DRN-5614143

## The complaint

Mr M has a self-invested personal pension ('SIPP') with London & Colonial Services Limited ('L&C") now Pathlines Pensions UK Limited. Mr M says L&C mismanaged his SIPP and as a result it allowed investments to be made that were not appropriate investments for his pension, which has caused him significant losses.

## What happened

This complaint is one of approximately 20 similar complaints. I will refer to them as the 'MA complaints'. They relate to events in the period from late 2014 and on into 2016. Those complaints have much in common but are not identical. The complaints involve the following:

- The complainant: in this case Mr M.
- The respondent firm (the business the complaint is about): L&C, now known as Pathlines Pensions UK Limited. Here, I will refer to the respondent firm as L&C. L&C is the SIPP operator in the MA complaints.
- Third parties: not all third parties I mention below are involved in every MA case, but every MA case involves three or more of those third parties.

The third parties in the MA complaints form into two groups: advisers and introducers; and platform providers and investment managers.

*The advisers and introducers*

The advisers and introducers were:

- A firm I will call 'MA'. This is a regulated advice firm authorised to advise on pension transfers.
- A man I will call 'Mr X', an adviser with, and Director of, MA until late 2016.
- A firm I will call 'FW', an appointed representative of a regulated firm I will call 'PF'. FW was not authorised to advise on pension transfers.
- A man I will call 'Mr Y', an adviser at firm FW.
- A man I will call 'Mr B', an unregulated introducer who introduced business to both firm MA and firm FW.

There is no dispute that MA and Mr X are involved in all the MA cases. The MA complainants all say that Mr B was also involved in all the cases. MA has said that FW or Mr B obtained leads from the Pensions Wise/Money Advice website and that all or most of the MA complainants first contacted FW or Mr B through that route and were then introduced to MA by Mr B.

*The platform providers and/or investment managers*

Platform arrangements were opened for all the MA complainants.

A platform is an online service or an account which can be used to view and administer a client's investment portfolio. Investments on the platforms may be chosen by the member

without assistance from anyone else. This type of investing, where the consumer gives the instruction without advice is called ‘execution only’. In practice, advisers or investment managers are usually involved. A firm that refers to itself as an investment manager may act on an advisory basis – where the investment manager gives advice, and the client makes the decision whether to buy, or sell an investment. Or a consumer may authorise the investment manager to buy, sell or hold investments at their discretion. This is called discretionary investment/fund management. The investment manager is often referred to as a ‘DFM’.

The MA complainants all invested in or through one or more of the following third-party platform providers and investment managers:

- Shard Capital: Shard Capital provided a platform which was used to hold investments involving another firm called Horizon Stockbroking. Shard Capital is still trading, and I’m not aware of any complaints against that firm.

- Horizon Stockbroking (‘Horizon’): in some of the MA complaints, Horizon acted as an investment manager and it operated using the account/platform with Shard Capital. Horizon acted as DFM in some of the MA complaints. In all or most of the MA complaints in which Horizon is involved it carried out Contracts for Difference (‘CFD’) trading on a discretionary basis. Such trading has often resulted in losses to relevant MA complainants.

  Horizon is no longer trading.

- Strand Capital: Strand Capital features in most of the MA complaints. Strand Capital was a platform provider and investment manager. At the time covered by the MA complaints Strand Capital was owned by Optima Worldwide Group (‘OWG’) and most of the MA complainants invested in bonds issued by OWG. All or most of those purchases involved letters that purported to be from the MA complainant instructing Strand Capital to buy the OWG Bonds on an execution-only basis.

  Strand Capital is no longer trading. Nor is OWG. The money invested in the OWG Bonds has been lost, causing losses to relevant MA complainants.

- Beaufort Securities: Beaufort Securities features in most of the MA complaints. Beaufort Securities was an investment firm that was a platform provider and an investment manager. In some MA cases, money paid over to Beaufort Securities was redirected to investment with Strand. In some cases, money was invested with Beaufort Securities in investments which later failed causing losses to relevant MA complainants.

  Beaufort Securities is no longer trading.

An unusual feature of the MA complaints is that initially MA acted for the consumers in complaints against L&C and against relevant third parties. That arrangement has now stopped and most, if not all the MA complainants, have made complaints to MA and recovered compensation from it. In many cases, compensation has also been recovered either from a relevant third party or from the Financial Services Compensation Scheme (‘FSCS’) after the relevant (regulated) third party had gone into default. Those consumers who still have unrecovered losses are proceeding with their complaints against L&C.

What happened in Mr M's case

In 2015 Mr M was approaching retirement and had just taken redundancy from his employer. He had retained benefits in a defined-benefit ('DB') occupational pension scheme, guaranteed benefits in two other occupational pension schemes and a personal pension plan. Mr M says he contacted Pension Wise online to find out more about his retirement options and he was subsequently contacted by Mr B.

Mr M explains that he knew Mr B wasn't a regulated financial adviser and discussed this with him; Mr B told him he would be introduced to Mr X, who was a regulated financial adviser at MA. Mr M then had a meeting with Mr X and Mr B to discuss his retirement options, during which he says he was advised to transfer all of his existing pension arrangements to a SIPP with L&C.

MA produced a Retirement Options Report dated 30 June 2015. That report recorded several points including:

- The report was intended to be a record of the advice given by Mr X on behalf of MA.
- The report followed a meeting on 17 June 2015 with Mr M.
- Mr M wanted to take £4,000 per month from his tax-free cash entitlement to replace his income.
- Mr M had a 'medium to high' (six out of ten) attitude to risk for pension planning.
- MA recommended Mr M transfer all of his pensions to a SIPP with L&C so that he could make flexible withdrawals in line with his income needs and to take control over the investment choices for the remaining funds. Mr M would also have access to more flexible death benefits.
- The report said:

  *"Further to our discussions, we have agreed that the portfolio could be managed more efficiently by moving to a discretionary investment management service. The investment manager would manage the portfolio on a day to day basis in line with your risk tolerance and requirement for income and capital growth.*

  *I recommend that you use Horizon Stockbroking to access their Discretionary Managed Account Service...*

  *…**Horizon will analyse the results of your risk profile questionnaire and recommend a suitable bespoke portfolio for you**."*

- MA would receive a reduced initial advice fee of 1% of the transfer value and an ongoing adviser charge of 0.5% per year.

It appears that Mr M applied for a Simple Investment SIPP with L&C via a paper application form on 17 June 2015 as it was signed by Mr M and Mr X on this date.

The application form recorded:

- Mr M's "Financial Adviser" was Mr X of MA.
- Advice had been given at the point of sale that took account of the underlying

investment strategy and that the advice had been followed.
- An 'Investment Manager/DFM' would make the investment decisions but the chosen firm was not named.
- Mr M did not intend to make any further contributions.

However, I've also seen an undated online SIPP application form which provided the following additional details:

- Horizon was the selected DFM.
- Mr M wished to transfer benefits held in four separate pensions, which had a combined value of around £850,000.

The SIPP was opened on 1 July 2015 and L&C received around £490,000 from Mr M's former DB scheme on 29 July 2015. On 5 August 2015, it received just under £56,000 from another occupational scheme.

On 3 August 2015, or thereabouts, a letter of instruction was produced that purports to be from Mr M addressed to Strand Capital. The letter said:

*"Dear Sirs*

*I am writing to confirm that I wish to purchase forty units of the Optima Worldwide Group Corporate Bond in the Sum of £200,000 (Two Hundred Thousand Pounds). This Bonds ISIN Number is* [number given].

*I can confirm that my Self Invested Personal Pension (SIPP) trading account with Strand Capital Ltd has been set up on an 'execution only' basis by London & Colonial and that any instruction to trade must come from me.*

*I hope this meets with your approval.*

*Yours Sincerely*
[signed Mr M]"

When MA made a complaint for Mr M to L&C, MA said the following about the above letter:

*"…* [Mr B] *procured an Execution Only Letter from Mr M. Based on the experience of other clients and the similarities between this letter and a number of letters executed by such clients instructing similar purchases,* [MA] *is aware that* [Mr B] *simply provided Mr M with a pre-printed letter and asked him to sign it; this point as been directly confirmed by Mr M. This letter informed Strand that Mr M wished to purchase 40 units in the OWG bond at a cost of £200,000."*

MA also queried why L&C allowed the Strand Capital account to be set up without clear instruction from MA.

L&C also says it was not aware of the execution only letters sent to Strand Capital.

L&C says Mr M signed application forms for Shard Capital and Horizon on 6 August 2015, although I've only seen a copy of the Shard Capital application form. The form noted Mr M wished to invest in CFDs. The accounts were opened on 31 August 2015.

L&C emailed Strand Capital on 10 August 2015 providing Mr M's details so that an account with Strand Capital could be established for Mr M.

On 13 August 2015, L&C sent just over £200,000 to Mr M's Strand Capital account.

On 14 August 2015, L&C received around £245,000 from Mr M's personal pension provider.

On 25 August 2015, or thereabouts, another letter of instruction was produced, again purporting to be from Mr M addressed to Strand Capital. The letter said:

*"Dear Sirs*

*I am writing to confirm that I wish to purchase 20 units of the Optima Worldwide Group Corporate Bond in the Sum of £100,000 (One Hundred Thousand Pounds). This Bonds ISIN Number is* [number given].

*I can confirm that my Self Invested Personal Pension (SIPP) trading account with Strand Capital Ltd has been set up on an 'execution only' basis by London & Colonial and that any instruction to trade must come from me.*

*I hope this meets with your approval.*

*Yours Sincerely*
[signed Mr M]

On 1 September 2015, an additional £100,000 was sent to Mr M's Strand Capital account.

Later in September 2015, L&C was notified that Mr M was to take £4,000 per month tax-free cash over the next six months. The first payment was made on 15 September 2015 and continued each month until March 2016.

L&C received around £58,000 from Mr M's remaining occupational pension on 8 September 2015.

On 17 September 2015, MA instructed L&C to send £388,500 to Mr M's Horizon account.

L&C says that Mr M signed an application form to open an account with Beaufort on 30 September 2015, but no copy has been provided. This was opened and MA instructed L&C to send £120,000 to the account in October 2015.

MA asked L&C to close Mr M's Horizon account on 23 March 2016. And on 7 April 2016, MA instructed L&C to send £350,000 to Mr M's Beaufort account.

