DRN-5647933

The complaint

Mr F has a self-invested personal pension (SIPP) with London & Colonial Services Limited ("L&C") now Pathlines Pensions UK Limited. Mr F 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 F.
- The respondent firm (the business the complaint is about): L&C, now known as Pathlines Pensions UK Limited. 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 M, 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 M 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 account which can be used to view and administer a client's investment portfolio. Investments on the platform 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 management. It is also often referred to as discretionary fund management or DFM with the investment manager 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 am not aware of any complaints against that firm.
- Horizon Stockbroking: in some of the MA complaints Horizon Stockbroking 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 Stockbroking 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 has gone into default. Those consumers who still have unrecovered losses are proceeding with their complaints against L&C.

What happened in Mr F's case:

In 2015 Mr F was in his mid-60's. He had a number of pensions but some did not provide the flexibility he wanted, as one or more of his larger pensions did not offer income drawdown as an option, so he decided to get advice. After using a website, he was contacted by Mr B who introduced Mr F to Mr M. Mr F says Mr B remained involved in his dealings with his pension.

Mr M advised Mr F to switch a number of his pensions to a SIPP with L&C.

Mr M applied for a SIPP with L&C and the application form recorded a number of matters including:

- Mr F's financial adviser was Mr M of MA.
- Mr M confirmed the following statement:
    - *"Advice given at point of sale to client that takes account of the intended underlying investment strategy"*
- Mr M had chosen a DFM arrangement with Horizon Stockbroking with the DFM to perform the trading on the account.
- L&C was to request the transfer to it of five pension arrangements.

The combined transfer value of Mr F's pensions was over £1 million and all the pensions (unusually for one of the MA complaints) were defined contribution pensions. (Mr F also had a defined benefit pension but that was not transferred.)

The transfer payments were received into the SIPP in August 2015.

On 3 August 2015 a letter from Mr F was sent to Strand Capital. It said:

> ***Private & Confidential*** [original emphasis]
>
> *Dear Sirs*
>
> *I am writing to confirm that I wish to purchase the 60 units of the Optima Worldwide Group Corporate Bond for the sum of £300,000 (Three 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 instructions to trade must come from me.*
>
> *I hope this meets with your approval.*
>
> *Yours Sincerely*
> [signed Mr F]

An almost identical letter was sent on 25 August 2015 giving instructions to buy 16 units of OWG Bonds for £80,000.

Funds to make those purchases were sent to Strand Capital in August 2015.

Mr F says the OWG Bond was recommended to him by Mr B – who he thought was acting on behalf of Mr M, as a low-risk investment with a good return.

In September 2015 almost £740,000 was sent to Shard Capital for investment by Horizon Stockbroking. Horizon carried on CFD trading with some of those funds.

Mr F has said he was not aware that such trading was to be carried out and that he had thought investments would be low to medium risk in accordance with Mr M's assessment of his attitude to risk.

In April 2016 around £670,000 was returned to L&C by Shard Capital and £660,000 was paid to Beaufort Securities.

In August 2016 around £630,000 was returned to L&C by Beaufort Securities. It then seems to have been held in the SIPP uninvested until June 2017.

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

OWG also got into difficulties. 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 F has therefore lost most or all of the money that was invested in the OWG Bonds causing significant losses in his pension.

Horizon Stockbroking also failed in 2019 and was declared in default by the Financial Services Compensation Scheme (FSCS).

Mr F has done a number of things to try to recover his losses.

Initially, in 2017/2018 MA represented Mr F in making complaints and/or claims against L&C, Horizon Stockbroking, Beaufort Securities and Strand Capital

Mr F was paid compensation of almost £30,000 by the FSCS in respect of Beaufort Securities.

Ordinarily when the FSCS makes an award it requires the claimant to assign to it the right to make related claims to third parties. The FSCS is normally willing to reassign those rights to the claimant on condition that the claimant repays the FSCS from the money recovered from the third party. As a result of discussions with the FSCS it is Mr F's understanding that a reassignment is not however needed in this case.

So far as I am aware Mr F has not recovered any compensation either from or in respect of Horizon Stockbroking or Strand Capital.

MA made a complaint to L&C on behalf of Mr F in June 2018 and referred that complaint to the Financial Ombudsman Service in October/November 2018. MA submitted a number of other complaints to L&C for other clients at that time.

