

The complaint

Mr B complains about the due diligence London & Colonial Services Limited ('L&C') undertook before accepting Mr B's application.

Mr B complains that in 2012 L&C accepted his Self-Invested Personal Pension ('SIPP') application and allowed him to invest in a Store First Limited ('Store First') investment without carrying out adequate due diligence. And that he has suffered loss as a result of this.

Mr B is represented in this complaint, but for ease I'll refer only to Mr B. L&C has been represented by solicitors for periods of our investigation of this complaint, and the solicitors representing L&C have made submissions on behalf of L&C at various times. But again, for ease I've referred to L&C throughout.

What happened

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

Involved parties

L&C

L&C 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.

The Pensions Office Limited ('TPO')

TPO was authorised by the regulator – the Financial Services Authority ('FSA'), which later became the Financial Conduct Authority ('FCA') – to advise on products and services including giving investment advice and arranging deals in investments such as pensions. TPO was no longer authorised from 13 August 2015 and, as I understand it, TPO was declared in default by the Financial Services Compensation Scheme ('FSCS') in 2015.

Store First

The Store First investment took the form of one or more self-storage units, which were part of a larger storage facility in a UK location. Investors bought one or more units in the facility and were offered a guaranteed level of income for a set period of time. After that, they could either take whatever income the unit(s) provided, or sell them (assuming there was a market for them).

The Store First investment was marketed as offering a guaranteed 8% return in the first two years, an indicated return of 10% in the following two years, and 12% in the next two years. It was also marketed as offering a "*guaranteed*" buy back after five years.

In May 2014, the Self Storage Association of the UK ('SSA UK') issued a press release (amended in January 2015), detailing the outcome of a review it had commissioned Deloitte

LLP to undertake of the marketing material made available to potential investors by Store First.

The release recommended that any potential investors in Store First storage units consider the following key points before taking any investment decision:

- What will the impact be on the business model if VAT is charged on the rental of storage units to customers following a review by HM Revenue & Customs ('HMRC')?
- How is Store First funding guaranteed returns to investors? Is this from operating profits, the proceeds from the sale of other storage pods to investors, or a different source?
- Compare the total value being paid for all the units in a Store First self-storage site against the price at which stand-alone self-storage businesses have been valued and sold at recently.
- Consider if there is a realistic re-sale opportunity for, and exit, from this investment, particularly if Store First exits the business.
- Research the performance of investments based on a similar investment model that have been offered primarily in Australia, such as Ikin Self Storage in Townsville, Queensland and Strata Self Storage in Melbourne (these schemes had failed).

The release refers to a number of misleading and inaccurate statements made by Store First in its marketing material. It also makes the following observations:

"SSA UK's investigations indicate that these storage units are being rented to the general public at approximately £18 - £21 per square foot including insurance. Normally the rent paid by a self-storage operator would be at most half of the income per square foot earned through storage fees. Presuming the Store First sites were at industry average occupancy levels, SSA UK believe that they would have to be earning £23.95 per square foot just to pay the guaranteed rent to investors, excluding operating costs such as insurance, staff, business rates, utilities, marketing and management fees for Store First. Furthermore, this does not factor in the losses incurred by each site as it takes some years to reach a mature occupancy level. During this time, Store First is obliged to pay the guaranteed returns to investors, yet there does not appear to be sufficient income from the operations of the business to fund these returns.

In addition, the analysis SSA UK has seen indicates that the purchase price being paid per square foot by investors to Store First for these self-storage units taken together equates to a much higher value than they would be worth if the whole sites were sold as stand-alone self-storage stores.

...a very serious question arises over how Store First is funding the guaranteed returns to existing investors, considering the absence of bank funding and the likely level of losses that require funding in each new store. It may yet prove to be the case that the rental returns being paid to investors are in fact being funded from the sale proceeds of new units, and not the operation of the self-storage business."

Store First was the subject of a winding up petition issued by the Business Secretary. On 30 April 2019 the Court made an order to wind-up Store First and three associated companies in the public interest by consent between those four companies and the Secretary of State. The Official Receiver was appointed as liquidator and had responsibility for dealing with the assets and liabilities of the four companies.

Following this the freehold, associated assets and goodwill of 15 storage centres were sold by the Official Receiver to a company called Store First Freeholds Limited. As I understand it, the self-storage units continued to be rented to end users and a company called Pay Store now manages the storage sites trading as Store First. The Official Receiver and Store First Freeholds Limited agreed that the latter would accept any requests from investors to surrender their pods. Store First Freeholds Limited would cover its own costs of the surrender, but investors wouldn't receive any payment.

In the judgment in *Adams v Options SIPP UK LLP (formerly Options Pensions UK LLP)* [2020] EWHC 1299 (Ch) ('*Adams v Options*'), the judge found the value of Mr Adams' six pods, acquired for around £52,000 in July 2012, to be £15,000 as of January 2017. And in the judgement in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 1188 it was stated that, in February 2020, Options had said it was valuing Storepods at £430 each following (then) recent sales of Store First storage units at auction and the Court used that value in assessing the redress due to Mr Adams.

Jackson Francis Ltd ('Jackson Francis')

As I understand it, Jackson Francis was an unregulated sales company. It was explained on Jackson Francis' website in March 2012 that:

"Jackson Francis's free, unique and no-obligation Pension Transfer Service means you can quickly understand what switching your pension means for you – and whether or not it's worth it."

One of our dedicated account managers will discuss the relevant information with you, and will collate details of charges from your existing provider, helping you to track old policies and understand the process."

We will then introduce you to either traditional schemes or alternative investments that might match or surpass your existing provider. Where you invest is your choice, we are unbiased and simply give you the facts."

It was also explained that:

"As you'd expect, deciding whether it's a good idea to switch your pension begins with looking at your existing arrangements. More often than not it does not take a great deal of detective work to realise just how badly most pensions are performing but if in doubt it's always best to take advice."

If you would like to speak to a financial advisor we will arrange one to call you with no obligation. Assessing the market for your options can be difficult but our unbiased 'just the facts' approach will help you to identify the right choice for your future. There are no up-front costs and of course, you will be under no obligation to transfer with us."

In 2015 the British Broadcasting Corporation reported that:

"The Liverpool sales company Jackson Francis Ltd was paid through an intermediary by Store First to cold call people with "dormant pensions" - savings they had accrued under previous employers."

From 2011, more than 1,000 people were persuaded by Jackson Francis staff to move these pensions into the Store First scheme."

...

Over two years, Store First owner (Mr W) paid £33m commission to Transeuro Worldwide Holdings Ltd, which funded Jackson Francis."

What happened?

It seems Jackson Francis introduced Mr B to TPO.

TPO sent Mr B it's suitability letter in July 2012. Unfortunately only a partial copy of this suitability letter is now available. But this shows that TPO said, amongst other things, that it didn't recommend Mr B transfer his *"salary-related scheme"* benefits as the return needed to replicate the benefits being forfeited on transfer was highly unlikely to be achievable – from this, it's my understanding that the pension in question was a defined benefit ('DB') scheme, and neither Mr B or L&C have disputed my understanding.

TPO's suitability letter went on to say that it had been informed by Jackson Francis that Mr B wanted to transfer his monies into a SIPP so as to make investments that weren't permitted within his existing arrangement. TPO said that if Mr B's overriding intention was to transfer, then TPO would be happy to assist him with transferring his monies to L&C. It was explained that application forms for L&C were enclosed for completion and return to proceed.

In August 2012, Mr B completed an application form to open a SIPP with L&C and transfer in benefits from his DB scheme. It appears that this form was sent to L&C by TPO on 3 October 2012. The Independent Financial Adviser ('IFA') details are on page three of the form. The name of the IFA firm was recorded as TPO and TPO's FSA authorisation number was noted. Mr P is the named TPO contact. In the section immediately below these details, a box reading *"Advice given at point of sale to client"* has been ticked.

Elsewhere in the form it's recorded that Mr B is looking to transfer in funds worth around £27,043 from his DB scheme and a box has been ticked to confirm that he is not looking to manage the fund himself.

I've not been provided with a copy of any SIPP application checklist L&C completed for Mr B. But from other complaints we've received, I'm aware that L&C did complete such a checklist for the SIPP applications it received from consumers. And from those other complaints, I'm aware L&C ticked boxes in the checklist to confirm that TPO has an agency agreement with L&C and to confirm that, if the IFA wasn't authorised, L&C had ensured the transfer wasn't from a DB scheme.

On 11 February 2013, L&C wrote to Mr B to say his SIPP was now in force and that £30,388.04 was transferred into the SIPP from Mr B's DB scheme.

On 15 February 2013, Mr B completed an investment purchase request form. Amongst other things, this form included the following:

- A note of Mr B's details, as well as noting that the investment was *"Storefirst"* and the investment company name was *"Jackson Francis"*.
- A question about whether the investor was a certified Sophisticated Investor or a self-certified Sophisticated Investor (and a request to provide evidence where this was the case). A box reading *"I do not fall into either of the two categories above"* was ticked.
- A box reading *"I have received no advice on the merits of my proposed investment and the investment decision is solely my responsibility"* was ticked.
- A typed SIPP member declaration 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, 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'd appointed, unregulated investments may not be protected by the FSCS and that the consumer indemnified L&C against any liabilities arising from the investment (bold my emphasis). This declaration was signed by Mr B.

