DRN-5657948

The complaint

Mrs M had a self-invested personal pension ("SIPP") with Pathlines Pensions (UK) Limited (formerly called London & Colonial Services Ltd) ("L&C"). Mrs M says L&C mismanaged her SIPP and as a result it allowed investments to be made that were not appropriate investments for her pension which has caused her significant losses.

What happened

In 2016 Mrs M transferred an existing defined benefit occupational pension scheme ("OPS") to a SIPP with L&C following advice from a regulated independent financial adviser firm I will call MA.

Mrs M dealt with an adviser from MA and another man I will call Mr B who had a role as an introducer for MA (and other firms).

On the SIPP application form it was recorded that investment decisions relating to the funds in the SIPP were to be made by Beaufort Securities who was to act as the discretionary fund manager ("DFM").

The cash equivalent transfer value ("CETV") of almost £200,000 was transferred to the SIPP in June 2016. And almost £100,000 was paid to Beaufort Securities by L&C that month and £85,000 was paid to Strand Capital.

The payment to Strand Capital was a result of written instructions to L&C that purported to come from Mrs M. The letter said that £85,000 was to be sent to Strand Capital, £5,000 kept in cash and the balance sent to Beaufort Securities.

The money sent to Strand Capital was invested in Optima Worldwide Group ("OWG") Corporate Bonds.

In September 2016 further written instructions purporting to be from Mrs M were sent to L&C. It was instructed to close the account with Beaufort Securities, and send the money returned from Beaufort Securities to Strand Capital. Almost £99,000 was returned by Beaufort Securities and nearly all that money was sent to Strand Capital.

Written instructions purporting to be from Mrs M were sent to Strand Capital in September 2016 to invest a further £25,000 in OWG Bonds.

These three letters are referred to as the execution only letters.

Mrs M admits to signing some documents without being fully aware of their contents after being rushed by Mr B and accepts she may have signed the execution only letters but does not recall doing so and considers there to be some inconsistencies in the way the documents are signed.

In 2017 Strand Capital was placed in special receivership.

Around £75,000 was returned from Strand Capital to L&C in 2017. This money and some of the cash in the SIPP was invested in Cofunds in 2017 – and there is no complaint about those funds.

This complaint relates to the losses suffered from the over £100,000 invested in OWG Bonds through Strand Capital which has been lost.

Mrs M's complaint was made to L&C and then referred to the Financial Ombudsman Service in 2018. At that time Mrs M was represented by MA.

The complaint, as originally made to L&C and referred to the Financial Ombudsman Service, was that L&C had mismanaged Mrs M's SIPP and failed to meet the obligations on it in various ways. In particular, the complaint was that L&C had failed to make adequate checks before allowing the investments made in Mrs M's SIPP which had resulted in losses. MA calculated Mrs M's loss at around £112,500.

Mrs M's complaint was one of around 30 similar complaints made by MA on behalf of clients who had opened SIPPs with L&C (and one other SIPP provider) and made the same or similar investments following the involvement of one of its advisers and Mr B.

The original complaint, made by MA on Mrs M's behalf included the following:

> *"For the avoidance of doubt, MA stands by the advice provided by Mrs M to transfer out of* [her OPS], *a defined benefit scheme."*

And:

> *"Mrs M … looks to L&C to put her back in the position she would have been in had her pension been invested appropriately."*

In 2020 MA was replaced by solicitors who continue to represent Mrs M in this complaint. The solicitors act for a number of the MA complainants.

In July 2020 Mrs M's solicitors wrote to MA to make a complaint to it, in addition to the existing complaint to L&C. They said they had been instructed by Mrs M:

> *"…in connection with a complaint against your firm arising from the transfer of her pension funds from* [her OPS] *to* [L&C] *and their subsequent investment."*

In September 2020 MA decided to settle the complaint. It made an offer which it said was made on the basis that Mrs M should not have been advised to transfer out of her OPS. It said it had instructed an actuary to calculate Mr M's loss on that basis. The offer was made on then current figures for Mrs M's OPS. As I understand it the actuary calculated the likely CETV of the OPS. The offer was almost £32,000.

Mrs M did not accept the offer. MAFS obtained the CETV from the OPS which was a lower figure than the one calculated by the actuary. A revised, lower, offer was made based on the OPS's figure for the current CETV.

Mrs M was disappointed with the offers made and her solicitors referred her complaint about MA to the Financial Ombudsman Service in October 2020.

In November 2021 Mrs M's solicitors said that they had realised Mrs M's complaint against L&C would need amending but that they had held off doing so until an investigator started their review of the complaint when they would probably ask for more information.