MA stopped acting for Mr F in this complaint in June 2021. Mr F went on to make a complaint about the advice he'd received from MA. As I understand it Mr F referred his complaint to the Financial Ombudsman Service and his complaint was upheld by an ombudsman. The ombudsman thought MA should pay compensation to Mr F – subject to the limits on our powers to make money awards. MA arranged for an actuary to calculate Mr F's loss, and it amounted to almost £650,000. Mr F decided not to accept that decision because his loss was so much larger than the maximum award limit.

Mr F then issued court proceedings against MA. Those proceedings were settled on the basis that MA pay £300,000 to Mr F (which it has been paying by instalments) because that was all MA could afford to pay. Mr F did not regard that as full recovery of all his losses.

When Mr F was engaged in court proceedings, we decided that we would not actively proceed with consideration of the complaint and L&C was told we had closed our file. Mr F recontacted the Financial Ombudsman Service when his court case against MA was settled, in order to try to recover the rest of his losses from L&C.

L&C did not uphold Mr F's complaint when it was first referred to it. In short it does not consider that it has been at fault. Nor does it think the complaint should be reopened since it was told the file had been closed.

One of our investigators considered Mr F's complaint. He thought the complaint should be reopened and that the complaint should be upheld. He thought L&C had failed to make adequate checks on or adequately monitor Strand Capital. He thought L&C had failed to prevent investments which were not on its permitted list (the OWG Bonds) or not in accordance with its additional requirements (CFD trading by Horizon Stockbroking). He also thought L&C should have had concerns about the business introduced by MA. He thought L&C did not carry out adequate due diligence checks either before or during L&C's dealings with those businesses. He thought it was fair and reasonable for L&C to pay compensation to Mr F in respect of the losses he had suffered.

The investigator also explained how he thought L&C should put things right.

L&C did not respond to the investigator and as it did not agree with him the investigator arranged for the complaint to be referred to an ombudsman.

I have considered some other MA complaints and in this and in other cases L&C has made a number of points which I have considered. I set out below what I consider to be the main points relevant to determining this complaint.

- L&C thinks it is unfair to reopen Mr F's case. It thinks we are acting contrary to our published policy in reopening a complaint that has been withdrawn.
- L&C's role is limited. It is the Trustee and administrator of the SIPP. It does not provide advice. It is for the member to choose their own investments.
- L&C does not comment on the merits of any investment chosen by the member or their adviser or investment manager.
- Its only role in this area is to check the investment is of a type permitted within the rules of the SIPP and HMRC's rules.
- MA, Horizon Stockbroking, Beaufort Securities and Strand Capital were all regulated businesses, and it was reasonable for L&C to rely on them.
- L&C did have a permitted list of investments at the time of the OWG investment and it was a permitted investment. And the businesses it deals with are required to agree to invest only in permitted investments.
- L&C had such agreements with Horizon Stockbroking, Strand Capital and Beaufort Securities.
- Strand Capital bought the OWG Bonds without the knowledge or approval of L&C.
- L&C is not required to perform ongoing checks on discretionary investment managers. Their status as regulated firms may reasonably be relied upon.
- Horizon Stockbroking, Strand Capital and/or MA is responsible for Mr F's losses, not L&C.
- The investigator has relied on irrelevant guidance and has not taken into account key

elements of the relevant case law. The investigator is seeking to extend L&C's duties beyond what a SIPP provider is required to do and is inconsistent with the case law authority of *Adams v Options.*

- The non-advisory relationship between Mr F and L&C was made clear and this is the correct starting point. Clear warnings were given.
- The investigator's view is inconsistent with decisions made by an ombudsman relating to MA. The ombudsman said MA was 100% responsible in cases involving investments into OWG Bonds by Strand.
- There is an ongoing dispute between MA and L&C.
- The OWG Bonds were permitted investments because the Bonds were listed on the CXG market and later the First North exchange.

As no agreement had been reached, this complaint has been referred to me to determine. I am sorry for the length of time this has taken.

I issued a provisional decision on 27 May 2025. Mr F accepts my provisional decision. L&C has not responded.

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

Should Mr F's complaint be reopened?

In 2021 Mr F told the Financial Ombudsman Service he had decided to take court action against MA. Although an ombudsman had upheld his complaint against MA, his loss was much greater than the binding award an ombudsman may make.