On the same date, a second form titled Self Storage Commercial Property Investment was completed, also signed by Mr B. This form noted, amongst other things:

- The location of the Storepods and the two unit numbers to be purchased. The total purchase price of the units was £16,500.
- L&C wasn't authorised to give financial or investment advice. But it had obtained legal advice in its capacity as trustee, in order to assess the risks of ownership and to ensure appropriate title was attained. That advice didn't cover the investment merits, marketability or value of the property.
- Mr B had obtained whatever information, reports, legal or other advice that he required.

L&C says it wrote to Mr B on 24 April 2013 and enclosed a copy of the sub-lease for the investment. And that on 2 May 2013, L&C received a handwritten letter from Mr B confirming that he wanted to proceed.

L&C says an investment of £17,071 was then made with Store First on 13 May 2013. Based on later correspondence from the FSCS to Mr B, it seems Mr B took a pension commencement lump sum of £7,190.26 and gross income of £4,400.52 from his SIPP.

Mr B made a complaint to the FSCS about TPO. The FSCS investigated that complaint and in May 2018 awarded Mr B £50,000.

The FSCS entered into a reassignment of rights with Mr B, which has enabled him to bring this complaint against L&C.

Additional background information

Mr B has told us, amongst other things, that:

- He wasn't interested in changing his pension at the time of being contacted by TPO and hadn't known where his pension was.
- TPO led him to believe its role in the transaction was to control everything for him.
- TPO recommended store pods to him.
- He understood that store pods was a good investment as it would make him more money than his pension and he would never be worse off. The adviser made it seem like a win/win situation and Mr B thought it would give him a better pension pot.
- He understood the investment he'd made to be risk free.
- He had received a lump sum payment from his pension of about £6,000 when moving his pension. This made the transfer more attractive and Mr B used it to pay some bills and buy a car as he didn't have one at the time. But if Mr B had known there were risks attached to the investment, he wouldn't have gone ahead and would have been able to manage without the £6,000 payment.

An Investigator reviewed Mr B's complaint and concluded it should be upheld. The Investigator said that in light of the investment marketing literature L&C should have been concerned that consumers were being misled about the returns and risks associated with the investment and that there was the risk of consumer detriment. Further, that L&C didn't act in a fair and reasonable manner in accepting the Store First investment within Mr B's SIPP. And that had L&C acted fairly and reasonably it shouldn't have accepted Mr B's application to open a SIPP with it.

L&C replied to the Investigator's view. L&C has also made a number of other submissions to us previously in separate complaints not involving Mr B. For ease of reference, I've not separated L&C's reply to the Investigator's view from L&C's submissions in other complaints – I've included both here. Amongst other things, L&C said:

- Mr B invested £17,071 in Store First, and has received £50,000 compensation from the FSCS in respect of his Store First investment. So Mr B has already received full compensation from the FSCS.
- Mr B chose to transfer his DB scheme pension against advice. TPO's suitability letter had advised Mr B not to transfer his DB scheme pension and went on to state *"I have been advised by Jackson Francis that you wish to effect a transfer to your existing Self-Invested Personal Pension with the firm intention of making one or more specific investments that are not permitted within your current pension arrangement."* The letter also said Mr B should take professional advice before making further investments. L&C understood TPO's suitability letter would also have said *"If you are planning to invest your pension funds in alternative investments, as I am advised, you should be aware that certain investments are not designated under the regulation of the FSA and therefore are not covered by the Financial Services Compensation Scheme, or the Financial Ombudsman Service. As such you should consider alternative Investments to represent a higher risk than appears appropriate for your personal risk profile."*
- Mr B submitted an application to invest in Store First on 15 February 2013. This confirmed that Mr B understood that L&C wasn't authorised to give financial or investment advice and that the advice obtained by L&C as trustee was limited to assessing the risks of ownership and to ensure the acquisition of appropriate title. Further, that advice obtained by L&C didn't cover the investment's merits, marketability or value and that Mr B had obtained whatever reports or advice he required.
- An investment purchase request of 13 February 2013 said that L&C hadn't provided advice and that Mr B had carried out his own due diligence and was happy to proceed. The request confirmed that Mr B understood the investment was high risk and that there may not be an established market for resale.
- Mr B indemnified L&C against all liability arising from the investment and confirmed that responsibility for assessing the merits of the investment lay solely with him.
- The relationships in this case are similar to those in the *Adams v Options* case, but the Investigator's view doesn't explain why we've reached a different conclusion to that arrived at in *Adams*.
- If anything the position here is stronger in that a regulated adviser was involved and would have been responsible for assessing any marketing materials and the suitability of the investment. This was not the case in *Adams*.
- The Investigator's view imposes a duty on L&C to decide whether to accept or reject business brought to it by a customer requesting an execution-only service.
- A breach of the Principles cannot, of itself, give rise to any cause of action at law.
- The ambit and application of the Principles, and such duties as may be imposed on

L&C by these, fall to be construed in light of the Conduct of Business Sourcebook ('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.

- It was said in *Adams* that reports, guidance and correspondence issued after the events at issue couldn't be applied to Options' conduct at the time. So, publications issued after the transactions in this case shouldn't have a bearing on the complaint.
- Even if the 2009 Thematic Review Report had been statutory guidance made under FSMA S.139A (which it wasn't), the breach of such statutory guidance wouldn't give rise to a claim for damages under FSMA S.138D.
- The FCA's Enforcement Guide says that *"Guidance is not binding on those to whom the FCA's rules apply. Nor are the variety of materials (such as case studies showing good or bad practice, FCA speeches and generic letters written by the FCA to Chief Executives in particular sectors) published to support the rules and guidance in the Handbook. Rather, such materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant rules."*
- Regulatory publications can't alter the meaning, or the scope, of the obligations imposed by the Principles.
- *Adams* held that duties imposed by COBS can't all apply to all firms in all circumstances.
- 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 Investigator's view extends the scope of the duty of due diligence owed by L&C beyond what was envisaged and agreed by the parties.
- Mr B was aware that L&C would act on an execution-only basis and wouldn't accept responsibility for the quality of the investment business.
- If L&C really had the obligations of due diligence set out in the Investigator's view and had acted in accordance with them then it would have been required to advise on investments, which was contrary to its regulatory permissions.
- With an execution-only service, it would be unfair if the SIPP provider couldn't rely on representations made by the consumer when signing the contractual documentation.
- Amongst other things, the judge in *Adams* held that in order to identify the extent of the regulatory duties imposed on Carey, *"one has to identify the relevant factual context"* and that *"the key fact ... in the context is the agreement into which the parties entered, which defined their roles in the transaction"*.
- Also, the judge in *Adams* held that *"there is a very plain inconsistency between the contract which was entered into between it and the claimant and the duties [under COBS 2.1.1R] which the claimant now suggests that the defendant owed to him."*
- Further, that *"there was... [no] duty on [Carey]... to consider the suitability of appropriateness of a SIPP or the underlying investment. The contract between [the parties] makes that clear."*
- The judge also 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."*
- In *Adams* the FCA agreed that the function of a firm, as determined by contract, would govern what it had to do to comply with its duties under the FCA Handbook.
- Insufficient weight has been given to contractual arrangements and the demarcation of roles and responsibilities. The documents setting out the contractual relationship between the parties make it clear that L&C was acting on an execution-only basis.
- The Investigator's view runs contrary to *Adams* by suggesting that, notwithstanding the clear contractual terms, L&C owed due diligence obligations under the Principles.

- The Financial Ombudsman Service is attempting to use the Principles to circumvent the *Adams* decision.
- The Financial Ombudsman Service must take into account the relevant case law and, if this is deviated from, must set out why – *R. (on the application of Aviva Life and Pensions (UK) Ltd) v Financial Ombudsman Service* [2017] EWHC 352 (Admin) and Jay J's comments at paragraph 73 of that judgment were referenced.
- 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 *Aviva*.
- The Principles can't give rise to a cause of action if breached, and consideration of the Principles must be via the appropriate COBS rules applying to the transaction.
- 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 view enables Mr B to recover against L&C for losses flowing from non-contractual obligations which were inconsistent with, and contrary to, the express obligations in the parties' contractual arrangements.
- In *Adams* the Store First investment being high risk didn't make it manifestly unsuitable.
- The suitability of a high risk investment depends on the particular financial circumstances of the particular customer and their attitude to risk. An execution-only SIPP provider was under no regulatory obligation to ascertain these details.
- The investment purchase request clearly set out that the investment was high risk.
- That it wasn't clear how an investment could be independently valued wouldn't, of itself, make an investment unsuitable, and the consumer was clearly informed of this.
- That an investment didn't have investor protection wouldn't, of itself, make an investment unsuitable. And the member declaration stated that unregulated investments might not be protected by the FSCS.
- The Investigator's view criticised L&C for failing to independently verify claims made in Store First's marketing material.
- The duty that the Financial Ombudsman Service is seeking to impose on L&C appears to require an analysis of the investment commensurate with what one would expect from a financial adviser.
- L&C wasn't able to provide any views on the specific qualities of an investment without potentially putting itself in breach of its permissions.
- L&C wasn't able to refuse a member's instruction to invest based on the risk profile of an investment without completing a full assessment of suitability. This would fall well outside of the scope of L&C's duty and retainer. And L&C couldn't communicate the results of such an investigation to a consumer without giving advice.
- Suggestions that L&C should have looked into the viability of guarantees offered, the likelihood of expected returns being achieved and the credibility of statements about rental income, are far beyond the scope of the retainer agreed by the parties. And are at odds with the service offered by an execution-only SIPP provider.
- At the time of the transaction, there was no obligation for a customer to take advice on the transfer of a pension. There was also no requirement to ensure that customers were obtaining independent financial advice.
- TPO was authorised and regulated by the FCA and there were no issues in accepting business from it. L&C provided a copy of a printout from the FSA Register. This records that, as at 6 August 2012, TPO's permissions included advising on Pension Transfers and Pension Opt Outs.
- At the time of the transaction, there was nothing in the DISP rules preventing SIPP providers accepting business from unregulated introducers, execution-only customers or high-risk business provided that adequate risk warnings were given.
- Any responsibility to complete wider due diligence on the investment fell to TPO.

