

The complaint

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

What happened

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

- The complainant: in this case Mr M
- The respondent firm (the business the complaint is about): L&C, now known as Pathlines Pensions UK Limited. 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 complaint 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 M2, 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 M2 are involved in all the MA cases. The MA complainants all say that Mr B was also involved in all the cases. MA has said that FW or Mr B obtained leads from the Pensions Wise/Money Advice website and that all or most of the MA complainants first contacted FW or Mr B through that route and were then introduced to MA by Mr B.

The platform providers and/or investment managers:

Platform arrangements were opened for all the MA complainants.

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

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

Mr M was a deferred member of three occupational defined benefits ('DB') pension schemes. On Mr M's behalf, MA has said that he wanted to review these pensions, break all ties with these ex-employers and consolidate his pension arrangements, and maximise his death benefits.

Mr M himself has told us that, after seeing government advertisements, he decided to investigate his options by visiting the Pensions Wise/Money Advice website and was put in touch with FW.

FW worked with the introducer Mr B. Some initial fact finding was carried out by or on behalf of FW. Mr M says Mr B explained his options, highlighted the benefits of SIPP investments and that DB pension administrators were encouraging transfers by offering attractive transfer values – Mr M says his transfer value increased by £80,000 between his initial enquiry and his transfer, and this was the main reason he took TFC from his pension. Mr M also says he was attracted to a transfer because his remaining pension funds would pass to his family in the event of his death, rather than being lost.

MA carried out some fact finding with Mr M and he was assessed as having a medium attitude to risk (5 on a scale of 1 to 10).

MA says that in its Pension Transfer Report of March 2015, it advised Mr M to stay in two of his DB schemes, which I'll call 'Pension V' and 'Pension H'. But that he should transfer out of the third DB scheme 'Pension R' as this would allow him to maximise death benefits and access a tax free cash ('TFC') lump sum immediately while deferring taking his retirement income at a later date. L&C advised Mr M to transfer his Pension R benefits to an L&C SIPP and leave it in the SIPP cash account, on the basis that once business was concluded, Mr M would be mandated back to FW who would recommend a suitable portfolio.

Mr M applied for a 'Multi-Platform SIPP' with L&C on a paper application form, signed 1 April 2015. It appears the details from the paper version were manually entered onto a system.

The paper version of the application form recorded that:

- Mr M was employed with an intended retirement age of 75.
- Mr M's "adviser" was Mr M2 of MA.
- The adviser ticked the box on the application form to confirm the following statement:
 - *"Advice given at point of sale to client that takes account of the intended underlying investment strategy."*
- The platform provider was to be "Strand Capital".
- The "Investment Manager/DFM" was to be Mr S of Beaufort Securities.
- Mr M did not intend to make any further contributions.
- Mr M wanted L&C to request the transfer of Pension R, details of which were recorded including that it had an estimated transfer value of about £343,467.

I note the electronic copy of the SIPP application form included:

- Mr M was applying for a 'Simple Investment SIPP' with L&C.
- The answer 'yes' was given to the following statement:
 - *"Advice given at point of sale to client that takes account of the intended underlying investment strategy."*
- Strand Capital is recorded as the investment provider.
- Investment trading was to be performed by the "Financial Adviser"

On 23 April 2015 Strand Capital sent a confirmation of account opening relating to Mr M to L&C. That document begins:

"This form confirms that we have opened the account on behalf of the below Retail client SIPP member and it will be operated in accordance with your email dated 23 April 2015. It is now able to receive SIPP Funds."

On 22 May 2015 about £343,467 was transferred into Mr M's L&C SIPP from Pension R.

On 27 May 2015, Mr M signed an account application for a stockbroking account with Horizon, this was also signed by L&C soon after. This recorded that Mr M wished to invest £250,000 with Horizon. The box for the discretionary service was ticked on the form. And the box for trading through a managed CFD account was ticked.

On the same day, Mr M signed an account application for a stockbroking account with Shard Capital, which was also signed by L&C. This recorded that Mr M wished to trade in equities and CFDs.

In June 2015, L&C paid £80,000 of Mr M's SIPP monies to him as TFC. It also sent £255,000 to Shard Capital; almost a year later, on 6 April 2016, about £212,691 was disinvested.

On Mr M's behalf, MA has told our Service that on 15 March 2016 Mr B arranged for Mr M to sign an execution only letter to purchase the OWG Bond, a Strand account form and a Beaufort share dealing application, as follows.