Mrs M's solicitors said the complaint against L&C is in respect of:

> *"… its failure to discharge its duties as SIPP trustee as regards the nature of the investment permitted in the SIPP under their own terms and conditions but also their failure to ensure that the investments engineered by an unauthorised introducer were not of a risk category that was too high risk for* [Mrs M]."

In early 2022 one of our investigators reviewed Mrs M's complaint against MA. He thought MA's advice to transfer the OPS was unsuitable and that it was responsible for what followed on from that advice. He thought that but for the unsuitable advice to transfer the pension Mrs M would have remained in her OPS and so she should be compensated on the basis of the guidance issued by the regulator for unsuitable pension transfer advice.

MA said it had already, in effect, offered to compensate Mrs M on that basis but would obtain a new actuarial calculation of the loss using the methodology the investigator proposed.

Mrs M's solicitors asked to see the new actuarial calculations so they could consider whether to get those calculations checked.

The actuary appointed by MA calculated Mrs M's loss to be just over £20,500. I note the calculation was based on the then current valuation for the benefits in the OPS of just over £138,000 which was considerably less than the CETV paid in 2016 of just over £196,000.

Mrs M's solicitors said they had the loss calculations checked and any differences they had with the calculations themselves were minor, but the methodology had not addressed the investment loss Mrs M had also suffered. They pointed out that Mrs M had paid £196,000 into the SIPP and that its value had fallen to around £80,000 meaning Mrs M had suffered a loss of over £115,000. And that figure should be nearly £126,000 if investment loss was calculated by comparison to the benchmark index often used by the Financial Ombudsman Service.

MA did not agree with the methodology suggested by Mrs M's solicitors and the complaint was referred to an ombudsman to decide. An ombudsman considered the points made by Mrs M's solicitors and was not persuaded by them. The ombudsman considered that the methodology already used to calculate redress was fair and reasonable in the circumstances. The ombudsman's decision in October 2022 included the following (in which she referred to the OPS as a Mrs M's "DB Scheme"):

> *"The redress method requires MA to calculate the cost of replacing the benefits Mrs M lost as a result of transferring out of her DB scheme, i.e the amount required to purchase an annuity providing comparable benefits with the DB scheme at her normal retirement age of 65. This sum is then discounted back to allow the compensation amount to grow in line with assumed investment returns until 65. This is then compared with the current actual value of Mrs M's SIPP, and if the actual value is lower, compensation is due. So, I'm satisfied the calculation is putting* [Mrs M] *as far as possible into the position she would've been in if she had remained in the DB scheme. And this calculation method will aim to provide Mrs M with sufficient funds to purchase an annuity providing comparable benefits to her DB scheme at the date of calculation.*
>
> *If Mrs M accepts my final decision,* [MA] *will be required to calculate the compensation due to her. However, I note the calculations it has previously carried out have produced a lower amount of compensation compared to the amount she has lost through her investments with S. So, I can understand why Mrs M may feel*

that the method of redress isn't appropriate for her as it doesn't reflect the amount she lost through her investments.

However, it's important to note that Mrs M complained she should not have been advised to transfer her DB scheme, and that if suitable advice had been given, she would not have transferred out of the scheme. So, the appropriate way to compensate Mrs M is to ensure that she has sufficient funds to purchase an annuity that would provide comparable benefits to her DB scheme. In any event, the Regulator has set out what is it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And I see no reason to depart from this in the circumstances of this complaint as it puts Mrs M back into the position she would've been in but for the unsuitable advice."

Mrs M did accept the ombudsman decision and compensation was paid to Mrs M based on the above methodology. A payment for the loss of £17,430 and £300 for distress and inconvenience plus interest was made to Mrs M accordingly.

Meanwhile on the L&C complaint Mrs M's made further submissions that included the following:

"…during the period June 2014 - December 2016 that [MA] *and* [Mr B] *referred SIPP business to L&C,* [Mr B] *was not personally authorised/approved by the FCA in any capacity either directly or as an appointed representative or as an introducer to* [MA].

Had L&C undertaken any real due diligence in or after June 2014 it would have disclosed that one of the key persons they knew they would be dealing with, [Mr B], *did not hold any personal regulatory authorisation from FCA and was not in any way connected formally with* [MA].

That ought at least to have prompted them to ask ... what was the nature of the arrangement between the unregulated [Mr B] *and* [MA], *and ascertain precisely what* [Mr B's] *involvement would be in the pension transfer process.*

As it was, L&C knew, or ought to have known, that they were entering into a working relationship which involved a freelance unregulated person who was not subject to any regulatory obligations to SIPP clients.

L&C would further know, or they really ought to have known, that it is a criminal offence for any individual who is not an authorised person to be engaged in any respect of the provision of financial services."