- Store First investments were bona fide and good title was obtained, that they didn't perform as hoped doesn't change this.
- The Financial Ombudsman Service has said that L&C should have conducted some further independent searches following receipt of the Enhanced Support Solutions Limited report. However, the only example given is a reference to a County Court Judgment ('CCJ') recorded against Harley Scott Holdings Limited ('the promoter'). Enhanced Support Solutions obtained information from the promoter directly relating to a fee dispute which was in the process of being settled. Given the limited nature of information provided on a CCJ, it would have been necessary to ask the relevant party for this information directly. The CCJ was of an insignificant value and bears no relevance to the investment in Store First.
- The Financial Ombudsman Service has put disproportionate weight on the actions of the promoter but fails to link the promoter's conduct or actions to the investment itself.
- Mr B had already decided to transfer his pension before he contacted L&C. There's nothing to indicate that Mr B wouldn't still have gone ahead had L&C refused the business, particularly given Mr B had already shown he was willing to act against advice.
- A number of other SIPP providers at the time were accepting such investments and it's most likely that if L&C had rejected the application the transaction would still have been effected with a different provider.
- The Financial Ombudsman Service's view of what was reasonable practice for the SIPP industry at the time is at odds with the view of the SIPP industry in general.
- There is a real unfairness if an execution-only SIPP provider is liable for the poor investment choices of consumers.

Mr B had nothing substantive to add in response to the Investigator's view.

As agreement couldn't be reached, this complaint was passed to me for a decision.

I issued a provisional decision on this complaint. I concluded it should be upheld. In summary, I said L&C should have decided not to accept business from TPO and/or to accept the Store First investment to be held in its SIPPs before it had received Mr B's application from TPO. That if L&C hadn't accepted Mr B's introduction from TPO and/or the Store First investment to be held in its SIPPs, Mr B wouldn't have established a L&C SIPP, transferred his DB Scheme monies into it or invested in Store First. I said it's fair and reasonable for L&C to compensate Mr B for the loss he's suffered as a result of L&C accepting his business from TPO and permitting him to invest his L&C monies in Store First. So L&C should undertake a redress calculation for Mr B, and also pay him £500 compensation for his distress and inconvenience.

Mr B confirmed he'd received the provisional decision and had no further comments to add.

L&C didn't agree with the provisional decision and thought there were points it hadn't addressed or given sufficient weight to. L&C went on to provide further comments. This included reiteration of some comments it had already made, which are summarised earlier in this decision. So here, I've summarised what I consider to be the main new comments L&C has made, however I'd like to be clear that I've carefully considered L&C's response to the provisional decision in full:

- The provisional decision 'cherry picks' from case law whilst largely ignoring *Adams v Options SIPP UK LLP* which is more relevant.
- No attempt has been made to explain why the Principles have been relied on rather

than the High Court decision in *Adams*, despite the decision forming a much more solid foundation for any consideration of a complaint against a SIPP provider.

- The provisional decision ignores the fact that the Principles, and the duties imposed on L&C by these, must be construed in light of the COBS rules applicable to L&C and the regulatory permissions L&C held at the time – it was unable to provide advice to Mr B.
- The provisional decision finds that Mr B was not responsible for any of his decisions despite the findings in *Adams*.
- The publication of the regulator's documents and their contents (or the Principles) cannot found a claim for compensation of itself.
- There was no obligation imposed on L&C by the Principles to consider and act on the suitability of the SIPP or underlying investment, and the regulator's publications referred to cannot impose such a duty.
- The 2009 and 2012 thematic reviews did not provide "guidance" and were not statutory guidance. They only highlighted some "examples of measures" that SIPP operators could consider. And many of these were aimed at advisory firms, not execution-only businesses like L&C.
- Despite many of the COBS rules not being applicable to execution-only SIPP providers (a position confirmed in *Adams*) the provisional decision seeks to impose on L&C a duty of due diligence that it does not owe and which goes far beyond the scope of any duty envisaged by the parties, by a generalised appeal to the Principles.
- The Ombudsman was attempting to create a relationship between L&C and Mr B before a contract was entered into and before any funds were received by L&C.
- The due diligence carried out by L&C on TPO was sufficient and did not raise any cause for concern.
- It is wrong of the Ombudsman to conclude that L&C was under obligations to conduct further due diligence to protect against 'consumer detriment' and to ensure Mr B understood the level of risk involved.
- L&C was unable to provide advice on either the suitability of the SIPP or the investment. That is why it entered into an intermediary agreement with TPO. The provisional decision has largely ignored the parties contractual arrangements and demarcation of the roles and responsibilities.
- The Ombudsman provided no rational reason for failing to consider the duties of a SIPP operator under COBS and for imposing obligations on L&C beyond its contractual relationship (contrary to *Adams*).
- The provisional decision should have found that L&C's duties to Mr B extended no further than those owed to the claimant in *Adams* and accordingly it is neither fair nor reasonable for L&C to pay redress in this case.
- The Ombudsman has failed to properly take into account FSMA s.5(2)(b) – the general principle that consumers should take responsibility for their actions, as held in *Adams*.
- L&C complied with COBS 11.2.19R when it acted on Mr B's written instructions in the

setting up of the SIPP and the transfer of monies.

- It was reasonable for L&C to be afforded a significant level of comfort from the fact that TPO was an FCA authorised firm, and as such was required to operate under a set of regulatory obligations to keep its clients' best interests in mind. COBS stated it is reasonable for a firm to take comfort in the FCA status of another professional firm, and in ignoring this provision the Ombudsman is acting unfairly to L&C.
- Regarding Mr B's DB pension transfer, the point of no return was when Mr B accepted the cash equivalent transfer value ('CETV') quote from his DB scheme and requested a transfer – this took place before L&C has any basis to refuse any business.
- L&C should not be held responsible for decisions made by Mr B prior to its involvement. TPO advised Mr B not to transfer his DB scheme pension because he was highly unlikely to achieve the returns needed to replicate the benefits lost on transfer. Mr B understood this advice but chose to ignore it. And he made his investment having signed documents confirming Store First was high risk.
- This extinguishes the Ombudsman's argument that an unregulated introducer "sold" Mr B on the idea of investing in Store First before receiving advice from TPO. Any reasonable investor having received this advice from TPO would have declined to transfer their pension. Mr B was attracted by the £6,000 lump sum payment.
- The due diligence carried out by L&C on Store First was sufficient and did not raise any cause for concern. In any event, the fact that a) the investment was likely high risk; b) it was unclear how the investment could be independently valued; and c) there was no investor protection; does not automatically equate to an unsuitable investment nor does it amount to a breach by L&C. But the Ombudsman has found the investment to be unsuitable in relation to Mr B's attitude to risk.
- Mr B has already received £50,000 compensation from the FSCS. To avoid Mr B being overcompensated, this amount should be taken off the amount of redress L&C is required to pay. And if not, we should at least make an allowance for any return Mr B has enjoyed on the £50,000 since the date he received it.
- L&C has not been provided with any evidence that Mr B will be a basic rate tax payer in retirement. It is unfair to assume this will be 20% where there is a potential for this to be factually incorrect.
- The £500 award for distress and inconvenience does not take into account that which was caused by Mr B's own actions resulting in his financial loss.

I'm now in a position to make my final decision.

What I've decided – and why

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

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.

Both parties have provided detailed submissions to support their position and I'd like to reassure them both that I've considered all the comments and evidence they've provided. But while I mean no discourtesy, my decision will focus on what I consider to be the central issues in reaching a fair and reasonable outcome to this complaint. So my decision won't address every point or question both parties have raised, but will instead set out my findings and my reasons for reaching them.

Relevant considerations

Having carefully reconsidered all of the evidence, I'm still of the view that the relevant considerations in this case are those 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.

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). 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 FCA's Principles. In *R (British Bankers Association) v Financial Services Authority* [2011] EWHC 999 (Admin) ('BBA') Ouseley J said at paragraph 162:

"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."

And at paragraph 77 of BBA 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."

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'd upheld a consumer's complaint against it. The Ombudsman considered the FCA 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 *BBSAL*):

"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."

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 B's case.

I've considered whether *Adams* means that the Principles should not be taken into account in deciding this case. 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 B'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 B'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 Storepods investment into its SIPP.

In Mr B's complaint, amongst other things, I'm considering whether L&C ought to have identified that the Store First investment involved a significant risk of consumer detriment and, if so, whether it ought to have declined to accept applications to invest in Store First *before* it received Mr B's application.