On 15 March 2016, a letter of instruction was produced that purports to be from Mr M addressed to Strand Capital. The letter said:

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

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

I hope this meets with your approval.

Yours Sincerely

[signed Mr M]

On the same day, Mr M signed an account application for an investment account with Strand Capital.

Also on the same day, Mr M signed an account application for a share dealing account with Beaufort Securities. The box for the discretionary service was ticked on the form, and his adviser was recorded as MA. In April 2016 L&C sent £210,00 to Beaufort Securities.

On 6 May 2016 about £211,513 was transferred into Mr M's L&C SIPP from another of his DB pensions, 'Pension H'. Four days later, L&C sent £100,000 of Mr M's SIPP monies to Strand Capital, and approximately £110,108 to Beaufort Securities.

On 31 May 2016 a letter of instruction was produced that purports to be from Mr M addressed to L&C. The letter said:

"I confirm that I wish [MA] to receive the 2% fee on the £211,513.48 recently transferred into my SIPP account from [Pension H].

I hope this meets with your approval.
Yours Sincerely
[signed Mr M]

On the same day a letter of instruction was produced that purports to be from Mr M addressed to L&C. The instruction was to:

"Please withdrawn £95,000 from my Beaufort Securities account and sent it to my Strand Capital account for re-investment.

I hope this meets with your approval.
Yours Sincerely
[signed Mr M]"

On 26 July 2016, a letter of instruction was produced that purports to be from Mr M addressed to Strand Capital. The letter said:

"I am writing to confirm that I wish to purchase the Optima Worldwide Group Corporate Bond in the Sum of £95,000 (Ninety Five 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 Ltd and that any instructions to trade must come from me.

I hope this meets with your approval.
Yours Sincerely
[signed Mr M]"

On 22 August 2016 £95,000 was disinvested from Beaufort Securities Limited to Mr M's SIPP, and two days later L&C sent £95,000 to Strand.

On 20 September 2016, a letter of instruction was produced that purports to be from Mr M addressed to Strand Capital. The letter said:

"I am writing to confirm that I wish to purchase the Optima Worldwide Group Corporate Bond in the Sum of £50,000 (Fifty 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 Ltd and that any instructions to trade must come from me.

I hope this meets with your approval.
Yours Sincerely
[signed Mr M]"

On 24 November 2016 about £184,808 was disinvested from Beaufort Securities into Mr M's SIPP. And on the same day, L&C sent about £179,973 from his SIPP to Strand.

In early 2017 a total of about £137,000 was disinvested from Strand into Mr M's SIPP, plus about £1,278 from Beaufort Securities.

On 31 October 2019, Mr M signed what appears to be a pre-printed fund switch instruction letter to L&C, which MA sent to L&C on 7 November 2019. This fund switch instruction said:

"I wish to invest £100,000 from the SIPP Cash Account into the following funds with a new [CoFunds] Platform Investment Account.

[list of ten funds with allocation %]

The funds should be invested immediately and confirmation that the switches have been made should be sent to my financial adviser, [MA]."

On 27 April 2020 about £143,585 was transferred to CoFunds from Mr M's SIPP. And on 4 May 2020 about £43,585 was returned to his SIPP from CoFunds.

Beaufort Securities do seem to have some issues in 2016 but the details were not made public. Beaufort Securities did later get into difficulties which became a matter of public knowledge in 2018 and it went into special administration in March 2018.

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

Horizon got into difficulties, and it went into liquidation in July 2018.

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 M has therefore lost most or all of the money that was invested in the OWG Bonds.

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

Mr M made complaints with the help of MA to Beaufort Securities, Strand Capital and Horizon in 2017. It is my understanding that these complaints were not resolved before those businesses went into administration.

It may be that Mr M made a claim to the FSCS in respect of Strand Capital; if so, I do not know the outcome of that claim.

Mr M says that when MA was representing him, on his behalf it made a claim to the FSCS in respect of Horizon. But he thought there had been problems progressing the claims and then MA had cut ties with him; he says he heard nothing more about the claim and never received any payment in relation to it.

Mr M did make a claim to the FSCS in respect of Beaufort Securities. Based on copies of emails from MA to Mr M, it appears that in mid-2019 the FSCS had calculated his loss to be about £38,195, albeit MA said it would appeal that loss calculation. Later, the FSCS provided Mr M with a reassignment of rights in respect of his Beaufort claim, to allow him to pursue a complaint against L&C.

