DRN-5433952

The complaint

Mr H has a self-invested personal pension ("SIPP") with London & Colonial now called Pathlines Pensions UK Limited ("L&G"). Mr H thinks his pension was mismanaged by L&C as he wanted low risk UK based investments and has ended up with loss making high risk overseas investments. Mr H holds L&C responsible for his losses.

What happened

In October 2015 Mr H applied for a SIPP with L&C. Information recorded on the application form included:

- Mr H's financial adviser was Foreman Financial Services Ltd. (That firm used the name GraingerCo. I will refer to it by that name.)
- GraingerCo had given advice that *"takes account of the intended underlying investment strategy".*
- The chosen investment service was a stockbroker service to be provided by Beaufort Securities. (The SIPP application form included an option for an investment manager or discretionary fund manager. This part of the form was marked not applicable.)
- The SIPP arrangement had a role called 'Investment Trader' to act as Investment Trader on the SIPP and the underlying investments. GraingerCo was appointed Investment Trader.
- Mr H intended to transfer two personal pensions to the L&C SIPP. Their combined value was around £40,000.
- Mr H intended to retire at 65.

Mr H signed an application form for a dealing account with Beaufort Securities in October 2015 to be set up on an execution only basis rather than on an advisory or discretionary basis.

In October L&C, signing as the account holder, signed a third-party authorisation appointing GraingerCo as agent for the purposes of operating the Beaufort Securities account. There was an endorsement on the form that said it had been signed for and on behalf of L&C at the direction of Mr H. This authorisation meant GraingerCo could give instructions to Beaufort Securities to buy or sell investments in the account and Beaufort Securities was to accept and act on those instructions.

The provider of Mr H's existing pensions sent the funds (just over £42,000) to L&C in October 2015. And L&C sent just over £40,000 to Beaufort Securities in November 2015. In October 2016 a SIPP statement recorded the value of the Beaufort Securities portfolio at just under £40,000.

On 11 January 2017 Beaufort contacted L&C to say that following concerns identified by the FCA with its discretionary fund management (DFM) service it had agreed to cease its DFM service.

On 25 January 2017 L&C wrote to Mr H and said it was providing an update on recent developments that had arisen with his SIPP. It reported that it had heard from Beaufort Securities, who it said was Mr H's discretionary fund manager, saying it is to cease its DFM business. It asked Mr H for his instructions.

(It is not clear Beaufort Securities was in fact Mr H's discretionary fund manager given that it was not appointed as such when the account was set up in 2015 and GraingerCo was the Investment Trader for Mr H's SIPP with authority to give instructions on Mr H's Beaufort Securities account.)

In February 2017 Mr H signed instructions to Beaufort Securities to encash all his investments.

On 8 February 2017 L&C instructed Beaufort Securities to encash its account and return the proceeds to L&C. A SIPP statement in February 2018 shows a sale by Beaufort Securities raised just over £1,500. (It is not clear whether Beaufort continued to hold other securities that were illiquid and could not at that point be sold.)

In 2017 the Financial Conduct Authority took disciplinary action against Foreman Financial Services Limited as a result of its refusal to pay compensation to a consumer as required by a decision against it by the Financial Ombudsman Service. On 23 October 2017 the FCA cancelled GraingerCo's permission to carry on regulated activities.

On 7 September 2018 the Financial Services Compensation Scheme (FSCS) declared GraingerCo in default which meant that consumers could make claims to it if they thought they had been poorly advised by that firm.

On 1 March 2018 Beaufort Securities and a related company Beaufort Asset Clearing Services Limited went into administration. Under a distribution plan, client assets held by those companies were to be transferred to a third party nominated broker or return direct to the client. I have not seen details of the funds transferred to a third-party broker for Mr H. If either party has that information they should let me know when responding to this provisional decision.

In October 2108 L&C provided a SIPP account statement which showed some account charges. Mr H emailed L&C in November 2018 to say he was surprised that there were any charges since his investments were with Beaufort Securities and it had gone into Administration in March 2018. Mr H said he had been in direct contact with the administrators about the return of his investments. He asked L&C to do likewise – to return to him the money in his SIPP bank account and refund his charges since his SIPP only consisted of a bank account and bank accounts do not charge fees.

Mr H also said he had been contacted by third parties about pension miss-selling claims who had referred to L&C, GraingerCo and Beaufort Securities but he just wanted his money back from L&C.

On 10 September 2019 L&C replied to Mr H's complaint which it said it had received on 18 November 2018. It made several points including:

- L&C does not manage the investments in the SIPP.

- Mr H's SIPP is a member directed pension arrangement which means he is responsible for the investment in his SIPP and he appointed his financial adviser GraingerCo to advise him about that.
- Fees are charged by L&C for the administration of the SIPP, not the management of the investments, in accordance with agreed terms and conditions. However, as a gesture of goodwill L&C would suspend the fees from 2018 when the investments failed and so £238 would be refunded.
- L&C said it could not refund the adviser fees paid to GraingerCo as he had instructed.
- L&C said Mr H might be able to make a claim to the FSCS if he thought GraingerCo had caused him loss.
- L&C was happy to pay the money into the SIPP bank account or to another pension provider if Mr H wished but it could not pay the money to him direct as he had not yet reached the minimum pensionable age of 55.

Mr H has referred his complaint to the Financial Ombudsman Service, and he has said that he has not made a claim to the FSCS in respect of GraingerCo.

One of our investigators considered Mr H's complaint. She asked L&C about the checks it made on Beaufort Securities before allowing Mr H to invest through that business. L&C said it had made checks but provided evidence to show checks on a different business with a similar name. The investigator asked L&C to provide details of the checks made on the correct business and L&C did not answer.

The investigator therefore issued an opinion letter. The investigator thought L&C had failed to make appropriate checks on Beaufort Securities. She thought Beaufort Securities had a poor disciplinary record and that if L&C had made appropriate checks it would have chosen not to do business with that firm. She thought L&C was therefore responsible for any losses Mr H had suffered.

