DRN-5653724

The complaint

London & Colonial Services Limited recently changed its name to Pathlines Pensions UK Limited but for ease of reference I'll simply be referring to 'L&C' throughout this decision.

Mr C complains that L&C failed to meet its regulatory obligations and failed to carry out satisfactory checks both on the firm introducing his business and on an investment in The Resort Group's ('TRG's) Llana Beach hotel ('Llana Beach') that was made with monies transferred into his L&C Self-Invested Personal Pension ('SIPP'). Mr C says that he's suffered loss as a result of this.

What happened

At times both Mr C and L&C have had professional representatives and, for simplicity, I simply refer to Mr C and L&C throughout this decision even where the submissions I'm referring to were made on their behalf by their representatives.

I've outlined the key parties involved in Mr C's complaint below

Involved parties

Pathlines Pensions UK Limited ('L&C')

Pathlines Pensions UK Limited is a regulated pension provider and administrator. It's authorised to arrange deals in investments, deal in investments as principal, establish, operate or wind up a personal pension scheme and to make arrangements with a view to transactions in investments.

C.I.B (Life & Pensions) Limited ('CIB')

At the time of the events in this complaint, CIB was authorised by the regulator – the Financial Services Authority ('FSA'), which later became the Financial Conduct Authority ('FCA') – to advise on regulated products and services including giving investment advice and arranging deals in investments such as pensions. In May 2015, CIB went into liquidation, and has since been dissolved.

Real SIPP LLP ('RealSIPP')

RealSIPP was an appointed representative of CIB from April 2010 to June 2015.

The Resort Group ('TRG')

TRG was founded in 2007. TRG owns a series of luxury resorts in Cape Verde. TRG sold luxury hotel rooms to UK consumers, either as whole entities or as fractional share ownership in a company. TRG wasn't regulated by the financial services regulator. This case involves investments in TRG's Llana Beach.

What happened?

I've briefly summarised what's happened below.

Mr C says that his "*partner's sister's brother in law"* referred him to RealSIPP. And that RealSIPP then provided pension transfer and investment advice.

CIB completed a Client Financial Information (Alternative Investment SIPP Package) form with Mr C that was signed by Mr C on 3 May 2012. It was explained at the start of this form that:

> *"This information will be used to report on your current pension arrangements and the costs and benefits of transferring to a Self Invested Personal Pension package, for the express purpose of purchasing an off-plan/offshore commercial property/alternative investment. We are not offering full advice and only providing a report to your pension requirements. We will not provide any further advice. If you are in any doubt about how you should complete this form please ask an adviser for help."*

There was also a section with risks specific to property/alternative investments which explained, amongst other things, that:

- Generally commercial property was seen as a long term investment and wasn't as liquid as other assets.
- There were risks with any property/alternative investment purchase, so investors should ensure that they were happy with the offer being made by the developer and with any potential downside.
- There were ongoing costs to commercial property and alternative investment ownership within a pension scheme.
- With assets located outside of the UK there was a risk of currency fluctuations.
- Property and non-liquid asset investments may not be suitable if the investor required access to capital before they took retirement benefits.

It was also noted in the form that:

- Mr C's anticipated retirement age was age 65.
- Mr C was intending to invest in TRG's Llana Beach hotel.
- As a percentage of Mr C's overall wealth, the pension/property investment would be in the 25% to 50% range.
- Mr C's attitude to risk was balanced.

CIB wrote to Mr C on 17 May 2012. It was noted, amongst other things, in this letter that:

- Mr C wished to purchase an alternative investment with his pension monies and his existing pension provider didn't permit such investments.
- It was recommending that Mr C consider establishing a SIPP with L&C to facilitate the purchase of his chosen investment.
- Mr C's existing pension arrangement didn't include guaranteed annuity rates.
- Mr C wanted to invest for the long term and didn't require access to monies prior to his proposed retirement date of age 65.
- RealSIPP would charge a fee for its services as *"packager and administrator"* of the plan.
- CIB wouldn't receive any initial commission and it would be remunerated by RealSIPP per the terms of Mr C's agreement with RealSIPP.

- It "*would wish to carry out a complete financial review, but at* [Mr C's] *explicit request, our advice is restricted to the consideration of establishing a Self Invested Personal Pension to allow* [Mr C] *to invest in the alternative investment(s) of* [his] *choice"*.
- It was only providing limited advice and it was "*not advising on* [Mr C's] *chosen investment(s) itself."*
- The use of a SIPP package matched Mr C's attitude to investment risk and his objective of investing in an alternative investment.
- It assumed that an alternative investment would be deemed to be a speculative and adventurous investment.
- Mr C's views on investment risk for the monies were understood to be balanced rather than cautious or adventurous. Around four to six on a scale of one to ten.
- A balanced attitude would not preclude Mr C from considering an alternative investment unless such an investment formed a considerable part of his overall wealth.

There was an appendix of sorts included with the report, this set out a number of pages of information about pensions, and pensions related issues. One of these pages was a page of general risk warnings applicable to SIPPs/alternative investments. This noted, amongst other things, that many alternative investments were unregulated and that there could be liquidity problems with alternative investments.

On 30 May 2012, Mr C completed an application form to open a SIPP with L&C. The Independent Financial Adviser ('IFA') details are on page three of the form, details for both RealSIPP and CIB, including their authorisation numbers, are noted. It's also recorded in the form that:

- Initial remuneration of £2,550, and ongoing annual remuneration of £300, would be paid to the IFA.
- A little under £90,000 was to be invested into Llana Beach hotel.
- Mr C wanted to manage the pension fund himself, and he wanted L&C to act on his financial adviser's instructions.

We've been provided with an L&C Investment Purchase Request form that Mr C signed on 30 May 2012. It was noted, amongst other things, in this form that:

- The investment was in TRG's Llana Beach hotel and a little under €90,000 was to be invested.
- A box had been ticked to confirm that Mr C wasn't a certified (or self-certified) Sophisticated Investor.
- A box has been ticked to confirm that *"I have received no advice on the merits of my proposed investment and the investment decision is solely my responsibility".*
- The section to be completed by a financial adviser if advice had been given on the investment was left blank.
- Mr C signed the typed member declaration section towards the end of the form to confirm, amongst other things, that L&C hadn't provided advice on the investment, that the consumer had carried out their own due diligence into the investment and that the investment **may** be high risk and that there **may** not be an established market for selling the proposed holding. It was also stated that the responsibility for assessing the risks and merits of the investment rested with the consumer and any investment adviser they had appointed, that unregulated investments may not be protected by the Financial Services Compensation Scheme ('FSCS') and that the consumer indemnified L&C against any liabilities arising from the investment (bold my emphasis).

We've also been provided with a Scheme Borrowing form that Mr C signed on 30 May 2012. It was noted, amongst other things, in this form that:

- This was an unusual investment structure involving property in a foreign jurisdiction, with a long period between the contract being entered into and completion, when the balance (including any scheme borrowing) would be due.
- There were no standard or previously agreed terms with any potential lender.
- Where scheme borrowing was needed, it was for the investor to choose a lender and obtain an offer, this would then be sent to L&C to review.

L&C wrote to Mr C's adviser on 7 June 2012 and noted that it would need completed Off Plan Property, Scheme Borrowing and Investment Purchase Request forms for the Llana Beach investment.

We've been provided with a blank copy of an Off Plan Property form by L&C. While I've not been provided with a copy of this form that has been signed by Mr C, given the content of L&C's email to Mr C's adviser on 7 June 2012, I think it's more likely than not such a form would have been completed and returned by Mr C. The blank form we've been provided includes a section for inputting details about the specific holding monies were to be invested into, including whether the investment would be a single payment or staged payments. It's also recorded, amongst other things, in the form that:

- The initial deposit could be lost if, for any reason, there wasn't enough cash available to pay the balance when due.
- L&C wasn't authorised to give financial or investment advice.
- L&C had obtained legal advice in its capacity as trustee, in order to assess the risks of ownership and to ensure that appropriate title was attained.
- Advice L&C had obtained didn't cover the investment merits, marketability or value of the property.
- The investor had reviewed a due diligence report/report on title, the promissory contract of purchase and sale, the management/rental agreement and the investor pack.
- The investor had obtained whatever information, reports, legal and other advice they required regarding investments, including the potential income and the associated costs and expenses which may fall to be paid.
- The investor would indemnify L&C in respect of any loss claim action damage L&C incurred, or suffered, in respect of the investment.
- The investor wished to proceed with the investment.

We've also not been provided with a contract for Mr C's Llana Beach investment that has been signed by the vendor. However, we've previously been provided with a copy of a contract signed by the vendor (in that case Llana Beach Hotel, S.A.) in the complaint that was the subject of published decision DRN-3587366. In that complaint the signed contract explained that a total of 65% (consisting of a 45% 'down payment' and an additional 20%) was paid when the contract is signed. Another 30% was then payable on the conclusion of the construction, with the vendor writing off the final 5%. There would also be a discount each year, equivalent to 3% of the cost of the 45% down payment, until the earlier of three years or the date of delivery of the keys. It was also explained that the discount would be *"processed through payment directly to the Promissory Purchaser on a proportional monthly basis."* I will refer to these payments elsewhere in this decision as 'monthly discount payments'. The contract explained that there was an established date for the conclusion of the construction.

While we've not seen a copy of the contract the vendor signed in Mr C's case, I think it's more likely than not that a broadly similar contract would have been completed in respect of Mr C's Llana Beach investment.

In my provisional decision I requested that L&C provide me with a copy of the Off Plan Property form Mr C signed, and a copy of the contract the vendor signed in respect of Mr C's Llana Beach investment, by the deadline that was set for responding to the provisional decision. No response was received to that request by the deadline.

Under DISP 3.5.9(3)R I may *"reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested."*

L&C wrote to RealSIPP on 26 June 2012 and confirmed that Mr C's SIPP had been established. L&C wrote to Mr C the same day and confirmed that £65,585.94 had been received into the SIPP from his previous pension arrangement.

L&C sent Mr C a statement for his SIPP on 26 June 2013, amongst other things, it was noted in the statement that the value of Mr C's SIPP as at 26 June 2013 was £63,180.67. This consisted of £59,777.21 in a Llana Beach holding and with the residual £3,403.46 in cash.

L&C sent Mr C a statement for his SIPP on 11 July 2014, amongst other things, it was noted in the statement that the value of Mr C's SIPP as at 11 July 2014 was £62,764.87. This consisted of £59,777.21 in a Llana Beach holding and with the residual £2,987.66 in cash.

L&C sent Mr C a statement for his SIPP on 8 June 2015, amongst other things, it was noted in the statement that the value of Mr C's SIPP as at 8 June 2015 was £63,392.72. This consisted of £59,777.21 in a Llana Beach holding and with the residual £3,615.51 in cash.

L&C sent Mr C a statement for his SIPP on 13 June 2016, amongst other things, it was noted in the statement that the value of Mr C's SIPP as at 13 June 2016 was £65,792.83. This consisted of £63,037.17 in a Llana Beach holding and with the residual £2,755.66 in cash.

L&C sent Mr C a statement for his SIPP on 17 October 2017, amongst other things, it was noted in the statement that the value of Mr C's SIPP as at 17 October 2017 was £99,157.96. This consisted of £97,171.57 in a Llana Beach holding and with the residual £1,986.39 in cash.

L&C sent Mr C a statement for his SIPP on 25 June 2019, amongst other things, it was noted in the statement that the value of Mr C's SIPP as at 25 June 2019 was £97,344.93. This consisted of a euro based investment (which I've assumed to be the Llana Beach investment) that was valued at £93,876.41 and with the residual £3,468.52 in cash.

L&C sent Mr C a statement for his SIPP on 29 June 2020, amongst other things, it was noted in the statement that the value of Mr C's SIPP as at 29 June 2020 was £97,061.73. This consisted of a euro based investment (which I've assumed to be the Llana Beach investment) that was valued at £94,607.21 and with the residual £2,454.52 in cash. A transaction history for Mr C's SIPP was included with this statement and this recorded, amongst other things, that:

- £65,585.94 was transferred into the SIPP on 26 June 2012.
- £59,777.21 was invested with TRG on 2 July 2012.
- A sum was credited to the SIPP from TRG every month from August 2012 to July 2015, this was for £84.35 every month other than the first month which was for

£159.23.

- There was a further transfer into the SIPP of £5,320.74 on 11 February 2016.
- A further £5,595.29 was paid to cover a completion balance, fees and taxes for the TRG investment in February 2016.
- From July 2017 onwards, roughly every three to four months periodic TRG rental payments of differing amounts were credited to the SIPP. Rental payments continued to be credited to the SIPP through until June 2019. No further rental payments were credited to the SIPP between June 2019 and July 2023.

Additional background information

Having explained what's happened above, I've mentioned below some additional documentation we've previously been provided on some other complaints involving all of L&C, RealSIPP/CIB and TRG investments, before then going on to summarise what's happened in Mr C's complaint to date.

In this complaint L&C appears to have mainly provided us with information about the due diligence it undertook into TRG's Dunas Beach investment rather than the due diligence it undertook into TRG's Llana Beach investment (which, as I understand it, is the investment that Mr C actually made). In my provisional decision I requested that L&C provide copies of *all* due diligence it undertook into the Llana Beach investment to this Service, alongside its response to my provisional decision and by the deadline that was set for responding to the provisional decision. No response was received to that request by the deadline.

I'm aware from the complaint that was the subject of published decision DRN-3587366 that L&C has previously provided us with a third-party investment due diligence document it obtained for Llana Beach. The document sets out some details about the investment, including that:

- The investment appeared to be a genuine hotel operation and TRG had completed one previous development in Cape Verde.
- The investment involved acquiring hotel rooms off plan, with annual income being generated through room rental. Ownership and rental income weren't pooled.
- TRG said that the investment wasn't an Unregulated Collective Investment Scheme ('UCIS'). But as the investment was still unregulated there would be no FSCS protection.
- Management of the hotel would be covered by an operator agreement; the hotel operator would be an established operator listed on the Spanish stock exchange.
- First Resort Property Services Limited was promoting the investments under licence from TRG.
- Web searches revealed no adverse history for those involved in the arrangement.

