitability of the SIPP or Store First investment.

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. To be clear, I don't agree that it couldn't have rejected applications without contravening its regulatory permissions by giving investment advice.

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

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

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

So, and well before the time of Mr L's application, I think that L&C ought to have understood that its obligations meant that it had a responsibility to carry out appropriate checks on RealSIPP to ensure the quality of the business it was introducing. And I think L&C also ought to have understood that its obligations meant that it had a responsibility to carry out appropriate due diligence on investments, like the Store First holding, before accepting them into its SIPPs.

L&C's due diligence on RealSIPP

In considering this point, I've taken account of the information L&C provided on the complaint that was the subject of the published decision.

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

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

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

I'm aware that on the published decision complaint, L&C explained that at the date of that consumer's application, it wouldn't have accepted applications from a firm that wasn't authorised by the FSA. And L&C also said its directors from the relevant period have confirmed its policy was that applicants effecting a pension transfer, like Mr L, had to have had advice made available to them which would, as L&C put it, "in this case (have been) through RealSIPP." And that it was then for the applicant to choose whether to take up the intermediary's offer of advice. It's not been suggested that L&C's policy on this point had changed before it received Mr L's application.

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

- L&C was aware of or should have identified potential risks of consumer detriment associated with business introduced by RealSIPP at the outset of its

relationship with RealSIPP, and certainly by the time of Mr L's application:

- There was insufficient evidence to show RealSIPP (or any other regulated party) was offering or giving full regulated advice (that is advice on the transfer or switch to the SIPP and the intended investment).
- The introductions had anomalous features – high-risk business, in relatively high volumes, for unregulated overseas property developments and other esoteric investments. And, even though RealSIPP had the necessary permissions to give full advice on the business it was introducing, it wasn't giving advice on a large proportion of that business.
- L&C should have taken steps to address these risks (or, given these risks, have simply declined to deal further with RealSIPP).
- Such steps should have involved getting a full understanding of RealSIPP's business model – through requesting information from RealSIPP and through independent checks. Including gaining an understanding of what RealSIPP's arrangements with any unregulated businesses were.
- Such understanding would have revealed there was a significant risk of consumer detriment associated with introductions of business from RealSIPP.
- In the alternative RealSIPP would have been unwilling to answer or fully answer the questions about its business model.
- In either event L&C should have concluded it shouldn't accept introductions from RealSIPP.

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

The availability of advice

I'm aware from the information provided on the published decision complaint, L&C entered into intermediary agreements with RealSIPP and its principal, CIB. As part of this process, it was open to L&C to mention to RealSIPP any policy requirements it had for full regulated advice to be made available to applicants where introduced business involved pension transfers. L&C could have highlighted this in the intermediary application form, The Intermediary Agreement for Non-Insured Contracts, or in supplementary correspondence with RealSIPP. However, no correspondence I've seen between L&C and RealSIPP mentioned this.

On the published decision complaint, the ombudsman concluded there was no evidence that the consumer in that case was ever offered full regulated advice on the transaction complained about by RealSIPP or its principal (or any other regulated advisory firm). In that case, the client agreement and Keyfacts document made it clear, RealSIPP wasn't offering clients the option of any regulated advice on the proposed transactions, let alone full regulated advice.

In Mr L's case, L&C says that, while it's not aware of the advice he received, it can only assume RealSIPP advised him to make the investment into Store First. It says this because the FSCS has made a payment in respect of Mr L's claims about CIB/RealSIPP.

I'm not aware of the basis on which the FSCS upheld Mr L's claim. But I should clarify that just because a claim has been upheld, it doesn't mean advice was provided. It may have been upheld because advice wasn't provided when it should have been. Either way, that doesn't impact my decision in this case.

I say this because the application that L&C received for Mr L actually told L&C that Mr L had *not* received advice. That is the basis on which L&C accepted the application. And given what I know from the published decision complaint, and from what L&C has told us about the levels of introduced execution-only business it accepted from RealSIPP, there were certainly instances where RealSIPP referred clients to L&C where no advice had been provided. So, based on the available evidence, I think there was insufficient basis for L&C to reasonably assume that advice had been given to Mr L. The possibility no regulated advice had been given or made available was a clear and obvious potential risk of consumer detriment here. Mr L was transferring over £90,000, some of this from a defined benefit scheme to invest (the majority) in Storepods – a move which was highly unlikely to be suitable for the vast majority of retail clients.

Anomalous features

RealSIPP was introducing consumers who were all investing in high risk non-standard Assets

The introductions L&C received from RealSIPP were for applicants looking to invest in high- risk non-standard esoteric holdings, such as the unregulated Store First Investment Mr L was investing in. As mentioned, I think it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of the population – sophisticated and/or high net worth investors.

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

High proportion of execution-only business

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

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

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

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

So I don't think simply keeping records without scrutinising that information would be

consistent with good industry practice and L&C's regulatory obligations. As highlighted in the 2009 Thematic Review Report, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

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

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

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

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

Volume of business

On the published decision complaint, L&C said 153 members were introduced by RealSIPP and over a quarter of these had an Occupational Pension Scheme. On that case, RealSIPP had introduced 44 applications in about 9 months, prior to receiving that consumer's application in November 2011. Mr L's application wasn't submitted to L&C until February 2012. So, after the consumer in the published decision. So, I think there was even more reason for L&C to have been concerned that such a volume of introductions, relating exclusively to consumers investing in higher-risk esoteric investments was unusual – particularly from a small IFA business. And it should have considered how a small IFA business introducing this volume of higher-risk business was able to meet regulatory standards.

And I think this concern ought to have been even greater in a case like Mr L where a Defined benefit scheme was involved. At the relevant date COBS 19.1.6G stated:

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

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

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

The involvement of an unregulated business

I'm aware from submissions on another complaint that L&C obtained a report from a firm named Enhanced Support Solutions Limited. This report stated that Store First was promoting its products in the UK through Harley Scott Holdings Limited. And it seems likely from paperwork that L&C received, such as the Store First reservation form, that PBV was also involved in the process. Neither Harley Scott Holdings Limited nor PBV were regulated by the FSA/FCA.