L&C does not agree with the investigator. Solicitors acting for L&C have made a number of points including:

- The investigator has suggested that the duties on L&C went beyond those required of a non-advisory SIPP operator.
- The investigator failed to take into account the nature of the non-advisory relationship between L&C and Mr H.
- The investigator did not explain what exactly L&C did wrong or how it caused Mr H any loss.
- Mr H's application was introduced to L&C by GraingerCo which was a regulated firm at the time. On the SIPP application form it was confirmed that that firm had advised Mr H and that its advice took into account the underlying investment strategy. Based on that advice Mr H selected an investment platform with Beaufort Securities with investment trading to be completed by GraingerCo.
- Mr H complained about the charges on his account and L&C agreed to suspend the fees on his account.
- The Financial Ombudsman Service considered Mr H's complaint on a basis that bears little resemblance to Mr H's original complaint.
- L&C's role as a non-advisory SIPP operator is very limited. L&C carried out appropriate checks and had appropriate procedures given its role.

- Even if L&C had made additional checks with Beaufort Securities it would not have told L&C if the investments being made were highly inappropriate and high risk or if, contrary to the agreement with L&C, it had no intention of complying with L&C's permitted investment list.
- Any loss Mr H has suffered was caused by GraingerCo and/or Beaufort Securities not L&C.

As the parties have not both agreed with the investigator, Mr H's complaint has been referred to me to determine. I am sorry for the length of time it has taken to reach this stage.

I issued a provisional decision on 25 February 2025. I explained why I thought Mr H's complaint should be upheld. I also explained what I thought L&C should do put things right.

Mr H agrees with my provisional decision but thinks that any compensation he is awarded should be paid to him direct rather into his pension.

L&C asked for more time to respond to my provisional decision. The agreed extended deadline for its response has now passed but I have not heard further from L&C.

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.

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

I have taken into account a number of considerations including:

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

The legal background:

As highlighted in the High Court decision in *Adams* the factual context is the starting point for

considering the obligations the parties were under. And in this case the contractual relationship between L&C and Mr J is a non-advisory, or execution only, relationship.

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

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

The case law:

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

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

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

The Principles for Businesses:

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

Principles 2, 3 and 6 are of particular relevance here. They provide:

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

I am satisfied that I am required to take the Principles into account (see *Berkeley Burke*) even though a breach of the Principles does not give rise to a claim for damages at law (see *Options*).

The regulatory publications and good industry practice:

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

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

The 2009 Report included:

> *"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…*
>
> *We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers."*

The Report also included:

> *"The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:*
>
> - *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*
> - *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
> - *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*
> - *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*
> - *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely…"*

The October 2013 finalised guidance for SIPP operators included the following:

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

- *Confirming, both initially and on an ongoing basis, that: introducers that advise clients are authorised and regulated by the FCA; that they have the appropriate permissions to give the advice they are providing; neither the firm, nor its approved persons are on the list of prohibited individuals or cancelled firms and have a clear disciplinary history; and that the firm does not appear on the FCA website listings for un-authorised business warnings.*
- *Having terms of business agreements that govern relationships and clarify the responsibilities of those introducers providing SIPP business to a firm.*
- *Understanding the nature of the introducers' work to establish the nature of the firm, what their business objectives are, the types of clients they deal with, the levels of business they conduct and expect to introduce, the types of investments they recommend and whether they use other SIPP operators. Being satisfied that they are appropriate to deal with.*
- *Being able to identify irregular investments, often indicated by unusually small or large transactions; or higher risk investments such as unquoted shares which may be illiquid. This would enable the firm to seek appropriate clarification, for example from the prospective member or their adviser, if it has any concerns…"*

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

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter are not formal guidance (whereas the 2013 finalised guidance is). However all of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account (as did the ombudsmen whose decisions were upheld by the courts in the *Berkeley Burke* and *Options* cases).

Points to note about the SIPP publications include:

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

Page v Financial Conduct Authority [2022] UKUT124 (UT)

The FCA prohibited five directors of financial advice firms from working in financial services and fined them over £1 million. The *Page v FCA* case is a lengthy judgment issued by the Upper Tribunal in which the five directors unsuccessfully challenged the FCA's decisions.

The Tribunal found those directors had failed to act with integrity having either acted dishonestly or recklessly. Each had been directors at failed financial advice firms who

provided unsuitable advice to customers causing them to place their pensions in high-risk investments in which a firm called Hennessy Jones had a significant financial interest. These customers had been referred to them by Hennessy Jones which was also involved in designing the pension advice process used by these firms.

I have referred to this case as it provides information about the way in which Hennessy Jones was operating in 2014-2015 in the period leading up to Mr H's SIPP application. This is relevant because Hennessy Jones is connected to the investment portfolios promoted by GraingerCo at the time of Mr H's SIPP application.

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

I am 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. I say this based on the overarching nature of the Principles (as is clear from the case law) and based on good industry practice notwithstanding the comments in the *Adams* case in the High Court relating to COBS 2.1.1R

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

It is my view, based on the Principles and good industry practice, that a non-advisory SIPP operator should have due diligence processes in place to check those who introduce business to them, and to check the investments they are asked to make on behalf of members or potential members. And L&C should have used the knowledge it gained from its due diligence checks to decide whether to accept or reject a referral of business or a particular investment.

I am also satisfied, based on the Principles and good industry practice, that SIPP operators should understand the nature of the investments made for their members when the investments are made via a platform and that good industry practice included:

- processes or procedures such as permitted investment lists
- arrangements in place with platform providers to require them to make only permitted investments
- processes to ensure compliance with those arrangements.