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

So I've considered COBS 2.1.1R – alongside the remainder of the relevant considerations, and within the factual context of Mr B'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 B on the SIPP and/or the underlying investments. Refusing to accept an application isn't the same thing as advising Mr B 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 B'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 Businesses (‘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, 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 submissions, 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."*

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 therefore remain satisfied it's appropriate to take them into account too.

I've carefully considered what L&C has said about publications published after Mr B's SIPP was set up. But I'm of the view that, like the Ombudsman in the *BBSAL* case, I don't think the fact the publications, (other than the 2009 and 2012 Thematic Review Reports), post-date the events that took place in relation to Mr B'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 January 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.”

This alert 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 B. It's accepted L&C wasn't required to give advice to Mr B, and couldn't give advice. And I accept the publications don't alter the meaning of, or the scope of, the Principles. But as I've said above 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. As L&C notes from the FCA's Enforcement Guide, publications of this type “*illustrate ways (but not the only ways) in which a person can comply with the relevant rules*”. 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 and 2012 Reports 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 B's application.

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 B's application to establish a SIPP and to invest in Store First, 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.

And taking account of the factual context of this case, it's 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 TPO/the business TPO was introducing and the Store First investment *before* deciding to accept Mr B's applications.

Ultimately, what I'll be looking at here is whether L&C took reasonable care, acted with due diligence and treated Mr B fairly, in accordance with his best interests. And what I think is fair and reasonable in light of that. And I think the key issue in Mr B's complaint is whether it was

fair and reasonable for L&C to have accepted Mr B's SIPP application and Store First application in the first place. So, I need to consider whether L&C carried out appropriate due diligence checks on TPO and the Store First investment before deciding to accept Mr B's applications.

And the questions I need to consider include whether L&C ought to, acting fairly and reasonably to meet its regulatory obligations and good industry practice, have identified that consumers introduced by TPO and/or investing in Store First were being put at significant risk of detriment. And, if so, whether L&C should therefore not have accepted Mr B's application for the L&C SIPP and/or Store First investment.

The contract between L&C and Mr B

L&C has made submissions about its contract with Mr B and I've carefully reconsidered what L&C has said about this. And 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 previously been made, I've largely repeated what I'd said about this point in my provisional decision.

My 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 B or otherwise have ensured the suitability of the SIPP or Store First investment for him. I accept that L&C made it clear to Mr B 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 B 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 B'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 B on the suitability of the SIPP or Store First investment.

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

Having carefully reconsidered all of the evidence, 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 previously 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 SIPP business, L&C had to decide whether to accept or reject particular investments and/or referrals of business with the Principles in mind. To be clear, I don't agree that it couldn't have rejected applications without contravening its regulatory permissions by giving investment advice.

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 is appropriate to deal with and that a particular investment is appropriate to 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 B) 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.

So, and well before the time of Mr B'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 TPO 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, like the Store First holding, before accepting them into its SIPPs.

L&C's due diligence on TPO

Having carefully reconsidered all of the evidence, 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 previously been made, I've largely repeated what I'd said about this point in my provisional decision.

L&C had a duty to conduct due diligence and give thought to whether to accept introductions from TPO. That's consistent with the Principles and the regulators' publications as set out earlier in this decision.

L&C explained to us in a previous complaint (that was the subject of published decision DRN-3587366 – 'the published decision') 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, as Mr B was here, 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. L&C has confirmed that this policy was also in place at the time it received Mr B's application.

As I've said, while I've not been provided with a copy of the SIPP application checklist L&C completed for Mr B, I'm aware from other complaints that L&C did complete such checklists for the SIPP applications it received and that the checklist mentioned that if the IFA isn't authorised L&C had to ensure that the transfer wasn't from a DB Scheme. L&C has provided us with evidence to show that it checked TPO's entry on the FSA register on 6 August 2012. And I can see that TPO's permissions included advising on Pension Transfers and Pension Opt Outs.

As I understand it, L&C also entered into an intermediary agreement with TPO. In Mr B's case, L&C has provided a copy of an L&C Intermediary application form. This sets out TPO's details and trading status as a company. And a box reading "*Are you authorised by the UK FSA or by a regulator in another jurisdiction?*" was ticked "yes". TPO also signed the declaration confirming that it had read and agreed to be bound by the terms of the applicable intermediary agreement. In a separate complaint, our Service asked L&C for evidence of any discussions it had with TPO about the client process and the business it was referring, as well as copies of any agreements that were in effect between it and TPO. L&C responded to say terms of business were in place when it accepted TPO as an introducer of business on 6 August 2012. But it had searched its records, and system migrations since its due diligence was carried out meant it couldn't provide the information we'd asked for.

As part of an agreement process, it was open to L&C to mention to TPO any policy requirements it had for full regulated advice to be made available to applicants where introduced business involved pension transfers. To date, no correspondence I've seen between L&C and TPO mentioned this.

In a separate complaint, our Service also asked L&C a series of detailed questions about the due diligence it undertook into TPO. This included information about, amongst other things, what L&C understood TPO's business model/client process to involve, how introductions were made, whether TPO was advising on the transfer and/or the underlying investments, whether L&C's understanding was advice would be given by TPO and whether L&C had asked to see any suitability reports/pension transfer reports provided to clients TPO was introducing, details about the volume of business TPO introduced to L&C, the period this occurred over, the percentage of the introductions that involved occupational pension transfers and the percentage of the introductions where applicants were to invest in non-mainstream investments.

In response, L&C told us TPO was an FCA regulated financial advisory firm with specific specialist pension transfer advice permissions. L&C understood that clients would approach TPO for advice in relation to understanding if a transfer from a DB pension scheme was suitable for their personal financial circumstances and objectives. Following system migrations since the due diligence was carried out, L&C was unable to retrieve the searches it had carried out. But L&C would have checked the FCA register to ensure TPO held the correct permissions for the transactions that they were proposing to recommend.

L&C's response to us went on to say L&C is an execution-only SIPP provider, and had no permissions or experience to advise or comment on the suitability of the transaction. L&C did not request copies of the suitability report from the introducer or consumer as it wasn't qualified to comment on whether the recommendations are suitable for an individual's personal financial circumstances or whether they meet their objectives, as, apart from not being qualified to assess if the advice is appropriate, L&C would not be entitled to have sight of the full fact-find that the adviser is required to carry out to enable them to consider the recommendations they intend to provide. Consumers appointed the FCA regulated adviser to provide holistic advice, which included the establishment of the SIPP, the pension transfers and the investment. L&C's understanding was that TPO would advise on the underlying investments which would be noted within the SIPP application form.

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.*"

To date, L&C has provided us with very little information about its relationship with TPO. From that information which has been provided, I'm satisfied that L&C did take *some* steps towards meeting its regulatory obligations and good industry practice. However, I don't think those steps we've seen evidence of went far enough, or were sufficient, to meet L&C's regulatory obligations and good industry practice.

I think L&C was aware of, or should have identified potential risks of, consumer detriment associated with business introduced by TPO, including the following, before it accepted Mr B's application:

- The SIPP business introduced by TPO had anomalous features – it appears to have been high risk business, including a number of DB scheme transfers where monies were ending up invested in unregulated and esoteric investments post-transfer.
- Neither TPO (nor any other regulated party) was offering the consumers being introduced full regulated advice (that is advice on the transfer or switch to the SIPP, the establishment of the SIPP *and* the intended Store First investment). Further, even though TPO had the necessary permissions to give full advice on the business it was introducing, it was restricting its advice and it wasn't offering advice on the suitability of the intended Store First investment.

- An unregulated firm, Jackson Francis was promoting the Store First investments.
- L&C should have taken steps to address these risks (or, given these risks, have simply declined to deal further with TPO). Such steps should have involved getting a fuller understanding of TPO's business model – through requesting information from TPO and through independent checks.
- Such understanding would have revealed there was a significant risk of consumer detriment associated with introductions of business from TPO.
- In the alternative TPO 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 TPO.

I've set out below some more detail on anomalous features of the business TPO was introducing to L&C, and on potential risks of consumer detriment that I think L&C either knew about, or ought to have known about, *before* it accepted Mr B's SIPP application. These points overlap, to a degree, and should have been considered by L&C cumulatively.

Anomalous features

Having carefully reconsidered all of the evidence, 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 previously been made, I've largely repeated what I'd said about this point in my provisional decision.

The type of investments being made by TPO-introduced consumers

In a separate complaint, L&C was asked what percentage of the TPO-introduced consumers invested in non-mainstream investments and what percentage invested in Store First. L&C told us that TPO had introduced 42 clients to L&C and L&C's sampling showed over 80% of these invested in Store First but it doesn't appear to have clarified the overall percentage that invested in non-mainstream investments.

Given this, I'm satisfied that in *most*, if not all, of the instances L&C sampled the consumers ended up with SIPP monies invested in higher risk non-standard assets like the Store First investment. And I think it's not unlikely that this might be reflective of the pattern of total business L&C received from TPO. So, based on the evidence I've seen to date, I think it's more likely than not that either all of, or the vast majority of, consumers introduced to L&C by TPO ended up with SIPP monies invested in higher risk non-standard assets like the Store First investment.