I have previously asked both Mr M and L&C to provide any details they hold about those FSCS claims. I also asked that, if either or both the Strand Capital and Horizon claims were successful, Mr M should provide details of how the FSCS calculated the sum(s) it paid and obtain from the FSCS, for each of these, a reassignment of his rights to make a complaint against L&C, and provide copy(ies) to us. But neither Mr M or L&C have provided any further information. So I have proceeded on the basis that Mr M has not received any FSCS compensation in relation to Strand Capital and Horizon, and that the amount of FSCS compensation he received in relation to Beaufort Securities was £38,195.

Mr M also made a complaint to MA, which was later referred to the Financial Ombudsman Service. It appears MA agreed to settle Mr M's complaint in late 2020, and he says it awarded him £150,000, which corresponds to the maximum award that could be made by the Financial Ombudsman Service in respect of that complaint. But Mr M maintains he's been caused a significant financial loss, and says this matter has caused him a great deal of anguish and embarrassment, as well as worry about his financial position. So Mr M has proceeded with his complaint against L&C.

The complaint to L&C:

In June 2018 MA, acting on behalf of Mr M, made a complaint to L&C that it had caused Mr M to suffer a loss through various (alleged) breaches of duty. Essentially, the complaint was that L&C failed to make checks on the investments made on Mr M's behalf.

L&C did not uphold Mr M's complaint.

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

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

L&C's response to the complaint:

In this and other similar complaints, L&C has made several points in support of its position, including:

- It provides its service to Mr M on a non-advisory basis. It's not its role to give advice. It's not authorised to give advice and it was made clear to Mr M that it was not giving him advice.
- The adviser in Mr M's application (and all other applications from MA) was Mr M2 of MA.
- MA is a regulated firm authorised to give investment advice and to advise on pension transfers. L&C carried out checks on MA and Mr M2 to satisfy itself on these points.
- No error lay with L&C. In each SIPP application received from MA it was confirmed on the application form that MA gave advice, and most if not all clients were transferred into the SIPP from a DB pension. So MA accepted it had advised Mr M to transfer, contrary to the COBS 19.1 presumption of unsuitability; without this advice, Mr M would not have transferred. And Strand Capital (and other DFMs) had full responsibility for making investment decisions. Further, MA was responsible for monitoring his SIPP and had the information it needed to do so.
- MA had a close working relationship with Mr B, and it is highly likely MA itself was party to the underlying investment plans. MA did not disclose Mr B's involvement as an unregulated introducer.
- L&C was not aware that Mr B had introduced clients such as Mr M to MA. As far as L&C was concerned the business was introduced to it by MA in accordance with the introducer agreement it had with MA, and Mr M2 was advising the clients.

- Mr B appears to have continued to be involved throughout in Mr M's case, as was MA; and MA had advised on the transfer of his second DB pension, Pension H. And Mr M's signature was on key correspondence and documents; MA (or rather Mr M) accepted and alleged that he went on to make his own investment decisions beyond the scope of what MA says was its advice. MA did not query why these investments were being made if they were not being made in accordance with its advice.
- MA, not L&C, should be responsible for any acts or omissions of Mr B.
- L&C is aware that a number of complaints have been made about MA to the Financial Ombudsman Service by MA complainants like Mr M. And their complaints have been upheld against MA. The Ombudsmen in those cases said MA was solely responsible for the whole of the loss suffered by the complainant in those cases. The decisions in the MA complaints should be taken into account in the MA complainants' complaints against L&C.
- If any employee or agent of MA was negligent and/or engaged in unregulated business and/or acted beyond their permissions and/or otherwise a rogue, that is not something which would or could have been discovered upon any reasonable, or even extensive, due diligence by L&C.
- L&C was under no obligation to obtain copies of the recommendation reports provided by MA and it did not do so. It was entitled to rely on MA acting in accordance with the regulatory obligations on it.
- Since disputes have arisen in relation to MA introduced clients L&C has seen copies of the recommendation reports and, while L&C is not authorised to give suitability advice, the reports do not obviously give cause for concern. There is therefore no reason to think L&C would have acted differently if it had seen the reports at the time of the MA introduced applications.
- L&C made checks on Shard, Horizon, Strand Capital and Beaufort Securities that included checking on their regulatory status including FCA permissions, disciplinary history; and about their corporate status including checks at Companies House. Web checks were made for any negative comments. These businesses passed these vetting procedures.
- Part of L&C's due diligence involves entering into agreements with investment companies and having a permitted investment list. When money is invested via third parties such as platform providers or DFMs, they are required to make investments only in accordance with the permitted investment list.
- DFMs agreed not to make investments that were not on the permitted investment list. As the DFMs were authorised and regulated firms L&C was entitled to rely on those firms doing what it had agreed to do. As far as L&C was aware all investments were permitted list investments.
- L&C acted in accordance with MA's instructions in opening the Beaufort Securities account. Some of the investments made by Beaufort may not have been permitted investments. It did so without the knowledge or approval of L&C. It is a matter that Beaufort Securities, not L&C, is responsible for.
- Strand Capital bought the OWG Bonds without the knowledge or approval of L&C.