L&C has previously told us that by applying to be an intermediary, RealSIPP agreed to be bound by the terms of The Intermediary Agreement for Non-Insured Contracts. I've seen copies of the L&C intermediary applications that CIB and RealSIPP signed on 13 September 2010 to confirm this, and I've also seen a copy of the agreement.

L&C has also previously provided us with copies of print outs from the FSA Register. These record that, as at November 2011, RealSIPP was an appointed representative of CIB. And CIB's permissions included advising on Pension Transfers and Pension Opt Outs.

I've also seen L&C's SIPP *'Open Pension Brochure'* document. Amongst other things, this says that *"the L&C Open Pension is not appropriate for everybody and it is essential that you obtain financial advice before entering into one"*. The brochure also explains that L&C has no responsibility for investment decisions. But that it will ensure assets are correctly registered and comply with HM Revenue & Customs ('HMRC') rules and regulations.

I requested in my provisional decision that L&C provide us with copies of any evidence it has to demonstrate any steps it took to understand the service RealSIPP/CIB would provide to its clients before it accepted Mr C's business, including all documentation it obtained from RealSIPP/CIB in respect of this. No further submissions were provided by L&C on this point in response to my provisional decision.

We've not been provided with a copy of RealSIPP/CIB client agreement(s) and/or Keyfacts documents that were provided to Mr C. However, we were provided with a copy of RealSIPP's client agreement and Keyfacts document, titled *"about our services for our Resort Group SIPP package"* in the complaint that was the subject of published decision DRN-3587366. RealSIPP's client agreement described it as an *"administrator and packager"* of pension solutions to clients of various alternative investment providers, and said that:

> *"We are not, however, financial advisers as defined by the Financial Services and Markets Act 2000 and we will not provide financial advice as to whether the SIPP is the right product for you, nor will we recommend or advise upon any investment strategy you should follow. You should seek advice from a suitably qualified and regulated firm or individual."*

Further, that:

> *"RealSIPP LLP does not make specific investment recommendations, nor will we confirm your objectives and any restrictions on the types of product that you wish to buy. We act upon your instructions."*

The Keyfacts document says that RealSIPP only offers products from a single company and that clients wouldn't receive advice or recommendations from RealSIPP. It's also explained that for clients establishing a SIPP (this included setting up the SIPP and arranging the transfers in) there would be an initial £2,550 fee and an annual ongoing fee of £300 for administration and correspondence.

And I've seen archived copies of RealSIPP's website (www.realsipp.com) from 3 February 2011 and 3 December 2011 where it's explained, amongst other things, that:

> *"RealSIPP does not provide individual financial advice on any of the developments in which clients may wish to invest. We provide generic information on the considerations and risks associated with property investment."*

Further, that:

> *"If you are in any doubt over your chosen investment and its suitability to your needs and circumstances you should seek professional advice from a suitably qualified Independent Financial Adviser."*

I've also seen a client form (which appears to be CIB's client form) on the complaint that was the subject of published decision DRN-4398600, which was another complaint involving L&C where RealSIPP/CIB was the introducer. Amongst other things it's stated in

the form that:

> *"Our firm is independent and we offer products from the whole market. In this particular instance we are restricting our services to the establishment and set-up of a specific SIPP to enable commercial property purchase. We will not be providing any advice on the suitability of this package to your own personal circumstances and you should seek professional advice where necessary."*

What has happened in Mr C's complaint so far?

We've been provided with an undated letter of complaint that Mr C sent to L&C. As I understand it, this letter was sent by email to L&C's compliance team on 11 October 2023. It's noted in this letter, amongst other things, that:

- L&C failed to meet the FCA's Principles for Businesses and failed to act in accordance with regulatory guidance.
- Instead of undertaking due diligence and acting in his best interests, L&C allowed an unregulated and highly illiquid asset to be held in his SIPP.
- At the time of transferring his pension, other than his pension and the equity in his house, he held no significant assets or debts.
- He was advised to transfer his pension to a SIPP and to invest in TRG, promises of high rental yields and capital growth were made to him.
- L&C ought to have identified that the investment was high-risk, considered whether the investment was appropriate for a pension scheme and ensured that he wasn't investing the majority of his pension into a speculative investment.
- L&C failed to check that Mr C's adviser had provided Mr C with advice.
- A complaint was also being submitted to the FSCS about CIB, but the maximum compensation award from the FSCS wouldn't fully cover his losses.

L&C replied to Mr C's complaint on 27 October 2023 and said, amongst other things, that:

- It was writing further to Mr C's complaint of 11 October 2023.
- It received Mr C's completed SIPP application form on 31 May 2012.
- Mr C's SIPP application form confirmed that he had appointed RealSIPP as his adviser and that he intended to switch his pension to L&C following the regulated advice he had received.
- As part of his SIPP application, Mr C provided a completed application for the TRG investment.
- The receipt of Mr C's application was the first contact between L&C and Mr C.
- RealSIPP forwarded Mr C's instructions to invest into TRG onto L&C, and £59,777.21 was then invested on 26 June 2012.
- An investment application form Mr C completed included a signed declaration confirming that Mr C had read, and *"agreed to, the risks of investing into the regulated investment like Dunas Beach"*.
- Mr C confirmed that he understood the risks associated with his choices, and that he understood L&C wasn't responsible for any of his decisions, because it acted on an instruction/execution-only basis.
- L&C can't be held responsible for Mr C's decision to sign documentation that he knew to be inaccurate, or failed to understand, in circumstances where there was no indication to L&C that this was the case.
- The total transfers received into the SIPP and subsequent investment were all below the FSCS' maximum threshold for compensation.

- L&C would have been in breach of the Conduct of Business Sourcebook (COBS) Rules (and COBS 11.2.19 was referenced) if it hadn't executed Mr C's instructions to make the investment.
- L&C followed its processes and ensured that Mr C was aware that it was acting on his behalf on an execution-only basis.
- L&C isn't obligated to *"go beyond the paperwork"* that Mr C signed.
- L&C acted in good faith.
- L&C doesn't, and isn't permitted to, provide any advice. And it's not qualified to assess suitability or an individual's investment needs.
- L&C offered Mr C the opportunity to seek regulated advice before proceeding with the transaction he had instructed.
- L&C has acted in accordance with regulatory and statutory requirements, and with the contractual documents governing the relationship between it and Mr C.
- L&C isn't connected to RealSIPP in any way and can't be held responsible for advice that RealSIPP provided. The full extent of L&C's relationship with RealSIPP was the acceptance of the referral of business in accordance with Terms of Business in operation between L&C and RealSIPP.
- RealSIPP was a FCA regulated firm at the time and had the appropriate permissions to advise Mr C on the transactions that he was instructing.
- It was RealSIPP's responsibility to assess Mr C's investment experience, his risk tolerance, his objectives and also to ensure that the investments it was recommending were suitable for Mr C.
- L&C understands that RealSIPP provided Mr C with advice on all of the transactions that were effected.
- L&C undertook due diligence on both RealSIPP and the TRG investment.
- L&C ensured the TRG investment was within HMRC pension scheme rules, that it was suitable to hold within a UK registered personal pension scheme like the SIPP and it also established that the investment wouldn't cause any unauthorised payments within the scheme.
- L&C reviewed the investment information and company background checks.
- L&C's due diligence on RealSIPP provided no cause for concern or reason to suspect there was anything wrong.
- L&C acted in accordance with the Principles for Businesses when it accepted Mr C's business.
- It was Mr C's decision to use RealSIPP and he engaged RealSIPP prior to his first contact with L&C.
- RealSIPP submitted both the SIPP application and investment instructions to L&C.
- RealSIPP advised on the TRG investment and it was RealSIPP's responsibility to conduct appropriate due diligence on the investment that it was recommending to Mr C.
- Paperwork that was required to establish the SIPP, to transfer monies from Mr C's previous scheme and to invest in TRG, wouldn't have been actioned without Mr C first reading, seeking advice and signing the paperwork to confirm that he had read and agreed to the contents of the documentation.
- At no point did Mr C request clarification from L&C about the contents of documentation he was required to read and complete.
- L&C has acted appropriately as SIPP administrator and trustee, it has administered Mr C's SIPP in line with its Terms and Conditions.

Mr C wrote to us on 4 January 2024, he noted that he wasn't in agreement with L&C's response to his complaint and asked us to review the matter.

L&C has said, amongst other things, that:

- It carried out its own due diligence on the underlying investment held in the SIPP and didn't rely on third-party reports.
- It satisfied itself that the property was able to be fairly valued as the investment was into hotel rooms (in a hotel complex) that are rented out. As such, a qualified surveyor could be appointed to provide their opinion on market value.
- L&C wouldn't automatically instruct a qualified surveyor to value each property as it would need its members' instructions, on the basis that it would be an additional cost to their scheme.
- The FCA Register was checked before L&C accepted any new applications to ensure that RealSIPP held appropriate permissions.
- L&C's process is to carry out regular checks against the FCA database to ensure the adviser remains authorised.
- Adviser charges were paid in accordance with the fee agreement Mr C signed.
- L&C has no permissions or experience to advise or comment on the suitability of a transaction, and it didn't request copies of RealSIPP's suitability reports.
- L&C's agreement with RealSIPP was terminated in 2015.
- 160 clients were introduced by RealSIPP and from a sample of 20% of the introduced clients then 99.94% involved transfers in from occupational schemes.
- All the clients introduced by RealSIPP invested into overseas commercial properties.
- RealSIPP introductions constituted 23% of L&C's new business during the course of L&C's agreement with it.

Amongst other things, Mr C has said that:

- His previous pension arrangement was a defined contribution group personal pension plan without guarantees.
- His pension with L&C is still active and he's taken no pension benefits.
- His *"partner's sister's brother in law"* worked in some type of advisory capacity and had referred him to RealSIPP.
- He was told how great the investment was, how it was an opportunity not to be missed and how it would be very profitable. He was shown charts and brochures all depicting huge profits.
- He hadn't considered changing his pension prior to being referred to RealSIPP.
- The adviser promised capital growth with low risk. The investment was described as low risk as it was investing in *"bricks and mortar".*
- RealSIPP provided the pension transfer and investment advice, it also actioned the transfer and did everything to set things up.
- He had received an advice report.
- At the time, he was told that it was a great investment, with large rental yields and capital growth. He was also told that he would receive profits from the hotel and could sell at any time.
- His understanding of L&C's role was that it was the pension company and it held the investment.
- He had made a claim to the FSCS about RealSIPP/CIB but that claim had been closed and without any compensation having been paid.
- He had engaged his representative to investigate matters as he had heard about the difficulty of selling the TRG investment from an acquaintance who had also invested. Prior to this, his SIPP statements had still shown the investment as being worth lots of money so he hadn't been aware of any issues.

- Mr C later clarified that it was during a phone call in June 2023 with a representative of TRG (as a part of TRG's process of providing updates) when the issues with selling TRG investments became apparent. And that this had then resulted in Mr C instructing his representative.
- Mr C's representative received initial instruction from Mr C on 19 June 2023.

Mr C has explained his claim against CIB with the FSCS is closed and that as the *"FSCS is an insurer of last resort…the matter against London & Colonial is to be progressed first"*. Mr C has provided us with a printout from the FSCS website that shows his claim about CIB was submitted to the FSCS on 4 October 2023 and also a letter that the FSCS sent him on 10 July 2024 confirming his claim is closed.

One of our investigators reviewed Mr C's complaint and concluded it should be upheld. They said that Mr C's complaint was one this Service could look at, and if L&C had undertaken appropriate due diligence it should have decided not to accept business from RealSIPP/CIB. Further, that L&C shouldn't have accepted Mr C's business and that but for L&C's failings Mr C wouldn't have transferred his pension monies to L&C.

L&C didn't agree with the investigator and, amongst other things, said that:

- This complaint wasn't made within the time limits and L&C doesn't agree to waiving the time limits.
- Mr C's complaint was made on 11 October 2023, which is more than six years after his SIPP was established in May 2012 and monies were invested into Llana Beach in July 2012. And it's also more than three years from when Mr C became aware, or ought reasonably to have become aware, of his cause for complaint.
- There have been a number of complaints involving similar circumstances to Mr C's complaint where the Financial Ombudsman Service has concluded the complaints weren't made in time – and L&C provided two of our complaint references.
- The Financial Ombudsman Service cannot decide that identical cases are time barred but that this one isn't.
- Rental income was being received on a regular basis from August 2012 to June 2019, and no further income was received after June 2019. Mr C would have become aware of this following receipt of his annual valuation reports on 25 June 2019 and 29 June 2020.
- The rental payments stopping is sufficient for Mr C to have had cause for concern that something had gone wrong and that he had, or may, suffer a loss.
- The *Berkeley Burke SIPP Administration v Financial Ombudsman Service* [2018] EWHC 2878 (Admin) judgment has previously been referenced in a number of complaints as being a trigger point for a consumer's understanding of their SIPP provider's responsibilities. And this judgment would have been discovered as part of Mr C's investigation into what had gone wrong.
- Any member experiencing an abrupt cessation of regular rental income from 2019 would have had cause for concern to review their asset's performance and ultimately have had reason to complain.
- The cessation of rental income was sufficient cause for concern that something had gone wrong, that Mr C had, or may, suffer a loss and that he had cause for complaint. And Mr C was put on notice for raising his complaint at that time.
- Mr C then had three years from this date of knowledge to start his investigation to determine what had gone wrong, who was to blame and to raise a complaint against that party before the three-year deadline expired.
- A consumer need not know what has gone wrong, who is to blame or what can be done to fix it, they merely need to know enough for it to be reasonable for them to investigate the matter further.