L&C's position in broad terms:

In broad terms L&C's position is:

- Its due diligence processes (which included checks on GraingerCo and Beaufort Securities and an approved investment list process) were carried out and were appropriate for its role as non-advisory SIPP operator.
- Its due diligence processes did not reveal any cause for concern at the time.
- It was not reasonably required to do more, but any further checks would not have revealed anything untoward.
- L&C did not cause the losses Mr H has suffered. It is unfair to require L&C to compensate Mr H for the losses others have caused him.

Mr H's position in broad terms:

It is clear Mr H feels let down by L&C. Although his dissatisfaction arose out of L&C charging him fees after Beaufort Securities had gone into administration it is also the case that he thinks his SIPP was mismanaged by L&C. I do not think Mr H meant manage in the more technical sense of investment management. Rather, Mr H thinks that if L&C had done its job as it should he would not have suffered the problems with his pension he has suffered.

My view about what happened in Mr H's case:

My view, based on the information provided by the parties in this case which includes copies of GraingerCo portfolio factsheets, but also based on information seen in other complaints about L&C made by other clients of GraingerCo, is that the following is the most likely sequence of events in this case:

- Mr H was contacted by a third party who introduced him to GraingerCo.
- GraingerCo recommended Mr H switch his existing pensions to L&C in order to make better investment returns in investments GraingerCo would recommend.
- GraingerCo then arranged the investments.

It is not clear whether GraingerCo recommended investments to Mr H and then obtained his instructions to invest in accordance with that recommendation, or if it just made the investment on a discretionary basis. It is the case that the Investment Trader status with L&C and the agency agreement with Beaufort Securities meant that GraingerCo could manage Mr H's investments on a discretionary basis in practice despite not having regulatory permission to do so.

Despite this possibility I will assume that GraingerCo acted in accordance with its regulatory permissions and did advise Mr H in relation to the investments before making them.

It is my view that the investment GraingerCo recommended was one of its three GraingerCo portfolios held with Beaufort Securities and that Mr H invested in one of those portfolios accordingly. I think this more likely than Beaufort Securities acting as a discretionary investment manager since that is not the basis on which the account was set up. But if I am wrong about that, it was nevertheless the case that the SIPP application was introduced by GraingerCo to L&C at a time when it (GraingerCo) was promoting those portfolios and the SIPP and Beaufort Securities account was originally supposed to be set up on a basis on which GraingerCo could have invested in one of the portfolios.

L&C's due diligence processes:

L&C has said in relation to Beaufort Securities, although it initially provided information relating to a firm with a similar name, it did make checks on the correct firm and it provided information to show it had done so. Its due diligence checks included checking the regulatory status of Beaufort Securities, including its disciplinary record, and checks at Companies House.

L&C entered into an agreement with Beaufort Securities in early 2015 that included:

> "[L&C] *shall have the overriding right to veto transactions which in its opinion would conflict with the requirements of Her Majesty's Revenue and Customs or the Financial Conduct Authority."*

> "[Beaufort Securities] *undertake to ensure that all assets purchased on behalf of* [L&C] *fall within the list of permitted investments which has been provided by* [L&C]."

The agreement also recorded that Beaufort Securities provided a read only online portal for account information but, as L&C was required to make quarterly reports of certain data to the FCA, Beaufort Securities would provide quarterly valuations providing details of each holding.

L&C did not in practice have any process in place for monitoring the investments made by or through Beaufort Securities. Its position is that having satisfied itself that Beaufort Securities was an authorised and regulated firm that had agreed to comply with the permitted list it could reasonably expect it to act accordingly.

In relation to GraingerCo, L&C made checks on the regulatory status and permissions of the firm in 2010 and from time to time thereafter. It also made checks on the directors of GraingerCo.

L&C also entered into an introducer agreement with GraingerCo in 2010 which continued until GraingerCo lost its authorisation in 2017.

I note that agreement included the following:

> *"We shall refuse to accept business from you if you cease to be authorised, and we reserve the right at any time, whether or not you continue to be Authorised, to cease to accept Business from you, or to refuse any particular business from you without giving reason."*

The 2010 version of the agreement provided by L&C does not refer to a permitted list of investments. It may be that that requirement was introduced later when the FCA introduced new requirements for the reserves SIPP operators were required to make depending on whether an investment was a standard or a non-standard investment.

L&C has provided a copy of its standard Intermediary Terms and Conditions document from April 2014 which does include a requirement on any intermediary appointed as an Account Trader to invest only in permitted list investments.

We asked L&C the following question:

> *"From the total number of clients introduced to you by the introducer, what % of the applications were to be invested in non-mainstream investments?"*

In reply, L&C said:

> *"0%, all investors invested in overseas commercial properties."*

I am aware of other GraingerCo complaints against L&C who invested in GraingerCo portfolios or other investment through Beaufort Securities so that 0% figure cannot be right, but I take the point that most GraingerCo introduced clients invested in overseas commercial properties.

L&C has said it did not make checks on GraingerCo's business model either when it started its relationship with GraingerCo or during that relationship. In effect it says that having checked that GraingerCo was an authorised and regulated firm it could reasonably expect GraingerCo to act appropriately.

L&C did not have a policy of asking to see copies of suitability reports from advisers such as GraingerCo who introduced business to it.

A further look at the parties involved in this case:

Beaufort Securities:

This firm was formerly known as Hoodless Brennan & Partners Plc. In 2000 the FSA fined that firm. It found that the firm had acted with a lack of integrity in relation to a share placing.

In 2003 the then CEO of Hoodless Brennan had his approval to perform controlled functions withdrawn after the regulator decided he was not a fit and proper person to perform a controlled function. The Chairman of Hoodless Brennan was also found to have made misjudgements but his approval was not withdrawn.

In 2006 Hoodless Brennan was fined again by the regulator. The FSA said there were weaknesses in its selling practices relating to the sale of AIM stock to advisory customers who might not understand the risks involved in investing in smaller companies.