In May 2016, Mr M requested a withdrawal of £100,000 from his Beaufort account, which would form part of his tax-free cash entitlement.

Mr M wrote to L&C on 13 July 2016 expressing concern that it had taken Beaufort almost six weeks to facilitate the withdrawal and he requested that the account should be closed and any remaining funds should be forwarded to his Strand Capital account.

On the same day, another letter of instruction was produced, again purporting to be from Mr M addressed to Strand Capital. The letter said:

*"Dear Sirs*

*I am writing to confirm that I wish to purchase the Optima Worldwide Group Corporate Bond for the Sum of £100,000 (Two Hundred Thousand Pounds). This Bonds ISIN Number is* [number given].

*I can confirm that my Self Invested Personal Pension (SIPP) trading account with Strand Capital Ltd has been set up on an 'execution only' basis by London & Colonial and that any instruction to trade must come from me.*

*I hope this meets with your approval.*

*Yours Sincerely*
[signed Mr M]"

Based on the evidence I've seen, Mr M's OWG bondholding increased by £100,000 following this instruction.

Strand Capital got into difficulties, and it went into special administration in May 2017.

By late 2017 MA was concerned about investments made by Beaufort Securities as several of them had become illiquid. Although some of those investments were listed there was no effective functioning secondary market for them. Beaufort Securities provided a report that listed 25 such securities that had been invested in by MA's clients. In March 2018 Beaufort Securities was put into administration by the Financial Conduct Authority ("FCA").

As I understand it, OWG stopped paying interest to bond holders in 2017 and went into liquidation in 2021 and there is little or no prospect of recovering the money invested in the OWG Bonds. Mr M has therefore lost all or most of the money that was invested in the OWG Bonds, causing significant losses to his pension.

With the help of MA, Mr M ultimately made claims to the FSCS against Horizon, Beaufort Securities and Strand.

In June 2019, Mr M received compensation from the FSCS for his claim against Beaufort Securities – it paid him just under £30,000.

The FSCS rejected Mr M's claim against Strand as it understood he had made a complaint about L&C in respect of the loss associated with his Strand investments.

In February 2020, the FSCS awarded Mr M compensation for his claim against Horizon, paying him just over £38,000.

The FSCS subsequently gave Mr M a reassignment of rights in respect of the Beaufort Securities and Horizon claims in which, amongst other things, the FSCS explained it was transferring back to Mr M any legal rights it held against L&C.

<u>The complaint to L&C</u>

In June 2018 MA, acting on behalf of Mr M, made a complaint to L&C that it had caused Mr M to suffer a loss through various (alleged) breaches of duty. Essentially, the complaint was that L&C failed to make checks on the investments made on Mr M's behalf.
L&C did not uphold Mr M's complaint.

MA referred Mr M's complaint to the Financial Ombudsman Service and soon after it ceased acting in the complaint.

Mr M also complained about MA and MA ultimately paid Mr M compensation up to the Financial Ombudsman Service award limit.

Mr M's complaint about L&C was considered by one of our Investigators who asked L&C about the due diligence checks it had made on MA, on the investments made and on the DFMs.

L&C's response to the complaint

L&C made several points in support of its position in this case. But I have also included comments it made on similar cases, as follows.

- It provides its service to Mr M on a non-advisory basis. It is not its role to give advice. It is not authorised to give advice and it was made clear to Mr M that it was not giving him advice.
- The adviser in Mr M's case (and all other applications from MA) was Mr X of MA.
- MA is a regulated firm authorised to give investment advice and to advise on pension transfers. L&C carried out checks on MA and Mr X to satisfy itself on these points.
- In each SIPP application received from MA it was confirmed on the application form that MA gave advice.
- MA did not disclose Mr B's involvement as an unregulated introducer.
- L&C was not aware that Mr B had introduced clients such as Mr M to MA. As far as L&C was concerned the business was introduced to it by MA in accordance with the introducer agreement it had with MA, and Mr X was advising the clients.
- MA, not L&C, should be responsible for any acts or omissions of Mr B.
- L&C is aware that a number of complaints have been made about MA to the Financial Ombudsman Service by MA complainants like Mr M. And their complaints have been upheld against MA. The Ombudsmen in those cases said MA was solely responsible for the whole of the loss suffered by the complainant in those cases. The decisions in the MA complaints should be taken into account in the MA complainants' complaints against L&C.
- If any employee or agent of MA was negligent and/or engaged in unregulated business and/or acted beyond their permissions, that is not something which would or could have been discovered upon any reasonable, or even extensive, due diligence by L&C.
- L&C was under no obligation to obtain copies of the recommendation reports provided by MA and it did not do so. It was entitled to rely on MA acting in accordance with the regulatory obligations on it.
- Since disputes have arisen in relation to MA introduced clients L&C has seen copies of the recommendation reports and, while L&C is not authorised to give suitability advice, the reports do not obviously give cause for concern. There is therefore no reason to think L&C would have acted differently if it had seen the reports at the time of the MA introduced applications such as Mr M's application.
- L&C made checks on Strand Capital and Beaufort Securities that included checking on their regulatory status including FCA permissions, disciplinary history; and about their corporate status including checks at Companies House. Web checks were made for any negative comments. Both businesses passed these vetting procedures.
- Part of L&C's due diligence involves entering into agreements with investment companies and having a permitted investment list. When money is invested via third

parties such as platform providers or DFMs, they are required to make investments only in accordance with the permitted investment list.

- Horizon, Strand Capital and Beaufort Securities agreed not to make investments that were not on the permitted investment list. As they were all authorised and regulated firms, L&C was entitled to rely on those firms doing what it had agreed to do. As far as L&C was aware all investments were permitted list investments.
- L&C acted in accordance with MA's instructions in opening the Horizon and Beaufort Securities accounts. Some of the investments made by those businesses may not have been permitted investments but if so, they did so without the knowledge or approval of L&C. It is a matter that Horizon and Beaufort Securities, not L&C, is responsible for.
- L&C was not aware of the execution-only letters to Strand Capital instructing it to buy OWG Bonds. Strand Capital made those investments without the knowledge or approval of L&C. It is a matter for Strand Capital, not something L&C is responsible for.
- The Financial Ombudsman Service should take account of the High Court decision in the case of *Adams v Options SIPP UK LLP*. And it should not focus on the various documents produced by the regulator relating to its thematic reviews. Those documents only provide indicative guidance or suggestions. They were not intended to be prescriptive. L&C was aware of the guidance and fully complied with the requirements in it.
- The complaints made by MA on behalf of consumers such as Mr M was an attempt by MA to shift the blame for its inappropriate pension transfer advice, and/or mismanagement of the client's SIPP, onto other parties. The complaints should therefore be read with caution and with this in mind.
- L&C complied with its limited obligations as a SIPP provider and, to the extent that loss has been suffered, responsibility should lie with the DFMs and/or with MA.
- Mr M has already received compensation from the FSCS. It is therefore unclear what if any residual loss Mr M has suffered.

One of our investigators considered Mr M's complaint. He thought the complaint should be upheld. He made several points including the following:

- The Administrators' report on Strand Capital (of 6 July 2017) said that until May 2016 the only investments arranged by Strand Capital were in OWG Bonds. And L&C ought to have identified this point as part of its checks on Strand Capital.
- OWG was the parent company of Strand. OWG Bonds A and B series were not listed. Issue C was listed on the GXG market until that market closed on 18 August 2015. The promotion for Series D said it expected to list on the Nasdaq First North exchange on 12 September 2016.
- The investments were not on the permitted investment list at the time of Mr M's investments (in August 2015, September 2015 and July 2016).
- L&C should have noticed and questioned these investments before Mr M made his investment and it should not have allowed them.
- L&C should also have made greater enquiries with MA and should have noticed that the business it was receiving from MA was unusual.
- There was a pattern with essentially the same execution-only instructions to invest in OWG Bonds which MA was not apparently advising on. The execution only letters were apparently being produced by Mr B who was not authorised to give regulated advice which should have been a matter of concern.
- Given what L&C reasonably ought to have concluded about MA and Strand Capital it was not necessary to also consider the due diligence carried out in respect of Horizon and Beaufort Securities as Mr M's first investments in Strand Capital were made before this.

- It's fair and reasonable in the circumstances for L&C to compensate Mr M for his losses (less the money he has received from MA) and pay £500 for the distress and inconvenience caused.

L&C didn't respond to the Investigator's view on this complaint, but L&C has responded to other views it has received on similar cases involving the same third-parties and investments. As such, I will set out some of the relevant points received from L&C here:

- L&C had carried out adequate due diligence on MA, Horizon, Strand Capital and Beaufort Securities. L&C did obtain information about the investments Strand Capital typically made and it acknowledged a potential conflict of interest in respect of OWG Bonds but said it did not receive any commission or reward from OWG when placing investors' funds into the listed OWG Bond. The OWG Bond was not a non-standard investment. Nothing untoward was discovered from the checks made.
- Even if further checks had been made by L&C nothing untoward would have been discovered and it would have received reassurances from MA.
- MA had a close working relationship with Mr B, and it is highly likely MA itself was party to the underlying investment plans involving Strand Capital/OWG Bonds.
- When MA first made the MA complaints it frequently asserted it had no contemporaneous knowledge of the Strand Capital transfer requests, but this has been shown to be incorrect and that MA instructed all or most of the transfers.
- MA did not query why the transfers were being made if they were not being made in accordance with its advice.
- The individual facts of the complaint had not been properly considered. The facts of the MA complaints are not all the same. There was no pattern of behaviour to give cause for concern.
- The execution-only letters were sent to Strand Capital not to L&C. L&C was not aware of any of the letters during most of the period covered by the MA complaints. It only received such letters addressed to it in around March 2016.
- MA gave the instructions to invest into Strand Capital in most cases.
- Mr M's own wishes and the fact he was being advised by MA are being ignored.
- If L&C refused Mr M's application this could have amounted to unfair treatment of Mr M.
- If L&C had not allowed the transfers and investments the business would have been taken elsewhere and the same events and losses would have occurred.
- The FCA was content for MA and Strand Capital to conduct regulated investment business.
- It is not fair and reasonable to hold L&C responsible for the losses caused by others such as MA and Strand Capital.
- L&C cannot reasonably be held responsible for the losses arising from the decision to transfer his pensions as Mr M wanted to transfer out of his occupational pensions in any event and MA said it stood by that transfer advice when it made Mr M's complaint.