We said to Mr F that as we are an alternative to the courts we are unable to consider a complaint about the same subject matter as the court. And we said if Mr F issued legal proceedings we would *"need to withdraw his complaint until such a time that the legal action is concluded."*

We also *said "at the point that the legal action concludes we'll need to make a decision on whether it is appropriate to re-open the complaint against L&C."*

On 30 April 2021 Mr F said the following to the investigator then assigned to his L&C complaint:

> *"I have always regarded the complaint against London & Colonial as separate from the claim being pursued in the court proceedings against* [MA] *given that they are concerned with different failures by different companies.*
>
> *I hope that covers my concerns with suspending your current investigations into L&C on my behalf."*

On 30 April 2021 the investigator wrote to Mr F. His email included:

> *"We won't take any further action in relation to your complaint about London & Colonial. As* [a colleague] *explained, when the legal action against* [MA] *is completed please tell us. We'll then decide whether it is appropriate to reopen this complaint against London & Colonial."*

And the investigator wrote to L&C on the same day as follows:

> *"We have agreed with* [Mr F] *that we won't take any further action in relation to this complaint. We understand there is ongoing legal action against another party.*
>
> *I will now arrange to close my file…"*

In November 2022 Mr F contacted the Financial Ombudsman Service to say the proceedings against MA had been concluded and that he wanted to re-open his complaint. We wrote to L&C on 5 December 2022 to say the complaint had been reopened.

L&C's lawyers contacted us soon after to say it did not think the complaint should be reopened after it had been closed for over 18 months. L&C also says re-opening the complaint is contrary to our publicly stated position given on our website which says:

> *"If you are a consumer, you don't have to accept what we say about your complaint, and you can withdraw from our process at any stage, before the final decision is issued. However, if you do choose to withdraw from our process you are unlikely to be able to revive your complaint with the Financial Ombudsman Service."*

L&C thinks that Mr F's conduct in pursuing MA for his full losses shows he holds it fully responsible for his loss. L&C says it's unfair and unreasonable and procedurally improper for the Ombudsman Service to reopen the complaint after so long where it is more than six years since the events complained about.

I do not agree with L&C. The Financial Ombudsman Service is an informal dispute resolution forum. We do not have detailed procedural rules and in particular there are no procedural rules around matters such as this.

I note that the stated position of the Financial Ombudsman Service is that reopening a complaint that a consumer has chosen to withdraw is *unlikely*, not, for example, that it cannot happen because it is not permitted by our rules.

The next point is that the publicly stated position is intended to relate to the very common situation where we say something about a complaint – such as an investigator saying they think the complaint should not be upheld. The consumer could choose to withdraw their complaint and it would be contrary to good order if consumers could just change their mind some time later and ask for their complaint to be referred to an ombudsman after all. So in such cases reopening will be unlikely.

But it has to be recognised that Mr F's situation is different. He did not really want to withdraw his complaint but he was told by the investigator that he would have to. There was however no procedural rule requiring this, it was just done as a matter of administrative convenience for sensible reasons since it could well have been a waste of resources to actively deal with Mr F's complaint against L&C if, in the event, he made full recovery of all his losses from MA through the courts.

Two other points are in my view also relevant. First, Mr F was clearly told we would consider reopening his complaint when the court proceedings against MA were concluded. To the extent that it can be said that Mr F agreed to withdraw his L&C complaint it is clear he did so

on the understanding that he could request the reopening of his complaint when the MA court claim was concluded.

The other point is that although there was some time between the complaint being closed and re-opened, MA has not been prejudiced by that. As mentioned above this is one of a group of cases. This is the only case that has been closed and reopened but Mr F's complaint is in the same position as the others. Regrettably progress on the MA complaints has been very slow and the fact is that during the time Mr F's complaint was closed all or most of the MA complaints were in effect in a queue waiting to be considered in detail. And L&C was able to provide the same submissions and evidence relating to merits in Mr F's case as it has done on the other MA complaints and at broadly the same time.

In all the circumstances I do not consider it unfair to reopen Mr F's complaint against L&C – I consider reopening the complaint to be reasonable and appropriate in the circumstances of this case.