It is fair to say that a number of other small stockbroking firms were also fined for poor selling practices at around that time. And it should be noted that despite the above matters Hoodless Brennan did not have its authorisation withdrawn by the regulator.

Hoodless Brennan changed its name a number of times over the years and in 2013 it became Beaufort Securities.

L&C has provided evidence to show in January 2015 L&C entered an agreement with Beaufort Securities relating to the investment of funds in connection with the L&C Simple SIPP.

Beaufort Securities acknowledged that L&C held funds for members, that the investment strategy was to be agreed with the members and that L&C would have the right to veto transactions which in its opinion would conflict with the requirements of HMRC or the FCA. It is now known that the FCA investigated the conduct of Beaufort Securities or more particularly one of its investment managers I will call SS, in 2016. That investigation led to the publication of a Final Decision Notice of 24 July 2024.

The FCA investigation and Final Decision relate to the period from 1 January 2015 to 12 April 2016 – so it considered events that were occurring at around the time of Mr H's SIPP application.

The Final Decision notice includes the following:

> *"2.2 Beaufort Securities Limited ("BSL") was a small to medium retail advisory stockbroker that was authorised by the Authority to conduct regulated activities. In March 2014, BSL launched a white-label* [SIPP] *named the Beaufort SIPP ("Beaufort SIPP"). On 28 January 2015, BSL was granted permission by the Authority to conduct the regulated activity of 'managing investments'. From that date, BSL's business model changed significantly with a new focus on carrying out discretionary fund management for pension trustees when underlying pension holders were retail clients."*

Although Beaufort Securities had launched the Beaufort SIPP it did not provide services only to holders of that SIPP.

In 2024 the FCA fined two financial advisers and SS in relation to their participation in the Scheme referred to in the decision. The Scheme involved an unregulated introducer identifying companies which were seeking to raise capital and contacting them with the promise of receiving significant capital through Beaufort Securities DFM Service. The investment companies issued bonds or shares which were nearly all high-risk products of limited liquidity. In return, the investment companies were to make substantial payments by way of marketing fees, marketing allowances, introducer fees, commission and other offers which would be distributed between the participants in the Scheme. Incentivised by those marketing fees, the IFAs involved in the scheme would advise pension holders, who had been contacted by Introducers involved in the Scheme, to transfer or switch existing pensions to the Beaufort SIPP.

Some introducers involved in the scheme would seek to:

- influence the advice of the IFAs and SS's investment management decisions
- direct SS in relation to the investment of pension holders' funds into specific investments and
- direct the IFAs to act as their agent.

To be clear, I do not say that L&C would or should have been aware of the FCA investigation into Beaufort Securities at the time of Mr H's SIPP application. Or that it should have been aware of the Scheme referred to in the decision. The above does however show how it is possible for introducers to be paid for introducing business and how that financial interest can lead to inappropriate investments that are not in the interests of the consumer.

So far as I am aware Hoodless Brennan/Beaufort Securities has always been active in the "small cap" area of the market – that is smaller capitalised companies often seeking capital from investors (rather than predominantly the trading of main market shares after the shares have been issued). Such investments are generally considered higher risk and are not generally suitable for most ordinary retail investors.

My view in relation to Beaufort Securities in this case:

I have mentioned above that the investigator considered that Beaufort Securities had a poor disciplinary record and that L&C had failed to make checks upon it. In response L&C has made a number of points, including:

- It did make checks on Beaufort Securities – sending records of searches relating to a firm with a similar name was an error. While L&C did have those records it has also provided documents to show it made checks on the correct business.
- Beaufort Securities was authorised to carry on regulated business. In saying L&C should not have done business with Beaufort Securities we are saying the regulator was wrong in not banning that firm.
- Any causal connection between L&C and Beaufort Securities and Mr H's losses has not been explained.

On the first point I accept that L&C made some checks and had some relevant processes in place with Beaufort Securities. I make no comment at this point about whether those checks and/or processes were adequate.

On the second, I do not say that Beaufort Securities disciplinary record was necessarily an automatic bar on doing business with Beaufort Securities. The point is that its record and

reputation are things L&C should have taken into account when deciding whether to do business with Beaufort Securities.

All I say at this point is that there are many different stockbrokers and/or platform providers that could be used to provide a SIPP client with an execution only dealing account. It is not obvious why a reasonable IFA acting reasonably would have recommended Beaufort Securities in preference to any other firm. There might be good reason, perhaps if the clients had a particular interest in a sector of the market Beaufort Securities claimed to have particular expertise. But it was at least a possibility that the reasons for selecting Beaufort Securities might not be good, and that Beaufort Securities might be doing things, or permitting things that other firms were not. And so a SIPP provider could reasonably have wondered about this in any investment proposal that was made to it.

On the third point I should say that I do not agree with the investigator who has concentrated on Beaufort Securities without really dealing with its role in this matter. Beaufort Securities was supposed to be the provider of an execution only dealing account. GraingerCo, not Beaufort Securities, was supposed to choose the investments.

It is possible Beaufort Securities may not have made adequate checks on the investments made on its platform but that is a different matter, and I can only consider the complaint that has been made about L&C. In my view that complaint does cover checks made by L&C in relation to GraingerCo and its portfolios, and I consider those points next.

GraingerCo:

GraingerCo first became an introducer of business to L&C in 2010. L&C made checks on that firm at the time which included checking the firm was regulated and making checks on the directors of that firm. L&C has provided evidence of those checks and other documents such as the intermediary agreement it entered with GraingerCo in 2010.

As well as making checks on GraingerCo in 2010, L&C has said it made further checks from time to time. L&C has provided a copy of a print-out of a check made in 2013 on the FCA register on that firm and of credit checks made on the directors in 2013.

In 2013 the checks made by L&C showed GraingerCo was an authorised financial adviser firm. I note that at that time the firm had permission to give investment advice and to arrange deals in investments.