- The Financial Ombudsman Service should take account of the High Court decision in the case of *Adams v Options SIPP UK LLP*. And it should not focus on the various documents produced by the regulator relating to its thematic reviews. Those documents only provide indicative guidance or suggestions. They were not intended to be prescriptive. L&C was aware of the guidance and fully complied with the requirements in it.
- L&C received the first application from MA on 12 December 2014. It was impossible to have spotted any pattern which might have alerted L&C to any problem.
- Even if L&C had gone further than required and had asked MA about its business model, there is no reason to conclude that it would have said anything to cause concern. MA would not have said that the business was highly inappropriate and high risk and that it had no intention of monitoring the investments or ensuring compliance with the permitted investment list.
- The complaints made by MA on behalf of consumers such as Mr M was an attempt by MA to shift the blame for its inappropriate pension transfer advice, and/or mismanagement of the client's SIPP, onto other parties. The complaints should therefore be read with caution and with this in mind.
- There is an ongoing dispute between MA and L&C.
- There is also a court claim(s) brought by a client(s) of MA against both MA and L&C.

Our Investigator's view of this complaint:

One of our Investigators considered Mr M's complaint and thought it should be upheld. He thought L&C did not carry out adequate due diligence and should have had concerns about the business being introduced by MA and the investments arranged by Strand, such that it should not have accepted his SIPP application. So he thought it was fair and reasonable for L&C to pay compensation to Mr M in respect of the losses he had suffered. The Investigator detailed how he thought L&C should put things right.

Mr M accepted the Investigator's view of this complaint.

L&C did not provide any response to the Investigator's view. However, its response in other separate but similar complaints includes that:

- L&C had carried out adequate due diligence, including on Strand Capital. L&C did obtain information about the investments Strand Capital typically made and it acknowledged a potential conflict of interest in respect of OWG Bonds but said it did not receive any commission or reward from OWG when placing investors' funds into the listed OWG Bond. The OWG Bond was not a non-standard investment. Nothing untoward was discovered from the checks made.
- When MA first made the MA complaints it frequently asserted it had no contemporaneous knowledge of the Strand Capital transfer requests, but this has been shown to be incorrect and that MA instructed all or most of the transfers.
- If L&C had not allowed the transfer and investment the business would have been taken elsewhere and the same events and losses would have occurred.

- The FCA was content for MA and Strand Capital to conduct regulated investment business.
- It is not fair and reasonable to hold L&C responsible for the losses caused by others such as MA and Strand Capital.

As both parties did not agree with the Investigator, this complaint was referred to me to determine.

The provisional decision:

I issued a provisional decision in which I explained why I thought Mr M's complaint should be upheld and what L&C should do to put things right.

Mr M accepted the provisional decision and didn't provide any further comments or evidence for consideration. Despite being provided with the opportunity to do so, L&C didn't provide any response to the provisional decision.

As both parties have had the opportunity to respond to my provisional decision, I'm now in a position to make my final decision. I'd like to thank both parties for their patience.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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

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 L&C UK Personal Pensions LLP* [2021] EWCA Civ 474 ("*Adams*")
 - *R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service* [2018] EWHC 2878 ("*Berkeley Burke*")
 - *Adams v L&C SIPP UK LLP* [2020] EWHC 1229 (Ch) ("*Adams – High Court*")
- The Financial Services Authority (FSA) and Financial Conduct Authority (FCA) rules including the following:
 - PRIN Principles for Businesses
 - COBS Conduct of Business Sourcebook
 - DISP Dispute Resolution Complaints
- Various regulatory publications relating to, or relevant to, SIPP operators and good industry practice.