Mrs M's solicitors have also said:

"…these complaints against L&C are not in relation to suitability of advice, which L&C are not authorised to give, but in relation to its quite different regulatory obligations regarding carrying out adequate due diligence on both an introducer of business to it and underlying investments it facilitates via its SIPP. It is on this very different basis that all my clients' complaints were made to [L&C].

All my complaints against [MA] *are based on different grounds of complaint against L&C, and I disagree that the FOS decision constitutes "highly relevant information" in relation to quite different complaints against* [L&C] *except perhaps, in relation to the calculation of any redress due by L&C should FOS uphold these complaints."*

One of our investigators considered Mrs M's complaint against L&C. He tried to explain that while he thought L&C had been at fault, Mrs M had already been paid by MA the compensation she would be awarded if the complaint against L&C was upheld. He thought the complaint should therefore be dismissed.

Mrs M does not agree, and her solicitors have made a number of points in response including:

- The solicitors have made similar complaints to us and do not ordinarily challenge the approach taken to redress because the limits on our power of award mean a different approach would make no difference to the outcome of the case but that is not the case for Mrs M.

- The investigator's approach does not give any consideration to the point that the regulatory duties on L&C as the SIPP provider are entirely different to those that applied to MA when giving advice.

- L&C *was not* responsible for ensuring the investments Mrs M made were suitable for her.

- It *was* L&C's responsibility to carry out due diligence checks.

- L&C didn't meet its regulatory obligations and did not act fairly and reasonably to Mrs M by not performing sufficient due diligence on Strand Capital before allowing Mrs M to invest SIPP monies with it.

- As L&C did permit Mrs M to invest with Strand Capital, L&C ought to have had regard to where the monies in its SIPP were being invested once they were received by Strand Capital.

- L&C should also have queried the execution only letters particularly as it was receiving similar letters from other MA clients. Such execution only instructions were implausible.

- In the circumstances L&C should have checked with Mrs M before making the investments.

- It is fair and reasonable to hold L&C accountable for these failures.

- The losses caused by L&C's breaches of duty are different to those caused by MA's breaches of duty and Mrs M should be awarded redress for the investment losses she has suffered.

- It might be that Mrs M's original quoted and received CETV was calculated in error. But having offered it, and Mrs M having accepted it, the OPS scheme was bound to pay the amount it paid. Mrs M was therefore lawfully in possession of that money and L&C was obliged to safeguard that money. The money was entrusted to L&C not MA and L&C should be held responsible for its loss.

- The investment with Strand Capital did not result from anything MA did but rather from the *"almost certainly forged 'execution only' letters that* [Mr B] *engineered L&C to receive and which they acted upon without questioning and without them undertaking any due diligence".*

- Mrs M invested £183,756 with Strand Capital and only £75,773 was recovered making a loss of £107,876.

- L&C's breaches of duty break the chain of causation between MA and the loss Mrs M has suffered. Its breaches allowed the funds to be diverted from MA's originally intended path (to Beaufort Securities) to Strand Capital by Mr B.

- The investigator also failed to consider the consequence of L&C dealing with an unauthorised person – Mr B. This was the position in the *Adams v Options* court case and the Court of Appeal held Options responsible for the investment loss the claimant had suffered.

- The courts have a broad discretion as to the remedies it may award where an authorised person (L&C) makes and agreement with a consumer as a consequence of something said or done by an unauthorised person (Mr B). That includes the power to award compensation for the loss sustained by the consumer as in the *Adams* case. Mrs M is entitled to redress on the same basis.

- Calculated using the FTSE UK Private Investors Income Index, Mrs M's loss is £103,539.47.

- Compensation should be awarded to Mrs M based on this methodology.

I issued a provisional decision on 2 May 2025. I explained why I thought the complaint should not be dismissed. And why I also thought that while L&C had been at fault Mrs M had already been fully compensated by MA and so no further award should be made.

Mrs M does not agree, and her solicitors have made a number of points on her behalf including the following:

- Although Mrs M's complaint is one of a number of similar complaints involving L&C and MA each case should be considered on its own individual facts. The facts of Mrs M's case are materially different to other decided cases and probably unique.

- I had said that Mrs M's complaint was also about the CETV received from Mrs M's OPS but that is not correct. The complaint is not about the CETV received from the OPS. The CETV is a significant point in the complaint.

- FCA's guidance at COB19.16G says the presumption is that advice to transfer from a defined benefit pension will be unsuitable unless it can be demonstrated on contemporary evidence that the transfer is in the *client's best interest*.

- The CETV given to Mrs M in a guaranteed quotation from her OPS was unusually high. This was realised at the time. Mr B told Mrs M that a CETV would normally be 20 to 30 times the annual pension to be provided. In Mrs M's case the CETV was nearly 80 times the annual pension. Mr B advised Mrs M that the CETV was so high it would be sensible to transfer her pension out of the OPS and invest it elsewhere.