- At the very latest, the June 2020 valuation should have highlighted an issue with Mr C's rental income, alerting him to the fact something had gone wrong with his investment and that he had reason to complain. A complaint should then have been submitted to L&C no later than June 2023.
- The Financial Ombudsman Service doesn't properly address using the Principles as the basis for finding against L&C in preference to the COBS rules or established case law.
- A breach of the Principles cannot, of itself, give rise to any cause of action at law.
- The relevant documents setting out the contractual relationship between the parties made it clear that L&C was acting on an execution-only basis.
- The Principles, and such duties as may be imposed on L&C by them, fall to be construed in light of the COBS rules applicable to L&C, L&C's regulatory permissions, L&C's contractual arrangements and the statutory objective that consumers should take responsibility for their decisions.
- The publication of any reports, guidance and correspondence issued by the regulator had no bearing on the construction of the Principles.
- Amongst other things, the judge in *Adams* said that *"a duty to act honestly, fairly and professionally in the best interests of the client, who is to take responsibility for his own decisions, cannot be construed...as meaning that the terms of the contract should be overlooked, that the client is not to be treated as able to reach and take responsibility for his own decisions and that his instructions are not to be followed."*
- The relationships in this case are similar to those in *Adams*, and if anything Mr C was in a safer position as he had the benefit of another regulated entity in RealSIPP/CIB.
- L&C did checks to ensure the introducer was properly regulated to advise on the business and it also entered into agreements with RealSIPP and CIB.
- It was reasonable for L&C to be afforded a significant level of comfort in relation to RealSIPP/CIB's appointment as Mr C's financial adviser. An FCA-authorised financial adviser is required to operate under a set of regulatory obligations at all material times to ensure they have their client's best interests in mind when providing their professional services.
- The investigator's view should have found that L&C's duties to Mr C extended no further than those owed to the claimant in *Adams.*
- The Financial Ombudsman Service is deviating from established case law with no valid explanation given for why it has done so.
- Under COBS 2.4.8 it will generally be reasonable for a firm to rely on information provided to it in writing by a professional firm, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information.
- COBS also states that it is reasonable for a firm to take comfort in the FCA status of another professional firm.
- L&C shouldn't be held responsible for decisions made by Mr C prior to its involvement.
- Regulatory publications can't alter the meaning, or the scope, of the obligations imposed by the Principles.
- The 2009 and 2012 thematic reviews didn't, in fact, provide guidance in any meaningful sense. And many of the matters which the thematic review invites firms to consider are directed at firms providing advisory services.
- Even if the 2009 and 2012 thematic reviews had been statutory guidance made under FSMA s.139A (which they weren't), the breach of such statutory guidance wouldn't give rise to a claim for damages under FSMA s.138D.
- It's not fair or reasonable to determine the complaint by reference to the FCA publications and to do so only exacerbates the problem referred to by Jay J in *R. (on the application of Aviva Life and Pensions (UK) Ltd) v Financial Ombudsman Service* [2017] EWHC 352 (Admin).

- Insufficient weight has been given to contractual arrangements and the demarcation of roles and responsibilities.
- *Adams* held that duties imposed by COBS can't all apply to all firms in all circumstances.
- The COBS rules contain some provisions and obligations that don't apply to execution-only SIPP providers.
- Neither the obligations under COBS 14.2.3R and COBS 14.3 to provide clients with product information, nor the obligation under COBS 19.1.2R to provide clients with pension product information, apply to execution-only SIPP providers.
- The Financial Ombudsman Service seeks to impose on L&C a duty of due diligence that it doesn't owe and which goes far beyond the scope of any duty envisaged by the parties.
- The Financial Ombudsman Service seeks to override COBS' careful allocation of duties between different types of firms conducting different types of business, and to impose duties on L&C in addition to those provided for under COBS.
- The Principles must be applied within the context of the specific duties imposed by the Rules.
- The findings in the investigator's assessment creates a relationship between L&C and Mr C before a contract is entered into and before any funds were received by L&C.
- Notwithstanding the appropriate level of due diligence carried out by L&C on RealSIPP/CIB, the investigator's assessment finds that L&C was under further obligations to protect against consumer detriment and ensure that Mr C understood the level of risk involved. This is wrong.
- The investigator's view runs contrary to *Adams*, in which it was held that Carey's duties under the regulatory regime fall to be construed in light of its contractual arrangements.
- *Adams* considered the duties of a SIPP provider under COBS at length and the findings of that case should be applied.
- The TRG investment was exactly what it was advertised to be. Whilst the investment may have been illiquid there were no restrictions on promotion and Mr C made the investment he intended to make.
- Mr C received a total of £6,578.34 in rental income from the investment between 2012 and 2019, which suggests this was a suitable investment to be held within a SIPP. The rental income only ceased to be paid when the global pandemic halted international travel.
- The Financial Ombudsman Service has concluded that there was a responsibility on a SIPP provider at the time to police the provision of pension transfer advice, quite distinct from any obligation at law.
- The investigator's view fails to have regard to the general principle that consumers should take responsibility for their decisions, the fundamental principle of freedom of contract and to the authority of *Adams* and *Kerrigan v Elevate Credit International Ltd* [2020] C.T.L.C. 161.
- The investigator's assessment enables Mr C to recover from L&C losses flowing from non-contractual obligations inconsistent with, and indeed contrary to, the express obligations in the parties' contractual arrangements.
- No fair or reasonable reading of the Principles could require L&C to conduct due diligence of the nature suggested by the Financial Ombudsman Service.
- The assessment of the suitability of any pension product, transfer of pension rights or investments was wholly the responsibility of Mr C and/or his financial adviser.
- There is a real unfairness if L&C is liable for the poor investment choices of consumers and the failures of other regulated entities over which it put in place contractual controls that the other regulated entity breached.

- It would be unfair if L&C wasn't able to rely on express representations made by the consumer when signing the contractual documentation and further to hold it responsible in circumstances where the failure is that of RealSIPP/CIB.

As agreement couldn't be reached the complaint was passed to me for review.

I issued a provisional decision on this complaint and concluded Mr C's complaint should be upheld. In brief, I concluded that:

- The complaint had been referred in time and was one we could consider.
- L&C should have been conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.
- On the basis of the available evidence, the due diligence undertaken by L&C into RealSIPP/CIB wasn't sufficient in the circumstances to have met L&C's obligations.
- L&C didn't take appropriate steps or draw reasonable conclusions from the information that was available to it before accepting Mr C's application.
- L&C had some reasons to be concerned about the type of business RealSIPP was introducing. The introductions had anomalous features – high-risk business for unregulated overseas property developments and other esoteric investments. And, even though L&C believed that RealSIPP had the necessary permissions to give full advice on the business it was introducing, a large proportion of the introduced business was execution-only.
- L&C knew all of this, or else ought to have known it from the information available, but it didn't then make further appropriate checks.
- Had L&C made reasonable checks prior to receiving Mr C's application, it would have realised that some introductions from RealSIPP involved a significant risk of consumer detriment.
- L&C should have ceased to accept introductions from RealSIPP before it accepted Mr C's application.
- In the circumstances, it was fair and reasonable for L&C to compensate Mr C to the full extent of the financial losses he's suffered due to L&C's failings.

Neither party added any further material submissions in response to my provisional decision.

What I've decided – and why

jurisdiction

I've considered all the evidence and arguments in order to decide whether we can consider Mr C's complaint.

The rules I must follow in determining whether we can consider this complaint are set out in the Dispute Resolution ('DISP') rules, published as part of the FCA's Handbook.

Has the complaint been brought in time?

DISP 2.8.2R sets out that:

> "The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

(1) more than six *months* after the date on which the *respondent* sent the complainant its *final response, redress determination* or *summary resolution communication;…*

…

unless:

(3) in the view of the *Ombudsman*, the failure to comply with the time limits in *DISP 2.8.2 R* or *DISP 2.8.7 R* was as a result of exceptional circumstances; or…

(5) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limits in *DISP 2.8.2 R* or *DISP 2.8.7 R* have expired*…"*

The respondent in this complaint is L&C, L&C hasn't consented to us considering this complaint. As I understand it, L&C issued its response to Mr C's complaint on 27 October 2023 and Mr C then referred his complaint to us in January 2024. As such, I'm satisfied Mr C's complaint was referred to us within six months of the date on which the respondent, here L&C, sent Mr C its response.

DISP 2.8.2R also sets out that:

"The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

…

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received;

unless:

(3) in the view of the *Ombudsman*, the failure to comply with the time limits in *DISP 2.8.2 R* or *DISP 2.8.7 R* was as a result of exceptional circumstances; or…

(5) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limits in *DISP 2.8.2 R* or *DISP 2.8.7 R* have expired*…"*

Mr C first referred his complaint to L&C on 11 October 2023.

All of Mr C's SIPP being established, monies being transferred into the SIPP and the investment into Llana Beach being made occurred in 2012, which is more than six years before Mr C first referred his complaint to L&C. As such, I've also gone on to consider whether Mr C's complaint was first referred to L&C within three years of the date on which Mr C became aware, or ought reasonably to have become aware, he had cause for complaint. And when I say here cause for complaint, I mean cause to make this complaint about this respondent firm, L&C, not just knowledge of cause to complain about anyone at all.

In thinking about when Mr C was aware, or ought reasonably to have become aware, that he had cause for complaint, I've considered how 'cause for complaint' should be interpreted in the context of the FCA Handbook.

On interpreting the Handbook generally Singh LJ said the following in *The Official Receiver v Shop Direct Finance Company Limited* [EWCA] Civ 367:

> *"44. The FCA Handbook is similar in its drafting style to the Financial Services Authority's Client Assets Sourcebook (CASS), which was considered by this Court in Re Lehman Brothers International (Europe) (No 2) [2010] EWCA Civ 917; [2011] 2 BCLC 184…*
> *…*
> *46. For present purposes I derive the following propositions from the judgments in Re Lehman Brothers:*
>
> *(1) Ultimately it is the actual wording of a provision that must govern any decision as to its effect.*
> *(2) The Handbook should be read as a whole, taking an holistic and iterative approach, so that a preliminary view on one provision can be tested by reference to the rest of the relevant provisions.*
> *(3) The provision should be construed in the light of its overall purpose.*
> *(4) It should be construed on the basis that it is intended to produce a practical and commercially sensible result. The rules should be taken to be grounded in reality. The court should keep in proportion any drafting infelicities."*

And in relation to DISP 2.8.2R Nugee LJ said the following:

> *"155. The resemblance to the ordinary limitation periods for claims in negligence where there is also a primary period of 6 years (under s. 2 of the Limitation Act 1980 ("LA 1980")) and a secondary period of 3 years from the date of the claimant's actual or constructive knowledge (under s. 14A LA 1980) is striking. We have in fact been shown evidence that this is not a coincidence, but even without this material (which is of doubtful admissibility) it would have been a reasonable assumption that the general structure was modelled on the LA 1980 provisions and was designed to do the same thing in general terms.*
>
> *156. What then is the purpose of having these two time-limits? The purpose of an ordinary limitation period is to prevent stale claims from being litigated, the period of 6 years being fixed as a generally reasonable period to bring a claim. This explains the primary period. But as is well-known that could and did lead to some claimants who had suffered latent injury or damage finding that they had lost their rights to sue before they even knew, or could reasonably be expected to know, that they had been injured or suffered loss. Provision was therefore made, first in ss. 11 and 14 LA 1980 (applicable to claims for personal injury) and subsequently in s. 14A LA 1980 (applicable to other claims in negligence), for the claimant to have 3 years from his date of knowledge to bring a claim. The purpose of this is obvious. It was to remedy the injustice of a claimant's claim being time-barred before they knew, or could reasonably be expected to know, that they had a claim. On the other hand the selection of a (relatively short) 3 year time period shows that another purpose was to provide that once they did, or should, have that knowledge they should get on with the claim and bring proceedings reasonably promptly. Precisely the same in my view applies to the secondary time-limit in DISP 2.8.2R(2)(b). The purpose of the rule is to prevent a complainant from losing the right to complain before they are, or ought reasonably to be, aware that they have cause for complaint, but to require them to*

pursue the complaint with reasonable promptness once they are, or should be, so aware."

The Handbook includes the following rule (GEN 2.2.1R):

"Every provision in the Handbook must be interpreted in the light of its purpose."

And guidance in the same section says the purpose of any provision in the Handbook is to be gathered first and foremost from the text of the provision in question and its context amongst other relevant provisions (GEN 2.2.2(G)).

The Handbook also says (GEN 2.2.7(R)):

"In the Handbook …

(1) an expression in italics which is defined in the Glossary has the meaning given there; and
(2) an expression in italics which relates to an expression defined in the Glossary must be interpreted accordingly.'

The term 'cause for complaint' is not defined in the FCA's glossary. But where DISP says the Ombudsman cannot consider a complaint if it is out of time, the word 'complaint' is in italics. So it is a defined term in the FCA Glossary and must be treated accordingly.

And where the Handbook says it sets out how complaints are to be dealt with by respondents, 'complaint' is again in italics. So again it is a defined term.

So although the term 'cause for complaint' isn't in italics in the FCA Handbook, it appears as part of the rule that sets out what 'complaints' (in italics) the Ombudsman cannot consider. And it's reasonable to infer in light of the above rules and guidance on interpreting the Handbook that the Handbook's definition of the word 'complaint' was intended to apply to that phrase.

For the purposes of DISP the FCA Handbook defines 'complaint' as follows:

"…any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service…which:

(a) Alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
(b) Relates to an activity of that respondent, or any other respondent with whom that respondent has some connection in marketing or providing financial services or products …which comes under the jurisdiction of the Financial Ombudsman Service…"

And 'respondent' (which is italicised) means a regulated firm covered by the jurisdiction of the Financial Ombudsman Service.

And so the material points required for Mr C to have awareness of a cause for complaint include:

- awareness of a problem
- awareness that the problem had or may have caused him material loss, and

- awareness that the problem was or may have been caused by an act or omission of L&C (the respondent in this complaint).

It's therefore my view that it's necessary for Mr C to have had an awareness (within the meaning of the rule) that related to L&C, not just awareness of a problem that had caused a loss. Knowledge of a loss alone is not enough. It can't be assumed that upon obtaining knowledge of a loss a consumer had knowledge of its cause. And I don't accept that the three year time limit necessarily means knowledge of a loss means the consumer has three years to make enquiries to discover all parties who might be responsible, failing which they run out of time to make a complaint. As Nugee LJ said in The Official Receiver case '*the purpose of the rule is to prevent a complainant from losing the right to complain before they are, or ought reasonably to be, aware that they have cause for complaint, but to require them to pursue the complaint with reasonable promptness once they are, or should be, so aware.'*

There are a number of points that I think are relevant to this discussion:

- In order to be aware of cause for complaint the complainant should reasonably know there's a problem, that they have or may suffer loss, and that someone else is responsible for the problem – and who that someone is. So, to have knowledge of cause for complaint about L&C, Mr C needs to be aware, or should reasonably be aware, that there's a problem which has caused, or may cause, him loss and that L&C might be responsible.