Mr M's representative didn't agree that the method of compensation recommended. He said that L&C should be found liable for Mr M's investment loss, rather than the losses he made as a result of transferring his pensions to the L&C SIPP. As such, the redress Mr M received from MA should not be taken into account as it relates to a different loss.

As L&C didn't respond and Mr M's representative didn't agree with the compensation methodology, this complaint was referred to me to determine.

I issued a provisional decision on 12 May 2025, upholding the complaint on the same basis as the Investigator's view. However, the redress I recommended to put things right was different, based on what I thought was most likely to have happened but for L&C's failings.

Mr M ultimately accepted my provisional decision. L&C asked for extra time to respond to my provisional decision, but it didn't provide its response by the deadline I set so I'm now providing my final 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.

I've reconsidered all the points made by the parties in this case and other similar cases involving the same third-parties and investments. I have not, however, responded to all of them below; instead I've concentrated on what I consider to be the main issues. Having done so, I'm still upholding 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.

Relevant considerations

I've 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 L&C 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 L&C 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 M 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.

As such, it is not necessary for me to quote extensively from the various court decisions.

*The Principles for Businesses*

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

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

"*Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*

*Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*

*Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly*."

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

*The regulatory publications and good industry practice*

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

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

The 2009 Report included:

*"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…*

*We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers."*

The Report also included:

*"The following are examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms:*

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

The 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.*
- *Identifying instances when prospective members waive their cancellation rights and the reasons for this.*

*Although the members' advisers are responsible for the SIPP investment advice given, as a SIPP operator the firm has a responsibility for the quality of the SIPP business it administers. Examples of good practice we have identified include:*

- *conducting independent verification checks on members to ensure the information they are being supplied with, or that they are providing the firm with, is authentic and meets the firm's procedures and are not being used to launder money*
- *having clear terms of business agreements in place which govern relationships and clarify responsibilities for relationships with other professional bodies such as solicitors and accountants, and*
- *using non-regulated introducer checklists which demonstrate the SIPP operators have considered the additional risks involved in accepting business from non-regulated introducers."*

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 Ombudsman whose decision was upheld by the court in the *Berkeley Burke* case).

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* cases 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.

*COBS 19.1.6G*

At the time the MA complainants applied for their SIPPs with L&C guidance to advisers within the COBS rules said:

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

Although this guidance was aimed at advisers, L&C would (or should) have been aware of it. L&C would (or should) accordingly have been aware that the starting presumption in any pension transfer case is that the transfer is unsuitable. This did not mean that L&C was required to reject all applications involving pension transfers or to audit the advice in any pension transfer application received. It did, however, mean that L&C was aware (or should have been aware) for the need for caution with pension transfers as a general point.

*FSA & FCA Alerts relating to pension transfer advice*

In January 2013 the FSA issued an alert that reminded advisers that the advice on a pension transfer must take account of the overall investment proposition – the SIPP and the expected underlying investments – the customer is contemplating.

*"Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP*

*It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes). Examples of these unregulated investments are diamonds, overseas property developments, store pods, forestry and film schemes, among other non-mainstream propositions.*

*The cases we have seen tend to operate under a similar advice model. An introducer will pass customer details to an unregulated firm, which markets an unregulated investment (e.g. an overseas property development). When the customer expresses an interest in the unregulated investment, the customer is introduced to a regulated financial adviser to provide advice on a SIPP capable of holding the unregulated investment. The financial adviser does not give advice on the unregulated investment, and says it is only providing advice on a SIPP capable of holding the unregulated investment. Sometimes the regulated financial adviser also assists the customer to unlock monies held in other investments (e.g. other pension arrangements) so that the customer is able to invest in the unregulated investment.*

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

*The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes. It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating."*

In April 2014 the FCA issued a further Alert to advice firms. It also stated that the suitability of the underlying investment must be part of the advice given to the customer.

*"**Why are we issuing this alert?***

*On 18 January 2013, we outlined our concerns that firms were advising on pension transfers or switches to SIPPs without assessing the advantages and disadvantages for customers of the underlying investments to be held within the new pension arrangement.*

*Following the initial alert, we carried out further supervisory work, including visiting some firms, to assess whether their business model complied with our requirements. Through this work, we continued to identify serious and ongoing failings.*

*We have taken action to stop a large number of firms from operating such business models and will continue to do so. We have also recently published two final notices where we took enforcement action against two partners in [1 Stop Financial Services] who failed to comply with our rules in this area.*

***Our view***

*Customers have a right to expect an authorised firm to act in their best interests, yet the serious and ongoing failings found at firms have placed a substantial number of customers' retirement savings at risk.*

*We believe pension transfers or switches to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers. Firms operating in this market need to be particularly careful to ensure their advice is suitable.*

***What does this mean for firms?***

*Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable.*

*If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole.*

*The failings outlined in this alert are unacceptable and amount to conduct that falls well short of firms' obligations under our Principles for Businesses and Conduct of Business rules. In particular, we are reminding firms that they must conduct their business with integrity (Principle 1), due skill, care and diligence (Principle 2) and must pay due regard to the interests of their customers and treat them fairly (Principle 6)."*

These Alerts were addressed to advisers not SIPP operators, but they were matters SIPP operators would reasonably have been aware of at the time of the MA complainants' applications.

*Final Notice of decision relating to the managing director of Montpelier Pension Administration Services Limited ("MPAS")*

On 18 April 2013 the FCA issued a decision banning the former managing director of a SIPP provider referred to as MPAS in the Final Decision notice. That decision included:

***"Due diligence and monitoring of discretionary fund managers***

*4.38. A proportion of the assets administered by MPAS were managed by discretionary fund managers during the Relevant Period, and MPAS typically entered into agreements with those discretionary fund managers upon recommendation by MPAS' Introducers. However, no due diligence was undertaken in relation to the recommended fund managers, nor was any ongoing monitoring undertaken to ensure that those with responsibility for management of members' assets were doing so properly…*

***Due diligence and monitoring of discretionary fund managers***

*5.22.* [Mr W] *failed to ensure that any controls were in place in relation to discretionary fund managers, in the form of agreements setting out the terms on which SIPP assets were to be managed. By failing in this regard,* [Mr W] *exposed members to the risk that their assets would be mismanaged without detection by MPAS, and especially given that no other procedures were in place for continuous monitoring of discretionary fund managers."*

The information above was of direct relevance to SIPP operators and L&C should have been aware of it at the time of the MA complainants SIPP applications. It was a further reminder 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.

*FCA Handbook Notice No.28*

In 2012 and 2014 the FCA consulted on rules amending the capital requirements for SIPP operators. The rules required firms to calculate assets under management with an additional capital requirement for non-standard assets.

In June 2015 the FCA consulted on additional guidance on the rules in Quarterly Consultation Paper 15/19 and it gave feedback on that consultation in Handbook Notice No.28 in December 2015.

An asset could be considered a standard asset if included the FCA's list of standard assets (the first condition) and if capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days whenever required (the second condition). The FCA gave the following guidance on how a discretionary managed (DFM) portfolio should be treated as regards categorisation as either a standard or non-standard assets:

*"3.24 Provided the second condition is met, a DFM portfolio can be standard when the SIPP operator has <u>arrangements in place to ensure that the portfolio comprises standard assets only</u>. These arrangements may vary across different firms and business models, and therefore we cannot prescribe any regulatory preference: it should be the choice and responsibility of the firm."* [Emphasis added]

The above guidance postdates MA's application to L&C to become an introducer in 2014. And it does not relate to due diligence processes as such. But a point to note is the reference to arrangements "*to ensure"* portfolios comprise standard assets only, not to arrangements (for example) *requiring* that portfolios comprise standard assets only. This makes sense as the point being made by the FCA is about outcome rather than process. I consider the above supports the view that for SIPP operators who permitted DFM arrangements in their SIPPs, it was good practice to have arrangements for monitoring the DFMs to reasonably ensure that portfolios comprised only assets that were acceptable to the SIPP operator.

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 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/DFM and that good industry practice included:

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

L&C's position

In broad terms, L&C's position is:

- Its due diligence processes (which included checks on MA, Horizon, Strand Capital and Beaufort Securities, and a permitted investment system) 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 aware of the involvement of the unregulated introducer, Mr B.
- It was not reasonably required to do more, but any further checks would not have revealed anything untoward.
- In any event, AM is solely and wholly responsible for the losses Mr M has suffered. It is unfair to require L&C to compensate Mr M for the losses others have caused him.

A further look at the parties involved in the MA cases

*Firm MA*

In all the MA complaints, MA advised the consumers to transfer or switch existing pensions to a SIPP with L&C.

MA applied to L&C to act as an intermediary to introduce business (SIPP applications) to L&C in December 2014. L&C dealt with Mr X of MA.

31 clients were introduced to L&C by MA between December 2014 and November 2016. Of those applications, 16 involved a DB scheme transfer. Across those 31 members there were 80 transfers including 24 from DB schemes and 56 pension switches from defined-contribution ('DC') scheme pensions.

In the 2014/2015 period MA operated an approach in which it would categorise clients as transaction clients, in which it would only advise about the potential transfer of pensions to a new pension provider. MA has said the client would then be "mandated" back to the introducing adviser who would be responsible for recommending suitable investments for the client.

An Ombudsman considered a complaint brought by another MA complainant who was one of the earlier applicants referred to L&C by MA and issued a decision. In that early case, the consumer was categorised by MA as a transaction client. MA says this model was also used in other cases with applications in late 2014, which must have been some of the first, if not the first, applications L&C received from MA.

MA has said with transaction clients it provided an indication of the portfolio it would have recommended to a client with his or her risk profile. In the early case, MA set out what it said was a model asset allocation for an investor with a medium risk profile.

MA appears to have considered that this meant it could answer yes to the following question on the L&C SIPP application form:

*"Advice given at point of sale to client that takes account of the intended underlying investment strategy:"*

MA acted for the MA complainants when they first complained to L&C and to other third parties and/or made claims to the FSCS.

L&C and others were concerned about a conflict of interest between MA and the consumers and MA stopped acting for the complainants.

Complaints were also made against MA by a number of, if not all of, the MA complainants. Some of those complaints were referred to the Financial Ombudsman Service. Some MA complainants may have issued court proceedings against MA.