I also note that GraingerCo did not have permission to manage investments. And that the Account Trader arrangement and the agency agreement relating to the Beaufort Securities account meant that in practice GraingerCo could in fact manage investments for Mr H.

However documents provided by L&C as part of evidence of checks made on GraingerCo include the following:

- Fact Sheet for GraingerCo Cautious Portfolio
- Fact Sheet for GraingerCo Moderate Portfolio
- Fact Sheet for GraingerCo Adventurous Portfolio

I do not know when these portfolios were first launched. None of the factsheets are dated. But judging by when the Bonds in those portfolios were issued and tying in with L&C's comment about most GraingerCo clients investing in overseas property, it is likely the portfolios were launched in 2015 shortly before client L&C has said was number 197 made

their application in June 2015 And from what L&C says, this seems to have been a departure from what L&C understood to be GraingerCo's usual type of investment.

The GraingerCo Portfolios:

Looking at the GraingerCo portfolios, each factsheet is very similar. Each is clearly styled as a GraingerCo document. Each begins with an un-headed introduction, then four headed sections and a pie chart headed Investment Sector Exposure.

The un-headed introduction says the following on each factsheet:

> *"A mixed portfolio of listed corporate bonds developed for investors with a desire to invest in non-corelated assets within their portfolio. Each bond offering exposure to a different market sector and benefitting from fixed returns and capital protection."*

This is followed by the following on each factsheet:

> *"Capital Protection*
>
> *The bonds benefit from being asset backed as they have tangible assets securing their value held by the bond trustee in favour of the bond holders. As additional capital protection, a loss provision mechanism has been built in that provides additional capital in the event of loss. This is similar in construct to an insurance premium and the amount is determined by an actuarial report that determines the worst case loss scenario and the number of expected yeas before such an event based on the underlying asset class."*

Next is a heading 'accessing your fund'. The same text is included in the cautious and moderate portfolios, with the final sentence omitted from the Adventurous Portfolio:

> *"Accessing your funds*
>
> *The bonds are listed on the CSE Exchange and there is no restriction on resale. If you wish to sell the bonds then Beaufort Securities (FCA 155104) have been appointed as broker and will perform this function on your behalf. The portfolio also benefits from the inclusion of a 'cash equivalent' bond that is redeemable daily and as such provides immediate liquidity within the portfolio where necessary."*

The next section is headed investments and is different for each fund, but although different they are very similar so I will set out the investments in table form side by side so the similarities can be easily seen. I have added the proportion in which the bond was to be held in each portfolio from the pie chart on each factsheet.

GraingerCo Cautious Portfolio	GraingerCo Moderate Portfolio	GraingerCo Adventurous Portfolio
Ballarat Property PLC 5.5% 2025 Bonds (15 %)	Ballarat Property PLC 5.5% 2025 Bonds (30%)	Ballarat Property PLC 5.5% 2025 Bonds (35%)
Apollo Commercial Property PLC 5% 2025 Bonds (50%)	Apollo Commercial Property PLC 5% 2025 Bonds (40%)	Apollo Commercial Property PLC 5% 2025 Bonds (35%)
HJ SME PLC 8%	HJ SME PLC 8%	HJ SME PLC 8%

2024 Bonds (15%)	2024 Bonds (25%)	2024 Bonds (30%)
HJ Liquid Assets PLC 3% 2024 Bonds (15%)	HJ Liquid Assets PLC 3% 2024 Bonds (5%)	

The stated return on each portfolio was:

- Cautious portfolio: 5.25% fixed
- Moderate portfolio: 5.8% fixed
- Adventurous portfolio: 6.1% fixed.

A number of things strike me straight away from only a brief look at these factsheets:

- The very small number of holdings in each portfolio – they hardly seem to merit the use of the word portfolio. The idea of a portfolio is to seek to reduce specific risk through diversification. A portfolio with only four or three holdings seems questionable.
- Two portfolios have two funds from the same investment house. This again works against the generally accepted idea of spreading risk.
- The difference in return between a cautious, moderate and adventurous portfolio seems implausibly narrow. This gives the impression that something, somewhere, may not be right.
- The documents say nothing about charges or fees.
- The documents contain no risk warnings.
- The documents do not say they have been approved by a regulated firm.
- The documents say bonds are listed on the CSE without saying what that means. Why is that? At first sight, without further checking, it is likely to mean the Cyprus Stock Exchange. Why was the document seemingly reluctant to make that clear.
- Bearing in mind the lack of diversity, the cautious portfolio and the moderate portfolio are unlikely to be suitable for low or medium risk retail investors if– and that point is not clear from the factsheets alone – they are intended for low and medium risk investors respectively.

So an initial first look raises some concerns. What about a closer look?

The Ballarat Property Bond was first issued on 1 May 2015 and had applied for listing on the Emerging Companies Market of the Cyprus Stock Exchange with listing from 18 August 2015.

The same was the case for the Apollo Commercial Property PLC Bond.

The HJ SME Bond was first issued on 8 August 2014 and it was to be listed on the Emerging Company Market of the Cyprus Stock Exchange from 14 August 2015.

And the HJ SME Liquid Assets Bond was first issued on 17 February 2015. It was to be listed on the Emerging Companies Market of the Cyprus Stock Exchange.

It is possible the HJ Bond, which were issued earlier, had been listed on the CXG Market in Denmark before it closed down in 2015.

So it's not clear all four bonds were listed in June 2015 (or thereabouts) at the time of L&C's fist GraingerCo applications involving such portfolios. But, as I understand it, all four Bonds had information memorandum documents that said the bonds intended to list.