That *most* TPO-introduced consumers were ending up invested in higher risk unregulated holdings also doesn't appear inconsistent with what Mr P of TPO is quoted as stating by the FCA in a final notice it issued about a firm named United Claims Management Limited dated 14 May 2021. The FCA quotes Mr P as stating that:

"...I was a director of The Pensions Office Limited, which went into Creditors Voluntary Liquidation on 9 March 2015"; "Since at least 16 July 2012 I misused my position as an 'Approved Person' with the regulatory authority by failing to ensure that The Pensions Office ('TPO') properly advise[d] its clients on the transfer of low-risk personal and occupation (sic) pension products into Self-Invested Personal

Pensions ('SIPPs') and failing to advise clients on the high risk unregulated underlying investment, much of which was into 'Storepod' investments"; and "TPO also failed to take into account financial circumstances, needs and objectives and attitude to risk when advising clients and failed to ensure that adequate systems, controls, risk analysis and management information were put in place..."

So, from the evidence that's been made available to us to date, I think either all of, or the vast majority of, consumers introduced to L&C by TPO ended up with their SIPP monies invested in higher risk unregulated investments such as the Store First investment Mr B invested 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. And I think L&C either was aware, or ought reasonably to have been aware, that the type of business TPO was introducing was high risk and therefore carried a potential risk of consumer detriment.

Volume and nature of business introduced

An example of good practice identified in the FSA's 2009 Thematic Review Report 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."

In a separate complaint, L&C told us TPO made its first introduction to L&C on 13 August 2012. That there was no set expectations for the number of introductions TPO would make to L&C each month. And the number varied, with one in August 2012, fifteen in September 2012, fourteen in October 2012, and two to three a month thereafter until April 2013. L&C told us that TPO had introduced 42 consumers to L&C. That during the period TPO was making introductions to L&C, TPO's introductions constituted 3.4% of L&C's new business. And of the 42 introductions TPO made to L&C, about 60% involved DB scheme transfers.

Based on this, I think L&C had access to information about the number and type of introductions that TPO made. And I don't think simply keeping records about the number and nature of introductions that TPO made without scrutinising that information was 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.

Mr B's SIPP application form included TPO's details and had a box ticked that said *"Advice given at point of sale to client"*. But this wasn't the only form L&C received in relation to Mr B. An investment purchase request form was also completed in relation to Mr B. This form included a question about whether advice had been provided on the proposed investment, and the box reading *"I have received no advice on the merits of my proposed investment and the investment decision is my responsibility"* was ticked. This was followed by a section for the adviser to complete (including a box for their FSA number(s)) if advice had been given, and this section was not completed. And I'm mindful this is in line with other investment purchase request forms I've seen supplied on different complaints for other TPO-introduced consumers who invested L&C SIPP monies in Store First.

From the point in time it first started receiving investment purchase request forms from TPO-introduced consumers for Store First investments, I think L&C was on notice from the content of those forms that TPO might not have given consumers *any* advice on Store First investments.

TPO was a regulated business that had permissions to advise on the establishment of a SIPP, the transfer of monies into that SIPP and where monies would be invested post-transfer. But I think that from very early on L&C was aware, or ought to have been aware, that TPO wasn't a firm that was doing things in a conventional way.

It's unusual for regulated advice firms to be involved in transactions involving pension transfers to invest in high risk esoteric investments, such as the Store First investment, where no advice is being given by that firm on the esoteric investment. That's because the risks involved in such investments 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.

I think this ought to have been a red flag for L&C in its dealings with TPO. And I think L&C ought to have recognised that there was a risk that TPO might be *choosing* to introduce consumers without their having been offered regulated advice by TPO on the unregulated investments that their transfers to L&C were being effected to make. I think L&C ought to have viewed this as a serious cause for concern – this was a clear and obvious potential risk of consumer detriment in this case.

And I think this concern ought to have been even greater in a case like Mr B's where a DB scheme was involved. 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 COBS – even if it didn't apply directly to it. This was a further clear and obvious potential risk of consumer detriment.

The involvement of an unregulated business

Having carefully reconsidered all of the evidence, 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 previously been made, I've largely repeated what I'd said about this point in my provisional decision.

As I've mentioned above, from the point in time it first started receiving investment purchase request forms from TPO-introduced consumers for Store First investments, I think L&C was on notice from the content of those forms that TPO might not have given consumers any advice on Store First investments.

Having carefully considered the available evidence, including Mr P's comments referenced above, and investment purchase request forms I've seen in this and other complaints against L&C where TPO was the introducer, I think it's more likely than not that most, if not all, TPO-introduced L&C consumers investing in Store First were doing the same thing. By

which I mean that SIPP application forms to establish an L&C SIPP were being submitted for TPO-introduced L&C consumers recording that advice was given at the point of sale by TPO, pension monies were then being transferred into the newly established L&C SIPPs for those consumers, and, subsequently, they were submitting an investment purchase request form to L&C to invest in Store First and where the section of that form for an adviser to complete if advice had been proffered was blank.

If L&C believed that TPO was advising consumers on the Store First investment, I think L&C ought to have questioned this anomaly in the investment purchase request forms it was receiving. And I think it ought to have done this from the point in time that it first started receiving such forms from TPO-introduced consumers.

To be clear, I don't think it's credible that most, or all, of these TPO-introduced consumers were independently determining to invest their pension monies in Store First without any input from a third party. Given what L&C ought reasonably to have identified about the business it was receiving from TPO had it undertaken adequate due diligence, I think this should have been a significant cause for concern for L&C and caused it to consider the business it was receiving from TPO very carefully. I think that L&C ought to have been alive to the risk that an unregulated third party might have been involved in promoting the Store First investments to investors, like Mr B, and that consumers might not have been receiving any regulated advice from TPO on their Store First investments.

L&C obtained a report from a firm named Enhanced Support Solutions Limited. This report stated that Store First was promoting its products in the UK through Harley Scott Holdings Limited. And it was, or ought to have been, apparent from paperwork that L&C received, such as the Store First reservation form, that Jackson Francis was also involved in the process. Neither Harley Scott Holdings Limited nor Jackson Francis were regulated by the FSA/FCA.

I'm satisfied from the content of TPO's suitability report and Mr B's investment purchase request form that Jackson Francis was involved in promoting the Store First investment to Mr B.

Even if the promotion of Store First wasn't a regulated activity, this was nonetheless another clear and obvious potential risk of consumer detriment – particularly where pension investors were being targeted, as appears to be the case here.

It's unlikely retail clients like Mr B were proactively deciding to transfer their pension provisions to a SIPP in order to invest in Store First without the involvement of a third party.

I think that L&C should have been alive to the risks associated with an unregulated firm promoting an unregulated investment for SIPPs to consumers being introduced to L&C, and which investment was unlikely to be suitable for the vast majority of retail clients. That's especially true in circumstances like this where I think L&C ought to have identified that regulated advice, on the unregulated investment that consumers' pensions monies were being transferred to L&C to effect, wasn't being offered to those consumers by the IFA who was introducing their business to L&C.

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

Having carefully reconsidered all of the evidence, 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 previously 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 TPO. 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.

Requesting information directly from TPO

Given the significant potential risk of consumer detriment I think that, as part of its due diligence on TPO, L&C ought to have found out more about how TPO was operating and *before* it accepted Mr B's application. Mindful of the type of introductions I think it was receiving from TPO, and the content of investment purchase request forms it was receiving for TPO-introduced consumers investing in Store First, I think it's fair and reasonable to expect L&C, in-line with its regulatory obligations, to have made some very specific enquiries and obtained information about TPO'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 way *"...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."

I think that L&C, and *before* it received Mr B's application from TPO, should have checked with TPO 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 full advice, what its arrangements with any unregulated businesses were, how and why retail clients were interested in making Store First 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 obtaining this *type* of information from TPO was a fair and reasonable step for L&C to take, in the circumstances, to meet its regulatory obligations and good industry practice.

And, on balance, I think it's more likely than not that if L&C *had* checked with TPO and asked the *type* of questions I've mentioned above that TPO would have provided a full response to the information sought.

In the alternative, if TPO had been unwilling to answer such questions if they'd been put to it by L&C, I think L&C should simply then have declined to accept introductions from TPO.

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 enhance its understanding of the introductions it was receiving from TPO. 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, like Mr B, directly and also to seek copies of the suitability reports.

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 TPO’s business model. It could also have helped to clarify to L&C whether full regulated advice on the overall proposition was being offered to consumers, including on the Store First investment that TPO-introduced consumers’ pension monies were being transferred to L&C to effect. These were fair and reasonable steps 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, 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 previously 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 accepted Mr B’s application:

- TPO was having business referred to it by introducers, like Jackson Francis, and it was then introducing business to L&C.
- TPO wasn’t offering consumers it was introducing to L&C (like Mr B) advice on the suitability, or otherwise, of the high risk unregulated Store First investment that their L&C SIPPs were being established, and that their monies were being transferred to L&C, to effect.
- Consumers might have been ‘sold’ on the idea of transferring pension monies so as to invest in Store First before the involvement of any regulated parties.

- The anomalous features I've mentioned above carried 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 the introductions L&C received from TPO. I think that L&C ought to have had real concerns that TPO wasn't acting in customers' best interests, and wasn't meeting its regulatory obligations.

Had L&C carried out the due diligence I've mentioned above, I think it should have identified that consumers (like Mr B) introduced by TPO hadn't been offered, or received, regulated advice from TPO on the suitability, or otherwise, of the high risk unregulated investment that their pension monies were being transferred to L&C so as to effect.