- The CETV quoted may have been an error but that does not matter. There was no obligation on Mrs M or her advisers to question it.

- The exceptional CETV means the transfer from the OPS *was* in Mrs M's best interests. It would not have been in Mrs M's best interest to leave the pension where it was.

- I had expressly said that L&C should have considered introducer "and/or" investment due diligence. If L&C had considered Mrs M's application properly it would have considered both the requested transfer and the requested investments. As the transfer was in Mrs M's best interests there was no reason not to allow it. L&C were correct to accept the SIPP application and pension transfer, albeit unwittingly.

- While the transfer should have been accepted the investments should not. This means the appropriate way to approach redress is to compare the performance of Mrs M's SIPP with the performance that would have been achieved with suitable alternative investments.

L&C has not responded to my provisional decision.

What I've decided – and why

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

Should this complaint be dismissed?

Under the DISP rules an ombudsman may dismiss a complaint without considering its merits in certain circumstances.

The investigator's position was that there is no point in considering Mrs M's complaint further because even if all her points are accepted and the complaint upheld she would not be awarded any further compensation.

Mrs M's position is that the merits of her complaint should be considered, her complaint should be upheld, and redress should be awarded because the amount received from MA does not fully compensate her for the loss she has suffered.

Without saying I agree with Mrs M, I do think the points are reasonably made and deserve consideration.

The relevant power to dismiss is a power to dismiss without considering the merits of the complaint and that power may only be exercised in certain circumstances. Without going into a lot of detail here and now I still do not think Mrs M's complaint should be dismissed. The correct approach to redress does depend on the facts of the case and involve matters such as consideration of the nature of the duties owed and the consequences of a breach of those duties and I have given some consideration to the merits of the complaint in order to give a considered answer to the point raised by Mrs M about fair redress if her complaint is upheld.

What I have decided and why – the merits of Mrs M's complaint

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

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

I'm required to determine this complaint by reference to what I consider to be fair and

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

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

- The agreement between the parties.
- The Financial Services and Markets Act 2000 ("FSMA").
- Court decisions relating to SIPP operators, in particular *Options UK Personal Pensions LLP v Financial Ombudsman Service Limited* [2024] EWCA Civ 541 (*"Options"*) and the case law referred to in it including:
    - *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474 ("*Adams"*)
    - *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 ("*Adams consequential relief decision"*)
    - *R (Berkeley Burke SIPP Administration) v Financial Ombudsman Service* [2018] EWHC 2878 (*"Berkeley Burke"*)
    - *Adams v Options SIPP UK LLP* [2020] EWHC 1229 (Ch) (*"Adams – High Court"*)
- The Financial Services Authority (FSA) and Financial Conduct Authority (FCA) rules including the following:
    - PRIN Principles for Businesses
    - COBS Conduct of Business Sourcebook
    - DISP Dispute Resolution Complaints
- Various regulatory publications relating to, or relevant to, SIPP operators and good industry practice.

The legal background:

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

Setting up and operating a SIPP is an activity that is regulated under FSMA. And pensions are subject to HMRC rules. L&C was therefore subject to various obligations when offering and providing the service it agreed to provide – which in this case was a non-advisory service.

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

The case law:

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

The approach taken by the Financial Ombudsman Service in two similar complaints was challenged in judicial review proceedings in the *Berkeley Burke* and the *Options* cases. In both cases the approach taken by the ombudsmen concerned was endorsed by the court. A

number of different arguments have therefore been considered by the courts and may now reasonably be regarded as resolved.

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

The Principles for Businesses:

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

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

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

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

The regulatory publications and good industry practice:

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

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

The 2009 Report included:

> *"We are concerned by a relatively widespread misunderstanding among SIPP operators that they bear little or no responsibility for the quality of the SIPP business that they administer, because advice is the responsibility of other parties, for example Independent Financial Advisers…*
>
> *We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses ('a firm must pay due regard to the interests of its clients and treat them fairly') insofar as they are obliged to ensure the fair treatment of their customers…*
>
> *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 unsuited or detrimental to clients."

Although I have not quoted all the above-mentioned publications, I have considered them all in their entirety. All of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account (as did the ombudsmen whose decisions were upheld by the courts in the *Berkeley Burke* and *Options* cases).

COBS 19.1.6G:

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

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

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

FSA & FCA Alerts relating to pension transfer advice:

In January 2013 and April 2014 the regulator issued alerts that reminded advisers that the advice on a pension transfer must take account of the overall investment proposition – the SIPP and the expected underlying investments - the customer is contemplating.

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

Final Notice of decision relating to the managing director of Montpelier Pension Administration Services Limited:

On 18 April 2013 the FCA issued a decision banning the former managing director of a SIPP provider in the Final Decision notice. One of the failings found by the FCA was a failure to have adequate controls in relation to discretionary fund managers.