- Mr C says he first became aware something was wrong during a phone call in June 2023 with a representative of TRG. And, after Mr C's representative received initial instruction from Mr C in June 2023, a claim against CIB and a complaint about L&C were then raised in October 2023.

- L&C says Mr C should have realised by June 2020 at the very latest that rental payments hadn't been paid since June 2019 and that something might be wrong.

- L&C has also submitted that there have been a number of cases involving similar circumstances to Mr C's complaint where the Financial Ombudsman Service has concluded the complaints weren't made in time, and it's provided two of our complaint references. Only one of those two complaints appears to have been the subject of an Ombudsman's decision and in that complaint the Ombudsman concluded the complaint was one we *could* consider.

  Further, and more importantly, we review each individual complaint on its individual facts. My role is to reach findings in *this* complaint, and I have to assess matters in this complaint based on my own judgement not on what an Ombudsman has said in a different complaint.

- £65,585.94 was transferred into the SIPP on 26 June 2012 and £59,777.21 was then invested with TRG on 2 July 2012.

- A sum was credited to the SIPP from TRG every month from August 2012 to July 2015, this was for £84.35 each month other than the first month which was for £159.23.

  Premised on the information available, I think it's more likely than not these monies were what I've referred to earlier in this decision as *'monthly discount payments'*. And that these three years of payments would have been made in accordance with the

Llana Beach contract that was entered into. So, I don't think these were rental payments. I also explained this in my provisional decision, and said that if L&C disagreed with my findings on this point it should let me know by the deadline that was set for responding to my provisional decision. No further submissions were provided by L&C on this point in response to my provisional decision.

- There was a further transfer into the SIPP of £5,320.74 on 11 February 2016.

- £5,595.29 was paid to cover a completion balance, and fees and taxes for the TRG investment in February 2016.

- Premised on the information available, I think it's more likely than not that the plot Mr C had invested in was completed at some point between 2016 and 2017. This would appear to be consistent with the further payment in February 2016, the uplift in property value by the June 2017 annual statement and the commencement of (roughly) quarterly rental income from July 2017 onwards.

- I've carefully considered the statement evidence. The annual statements that were issued to Mr C between 2013 and 2016 recorded a fairly stable SIPP value, with annual valuations of between £62,764.87 and £65,792.83.

- I don't think it's unusual for there to be delays in the completion of property investments like Llana Beach, or for the substantive return from such investments to come post-completion. Property investments like this aren't short term investments and I've not seen anything to suggest that Llana Beach was sold to Mr C as such. Indeed, in the CIB documentation I've referred to earlier in this decision from May 2012, it's recorded that Mr C (who, as I understand it would have been 45 years of age at the time) wanted to invest for the long term and didn't require access to monies prior to his proposed retirement date of age 65.

  So, I don't think a substantive investment return on a commercial property development of this nature in the short term would necessarily have been expected, or that the absence of such a return until the 2017 statement, ought to have caused Mr C, or a reasonable investor in his position, to conclude there was a problem with the investment before the 2017 annual statement.

  I think the hoped for growth in the capital value of the plot and rental income were both elements of the investment that a reasonable retail investor in Mr C's position would expect to see post-completion of the plot and I've not seen anything to satisfy me that Mr C considered otherwise. Further, with an investment like this, I also don't think a reasonable retail investor in Mr C's position ought reasonably to have considered that the lack of a substantive return in the annual statements prior to 2017 meant that they might not get their money back, or that they weren't still going to enjoy capital growth and rental yields post-completion.

- There is a significant increase in the value of the SIPP in the 2017 annual statement, with the SIPP increasing in value from £65,792.83 in 2016 to £99,157.96 in 2017. And by the 2017 statement the value of the Llana Beach investment had increased to £97,171.57.

- Those annual statements we've seen that were issued to Mr C between 2017 and 2020 recorded a fairly stable SIPP value, with annual valuations of between £97,061.73 and £99,157.96. There does seem to have been some fairly modest fluctuations in the sterling value of the Llana Beach investment between these dates.

However, it appears from the contents of the 2019 and 2020 statements that the euro valuation for the plot remained at €105,000, and the fluctuations appear to have been largely due to movements in the currency rate between sterling and euros rather than any underlying issues with the investment.

- From July 2017 onwards, roughly every three to four months periodic TRG rental payments of differing amounts were credited to the SIPP. Rental payments continued to be credited to the SIPP through until June 2019.

- The June 2020 statement included a transaction history that showed rental payments hadn't been credited to the SIPP since June 2019. It's an obvious point but the generation of rental income is reliant on a property being occupied and I think it's foreseeable with such investments that there might be periods with low or no occupancy (and that specific plots might not generate rental income during those periods). Mr C hasn't contended he was told quarterly/annual rental payments were guaranteed, and I don't think a reasonable investor in Mr C's position ought reasonably to have become aware from the absence of rental income for a one-year statement period, and following a two-year period in which rental income had been generated, that there was a problem with their investment (and/or with their SIPP where the investment was held in a SIPP). Rather, I think a reasonable retail investor in Mr C's position on receipt of the 2020 statement would have recognised that:

    - It's in the nature of rental properties that there might be periods with low or no occupancy, and that there might be corresponding fluctuations in the rental income being generated in each statement year.
    - Post-completion, two full years of rental income had been generated between July 2017 and June 2019. Following this, the lack of rental income return in the June 2019 to June 2020 statement was disappointing, but (much as is the case with many investments) the rental aspect of a property investment would provide better returns some years than others. And the capital value of the investment hadn't fallen in value. Indeed, and importantly, the capital value of the Llana Beach investment had grown, and not insignificantly, from the amount invested into that holding. And the capital value of the SIPP had also grown, and not insignificantly, from the total sum transferred into the SIPP.
    - The June 2020 statement was being received in a period when there was a global pandemic and this would likely have impacted leisure travel and hotel occupancy rates for, at least, a period of the statement year. Indeed, as L&C itself noted in its submissions on this complaint *"The rental income only ceased to be paid when the Global Pandemic effectively halted international travel, something that was clearly not foreseeable at the time the investment was made."*

- On the available evidence, I have no reason to doubt Mr C's testimony that he didn't have actual awareness of cause for complaint until 2023.

- On balance, and for the reasons I've explained in detail above, I'm also not in agreement with L&C that Mr C ought reasonably to have become aware there was a problem with his investment by the time he received the June 2020 statement at the latest.

  I think a reasonable retail investor in Mr C's position, on receipt of the June 2020 statement, would have considered that the capital value of their investment (and SIPP) had grown, not insignificantly, since outset and that there had been two years of rental income post-completion followed by one year without rental income (and

with the backdrop of a global pandemic for a part of that year). I don't think that this was outwith what a reasonable investor in Mr C's position at the time might reasonably have expected from the investment.

I certainly don't agree that a reasonable retail investor in Mr C's position ought to have regarded the contents of a statement showing a not insignificant increase in the capital value of their investment (and SIPP) since outset, along with one year's disappointing rental income return that followed on from two years of reasonable income rental returns, to be indicative of a problem with their underlying investment.

- In addition to the contents of the statements L&C has provided, there is also nothing in any other correspondence or submissions provided to us that leads me to conclude that Mr C was aware, or ought reasonably to have become aware, there was a problem with his investment and/or his SIPP more than three years before he first complained to L&C in October 2023.

Overall, having carefully considered all of the available evidence, for the reasons I've explained above I don't think Mr C was aware, or ought reasonably to have become aware, that he had cause for complaint against L&C more than three years before his complaint was referred to L&C. Accordingly, I'm satisfied this complaint has been brought in time and that it's one we can consider. As such, I've gone on to consider the merits of this complaint below.

merits

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

When considering what's 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.

As a preliminary point, I should also say the purpose of this final decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point by point response to every submission made by the parties to the complaint. And so whilst I have considered all the submissions made by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

Relevant considerations

I've carefully taken account of the relevant considerations to decide what's fair and reasonable in the circumstances of this complaint.

In my view, the FCA's Principles for Businesses are of particular relevance. The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (PRIN 1.1.2G – at the relevant date).

PRIN 1.1.9G at the relevant date stated that:

> *"Some of the other rules and guidance in the Handbook deal with the bearing of the Principles upon particular circumstances. However, since the Principles are also designed as a general statement of regulatory requirements applicable in new or*

unforeseen situations, and in situations in which there is no need for guidance, the ... other rules and guidance should not be viewed as exhausting the implications of the Principles themselves."

Principles 2, 3 and 6 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've carefully considered the relevant law and what this says about the application of the Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ('BBA') Ouseley J said at paragraph 161:

> *"The Principles are the overarching framework for regulation, for good reason. The FSA has clearly not promulgated, and has chosen not to promulgate, a detailed all-embracing comprehensive code of regulations to be interpreted as covering all possible circumstances…The overarching framework would always be in place to be the fundamental provision which would always govern the actions of firms, as well as to cover all those circumstances not provided for or adequately provided for by specific rules."*

At paragraph 162 Ouseley J said:

> *"The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The Specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirements they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."*

At paragraph 77 Ouseley J said:

> *"Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level Principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules."*

And at paragraph 184 Ouseley J said:

> *"The width of the Ombudsman's duty to decide what is fair and reasonable, and the width of the materials he is entitled to call to mind for that purpose, prevents any argument being applied to him that he cannot decide to award compensation where there has been no breach of a specific rule, and the Principles are all that is relied on."*

In *R (Berkeley Burke SIPP Administration Ltd) v Financial Ombudsman Service* [2018] EWHC 2878) ('BBSAL'), Berkeley Burke brought a judicial review claim challenging the decision of an Ombudsman who had upheld a consumer's complaint against it. The Ombudsman considered the FCA's Principles and good industry practice at the relevant time. He concluded that it was fair and reasonable for Berkeley Burke to have undertaken due diligence in respect of the investment before allowing it into the SIPP wrapper, and that if it had done so, it would have refused to accept the investment. The Ombudsman found Berkeley Burke had therefore not complied with its regulatory obligations and hadn't treated its client fairly.

Jacobs J, having set out some paragraphs of *BBA* including paragraph 162 set out above, said (at paragraph 104 of *BBSA*L):

> *"These passages explain the overarching nature of the Principles. As the FCA correctly submitted in their written argument, the role of the Principles is not merely to cater for new or unforeseen circumstances. The judgment in BBA shows that they are, and indeed were always intended to be, of general application. The aim of the Principles-based regulation described by Ouseley J. was precisely not to attempt to formulate a code covering all possible circumstances, but instead to impose general duties such as those set out in Principles 2 and 6."*

And at paragraph 107:

> *"The passages in the judgment of Ouseley J. discussed above were essentially directed at the question of whether the FSA could use the Principles to augment the rules. The answer to that question was that it could and there is no suggestion that the concept of augmentation was to be limited in the manner for which BBSAL contended. However, it is also important that the present case concerns the decision of an Ombudsman, rather than the FSA. In that connection, it is clear from the judgment of Ouseley J. that the Ombudsman can permissibly take an even broader approach than the regulator."*

And then, after citing more passages from the *BBA* case, Jacobs J at paragraph 109 stated:

> *"I consider that these passages, too, are fatal to BBSAL's attempts to put limits on the extent to which the Ombudsman was entitled to use the Principles in order to augment existing rules or duties. The Ombudsman has the widest discretion to decide what was fair and reasonable, and to apply the Principles in the context of the particular facts before him."*

The *BBSAL* judgment also considers section 228 of the FSMA and the approach an Ombudsman is to take when deciding a complaint. The judgment of Jacobs J in *BBSAL* upheld the lawfulness of the approach taken by the Ombudsman in that complaint, which I've described above, and included the Principles and good industry practice at the relevant time as relevant considerations that were required to be taken into account.

As outlined above, Ouseley J in the *BBA* case held that it would be a breach of statutory duty if I were to reach a view on a complaint without taking the Principles into account in deciding what's fair and reasonable in all the circumstances of a case. And, Jacobs J adopted a similar approach to the application of the Principles in *BBSAL*. I'm therefore satisfied that the Principles are a relevant consideration that I must take into account when deciding this complaint.

On 18 May 2020, the High Court handed down its judgment in the case of *Adams v Options SIPP* [2020] EWHC 1229 (Ch). Mr Adams subsequently appealed the decision of the High

Court and, on 1 April 2021, the Court of Appeal handed down its judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474. I've taken account of both these judgments and the judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 when making this decision on Mr C's case.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case. And, I'm of the view that it doesn't. I note that the Principles for Businesses didn't form part of Mr Adams' pleadings in his initial case against Options SIPP. And, HHJ Dight didn't consider the application of the Principles to SIPP operators in his judgment. The Court of Appeal also gave no consideration to the application of the Principles to SIPP operators. So, neither of the judgments say anything about how the Principles apply to an Ombudsman's consideration of a complaint. But, to be clear, I don't say this means *Adams* isn't a relevant consideration at all. As noted above, I've taken account of the *Adams* judgments when making this decision on Mr C's case.

I acknowledge that COBS 2.1.1R (*A firm must act honestly, fairly and professionally in accordance with the best interests of its client)* overlaps with certain of the Principles, and that this rule was considered by HHJ Dight in the High Court case. Mr Adams pleaded that Options SIPP owed him a duty to comply with COBS 2.1.1R, a breach of which, he argued, was actionable pursuant to section 138(D) of the FSMA ('the COBS claim'). HHJ Dight rejected this claim and found that Options SIPP had complied with the best interests rule on the facts of Mr Adams' case.

The Court of Appeal rejected Mr Adams' appeal against HHJ Dight's dismissal of the COBS claim, on the basis that Mr Adams was seeking to advance a case that was radically different to that found in his initial pleadings. The Court found that this part of Mr Adams' appeal didn't so much represent a challenge to the grounds on which HHJ Dight had dismissed the COBS claim, but rather was an attempt to put forward an entirely new case.

