DRN-5529956

The complaint

Mr P has a self-invested personal pension (SIPP) with London & Colonial Services Limited, now called Pathlines Pensions UK Limited ("L&C"). Mr P invested in unlisted shares in his SIPP. Mr P thinks L&C did not make adequate checks before allowing the investment which has since failed causing him loss.

What happened

Mr P says in 2010 he was contacted by a firm of financial advisers I will call the IFA.

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

On the advice of the IFA, Mr P opened a SIPP with L&C and transferred existing pensions to it in order to invest in shares in the investment company. Just over £100,000 was transferred into the SIPP and Mr P invested over £90,000 in the shares in November 2010. Mr P invested a further approximately £5,000 in September 2011 and almost £3,000 in November 2012 in the same shares.

The IFA failed in September 2017 and was declared in default by the Financial Services Compensation Scheme ("FSCS").

In February 2018 the investment company went into administration, and into liquidation in January 2020. The shares are now worthless.

In March 2018 Mr P made a complaint to L&C about L&C accepting the investment as an approved asset for the SIPP and for failing to remove it and replace it with something more appropriate.

L&C failed to log that complaint correctly and did not respond to it as it should have done.
In mid-2019 Mr P withdrew the remaining funds of around £3,000 from his SIPP.
Mr P made acclaim to the FSCS in respect of the advice from the IFA. In March 2019 it calculated Mr P's loss was just over £170,000. The FSCS paid Mr P £50,000 which was its maximum permitted award.

As part of the settlement with the FSCS, Mr P agreed to assign to the FSCS his right to make claims to third parties about matters relating to his pension. The FSCS reassigned to Mr P his right to make a complaint to L&C about his SIPP in February 2023.

In April 2023 solicitors acting for Mr P made a complaint to L&C. They said L&C had breached duties in a number of ways and should not have allowed the investment made in Mr P's SIPP. They said L&C was therefore responsible for the losses he had suffered.

L&C responded to the complaint in May 2023. It did not uphold Mr P's complaint. It acknowledged that it had failed to answer Mr P's complaint in 2018 but said that notwithstanding that point the complaint had now been made too late.

Mr P's solicitors referred his complaint to the Financial Ombudsman Service in June 2023.

One of our investigators explained why he did not think the complaint had been made too late and asked L&C to provide information so we could consider the complaint. One of our investigators considered the information provided. He thought L&C had been at fault and that it should take steps to put things right.

L&C's solicitors responded to the points made by the investigator. They did not agree with him. They made a number of points including:

- Mr P applied for a SIPP in September 2010. The application recorded that Mr P's financial adviser was the IFA.

- Mr P has made two similar complaints – the present complaint and a complaint in March 2018. L&C did not respond to the 2018 complaint and did not issue a final response in compliance with the relevant rules. But Mr P did obtain legal advice in 2019.

- Mr P has been aware he has cause for complaint for more than three years before he made his present complaint in 2023. The present complaint was therefore made late and should not be considered.

L&C's lawyers went on to make further points on the basis they were without prejudice to L&C's claim that the complaint is time barred, including the following,

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

The investigator said he would arrange for the matter to be referred to an ombudsman. Mr P's complaint has been referred to me accordingly and I am sorry for the length of time this has taken.

I issued a provisional decision on 4 April 2025. I explained why I thought Mr P's complaint could be considered, why I thought it should be upheld and what I though L&C should do to put things right. I asked the partes to let me have any comments they wished to make in response to my provisional decision by 18 April 2025.

Mr P agrees with my provisional decision. Mr P's solicitors said Mr P was in his early 60's and had retired at the time he was advised to open his SIPP with a view to providing an income later in his retirement as had had some cash and investments that were supporting him in the short term. When his pension fund was lost he was not then able to draw the income he needed and his retirement has suffered as a result. Eventually Mr P closed his SIPP because the value was so low but he had intended for it to remain open to support his financial needs in retirement.

L&C has not responded to my provisional decision.

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.

L&C's jurisdiction point:

Before deciding what is fair and reasonable I've considered L&C's jurisdiction point. This point is decided on the basis of what the jurisdiction rules provide, not on the basis of what is fair and reasonable in all the circumstances.