The legal background:

As highlighted in the High Court decision in *Adams* the factual context is the starting point for considering the obligations the parties were under. And in this case the contractual relationship between L&C and Mr M is a non-advisory, or execution only, relationship. Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. L&C was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

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

The case law:

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

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

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

The Principles for Businesses:

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

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

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

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

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

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

The regulatory publications and good industry practice:

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

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

The 2009 Report included:

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

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

The Report also included:

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

- *Confirming, both initially and on an ongoing basis, that intermediaries that advise clients are authorised and regulated by the FSA, that they have the appropriate permissions to give the advice they are providing to the firm’s clients, and that they do not appear on the FSA website listing warning notices.*
- *Having Terms of Business agreements governing relationships, and clarifying respective responsibilities, with intermediaries introducing SIPP business.*
- *Routinely recording and reviewing the type (i.e. the nature of the SIPP investment) and size of investments recommended by intermediaries that give advice and introduce clients to the firm, so that potentially unsuitable SIPPs can be identified.*
- *Being able to identify anomalous investments, e.g. unusually small or large transactions or more ‘esoteric’ investments such as unquoted shares, together with the intermediary that introduced the business. This would enable the firm to seek appropriate clarification, e.g. from the client or their adviser, if it is concerned about the suitability of what was recommended.*
- *Requesting copies of the suitability reports provided to clients by the intermediary giving advice. While SIPP operators are not responsible for advice, having this information would enhance the firm’s understanding of its clients, making the facilitation of unsuitable SIPPs less likely.*
- *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 necessarily 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 SIPP's 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 the FCA's list of standard assets (the first condition) and if capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days whenever required (the second condition). The FCA gave the following guidance on how a discretionary managed (DFM) portfolio should be treated as regards categorisation as either a standard or non-standard assets:

"3.24 Provided the second condition is met, a DFM portfolio can be standard when the SIPP operator has 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]

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

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

I am satisfied that to meet its regulatory obligations when conducting its operation of SIPPs business, L&C had to decide whether to accept or reject particular investments and/or referrals of business with the Principles in mind. I say this based on the overarching nature of the Principles (as is clear from the case law) and based on good industry practice notwithstanding the comments in the *Adams* case in the High Court relating to COBS 2.1.1R

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

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

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

- processes or procedures such as permitted investment lists
- arrangements in place with platform providers and DFMs to require them to make only permitted investments
- 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, 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 M has suffered. It is unfair to require L&C to compensate Mr M for the losses others have caused him.

A further look at the parties involved in the MA cases:

Firm MA:

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

MA applied to L&C to act as an intermediary to introduce business (SIPP applications) to L&C in December 2014. L&C dealt with Mr M2 of MA.

Around 30 clients were introduced to L&C by MA between December 2014 and November 2016. Of those applications 16 involved a DB transfer. Across those 31 members there were 80 transfers including 24 from DB 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'm aware of a complaint by another MA complainant who 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. As noted above in Mr M's case, MA set out a model asset allocation for an investor with a medium risk profile.

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

“Advice given at point of sale to client that takes account of the intended underlying investment strategy.”

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

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

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

Some MA complainants may have issued court proceedings against MA.

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

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

Firm FW:

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

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

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

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

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

L&C have not been asked about its previous dealings with firm FW during the investigation of this complaint. But in other cases L&C has referred to previous Financial Ombudsman Service published decisions. I have looked in the database 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, including Mr M's, 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 Stockbroking reached an agreement under which L&C would permit CFD investment in limited circumstances.

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

"In respect of the matter relating to the allowance of CFDs. The London & Colonial investment committee met in December 14 and January 15 to discuss 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 Stockbroking denied that Mr B acted for it in any capacity.

Strand Capital:

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

L&C says in around September 2014 it entered an agreement with Strand. 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 Multi-Platform SIPP.

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

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

"In January 2014 the Company was acquired ... by Panacea Corporate Services Limited, and was subsequently transferred to Optima Worldwide Group Plc ("OWG"). ... OWG invested funds into the Company to support the development of an algorithmic trading platform. ... Until May 2016 the only investments arranged by the Company were in OWG bonds. However, investments in OWG bonds slowed thereafter as alternative investment products were introduced by the Company."

L&C has said that it did carry out checks with Strand 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 SIPP's with L&C. All of most of the MA complainants invested in OWG Bonds in the L&C SIPP's.

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. It's likely L&C had a similar agreement relating to the Multi-Platform SIPP.

Beaufort Securities, and a Mr S at that firm, appear in most if not all the MA complaints. 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 the time instructions were given to return most of Mr M's funds with Beaufort Securities in August and November 2016, which were then invested elsewhere.

It is now known that the FCA investigated the conduct of Beaufort Securities and Mr S. That investigation led to the publication of a Final Decision Notice of 24 July 2024.