On the published decision complaint, L&C said it was reasonable to assume that the consumer hadn't walked into RealSIPP's offices and stated that they wanted an L&C SIPP and to invest in a high risk, esoteric investment. I think that argument is equally applicable to Mr L. Mr L's application form clearly stated "Advice not given at point of sale to client." And L&C appears to have processed the application on the basis that no advice had been provided. So, I think that L&C ought to have been alive both to the risk that an unregulated third party might have been involved in promoting the Store First investments to some investors and that consumers, like Mr L, might not have been receiving any regulated advice from RealSIPP on their Store First investments.

Although the promotion of Store First wasn't in itself a regulated activity, this was nonetheless another clear and obvious potential risk of consumer detriment – particularly where pension investors were being targeted. L&C should have been alive to the risks associated with an unregulated firm promoting an investment for SIPPs which was unlikely to be suitable for the vast majority of retail clients, particularly so where full regulated advice wasn't being received by consumers.

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

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

Requesting information directly from RealSIPP

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

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

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

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

And I think that L&C, before accepting further applications from RealSIPP, should have checked with RealSIPP about 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.

I think it's more likely than not if L&C had asked RealSIPP for this type information that RealSIPP would have provided a full response to the information sought. And that, amongst other things, L&C would have then been provided with copies of client agreements and Keyfacts documents that RealSIPP was providing to different consumers it was introducing to L&C.

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

Making independent checks

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

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 L, directly and/or to ask whether they'd been offered full regulated advice on their transactions and seek copies of the suitability reports.

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

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

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

- Some consumers were being introduced to L&C without having been offered full regulated advice.
- RealSIPP was explaining to some consumers that its role was solely as "administrator and packager" of the SIPP
- The other anomalous features I've mentioned did carry a significant risk of consumer detriment.

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

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

Mr L's SIPP application form clearly stated "*Advice not given at point of sale to client*." Further, I'm satisfied that RealSIPP wasn't offering clients like Mr L the option of *full* regulated advice. And that it was explained in CIB's client agreement that it was acting as *"administrator and packager"* of the SIPP – an unusual role for an advisory firm to take. This raises significant questions about the motivations and competency of RealSIPP/CIB.

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

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

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

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

I therefore think L&C ought to have concluded Mr L, and applicants before him, didn't have full regulated advice made available to them by RealSIPP/CIB. And L&C ought to have viewed this as a significant point of concern, as retail consumers, like Mr L, were transferring their existing pension monies to L&C to invest in higher-risk esoteric investments, including the Store First investment, without the benefit of having been offered full regulated advice, by a business which appeared to be actively avoiding any responsibility to give advice.

I also think L&C should have concluded that some consumers introduced by RealSIPP who were investing in Store First were likely being 'sold' on the Store First investment by an unregulated third party. As mentioned, the third-party due diligence report L&C obtained on Store First discloses the involvement of an unregulated business.

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

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

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

L&C shouldn't have accepted Mr L's introduction from RealSIPP *at all*. And, to be clear, even if I thought L&C had undertaken adequate due diligence on Store First and acted appropriately in permitting that investment into its SIPPs (which, as I explain below, I don't), I'd still consider it fair and reasonable to uphold Mr L's complaint on the basis of what I've already set out above – that L&C shouldn't have accepted Mr L's introduction from RealSIPP in the first place. However, for completeness, I've also gone on to consider the due diligence that L&C carried out on the Store First investment.

L&C's due diligence on Store First

I'm satisfied that, to meet its regulatory obligations when conducting its business, L&C

was required to consider whether to accept or reject a particular investment (here Store First), with the Principles in mind.

I think that it's fair and reasonable to expect L&C to have looked carefully at the Store First investment *before* permitting it into its SIPPs. To be clear, for L&C to accept the Store First investment without carrying out a level of due diligence that was consistent with its regulatory obligations, while asking its customer to accept warnings absolving it of the consequences, wouldn't in my view be fair and reasonable or sufficient. And if L&C didn't look at the investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure or might be fraudulent, it wouldn't in my view be fair or reasonable to say L&C had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

On another complaint, L&C has provided us with some evidence of the due diligence it undertook into Store First.

L&C has provided a copy of a report by Enhanced Support Solutions Limited dated 22 March 2011. Amongst other things, the report says that:

- The Store First investment concerned ownership of individual leasehold storage units within a storage facility.
- Individual units were held under a 250-year lease.
- Units were sub-let to a management company subject to a six-year term.
- To provide income through the sub-lease to Store First Management Limited ('SFML'), SFML rented the units, under licence, to end users.
- The seller of the sub-lease was Store First and the UK promoter was Harley Scott Holdings Limited.
- A CCJ was issued against the promoter of the scheme, but Enhanced Support Solutions Limited understood this arose from a disputed invoice which was in the course of being settled.
- The leasehold interest could be sold/assigned at any time.
- It was anticipated that the individual value would primarily be based on the rental income achieved. A standard valuation could be obtained as per any property from a RICS surveyor.
- The lease was on commercial terms with SFML. The scheme member shouldn't use the storage space for their own use to avoid any personal benefit being derived.
- As the investment was unregulated, no protection was offered through the FSCS.
- The review had been based on information supplied by Harley Scott Holdings Limited.
- Where used by a SIPP operator, a scheme member 'high risk/illiquid' disclaimer could be considered.
- The SIPP operator should engage legal advice on conveyancing.
- The investment was approved for SIPP investment by an Enhanced Support Solutions Limited consultant on 5 April

2011.

On 23 August 2012 an L&C employee (as I understand it an investment support manager) emailed several colleagues at L&C, including L&C's Director & Head of Compliance. The email was titled *"Store First – Review"* and stated that:

> *"Following the receipt of the SIP Member Update which mentioned that* (Mr W's) *firm faces tax investigation' we immediately imposed a temporary suspension on all Store First investments pending further investigation. I advised all three IFA introducers by telephone that we have a technical issue and have imposed a temporary suspension until we resolve.*
>
> *I have carried out an investigation and based on the information obtained my findings follow:*
>
> *Findings*
>
> *1) The tax investigation is into Harley Scott Group of companies and this does not currently extend to Store first or its parent Group First. We have received written confirmation of this from Pierce Accountants.*
>
> *2) It is not apparent that Harley Scott is linked to Store First or Group First in anyway other than that* (Mr W) *is a director and shareholder in all.*
>
> (there is no 3)
>
> *4)* (Mr W's) *business dealings seem to attract the label of 'controversial' in press articles.*
>
> *5)* (An employee of) *SIPP Investment Platform Limited confirmed that he has an increased level of enquiries on Store First (I suspect in response to their member bulletin) and metioned* (sic) *that some providers are not allowing investment into Storefirst, and that others are awaiting their report. He was unable to provide any further additional information. They are starting their review of this investment at the moment and the report will not be available for a few weeks.*
>
> *6)* (An employee of) *Hetheringtons Solictors* (sic) *confirmed that Harley Scott is a separate company to Store First, and added that as we are purchasing a lease she believes that a* (sic) *even if a tax investigation was to be carried out on Store First it should have no detrimental affect on our purchase. She was of the opinion that we did not need to be concerned by the tax investigation.*
>
> *Recommendation*
>
> *My recommendation would be to lift the suspension with immediate effect to be reviewed again upon receipt new information or the SIP report whichever is sooner. If everyone is in agreement then I will also confirm to the IFAs introducing the business that we have lifted the suspension pending the detailed DD report being carried out by SIP. I suggest that we also make a weekly internet search of the above until the SIP report is available.*
>
> *Please confirm if you are all in agreement."*