There are time limits for making a complaint and the Financial Ombudsman Service cannot consider a complaint made outside those time limits unless the delay in referring the complaint was the result of exceptional circumstances or the firm complained about consents to the complaint being considered.

The time limits are:

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

Mr P's complaint is that he has suffered losses in his pension which he would not have suffered if L&C had made adequate checks on the investments he made in his SIPP in 2010-2012. So the complaint relates to events in 2010-2012 and Mr P made his complaint more than six years after those events.
L&C says Mr P's complaint was made in 2023 and that this was more than three years after the time when Mr P was aware he had cause to complain since he first complained more than three years earlier in 2018. And it is L&C's position that the 2018 and 2023 complaints are materially the same.

There are rules that require regulated firms to deal with complaints appropriately. L&C accepts it failed to treat Mr P's 2018 complaint appropriately. It did not provide an answer to Mr P, it did not tell him he could refer his complaint to the Financial Ombudsman Service if he did not agree with its answer, and it did not tell him that he had only a limited time for doing so after providing that information.

There is no question that L&C received Mr P's complaint in 2018. It has kept some form of record of it as it is able to quote from that complaint; so there is a record of the complaint having been received by L&C even though it did not acknowledge it at the time. Also, it's clear the 2018 and 2023 are essentially the same complaint.

Mr P therefore referred his complaint to L&C in March 2018 and that is the point that stops the time limit clock as provided for in the part of the rule I have underlined above.
L&C told Mr P that the investment company had gone into administration in 2018. Mr P made his complaint soon after.

In another case, I am aware L&C argued the consumer in that case should have been aware there was a problem from the time the shares became illiquid in October 2016. But even if that is correct (and I make no finding on that point), the complaint was made less than three years later, in March 2018.

L&C has not argued that awareness of cause for complaint should have been triggered earlier than October 2016, and I am not aware of any earlier event that should reasonably have been a trigger for Mr P to have awareness of a problem that would lead to him having cause for complaint.

Ordinarily a consumer has a limited amount of time under the rules for referring a complaint to the Financial Ombudsman Service after a complaint has been made to a respondent firm. However, the relevant six months' time limit runs from the date on which the respondent sent a final response in compliance with the complaint handling rules. As L&C accepts, it did not issue a final response to the 2018 complaint as required under the rules, the six months' time limit has not therefore been triggered and the complaint cannot have been referred to the Financial Ombudsman Service late under the six months' time limit either.

It is therefore my view that this complaint was made within the relevant time limits and can therefore be considered.

The merits of Mr P's complaint:

I've considered all the points made by the parties in this case and I have considered points made by L&C in other similar complaints. I have not however responded to all of them below; I have concentrated on what I consider to be the main issues.

Relevant considerations:

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

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

- The agreement between the parties.
- The Financial Services and Markets Act 2000 ("FSMA").

- Court decisions relating to SIPP operators, in particular *Options UK Personal Pensions LLP v Financial Ombudsman Service Limited* [2024] EWCA Civ 541 (*"Options"*) and the case law referred to in it including:
    - *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474 ("*Adams"*)
    - *R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service* [2018] EWHC 2878 (*"Berkeley Burke"*)
    - *Adams v Options SIPP UK LLP* [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The Financial Services Authority (FSA) and financial Conduct Authority (FCA) rules including the following:
    - PRIN Principles for Businesses
    - 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 P 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…"*

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

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

Points to note about the SIPP publications include:

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

- The comments made in the publications apply to SIPP operators that provide a non-advisory service.

- Neither court in the *Adams* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.

- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

L&C's position in broad terms:

In broad terms L&C's position is:

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

L&C's due diligence:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I accept that the IFA had some responsibility for initiating the course of action that led to Mr P's loss. However, I'm satisfied that it's also the case that if L&C had complied with its own distinct regulatory obligations as a non-advisory SIPP operator, the arrangement for Mr P would not have come about in the first place.

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

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

Distress and inconvenience:

As a result of L&C's errors Mr P suffered considerable loss in his pension. Mr P had consulted the IFA in his early 60s and he suffered large losses in his pension when he was approaching 70. While Mr P planned to use his savings and investments initially, he planned to take an income later but because of the problems in his pension he was not able to do so.