The FCA investigation and Final Decision relate to the period from 1 January 2015 to 12 April 2016. Most of the MA complainants' L&C SIPPs were opened during that period. The Final Decision notice shows the presence of poor practice at Beaufort Securities at around the same time as the events in the MA complaints.

The Final Decision notice includes the following:

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

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

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

The Final Decision went on to say:

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

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

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

2.12 Incentivised by Marketing Fees, the IFAs involved in the scheme would advise pension holders, who had been contacted by Introducers involved in the Scheme, to transfer or switch existing pensions to the Beaufort SIPP.

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

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

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

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

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

2.21 On 13 October 2016, following the intervention of the Authority, BSL agreed to a voluntary requirement which was imposed by the Authority...and had the effect of preventing it from accepting new money from new and or existing pension holders

into the DFM Service. On 20 December 2016, at the Authority's request, BSL agreed to a voluntary variation ...of its...permission to carry on regulated activities ...
2.22 On 1 March 2018, BSL and its related firm Beaufort Asset Clearing Services Limited entered administration and special administration respectively.

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

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 in the complaint it made to L&C for MA complainants. This shows a number of securities that were not main market securities. Those that were listed were listed on secondary markets in Cyprus, Frankfurt and the 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 that Mr M2 did not leave full and complete file records or otherwise provide a full account of his dealings with Mr B.

I consider that Mr M2's dealings with Mr B at the time of MA's application to become an introducer with L&C was considered by Mr M2 to be a legitimate business arrangement which was to be carried on using the one-off transaction/split advice model Mr M2 did commit to writing in recommendation reports such as to Mr M. I think Mr M2 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 M2 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 M2'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 M2 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 M2 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 M2 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 M2 necessarily thought this was intrinsically wrong.

It is my view that it is more likely than not that Mr M2 of MA had in mind an arrangement under which Mr M2 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 M2 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 M2 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 M2 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 M2 was intending to use and did use in Mr M’s case. 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 M2 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 M2 would have been prepared to disclose this plan, at least in broad terms, to L&C if asked since the evidence shows that Mr M2 was prepared to put in writing that Mr M was to be mandated back to FW for investment advice after the pension transfer.

Due diligence carried out by L&C:

L&C did carry out some due diligence checks on MA. It also made checks on Strand Capital 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 M2 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 carried out its own research on him.

L&C is a business, and it will have a commercial mindset. L&C should have realised an introducer acts as an introducer by way of business and does so expecting some form of economic reward. 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 is unlikely to be suitable for most pension investors. Beaufort Securities was trying to rebuild its reputation including by moving into new areas such as the Beaufort SIPP from March 2014 (and was apparently seeking permission to manage investments which permission was granted in January 2015.) L&C might have had some concerns about Beaufort Securities and wondered why it (L&C) was being chosen in preference to the Beaufort SIPP by an introducer who had or was developing a connection with Beaufort Securities. (I do not say this point alone was a bright red flag, but it was part of an overall picture which was to be considered by L&C.)

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

- MA was to be involved in pension transfer cases. Although MA was authorised to give pension transfer advice, and the suitability of that advice was MA's responsibility, MA was known to be operating in an area where the risks of consumer detriment were high and the starting presumption is that advice to transfer is likely to

be unsuitable. So there was a need for caution generally.

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

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

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

L&C might also have consulted its own records and reviewed its dealings with FW and realised that it had referred applications to it on a restricted advice basis. If it had done this it would have wondered what was going on. Why was MA proposing not to give advice on investments in the SIPP? 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 introductions from MA. But this was not the only point that could and should reasonably have been discovered by L&C before it decided to accept business from MA. This point together with the other concerns L&C ought to have had about Mr B and his role in the matter and the real risk that his involvement would have a distorting effect, 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 M2 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 Mr M who was not mandated back to FW as originally planned, and to later MA applicants, after the original plan seems to have evolved slightly, and the "*mandating back to the original adviser*" point dropped from MA's transfer advice.

In my view all the above matters could reasonably have been discovered from reasonable checks in late 2014 and/or early 2015 and certainly before Mr M's application in April 2015. I do not say that each of the points mentioned above was necessarily a major point on its own, or that they only amount to something when each and every mentioned point is added together. The points accumulate and build up a picture. And that picture does not need to be fully emerged or completely in focus to be acted 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 M 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 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. 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 M's application in April 2015. And so even if L&C had decided to accept applications when first approached by MA it should have reversed that decision by the time of Mr M's application.

What should have happened?