I've seen two replies from two different individuals, including from L&C's Director & Head of Compliance, to the 23 August 2012 email. The effect of the responses is to support the recommendation and it's noted in one of the responses that:

> *"Good investigation and analysis. Your recommendations are agreed by me.*
> *…*
> *…we should probably check to see if the Storepods investment is captured by the latest FSA initiative re UCIS or UCIS-type investments as this will determine whether we should be vetting the apps to check that the clients are Sophisticated/High Net Worth etc.*
> *…*
> (Name of investment support manager*) will you also give* (L&C colleague) *the go ahead to process the apps."*

On 17 January 2013 the same investment support manager at L&C sent an email to a L&C sales team address and a L&C property address. The subject of the email was *"Subject: Storefirst - Storepods - Self Storage Units - Suspension of investment"* and the email said that:

> *"We have with, immediate effect, suspended all new investments in the above.*
>
> *Storefirst have failed to provide us with certain ongoing monitoring information within a reasonable timescale and our Investment Committee have decided that we suspend all new investments. This includes any applications we have already received.*
>
> *Please would you make sure you update any of your IFA's who submit Storefirst - Storepod applications* ***immediately****. I believe that the majority are submitted by The Pensions Office and RealSIPP. I suggest that if you are questioned then you say something like* ***'we have requested an update on the progress of the facilities and a response has not been forthcoming'.****"*

We've been provided with an ongoing monitoring report by L&C's investment support manager dated 26 February 2013. It's noted amongst other things in the report that:

- L&C had requested an update on the progress of the investment.
- Store First hadn't provided information within a reasonable timescale, so L&C had decided to temporarily suspend any pending or new investment into Store First.
- The total value of L&C's Storepod purchases was £1,400,000 as at end of January 2013.
- This was made up of 53 different SIPP members equating to an average holding per member of £26,415.
- It was looking to check that Store First was delivering on the promises made to investors.

It had asked Store First for the following:

> *"The present sites that we have accepted are Barnsley, Liverpool, Rochdale and Blackburn. Please can you confirm if the units have been built and are ready for leasing.*

If any of the sites have been built can you confirm if any of the units we have purchased have been rented out or if they are still working under the guaranteed rental agreement set out in the contracts.

1) Report & Accounts for each company
2) Plan of each site detailing all storage units
3) How many storage units on each site have been completed to date
4) How many storage units on each site have not been completed to date
5) How many storage units on each site have been let to date
6) Have any of the storage units subsequently been sold, how many, at what price compared with the original purchase price
7) How many storage units we own on each site"

The report continued noting that:

- Members are provided with an outline of costs and sample legal documents by L&C before entering into any obligation to purchase. Purchases only proceed once members have confirmed that they're happy with the documents and fees.
- It insists on a valuation for each site from an appropriately qualified valuer, and its property team obtain valuations on a six-monthly basis for each site.
- All Storepod purchases are made via scheme appointed lawyers and have clear title and are registered individually at HM Land Registry.
- L&C's property team had advised that rent was coming in as expected with no issues. All of the Storepods were (then) within the rent guarantee period.
- Store First appeared to have made all of their annual returns and submitted accounts as required.
- A SIPP Investment Platform ('SIP') Review was carried out by SIP's precursor Enhance Support Solutions in 2011 (as I understand it this is the Enhance Support Solutions Limited report I've referred to elsewhere in this decision).
- Store First had provided L&C with the information it had requested.
- L&C hadn't verified information and commentary provided by Store First regarding timescales, achievable rent, resale values, and market research. However, the valuations provided appear to support Store First's claims.
- It's appropriate that L&C carry out checks from time to time to ensure that the investment is operating as promised by the investment provider.
- It appears that Storepods are being sold constructed and let out as promised. Rent is being received, and the purchases are all being made as expected. The Hetherington Partnership had no cause for concern and legal title was being registered at HM Land Registry.
- There didn't appear to be cause for concern at this stage, but due to the unregulated nature of the investment and large sums of money already invested L&C should exercise continued caution.

- The recommendation was to continue ongoing monitoring and to lift the suspension immediately. Further, that any new sites from the same corporate entities with an identical set up to those L&C had already invested in wouldn't need to pass through SIP.

We've been provided with some of the correspondence that's referred to in the 26 February 2013 report. But, I've not seen copies of the emails that were exchanged between L&C's investment support manager and Group First/Store First on 21 January 2013, 24 January 2013, 28 January 2013 and 5 February 2013 – this included correspondence with Mr W. I've also not seen copies of emails that are referred to between L&C's investment support manager and The Hetherington Partnership on 19 February 2013. To date, L&C hasn't provided a copy of these emails.

Group First emailed L&C's investment support manager on 9 January 2013 and it was stated that some of the information that had been requested was being enclosed. This included reports and accounts for each company, a plan of each site, a current valuation and site information.

I've seen copies of the site plans and a copy of the valuation. But I've not seen the content of the response provided by Group First/Store First to the other queries L&C raised. Including, amongst other things, information about the number of storage units that had been completed on each site, the number of storage units that had been let to date and whether any storage units had been sold and, if so, the price they'd been sold at compared to the original purchase price. To date, L&C hasn't provided a copy of Store First's responses to it to these questions.