As I understand it, all those disputes between consumers and MA have been concluded one way or another and compensation paid by MA to all or most of the MA complainants. The amounts paid did not, however, cover the consumers' full losses.

As I understand it, MA and L&C are in litigation in relation to the complaints made to it by MA complainants. That is a matter L&C has drawn to our attention, but I do not consider it relevant to the resolution of this complaint.

*Firm FW*

FW is another advice firm based in the same city as MA. According to the FCA register this firm involved one approved person, Mr Y.

Mr Y/FW was an appointed representative of PF between 2014 and 2018.

According to MA, Mr Y or his firm (or the introducer to FW, Mr B) bought leads from the Pensions Wise/Money Advice website.

Neither FW nor Mr Y were authorised to advise on pension transfers, but Mr Y could advise on pension matters that did not involve transfers from occupational pensions.

According to MA, Mr Y shared an office with Mr B.

L&C have not been asked about its previous dealings with firm FW during the investigation of this complaint. But in this case L&C has referred to previous Financial Ombudsman Service published decisions. I have looked in the data base of published decisions and have seen a complaint against PF in relation to FW. I note that according to the published decision that case involved a consumer who took out a SIPP with L&C in December 2014 who went on to invest in OWG Bonds and in an investment portfolio with Horizon Stockbroking through Shard Capital in January 2015. That case also involved Mr B and I note PF argued that FW was asked to give advice restricted to the switch of an existing pension to a SIPP and FW advised on that point only and not on the investments made in the SIPP. The consumer in that case said the FW adviser and Mr B recommended the OWG Bonds to him.

Although PF argued that FW did not recommend the investments, the alleged involvement of Mr B and the investments made are points of similarity with the MA complaints.

I am aware from seeing other complaints that Mr Y/FW had operated a restricted advice methodology under which FW advised on pension switches into SIPPs without giving advice on the suitability of the investments to be made in the SIPP after the switch. And that PF took action to stop that practice from August 2015. The steps it took included requiring FW to give advice that was not constrained by the client's objectives as agreed with an introducer, and restricting recommendations of SIPP operators and DFMs to those on PF's approved panel.

August 2015 is after MA approached L&C about introducing new business to L&C, and after the application in the earlier MA case I mentioned above. As noted above at the time of the application in the earlier MA case, the proposal (as recorded in the MA recommendation report to that consumer) was that the consumer would be mandated back to FW for investment advice after his pensions had been switched to L&C. And, at that time, it does seem that FW was operating in a way in which its clients have made investments of the same type as those made by the MA complainants - investments in which Mr B appears to have an interest, a point I will return to below.

*Horizon Stockbroking*

In some of the MA complaints, including in Mr M's case, Horizon Stockbroking acted as an investment manager and, as I understand it, operated using an account or platform with Shard Capital.

Horizon Stockbroking acted as DFM in some of the MA complaints. And in some or all of those cases the DFM engaged in CFD trading.

CFD trading is a particularly high-risk form of investing. CFDs were expressly referred to as not permitted on the L&C permitted investment list in 2015. However, at around the time of MA's application to become an L&C introducer was first being discussed, L&C and Horizon Stockbroking reached an agreement under which L&C would permit CFD investment in limited circumstances.

In February 2018 L&C said the following in an email to MA when it was investigating matters surrounding what became the MA complaints:

*"In respect of the matter relating to the allowance of CFDs. The London & Colonial investment committee met in December 14 and January 15 to discuss an exception to the agreed permitted investment lists in potentially allowing CFD's.*

*The committee agreed that where the client had ticked they wished to invest in CFD and has appointed Horizon as the discretionary fund manager an exception would be allowed outside the normal permitted list. Horizon would undertake the suitability of such investment in line with their risk profiling and discussions with the client and make the client aware of such risks.*

*The criteria set by L&C to allow CFD was*

1. *Client introduced by an adviser firm who is using a DFM*
2. *20% in CFD*
3. *Client has appointed Horizon as the DFM*
4. *The DFM has undertaken risk appetite with the client and determined that the CFD were suitable for the client.*
5. *The DFM would have a stop loss in place."*

Horizon Stockbroking is no longer trading. The FCA withdrew its authorisation in November 2019. And the FSCS has declared the firm in default and is dealing with claims made about that firm.

Mr B appears to have had some form of relationship with Horizon Stockbroking. I have seen a Horizon Stockbroking business card on which Mr B is referred to as "Associate".

According to the FCA register Mr B was not an approved person or authorised to advise or trade on behalf of that firm. And as I understand it Horizon Stockbroking denied that Mr B acted for it in any capacity.

*Strand Capital*

Strand Capital was authorised by the FSA from 2009 and by the FCA from 2013 until 2023. Strand Capital was an investment firm that was an investment manager and platform provider.

L&C says in around September 2014 it entered an agreement with Strand Capital. L&C has not been able to locate the original agreement from that time but has provided a copy of the final draft agreement (which relates to something called the Sunlight Account).

In 2015 Strand Capital was listed as one of the 19 panel platform providers for L&C's Multi-Platform SIPP.

Most, if not all, the MA complainants had accounts with Strand Capital.

In 2017 Strand Capital entered administration. A report from the administrator included the following:

*"In January 2014 the Company was acquired … by Panacea Corporate Services Limited, and was subsequently transferred to Optima Worldwide Group Plc ("OWG").*

*… OWG invested funds into the Company to support the development of an algorithmic trading platform.*

*…Until May 2016 the only investments arranged by the Company were in OWG bonds. However, investments in OWG bonds slowed thereafter as alternative investment products were introduced by the Company."*

L&C has said that it did carry out checks with Strand Capital which included details of its typical portfolios and it provided a copy of a document headed Strand Capital Limited Due Diligence Pack from Strand Capital dated 1 April 2016.

That document is eight pages long and appears to have been prepared by Strand Capital itself. It makes a number of fairly generalised claims about Strand Capital's approach. It gives the impression it has model portfolios selected from regulated funds with low fees selected on the basis of sophisticated techniques but does not make any specific verifiable points about its model portfolios or any investments made.

The document gives an impression that is different to the point later made by the Administrator that Strand Capital only invested in OWG Bonds until May 2016. However, the due diligence document does disclose that Strand is a subsidiary of OWG and that it may place a proportion of a client's portfolio in OWG Bonds.

*Optima Worldwide Group*

As mentioned above, OWG was the parent company of Strand Capital during the period the MA complainants opened their SIPPs with L&C. Most of the MA complainants invested in OWG Bonds in the L&C SIPPs.

OWG was also an investment provider. It issued bond investments – the OWG Bonds. As I understand it there were four versions of OWG Bonds, generally referred to as series A, B, C and D.

Series A and B Bonds were unlisted. According to an OWG document for the Series D Bonds dated 31 August 2016, the Series C Bonds were listed on the GXG Markets exchange (in Denmark) until that market closed.

As I understand it the Series C Bond Instrument was dated 18 November 2014. I do not currently know when the Series C Bond was first listed but the GXG market closed in July 2015.

In September 2015 OWG applied for the Series C Bonds to be listed on the First North Bond Market operated by the NASDAQ/OMX Group in Denmark. Both exchanges were relatively lightly regulated and intended for newer, and therefore generally smaller, companies who wanted to raise capital.

The Series C Bond was closed to new investors on 23 October 2015.

The Series D Bond was launched in August 2016 and expected to be listed in September 2016.

OWG went into liquidation in January 2021.

Many of the MA complainants invested in OWG Bonds as a result of instructions contained in letters that purported to come from them giving instructions to Strand Capital to invest in the Bonds.

Those letters have a number of similarities such as:

- The same font type and size.
- The frequent marking of the letters as private and confidential with that heading in bold and underlined.
- The addressing of the letter to 'Dear Sirs' but signing off 'yours sincerely' rather than 'yours faithfully'.
- The use of capitals for each word in Self Invested Personal Pension and when writing numbers in words rather than figures, but not using capitals for the first words in the phrase 'execution only'.
- Writing Self Invested Personal Pension in full followed by SIPP in brackets but then not using that abbreviation later in the letter.
- The use of the unusual closing *"I hope this meets with your approval".*
- The use of a capital letter S in 'yours sincerely'.

The number of such similarities and therefore the strong likelihood they were all produced by one author rather than by each MA complainant is therefore to be noted.

As noted above, MA and L&C both say they were not aware of the execution-only letters sent to Strand Capital instructing it to invest in OWG Bonds in Mr M's 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 that 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's likely L&C had a similar agreement relating to the Multi-Platform SIPP.

Beaufort Securities, and a Mr S at that firm, appear in most, if not all, the MA complaints. It is now known that the FCA investigated the conduct of Beaufort Securities and Mr S. 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. Most of the MA complainants' L&C SIPPs were opened during that period. The Final Decision notice shows the presence of poor practice at Beaufort Securities at around the same time as the events in the MA complaints.

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.

The FCA's Final Decision says that a Mr S was the discretionary fund manager in Beaufort's London office and he was part of a team that grew the DFM service. Mr S was named as the DFM in many, though not all, of the MA complaints.