Mr P was able to recover a proportion of his losses from the FSCS. But this was less than a third of his loss. So Mr P's retirement plans will still have been seriously disrupted which will have been worrying and frustrating.

I consider that L&C's errors have materially contributed to what, overall, will have been a very difficult and worrying time for Mr P. Mr P has suffered considerable distress and inconvenience as a result of the avoidable problems in his pension and I consider a payment of £1,000 is appropriate for the distress and inconvenience L&C has caused Mr P.

Putting things right

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

IFA, the IFA would have ceased such business before Mr P's application, and Mr P would have obtained reasonable and suitable advice in 2010.

Although Mr P did make changes to his pension in 2010, this was as a result of advice from the IFA that was motivated by a conflict of interest and so is not a reliable guide to what Mr P would have done had he received suitable advice. Although Mr P was considering his pension options in 2010 it is not clear there was a need to make any changes. Nor is it clear Mr P was particularly looking to make the kind of changes in investment strategy that would have required him to move his pension to a SIPP.

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

Although Mr P closed his SIPP in 2019 this was a reaction to the failure of the investments and to just draw things to a close. He had not made any drawings from his pension up to that point and I am not aware of anything to indicate he would otherwise have taken his pension but for the failure of the investments.

In light of the above, L&C should:

- Obtain the notional transfer value of Mr P's existing pension that was switched to the L&C SIPP.
- Calculate the actual transfer value of Mr P's SIPP, including any outstanding charges.
- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).
- Pay an amount into Mr P's SIPP so as to increase the transfer value to equal the notional value established. These payments should take account of any available tax relief and the effect of charges.
- If the SIPP needs to be kept open only because of any illiquid investments and is used only or substantially to hold these investments, then any future SIPP fees should be waived until the SIPP is closed.
- If Mr P has paid any fees or charges from funds outside his pension, L&C should also refund these to Mr P. And interest at the rate of 8% simple per year from the date of payment to the date of refund should be added to this.
- Pay Mr P £1,000 to compensate him for the distress and inconvenience he's been caused.

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

Treatment of the illiquid assets held in the SIPP:

If this has not already happened, I think it would be best if any illiquid shares could be removed from Mr P's SIPP. Mr P would then be able to fully close the SIPP if he wishes (again, if this has not already happened). That would then allow him to stop paying or incurring fees for the SIPP. The calculation of value of illiquid investments may prove difficult, as there is no market for them. For calculating compensation, L&C should establish an amount it's willing to accept for the investments as a commercial value. It should pay the sum agreed plus any costs and take ownership of the investment.

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

L&C may ask Mr P to provide an undertaking to account to it for the net amount of any further payment the SIPP may receive from the investment thereafter. The undertaking should allow for the effect of tax and charges on the amount Mr P may receive from the investment from that point, and any eventual sums he would be able to access from the SIPP. L&C will need to meet any costs in drawing up the undertaking.

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

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

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

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

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

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

The FSCS payment:

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

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

To do this, L&C should ask the providers of Mr P's previous pensions to allow for the relevant notional deduction in the manner specified above. The total notional deductions allowed for shouldn't equate to any more than the actual payment from the FSCS that Mr P received. L&C must also then allow for a corresponding notional addition as at the date of my final decision, equivalent to the FSCS payment notionally deducted by the provider of Mr P's previous pensions.

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

Pay an amount into Mr P'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 P'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 P as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate. This should be taken to be 20% making a notional deduction of 15% overall from the loss to reflect this.

SIPP fees:

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

Interest:

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

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

Calculations:

L&C should provide Mr P 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

For the reasons set out above it is my decision that Mr P’s complaint should be upheld.

Where I uphold a complaint referred to us on or after 1 April 2023, I can award fair compensation of up to £190,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £190,000, I may recommend that the business pays the balance.

Determination and money award: I uphold this complaint and require Pathlines Pensions UK Limited to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £190,000 (including the compensation for distress and inconvenience).

Recommendation: If the compensation amount exceeds £190,000, I also recommend that Pathlines Pensions UK Limited pays Mr P the balance.

If Mr P accepts my final decision, the money award becomes binding on Pathlines Pensions UK Limited.

My recommendation would not be binding. Further, it’s unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 30 May 2025.

Philip Roberts
Ombudsman