The copy (albeit a partial and not complete copy) of the suitability letter TPO sent to Mr B says that TPO doesn't recommend he transfer his DB scheme, but TPO still proactively offers to assist in effecting the transfer if Mr B wants to transfer to make one or more investments that aren't permitted in his (then) existing pension arrangement. L&C says it understands TPO's suitability letter would have said alternative investments represented a higher risk than appeared appropriate for Mr B's risk profile.

And I've seen that TPO's suitability letter states that it had been "*advised*" by Jackson Francis that Mr B wanted to transfer his monies into a SIPP so as to make investments that weren't permitted within his existing arrangement. TPO says that if Mr B's overriding intention was to transfer, it would be happy to assist him with transferring his monies to L&C. And it seems TPO does this without offering any advice on the specific Store First investment while at the same time enclosing application forms for Mr B to complete and return to TPO, so that the transfer could proceed. I've seen advice letters from TPO which adopt a similar approach on a number of other complaints we've received against L&C where TPO was the introducer (copies of which have previously been sent to L&C on other complaints).

As I've mentioned above, it's unusual for regulated advice firms to be involved in transactions involving pension transfers to invest in high risk esoteric investments, such as the Store First investment, where no advice is being given by that firm on the esoteric investment. That's because the risks involved in such investments 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.

So, the approach TPO was taking was an unusual role for a regulated advice firm to take. In the SIPP application form it was stated that advice was given at the point of sale. However, TPO wasn't discussing the specific risks associated with the Store First investment with consumers it was introducing to L&C, even though the reason those consumers were establishing L&C SIPPs, and transferring pension monies to L&C, was so as to effect the Store First investment. This raises significant questions about the motivations and competency of TPO – particularly where consumers were being introduced by an unregulated business like Jackson Francis.

Had L&C taken appropriate steps, such as seeking clarification from some applicants introduced by TPO at the time, like Mr B, and/or requesting copies of some suitability reports for TPO-introduced consumers, I think it's more likely than not that the information L&C obtained would have accorded with what TPO was stating in its suitability reports at the time, and with what Mr P is quoted as saying in the FCA's 14 May 2021 final notice mentioned above. Namely, that TPO wasn't offering consumers it was introducing any advice on the high risk unregulated investments, like Store First, that their pension monies were being transferred to invest in.

I therefore think L&C ought to have concluded Mr B - and applicants before him – weren't being offered regulated advice by TPO on the unregulated investment that their pension monies were being transferred to L&C to effect. And I think that L&C ought to have viewed this as a significant point of concern. Retail consumers, like Mr B, were transferring pension monies, including DB schemes, to L&C to invest in higher-risk esoteric investments like Store First, and without the benefit of having been offered any regulated advice on that investment by the IFA who was introducing their business to L&C.

I also think L&C should have concluded that consumers introduced by TPO who were investing in Store First were likely being 'sold' on the Store First investments by an unregulated third party. I'm satisfied TPO's suitability report supports such a conclusion and I think, if asked, Mr B would have explained how his Store First application came about – which, as I mention, was likely the result of the involvement of the unregulated business Jackson Francis.

So, I think that L&C should have identified that the business it was receiving from TPO, whereby TPO wasn't offering consumers it was introducing to L&C (like Mr B) advice on the suitability, or otherwise, of the high risk unregulated Store First investment that their monies were being transferred to L&C to effect, raised serious questions about the motivation and competency of TPO.

And I think L&C should have concluded, and *before* it accepted Mr B's business from TPO, that it shouldn't accept introductions from TPO. I therefore conclude that it's fair and reasonable in the circumstances to say that L&C shouldn't have accepted Mr B's application from TPO.

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

L&C shouldn't have accepted Mr B's introduction from TPO *at all*. And, to be clear, even if I thought L&C had undertaken adequate due diligence on Store First and acted appropriately in permitting that investment into its SIPPs (which, as I'll explain below, I don't), I'd still consider it fair and reasonable to uphold Mr B's complaint on the basis of what I've already set out above – that L&C shouldn't have accepted Mr B's introduction from TPO in the first place. However, for completeness, I've also gone on to consider the due diligence that L&C carried out on the Store First investment.

L&C's due diligence on Store First

Having carefully reconsidered all of the evidence, 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 previously been made, I've largely repeated what I'd said about this point in my provisional decision.

I'm satisfied that, to meet its regulatory obligations when conducting its business, L&C was required to consider whether to accept or reject a particular investment (Store First in this case), with the Principles in mind.

I think that it's fair and reasonable to expect L&C to have looked carefully at the Store First investment *before* permitting it into its SIPPs. To be clear, for L&C to accept the Store First investment without carrying out a level of due diligence that was consistent with its regulatory obligations, while asking its customer to accept warnings absolving it of the

consequences, wouldn't in my view be fair and reasonable or sufficient. And if L&C didn't look at the investment in detail, and if such a detailed look would have revealed that potential investors might be being misled, or that the investment might not be secure or might be fraudulent, it wouldn't in my view be fair or reasonable to say L&C had exercised due skill, care and diligence – or treated its customer fairly – by accepting such an investment.

L&C has provided us with some evidence of the due diligence it undertook into Store First.

During our investigation of other complaints, L&C has provided a copy of a report by Enhanced Support Solutions Limited dated 22 March 2011. Amongst other things, the report says that:

- The Store First investment concerned ownership of individual leasehold storage units within a storage facility.
- Individual units were held under a 250-year lease.
- Units were sub-let to a management company subject to a six-year term.
- To provide income through the sub-lease to Store First Management Limited ('SFML'), SFML rented the units, under licence, to end users.
- The seller of the sub-lease was Store First and the UK promoter was Harley Scott Holdings Limited.
- A CCJ was issued against the promoter of the scheme, but Enhanced Support Solutions Limited understood this arose from a disputed invoice which was in the course of being settled.
- The leasehold interest could be sold/assigned at any time.
- It was anticipated that the individual value would primarily be based on the rental income achieved. A standard valuation could be obtained as per any property from a RICS surveyor.
- The lease was on commercial terms with SFML. The scheme member shouldn't use the storage space for their own use to avoid any personal benefit being derived.
- As the investment was unregulated, no protection was offered through the FSCS.
- The review had been based on information supplied by Harley Scott Holdings Limited.
- Where used by a SIPP operator, a scheme member 'high risk/illiquid' disclaimer could be considered.
- The SIPP operator should engage legal advice on conveyancing.
- The investment was approved for SIPP investment by an Enhanced Support Solutions Limited consultant on 5 April 2011.

On 23 August 2012 an L&C employee (an investment support manager, as I understand it) emailed several colleagues at L&C, including L&C's Director & Head of Compliance. The email was titled "*Store First – Review*" and stated that:

"Following the receipt of the SIP Member Update which mentioned that [Mr W's] firm faces tax investigation' we immediately imposed a temporary suspension on all Store First investments pending further investigation. I advised all three IFA introducers by telephone that we have a technical issue and have imposed a temporary suspension until we resolve.

I have carried out an investigation and based on the information obtained my findings follow:

Findings

1) *The tax investigation is into Harley Scott Group of companies and this does not currently extend to Store first or its parent Group First. We have received written confirmation of this from Pierce Accountants.*

2) *It is not apparent that Harley Scott is linked to Store First or Group First in anyway other than that [Mr W] is a director and shareholder in all.*

[there is no 3]

4) *[Mr W's] business dealings seem to attract the label of 'controversial' in press articles.*

5) *[An employee of] SIPP Investment Platform Limited confirmed that he has an increased level of enquiries on Store First (I suspect in response to their member bulletin) and metioned [sic] that some providers are not allowing investment into Storefirst, and that others are awaiting their report. He was unable to provide any further additional information. They are starting their review of this investment at the moment and the report will not be available for a few weeks.*

6) *[An employee of] Hetheringtons Solicitors [sic] confirmed that Harley Scott is a separate company to Store First, and added that as we are purchasing a lease she believes that a [sic] even if a tax investigation was to be carried out on Store First it should have no detrimental affect on our purchase. She was of the opinion that we did not need to be concerned by the tax investigation.*

Recommendation

My recommendation would be to lift the suspension with immediate effect to be reviewed again upon receipt new information or the SIP report whichever is sooner. If everyone is in agreement then I will also confirm to the IFAs introducing the business that we have lifted the suspension pending the detailed DD report being carried out by SIP. I suggest that we also make a weekly internet search of the above until the SIP report is available.

Please confirm if you are all in agreement."

I've seen two replies from two different individuals, including from L&C's Director & Head of Compliance, to the 23 August 2012 email. The effect of the responses is to support the recommendation and it's noted in one of the responses that:

"Good investigation and analysis. Your recommendations are agreed by me.

...

...we should probably check to see if the Storepods investment is captured by the latest FSA initiative re UCIS or UCIS-type investments as this will determine whether we should be vetting the apps to check that the clients are Sophisticated/High Net Worth etc.

...

[Name of investment support manager] will you also give [L&C colleague] the go ahead to process the apps."

On 17 January 2013 the same investment support manager at L&C sent an email to a L&C sales team address and a L&C property address. The subject of the email was "*Subject: Storefirst - Storepods - Self Storage Units - Suspension of investment*" and the email said that:

“We have with, immediate effect, suspended all new investments in the above.

Storefirst have failed to provide us with certain ongoing monitoring information within a reasonable timescale and our Investment Committee have decided that we suspend all new investments. This includes any applications we have already received.