Relevant considerations:

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

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

- The agreement between the parties.
- The Financial Services and Markets Act 2000 ("FSMA").
- Court decisions relating to SIPP operators, in particular *Options UK Personal Pensions LLP v Financial Ombudsman Service Limited* [2024] EWCA Civ 541 (*"Options"*) and the case law referred to in it including:
    - *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474 ("*Adams"*)
    - *R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service* [2018] EWHC 2878 (*"Berkeley Burke"*)
    - *Adams v Options SIPP UK LLP* [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The Financial Services Authority (FSA) and Financial Conduct Authority (FCA) rules including the following:
    - PRIN Principles for Businesses
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to, or relevant to, SIPP operators and good industry practice.

The legal background:

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

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. L&C was therefore subject to various obligations when offering

and providing the service it agreed to provide – which in this case was a non-advisory service.

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

The case law:

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

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

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

The Principles for Businesses:

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

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

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

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

The regulatory publications and good industry practice:

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

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

The 2009 Report included:

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

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

The Report also included:

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

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm's clients, and that they do not appear on the FSA website listing warning notices.*
- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*
- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more 'esoteric' investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*
- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm's understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*
- *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* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.
- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

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…"

And

"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 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 in 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 asset:

> *"3.24 Provided the second condition is met, a DFM portfolio can be standard when the SIPP operator has arrangements in place to ensure that the portfolio comprises standard assets only. 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]

Although the above was not published before Mr F's SIPP application, it 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
- processes to ensure compliance with those arrangements.

L&C's position in broad terms:

In broad terms L&C's position is:

- Its due diligence processes (which included checks on MA, Horizon Stockbroking, 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, MA is solely and wholly responsible for the losses Mr F has suffered. It is unfair to require L&C to compensate Mr F for the losses others have caused her.

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 M of MA.

Around 30 clients were introduced to L&C by MA between December 2014 and November 2016. Of those applications 16 involved a defined benefit transfer. Across those 31 members there were 80 transfers including 24 from defined benefit transfers and 56 pension switches from defined contribution 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.

I have considered a complaint by another MA complainant who was one of the was one of the earlier cases applicants referred to L&C by MA. 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. And as mentioned, Mr F 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 my 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 the MA complaints. But in the MA complaints 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 he (that 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 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 the MA application to be an L&C introducer was first being discussed L&C and Horizon 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 and 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 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. 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 its Mult-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 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 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 does give an impression that is different to the point later made by the Administrator that Strand only invested in OWG Bonds until May 2016.

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. All of 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 CXG 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 CXG 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 purport 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.

Beaufort Securities:

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

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

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

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

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

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

Beaufort Securities acknowledged that L&C held funds for members, that the investment strategy was to be agreed with the members and that L&C would have the right to veto transactions which in its opinion would conflict with the requirements of HMRC or the FCA. Beaufort Securities, and a Mr S at that firm, appear in most if not all the MA complaints. On 30 October 2016 Mr S and Beaufort Securities were mentioned in a column in The Times which said:

> *"Last year he was named most promising newcomer at the City of London wealth management awards, but this year is looking less rosy for* [Mr S], *a fund manager at Beaufort Securities. The stockbroker confirms that [*Mr S] *… has been suspended pending investigation.*
>
> *The problem is something of a mystery, although City insiders believe it could be related to investments made in small companies in places such as Cyprus, Gibraltar and Mauritius.*
>
> *The Financial Conduct Authority is said to have knocked on Beaufort's door a few weeks ago.* [Mr S] *is marked as "inactive" on the FCA's register on 7 October…"*

I note this report occurred at around – but slightly after – instructions were given to close Mr F's account with Beaufort Securities in August 2016,

It is now known that the FCA did investigate the conduct of Beaufort Securities and Mr S in 2016. That investigation led to the publication of a Final Decision Notice of 24 July 2024. The FCA investigation and Final Decision relate to the period from 1 January 2015 to 12 April 2016. 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 DFM in many, though not all, of the MA complaints including Mr F's complaint.

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.

So 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.

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

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 to 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 CXG 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.

I think it is likely the then CEO of MA who wrote those complaint submissions considered them to be correct, but I do not think they were right in some respects.

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

I consider that Mr M's dealings with Mr B at the time of MA's application to become an introducer with L&C was considered by Mr M to be a legitimate business arrangement which was to be carried on using the one-off transaction/split advice model Mr M did commit to writing in recommendation reports such as in the case of the earlier applicant complainant I mentioned above. I think Mr M turned a blind eye to what would happen after the client was mandated back to FW. I think he 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 M 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 M's and MA's openness about its one-off transaction or transaction only service.

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 does not 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.