The valuation report was undertaken by a chartered surveyor who had received instructions from Group First to inspect a Storage Pods property in Barnsley. The valuer said amongst other things that:

> *"The property is likely to enjoy a fair level of occupational demand by virtue of its site, general characteristics and condition.*
> *…*
> *We consider there are unlikely to be any significant fluctuations in the general levels of both rental and capital values.*
> *…*
> *The individual store pods are held on a 250 year Long leasehold basis with a ground rent of £12.50 per sq ft payable. There is a service charge of £1.95 per sq ft payable. A management fee of 15% of the rent receivable is charged by Store First.*
>
> *The store pods are sublet back to Store First at a rental of £17 per sq ft per annum on an 86 year lease. There are fixed upwards-only rent reviewed every two years.*
> *…*
> *There had been a general downturn in the commercial property market over the past four years. This has affected all types of commercial properties with a large reduction in values from the peak of the market in Autumn 2007.*

There's then a section titled *"Capital Value"* with a table that reads as follows:

Size (*sq ft*)	Market Value
25	£4.750.00
50	£9,500.00
75	£13,950.00
100	£18,750.00
150	£27,950.00
175	£32,950.00

On 8 March 2013, the investment support manager at L&C sent an email to a number of L&C colleagues. The subject of the email *was "Storefirst - New Sites"* and the email said that:

> *"As we agreed - The property team can proceed with investments in the following sites on the basis that we have already carried out a review of the existing sites/investment and that we must have received and accepted a valuation of the site for the specific purchase. We have already carried out a recent review of the contracting entities involved in the existing sites and it is our understanding that the entities will be the same for new sites.*
>
> *Barnsley*
> *x1*
> *Blackburn*
> *x3 Burnley*
> *x2*
> *Ellesmere*
> *Port x1*
> *(aka*
> *Cheshire*
> *Oaks)*
> *Glasgow*
> *x1 Leeds*
> *x1*
> *Liverpool*
> *x2*
> *Rochdale*
> *x2 Preston*
> *x1*
> *Wakefield*
> *x1*
>
> *Property Team - Please ensure you have received a valuation for each site and that it has been accepted by us. If you detect any changes to contracts or companies involved then please notify Corporate Governance immediately.*
>
> (L&C colleague) *please put this in the Storefirst file."*

Having carefully considered all of the information that's been made available to us to date, I don't think L&C's actions went far enough. As I explain in more detail below, I'm not satisfied that L&C undertook sufficient due diligence on the Store First investment *before* it decided to accept that investment into its SIPPs. As such, in my view, L&C didn't comply with its regulatory obligations and good practice, and it didn't act fairly and reasonably in its dealings with Mr L, by not undertaking sufficient due diligence on the Store First investment *before* it accepted Mr L's application to invest in Store First.

Further, based on what it knew or ought to have known had it undertaken sufficient due diligence, I think L&C failed to draw a reasonable conclusion on accepting the Store First investment into its SIPPs.

If L&C had completed sufficient due diligence, what ought it reasonably to have discovered?

I note that some information about the Store First investment was compiled by Enhance Support Solutions Limited. That firm provided L&C with a brief report and, amongst other things, the report said that no adverse history had been found about the seller of the sub-lease, Store First, or the UK promoter, Harley Scott Holdings Limited.

Reference was made to a CCJ being recorded against Harley Scott Holdings Limited and Enhance Support Solutions Limited said that it understood this arose from a disputed invoice that was in the course of being settled. Enhance Support Solutions Limited doesn't expand on how it's come to that understanding, but it does say elsewhere in its report that *"This review has been based on information supplied by email from…Harley Scott Holdings Limited."*

In my view, it would have been fair and reasonable for L&C to have conducted some further basic *independent* searches following its receipt of Enhance Support Solutions Limited's report. I think that's especially true in the circumstances given the fact that Enhance Support Solutions Limited acknowledged its review was premised on information supplied by Harley Scott Holdings Limited.

Enhance Support Solutions Limited's report was mentioned in the 26 February 2013 ongoing monitoring report by L&C's investment support manager. It's not clear how much weight L&C placed on Enhance Support Solutions Limited's report *before* first permitting Store First investments to be held in its SIPPs. However, in my view Enhance Support Solutions Limited's report was of limited value. It was cursory, it states it's based on material emailed to it by Harley Scott Holdings Limited and it makes no comment on the obvious issues with the Store First marketing material. So, I don't think L&C should have taken much comfort from Enhance Support Solutions Limited's report or attached any significant weight to it.

Had basic *independent* searches been completed by L&C following its receipt of Enhance Support Solutions Limited's report, I think it's more likely than not that they'd have shown that Dylan Harvey Group Limited (Harley Scott Holdings Limited's previous business name before a name change in June 2010) and one of its directors, Mr W, had been the subject of national press reports, online petitions and proposed legal action, as a result of a failed property investment. It was reported that hundreds of investors had invested money in a scheme to develop flats, but the flats had not been built and the investors had been unable to recover their money. Mr W was also a director of Store First. Some of these things were briefly mentioned in the internal L&C email of 23 August 2012 I've mentioned above.

I think a basic search of Harley Scott Holdings Limited's filing history would also have shown issues being raised by Harley Scott Holdings Limited's then auditors at the start of 2010, which resulted in their resignation. And that in Harley Scott Holdings Limited's accounts made up to 28 February 2009, auditors had highlighted that they're materially uncertain as to the future of Harley Scott Holdings Limited.

Importantly, and consistent with its regulatory obligations, I think that when undertaking due diligence into the proposed Store First investment that L&C should have had regard to, and given careful consideration to, Store First's marketing material.

Store First's marketing material from the relevant period included the following prominent statements:

> *"You will receive guaranteed returns from a 6 year lease already in place upon completion, making this a high yielding, hassle-free investment which has been specifically designed to meet the needs of today's astute investor."*
>
> *"You will receive a 6 year lease in place upon completion. The lease produces an excellent return of 8% (guaranteed for the first 2 years) rising to over 12% in years 5 and 6. The lease contains upward-only rental reviews and break clauses for both parties every two years."*

The marketing material also sets out in a table the returns payable in years 1&2, 3&4 and 5&6 at 8%, 10% and 12%. In the *"Your Questions Answered…"* section the following is included:

> *"What rental income can I expect?*
>
> *Storepod rental starts at £17 per Sq/Ft per annum (+ VAT). The 6 year tenancy/lease in place on your Storepod has fixed upwards only rental reviews and break clauses (for both parties) every 2 years. This produces an 8% yield on your investment within the first two years, this then is predicted to rise to over 10% return in years 3&4 and then surpass 12% return in years 5&6.*
>
> *Can I easily re-sell my Storepod?*
>
> *Yes, you can re-sell your Storepod at any time and selling your Storepod couldn't be simpler. Store First Ltd can market your Storepod upon your request. We believe that because Storepods are so competitively priced when new, they will make a very attractive sale proposition in the future. We also expect that many tenants will wish to purchase the Storepod they are using. For example, other self storage PLCs usually achieve rent of between £20.00 - £25.00 per square foot.*
> *Our Storepods are costed at a rent of only £17.00 per square foot; once higher rents are achieved the capital value of the Storepod will increase.*
>
> *Guaranteed exit route?*
>
> *In year 5, investors have the option to enter the guaranteed buy-back scheme. In this scheme, Store First Management Ltd will guarantee to buy the Storepod back off the investor for the original price paid within the next 5*

years. This is a unique offer in the market place and we are happy to be able to offer this exit route to our investors.