*Please would you make sure you update any of your IFA's who submit Storefirst - Storepod applications **immediately**. I believe that the majority are submitted by The Pensions Office and Real SIPP. I suggest that if you are questioned then you say something like **'we have requested an update on the progress of the facilities and a response has not been forthcoming'**.”*

We've been provided with an ongoing monitoring report by L&C's investment support manager dated 26 February 2013. It's noted amongst other things in the report that:

- L&C had requested an update on the progress of the investment.
- Store First hadn't provided information within a reasonable timescale, so L&C had decided to temporarily suspend any pending or new investment into Store First.
- The total value of L&C's Storepod purchases was £1,400,000 as at end of January 2013.
- This was made up of 53 different SIPP members equating to an average holding per member of £26,415.
- It was looking to check that Store First was delivering on the promises made to investors.

It had asked Store First for the following:

“The present sites that we have accepted are Barnsley, Liverpool, Rochdale and Blackburn. Please can you confirm if the units have been built and are ready for leasing.

If any of the sites have been built can you confirm if any of the units we have purchased have been rented out or if they are still working under the guaranteed rental agreement set out in the contracts.

- 1) Report & Accounts for each company
- 2) Plan of each site detailing all storage units
- 3) How many storage units on each site have been completed to date
- 4) How many storage units on each site have not been completed to date
- 5) How many storage units on each site have been let to date
- 6) Have any of the storage units subsequently been sold, how many, at what price compared with the original purchase price
- 7) How many storage units we own on each site”

The report continued noting that:

- Members are provided with an outline of costs and sample legal documents by L&C before entering into any obligation to purchase. Purchases only proceed once members have confirmed that they're happy with the documents and fees.
- It insists on a valuation for each site from an appropriately qualified valuer, and its property team obtain valuations on a six-monthly basis for each site.
- All Storepod purchases are made via scheme appointed lawyers and have clear title and are registered individually at HM Land Registry.

- L&C's property team had advised that rent was coming in as expected with no issues. All of the Storepods were (then) within the rent guarantee period.
- Store First appeared to have made all of their annual returns and submitted accounts as required.
- A SIPP Investment Platform ('SIP') Review was carried out by SIP's precursor Enhanced Support Solutions in 2011 (as I understand it this is the Enhanced Support Solutions Limited report I've referred to elsewhere in this decision).
- Store First had provided L&C with the information it had requested.
- L&C hadn't verified information and commentary provided by Store First regarding timescales, achievable rent, resale values, and market research. However, the valuations provided appear to support Store First's claims.
- It's appropriate that L&C carry out checks from time to time to ensure that the investment is operating as promised by the investment provider.
- It appears that Storepods are being sold constructed and let out as promised. Rent is being received, and the purchases are all being made as expected. The Hetherington Partnership had no cause for concern and legal title was being registered at HM Land Registry.
- There didn't appear to be cause for concern at this stage, but due to the unregulated nature of the investment and large sums of money already invested L&C should exercise continued caution.
- The recommendation was to continue ongoing monitoring and to lift the suspension immediately. Further, that any new sites from the same corporate entities with an identical set up to those L&C had already invested in wouldn't need to pass through SIP.

We've been provided with some of the correspondence that's referred to in the 26 February 2013 report. But, I've not seen copies of the emails that were exchanged between L&C's investment support manager and Group First/Store First on 21 January 2013, 24 January 2013, 28 January 2013 and 5 February 2013 – this included correspondence with Mr W. I've also not seen copies of emails that are referred to between L&C's investment support manager and The Hetherington Partnership on 19 February 2013. In a separate complaint, our Service asked L&C to provide copies of Store First's responses to it regarding these questions. L&C responded to say it had searched its records but system migrations since its due diligence was carried out meant it had already provided what information it had been able to retrieve.

Group First emailed L&C's investment support manager on 9 January 2013 and it was stated that some of the information that had been requested was being enclosed. This included reports and accounts for each company, a plan of each site, a current valuation and site information.

I've seen copies of the site plans and a copy of the valuation. But I've not seen the content of the response provided by Group First/Store First to the other queries L&C raised. Including, amongst other things, information about the number of storage units that had been completed on each site, the number of storage units that had been let to date and whether any storage units had been sold and, if so, the price they'd been sold at compared to the original purchase price. But as I say, L&C has told our Service it's searched its records but system migrations since its due diligence was carried out meant it had already provided what information it had been able to retrieve.

The valuation report was undertaken by a chartered surveyor who had received instructions from Group First to inspect a Storage Pods property in Barnsley. The valuer said amongst other things that:

“The property is likely to enjoy a fair level of occupational demand by virtue of its site, general characteristics and condition.

...

We consider there are unlikely to be any significant fluctuations in the general levels of both rental and capital values.

...

The individual store pods are held on a 250 year Long leasehold basis with a ground rent of £12.50 per sq ft payable. There is a service charge of £1.95 per sq ft payable. A management fee of 15% of the rent receivable is charged by Store First.

The store pods are sublet back to Store First at a rental of £17 per sq ft per annum on an 86 year lease. There are fixed upwards-only rent reviewed every two years.

...

There had been a general downturn in the commercial property market over the past four years. This has affected all types of commercial properties with a large reduction in values from the peak of the market in Autumn 2007.

There's then a section titled “Capital Value” with a table that reads as follows:

Size (sq ft)	Market Value
25	£4,750.00
50	£9,500.00
75	£13,950.00
100	£18,750.00
150	£27,950.00
175	£32,950.00

On 8 March 2013, the investment support manager at L&C sent an email to a number of L&C colleagues. The subject of the email was “Storefirst - New Sites” and the email said that:

“As we agreed - The property team can proceed with investments in the following sites on the basis that we have already carried out a review of the existing sites/investment and that we must have received and accepted a valuation of the site for the specific purchase. We have already carried out a recent review of the contracting entities involved in the existing sites and it is our understanding that the entities will be the same for new sites.

*Barnsley x1
Blackburn x3
Burnley x2
Ellesmere Port x1 (aka Cheshire Oaks)
Glasgow x1
Leeds x1
Liverpool x2
Rochdale x2
Preston x1
Wakefield x1*

Property Team - Please ensure you have received a valuation for each site and that it has been accepted by us. If you detect any changes to contracts or companies involved then please notify Corporate Governance immediately.

(L&C colleague) please put this in the Storefirst file."

Having carefully considered all of the information that's been made available to us to date, I don't think L&C's actions went far enough. As I explain in more detail below, I'm not currently satisfied that L&C undertook sufficient due diligence on the Store First investment *before* it decided to accept that investment into its SIPPs. As such, in my view, L&C didn't comply with its regulatory obligations and good practice, and it didn't act fairly and reasonably in its dealings with Mr B, by not undertaking sufficient due diligence on the Store First investment *before* it accepted Mr B's application to invest in Store First.

Further, based on what it knew or ought to have known had it undertaken sufficient due diligence, I think L&C failed to draw a reasonable conclusion on accepting the Store First investment into its SIPPs.

If L&C had completed sufficient due diligence, what ought it reasonably to have discovered?

Having carefully reconsidered all of the evidence, 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 previously been made, I've largely repeated what I'd said about this point in my provisional decision.

I note that some information about the Store First investment was compiled by Enhanced Support Solutions Limited. That firm provided L&C with a brief report and, amongst other things, the report said that no adverse history had been found about the seller of the sub-lease, Store First, or the UK promoter, Harley Scott Holdings Limited.

Reference was made to a CCJ being recorded against Harley Scott Holdings Limited and Enhanced Support Solutions Limited said that it understood this arose from a disputed invoice that was in the course of being settled. Enhanced Support Solutions Limited doesn't expand on how it's come to that understanding, but it does say elsewhere in its report that *"This review has been based on information supplied by email from...Harley Scott Holdings Limited."*

In my view, it would have been fair and reasonable for L&C to have conducted some further basic *independent* searches following its receipt of Enhanced Support Solutions Limited's report. I think that's especially true in the circumstances given the fact that Enhanced Support Solutions Limited acknowledged its review was premised on information supplied by Harley Scott Holdings Limited.

Enhanced Support Solutions Limited's report was mentioned in the 26 February 2013 ongoing monitoring report by L&C's investment support manager. It's not clear how much weight L&C placed on Enhanced Support Solutions Limited's report *before* first permitting Store First investments to be held in its SIPPs. However, in my view Enhanced Support Solutions Limited's report was of limited value. It was cursory, it states it's based on material emailed to it by Harley Scott Holdings Limited and it makes no comment on the obvious issues with the Store First marketing material. So, I don't think L&C should have taken much comfort from Enhanced Support Solutions Limited's report or attached any significant weight to it.

Had basic *independent* searches been completed by L&C following its receipt of Enhanced Support Solutions Limited's report, I think it's more likely than not that they'd have shown that Dylan Harvey Group Limited (Harley Scott Holdings Limited's previous business name before a name change in June 2010) and one of its directors, Mr W, had been the subject of national press reports, online petitions and proposed legal action, as a result of a failed property investment. It was reported that hundreds of investors had invested money in a scheme to develop flats, but the flats had not been built and the investors had been unable to recover their money. Mr W was also a director of Store First. Some of these things were briefly mentioned in the internal L&C email of 23 August 2012 I've mentioned above.