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 is possible Mr M 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 M of MA about these matters, without perhaps disclosing the amounts he would be paid.

It is my view that at the time MA applied to be an introducer to L&C, Mr M 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 M necessarily thought this was intrinsically wrong.

It is my view that it is more likely than not that Mr M of MA had in mind an arrangement under which Mr M 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 M 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 M 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 in effect the process recorded on the recommendation report in early 2015 I mentioned above.

Further, it seems more likely than not that Mr M 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 M was intending to use and did use in early applications to L&C. It appears to have thought it was in order for it to recommend and arrange a pension transfer and then 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 M 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 M would have been prepared to disclose this plan, at least in broad terms, to L&C if asked since the evidence shows that Mr M was prepared to put in writing that clients were to be mandated back to FW for investment advice after the pension transfer (even if, as a later case, that is not the precise process followed in Mr F’s case).

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 and on 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. I have not forgotten that point and I do not overlook it.

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.

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

L&C knew, or should reasonably have known, that dealing with regulated firms, was not a guarantee against problems. The point is an obvious one. Most years there are reports of the regulator fining regulated firms for conduct that has caused harm to their clients. 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, L&C should in relation to MA 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 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 M 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.
- 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. 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 caried 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. L&C should have wanted to know what was in it for Mr B? How was he 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. 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 was 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? 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. It looks unnecessarily involved. 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 really fit in with the regulator's expectations or good industry practice. 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 form 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, mean 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 M 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 FM, 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 earlier MA complaint I referred to who was not mandated back to FW as originally planned, and to later MA applicants such as Mr F, 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 F's application in 2016.
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 on. 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 F would not have applied for a SIPP with L&C.

What about L&C's due diligence arrangements in relation to investments via Strand Capital, Horizon Stockbroking and Beaufort Securities?

Given my present 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.

I do however realise that L&C may not agree with what I have said in relation to MA and may make submissions to urge me to change my view. I will therefore say now that 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 do not know which was the first MA application, but I am 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 investment 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.
It is my view that these matters could and should have been discovered by L&C before Mr F's application. 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 F's application.

What should have happened?

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

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 F'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 F 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 F's application.

Further, I think it's very unlikely that advice from a different advisory business would have resulted in Mr F taking the same course of action. If L&C had declined to accept business from MA and Mr F had then sought advice from a different adviser, I think it's unlikely that another adviser, acting reasonably, would have advised Mr F to transfer into the L&C SIPP and make the investments that Mr F 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 reasonably have happened its appropriate to think about what a reasonable adviser acting reasonably would have done in the circumstances of Mr F's case. And given what Mr F has said about his requirements that could not be met with one or more of his existing defined contribution pensions I consider it more likely than not that if provided with reasonable advice Mr F would still have transferred his pensions to a SIPP but he would not have invested his pension funds in the way that he did.

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

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

Whether or not there is an unrecovered loss will depend upon a calculation of the loss which I will come on to below. If there is no outstanding loss there will be no compensation for L&C to pay.

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

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

- I am required to make the decision that I considered 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 Mr F was not in issue in the MA complaints decided by my colleagues.
- And in any event, I am not bound by the previous decisions of my fellow ombudsmen.

It is my view that L&C's conduct was one of the causes of the loss Mr F has suffered. I am satisfied that the transaction would not have proceeded as it did if L&C had not accepted

Mr F's application. While I accept that MA is responsible for initiating the course of action that led to Mr F'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 F would not have transferred his pensions and made the investments that were made in the SIPP and the loss Mr F 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 F fairly.

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

If Mr F 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 presently consider that outcome unlikely.

Distress and inconvenience:

As a result of L&C's errors Mr F has suffered considerable loss in his pension. The size of the loss and the impact this has had on Mr F's retirement planning will have caused him considerable distress, worry and inconvenience.

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

Putting things right

Fair compensation:

My aim is that Mr F should be put as closely as possible in the position he would probably now be in but for L&C's errors. Based on Mr F's objectives at the time I think it's likely Mr F would have accepted advice to consolidate his pensions in order to allow for the flexibility f drawdown for all his defined contribution pensions. And that his pension would have been invested in suitable mainstream investments in line with Mr F's broadly medium risk attitude to investment risk.

What must L&C do?

To compensate Mr F fairly, L&C must:

- Subject to points made below, compare the performance of Mr F's SIPP with that of the benchmark shown below. If the actual value is greater than the fair value, no

compensation is payable.