I have not seen the information memoranda documents but I assume they all said the intention was either to list on the CXG market or the Emerging Companies Market of the Cyprus Stock Exchange. Both markets are intended for smaller emerging companies and involve lighter touch regulation. The failure rates of such smaller companies tends to be higher than for larger established business and investment in these market are generally considered higher risk and are not generally suitable for most retail investors. That does not mean they can never be appropriate for a SIPP investment, but it is a point to weigh up with all others when considering the GraingerCo portfolios.

Next, a search at Companies House would show that Ballarat Properties was a new company formed in early 2015 and its director was a man I will call MJS. It became a PLC in April 2015 and a man I will call JKK also became a director.

Apollo Commercial Property was also a new company formed in 2015. Its director was also MJS. JKK became a director in June 2015.

HJ SME was formed in 2014. MJS and JKK were directors from formation.

HJ Liquid Assets was also formed in 2014. Its directors from 2014 were also MJS and JKK. This information could be discovered very quickly and factsheets that look questionable now look suspicious. There is nothing on them to say that the four bonds involve companies with the same directors.

A search at Companies House would also have revealed (if the point was not already known) that directors of those four companies MJS and JKK were directors of a company called Hennessy Jones Limited. And that company was active in the world of SIPPs from 2013 or 2014, certainly before Mr H's application was made to L&C.

Hennessy Jones:

Hennessy Jones is listed on the FCA register. It is shown as having been an appointed representative introducer firm for Henderson Carter Associates Limited between December 2013 and 20 March 2015 and Financial Page Limited between September 2014 and July 2015.

The activities of Hennessy Jones were discussed in a lengthy decision by the Upper Tribunal involving the two IFA firms mentioned above and one other (*Page v Financial Conduct Authority* [2022] UKUT 124 (TCC)).

A number of points can be seen from that decision which I set out below to show the existence of those matters in 2015 not because I say L&C should have been aware of that decision in 2015 or of the FCA investigation into the matters covered by that decision which seem to have started before Mr H's application to L&C in October 2015. The decision does however set out behaviours that were occurring in the SIPP industry in 2014 and 2015 as a general point and behaviours involving people connected to investments in the GraingerCo Portfolios specifically.

The Upper Tribunal decision includes the following by way of background:

> *"4. The subject matter of the references is the conduct of the Applicants in respect of a business model which each of the Firms adopted and used. The Authority contends*

that each of the Firms adopted a business model which was designed by a third party which had not been authorised by the Authority to carry out regulated activities, namely Hennessy Jones Limited ("HJL"). The Authority says the model was designed by HJL to result in customers introduced to the Firms through HJL investing their pensions in high-risk products in which HJL had a significant financial interest…

6. Potential customers holding one or more personal pensions were contacted by marketing companies used by HJL and offered a free pension review showing their current pension projections and what an alternative arrangement might look like if invested in a self–invested pension plan ("SIPP") in an unspecified product selected by HJL and introduced to the relevant Firm.

…(2) The Pension Review and Advice Process was structured so as to result in customers who met predetermined criteria established through the process being recommended to switch their pensions to a SIPP provided by Guinness Mahon (for HCA, FPL and latterly BHIM) or Avalon (for BHIM initially) with the underlying investment in high-risk investments. Those investments were either Loan Notes issued by one of the protected cells of AIGO Holdings PCC, a protected cell company incorporated in Mauritius ("AIGO"), or Bonds issued by one of a number of UK incorporated companies promoted by HJL, namely HJ Residential plc, HJ Commercial plc, HJ SME plc and HJ Liquid Assets plc.

(3) HJL had a material financial interest in the Loan Notes and Bonds which was not disclosed to customers…"

The decision also included the following:

"199. The first issue of Bonds took place in October 2014. There were three separate issues, each of which was made by a separate company, namely HJ Residential plc, HJ Commercial plc and HJ SME plc. Each of these companies (an "Issuer") was incorporated in England and Wales and registered as a public limited company, and made an initial offer of up to £4 million of nominal value of Bonds at par. Each of these issues was described in a separate Information Memorandum for each Issuer, all dated 1 October 2014…

201. Subsequently, on 17 February 2015, up to £3.7 million Bonds were offered by HJ Liquid Assets plc, which was also incorporated in England and Wales and registered as a public limited company. These Bonds were also offered at par. There is an Information Memorandum for this issue dated 17 February 2015.

202. Each Issuer was wholly owned by [MJS] and had £50,000 in equity capital (a quarter of which was paid up). [MJS] and [JKK] were named as the two executive directors for each Issuer, being described as having "substantial expertise" in either "the UK residential property market", "the commercial property market", "the corporate and business environment" or the "financial markets" depending on the Issuer concerned.

203. The Information Memoranda contain extensive risk warnings. The offer document states clearly on the first page that "an investment in the Company involves a high degree of risk". Each Information Memorandum also contains a declaration on the application form in which investors confirm that they understand it to be a high risk investment and that they are seeking a high risk profile for this part of their investment strategy. In the body of the Information Memorandum prospective investors are warned that "an investment … is only suitable for investors capable of evaluating the risks and merits of such investment and who have sufficient resources

to bear any loss which may result from the investment". Warnings are given as to the likely illiquidity of the Bonds; that each Issuer was newly established and so its business strategy was unproven; that the expected economic performance of the investments may not occur; and that the value of each Issuer's assets may not exceed its liabilities at any particular time.

204. Summary information memoranda were also produced for each issue of Bonds which contained information about the features of bonds in general, a summary of the terms of the Bonds, details of each Issuer's strategy and a summary of risk factors but did not contain any information about fees. In addition, two page Fact Sheets were produced which contained no information about risk or disclosure of fees.

205. Each Information Memorandum was a financial promotion pursuant to s 21 FSMA but was capable of being lawfully distributed in the UK on the basis that it was stated in the document that it had been issued by Alfred Henry Corporate Finance Limited, a firm authorised and regulated by the Authority.