The Final Decision went on to say:

*"2.9 During the Relevant Period, Mr S participated in a scheme involving a number of firms and individuals (the "Scheme"). Other participants in the Scheme included an unregulated individual ("the "Unregulated Individual") who oversaw the Scheme, certain introducers ("Introducers") and certain IFAs…*

*2.10 The Scheme involved certain participants (principally the Unregulated Individual and his firms) identifying companies (the "investment Companies") which were seeking to raise capital and contacting them with the promise of receiving significant capital through BSL's DFM Service. The investment companies issued bonds or shares which were nearly all high-risk products of limited liquidity.*

*2.11 In return, The Investment Companies were to make substantial payments by way of marketing fees, marketing allowances, introducer fees, commission and other offers ("Marketing Fees") which would be distributed between the participants in the Scheme…*

*2.12 Incentivised by 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.*

*2.13 Certain Introducers would seek to: (a) influence the advice of the IFAs and Mr S's investment management decision, (b) direct Mr S in relation to the investment of pension holders' funds into specific investments (including the Underlying Investments) and*

*(c) direct the IFAs to act as their agent…*

*2.15 Pension holders' funds were placed in the Strategic Income Portfolio and thereby invested in the Underlying Investments, regardless of whether they were suitable for those pension holders, so those involved in the Scheme would receive a share of the Marketing Fees…*

*2.16 In total, approximately £5.9 million in Marketing Fees was paid to the various participants in the Scheme, of which Mr S received over £1.25 million.*

*2.17 These Marketing Fees were separate from the fees charged by the DFM Service and IFAs advising the pension holders, which were payable by the pension holder in the usual way…*

*2.18 The payment of these marketing Fees was not disclosed to the pension holders and was to the ultimate detriment of the pension holders whose funds were invested in the Underlying Investments. In some cases, the payment of Marketing Fees directly resulted in certain Investment Companies facing significant financial difficulty and in turn substantially impaired the value of the Underlying Investments…*

*2.21 On 13 October 2016, following the intervention of the Authority, BSL agreed to a voluntary requirement which was imposed by the Authority…and had the effect of preventing it from accepting new money from new and or existing pension holders into the DFM Service. On 20 December 2016, at the Authority's request, BSL agreed to a voluntary variation …of its…permission to carry on regulated activities …*

*2.22 On 1 March 2018, BSL and its related firm Beaufort Asset Clearing Services Limited entered administration and special administration respectively."*

In 2024 the FCA fined two financial advisers and Mr S in relation to their participation in the Scheme referred to above. The FCA said Mr S was dishonest and failed to act with integrity and that his conduct exposed a large number of pension holders to significant risk and in many cases caused pension holders to suffer actual loss.

As far as I am aware, the unregulated Introducer referred to above was not Mr B who is the unregulated introducer common to all the MA complaints.

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 the MA complainants' applications to it. 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.

As I understand it, 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.

In 2017, MA was concerned about the number of investments made by Beaufort Securities in securities which had become illiquid. It asked Beaufort Securities for details of such investments and MA exhibited Beaufort Securities' response in the complaint it made to L&C for MA complainants. This shows a number of securities that were not main market securities. Those that were listed were listed on secondary markets in Cyprus, Frankfurt and

the GXG and NEX exchanges. The securities fit the general description of higher risk non-main market investments – the sort of investments in the area of the market Hoodless Brennan/Beaufort Securities was active in.

*MA and the introducer Mr B*

As mentioned, MA and Mr B are a common feature of the MA complaints against L&C. Having considered all of the evidence and submissions in this case and a small number of other MA cases in detail, and having reviewed the other MA complaints and a number of published decisions against MA, and some published decisions relating to PF and its appointed representative FW, I have formed views which I set out below.

I think the complaints as submitted by MA do need to be treated with caution. While I think it is likely the then CEO of MA who wrote those complaint submissions considered them to be correct, I don't think they were right in some respects.

I also consider it more likely than not that Mr X did not leave full and complete file records, or otherwise provide a full account of his dealings with Mr B.

I consider that Mr X's dealings with Mr B, at the time of MA's application to become an introducer with L&C, was considered by Mr X to be a legitimate business arrangement which was to be carried on using the one-off transaction/split advice model. I say this because Mr X wrote this arrangement down in recommendation reports, including to the consumer I've referred to in the earlier case above. But I think Mr X turned a blind eye to what would happen after the client was mandated back to FW. I think he most likely thought that if there was distance between him and his firm and the eventual investments, it was literally not his business to worry about.

I think Mr X thought the plan navigated an acceptable way around the rules just as other advisers before him had thought giving limited advice complied with the rules. Again, I say this because of Mr X's and MA's openness about its one-off transaction or transaction only service in the recommendation reports.

Next, it has to be remembered that Mr B was an introducer – that it was his *business*. He was carrying on this business and will have expected to be remunerated for it.

Mr B had an introducer relationship with a number of businesses including the firm FW, an appointed representative of PF, and the firm MA.

It should be noted that introducers are a feature of the financial services landscape. Some introducers may be guilty of wrongful conduct – that doesn't mean all introducers are. The role of an introducer is not inherently inappropriate.

While I have not seen documented evidence to show all the relationships which I consider to be relevant in the MA complaints, I think that the facts largely speak for themselves and show that Mr B was also an introducer for:

- Horizon Stockbroking
- OWG Bonds and Strand Capital in order to make those investments in OWG Bonds
- Beaufort Securities.

I consider it implausible that the introducer Mr B was involved in the SIPP applications of the MA complainants who then all ended up with investments in OWG Bonds through Strand Capital and/or with accounts with and investments through Beaufort Securities, and/or investments with or through Horizon Stockbroking and that Mr B was not an introducer for

those businesses also. I also consider it not merely coincidental that at least one and possibly more FW clients ended up with investments from that same small group during the same late 2014 early 2015 period.

However, I do not know how Mr B was remunerated as an introducer.

It seems likely to me that Mr B was not directly remunerated by MA for the referrals he made to it. It seems likely MA would have seen any such payment to Mr B in its accounts when investigating the MA complaints and would have admitted them. Or such payments would otherwise have come out during the complaints process against it and/or against L&C.

It's possible Mr X paid Mr B personally and recovered that outlay indirectly through greater earnings at MA. But such personal, off-the-books dealing, though possible seems unlikely.

It seems more likely to me that Mr B was paid some form of remuneration for the introduction of investors in OWG Bonds/Strand Capital and Horizon and Beaufort Securities. I consider that the Final Notice decision against Mr S of Beaufort Securities shows that the payment of fees by Beaufort Securities to an introducer of business is a realistic possibility. The fact of the repeated introduction to OWG Bonds, and to a lesser extent Horizon, indicates some form of payment from them is also likely.

I also consider that Mr B will have thought this was, at least largely, a legitimate way to do business. I do not think he necessarily will have been open about the level of any payments he received for introductions with his clients. But I do think he would have been reasonably open with Mr X of MA about these matters, without perhaps disclosing the amounts he would be paid.

It's my view that at the time MA applied to be an introducer to L&C, Mr X of MA will have known that Mr B introduced business to Horizon and OWG Bonds/Strand Capital and to Beaufort Securities (or was planning to do so) and that he would receive some form of remuneration for doing so. And I do not think Mr X necessarily thought this was intrinsically wrong.

It's also my view that it is more likely than not that Mr X of MA had in mind an arrangement under which Mr X would advise on the pension transfer with the client being referred back to FW so that the consumer would make investments with FW upon which Mr B would be paid fees or commission. In this way MA would be paid for its advice by the client (from their pension) and Mr B would have the opportunity to earn his fee or commission if the client invested in OWG Bonds and/or through Horizon and/or through Beaufort Securities.

I think this was the business model Mr X had agreed with Mr B and FW when he approached L&C in late 2014 in order to become an introducer of business to it. Mr X would, on behalf of MA, give one-off transaction advice and then the client would be mandated back to FW (with whom Mr B also had a relationship). That is the process recorded on the recommendation report in early 2015 I have mentioned above.

Further, it seems more likely than not that Mr X thought this was a business model that was perhaps operating in a grey area where he had found a way of complying with his understanding of the letter of the rules if not the spirit, rather than some form of criminal conspiracy that must be concealed from all. I say this because MA had an approach it clearly referred to as "transaction only" which it did not try to conceal, and which Mr X was intending to use and did use in in early applications to L&C. It appears to have thought it was compliant with the regulations for it to recommend and arrange a pension transfer and then to leave the later investments to FW.

I accept that this original plan seems to have evolved over time – and it is possible this was because FW became subject to closer supervision by PF during 2015, meaning it could no longer arrange the investments Mr B had an interest in. Whatever the reason for the later change, I consider referral back to FW (where Mr B would have the opportunity to earn a fee or commission from the investments the client made) was how Mr X at MA originally intended this business to be carried on when he made contact with L&C in late 2014 to arrange to introduce SIPP applications to it. And I think it is more likely than not that at that time Mr X would have been prepared to disclose this plan, at least in broad terms, to L&C if asked since the evidence shows that Mr X was prepared to put it in writing that clients were to be mandated back to FW for investment advice after the pension transfer.

Due diligence carried out by L&C

L&C did carry out some due diligence checks on MA. It also made checks on Strand Capital, Beaufort Securities and Horizon Stockbroking. In general terms those checks consisted of checking those businesses were regulated and had appropriate permissions. And putting in place a permitted investment list and requiring agreements under which those businesses agreed not to make investments that were not on the permitted investments list.

In the case of Horizon Stockbroking and CFD investments, L&C made a further, conditional agreement as an exception to its permitted investments list.

In broad terms, having satisfied itself that each business was regulated, L&C considered that it could rely on those businesses to act appropriately. Its processes or procedures did not involve many or any further steps.

*Was this enough in the circumstances?*

An important circumstance here was that L&C was providing a non-advisory service and I've kept this in mind.

In my view L&C was right to check the regulatory status of the businesses it was dealing with in its capacity as a non-advisory SIPP operator. And it was entitled to take some comfort from those firms being regulated. It was not, however, reasonable to in effect decide there was no further action required once it was established that a firm was regulated, had appropriate permissions and a satisfactory disciplinary record, and agreed to its permitted investment list requirement.

L&C was not authorised to give pensions advice, but it was a professional in the pensions field. It knew, or should have known, that ordinary retail consumers are vulnerable in this area in that they usually lack a good understanding of matters relating to pensions and investments. L&C as a pension provider will have been well aware of the benefits of successful pension provision and will have been just as aware of the drawbacks of having insufficient pension provision – whether through a failure to plan or through the failure of plans.

L&C will also 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 of those things happen, the consequences for consumers can be extremely serious. And L&C will have known in 2014 and 2015 that regulated, as well as unregulated, businesses have been involved in cases where consumers have been caused considerable detriment in this way.

So 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 and there are frequent reports of

the Regulator fining regulated firms for conduct that has caused harm to their clients. The point also comes through from the pension transfer alerts in 2013 and 2014 referred to above. And also in the Regulators' publications addressed to SIPP operators referred to above in 2009, 2012, 2013 and 2014.

Accordingly, bearing in mind the Principles and good industry practice, in relation to MA, L&C should have done more than check the regulatory status of the firm and the individual with whom they were dealing.

In my view, meeting the standards required of a non-advisory SIPP operator by the Principles, and good industry practice, required systems or processes such as getting to know and understand its introducers so as to reasonably ensure they are satisfied the introducer (MA in this case) is appropriate to deal with. In my view L&C should have had processes in place to reasonably satisfy itself about the type of business MA was proposing to introduce to it. It should have asked about matters such as why MA was seeking to start a business relationship with it, about how it sourced its business, its typical clients and the types of investments it recommends.