If the fair value is greater than the actual value, there is a loss and compensation is payable.

- L&C should add interest as set out below.

- L&C should pay into Mr F's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If L&C is unable to pay the total amount into Mr F's pension plan, it should 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 total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr F's actual rate of tax in retirement.

- It's reasonable to assume that Mr F is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr F would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- If the SIPP needs to be kept open only because of the illiquid investment/s and is used only or substantially to hold that asset, then any future SIPP fees should be waived until the SIPP can be closed.

- If Mr F has paid any fees or charges from funds outside of his pension arrangements, L&C should also refund these to Mr F. Interest at a rate of 8% simple per year from date of payment to date of refund should be added to this.

- Pay to Mr F £500 for the distress and inconvenience caused by the significant loss in his pension.

- L&C should provide a copy of its compensation calculations to Mr F in a clear and simple format.

Income tax may be payable on any interest paid. If L&C deducts income tax from the interest it should tell Mr F how much has been taken off. L&C should give Mr F a tax deduction certificate in respect of interest if Mr F asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio	Status	Benchmark	From (“start	To (“end	Additional

name			date")	date")	interest
The monies transferred into the SIPP	Either no longer or exists but illiquid	FTSE UK Private Investors Income Total Return Index	Date of receipt of the transferred in pensions	The date of my final decision	8% simple per year from the date of my final decision to settlement (if not settled within 28 days of L&C being notified of Mr F's acceptance)

Actual value

This means the actual amount payable from the SIPP at the end date.

It may be difficult to find the *actual value* of the illiquid investment/s. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. L&C should establish an amount it's willing to accept for the investment/s as a commercial value. It should then pay the sum agreed plus any costs and take ownership of the investment/s.

If L&C is able to purchase the illiquid investment/s then the price paid to purchase the holding/s will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding/s).

If L&C is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. L&C may require that Mr F provides an undertaking to pay Mr F any amount he may receive from the illiquid assets in the future.

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 F 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 F 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 F 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 F 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 F 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.

Fair value

This is what the SIPP would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if L&C totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Compensation received from the FSCS:

If Mr F has received compensation from the FSCS relating to losses suffered in his SIPP he will have had the use of the monies received.

The standard terms of settlement with the FSCS requires the claimant to assign to the FSCS their right to make related claims against third parties. And a standard term of such reassignment from the FSCS is the condition that the claimant must repay the compensation paid by the FSCS in the event a complaint is successful. 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 F has received from the FSCS (if any) which he has repaid or has to repay. And it will be for Mr F 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 Mr F has actually received from the FSCS and has had the use of for a period of the time covered by the calculation.

If it wishes, L&C may make an allowance in the form of a notional deduction equivalent to any payment Mr F received from the FSCS, and on the date the payment was actually paid to Mr F. Where such a deduction is made there must also be a corresponding notional addition, at the date of repayment to the FSCS or this final decision as appropriate, equivalent to the FSCS payment notionally deducted earlier in the redress calculation.

Compensation received from third parties other than the FSCS:

Mr F has received compensation from MA. Unlike any repayable compensation received from the FSCS, a permanent deduction in the redress calculation for the compensation Mr F received from MA and any other third party is appropriate. The notional deduction should be allowed for at the date(s) on which the compensation payment(s) were actually paid to Mr F.

SIPP fees

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

Distress & inconvenience

I think the loss of the pension provision that is the subject of this complaint caused Mr F distress and inconvenience and as mentioned above L&C should pay Mr F £500 to compensate him for this.

Why is this remedy suitable?

I've decided on this method of compensation because:

- I can't say definitively into what holdings, and in what proportions, Mr F's monies would have been invested had L&C not accepted his application. However, overall, I consider the measure below is a fair and reasonable proxy for the return Mr F's monies might have experienced over the period in question if they hadn't been switched to an L&C SIPP and invested in the manner that they were.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds.

- I'm satisfied that the mix and diversification provided by using a benchmark of the FTSE UK Private Investors Income total return index for the investment would be a fair measure for comparison for what Mr F s monies might have been worth if they hadn't been switched to an L&C SIPP and invested in the manner that they were.

My final decision

For the reasons set out above it is my decision that Mr F'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 F 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 F the balance.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 July 2025.

Philip Roberts
Ombudsman