It is difficult to know what would have happened if L&C had acted as it should. Mr M wanted pensions advice but the advice he received was tainted by the involvement of an unregulated introducer who influenced the decisions made by Mr M2 at MA and by Mr M.

L&C may argue that if it hadn't accepted business from MA and/or permitted the investments that were effected in its SIPPs, MA would have gone elsewhere and that Mr M's transfers and investments would still have been effected with a different SIPP provider. I don't think it's fair and reasonable to say that L&C should not compensate Mr M for his loss on the

basis of speculation that another SIPP operator would have made the same mistakes as I've found L&C did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted business from MA involving Mr B including Mr M's application.

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

To decide what would reasonably have happened it is reasonable to think about what a reasonable adviser acting reasonably would have done in the circumstances of Mr M's case. And it seems reasonable in the circumstances not to move on from the starting presumption that advice to transfer a DB pension is likely to be unsuitable – and in this case, Mr M transferred DB Pension R in May 2015 and DB Pension H in May 2016.

In Mr M's case the primary motivation for seeing an adviser and discussing his pensions was because he'd seen government advertisements about pensions and decided to investigate his options by visiting the Pensions Wise/Money Advice website, and he was put in touch with FW, which worked with the introducer Mr B. And Mr M says Mr B explained his options, highlighted the benefits of SIPP investments and that DB pension administrators were encouraging transfers by offering attractive transfer values – Mr M says his transfer value increased by £80,000 between his initial enquiry and his transfer, and that this was the main reason he took TFC. Mr M also says he was attracted to a transfer because his remaining pension funds would pass to his family in the event of his death, rather than being lost.

MA says its Pension Transfer Report of March 2015 advised Mr M to stay in his DB schemes Pension V and Pension H, but to transfer out of his DB scheme 'Pension R' as this would allow him to maximise death benefits, and access TFC immediately while deferring taking retirement income to a later date. And that it advised Mr M to transfer his Pension R benefits to an L&C SIPP and leave it in the SIPP cash account, on the basis that once business was concluded, Mr M would be mandated back to FW who would recommend a suitable portfolio.

Death benefits are an emotive subject and of course most people would like their loved ones to be taken care of when they die. But the priority here was to advise Mr M about what was best for his retirement provisions. And I'd expect a reasonable adviser to highlight the value of Mr M's existing death benefits and/or to explore the alternatives available to Mr M to meet this objective.

And regarding TFC, it appears that Mr M only took this because it was available; I've not seen that MA, or any other party, has pointed to any pressing need Mr M had for TFC at that time.

Accordingly, my view is that a reasonable adviser acting reasonably is likely to have advised Mr M to leave his DB pensions untouched in 2015 and 2016. I consider it more likely than not that if provided with reasonable advice Mr M would not have transferred his two DB pensions to a SIPP and he would not have invested his pension funds in the way that he did.

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

L&C may argue that, given the sums recovered from MA and possibly from the FSCS, there is no unrecovered loss. And L&C does argue that MA is solely responsible for any loss Mr M

has suffered and so it is unfair to require L&C to compensate Mr M if there is any unrecovered loss.

On the first of those two points, I've not seen anything to show that Mr M has received any FSCS compensation in relation to Strand Capital and Horizon. However, I have seen evidence that he received FSCS compensation in relation to Beaufort Securities in the amount of £38,195. In addition, it seems likely Mr M received a payment from MA in the amount of £150,000; it is possible L&C already has the details of that payment. If not, Mr M will either have to provide evidence to L&C to show the amount paid and when or provide his agreement to MA giving details to L&C.

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

The next point is about whether MA is the only cause of Mr M'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 M 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 M has suffered. I am satisfied that the transaction would not have proceeded as it did if L&C had not accepted Mr M's application. While I accept that MA is responsible for initiating the course of action that led to Mr M's loss, I consider that L&C failed unreasonably to put a stop to that course of action when it had the opportunity and obligation to do so. I am, accordingly, satisfied that if L&C had complied with its own distinct regulatory obligations as a non-advisory SIPP operator, Mr M would not have transferred his DB pensions and the investments Mr M made in his SIPP would not have come about and the loss Mr M has suffered would have been avoided.

The DISP rules set out that when an Ombudsman's determination includes a money award, that money award may be such amount as the Ombudsman considers to be fair compensation for financial loss whether or not a Court would award compensation (DISP3.7.2R).

I consider it is fair and reasonable in the circumstances of this case to hold L&C accountable for its own failure to comply with its regulatory obligations, good industry practice and to treat Mr M fairly.