L&C should also have asked about whether MA worked with any introducers and if so who. It should also have asked about that introduction process.

In short, L&C should reasonably have asked the sort of questions that would have led to one of two outcomes. One possibility is a refusal by MA to give answers or answers that seemed evasive. This would clearly have been a cause for serious concern.

The other possibility was that Mr X would have given reasonable answers to L&C's questions and that would have allowed L&C to understand that:

- MA was working with an introducer;
- the introducer was Mr B who also worked with FW; and
- FW got leads from the Pension Wise/Money Advice website and when that involved pension transfers, Mr B would introduce the client to MA.

All of the above matters are relatively uncontroversial and there is no reason why they would not have been disclosed.

I also consider that MA would have explained that the intention was that MA would give advice on the transferring of pensions to a SIPP on a one-off transaction basis and that the client would then be mandated back to FW for advice on investment in the SIPP. Again, this was documented by MA; it was not concealed. As such, there is no reason to say that MA would not have explained to L&C that this was the plan, if asked.

Bearing in mind the role of Mr B, L&C should reasonably have asked questions about him, and carried out its own research on him.

L&C is a business, and it will have a commercial mindset. L&C should have realised an introducer acts as an introducer by way of business and does so expecting some form of economic reward. In my view, L&C should have wanted to know what was in it for Mr B and how he was going to be paid. It would have wanted to know this because L&C would want to understand if this point was likely to unduly influence the outcomes for the potential new members. And importantly, it should have been alert to the possibility of consumer detriment when an introducer is incentivised to make introductions.

Accordingly in my view L&C would reasonably have discovered from those questions of MA and its own enquiries that:

- Mr B was formerly a partner with, and held senior positions at, a regulated business whose permission to carry on regulated activities was cancelled in 2012 as a result of non-payment of fees to the Regulator.
- Mr B acted as an introducer for other regulated adviser firms.
- And that Mr B acted as an introducer for OWG Bonds, Strand Capital, Horizon Stockbroking and was or was planning on becoming an introducer for Beaufort Securities.

Beaufort Securities apparently did not have permission to manage investments until early 2015 and L&C would have been thinking about MA's application to be an introducer in late 2014 and maybe into January 2015 if it had taken more time in considering that application. Even if Beaufort did not yet have permission to manage investments at the time L&C considered MA's application to become an introducer to it, it seems Beaufort Securities would have told introducers and potential introducers to it that it had applied for and expected to get permission to manage investments. Beaufort Securities would have been promoting itself. And as it was already offering the Beaufort SIPP and as Mr B seems to have been active in the higher risk/growth oriented areas in which Beaufort Securities was active it seems unlikely Mr B was not in touch with Beaufort Securities and aware of its business expansion plans.

Further thought should have been given by L&C about Strand Capital and OWG Bonds, and about Horizon and about Beaufort Securities, in general terms, to put more context around the consideration of Mr B.

This would have meant that at the time of MA's application to be an introducer in late 2014, L&C would have noted:

- It was already in contact with Strand Capital. And that Strand Capital was wholly owned by OWG meaning there was a *potential* conflict of interest in Strand Capital being involved in any OWG investment. (L&C may have been told that Strand would receive no payment for investing in OWG Bonds but L&C still knew there was *potential* for a conflict of interest and that it was still possible for Strand Capital to have an interest in promoting OWG Bonds even if no commission was being paid to it.)
- The OWG Bonds Series C had recently been issued. Unlike series A and B which were unlisted, Series C was (or was intended to be) listed. While OWG was a UK company the listing was on an exchange in Denmark subject to relatively light touch regulation intended for smaller, newer, companies that could not yet meet the criteria for listing on a more established exchange. L&C would be aware that investment was unlikely to be suitable for most ordinary retail investors.
- It also already had dealings with Horizon Stockbroking which was involved in CFD trading. And although it had reached an exceptional agreement with Horizon Stockbroking, it was still aware that CFD trading was a particularly high-risk area. Though this may have been of interest to some L&C members, it is not suitable for most pension investors. It is such a high-risk area that the possibly distorting effect of an introducer promoting this form of investment and being incentivised for doing so ought to have been a concern.
- That Beaufort Securities was formerly Hoodless Brennan - a firm with a poor disciplinary record. Hoodless Brennan/Beaufort Securities was a firm that was still permitted to trade by the Regulator and it had been active in what is often called the growth and/or "small cap" area – that is smaller new companies trying to raise

capital. I do not say there was anything wrong with this, but this area is a higher risk area. Though this may have been of interest to some L&C members it is unlikely to be suitable for most pension investors. Beaufort Securities was trying to rebuild its reputation including by moving into new areas such as the Beaufort SIPP from March 2014 (and was apparently seeking permission to manage investments which permission was granted in January 2015.) L&C might have had some concerns about Beaufort Securities and wondered why it (L&C) was being chosen in preference to the Beaufort SIPP by an introducer who had or was developing a connection with Beaufort Securities. (I do not say this point alone was a bright red flag, but it was part of an overall picture which was to be considered by L&C.)

In my view when L&C considered all of the information that it should reasonably have been able to gather, a number of points should have given it cause for concern. Those points include:

- MA was to be involved in pension transfer cases. Although MA was authorised to give pension transfer advice, and the suitability of that advice was MA's responsibility, MA was known to be operating in an area where the risks of consumer detriment were high and the starting presumption is that advice to transfer is likely to be unsuitable. So, there was a need for caution generally.
- There was an unregulated introducer involved who seemed to be a central figure.
- Unregulated introducers are not necessarily and automatically to be avoided or vetoed but there is a need to be cautious. An unregulated introducer might cross the line into giving advice they are not authorised to give. They will promote the benefit of anything they introduce and may not do so in an impartial way. Their involvement in a process, and particularly their financial interests in a particular outcome being achieved, can create distorting pressures on a consumer's decision making.
- Mr B had a firm whose regulatory permissions had been withdrawn.
- The investments or investment providers Mr B also had connections with could not be considered vanilla or low risk choices. There is nothing intrinsically wrong with such investments. But it means that if the introducer's involvement distorted things it could well be in the direction of higher risk investments. L&C ought to have had concerns about the possibility of an introducer being incentivised to promote very high-risk activities such as CFD trading with Horizon Securities, and/or being incentivised to promote higher risk investment such as the OWG Bond, and the sort of investments Beaufort Securities was likely to be involved with (non-main market higher risk securities).

In my view a SIPP operator should as a general point have been cautious about the involvement of an unregulated introducer when L&C was considering MA's application to be an introducer in later 2014. And in my view L&C should have noticed and been concerned about the points mentioned above in relation to the involvement of Mr B in business to come from MA.

Further there was the process MA was proposing which ought to have struck L&C as odd from the outset. Why, for example, was an appointed representative of PF without pension specialist status not referring work to another PF appointed representative firm that could advise on pension transfers?

L&C might also have consulted its own records and reviewed its dealings with FW and realised that it had referred applications to it on a restricted advice basis. If it had done this it would have wondered what was going on. Why was MA proposing not to give advice on investments in the SIPP when it was authorised to do so? There had to be some economic reason in the business model proposed by MA. Was it that MA had to do that to give Mr B

opportunity to earn his fees or commission? And if so, did that mean the consumer was not getting impartial advice about the investments to be made in their SIPP with L&C? And/or was it that MA was not willing to recommend those investments because it did not think they were suitable?

The split advice model looks unnatural and unnecessarily involved. Moreover, it looks suspicious. It looks like something that might not be putting the interests of the customer first.

On top of that is the clearly stated view of the Regulator that an adviser who advises on a transfer of a pension into a SIPP ought to advise on the suitability of the whole transaction including the investment to be made in the SIPP. So, the business model proposed by MA did not fit in with the Regulator's expectations or good industry practice. In my view, an indication of the asset allocation that might be suitable for a client's attitude to risk does not really amount to *"…consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments…"*

MA may have thought it had found a way around FCA's requirements, and thought it could answer yes to the question about whether its advice had taken account of the intended underlying investment strategy, but in my view L&C should have been doubtful about that one off transaction/split advice model.

This one-off transaction/split advice model alone ought to have been a serious concern to L&C. In my view this point alone ought to have meant that L&C would not accept instructions from MA. But this was not the only point that could and should reasonably have been discovered by L&C before it decided to accept business from MA. This point together with the other concerns L&C ought to have had about Mr B and his role in the matter and the real risk that his involvement would have a distorting effect, means that L&C should have decided not to accept the introduction of business from MA.

I also consider that MA's proposed business model should reasonably have coloured L&C's view of MA. L&C should have been concerned by the fact that Mr X on behalf of MA would think this an appropriate way to proceed. This means that if L&C had said it was not prepared to accept introductions from MA because of, say, the Regulator's guidance about limited advice in pension transfers, it would not have changed its mind about dealing with MA had it tried to persuade L&C to do so by saying it would change its business model. This was particularly the case given that L&C was aware that it did not have any process in place for checking that those it did business with stuck to the terms of their permitted investments list agreements.

L&C should have been suspicious that even if clients were not mandated back to FW, Mr B's involvement would still lead to outcomes for the L&C SIPP members which involved investing in the investments with which Mr B had a connection. This is what in effect happened with MA complainants such as the earlier applicant I mentioned above, who was not mandated back to FW as originally planned, and to later MA applicants, after the original plan seems to have evolved slightly, and the *"mandating back to the original adviser"* point dropped from MA's transfer advice.

In my view all the above matters could reasonably have been discovered from reasonable checks in late 2014 and/or early 2015 and certainly before Mr M's application in June 2015.

I do not say that each of the points mentioned above was necessarily a major point on its own, or that they only amount to something when each and every mentioned point is added together. The points accumulate and build up a picture, and that picture does not need to be fully emerged or completely in focus to be acted upon. L&C was entitled to, and in my view

reasonably should have acted on an overall impression. And that overall impression ought to have been one of serious concern that consumer detriment could very well result from MA's proposed business model.

Or, alternatively, as I have mentioned it may have been that answers to reasonable enquiries may have been refused, or evasive answers given, that meant L&C could not satisfy itself that all was in order.

Either way, in my present view if L&C had carried out appropriate due diligence on MA it would not have agreed to accept SIPP applications from it. And in this case that means Mr M would not have applied for a SIPP with L&C.