I note that in *Adams v Options SIPP*, HHJ Dight found that the factual context of a case would inform the extent of the duty imposed by COBS 2.1.1R. HHJ Dight said at paragraph 148:

> *"In my judgment in order to identify the extent of the duty imposed by Rule 2.1.1 one has to identify the relevant factual context, because it is apparent from the submissions of each of the parties that the context has an impact on the ascertainment of the extent of the duty. The key fact, perhaps composite fact, in the context is the agreement into which the parties entered, which defined their roles and functions in the transaction."*

I note that there are significant differences between the breaches of COBS 2.1.1R alleged by Mr Adams and the issues in Mr C's complaint. The breaches were summarised in paragraph 120 of the Court of Appeal judgment. In particular, HHJ Dight considered the contractual relationship between the parties in the context of Mr Adams' pleaded breaches of COBS 2.1.1R that happened *after* the contract was entered into. And he wasn't asked to consider the question of due diligence *before* Options SIPP agreed to accept the store pods investment into its SIPP.

And in Mr C's complaint, amongst other things, I'm considering whether L&C ought to have identified that the introductions from RealSIPP involved a significant risk of consumer detriment and, if so, whether it ought to have ceased accepting introductions from RealSIPP *before* entering into a contract with Mr C.

The facts of Mr Adams' and Mr C's cases are also different. I make that point to highlight that there are factual differences between *Adams v Options SIPP* and Mr C's case. And I need to construe the duties L&C owed to Mr C under COBS 2.1.1R in light of the specific facts of Mr C's case.

So I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr C's case, including L&C's role in the transaction.

However, I think it's important to emphasise that I must determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. And, in doing that, I'm required to take into account relevant considerations which include: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. This is a clear and relevant point of difference between this complaint and the judgments in *Adams v Options SIPP*. That was a legal claim which was defined by the formal pleadings in Mr Adams' statement of case.

I also want to emphasise that I don't say that L&C was under any obligation to advise Mr C on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr C on the merits of the SIPP and/or the underlying investments.

Overall, I'm satisfied that COBS 2.1.1R is a relevant consideration – but that it needs to be considered alongside the remainder of the relevant considerations, and within the factual context of Mr C's case.

The regulatory publications

The FCA (and its predecessor, the FSA) 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.

I've considered the relevance of these publications. And I've set out material parts of the publications here, although I've considered them in their entirety.

The 2009 Thematic Review Report

The 2009 Report included the following statement:

"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. COBS 3.2.3(2) states that a member of a pension scheme is a 'client' for COBS purposes, and 'Customer' in terms of Principle 6 includes clients.

It is the responsibility of SIPP operators to continuously analyse the individual risks to themselves and their clients, with reference to the six TCF consumer outcomes.
…
We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot

absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way, for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification. Moreover, while they are not responsible for the advice, there is a reputational risk to SIPP operators that facilitate SIPPs that are unsuitable or detrimental to clients.

Of particular concern were firms whose systems and controls were weak and inadequate to the extent that they had not identified obvious potential instances of poor advice and/or potential financial crime. Depending on the facts and circumstances of individual cases, we may take enforcement action against SIPP operators who do not safeguard their customers' interests in this respect, with reference to Principle 3 of the Principles for Business ('a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

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 later publications

In the October 2013 finalised SIPP operator guidance, the FCA stated:

"This guide, originally published in September 2009, has been updated to give firms further guidance to help meet the regulatory requirements. These are not new or amended requirements, but a reminder of regulatory responsibilities that became a requirement in April 2007.

All firms, regardless of whether they do or do not provide advice must meet Principle 6 and treat customers fairly. COBS 3.2.3(2) is clear that a member of a pension scheme is a 'client' for SIPP operators and so is a customer under Principle 6. It is a SIPP operator's responsibility to assess its business with reference to our six TCF consumer outcomes."

The October 2013 finalised SIPP operator guidance also set out 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*

In relation to due diligence, the October 2013 finalised SIPP operator guidance said:

"***Due diligence***

Principle 2 of the FCA's Principles for Businesses requires all firms to conduct their business with due skill, care and diligence. All firms should ensure that they conduct and retain appropriate and sufficient due diligence (for example, checking and monitoring introducers as well as assessing that investments are appropriate for personal pension schemes) to help them justify their business decisions. In doing this SIPP operators should consider:

- *ensuring that all investments permitted by the scheme are permitted by HMRC, or where a tax charge is incurred, that charge is identifiable, HMRC is informed and the tax charge paid*

- *periodically reviewing the due diligence the firm undertakes in respect of the introducers that use their scheme and, where appropriate enhancing the processes that are in place in order to identify and mitigate any risks to the members and the scheme*

- *having checks which may include, but are not limited to:*

    - *ensuring that introducers have the appropriate permissions, qualifications and skills to introduce different types of business to the firm, and*
    - *undertaking additional checks such as viewing Companies House records, identifying connected parties and visiting introducers*

- *ensuring all third-party due diligence that the firm uses or relies on has been independently produced and verified*

- *good practices we have identified in firms include having a set of benchmarks, or minimum standards, with the purpose of setting the minimum standard the firm is prepared to accept to either deal with introducers or accept investments, and*

- *ensuring these benchmarks clearly identify those instances that would lead a firm to decline the proposed business, or to undertake further investigations such as instances of potential pension liberation, investments that may breach HMRC tax-relievable investments and non-standard investments that have not been approved by the firm"*

The July 2014 *"Dear CEO"* letter provides a further reminder that the Principles apply and an indication of the FCA's expectations about the kinds of practical steps a SIPP operator might reasonably take to achieve the outcomes envisaged by the Principles.

The *"Dear CEO"* letter also sets out how a SIPP operator might meet its obligations in relation to investment due diligence. It says those obligations could be met by:

- *correctly establishing and understanding the nature of an investment*

- *ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation*

- *ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)*

- *ensuring that an investment can be independently valued, both at point of purchase and subsequently, and*

- *ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc.)*

Although I've referred to selected parts of the publications, to illustrate their relevance, I've considered them in their entirety.

I acknowledge that the 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter aren't formal guidance (whereas the 2013 finalised guidance is). However, I'm of the view that the fact that the reports and *"Dear CEO"* letter didn't constitute formal guidance doesn't mean their importance should be underestimated. They 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's 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.

It's relevant that when deciding what amounted to good industry practice in the *BBSAL* case, the Ombudsman found that *"the regulator's reports, guidance and letter go a long way to clarify what should be regarded as good practice and what should not."* And the judge in *BBSAL* endorsed the lawfulness of the approach taken by the Ombudsman.

At its introduction, the 2009 Thematic Review Report says:

> *"In this report, we describe the findings of this thematic review, and make clear what we expect of SIPP operator firms in the areas we reviewed. It also provides examples of good practices we found."*

And, as referenced above, the report goes on to provide "…*examples of measures that SIPP operators could consider, taken from examples of good practice that we observed and suggestions we have made to firms."*

So, I'm satisfied that the 2009 Report is a *reminder* that the Principles apply and it gives 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. The Report set out the regulator's expectations of what SIPP operators should be doing and therefore indicates what I consider amounts to good industry practice at the relevant time. So I'm satisfied it's relevant and therefore appropriate to take it into account.

In its response to the investigator's view, including when making its points about the

regulatory publications, L&C has referenced the *R. (on the application of Aviva Life and Pensions (UK) Ltd) v Financial Ombudsman Service* [2017] EWHC 352 (Admin) case. While the judge in that case made some observations about the application of our statutory remit, that remit remains unchanged. And, as noted above, in considering what's fair and reasonable in all the circumstances of a case, I'm required to take into account (where appropriate) what I consider to have been good industry practice at the relevant time.

L&C has also said that many of the matters which the Report invites firms to consider are directed at firms providing advisory services. It's not specified which parts of the Report it thinks are directed at such firms but, to be clear, I think the Report is also directed at firms like L&C acting purely as SIPP operators. The Report says that *"We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses…"* And it's noted prior to the good practice examples quoted above that *"We agree that firms acting purely as SIPP operators are not responsible for the SIPP advice given by third parties such as IFAs. However, we are also clear that SIPP operators cannot absolve themselves of any responsibility, and we would expect them to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs."*

I'm also satisfied that L&C, at the time of the events under consideration here, thought the 2009 Thematic Review Report was relevant. L&C *did* carry out some due diligence on RealSIPP and the Llana Beach investment. So, it clearly thought it was good practice to do so, at the very least.

The remainder of the publications also 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 to produce the outcomes envisaged by the Principles. In that respect, these publications also go some way to indicate what I consider amounts to good industry practice at the relevant time. I'm therefore satisfied it's appropriate to take them into account too.

I've carefully considered what L&C has said about publications published after Mr C's SIPP was set up. But like the Ombudsman in the *BBSAL* case, I don't think the fact the publications, (other than the 2009 Thematic Review Report), post-date the events that took place in relation to Mr C's complaint, mean that the examples of good practice they provide weren't good practice at the time of the relevant events. Although the later publications were published after the events subject to this complaint, the Principles that underpin them existed throughout, as did the obligation to act in accordance with the Principles.

It's also clear from the text of the 2009 and 2012 Thematic Review Reports (and the *"Dear CEO"* letter in 2014) that the regulator expected SIPP operators to have incorporated the recommended good practices into the conduct of their business already. So, whilst the regulators' comments suggest some industry participants' understanding of how the good practice standards shaped what was expected of SIPP operators changed over time, it's clear the standards themselves hadn't changed.

I note L&C's point that the judge in the *Adams* case didn't consider the 2012 Thematic Review Report, 2013 SIPP operator guidance and 2014 *"Dear CEO"* letter to be of relevance to his consideration of Mr Adams' claim. But it doesn't follow that those publications are irrelevant to my consideration of what's fair and reasonable in the circumstances of this complaint. I'm required to take into account good industry practice at the relevant time. And, as mentioned, the publications indicate what I consider amounts to good industry practice at the relevant time.

That doesn't mean that in considering what's fair and reasonable, I'll only consider L&C's actions with these documents in mind. The reports, *"Dear CEO"* letter and guidance gave non-exhaustive examples of good practice. They didn't say the suggestions given were the limit of what a SIPP operator should do. As the annex to the *"Dear CEO"* letter notes, what should be done to meet regulatory obligations will depend on the circumstances.

The regulator also issued an alert in 2013 about advisers giving advice to consumers on SIPPs without consideration of the underlying investment to be held in the SIPP. The alert *("Advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP"*) set out that this type of restricted advice didn't meet regulatory requirements. It said:

> *"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).*
> *…*
> *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."*

The alert post-dates the events in this complaint – but, again, it didn't set new standards. It highlighted that advisers using the restricted advice model discussed in the alert generally weren't meeting *existing* regulatory requirements and set out the regulator's concerns about industry practices at the time.

To be clear, I don't say the Principles or the publications obliged L&C to ensure the transactions were suitable for Mr C. It's accepted L&C wasn't required to give advice to Mr C, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But they're evidence of what I consider to have been good industry practice at the relevant time, which would bring about the outcomes envisaged by the Principles. And so it's fair and reasonable for me to take them into account when deciding this complaint.

I'd also add that, even if I agreed with L&C that any publications or guidance that post-dated the events subject of this complaint don't help to clarify the type of good industry practice that existed at the relevant time (which I don't), that doesn't alter my view on what I consider to have been good industry practice at the time. That's because I find that the 2009 Report together with the Principles provide a very clear indication of what L&C could and should have done to comply with its regulatory obligations that existed at the relevant time before accepting Mr C's introduction from RealSIPP.

It's important to keep in mind the judge in *Adams v Options* didn't consider the regulatory publications in the context of considering what's fair and reasonable in all the

circumstances bearing in mind various matters including the Principles (as part of the regulator's rules) or good industry practice.

And in determining this complaint, I need to consider whether, in accepting Mr C's SIPP application from RealSIPP, L&C complied with its regulatory obligations: to act with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively; to pay due regard to the interests of its customers and treat them fairly; and to act honestly, fairly and professionally. In doing that, I'm looking to the Principles and the publications listed above to provide an indication of what L&C should have done to comply with its regulatory obligations and duties.

Submissions have been made about breaches of the Principles not giving rise to any cause of action at law, and breaches of guidance not giving rise to a claim for damages under the FSMA. I've carefully considered these submissions but, to be clear, it's not my role to determine whether something that's taken place gives rise to a right to take legal action. I'm making a decision on what's fair and reasonable in the circumstances of this complaint – and for all the reasons I've set out above I'm satisfied that the Principles and the publications listed above are relevant considerations to that decision.

So taking account of the factual context of this case, it is my view that in order for L&C to meet its regulatory obligations, (under the Principles and COBS 2.1.1R), amongst other things it should have undertaken sufficient due diligence into RealSIPP and the business RealSIPP was introducing, both initially and on an ongoing basis.

In deciding what's fair and reasonable in the circumstances, it's appropriate to take an inquisitorial approach. And, ultimately, what I'll be looking at here is whether L&C took reasonable care, acted with due diligence and treated Mr C fairly, in accordance with his best interests. And what I think's fair and reasonable in light of that. And I think the key issue in Mr C's complaint is whether it was fair and reasonable for L&C to have accepted Mr C's SIPP application in the first place. So, I need to consider whether L&C carried out appropriate due diligence checks on RealSIPP before deciding to accept Mr C's SIPP application.

L&C says it carried out due diligence on RealSIPP before accepting business from it. And from what I've seen I accept that it undertook some checks. However, the questions I need to consider are whether L&C ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by RealSIPP were being put at significant risk of detriment. And, if so, whether L&C should therefore not have accepted Mr C's application from RealSIPP.

The contract between L&C and Mr C

L&C has made a number of references to its contract with Mr C. I've carefully considered what L&C has said about this.

This final decision is made on the understanding that L&C acted purely as a SIPP operator. I don't say L&C should (or could) have given advice to Mr C or otherwise have ensured the suitability of the SIPP or Llana Beach investment for him. I accept that L&C made it clear to Mr C that it wasn't giving, nor was it able to give, advice and that it played an execution-only role in his SIPP investments. And that forms Mr C signed confirmed, amongst other things, that losses arising as a result of L&C acting on his instructions were his responsibility.