Most investors are driven to keep the property investment they have purchased and carry on receiving the rental yield produced for years to come, this means only a very limited number of Storepods per centre will ever come onto the resale market, this creates a high sale value and demand for the future."

The marketing material says the *"figures shown are for illustration purposes".* But it does not contain any type of risk warning, or illustrations of any other returns. No explanation of the guarantees was offered, or the basis of the projected returns – other than Store First's own confidence in its business model and the self-storage marketplace.

L&C's internal August 2012 email records that an employee of SIP confirmed that there'd been an increased level of enquiries on Store First and that some providers were not allowing investments in Store First, and that others were awaiting SIP's report. It was noted that this report wouldn't be available for a few weeks.

As I understand it, L&C opted not to wait for the report from SIP before continuing to permit Store First investments to be held in its SIPPs. L&C later decided to suspend further investments being made in Store First in January 2013, noting that Store First had failed to provide it with information requested in a reasonable timescale.

I can see some questions that L&C asked Store First, as they're set out in correspondence we've been provided alongside L&C's ongoing monitoring report of 26 February 2013. Aside from question 7) "*How many storage units we* (L&C) *own on each site",* the other questions set out in the correspondence are all questions that I think L&C ought to have asked Store First *before* it permitted consumers, like Mr L, to invest in Store First though their L&C SIPP. I've not seen that L&C did this.

I've also not seen the answers that L&C received from Store First to the questions "*How many storage units on each site have been let to date"* and *"Have any of the storage units subsequently been sold, how many, at what price compared with the original purchase price."*

I do think L&C having concerns about these issues on an ongoing basis and asking these questions was good practice. But I also think that questions like these were relevant to establishing an understanding of the nature of the investment and trying to ensure the investment was genuine at outset. Such that L&C should also have obtained answers to questions akin to these *before* it allowed Store First investments to be held in any of its SIPPs.

And I think that's especially true in circumstances like these where, as I explain below, I think that L&C should have identified, and *before* permitting the Store First investments to be held in its SIPPs, that there was a significant risk that potential investors were being misled by Store First's marketing material.

To be clear, if Store First was unwilling or unable to fully answer L&C's questions and to provide information sought then I think, consistent with its regulatory obligations and good practice L&C should simply have concluded it wouldn't permit Store First investments to be held within its SIPPs.

If L&C had completed sufficient due diligence on Store First, what ought it reasonably to have concluded?

The failure of the previous scheme which Dylan Harvey Group Limited/Harley Scott Holdings had been involved in may have been entirely down to market forces. But I think the fact that Store First's UK promoter, who was commented on in Enhance Support Solutions Limited's report and who had supplied information that was relied upon in that report, had recently been involved in a property investment scheme which had failed, had recently changed its name and had relatively recently been subject to some adverse comments following audit, ought to have given L&C cause for concern. Particularly when considered alongside the content of Store First's marketing material and the fact that L&C had identified that "(Mr W's) *business dealings seem to attract the label of 'controversial' in press articles.*

In my view there were a number of things about Store First's marketing material which ought to have given L&C significant cause for concern and to have led it to have drawn similar conclusions to those later drawn by the SSA UK on the basis of a report by Deloitte LLP and the Insolvency Service. Namely, that there was a significant risk that potential investors were being misled.

Store First appeared to be presenting the investment as one that was assured to provide high and rising returns, was underwritten by guarantees, and offered a high level of liquidity together with a strong prospect of a capital return – despite the fact that there was no investor protection associated with the investment and the investment was potentially illiquid.

Store First had no proven track record for investors, so L&C couldn't be certain that the investment operated as claimed. L&C should also have been very concerned about a guarantee offered by a new business with no track record (and promoted by a business with a questionable one).

I think, in light of this, L&C should have been concerned that consumers may have been misled or didn't properly understand the investment they intended to make. Consumers could easily have been given the impression, from the marketing material, that they were assured of high returns with little or no risk and would easily be able to sell their investment when they wished to. Such an impression was clearly misleading.

And I note that in an internal L&C email we received on a different complaint, dated 21 January 2015, L&C's Corporate Governance Director raised concerns internally about some information Store First was publishing, they noted that:

> *"… it still remains to be seen whether the sites will "mature" as Storefirst describe it, to the point that rentals start coming in and a secondary market for sales evolves.*
>
> *I do think that their website is misleading on a number of fronts. I have an email in drafting to bring this to their attention."*

From the evidence I've seen I think the information Store First was publishing *before* Mr L's L&C monies were invested with it, including marketing material available through its website, gave rise to a significant risk that potential investors were being misled by Store First. I think L&C's Corporate Governance Director's comments in 2015 were equally applicable in 2012. And I think that L&C ought to have identified this *before* permitting the Store First investment into its SIPPs. This is a clear point of concern, which I think L&C

ought reasonably to have identified *before* it accepted Mr L's application to invest in Store First.

In my opinion, the issues I've identified above should have, when considered objectively, put L&C on notice that there was a significant risk of consumer detriment. And, without more evidence to ensure the investment was an appropriate one to permit within its SIPPs, I'm satisfied that L&C shouldn't have accepted the Store First investment.

In my opinion it's fair and reasonable to say that L&C ought to have concluded there was an obvious risk of consumer detriment here. All in all, I am satisfied that L&C ought to have had significant concerns about the Store First investment from the beginning. And I think such concerns ought to have been a red flag for L&C when it was considering whether to accept the Store First investments into its SIPPs. Such concerns emphasise the importance of sufficient due diligence being undertaken *before* investments are accepted and *before* SIPP investors monies are invested.