L&C's due diligence checks on investments via Strand Capital, Horizon Stockbroking and Beaufort Securities

Given my view about the due diligence carried out in relation to MA, I do not consider that it is necessary for me to also consider in detail and comment upon L&C's due diligence processes in relation to Strand Capital and OWG Bonds, Horizon Stockbroking and Beaufort Securities. Nevertheless, I also have serious misgivings about L&C's due diligence processes in relation to the investments made in the SIPP.

In my view L&C's processes were ineffective because of its decision to take on trust that the regulated firms would act appropriately without having any effective process for monitoring that they were doing so. I do not consider that was a reasonable position to take. As mentioned above, L&C should have been aware that some regulated firms do sometimes fail to act appropriately. In my view L&C should reasonably have been monitoring, from the outset, the investments being made for its members. It should have had processes in place to ensure compliance with its requirements and to otherwise allow it to identify anomalous investments such as unusually large investments and investments that might otherwise cause concern such as those which were known to be connected to an investment manager/platform provider such as Strand Capital and OWG Bonds.

In my view reasonable processes should provide for checks at the start of a relationship so that any issues can be spotted and acted on if there is any misunderstanding about what is required or deliberate ignoring of requirements. Such steps should not just be made later when there is a larger mass of evidence to review. When a relationship is new L&C ought to have checked that things were getting off to a satisfactory start and not just wait for a trend to emerge over time.

I don't know which was the first MA application, but I'm aware that at least one MA complainant applied for a SIPP with L&C in December 2014. That applicant also applied for an account with Strand at that time and an investment was made in OWG Bonds following an execution-only letter to Strand Capital in early January 2015 instructing Strand Capital to buy £200,000 worth of OWG Bonds. This is clearly a large investment in an unusual asset and if L&C had been monitoring the investments made on behalf of its new MA clients it should have noticed and had concerns about this investment.

If L&C had looked into this investment it would have discovered it had been arranged on an execution-only basis. A large execution-only transaction, particularly one involving an investment connected to Strand Capital, for a client who was supposed to be an advised client, should have caused concern. Further, the consumer in that case denies signing the execution-only letter.

I'm also aware of another MA complainant who opened a SIPP in March 2015. That applicant also applied for an account with Strand at that time and an investment was made

in OWG Bonds following an execution-only letter to Strand Capital in early March 2015 instructing Strand Capital to buy £70,000 worth of OWG Bonds.

It is my view that these matters could and should have been discovered by L&C before Mr M's application in June 2015. And so even if L&C had decided to accept applications when first approached by MA it should have reversed that decision by the time of Mr M's application.

What should have happened?

It is difficult to know exactly what would have happened if L&C had acted as it should. It appears Mr M wanted pensions advice but the advice he received was tainted by the involvement of an unregulated introducer who influenced the decisions made by Mr X at MA and by Mr M.

L&C might say that if it hadn't accepted business from MA and/or permitted the investments that were effected in its SIPPs, MA would have gone elsewhere and that Mr M's transfer 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 M 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 MA involving Mr B including Mr M's application.

Further, I think it's very unlikely that advice from a different advisory business would have resulted in Mr M taking the same course of action. If L&C had declined to accept business from MA and Mr M had then sought advice from a different adviser, I think it's unlikely that another adviser, acting reasonably, would have advised Mr M to transfer into the L&C SIPP and make the investments that Mr M 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.

To decide what would have most likely happened here, I've considered Mr M's circumstances at the time of the advice.

The recommendation report prepared by MA justified the advice to Mr M to transfer his occupational pensions and switch his personal pension to the SIPP based on the following points:

- Mr M wanted to access tax free cash of £24,000 to replace his income for the next six months without having to commence an annuity.
- Mr M would have control over the investment choices of the remaining funds, which could be structured to meet his requirements.
- To be able to access Flexi Access Drawdown so Mr M could access his entire pension pot.
- More flexible death benefits.

According to the Retirement Options Report issued by MA, at the time of the advice Mr M was aged 62 and had just taken redundancy from his employer, which equated to three months' salary and a tax-free lump sum of £10,000. He owned his home, and had cash deposits of £150,000, plus investments worth around £30,000. The report noted that there was a possibility that Mr M would take on some temporary work until January 2016, but MA noted that Mr M wished to take a tax-free cash sum of £24,000 from his pension to replace his income until the end of the financial year.

While it would appear Mr M had access to cash deposits, he did in fact take an income of £4,000 per month from the SIPP from September 2015 to March 2018. Between September 2015 and March 2016, this was taken exclusively as tax-free cash and from April 2016 this was via a combination of tax-free cash and taxable income. Mr M also took a one-off tax-free lump sum of around £100,000 in July 2016. In total, based on the SIPP transaction statement dated 8 August 2019, Mr M withdrew around £227,000 from the SIPP. So, it seems to me that Mr M had a genuine need for income at the time of taking the advice and he wasn't inclined to use his other cash or investments.

I asked Mr M what he thought should have happened here given that he appeared to have a genuine need to access his pensions at the time. But as Mr M was reliant on the advice he was given, he didn't really have an answer for this. So, I've thought about what an adviser acting reasonably and in their client's best interest would have done in the circumstances of Mr M's case.

Mr M had four different pension arrangements, which provided the following benefits:

- A DB scheme which had a transfer value of around £492,000 and provided an annual pension of around £24,000 or a tax-free cash sum of around £102,000 and a reduced annual pension of around £12,000.
- 'OPS1' which had a transfer value of just under £56,000 and provided an annual pension of £3,146.
- 'OPS2' which had a transfer value of around £55,500 and had a protected tax-free cash sum of around £16,000 (28% of the transfer value) which he could take with a reduced annual income of around £900. Alternatively he could take an annual income of around £1,500.
- A personal pension which had a transfer value of around £247,000.

Having considered this and given Mr M's need for a monthly income of around £4,000, on balance I think an adviser acting reasonably would've recommended that Mr M should not transfer his DB scheme and instead he should take benefits from it immediately. This is because he would be entitled to take tax-free cash of over £100,000 and an annual pension of around £12,000. This would've gone some way to meeting Mr M's needs for tax-free cash and income following his retirement. And I haven't seen any reasons to persuade me that it was in Mr M's best interest to transfer out of this scheme given the valuable guarantees it provided, which would meet a significant part of his retirement needs, and the fact that Mr M already had other pensions which he could use flexibly to meet his needs.

Given that OPS2 had a protected higher tax-free cash amount available to Mr M, I also think Mr M should've been advised to take benefits from this scheme directly, so he'd have access to an additional £16,000 of tax-free cash and a small annual income. The spouse's pension under OPS2 was also generous, paying Mr M's spouse an annual pension of around £1,750 per year in the event of his death, whether he took the tax-free cash or not. So, I think this was a valuable benefit that wasn't worth sacrificing for extra flexibility given what I'll go on to say below.

On balance, I think it would've been suitable advice to consolidate the remaining pensions; OPS1 and the personal pension. This would've ensured that Mr M retained some extra flexibility in his pension arrangements, the balance of which could be left to his family in the event of his death. He'd also be entitled to take additional tax-free sums and top up his income as and when required. I don't know whether Mr M's personal pension was a flexible arrangement or whether it could accept transfers in from alternative pensions. As such,

I think it would've been reasonable to recommend that these pensions be transferred to a SIPP. And I note Mr M has accepted my view on this point.

Accordingly, it remains my view is that a reasonable adviser acting reasonably and in Mr M's best interest is likely to have advised Mr M to:

- Take benefits immediately from the DB scheme and OPS2 – taking the maximum tax-free cash in each case;
- Transfer OPS1 and the personal pension to a SIPP and make investments suitable for a medium risk investor with the remaining funds.

I consider it more likely than not that with reasonable advice Mr M would not have invested the funds in the SIPP in the way that he did. The investments made were largely because of the involvement of the introducer Mr B and are not the sort of investment choices that would have been recommended for a medium risk investor by a regulated financial adviser acting reasonably in the circumstances.

Accordingly, in broad terms this is the position Mr M ought to be in, and ignoring for a moment any monies he has recovered from third parties or the FSCS, Mr M has ended up in a worse position because of the failings of L&C.

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

In similar cases, L&C has made points on this issue. One point is that given the sums recovered from MA and the FSCS there may be no unrecovered loss. Another point is that MA is solely responsible for any loss Mr M has suffered and so it is unfair to require L&C to compensate Mr M if there is any unrecovered loss.

On the first of those two points, Mr M should provide evidence of all the sums he has recovered from third parties including the FSCS and MA.

Whether or not there is an unrecovered loss will depend upon a calculation of the loss which I will come on to below.

If Mr M has been paid any compensation by the FSCS he will have agreed to assign to the FSCS his rights to make a complaint against others such as L&C. And as I understand it, he has already had the right to complain about L&C reassigned to him. The terms on which the FSCS agrees to such reassignments normally requires the claimant to agree to repay the FSCS from any money received from others (L&C in this case). That should be kept in mind here.

Subject to this point about having to repay the FSCS, if there is no outstanding loss there will be no compensation for L&C to pay. However, given the sums invested by Mr M, I think that's unlikely to be the case.

The next point is about whether MA is the only cause of Mr M's loss. L&C has referred to comments made by myself and other Ombudsmen, when deciding complaints about MA.

I will deal with this point briefly and I consider the following points relevant:

- I am required to make the decision that I consider to be fair and reasonable in all the circumstances taking into account relevant law and regulations, Regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

- The Financial Ombudsman Service is an informal dispute resolution service and an Ombudsman's decision in a case must be considered in that context. Comments made in one decision may be appropriate and reasonably worded in that context but should not be interpreted as formally determining issues beyond the scope of the complaint being decided.

- Whether or not L&C was responsible for any of the loss suffered by the consumers was not in issue in the MA complaints I decided or those decided by my colleagues.

- And in any event, I am not bound by previous Ombudsman decisions.

It is my view that L&C's conduct was one of the causes of the loss Mr M has suffered. I'm satisfied that the transaction would not have proceeded as it did if L&C had not accepted Mr M's applications from MA. I consider it more likely that Mr M would have accessed his DB scheme and OPS2 and would've transferred OPS1 and his personal pension to a SIPP.