The information contained in that Final Decision Notice was of direct relevance to SIPP operators and L&C should have been aware of it at the time of the MA complainants SIPP applications. It was a further reminder of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the

Principles.

FCA Handbook Notice No.28:

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

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

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

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

A point to note is the reference to arrangements "*to ensure"* portfolios comprise standard asset only not to arrangements (for example) *requiring* that portfolios comprise standard assets only. This makes sense as the point being made by the FCA is about outcome rather than process. I consider the above supports the view that for SIPP operators who permitted DFM arrangements in their SIPPs it was good practice to have arrangements for monitoring the DFMs to reasonably ensure that portfolios comprised only assets that were acceptable to the SIPP operator.

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

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

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

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

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

- processes or procedures such as permitted investment lists

- arrangements in place with platform providers and DFMs to require them to make only permitted investments
- processes to ensure compliance with those arrangements.

To be clear I do not consider introducer and investment due diligence to be an either/or situation. Acting in accordance with the requirements of the Principles and good industry practice a SIPP operator should consider both before accepting introductions and making investments for its members.

My point is that both grounds should be considered before *accepting* introductions and making investments not that checks should be made on both grounds in all cases if the decision is made not to accept the introduction.

So to be clear, I do not mean that both sets of checks must be made in all cases. It's for a SIPP operator to decide how it arranges these matters and if, for example, it makes checks on an introducer and is unhappy with the outcome I do not say that the SIPP operator is also obliged to carry out checks on the investments the introducer proposes to make. The SIPP operator could reasonably decide to reject business from an introducer without also going on to make detailed checks on the proposed investments.

L&C's position in broad terms:

In my view (from reviewing this and other MA complaints against L&C) I consider that in broad terms L&C's position is:

- Its due diligence processes (which included checks on MA, Strand Capital and Beaufort Securities, and a permitted investment list system) were carried out and were appropriate for its role as non-advisory SIPP operator.
- Its due diligence processes did not reveal any cause for concern at the time. It was not aware of the involvement of the unregulated introducer Mr B.
- It was not reasonably required to do more, but any further checks would not have revealed anything untoward.
- In any event, MA is solely and wholly responsible for the losses Mrs M has suffered. It is unfair to require L&C to compensate Mrs M for the loss others have caused her.
- And in any event Mrs M has been fully compensated and no further redress is due to her.

What I consider to be Mrs M's position:

The Financial Ombudsman Service is an informal dispute resolution service that is required to investigate the complaints referred to it. The scope of the complaint, and therefore investigation, is not confined only to the words used by the complainant. We will for example consider matters surrounding the events as expressly complained about if that helps to identify the root cause of the issue giving concern.

It is my view that Mrs M's complaint does include within its scope a complaint about L&C in relation to both the accepting the SIPP application referred to it by MA and the investments made in the SIPP after the SIPP was set up and the CETV received from the OPS. This is the case either expressly or impliedly.

In response to my provisional decision, Mrs M's lawyers argue that Mrs M's complaint does not relate to the transfer into the SIPP and relates only to the investments made. The point is

also made that the significance of the high level of the CETV had not previously been recognised.

While I note the points made, I remain satisfied that I can and should consider L&C's conduct prior to accepting Mrs M's SIPP application and whether it acted fairly and in accordance with its obligations under the Principles and good industry practice when it decided to accept Mrs M's application to open a SIPP and transfer her OPS to it. This is the logical starting point notwithstanding the greater emphasis by Mrs M placed on alleged failures by L&C relating to the investments made.

The L&C/MA complaints

I have issued decisions in other complaints about L&C by MA complainants. Based on my detailed review of those other complaints and my review of the evidence in this case, my view is as follows:

- L&C made some checks on MA, and on Beaufort Securities and Strand Capital.

- In general terms those checks consisted of checking those businesses were regulated and had appropriate permissions. And putting in place a permitted investment list and requiring agreements under which those businesses agreed not to make investments that were not on the permitted investment list.

- L&C could reasonably take some comfort from those firms being regulated. It was not however reasonable to, in effect, decide there was no further action required once it was established a firm was regulated, had appropriate permissions and a satisfactory disciplinary record, and agreed to its permitted investment list requirement.
- L&C knew, or should reasonably have known, that dealing with regulated firms was not a guarantee against problems. L&C will have known that regulated as well as unregulated businesses have been involved in cases where consumers have been caused considerable detriment.
- The standards required of a non-advisory SIPP operator by the Principles, and good industry practice, required systems or processes such as getting to know and understand its introducers so as to reasonably ensure the introducer (MA in this case) is appropriate to deal with.