I've not overlooked or discounted the basis on which L&C was appointed. And my decision on what's fair and reasonable in the circumstances of Mr C's case is made with all of this

in mind. So, I've proceeded on the understanding that L&C wasn't obliged – and wasn't able – to give advice to Mr C on the suitability of the SIPP or the Llana Beach investment. But I'm satisfied that, to meet its regulatory obligations when conducting its operation of SIPPs business, L&C had to decide whether to accept introductions of business with the Principles in mind. And I don't agree that it couldn't have rejected introductions or applications without contravening its regulatory permissions by giving investment advice.

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

Having carefully reconsidered all of the evidence on this point, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have been made, I've largely repeated what I'd said about this point in my provisional decision.

In this case, the business L&C was conducting was its operation of SIPPs. And I'm 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.

The regulators' reports and guidance provided some examples of good practice observed by the FSA and FCA during its work with SIPP operators. This included being satisfied that a particular introducer/investment is appropriate to deal with/accept. That involves conducting checks – due diligence – on introducers and investments to make informed decisions about accepting business. This obligation was a continuing one.

As set out above, to comply with the Principles, L&C needed to conduct its business with due skill, care and diligence; organise and control its affairs responsibly and effectively; and pay due regard to the interests of its clients (including Mr C) and treat them fairly. Its obligations and duties in this respect weren't prescriptive and depended on the nature of the circumstances, information and events on an ongoing basis.

And I think that L&C understood this at the time too, as it did more than just check the FSA entries for RealSIPP and CIB to ensure they were regulated to give advice. It also entered into intermediary agreements with those firms. And it's apparent that L&C had access to some information about the type and volume of introductions it was receiving from RealSIPP, as it's previously been able to provide us with information about this when requested.

So, and well before the time of Mr C's application, I think that L&C ought to have understood that its obligations meant that it had a responsibility to carry out appropriate checks on RealSIPP to ensure the quality of the business it was introducing.

And I think L&C also ought to have understood that its obligations meant that it had a responsibility to carry out appropriate due diligence on investments before accepting them into a SIPP. I think L&C's previous submissions to this Service on the due diligence it undertook prior to allowing Llana Beach holdings within its SIPPs reflect this. So, I'm satisfied that, to meet its regulatory obligations when conducting its business, L&C was also required to consider whether to accept or reject a particular investment (here Llana Beach), with the Principles in mind.

L&C's due diligence on RealSIPP/CIB

L&C appears to have carried out the following checks before it accepted business from RealSIPP:

- It checked the FSA/FCA register on an ongoing basis to ensure that RealSIPP and its principal were regulated and authorised to give financial advice.
- It entered into intermediary agreements with RealSIPP and its principal.

And, prior to accepting Mr C's application, it also had access to some information about the type and volume of introductions it was receiving from RealSIPP.

L&C explained to us in the complaint that was the subject of published decision DRN-3587366 that at the date of the SIPP application in that case, which was towards the end of 2011, it wouldn't have accepted applications from a firm that wasn't authorised by the FSA.

L&C also told us in that case that its directors from the relevant period had confirmed that its policy was that applicants effecting a pension transfer had to have had advice made available to them. And that it was then for the applicant to choose whether to take up the intermediary's offer of advice. In my provisional decision I explained that if L&C's policy on this point wasn't the same when it received Mr C's application that L&C should confirm as such to us. In response to my provisional decision, L&C hasn't stated that its policy wasn't the same when it received Mr C's application.

These steps go some way towards meeting L&C's regulatory obligations and good industry practice. But in my view L&C failed to conduct sufficient due diligence on RealSIPP before accepting Mr C's business from it or draw fair and reasonable conclusions from what it did know about RealSIPP. And I think that L&C ought reasonably to have concluded it should *not* accept business from RealSIPP, and have ended its relationship with it, before Mr C's application was accepted by L&C. I say this because:

- L&C was aware of, or should have identified potential risks of, consumer detriment associated with business introduced by RealSIPP at the outset of its relationship with RealSIPP, and certainly by the time of Mr C's application:
    - There was insufficient evidence to show RealSIPP (or any other regulated party) was offering or giving full regulated advice (by which I mean advice on all of establishing the SIPP, the transfer or switch to the SIPP *and* the intended investment).
    - The introductions had anomalous features – high-risk business, in relatively high volumes, for unregulated overseas property developments and other esoteric investments. And, even though RealSIPP had the necessary permissions to give full advice on the business it was introducing, it wasn't giving advice on a large proportion of that business.
- L&C should have taken steps to address these risks (or, given these risks, have simply declined to deal further with RealSIPP).
- Such steps should have involved getting a full understanding of RealSIPP's business model – through requesting information from RealSIPP and through independent checks.
- Such understanding would have revealed there *was* a significant risk of consumer detriment associated with introductions of business from RealSIPP.
- In the alternative RealSIPP would have been unwilling to answer or fully answer the questions about its business model.
- In either event L&C should have concluded it shouldn't accept introductions from

RealSIPP.

I've set out below some more detail on the potential risks of consumer detriment L&C either knew about or ought to have known about at the time of Mr C's application. These points overlap, to a degree, and should have been considered by L&C cumulatively.

Anomalous features

Volume of business

It's clear that L&C had access to information about the number and nature of introductions that RealSIPP made, as it's previously been able to provide us with details about this when requested. An example of good practice identified in the FSA's 2009 review was: *"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."*

Given all that I've said above, I don't think simply keeping records without scrutinising the information would be consistent with good industry practice and L&C's regulatory obligations. As highlighted in the 2009 review, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

L&C said during the complaint that was the subject of published decision DRN-3587366 that 153 of its members were introduced by RealSIPP, 44 of whom were introduced *before* the consumer in the published decision established their L&C SIPP in November 2011. It also said that 44 of the total introductions involved members with an Occupational Pension Scheme. On a previous complaint, back in January 2018, L&C said that RealSIPP's introductions were made between February 2011 and May 2013. Further, that RealSIPP was involved with a number of investments across members SIPPs and that *"all of these investments would be considered Non- standard by FCA definition."* L&C provided a list of the investments concerned, and confirmed that in 77 cases RealSIPP received fees but didn't advise on the SIPP.

I'm aware that in some more recent complaints, for example in this complaint and also in the complaint that was the subject of published decision DRN-4484149, L&C has said that 160 clients were introduced by RealSIPP. And that from a sample of 20% of the total clients introduced by RealSIPP 99.94% involved transfers from Occupational Pensions Schemes. L&C has also said all investors invested in overseas commercial properties. And that during the course of the agreement with RealSIPP 23% of L&C's total new business came from RealSIPP introductions.

We've previously asked L&C what number introduction Mr C was from RealSIPP and L&C hasn't replied to that question.

In the absence of a response from L&C to our query, it appears that Mr C's SIPP was established in June 2012. So, I think Mr C's SIPP was established a number of months after the SIPP was established for the consumer in the complaint that was the subject of published decision DRN-3587366 (the SIPP in that complaint was established in November 2011 and L&C confirmed that the consumer in that complaint was the 45th introduction it received from RealSIPP).

As such, premised on the information available to us, I'm satisfied that by the time it accepted Mr C's business, L&C had already received quite a lot of introductions from RealSIPP over a period of around fifteen months. And I think that L&C should have been concerned that such a volume of introductions, relating exclusively to consumers investing in

higher-risk esoteric investments was unusual – particularly from a small IFA business. And it should have considered how a small IFA business introducing this volume of higher-risk business was able to meet regulatory standards.

Although Mr C's application didn't involve an occupational pension scheme transfer, I think this concern ought to have been even greater given the amount of business introduced by RealSIPP which L&C says involved occupational pension scheme transfers. At the relevant date COBS 19.1.6G stated:

> *"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".*

While I acknowledge this aims to define the expectation of a regulated financial adviser when determining the suitability of a pension transfer, it emphasises the regulator's concern about the potential detriment such a transaction could expose a consumer to. Given the nature of its business and regulatory status, I'd expect L&C to have been familiar with the guidance contained in the COBS – even if it didn't apply directly to it.

This was a further clear and obvious potential risk of consumer detriment in the business L&C was receiving from RealSIPP *before* it accepted Mr C's application.

RealSIPP was introducing consumers who were all investing in high risk non-standard assets

RealSIPP was introducing consumers who were all investing in high risk non-standard assets. The introductions L&C received from RealSIPP were for applicants looking to invest in high risk non-standard esoteric holdings, such as the unregulated overseas property development that Mr C was investing in. I think it's fair to say that such investments are highly unlikely to be suitable for the vast majority of retail clients. They will generally only be suitable for a small proportion of the population – sophisticated and/or high net worth investors. The risks are multiplied where the property is *"off plan"* and further funding is necessary from investors to complete the purchases, as was the case with many of the deposit based TRG investments.

So, I think L&C either was aware, or ought reasonably to have been aware, that the type of business RealSIPP was introducing was high-risk and therefore carried a potential risk of consumer detriment on this basis.

High proportion of execution-only business

As noted above, L&C had access to information about the number and nature of introductions that RealSIPP made, as it's previously been able to provide us with details about this when requested. And I don't think simply keeping records without scrutinising that information would be consistent with good industry practice and L&C's regulatory obligations. As highlighted in the 2009 Thematic Review Report, the reason why the records are important is so that potentially unsuitable SIPPs can be identified.

From the figures L&C has previously provided to us, a little under half the introductions from RealSIPP were transacted as execution-only business (i.e. with no advice being given by RealSIPP). That's a large proportion of the total business RealSIPP introduced, and I think it's likely that RealSIPP had introduced business to L&C without providing advice on a number of occasions before Mr C's introduction.

So I think that, from very early on, L&C was on notice that RealSIPP, although the appointed representative of a regulated business that had permissions to advise on the business being introduced, wasn't a firm that was doing things in a conventional way. And I think L&C ought to have recognised that there was a risk that RealSIPP might be choosing to introduce some consumers not only without them being given full regulated advice but also without them having been *offered* full regulated advice.

I think this ought to have been a red flag for L&C in its dealings with RealSIPP. It's highly unusual for regulated advice firms to be involved in execution-only transactions involving pension transfers or switches to invest in high-risk esoteric investments, such as unregulated overseas property developments. That's because the risks involved in such transactions are unlikely to be fully understood by most people, without obtaining regulated advice. I think it's fair to say that most advice firms decline to be involved in such transactions and certainly don't transact this kind of business in significant volumes. I think L&C ought to have viewed this as a serious cause for concern – this was a further clear and obvious potential risk of consumer detriment.

The availability of advice

L&C entered into intermediary agreements with RealSIPP and its principal, CIB. As part of this process, it was open to L&C to mention to RealSIPP/CIB any policy requirements it had for full regulated advice to be made available to applicants where introduced business involved pension transfers. L&C could have highlighted this in the intermediary application form, The Intermediary Agreement for Non-Insured Contracts, or in supplementary correspondence with RealSIPP/CIB. However, no correspondence I've seen between L&C and RealSIPP/CIB mentioned this.

On balance, having carefully considered all of the available evidence, I think it's more likely than not that Mr C wasn't ever offered *full* regulated advice on the transactions this complaint concerns by RealSIPP or its principal (or any other regulated advisory firm). As its client agreement makes clear, RealSIPP wasn't offering clients like Mr C the option of *full* regulated advice on the package it was offering. And CIB was restricting its services to the establishment and set-up of a specific SIPP (here the L&C SIPP). And it wouldn't be providing advice on the suitability of the overall total package for consumers (i.e. including advice on the specific investment(s) that monies were being transferred into the SIPP to effect). Further, I think what is stated about this in the examples of the RealSIPP/CIB documentation we've seen on other complaints is also consistent with what CIB was stating in its 17 May 2012 letter to Mr C. In that correspondence it was made clear that CIB was only providing limited advice and it was "*not advising on* [Mr C's] *chosen investment(s) itself*" and it was explained that RealSIPP was being remunerated for its services as a *"packager and administrator"* of the plan.

It was also explained in CIB's letter dated 17 May 2012 that "*we would wish to carry out a complete financial review, but at your explicit request, our advice is restricted to the consideration of establishing a Self Invested Personal Pension to allow you to invest in the alternative investment(s) of your choice".*

A complete financial review, in my understanding, would include a review of an individual's total financial circumstances, needs and objectives. So, I wouldn't (and don't) read Mr C not wanting a complete financial review as equating to him not wanting full advice on all of the establishment of a SIPP, the transfer of monies into the SIPP and the TRG investments.

Further, I think it's more likely than not that the 'complete financial review' wording was standard wording CIB was incorporating into a number of its letters. I say this mindful of the

fact that we've seen no complaints that I'm aware of where CIB gave a complete financial review to consumers effecting transactions similar to those Mr C effected. And in the complaints I'm aware of, where RealSIPP/CIB introduced business to L&C and consumers then invested in TRG investments post-transfer, RealSIPP and/or CIB was either giving no advice, or it was limiting its advice to an appropriate SIPP to transfer the consumer's pension monies into (and without consideration of the suitability or otherwise of the specific investment that monies were being transferred into the SIPP to effect).

As I've mentioned above, we've seen a copy of the Investment Purchase Request form that Mr C signed on 15 September 2012. I've noted that the proposed investment has been recorded in the form, that a box has been ticked to confirm that Mr C hadn't received advice that the investment was suitable and that the section to be completed by a financial adviser *if* advice had been given on the investment was left blank. And I think it ought to have been clear from the contents of that form that RealSIPP/CIB might not have been undertaking to offer advice on the Llana Beach investment.

I do accept that, in addition to the Investment Purchase Request form, L&C had also received a SIPP application form for Mr C in which a box had been ticked to confirm that "*Advice given at point of sale to client".* But the SIPP application doesn't make clear the extent of that advice. And I'm also satisfied it's the case that *before* it accepted Mr C's business L&C had received introductions for a number of consumers where L&C either was aware, or ought reasonably to have been aware, that RealSIPP wasn't offering any advice. I say that based not only on what L&C has told us about the fact that in 77 cases RealSIPP received fees but didn't advise on the SIPP, but also on the fact that we've seen evidence of some consumers who were introduced to L&C by RealSIPP *before* Mr C and where the box on the SIPP application was ticked to confirm that *"Advice not given at point of sale to client".* By way of example, we've referenced this as being the case for the consumers in published decisions DRN-3587366 and DRN-4638114 amongst others.