While I accept that MA is responsible for initiating the course of action that led to Mr M'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 M would not have transferred his DB scheme or OPS2. Further, that the investments Mr M made in his SIPP would not have come about and the loss Mr M 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 M fairly.

It is my view that it is appropriate and fair in the circumstances for L&C to compensate Mr M for the full extent of the financial loss he has suffered due to its failings. I don't think it would be appropriate or fair in the circumstances to reduce the compensation amount L&C is liable to pay Mr M except by any sum(s) already recovered from third parties, other than the FSCS which Mr M is obliged to repay.

If Mr M has been paid compensation by third parties (other than the FSCS) equal to or greater than the loss calculated in the way I set out below, no further payment will be due. However, I consider that outcome unlikely.

Distress and inconvenience

As a result of L&C's errors Mr M has suffered considerable loss in his pension. His retirement planning has certainly been disrupted and it is possible that his income in retirement may have been considerably reduced.

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

**Putting things right**

I've considered Mr M's representative's comments about how Mr M should be compensated; that it should be based on the amounts he invested and lost, rather than the position his pensions would've been in had L&C not accepted his applications. But for the reasons I've given above I think it is fair and reasonable in the circumstances to consider what would've happened if L&C had acted reasonably and not accepted his applications and then Mr M went on to receive suitable advice from a third-party.

My aim, therefore, is that Mr M should be put as closely as possible in the position he would probably now be in if he had not transferred his DB scheme or OPS2 to a SIPP and had not invested his personal pension monies or the transfer value of OPS1 in the way he did after these pensions were switched to a SIPP.

I do not know exactly how Mr M would have invested the pension monies that would've reasonably been transferred to a SIPP, but I am satisfied that what I have set out below is fair and reasonable taking all the circumstances into account.

What L&C must do

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

In light of the above, L&C should:

- Obtain the actual transfer value of Mr M's L&C SIPP, including any outstanding charges.
- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).
- Undertake loss calculations as set out below in respect of each of the pension schemes from which monies were transferred into the SIPP and pay any redress owing in line with the steps set out below.
- If the SIPP needs to be kept open only because of the illiquid investment and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.
- Pay to Mr M £500 to compensate him for the distress and inconvenience he's been caused.

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

I acknowledge that Mr M has received compensation from the FSCS and that he will have had the use of the monies received from the FSCS. The terms of any reassignment of rights would 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 assignments if required. So, I think it's fair and reasonable to make no permanent deduction in the redress calculation for any compensation Mr M has received from the FSCS. And it will be for Mr M to make the arrangements to make any repayments he needs to make to the FSCS. However, I do think it's fair and reasonable for some allowance to be made for any sum(s)

Mr M has actually received from the FSCS and has had the use of for a period of the time covered by the calculation.

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

Compensation received from third parties other than the FSCS

As I understand it Mr M has received compensation from MA. Unlike the compensation received from the FSCS, a permanent deduction in the redress calculation for the compensation Mr M received from MA and any other third party is appropriate.

So as to allow for this, L&C must first calculate the proportion of any relevant compensation payment(s) Mr M received from MA and/or any other third party that it's fair and reasonable to apportion to each individual transfer into the SIPP – this must be proportionate to the value of the actual sums transferred in. The total payment(s) allowed for must be no more than the total compensation payment(s) Mr M actually received. Having done this, L&C can then make the allowance by following the steps set out in the sections below.

Treatment of the illiquid assets held within the SIPP

But for any illiquid holdings that remain within Mr M's L&C SIPP, Mr M's monies could be transferred away from L&C. In order to ensure the SIPP could be closed and further L&C SIPP fees could be prevented, any remaining illiquid holdings need to be removed from the SIPP. To do this L&C should reach an amount it's willing to accept as a commercial value for any illiquid holdings that remain within Mr M's L&C SIPP, and pay this sum into the SIPP and take ownership of the relevant investments.

If L&C is able to purchase an illiquid investment, then the price paid to purchase 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 an illiquid investment, it should give the holding a nil value for the purposes of calculating compensation. To be clear, this would include the investment being given a nil value for the purposes of ascertaining the current value of Mr M's SIPP.

If L&C doesn't purchase the investments, and if the total calculated redress in this complaint is less than £150,000, L&C may ask Mr M to provide an undertaking to account to it for the net amount of any future payment the SIPP may receive from these investments. That undertaking should allow for the effect of any tax and charges on the amount Mr M may receive from the investments after the date of my final decision, and any eventual sums he would be able to access from the SIPP in respect of the investments. L&C will need to meet any costs in drawing up the undertaking.

If L&C doesn't purchase the investments, and if the total calculated redress in this complaint is greater than £150,000 and L&C doesn't pay the *recommended* amount, Mr M should retain the rights to any future return from the investments until such time as any future benefit that he receives from the investments together with the compensation paid by L&C (excluding any interest) equates to the total calculated redress amount in this complaint. L&C may ask Mr M to provide an undertaking to account to it for the net amount of any

further payment the SIPP may receive from these investments thereafter. That undertaking should allow for the effect of any tax and charges on the amount Mr M may receive from the investments from that point, and any eventual sums he would be able to access from the SIPP in respect of the investments. L&C will need to meet any costs in drawing up the undertaking.

Calculate the loss Mr M has suffered as a result of making the transfer in relation to monies originating from the DB scheme and OPS2

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

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

As I understand it, Mr M was aged 62 and had retired at the time he took advice. Based on what I've set out above, I think Mr M would've taken benefits from both of these schemes if suitable advice had been given. The normal retirement age for the DB scheme was 61, and it was 62 for OPS2. So, compensation should be based on him taking benefits at age 62.

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

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

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

For the purposes of the calculation that's being carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4, if it wishes, L&C may notionally, for the period from the point of their payment through until the valuation date (as per the DISP App 4 definition of that term), allow for that proportion of any payment(s) Mr M received from the FSCS, that it's fair and reasonable to apportion to monies transferred in from the defined benefit scheme(s) and in accordance with what's stated earlier in this decision, as a notional deduction (while not an income withdrawal payment, for the purposes of the calculation it may be treated as a notional income withdrawal payment). Where such an allowance is made then L&C must also, at the end of the calculation, allow for a corresponding notional

addition to the overall calculated loss that's equivalent to the relevant notional deduction(s) allowed for. The effect of this notional addition will be to increase the overall loss calculated using the most recent financial assumptions in line with PS22/13 and DISP App 4, by a sum that's equivalent to the proportion of the payment(s) Mr M received from the FSCS accounted for in this defined benefit part of the redress calculation.

L&C should also allow for that proportion of the compensation payment(s) Mr M received from MA or any other third party (other than the FSCS payments which have been dealt with separately in my directions) that it's fair and reasonable to apportion to the monies transferred in from the defined benefit scheme(s) and in accordance with what's stated earlier in this decision, as a notional deduction (while not an income withdrawal payment, for the purposes of the calculation it may be treated as a notional income withdrawal payment).

Redress paid directly to Mr M as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), L&C may make a notional deduction to allow for income tax that would otherwise have been paid. Mr M's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

Calculate the loss Mr M has suffered as a result of making the transfer in relation to monies originating from OPS1 and his personal pension

L&C should calculate what the monies transferred into the L&C SIPP from OPS1 and the personal pension would now be worth had they instead achieved a return equivalent to that enjoyed by the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return index) from the date they were first transferred into the L&C SIPP through until the date of my final decision.

I'm satisfied that's a reasonable proxy for the type of return that could have been achieved over the period in question.

L&C must also make a notional allowance in this calculation for any additional sums Mr M has contributed to, or withdrawn from, his L&C SIPP since outset. To be clear this doesn't include SIPP charges or fees paid to third parties like an adviser. But it does include any pension commencement lump sums or pension income Mr M actually took after his pension monies were transferred to L&C. It would also include any sums that were transferred away from Mr M's L&C SIPP.

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

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

In its calculation L&C should also allow for that proportion of the compensation payment(s) Mr M received from MA or any other third party (other than the FSCS payments which have been dealt with separately in my directions) that it's fair and reasonable to apportion to the

monies transferred in from the defined contribution scheme(s) and in accordance with what's stated earlier in this decision, as a notional deduction. The notional deduction should be allowed for at the date(s) on which the compensation payment(s) were actually paid to Mr M.

Interest

The compensation resulting from the monies originating from OPS1 and his personal pension portion of the loss assessment must be paid to Mr M or into his SIPP within 28 days of the date L&C receives notification of Mr M's acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation isn't paid within 28 days of L&C being notified of Mr M's acceptance of my final decisions.

L&C must also provide the details of its redress calculation to Mr M in a clear, simple format.

Pay an amount into Mr M's SIPP so that the transfer value is increased by the loss calculated above in relation to monies originating from OPS1 and his personal pension

The combined notional values of Mr M's previous personal pension and OPS1 if the monies hadn't been invested as they were (established in line with the above) less the proportion of the current value of the L&C SIPP that's attributable to monies transferred in from those same plans (as at the date of my final decision) is Mr M's loss.

If the redress calculation demonstrates a loss, the compensation should, if possible, be paid into Mr M'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 L&C is unable to pay the compensation into a pension arrangement for Mr M, or if doing so would give rise to protection or allowance issues, it should instead pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr M's expected marginal rate of tax in retirement.

It's reasonable to assume that Mr M is likely to be a basic rate taxpayer in retirement, so the reduction would equal 20%. However, if Mr M would have been able to take a further tax-free lump sum, the reduction should only be applied to that portion of the compensation that couldn't have been taken as a tax-free lump sum. For example, if Mr M would have been able to take a tax-free lump sum of 25%, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

SIPP fees

If the illiquid investments cannot be removed from the SIPP, and because of this it cannot be closed after compensation has been paid, then it wouldn't be fair for Mr M 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 an 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.

## My final decision

For the reasons set out above it is my final decision that Mr M's complaint should be upheld.

Where I uphold a complaint referred to us before 1 April 2019, I can award fair compensation of up to £150,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £150,000, I may recommend that the business pays the balance.

Determination and money award: I uphold this complaint and require Pathlines Pensions UK Limited to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £150,000 (including the compensation for distress and inconvenience).

Recommendation: If the compensation amount exceeds £150,000, I also recommend that Pathlines Pensions UK Limited pays Mr M the balance.

If Mr M 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 M can accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept any final decision.
Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 July 2025.

Hannah Wise
**Ombudsman**