Had L&C done what it ought to have done, and drawn reasonable conclusions from what it knew or ought to have known, I think that it ought to have concluded there was a significant risk of consumer detriment if it accepted the Store First investment into its SIPPs and that the Store First investment wasn't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think L&C undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the Store First investment *before* it accepted that investment into its SIPPs. I don't think L&C met its regulatory obligations and, in accepting Mr L's application to invest in Store First, it allowed Mr L's funds to be put at significant risk.

To be clear, I don't say L&C should have identified all the issues the SSA UK press release set out or to have foreseen the issues which later came to light with Store First. I only say that, based on the information available to L&C at the relevant time, it should have drawn a similar overall conclusion – that there was a significant risk that potential investors were being misled. I'm satisfied, on a fair and reasonable basis, that a significant risk of consumer detriment ought to have been apparent from the information available to L&C at the time.

And I do think that appropriate checks would have revealed issues which were, in and of themselves, sufficient basis for L&C to have declined to accept the Store First investment in its SIPPs *before* Mr L invested in it. And it's the failure of L&C's due diligence that's resulted in Mr L being treated unfairly and unreasonably.

There's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. I accept that L&C wasn't expected to, nor was it able to, give advice to Mr L on the suitability of the SIPP and/or Store First investment for him personally. To be clear, I'm not making a finding that L&C should have assessed the suitability of the Store First investment for Mr L. I accept L&C had no obligation to give advice to Mr L, or to ensure otherwise the suitability of an investment for him.

And I'm also not saying that L&C shouldn't have allowed the Store First investment into its SIPPs because it was high risk. My finding isn't that L&C should have concluded that Mr L wasn't a candidate for high risk investments or that an investment in Store First was unsuitable for Mr L. Instead, it's my fair and reasonable opinion that there were things L&C knew or ought to have known about the Store First investment and how it was being

marketed which ought to have led L&C to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that L&C failed to act with due skill, organise and control its affairs responsibly, or treat Mr L fairly by accepting the Store First investments into his SIPP.

I think the fair and reasonable conclusion based on the evidence available is that L&C shouldn't have accepted Mr L's application to invest in Store First. In my opinion, it ought to have concluded that it would not be consistent with its obligations to do so. To my mind, L&C didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr L to be put at significant risk of detriment as a result.

Acting fairly and reasonably to investors (including Mr L), L&C should have concluded that it wouldn't permit the Store First investment to be held in its SIPPs *at all*. And I'm satisfied that Mr L's pension monies were only transferred to L&C so as to effect the Store First investment. So, I think it's more likely than not that if L&C hadn't permitted the Store First investment to be held in its SIPPs at all that Mr L's pension monies wouldn't have been transferred to L&C. Further, that Mr L wouldn't then have suffered the losses he's suffered as a result of transferring to L&C and investing in Store First.

For the reasons given above, L&C shouldn't have accepted Mr L's application to invest in Store First. And, to be clear, even if I thought L&C had undertaken adequate due diligence on RealSIPP/CIB and acted appropriately in accepting Mr L's business from RealSIPP (which, as I've explained earlier, I don't), I'd still consider it fair and reasonable to uphold Mr L's complaint on the basis that L&C didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr L fairly, by accepting the Store First investments into his SIPP.

I make this point here to emphasise that while I've concluded *both* that L&C shouldn't have accepted Mr L's business from RealSIPP and also that it shouldn't have accepted his application to invest in Store First, had I only reached the conclusions I've set out above on one of those aspects and not also gone on to reach findings on the other aspect for completeness, I'd still consider it fair and reasonable in all the circumstances to uphold this complaint. That's because L&C didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr L fairly by accepting his business from RealSIPP. And because, separately, L&C also didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr L fairly, by accepting the Store First investments into his SIPP. And to my mind, L&C didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr L to be put at significant risk of detriment as a result.

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

For the reasons given above, I think L&C shouldn't have accepted Mr L's business from RealSIPP and I also think it shouldn't have accepted the Store First investment into his SIPP. So things shouldn't have got beyond that.

Further, in my view it's fair and reasonable to say that just having Mr L 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 RealSIPP and the Store First investment.

L&C knew that Mr L had signed forms intended to acknowledge, amongst other things, him awareness of some of the risks involved with investing and to indemnify L&C

against losses that arose from acting on his instructions. And, in my opinion, relying on the contents of such forms when L&C knew, or ought to have known, that both the type of business it was receiving from RealSIPP and allowing the Store First investment to be held within its SIPPs would put investors 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 L's business from RealSIPP and to refuse to accept the Store First investment in his SIPP.

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

So, I'm satisfied that Mr L's L&C SIPP shouldn't have been established and his L&C monies shouldn't have been invested in the Store First holdings. And that the opportunity for L&C to execute investment instructions to invest Mr L's monies in Store First or proceed in reliance on an indemnity and/or risk disclaimers shouldn't have arisen at all. I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for L&C to accept Mr L's business from RealSIPP or for it to accept his application to invest in Store First.

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

The involvement of other parties

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

Regarding RealSIPP/CIB, Mr L pursued a complaint against this business with the FSCS. The FSCS upheld the complaint, it calculated Mr L's losses to be in excess of £50,000 and paid him £50,000 compensation. Following this the FSCS provided Mr L with a reassignment of rights.

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).

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

The starting point therefore, is that it would be fair to require L&C to pay Mr L 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 L for his loss.

I accept that other parties, including RealSIPP and/or PBV, might have some responsibility for initiating the course of action that led to Mr L'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 L 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 taken everything L&C has said into consideration. And in my view, it's appropriate and fair in the circumstances for L&C to compensate Mr L to the full extent of the financial losses he's suffered due to L&C's failings. And, having carefully considered everything, I don't think that it would be appropriate or fair in the circumstances to reduce the compensation amount that L&C is liable to pay to Mr L.

To be clear, I'm not making a finding that L&C should have assessed the suitability of the SIPP or the Store First holdings for Mr L. I accept that L&C wasn't obligated to give advice to Mr L, 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 L taking responsibility for his own investment decisions

In reaching my conclusions in this case I've thought about 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 L'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 L's business from RealSIPP or accepted his application to invest in Store First *at all*. That should have been the end of the matter – if either of those things had happened, I'm satisfied the arrangement for Mr L 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 initial and ongoing due diligence on RealSIPP and the Store First investment and reach the right conclusions. I think it failed to do this. And just having Mr L 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.