And, as I explain further below, if L&C had undertaken appropriate checks, I think it ought to have identified, amongst other things, that RealSIPP/CIB routinely wasn't offering consumers it was introducing to L&C advice on the suitability, or otherwise, of the high risk unregulated investments that their L&C SIPPs were being established, and that their monies were being transferred to L&C, to effect.

Based on the available evidence, and what L&C ought reasonably to have identified from the pattern of business being introduced to it by RealSIPP/CIB prior to L&C accepting Mr C's business, I don't think there was sufficient basis for L&C to reasonably assume that advice on the overall proposition for the consumer (i.e. including the intended TRG investments) had been given to Mr C or had been made available to Mr C by RealSIPP/CIB and declined.

The possibility that no regulated advice on the overall proposition had been given or made available was a clear and obvious potential risk of consumer detriment here. Mr C was transferring a little over £65,000 into a SIPP to invest the bulk of those monies in an overseas property development – a move which was highly unlikely to be suitable for the vast majority of retail clients.

What fair and reasonable steps should L&C have taken, in the circumstances?

Having carefully reconsidered all of the evidence on this point, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have been made, I've largely repeated what I'd said about this point in my provisional decision.

L&C could simply have concluded that, given the potential risks of consumer detriment – which I think were clear and obvious at the time – it should not accept applications from RealSIPP/CIB. That would have been a fair and reasonable step to take, in the circumstances. Alternatively, L&C could have taken fair and reasonable steps to address the potential risks of consumer detriment. I've set these out below.

Requesting information directly from RealSIPP/CIB

Given the significant potential risk of consumer detriment I think that, as part of its due diligence on RealSIPP/CIB, L&C ought to have found out more about how RealSIPP/CIB was operating long before it received Mr C's application. And mindful of the type of introductions it was receiving from RealSIPP from the outset, I think it's fair and reasonable to expect L&C, in-line with its regulatory obligations, to have made some specific enquiries and obtained information about RealSIPP's/CIB's business model.

As set out above, the 2009 Thematic Review Report explained that the regulator would expect SIPP operators to have procedures and controls, and for management information to be gathered and analysed, so as to enable the identification of, amongst other things, *"consumer detriment such as unsuitable SIPPs".* Further, that this could then be addressed in an appropriate manner *"…for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification."*

The October 2013 finalised SIPP operator guidance gave an example of good practice as:

> *"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."*

And I think that, before it accepted Mr C's applications from RealSIPP, L&C should have already checked with RealSIPP/CIB about things like: how it came into contact with potential clients, what agreements it had in place with its clients, whether all of the clients it was introducing were being offered advice, what its arrangements with any unregulated businesses were, how and why retail clients were interested in making these esoteric investments, whether it was aware of anyone else providing information to clients, how it was able to meet with or speak with all its clients, and what material was being provided to clients by it.

I think it's more likely than not that if L&C had asked RealSIPP/CIB for this *type* of information that RealSIPP/CIB would have provided a full response to the information sought. And that, amongst other things, L&C would have then been provided with copies of client agreements and Keyfacts documents that RealSIPP/CIB was providing to different consumers it was introducing to L&C. Including a copy of RealSIPP's *"about our services for our Resort Group SIPP package"* document.

Had L&C done this I think it's more likely than not that the information obtained would have reinforced the position referenced on RealSIPP's website, namely that RealSIPP didn't provide full advice and only provided 'generic information on the considerations and risks associated with property investment'. Further, that CIB was restricting its services to the establishment and set-up of a specific SIPP and that it wouldn't be providing advice on the suitability of the overall total package for consumers, including the specific investment(s) that transfers to SIPPs were being effected to make.

L&C might say that it didn't *have* to obtain copies of Keyfacts documents or client agreements from RealSIPP/CIB. But I think this was a fair and reasonable step to take, in the circumstances, to meet its regulatory obligations and good industry practice.

Making independent checks

I think, in light of what I've said above, it would also have been fair and reasonable for L&C, to meet its regulatory obligations and good industry practice, to have taken independent steps to satisfy itself that full regulated advice was being offered to applicants like Mr C. For example, it could have asked for copies of correspondence in which applicants were being offered advice.

The 2009 Thematic Review Report said that:

> *"…we would expect* (SIPP operators) *to have procedures and controls, and to be gathering and analysing management information, enabling them to identify possible instances of financial crime and consumer detriment such as unsuitable SIPPs. Such instances could then be addressed in an appropriate way,* ***for example by contacting the members to confirm the position, or by contacting the firm giving advice and asking for clarification****."* (bold my emphasis)

The 2009 Thematic Review Report also said that an example of good practice was:

> *"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."*

So I think it would have been fair and reasonable for L&C to speak to some applicants directly and to ask whether they had been offered full regulated advice on their transactions and/or to seek copies of the suitability reports.

L&C has said it couldn't comment on advice without potentially being in breach of its permissions. Again, I confirm that I accept L&C couldn't give advice. But it had to take reasonable steps to meet its regulatory obligations. And in my view such steps included addressing a potential risk of consumer detriment by speaking to applicants and/or having sight of advice letters, as this could have provided L&C with further insight into RealSIPP's/CIB's business model, and helped to clarify to L&C whether full regulated advice on the overall proposition was being offered/given. This was a fair and reasonable step to take in reaction to the clear and obvious risks of consumer detriment I've mentioned.

Had it taken these fair and reasonable steps, what should L&C have concluded?

Having carefully reconsidered all of the evidence on this point, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have been made, I've largely repeated what I'd said about this point in my provisional decision.

If L&C had undertaken these steps, I think it ought to have identified, amongst others, the following risks *before* it received Mr C's application:

- RealSIPP was explaining to consumers that its role was solely as

"administrator and packager" of the SIPP.

- CIB was explaining to consumers that it was restricting its services to the establishment and set-up of a specific SIPP and that it wouldn't *"be providing any advice on the suitability of this package to your own personal circumstances".*
- Consumers were being introduced to L&C without having been offered full regulated advice.
- The other anomalous features I've mentioned *did* carry a significant risk of consumer detriment.

Each of these in isolation is significant, but cumulatively I think they demonstrate that there *was* a significant risk of consumer detriment associated with introductions from RealSIPP. L&C ought to have concluded RealSIPP/CIB had a complete disregard for its consumers' best interests, and wasn't meeting many of its regulatory obligations.

Had L&C carried out the due diligence I've mentioned above, I think it should have identified that consumers introduced by RealSIPP hadn't been offered, or received, full regulated advice from RealSIPP/CIB on their transactions.

As previously stated, RealSIPP said it provided 'generic information' about investments, rather than advice. And RealSIPP wasn't offering clients like Mr C the option of full regulated advice on the proposed transactions. It was acting as *"administrator and packager"* of the SIPP – an unusual role for an advisory firm to take. This raises significant questions about the motivations and competency of RealSIPP – particularly if consumers were being introduced to it by unregulated businesses.

I'm aware that in some cases RealSIPP *did* refer some consumers, like Mr C, to CIB for advice. But in those instances I'm aware of where CIB did advise consumers to consider establishing a L&C SIPP, it didn't offer full regulated advice; it restricted its advice to the transfer of the existing pension scheme(s) to the SIPP, referencing generic risks and without the specific investment (here TRG) being named or discussed. As CIB explained in its client form:

> *"In this particular instance we are restricting our services to the establishment and set-up of a specific SIPP to enable commercial property purchase. We will not be providing any advice on the suitability of this package to your own personal circumstances and you should seek professional advice where necessary."*

So, in these instances, CIB wasn't discussing the specific risks associated with the TRG investment or advising on the suitability of the overall proposition for the consumer (i.e. including the intended TRG investment). This raises significant questions about the motivations and competency of CIB.

Had L&C taken appropriate steps at the time, and before it received Mr C's SIPP application, such as seeking clarification from some applicants introduced by RealSIPP and/or requesting copies of some suitability reports for RealSIPP-introduced consumers, I think it's more likely than not that the information L&C obtained would have accorded with what RealSIPP (and, where relevant, CIB) was stating in the contemporaneous documentation in relation to the extent of their role.

I therefore think L&C ought to have concluded Mr C – and applicants before him – didn't have full regulated advice made available to them by RealSIPP/CIB by *any* route. And have viewed this as a significant point of concern. As retail consumers, like Mr C, were

transferring their existing pension monies to L&C to invest entirely in higher-risk esoteric investments, including unregulated overseas property developments such as Llana Beach without the benefit of having been offered full regulated advice, by a business which appeared to be actively avoiding any responsibility to give full regulated advice.

I also think L&C should have concluded, and before it accepted Mr C's business, that the overall volume of business and the proportion of consumers who weren't apparently receiving *any* advice asked further serious questions about the motivation and competency of RealSIPP.

As such, I think L&C should have concluded – certainly by the time of Mr C's application and long before it – that it wasn't in accordance with its obligations, or its own policy requirements, to accept introductions from RealSIPP. I therefore conclude that it's fair and reasonable in the circumstances to say that L&C shouldn't have accepted Mr C's application from RealSIPP.

L&C didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr C fairly by accepting his application from RealSIPP. To my mind, L&C didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr C to be put at significant risk of detriment as a result.

Due diligence on the underlying investments

L&C had a duty to conduct due diligence and give thought to whether an investment itself is acceptable for inclusion into a SIPP. That's consistent with the Principles and the regulators' publications as set out earlier in this decision. It's also consistent with HMRC rules that govern what investments can be held in a SIPP.

I accept that the Llana Beach investment doesn't appear to be fraudulent or a scam. But this doesn't mean that L&C did all the checks it needed to do. However, given what I've said about L&C's due diligence on RealSIPP/CIB and my conclusion that it failed to comply with its regulatory obligations and good industry practice at the relevant time, I don't think it's necessary for me to also consider L&C's due diligence on the Llana Beach investment at this stage. I'm satisfied that L&C wasn't treating Mr C fairly or reasonably when it accepted his introduction from RealSIPP, so I've not gone on to consider the due diligence it may have carried out on the Llana Beach investment and whether this was sufficient to meet its regulatory obligations. And I make no findings about this issue.

Was it fair and reasonable in all the circumstances for L&C to proceed with Mr C's application?

Having carefully reconsidered all of the evidence on this point, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have been made, I've largely repeated what I'd said about this point in my provisional decision.

For the reasons previously given above, I think L&C should have refused to accept Mr C's application from RealSIPP. So things shouldn't have got beyond that.

L&C has referred to forms Mr C signed. In my view it's fair and reasonable to say that just having Mr C sign indemnity declarations wasn't an effective way for L&C to meet its regulatory obligations to treat him fairly, given the concerns L&C ought to have had about his introduction. L&C knew that Mr C had signed forms intended to indemnify it against losses that arose from acting on his instructions. And, in my opinion, relying on such indemnities when L&C knew, or ought to have known, Mr C's dealings with RealSIPP

were putting him at significant risk wasn't the fair and reasonable thing to do.

Having identified the risks I've mentioned above, it's my view that the fair and reasonable thing to do would have been to refuse to accept Mr C's application.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr C signed meant that L&C could ignore its duty to treat him fairly. To be clear, I'm satisfied that indemnities contained within the contractual documents don't absolve L&C of its regulatory obligations to treat customers fairly when deciding whether to accept or reject business.

I'm satisfied that Mr C's SIPP shouldn't have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity shouldn't have arisen at all. And I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for L&C to proceed with Mr C's application.

COBS 11.2.19R

In its response to Mr C's complaint L&C has referenced COBS 11.2.19R and said that it would have been in breach of COBS if it hadn't effected Mr C's investment instructions.

However, in the circumstances it's my view that the crux of the issue in this complaint is whether L&C should have accepted the SIPP application from RealSIPP and established Mr C's SIPP in the first place.

An argument about having to execute the transaction as a result of COBS 11.2.19R was considered and rejected by the judge in *BBSAL.* In that case Jacobs J said:

> *"The heading to COBS 11.2.1R shows that it is concerned with the manner in which orders are to be executed: i.e. on terms most favourable to the client. This is consistent with the heading to COBS 11.2 as a whole, namely: "Best execution". The text of COBS 11.2.1R is to the same effect. The expression "when executing orders" indicates that it is looking at the moment when the firm comes to execute the order, and the way in which the firm must then conduct itself. It is concerned with the "mechanics" of execution; a conclusion reached, albeit in a different context, in Bailey & Anr v Barclays Bank [2014] EWHC 2882 (QB), paras [34] – [35]. It is not addressing an anterior question, namely whether a particular order should be executed at all. I agree with the FCA's submission that COBS 11.2 is a section of the Handbook concerned with the method of execution of client orders, and is designed to achieve a high quality of execution. It presupposes that there is an order being executed, and refers to the factors that must be taken into account when deciding how best to execute the order. It has nothing to do with the question of whether or not the order should be accepted in the first place."*

And I don't think that L&C's argument on this point is relevant to its obligations under the Principles to decide whether to accept Mr C's business in the first place.

I'm satisfied that Mr C's SIPP shouldn't have been established and the opportunity to execute investment instructions or proceed in reliance on an indemnity shouldn't have arisen at all. And I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for L&C to proceed with Mr C's application.

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

Having carefully reconsidered all of the evidence on this point, I'm still of the view that I'd previously set out in my provisional decision. As such, and while taking into account all of the submissions that have been made, I've largely repeated what I'd said about this point in my provisional decision.

The involvement of other parties

In this decision I'm considering Mr C's complaint about L&C. However, I accept that other regulated parties were involved in the transactions complained about – RealSIPP and CIB. L&C has contended that it's RealSIPP/CIB that's really responsible for Mr C's losses. CIB would be the respondent for complaints about activities RealSIPP undertook as an appointed representative of CIB. And the Financial Ombudsman Service won't look at complaints against CIB, as it's been dissolved and no longer exists as a regulated business.