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

    - MA was to be involved in pension transfer cases. Although MA was authorised to give pension transfer advice, and the suitability of that advice was MA's responsibility, MA was known to be operating in an area where the risks of consumer detriment were high and the starting presumption is that advice to transfer is likely to be unsuitable. So there was a need for caution generally.
    - There was an unregulated introducer involved (Mr B) who seemed to be a central figure.
    - Unregulated introducers are not necessarily and automatically to be avoided or vetoed but there is a need to be cautious. An unregulated introducer might cross the line into giving advice they are not authorised to give. They will

promote the benefit of anything they introduce and may not do so in an impartial way. Their involvement in a process, and particularly their financial interests in a particular outcome being achieved, can create distorting pressures on a consumer's decision making.

- Mr B had a firm in the past whose regulatory permissions had been withdrawn.
- Mr B was an introducer for, or had other connections with, investment providers (Strand Capital/OWG Bonds, Horizon Stockbroking and Beaufort Securities) and they could not be considered vanilla or low risk choices. There is nothing intrinsically wrong with such investments. But it means that if the introducer's involvement distorted things it could well be in the direction of higher risk investments. L&C ought to have had concerns about the possibility of an introducer being incentivised to promote very high-risk activities such as CFD trading with Horizon Securities, and/or being incentivised to promote higher risk investment such as the OWG Bonds, and the sort of investments Beaufort Securities was likely to be involved with: non-main market higher risk securities.

- It was also the case that MA, originally at least, was operating a process under which it would only advise on part of the pension transfer or switch transaction and not on the investments to be made after the transfer. So the business model proposed by MA did not really fit in with the regulator's expectations or good industry practice in this area as set out in alerts issued by the regulator in 2013 and 2014.
- L&C reasonably should have acted on an overall impression. And that overall impression ought to have been one of serious concern that consumer detriment could very well result from MA's proposed business model.

Accordingly in my view if L&C had carried out appropriate due diligence on MA it would not have agreed to accept SIPP applications from it.

My view about Mrs M's complaint:

It is my view that L&C failed to treat Mrs M fairly and failed to meet the requirements of the Principles and act in accordance with good industry practice in accepting Mrs M's SIPP application and in requesting the transfer of the OPS to that SIPP. I hold this view for the reasons I have summarised above.

I do not say that these are L&C's only failings towards Mrs M but these failings occurred at (or before) the beginning of their relationship and cannot be ignored in order to concentrate on any failings later in the relationship.

Given my view about the due diligence carried out in relation to MA, I do not consider it necessary for me to also consider, and comment on in detail, L&C's due diligence processes in relation to Strand Capital and OWG Bonds, Horizon Stockbroking (which was involved in some other MA cases and in relation to which Mr B was also an introducer) and Beaufort Securities.

I do however have serious misgivings about L&C's due diligence processes in relation to the investments made in the SIPP.

In my view L&C's processes were ineffective because of its decision to take on trust that the regulated firms would act appropriately without having any effective process for monitoring that they were doing so. I do not consider that was a reasonable position to take. As mentioned above, L&C should have been aware that some regulated firms do sometimes fail

to act appropriately. In my view L&C should reasonably have been monitoring, from the outset, the investments being made for its members introduced by MA. It should have had processes in place to ensure compliance with its requirements and to otherwise allow it to identify anomalous investments such as unusually large investments and investments that might otherwise cause concern such as those which were known to be connected to an investment manager/platform provider such as Strand Capital and OWG Bonds.

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

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

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

Further, the consumer in that case denies signing the execution only letter.

It is my view that these matters could and should have been discovered by L&C before Mrs M's application in 2016. This means that Mrs M's application for a SIPP should not have been accepted as a result of decisions reasonably made before Mrs M's application was made as a result of the checks made on MA and Mr B and the investments the MA clients were typically making.

Put another way, I do not consider that L&C should have accepted Mrs M's SIPP application, and pension transfer request and only then at that stage refused to make the investments that were made.

I do not consider it reasonable to say that L&C ought to have put aside the serious concerns it should reasonably have had about MA in order to consider the merits of Mrs M's SIPP application. I do not consider L&C was reasonably required to decide, in the circumstances of her individual case, that the transfer request might be suitable (and I make no finding here on that suitability point), that it should accept her SIPP application introduced from MA and carry out her pension transfer. L&C was not obliged to consider the individual suitability of SIPP applications and not in a position to do so.

L&C's obligations under the Principles did require it to refuse business where appropriate and it was appropriate in relation to applications from MA, including Mrs M's application. As mentioned, L&C should reasonably have decided not to accept business from MA long before Mrs M's application was even received.

What does this mean in Mrs M's case?

There are two obvious points seem to flow from the above finding. First her pension would have remained in her existing OPS – the point made by the investigator.