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

From the evidence I've seen, I'm not satisfied that Mr L signed documents confirming that the Store First investment was high risk. And, as I explain below, I don't agree that the evidence we've seen to date supports the contention that it's more likely than not that Mr L understood the Store First investment was high risk. But, in any eventuality, this is a secondary point because, as mentioned above, if L&C had acted in accordance with its regulatory obligations and good industry practice I'm satisfied the arrangement for Mr L wouldn't have come about in the first place.

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 L for the loss he's suffered. I don't think it would be fair to say in the circumstances that Mr L should suffer the loss because he ultimately instructed the transactions be effected.

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

From the correspondence I've seen, I think that Mr L's pension monies were transferred to L&C to make the Store First investment. That position seems to be supported by the fact the PBV Storepod Reservation form was signed by Mr L a number of months before the L&C SIPP application form. And Mr L's testimony. He was cold called by someone working on behalf of RealSIPP and he doesn't appear to have been actively looking to make changes to his pension arrangements before this.

L&C might say that if it hadn't accepted Mr L's application from RealSIPP and/or permitted the Store First investment in its SIPPs, that the transfer and investment 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 L 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 Mr L's business from RealSIPP or permitted the Store First investment into its SIPPs.

Further, if Mr L had sought advice from a different adviser, who had given full regulated advice on the overall proposition, I think it's more likely than not that the advice would have been not to establish a SIPP and transfer pension monies so as to effect the Store First investment. And I think it's more likely than not that Mr L would have acted in accordance with that advice. Alternatively, if L&C hadn't accepted his business from RealSIPP and/or permitted the Store First investment in its SIPPs, Mr L 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 refused to accept Mr L's application from RealSIPP and/or hadn't permitted the Store First investment in its SIPPs, the transactions wouldn't still have gone ahead and Mr L would have retained his monies in his former pension arrangements.

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

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

Mr L says he was told he would have guaranteed rental income for the first 5 years and he was then guaranteed to get the full value of his investment back at that point, when he believed the buyback clause would be implemented.

I've seen pages from the investment purchase request form Mr L completed, it's not clear that we've been provided with all of the pages. I say that as I've seen investment purchase request forms (with the same reference at the bottom of the forms - OP IPF V1) on some other complaints where L&C consumers invested monies in Store First that contain a page I've not seen in the form on Mr L's case. And that page includes a statement that the investment *may* be high risk, but it doesn't say the investment *is*

high risk. Further, the OP IPG V1 form appears to be generic, by which I mean it appears to be a form that could be used for a number of investments and it doesn't appear to be a form that's bespoke to the Store First investment. I can see why the term *may* might have been used because of this, but I don't agree the contents of that form support the contention that Mr L *understood* the Store First investment was high risk.

I've also not seen any evidence to show Mr L was paid a cash incentive. It therefore cannot be said he was *"incentivised"* to enter into the transaction. And, on balance, I'm satisfied that Mr L, 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 I'm not satisfied that Mr L proceeded knowing that the investments he was making were high risk and speculative, and that he was determined to move forward with the transactions in order to take advantage of a cash incentive.

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 L's application from RealSIPP and/or to permit Store First investments in its SIPPs, the transactions this complaint concerns wouldn't still have gone ahead.

Overall, I do think it's fair and reasonable to direct L&C to pay Mr L compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to Mr L's loss, I consider that L&C failed to comply with its own obligations and didn't put a stop to the transactions proceeding by declining to accept Mr L's applications when it had the opportunity to do so. And I'm satisfied that Mr L wouldn't have established the L&C SIPP, transferred monies in from existing pensions or invested in Store First 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 L. 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 L for the full measure of his loss. L&C accepted Mr L's business from RealSIPP and the Store First investments into its SIPPs and, but for L&C's failings, I'm satisfied that Mr L's pension monies wouldn't have been transferred to L&C and invested in Store First.

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. However, that fact shouldn't impact on Mr L'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 L wouldn't have suffered the loss he's suffered. As such, I'm of the opinion that it's appropriate and fair in the circumstances for L&C to compensate Mr L to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by other firms involved in the transactions.

I acknowledge that Mr L 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 L received from the FSCS. It will be for Mr L to make the arrangements to make any

repayments he needs to make to the FSCS.

In conclusion

Taking all of the above into consideration, I uphold this complaint. I think that in the circumstances of this case it's fair and reasonable for me to conclude that L&C should have decided not to accept business from RealSIPP and/or to accept the Store First investment to be held in its SIPPs *before* it had received Mr L's application from RealSIPP. I conclude that if L&C hadn't accepted Mr L's introduction from RealSIPP and/or the Store First investment to be held in its SIPPs, Mr L wouldn't have established a L&C SIPP, transferred his former pension arrangements into it or invested in Store First.

For the reasons I've set out, I also think it's fair and reasonable to direct L&C to compensate Mr L for the loss he's suffered as a result of L&C accepting his business from RealSIPP and permitting him to invest his L&C monies in Store First.

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

I consider that L&C failed to comply with its own regulatory obligations and didn't put a stop to the transactions that are the subject of this complaint. My aim in awarding fair compensation is to put Mr L back into the position he would likely have been in had it not been for L&C's failings. Had L&C acted appropriately, I think it's *more likely than not* that Mr L would have remained a member of the pension schemes he transferred into the SIPP.

Mr L transferred monies from two different pension schemes into the SIPP, including monies from both defined contribution and defined benefit schemes. To put things right L&C will need to undertake different types of loss calculations, one in relation to the monies that originated from defined benefit schemes and another in relation to monies that originated from defined contribution schemes. As part of doing this L&C will need to calculate the portion of Mr L's current SIPP value that's attributable to each of the respective transfers/switches and apply them to the relevant calculations.

In light of the above, L&C should:

- Obtain the actual transfer value of Mr L's SIPP, including any outstanding charges.
- Take ownership of the Store First investments if possible.
- Undertake loss calculations as set out below in respect of each of the schemes from which monies were transferred into the SIPP and pay any redress owing in line with the steps set out below.
- If Mr L has paid any fees or charges from funds outside of his pension arrangements, L&C should also refund these to Mr L. Interest at a rate of 8% simple per year from date of payment to date of refund should be added to this.
- Pay to Mr L £500 to compensate him for the distress and inconvenience he's been caused.