The DISP rules set out that when an Ombudsman's determination includes a money award, then 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 (DISP 3.7.2R).

As I set out above, in my opinion it's 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 C fairly.

The starting point therefore, is that it would be fair to require L&C to pay Mr C compensation for the loss he's suffered as a result of its failings. I've carefully considered if there's any reason why it wouldn't be fair to ask L&C to compensate Mr C for his loss, including whether it would be fair to hold another party liable in full or in part.

I accept that it may be the case that TRG, RealSIPP or CIB might have some responsibility for initiating the course of action that led to Mr C's loss. However, I'm satisfied that it's also the case that if L&C had complied with its own distinct regulatory obligations as a SIPP operator, the arrangement for Mr C wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

I want to make clear that I've carefully taken everything L&C has said into consideration. And it's my view that it's appropriate and fair in the circumstances for L&C to compensate Mr C to the full extent of the financial losses he's suffered due to L&C's failings. And, taking into account the combination of factors I've set out above, I'm not persuaded that it would be appropriate or fair in the circumstances to reduce the compensation amount that L&C's liable to pay to Mr C.

To be clear, I'm not making a finding that L&C should have assessed the suitability of the SIPP or the Llana Beach investment for Mr C. I accept that L&C wasn't obligated to give advice to Mr C, or otherwise to ensure the suitability of the pension wrapper or investment for him. Rather, I'm looking at L&C's separate role and responsibilities – and for the reasons I've explained, I think it failed in meeting those responsibilities.

Mr C taking responsibility for his own investment decisions

It's been submitted that in construing L&C's obligations, regard should be had to section 5(2)(d) of the FSMA (now section 1C). This section requires the FCA, in securing an appropriate degree of protection for consumers, to have regard to, amongst other things, the

general principle that consumers should take responsibility for their own investment decisions.

I've considered this point carefully and I'm satisfied that it wouldn't be fair or reasonable to say Mr C's actions mean he should bear the loss arising as a result of L&C's failings.

In my view, if L&C had acted in accordance with its regulatory obligations and good industry practice it shouldn't have accepted Mr C's application from RealSIPP to open a SIPP *at all*. That should have been the end of the matter – if that had happened, I'm satisfied the arrangement for Mr C wouldn't have come about in the first place, and the loss he's suffered could have been avoided.

As I've made clear, L&C needed to carry out appropriate due diligence on RealSIPP/CIB and reach the right conclusions. I think it failed to do this. And just having Mr C sign forms containing declarations wasn't an effective way of L&C meeting its obligations, or of escaping liability where it failed to meet its obligations.

CIB was a regulated firm with the necessary permissions to advise on the transactions this complaint concerns. And RealSIPP was an appointed representative of CIB. I'm satisfied that in his dealings with them, Mr C trusted RealSIPP/CIB to act in his best interests. Mr C also then used the services of a regulated personal pension provider in L&C.

I've carefully considered what L&C has said about Mr C being aware of the risks. The Investment Purchase Request form Mr C signed on 30 May 2012 simply said that the investment *may* be high risk, it doesn't say the investment *is* high risk. Further, the form appears to be generic, by which I mean it appears to be a form that could be used for a number of investments and it doesn't appear to be a form that is bespoke to the Llana Beach investment. I can see why the term *may* might have been used because of this, but I don't agree the content of that form supports the contention that Mr C *understood* the Llana Beach investment was high risk.

I've no reason to doubt Mr C when he says that he believed the TRG investment would be low risk. And I wouldn't consider it fair or reasonable for L&C to have concluded that Mr C *had* received an explanation of the risks involved with the overall proposition including the TRG investment from RealSIPP and/or CIB given what L&C knew, or ought to have known, about RealSIPP's/CIB's business model by the time it received Mr C's application.

So, overall, I'm satisfied that in the circumstances, for all the reasons given, it's fair to say L&C should compensate Mr C for the loss he's suffered. I don't think it would be fair to say in the circumstances that Mr C should suffer the loss because he ultimately instructed the transactions be effected.

Had L&C declined Mr C's business from RealSIPP, would the transactions complained about still have been effected elsewhere?

In some complaints involving RealSIPP and TRG investments, L&C has previously contended that other SIPP providers were accepting the type of investments Mr C made at the time. But I don't think it's fair and reasonable to say that L&C shouldn't compensate Mr C for his loss on the basis of speculation that another SIPP operator would have made the same mistakes as I've found it 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 Mr C's application from RealSIPP.

Mr C says that he hadn't considered changing his pension prior to being referred to RealSIPP. If L&C had declined to accept Mr C's business from RealSIPP, and had Mr C then sought and received advice from a different regulated advisory firm that wasn't RealSIPP/CIB, I think it's fair and reasonable to conclude that such a firm would have acted in accordance with its regulatory obligations and given suitable advice on the overall proposition. And I think it's far more likely than not the advice would have been not to transfer to the SIPP so as to invest into TRG. And I think that Mr C would then have followed that advice. Alternatively, Mr C might have simply decided not to seek pensions advice elsewhere and still then remained in his existing pension arrangement.

In *Adams v Options SIPP*, the judge found that Mr Adams would have proceeded with the transaction regardless. HHJ Dight says (at paragraph 32):

> *"The Claimant knew that it was a high risk and speculative investment but nevertheless decided to proceed with it, because of the cash incentive."*

But, in this case, I'm not satisfied that Mr C proceeded knowing that the investments he was making were high-risk and speculative, and that he was determined to move forward with the transactions in order to take advantage of a cash incentive.

I'm not satisfied that Mr C understood he was making a high-risk investment. It appears Mr C understood that the Llana Beach investment (which his pension monies were being transferred into the SIPP to effect) would provide capital growth with low risk.

I've also not seen any evidence to show Mr C was paid a cash incentive. It therefore cannot be said he was incentivised to enter into the transaction. And, on balance, I'm satisfied that Mr C, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself. So, in my opinion, this case is very different from that of Mr Adams. And having carefully considered all of the circumstances, I'm satisfied it's fair and reasonable to conclude that if L&C had refused to accept Mr C's application from RealSIPP, the transactions this complaint concerns wouldn't still have gone ahead.

So, overall, I do think it's fair and reasonable to direct L&C to pay Mr C compensation in the circumstances. While I accept that TRG and/or RealSIPP/CIB might have some responsibility for initiating the course of action that's led to Mr C's loss, I consider that L&C failed to comply with its own regulatory obligations and didn't put a stop to the transactions proceeding by declining Mr C's application from RealSIPP when it had the opportunity to do so. And I'm satisfied that Mr C wouldn't have established the SIPP and transferred monies away from his existing pension arrangement so as to invest in Llana Beach if it hadn't been for L&C's failings.

In making these findings, I've taken into account the potential contribution made by other parties to the losses suffered by Mr C – including RealSIPP and CIB. In my view, in considering what fair compensation looks like in this case, it's reasonable to make an award against L&C that requires it to compensate Mr C for the full measure of his loss. RealSIPP was reliant on L&C to facilitate access to Mr C's pension. And but for L&C's failings, I'm satisfied the transfer of Mr C's pension monies wouldn't have occurred in the first place.

As such, I'm not asking L&C to account for loss that goes *beyond* the consequences of its failings. I'm satisfied those failings have caused the full extent of the loss in question. That other parties might also be responsible for that same loss is a distinct matter, which I'm not able to determine. However, that fact shouldn't impact on Mr C's right to fair

compensation from L&C for the full amount of his loss.

In conclusion

Taking all of the above into consideration, I think that L&C shouldn't have accepted Mr C's application from RealSIPP. For the reasons I've set out, I also think it's fair to direct L&C to compensate Mr C for the loss he's suffered.

I say this having given careful consideration to the *Adams v Options* judgments but also bearing in mind that my role is to reach a decision that's fair and reasonable in the circumstances of the case having taken account of all relevant considerations.

Putting things right

Mr C hasn't stated that there were any guarantees attached to the pension plan he transferred to L&C, so I've proceeded on the basis that there weren't guarantees attached to the pension plan that was transferred to L&C.

My aim is to return Mr C to the position he'd now be in but for what I consider to be L&C's failure to carry out adequate due diligence checks before accepting Mr C's SIPP application. As I've explained above, but for L&C's failings I think it's fair and reasonable for me to conclude that Mr C's monies would have remained in his existing pension arrangement and that they wouldn't have been transferred into a SIPP and invested in Llana Beach.

In light of the above, I think it's fair and reasonable for L&C to calculate fair compensation by comparing the current position to the position Mr C would be in if he hadn't transferred from his existing pension plan. In summary, L&C must:

1) Obtain the current notional value, as at the date of my final decision, of Mr C's previous pension plan(s), if they hadn't been transferred to the SIPP.

2) Obtain the actual current value of the monies that were transferred into Mr C's L&C SIPP(s), as at the date of my final decision, less any outstanding charges. This value might be £0.

3) Deduct the sum arrived at in step 2) from the sum arrived at in step 1).

4) Pay a commercial value to buy Mr C's share in any Llana Beach holdings in his SIPP that cannot currently be redeemed.

5) Pay an amount into a pension arrangement for Mr C, so that the transfer value of that pension arrangement is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.

6) Pay Mr C £500 for the distress and inconvenience the problems with his pension have caused him.

I've explained how L&C should carry out the calculation, set out in steps 1 - 6 above, in further detail below:

1) Obtain the current notional value, as at the date of my final decision, of Mr C's previous pension plan(s), if they hadn't been transferred to the SIPP.

L&C should ask the operator(s) of Mr C's previous pension plan(s) to calculate the current notional value of Mr C's plan(s), as at the date of my final decision, had he not transferred into the SIPP. L&C must also ask the same operator(s) to make a notional allowance in the calculations, so as to allow for any additional sums Mr C has contributed to, or withdrawn from, his L&C SIPP since outset. To be clear this doesn't include SIPP charges or fees paid to third parties like an adviser. Further, the total notional contributions or withdrawals to be allowed for shouldn't be any more than the total contributions or withdrawals Mr C actually made/took.

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

If there are any difficulties in obtaining a notional valuation from an operator of Mr C's previous pension plan(s), L&C should instead calculate a notional valuation by ascertaining what the monies transferred away from the plan(s) would now be worth, as at the date of my final decision, had they achieved a return from the date of transfer equivalent to the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index).

I'm satisfied that's a reasonable proxy for the type of return that could have been achieved over the period in question. And, again, there should be a notional allowance in this calculation for any additional sums Mr C has contributed to, or withdrawn from, his L&C SIPP since outset.

2) *Obtain the actual current value of the monies that were transferred into Mr C's L&C SIPP(s), as at the date of my final decision, less any outstanding charges. This value might be £0.*

This should be the current value of these monies as at the date of my final decision.

3) *Deduct the sum arrived at in step 2) from the sum arrived at in step 1).*

The total sum calculated in step 1) minus the sum arrived at in step 2), is the loss to Mr C's pension.

4) *Pay a commercial value to buy Mr C's share in any Llana Beach holdings in his SIPP that cannot currently be redeemed.*

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

If L&C is unwilling or unable to purchase any illiquid Llana Beach holdings that remain within Mr C's L&C SIPP, then the actual value of any such investments it doesn't purchase should be assumed to be nil for the purposes of the redress calculation. To be clear, this would include their being given a nil value for the purposes of ascertaining the current value of such investments in step 2).

If L&C doesn't purchase the investments, and if the total calculated redress in this complaint is less than £190,000, L&C may ask Mr C 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 C 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 £190,000 and L&C doesn't pay the *recommended* amount, Mr C 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 C 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 C 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.

5) *Pay an amount into a pension arrangement for Mr C, so that the transfer value of that pension arrangement is increased by an amount equal to the loss calculated in step 3). This payment should take account of any available tax relief and the effect of charges. The payment should also take account of interest as set out below.*

The amount paid should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into a pension plan if it would conflict with any existing protections or allowances.

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

The notional allowance should be calculated using Mr C's expected marginal rate of tax in retirement at his selected retirement age.

It's reasonable to assume that Mr C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr C would have been able to take a tax-free lump sum, or *further* tax-free lump sum if he's already taken some tax-free cash from his L&C SIPP, the reduction should only be applied to that portion of the compensation that couldn't have been taken as a tax-free lump sum. For example, if Mr C would have been able to take a tax-free lump sum of 25%, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

6) *Pay Mr C £500 for the distress and inconvenience the problems with his pension have caused him.*

In addition to the financial loss that Mr C has suffered as a result of the problems with his pension, I think that the loss suffered to Mr C's pension provisions has caused Mr C distress. And I think that it's fair for L&C to compensate him for this as well.

SIPP fees

If there remain illiquid Llana Beach holdings that can't be removed from Mr C's L&C SIPP, and it hence cannot be closed after compensation has been paid, then it wouldn't be fair for Mr C to have to continue to pay L&C SIPP fees to keep the SIPP open. As such, if the L&C SIPP needs to be kept open only because of illiquid Llana Beach holdings, and is used only or substantially to hold the illiquid Llana Beach holdings, then any future L&C annual SIPP fees must be waived by L&C until the SIPP can be closed.

Interest

The compensation resulting from this loss assessment must be paid to Mr C or into a pension arrangement for him within 28 days of the date L&C receives notification of Mr C's acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation isn't paid within 28 days.

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

My final decision

For the reasons given, I find this complaint is one we can consider and it's my final decision that Mr C's complaint is upheld and that Pathlines Pensions UK Limited must calculate and pay fair redress as set out above.

Where I uphold a complaint, I can make an award requiring a financial business to pay compensation of up to £190,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £190,000, I may recommend that Pathlines Pensions UK Limited pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that Pathlines Pensions UK Limited must pay the amount produced by that calculation up to the maximum of £190,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £190,000, I recommend that Pathlines Pensions UK Limited pay Mr C the balance plus any interest on the balance as set out above.

The recommendation isn't part of my determination or award Pathlines Pensions UK Limited doesn't have to do what I recommend. It's unlikely that Mr C could accept this final decision and go to court to ask for the balance and Mr C may want to get independent legal advice before deciding whether to accept this final decision

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

Alex Mann
Ombudsman