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

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

Putting things right

Fair compensation:

My aim is that Mr M should be put as closely as possible in the position he would probably now be in if he had not transferred his DB pensions to a SIPP. To do this, I consider that the methodology set out by the FCA for calculating redress for non-compliant pension transfer advice should be used. I do not say that guidance is of direct application, but I do consider that it provides a fair and reasonable approach to calculating redress due to Mr M.

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

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

The way in which redress is calculated depends on a number of factors including matters such as whether the consumer has yet retired. Mr M has told us that he planned to retire on reaching age 66 in 2024. Therefore it is my understanding that Mr M retired then, and neither party has disputed this understanding. So compensation should be based on him taking benefits at that age.

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

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

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

- augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

My aim is to return Mr M to the position he would have been in but for the actions of L&C. This is complicated where investments are illiquid (meaning they cannot be readily sold on the open market) as their value can't be determined, which may be the case here.

L&C should purchase any illiquid investments, the price paid to purchase the holdings will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding).

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

If L&C doesn't purchase the investments, and if the total calculated redress in this complaint is greater than £150,000 and L&C doesn't pay the recommended amount, Mr M should retain the rights to any future return from the investments until such time as any future benefit that he receives from the investments together with the compensation paid by L&C (excluding any interest) equates to the total calculated redress amount in this complaint. L&C may ask Mr M to provide an undertaking to account to it for the net amount of any further payment the SIPP may receive from these investments thereafter. That undertaking should allow for the effect of any tax and charges on the amount Mr M may receive from the investments from that point, and any eventual sums he would be able to access from the SIPP in respect of the investments. L&C will need to meet any costs in drawing up the undertaking.

L&C should allow for the compensation payment(s) Mr M received from MA as a notional deduction (while not an income withdrawal payment, for the purposes of the calculation it may be treated as a notional income withdrawal payment). It's fair and reasonable to apportion this to each individual transfer into the SIPP – this must be proportionate to the value of the actual sums transferred in. The total payment(s) allowed for must be no more than the total compensation payment(s) Mr M actually received.

I acknowledge that Mr M has received a sum of compensation from the FSCS in respect of Beaufort Securities, and that he will have had the use of the monies received from the FSCS. Despite my request, Mr M has not told us about any other compensation payments he may have received from the FSCS. If Mr M is mistaken that he has not received any FSCS compensation in respect of Strand Capital and/or Horizon, then he has also had the use of that money. If Mr M has received a sum of compensation from the FSCS it's very likely that the terms of any reassignment of rights would require him to return compensation paid by the FSCS in the event this complaint is successful, and I understand that the FSCS will ordinarily enforce the terms of assignments if required. So, I think it's fair and reasonable to make no *permanent* deduction in the redress calculation for the compensation Mr M received from the FSCS. And it will be for Mr M to make the arrangements to make any repayments he needs to make to the FSCS. However, I do think it's fair and reasonable for some allowance to be made for any sum(s) Mr M actually received from the FSCS and has had the use of for a period of the time covered by the calculation.

As such, for the purposes of the calculation that's being carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4, if it wishes, L&C *may* notionally, for the period from the point of their payment through until the valuation date (as per the DISP App 4 definition of that term), allow for any payment(s) Mr M received from the FSCS following a claim about Beaufort Securities, Horizon and/or Strand Capital as an income withdrawal payment.

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

Where such an allowance is made then L&C must also, at the end of the calculation, allow for a notional addition to the overall calculated loss that's equivalent to the payment(s) Mr M received from the FSCS following the claim about Beaufort Securities, Horizon and/or Strand Capital. The effect of this notional addition will be to increase the overall loss calculated using the most recent financial assumptions in line with PS22/13 and DISP App 4, by a sum that's equivalent to the payment(s) Mr M received from the FSCS.

Redress paid directly to Mr M as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), L&C may make a notional deduction to allow for income tax that would otherwise have been paid. Mr M's likely income tax rate in retirement is presumed to be 20%, and neither party has disputed this. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

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

SIPP fees

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

Distress & inconvenience

In addition to the financial loss that Mr M has likely suffered as a result of the problems with his pension, I think it's fair and reasonable to say that the loss of a significant portion of his pension provision has caused Mr M distress and inconvenience, and he has told us about the anguish, embarrassment and worry he's been caused. So I think it's fair for L&C to compensate Mr M for this. In the particular circumstances of this complaint, I think £500 is a fair and reasonable amount.

My final decision

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

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

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

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

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

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

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

Ailsa Wiltshire
Ombudsman