206. At the time of issuance of the Bonds, it was the intention to apply for them to be listed on GXG Main Quote Market, a Danish exchange similar to the UK Alternative Investment Market. The Information Memoranda stated that GXG Main Quote did not have the status of an EU regulated market. The Information Memoranda also all warned that the Bonds were not yet listed and that, prior to this, it may be difficult to sell them. Further, even with a listing, investors were warned that there may not be a liquid market in the Bonds and investors should regard their investment as of an illiquid nature. There was no evidence that at any time there was an active secondary market in the Bonds.

207. It is unclear when the Bonds were listed on GXG Main Quote, but subsequently GXG Main Quote was closed down and, on 28 September 2015, the Bonds were instead listed on the Cyprus Stock Exchange Emerging Companies Market. We had no evidence that the Bonds were ever traded on that market…

The Fact Sheets

225. As was the case with the Loan Notes, when customers of the Firms were recommended to invest in the Bonds, they were recommended to do so on the basis of investing in one of three portfolios. Those Portfolios were named the HJ Cautious portfolio, the HJ Moderate Portfolio and the HJ Adventurous Portfolio. Later versions were branded BHIM rather than HJ. As with the Loan Notes, those Portfolios consisted of what was described as a "carefully selected blend of investments" made up of a mixture of Bonds from the various Issuers.

226. There was a prominent heading in the Fact Sheets of "Capital Protection" under which there was text to the effect that the Bonds benefited from being asset-backed as they had tangible assets securing their value held by the bond trustee and that as additional protection, a loss provision mechanism had been built in that provided additional capital in the event of loss. This was described as being similar in construct to an insurance premium.

227. It was also stated that the Bonds were listed on GXG Main Quote and that there was no restriction on resale. Beaufort Securities had been appointed as broker and it was stated that if the investor wished to sell the Bonds, then Beaufort Securities would perform this function on the investor's behalf."

There are a number of similarities between the above and GraingerCo portfolios notwithstanding the fact that GraingerCo was not one of the three adviser firms involved in that case. For example:

- Investment in all the same bonds.
- The investment in those bonds in portfolios promoted by an IFA firm.
- The portfolio being part of a collection of portfolios referred to as cautious, moderate, and adventurous rather than, say, low, medium and high risk.
- Almost identical wording in the factsheets used to promote the portfolios.
- Seemingly, the use of an introducer to cold call the consumer to start the process that led to the investment in the bonds.

As already mentioned, I do not say that L&C should have known about the contents of a court decision that was not made until 2022 when it considered Mr H's application for a SIPP. I do however say that in 2015 L&C could have discovered the connection between the Bonds in the GraingerCo portfolios and MKS and JKK and therefore the connection to Hennessy Jones. And that L&C is likely to have been aware that Hennessy Jones was active in the SIPP market. Hennessy Jones may not have been an introducer of business to L&C but it seems likely that L&C will have heard of Hennessy Jones in 2015 when it was so active in schemes promoting investments it or its directors had an interest in which included the four Bonds in the GraingerCo Portfolios.

If L&C had not already heard of heard of Hennessy Jones at the time of Mr H's application, it could and should reasonably have noticed and been concerned by the involvement of the same directors involvement all of the GraingerCo portfolio investments when that fact had not been openly disclosed.

My view about the checks made by L&C on GraingerCo and the GraingerCo portfolios:

In my view in accordance with the Principles and good industry practice L&C should reasonably have found out about GraingerCo's business model and made checks on GraingerCo from time to time.

And in my view in accordance with the Principles and good industry practice L&C should have made checks on the investments made by the clients introduced by GraingerCo. L&C had a permitted investment list process under which those it dealt with were required to agree to only make investment of the types on its permitted list.

Such a process is reasonable in principle but to ensure its effectiveness L&C should have monitored the investments made by or on behalf of its members. L&C did not consider this necessary because it only dealt with regulated businesses. It may have been reasonable to only deal with regulated businesses and to take some comfort from that regulated status but it was not reasonable to think that was enough. Regulated firms do sometimes fail to act appropriately.

And L&C will have been aware that some consumers have, in relation to their pensions, been taken advantage of both in the sense of being given poor advice and in the sense of being scammed or defrauded. When either happens the consequences for consumers can be extremely serious. Plans for long term financial security can be completely ruined.

L&C will have known in 2015 that regulated as well as unregulated businesses have been involved in cases where consumers have been caused considerable detriment in this way.

L&C knew, or should reasonably have known, that dealing with regulated firms, was not a guarantee against problems. The point is an obvious one. Most years there are reports of the regulator fining regulated firms for conduct that has caused harm to their clients.

Accordingly, bearing in mind the Principles and good industry practice, L&C should reasonably have monitored the investments made by or for its members to ensure that its requirements were met.

What should have happened?

If L&C had kept itself up to date with its introducer's developing business model it should reasonably have been aware of the GraingerCo portfolios before its first client invested in one. It should reasonably have been aware because regular contact with its introducer and/or because it should reasonably have noticed a change in the business GraingerCo referred to it when it changed from exclusively overseas commercial property-based investment to some other investment that involved a platform with a stockbroker – in this case with Beaufort Securities.

It is therefore my view that acting in accordance with the Principles and good industry practice as a non-advisory SIPP operator L&C should have become aware of the GraingerCo portfolios before Mr H's SIPP application was received or when it was received the first GraingerCo portfolio case (which I understand was before Mr H's application) or when it received Mr H's application at the latest and before it was processed and the investment made.

GraingerCo clearly regarded its portfolios as legitimate investment portfolios and there is no reason to think that GraingerCo would have refused to disclose the existence of its new portfolios when launched or provide information about them if asked.

It is my view that L&C should therefore have discovered before Mr H's application was received that GraingerCo was planning to offer its clients its portfolios and that promotion of the portfolios would involve the factsheets which L&C had obtained. It is my view that, for the reasons I have set out above, L&C should have had serious concerns about the GraingerCo portfolios based on the factsheets and the information both disclosed and not disclosed in them and on the further enquiries they should reasonably have led to.