I've set out how L&C should go about calculating compensation in more detail below.
I acknowledge that Mr L 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 L'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 L received from the FSCS. And it will be for Mr L to make the arrangements to make any repayments he needs to make to the FSCS. However, I do think it's fair and reasonable for some allowance to be made for the sum(s) Mr L actually received from the FSCS and has had the use of for a period of the time covered by the calculation.

If L&C wishes to make such an allowance, it must first calculate the proportion of the total FSCS' payment(s) Mr L received that it's fair and reasonable to apportion to each individual transfer into the SIPP – this must be proportionate to the value of the actual sums transferred in. The total FSCS payment(s) allowed for must be no more than the total FSCS payment(s) Mr L actually received. Having done this, L&C can then make the allowance by following the steps set out in the sections below.

Take ownership of the Store First investments if possible

In order for the L&C SIPP to be closed and further SIPP fees to be prevented, any remaining Store First investments need to be removed from Mr L's SIPP. To do this, L&C should calculate an amount it's willing to accept for Mr L's Store First investments and pay that sum into Mr L's SIPP and take ownership of the Store First investments. Any sums paid into the SIPP to purchase the Store First investments will then make up part of the current actual value of the SIPP.

If L&C's unable to purchase the Store First investments, the actual value of any Store First 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 L's SIPP.

I think that is fair because I think it's unlikely the Store First investments will have any significant realisable value in the future. Further, I understand Mr L has the option of returning his Store First investments to the freeholder for nil consideration. And that should enable Mr L to close his SIPP if L&C is unable to take ownership of his Store First investments.

In the event the Store First investments remain in the SIPP, as L&C is unable to purchase them and Mr L decides not to transfer them to the freeholder, Mr L should be aware that he will be liable for all future costs associated with the investment such as the ongoing SIPP fees, business rates, ground rent and any other charges. He should also be aware it's unlikely he will be able to make a further complaint about these costs.

Calculate the loss Mr L has suffered as a result of making the transfer in relation to monies originating from his defined benefit scheme

L&C must undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

For clarity, Mr L has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual

assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr L's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, L&C should:

- always calculate and offer Mr L redress as a cash lump sum payment.

- explain to Mr L before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
    - offer to calculate how much of any redress Mr L receives could be augmented rather than receiving it all as a cash lump sum,
    - if Mr L accepts L&C's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr L for the calculation, even if he ultimately decides not to have any of his redress augmented, and
    - take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr L's end of year tax position.

For the purposes of the calculation that's being carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4, if it wishes, L&C *may* notionally, for the period from the point of their payment through until the valuation date (as per the DISP App 4 definition of that term), allow for that proportion of the payment(s) Mr L received from the FSCS following the claim about CIB, that it's fair and reasonable to apportion to monies transferred in from the defined benefit schemes and in accordance with what's stated earlier in this decision*,* as an income withdrawal payment. Where such an allowance is made then L&C must also, at the end of the calculation, allow for a corresponding notional addition to the overall calculated loss that's equivalent to the relevant notional income withdrawal payments allowed for. The effect of this notional addition will be to increase the overall loss calculated using the most recent financial assumptions in line with PS22/13 and DISP App 4, by a sum that's equivalent to the proportion of the payment(s) Mr L received from the FSCS accounted for in this part of the calculation.

Redress paid to Mr L as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, L&C may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension.
Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr L's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Calculate the loss Mr L has suffered as a result of making the transfer in relation to monies originating from defined contribution schemes

L&C should first contact the provider of the plan which was transferred into the SIPP and ask it to provide a notional value for the policy as at the date of calculation. For the purposes of the notional calculation the provider should be told to assume no monies would have been transferred away from the plan, and the monies in the policy would have remained invested in an identical manner to that which existed prior to the actual transfer.

Any contributions or withdrawals Mr L has made from the SIPP will need to be taken into account whether the notional value is established by the ceding provider 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 enjoyed is allowed for. To be clear withdrawals here doesn't include SIPP charges or fees paid to third parties like an adviser. But it would include any pension commencement lump sums or pension income Mr L actually took after his pension monies were transferred to L&C.

If there are any difficulties in obtaining a notional valuation from the previous provider, then L&C should instead arrive at a notional valuation by assuming the monies would have enjoyed 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.

If it wishes, L&C *may* make an allowance in the form of a notional withdrawal (deduction) equivalent to that proportion of the payment(s) Mr L received from the FSCS following the claim about CIB, that it's fair and reasonable to apportion to monies transferred in from the defined contribution schemes in accordance with what's stated earlier in this decision, and on the date the payment(s) was actually paid to Mr L. Where such a deduction is made there must also be a corresponding notional contribution (addition), at the date of my final decision equivalent to the total relevant notional withdrawal(s) accounted for in this part of the calculation.

To do this, L&C should ask the operators of Mr L's previous defined contribution pension plan to allow for the relevant notional withdrawal(s) in the manner specified above. L&C must also then allow for a corresponding notional contribution (addition) as at the date of my final decision, equivalent to the accumulated FSCS payment(s) notionally deducted by the operators of Mr L's previous defined contribution pension plan(s).

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

The notional value of Mr L's existing plan if monies hadn't been transferred (established in line with the above) less the proportion of the current value of the SIPP that's attributable to monies transferred in from the same existing plan (as at the date of calculation) is Mr L's loss.

Pay an amount into Mr L's SIPP so that the transfer value is increased by the loss calculated above in relation to monies originating from defined contribution schemes

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr L'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 directly to Mr L 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 in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Distress & inconvenience

In addition to the financial loss that Mr L has suffered as a result of the problems with his pension, I think that the loss of the majority of his pension provisions has caused him distress. And I think that it's fair for L&C to compensate him for this as well so it should pay Mr L £500 for the distress and inconvenience caused.

My final decision

For the reasons given, I uphold this complaint and I direct London & Colonial Services Limited to calculate and pay fair compensation to Mr L as set out above.

Where I uphold a complaint, I can make an award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that London & Colonial Services Limited pays the balance.

Determination and award: My final decision is to uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that London & Colonial Services Limited should pay the amount produced by that calculation up to the maximum of £160,000 (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 £160,000, I recommend that London & Colonial Services Limited pay Mr L 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 L could accept a decision and go to court to ask for the balance and Mr L 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 L to accept or reject my decision before 21 March 2024.
Lorna Goulding
Ombudsman