And second, the pension funds would not have been invested in Strand Capital and the losses suffered on those investments would not have been suffered – Mrs M's point.

Mrs M has argued further for the second point. In effect it is argued that L&C should have allowed the transfer – because of the high CETV – and thereafter refused to permit the investments Mrs M went on to make which would have avoided the losses she has suffered. However, for reasons already given I am not persuaded by this point.

I have considered the possible argument that Mrs M thought it was reasonable advice to transfer the OPS, because of the higher-than-expected CETV, and would have transferred her pension to a SIPP with a different provider or following advice from a different adviser in any event.

I am however required to come to a decision that is fair and reasonable in all the circumstances and there a number of points that mean I do not think the outcome Mrs M has argued for would be fair and reasonable in this case:

- As mentioned, if L&C acted appropriately it would have stopped taking applications from MA some time before Mrs M's application was made to L&C.
- Other SIPP operators would reasonably also not have accepted the same business under that existing business model involving Mr B introducing business to MA.
- This means that if L&C had acted correctly the whole sequence of events in Mrs M's case would not have started.
- Further, the way Mrs M has acted and the decisions she has made are tainted by the involvement of an unregulated introducer and a financial adviser who entered into an arrangement with the introducer he should not have entered into. Accordingly, the way Mrs M acted in practice and the opinions she formed based on Mr B's involvement is not necessarily a reliable guide to what Mrs M would have done with reasonable, unbiased, regulated independent financial advice.
- Mrs M has already complained to the adviser. That complaint was made to the Financial Ombudsman Service. A decision was made and accepted by Mrs M. Although it is correct to say that Mrs M argued for redress on the basis of comparing her SIPP to the performance of the FTSE UK Private Investors Income Index, the complaint was that both the transfer advice and the investment advice was unsuitable. This was how the complaint was made and the ombudsman said, through the investigator before her decision was issued, that both sides accept the transfer advice was unsuitable. This was not disputed.
- Mrs M, albeit reluctantly, accepted the ombudsman's decision to award redress on the basis of the then guidance for calculating redress for unsuitable pension transfer advice. She did this knowing redress would likely be less than £30,000 compared to the loss claimed on an investment loss basis of over £100,000 and she said she thought she was getting the *"worst of both worlds"* that is *"missing out on the generous transfer value"* and that the pension transfer redress methodology did not guarantee to provide the equivalent of the OPS pension.
- Mrs M's actions mean she has in effect accepted that reasonable advice from a reasonable adviser, would have been against transferring her pension away from her defined benefit pension to a defined contribution pension such as a SIPP.

In all the circumstances, I do not consider it to be fair and reasonable to say, that the usual starting presumption does not apply in Mrs M's complaint against L&C, and that but for L&C's errors Mrs M would have transferred her OPS to a SIPP with L&C, or another SIPP provider, and made different investments.

How should things be put right in Mrs M's complaint against L&C?

The usual approach to redress is to aim to put the injured party into the position they would have been in but for the wrong which is being put right. And this approach depends on the facts of a case.

In some cases, if the SIPP operator had acted appropriately the SIPP would have been set up but disputed investments would not have been allowed.

In some other cases if the SIPP operator had acted as it should, the SIPP application would not have gone ahead at all, and the consumer would not have moved their pension.

In the first case redress will involve a comparison with investments that reasonably would have been made in the SIPP but for the SIPP operator's error. In the second case redress involves a comparison with the pension arrangement the consumer would have remained in but for the SIPP operator's error.

This is consistent with the approach taken by the Court of Appeal on the *Adams consequential relief decision.* That case involved a SIPP and transfer (or switch) to it from a defined contribution pension rather than a defined benefit pension scheme. After finding for Mr Adams, the Court of Appeal proceeded on the basis of the parties' agreement that redress should be directed at putting Mr Adams in the position he would have been in if he had not transferred his pension to Options. So redress was based on the estimated value of Mr Adams' former pension if he had not moved it to the SIPP.

The Court of Appeal did not approach the problem on the basis of comparing Mr Adams current position with what a reasonable alternative investment would have been worth in the SIPP if the loss causing Storepod investment had not been made.

In cases involving a switch away from a defined contribution pension which would not have occurred but for the SIPP operator's error, our usual approach is essentially the same as the court's in the *Adams* case - i.e. a comparison of the present value of the SIPP with the notional value of the previous pension if the switch had not taken place. We do however know that in practice some pension providers may be unable or unwilling to work out the value of a pension that was closed many years before, so in practice we provide for the use of an alternative benchmark index to be used as a proxy for the sort of performance the former pension might have achieved if there are difficulties in getting a notional value from the provider of the old pension. The approach is however essentially the same – one of looking back to what things would be like if the transaction had not taken place, rather than looking at how things might have worked out if things had proceeded but on a different basis. That approach would only be right if the SIPP would have proceeded, but on a different basis, but for the SIPP operator's error. (And that is not my finding in this case.)