L&C should have found it a matter of serious concern that the GraingerCo portfolios were seemingly to be promoted to pension investors as being at cautious and moderate risk levels. And that they involved such highly concentrated portfolios involving investments all of which had an undisclosed connection with each other. L&C should either have found this suspicious and a concern about what might be happening and concerned that it was likely to involve detriment to its potential members. Or L&C should have understood what was (or what was likely to be) going on including the likely involvement of Hennessy Jones, and it should have been concerned that there was indeed a strong likelihood that consumers were not being treated fairly and it was indeed likely to lead to consumer detriment.

In either event L&C should have been concerned about GraingerCo's motives, and about its competence and/or integrity. And L&C should reasonably, acting in accordance with the Principles and good industry practice, have decided it was no longer prepared to accept business from GraingerCo. It should have reached that decision before it received Mr H's application.

L&C might say that if it hadn't accepted business from GraingerCo it would have gone elsewhere and that Mr H's pension switch and investments would still have been effected

with a different SIPP provider. I don't think it's fair and reasonable to say that L&C should not compensate Mr H 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 business from GraingerCo when its business model included promoting the GraingerCo portfolios.

If GraingerCo had not been able to arrange investments in its GraingerCo portfolios it is unlikely it or its introducer would have contacted Mr H or that he would otherwise have sought out pension advice. But even if he had it's very unlikely that advice from a different advisory business would have resulted in Mr H taking the same course of action. If L&C had declined business from GraingerCo and Mr H had then sought advice from a different adviser, I think it's unlikely that another adviser, acting reasonably, would have advised Mr H to switch his existing pensions to a SIPP and make the investments that Mr H actually made. Rather, I think it's fair and reasonable to conclude a different advisory business would have complied with its obligations and given suitable advice.

Is it fair to require L&C to compensate Mr H?

L&C considers that Mr H's losses were caused by GraingerCo and/or Beaufort Securities. It does not consider that it should be found responsible.

It is my view that L&C's conduct was one of the causes of the loss Mr H has suffered. I am satisfied that the transaction would not have proceeded as it did if L&C had not accepted Mr H's application. While I accept that GraingerCo is responsible for initiating the course of action that led to Mr H's loss, I consider that L&C failed unreasonably to put a stop to that course of action when it had the opportunity and obligation to do so. I am, accordingly, satisfied that if L&C had complied with its own distinct regulatory obligations as a non-advisory SIPP operator, Mr H would not have transferred his pensions to L&C and made the investments he made in the SIPP and the loss Mr H has suffered would have been avoided.

The DISP rules set out that when an ombudsman's determination includes a money award, 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 (DISP3.7.2R).

I consider it is 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 H fairly.

It is my view that it is appropriate and fair in the circumstances for L&C to compensate Mr H for the full extent of the financial loss he has suffered due to its failings.

Distress and inconvenience:

As a result of L&C's errors Mr H suffered considerable worry and frustration in relation to his pension. While Mr H still had some time until his planned retirement age when the investment failed, the loss of his pension fund will still have been a great worry to him. It is my view that L&C should pay Mr H £500 for the distress and in convenience it has caused Mr H accordingly.

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. My aim in awarding fair compensation is to put Mr H 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 *most likely* that Mr H would have remained a member of the pension plans he transferred into the SIPP. And as Mr H has not yet reached his intended retirement age (as recorded on the SIPP application form) it is likely he would still have his existing pensions.

So I think the way L&C should put things right is to, in effect, reinstate Mr H into the position of having a pension with the value the transferred pensions would have had if he had not moved them to L&C. I know Mr H thinks the compensation should be paid to him personally but his holding a cash lump sum now, in 2025, is not the position he would have been in if things had not gone wrong in 2015. The money would be in his pension and subject to the advantages and disadvantages it would be subject to in that form. I therefore think that we should at least aim to recreate that position. So that is the starting point for the way I think things should be put right, although I also acknowledge that might not be achievable in which case a payment to Mr H direct may have to be made, as I will go on to explain.

I have assumed that Mr H's investments in his SIPP have completely failed with no value and are not merely illiquid.

L&C should:

- Obtain the notional transfer values of Mr H's previous pensions.
- Obtain the actual transfer value of Mr H's SIPP, including any outstanding charges.
- Pay an amount into Mr H's SIPP so as to increase the transfer value to equal the notional value established. This payment should take account of any available tax relief and the effect of charges.
- If Mr H has paid any fees or charges from funds outside of his pension arrangements, L&C should also refund these to Mr H. 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 H £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.

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

L&C should first contact the provider of the pensions which were transferred into the SIPP and ask it to provide notional values for the pensions as at the date of my final decision. For the purposes of the notional calculation the provider should be told to assume no monies would've been transferred away from the pension, 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 H has made 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 experienced is allowed for.

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 experienced a return in line with the FTSE UK Private Investors Income Total Return Index. That is a reasonable proxy for the type of return that could have been achieved over the period in question.

The notional value of Mr H's existing pensions if monies hadn't been transferred (established in line with the above) less the current value of the SIPP is Mr H's loss.

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

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid direct to Mr H 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. A deduction equivalent to Mr H's tax rate presumed to be 20% may be made. So, making a notional deduction of 15% overall from the loss adequately reflects this.

SIPP fees:

Although I have said I assume the investments have failed rather than merely illiquid, if that is wrong and if the investments can't be removed from the SIPP, and because of this it can't be closed after compensation has been paid, then it wouldn't be fair for Mr H to have to continue to pay annual SIPP fees to keep the SIPP open. So, if the SIPP needs to be kept open only because of the illiquid investment/s and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

Interest:

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

Calculations:

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 April 2025.

Philip Roberts
Ombudsman