In complaints involving transfers away from a defined benefit scheme that would not have occurred but for the SIPP operator's error (which is my finding in this case) there is, the difficulty of making a comparison of two different types of pension. The regulator has recognised this difficulty and issued guidance on how to calculate redress for unsuitable defined benefit pension transfers (FG 17/9). Although that guidance was not written expressly for SIPP due diligence complaints, it nevertheless provides a fair and reasonable approach to calculating redress in complaints involving transfers away from a defined benefit

pension to a SIPP where the complaint is about an act or omission of the SIPP operator even when it did not give advice. It was therefore used by ombudsmen in decisions against SIPP operators, in appropriate cases, until the guidance was updated by the FCA in its rule book at DISP App 4.

As Mrs M's complaint involves a transfer away from a defined benefit OPS that occurred because of errors on the part of L&C, in principle I consider that redress should be calculated on the basis of the rules relating to the handling of pension transfer redress calculations in DISP App 4.

While I say that Mrs M's losses were caused by errors on the part of L&C they were also caused by errors on the part of MA which have been the subject of a separate complaint, ombudsman's decision, and compensation payment.

The present rules were introduced in April 2023 which is after the date of the ombudsman's decision in Mrs M's complaint about MA. However at that time Mrs M was given the option of proceeding on the basis of FG 17/9 or waiting for the publication of the new rules and she chose to go ahead under the then existing guidance rather than wait.

It is possible that any calculations carried out under the old guidance in 2022 and the new rules in 2025 will come out with different answers – although both will very largely be determined by the estimated value of the benefits in the OPS.

It is my view that (all other things being equal) an offer/settlement made based on FG17/9 at the time when that guidance applied would be a reasonable offer/settlement, just as one made now based on DISP App 4, when it applies, is reasonable.

I note that when Mrs M accepted MA's settlement offer she was represented by solicitors. And that the solicitors had the opportunity to have the calculations checked by a relevant expert. The solicitors said it did get the calculations checked and that any differences it had with the calculations were minor. Mrs M therefore made an informed decision when she decided to accept MA's offer. I do not therefore consider it appropriate to question the calculation of the offer made. I consider it appropriate to proceed on the basis that the offer made and accepted was based on a reasonable calculation of Mrs M's loss in accordance with the then existing guidance.

As mentioned, it is my view that ordinarily loss and redress in Mrs M's present complaint about L&C should be calculated based on DISP App 4. However given that Mrs M's loss has already been calculated and redress paid based on the guidance then in existence, I consider that Mrs M has already been paid fair and reasonable redress.

And I do not consider it fair and reasonable to require an updated calculation under the updated rules to see whether the new rules come out with a different answer. It cannot be right to undo previous settlements made on one basis if guidance or rules are later updated. The settlement if reasonable when made remains reasonable.

It is my view that Mrs M has already been paid fair and reasonable redress for the loss caused to her as a result of L&C's errors in accepting Mrs M's SIPP application and requesting her OPS be transferred to it. I do not consider it fair and reasonable in the circumstances to require L&C to pay any further compensation to Mrs M.

I appreciate Mrs M will find this disappointing but the position is that she has been paid a sum of money which was a reasonable estimate of the sum her SIPP needed to be enhanced by in order for her to be able to achieve a pension that is equivalent to the pension she lost. Although this does not come with guarantees, it does still represent a reasonable

estimate for what is required based on what the regulator considered reasonable assumptions. And I do not consider it fair and reasonable to require L&C to do more in the circumstances.

The difference between the CETV money received by L&C and the sum it would have grown to if invested differently is not a figure Mrs M would have received if L&C had done its job appropriately. The rights would have stayed with the occupational pension scheme and their value would have varied in accordance with whatever factors determine the value of those rights from time to time. And apparently by 2022 those rights were worth less (in cash terms) than they were in 2016. Whether that is actually the case, or whether the 2016 CETV was miscalculated, is not for me to decide since Mrs M accepted the calculation of the value of the benefits in her OPS in 2016 and 2022 and it is not appropriate for me to go behind that settlement and check those figures in this complaint against L&C. Both of those figures must be accepted by me as reasonable.

In all the circumstances I do not consider it fair and reasonable to require L&C to pay any further compensation to Mrs M.

My final decision

Although I consider that L&C has been at fault, it is my view that Mrs M has received full compensation for the losses caused by L&C as a result of her earlier complaint about the adviser MA. I therefore make no award against Pathlines Pensions UK Limited in Mrs M's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 July 2025.

Philip Roberts
Ombudsman