I think a basic search of Harley Scott Holdings Limited's filing history would also have shown issues being raised by Harley Scott Holdings Limited's then auditors at the start of 2010, which resulted in their resignation. And that in Harley Scott Holdings Limited's accounts made up to 28 February 2009, auditors had highlighted that they're materially uncertain as to the future of Harley Scott Holdings Limited.

Importantly, and consistent with its regulatory obligations, I think that when undertaking due diligence into the proposed Store First investment that L&C should have had regard to, and given careful consideration to, Store First's marketing material.

Store First's marketing material from the relevant period included the following prominent statements:

"You will receive guaranteed returns from a 6 year lease already in place upon completion, making this a high yielding, hassle-free investment which has been specifically designed to meet the needs of today's astute investor."

"You will receive a 6 year lease in place upon completion. The lease produces an excellent return of 8% (guaranteed for the first 2 years) rising to over 12% in years 5 and 6. The lease contains upward-only rental reviews and break clauses for both parties every two years."

The marketing material also sets out in a table the returns payable in years 1&2, 3&4 and 5&6 at 8%, 10% and 12%. In the "Your Questions Answered..." section the following is included:

"What rental income can I expect?"

Storepod rental starts at £17 per Sq/Ft per annum (+ VAT). The 6 year tenancy/lease in place on your Storepod has fixed upwards only rental reviews and break clauses (for both parties) every 2 years. This produces an 8% yield on your investment within the first two years, this then is predicted to rise to over 10% return in years 3&4 and then surpass 12% return in years 5&6.

Can I easily re-sell my Storepod?

Yes, you can re-sell your Storepod at any time and selling your Storepod couldn't be simpler. Store First Ltd can market your Storepod upon your request. We believe that because Storepods are so competitively priced when new, they will make a very attractive sale proposition in the future. We also expect that many tenants will wish to purchase the Storepod they are using. For example, other self storage PLCs usually achieve rent of between £20.00 - £25.00 per square foot. Our Storepods are costed at a rent of only £17.00 per square foot; once higher rents are achieved the capital value of the Storepod will increase.

Guaranteed exit route?

In year 5, investors have the option to enter the guaranteed buy-back scheme. In this scheme, Store First Management Ltd will guarantee to buy the Storepod back off the investor for the original price paid within the next 5 years. This is a unique offer in the market place and we are happy to be able to offer this exit route to our investors.

Most investors are driven to keep the property investment they have purchased and carry on receiving the rental yield produced for years to come, this means only a very limited number of Storepods per centre will ever come onto the resale market, this creates a high sale value and demand for the future."

The marketing material says the *"figures shown are for illustration purposes"*. But it does not contain any type of risk warning, or illustrations of any other returns. No explanation of the guarantees was offered, or the basis of the projected returns – other than Store First's own confidence in its business model and the self-storage marketplace.

L&C's internal August 2012 email records that an employee of SIP confirmed that there'd been an increased level of enquiries on Store First and that some providers were not allowing investments in Store First, and that others were awaiting SIP's report. It was noted that this report wouldn't be available for a few weeks.

As I understand it, L&C opted not to wait for the report from SIP before continuing to permit Store First investments to be held in its SIPP. L&C later decided to suspend further investments being made in Store First in January 2013, noting that Store First had failed to provide it with information requested in a reasonable timescale.

I can see some questions that L&C asked Store First, as they're set out in correspondence we've been provided alongside L&C's ongoing monitoring report of 26 February 2013. Aside from question 7) *"How many storage units we (L&C) own on each site"*, the other questions set out in the correspondence are all questions that I think L&C ought to have asked Store First *before* it permitted consumers, like Mr B, to invest in Store First through their L&C SIPP. I've not seen that L&C did this.

I've also not seen the answers that L&C received from Store First to the questions *"How many storage units on each site have been let to date"* and *"Have any of the storage units subsequently been sold, how many, at what price compared with the original purchase price."*

I do think L&C having concerns about these issues on an ongoing basis and asking these questions was good practice. But I also think that questions like these were relevant to establishing an understanding of the nature of the investment and trying to ensure the investment was genuine at outset. Such that L&C should also have obtained answers to questions akin to these *before* it allowed Store First investments to be held in any of its SIPPs.

And I think that's especially true in circumstances like these where, as I explain below, I think that L&C should have identified, and *before* permitting the Store First investments to be held in its SIPPs, that there was a significant risk that potential investors were being misled by Store First's marketing material.

To be clear, if Store First was unwilling or unable to fully answer L&C's questions and to provide information sought then I think, consistent with its regulatory obligations and good practice L&C should simply have concluded it wouldn't permit Store First investments to be held within its SIPPs.

If L&C had completed sufficient due diligence on Store First, what ought it reasonably to have concluded?

Having carefully reconsidered all of the evidence, 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 previously been made, I've largely repeated what I'd said about this point in my provisional decision.

The failure of the previous scheme which Dylan Harvey Group Limited/Harley Scott Holdings had been involved in may have been entirely down to market forces. But I think the fact that Store First's UK promoter, who was commented on in Enhanced Support Solutions Limited's report and who had supplied information that was relied upon in that report, had recently been involved in a property investment scheme which had failed, had recently changed its name and had relatively recently been subject to some adverse comments following audit, ought to have given L&C cause for concern. Particularly when considered alongside the content of Store First's marketing material and the fact that L&C had identified that "[Mr W's] *business dealings seem to attract the label of 'controversial' in press articles.*"

In my view there were a number of things about Store First's marketing material which ought to have given L&C significant cause for concern and to have led it to have drawn similar conclusions to those later drawn by the SSA UK on the basis of a report by Deloitte LLP and the Insolvency Service. Namely, that there was a significant risk that potential investors were being misled.

Store First appeared to be presenting the investment as one that was assured to provide high and rising returns, was underwritten by guarantees, and offered a high level of liquidity together with a strong prospect of a capital return – despite the fact that there was no investor protection associated with the investment and the investment was potentially illiquid.

Store First had no proven track record for investors, so L&C couldn't be certain that the investment operated as claimed. L&C should also have been very concerned about a guarantee offered by a new business with no track record (and promoted by a business with a questionable one).

I think, in light of this, L&C should have been concerned that consumers may have been misled or didn't properly understand the investment they intended to make. Consumers could easily have been given the impression, from the marketing material, that they were assured of high returns with little or no risk and would easily be able to sell their investment when they wished to. Such an impression was clearly misleading.

And I note that in an internal L&C email we received on a different complaint, dated 21 January 2015, L&C's Corporate Governance Director raised concerns internally about some information Store First was publishing, they noted that:

"... it still remains to be seen whether the sites will "mature" as Storefirst describe it, to the point that rentals start coming in and a secondary market for sales evolves.

I do think that their website is misleading on a number of fronts. I have an email in drafting to bring this to their attention."

From the evidence I've seen I think the information Store First was publishing *before* Mr B's L&C monies were invested with it, including marketing material available through its website, gave rise to a significant risk that potential investors were being misled by Store First. I think L&C's Corporate Governance Director's comments in 2015 were equally applicable in 2012.

And I think that L&C ought to have identified this *before* permitting the Store First investment into its SIPPs. This is a clear point of concern, which I think L&C ought reasonably to have identified *before* it accepted Mr B's application to invest in Store First.

In my opinion, the issues I've identified above should have, when considered objectively, put L&C on notice that there was a significant risk of consumer detriment. And, without more evidence to ensure the investment was an appropriate one to permit within its SIPPs, I'm satisfied that L&C shouldn't have accepted the Store First investment.

In my opinion it's fair and reasonable to say that L&C ought to have concluded there was an obvious risk of consumer detriment here. All in all, I am satisfied that L&C ought to have had significant concerns about the Store First investment from the beginning. And I think such concerns ought to have been a red flag for L&C when it was considering whether to accept the Store First investments into its SIPPs. Such concerns emphasise the importance of sufficient due diligence being undertaken *before* investments are accepted and *before* SIPP investors monies are invested.

Had L&C done what it ought to have done, and drawn reasonable conclusions from what it knew or ought to have known, I think that it ought to have concluded there was a significant risk of consumer detriment if it accepted the Store First investment into its SIPPs and that the Store First investment wasn't acceptable for its SIPPs.

As such, and based on the available evidence, I don't think L&C undertook appropriate steps or drew reasonable conclusions from the information that I'm satisfied would have been available to it, had it undertaken adequate due diligence into the Store First investment *before* it accepted that investment into its SIPPs. I don't think L&C met its regulatory obligations and, in accepting Mr B's application to invest in Store First, it allowed Mr B's funds to be put at significant risk.

To be clear, I don't say L&C should have identified all the issues the SSA UK press release set out or to have foreseen the issues which later came to light with Store First. I only say that, based on the information available to L&C at the relevant time, it should have drawn a similar overall conclusion – that there was a significant risk that potential investors were being misled. I'm satisfied, on a fair and reasonable basis, that a significant risk of consumer detriment ought to have been apparent from the information available to L&C at the time. And I do think that appropriate checks would have revealed issues which were, in and of themselves, sufficient basis for L&C to have declined to accept the Store First investment in its SIPPs *before* Mr B invested in it. And it's the failure of L&C's due diligence that's resulted in Mr B being treated unfairly and unreasonably.

There's a difference between accepting or rejecting a particular investment for a SIPP and advising on its suitability for the individual investor. I accept that L&C wasn't expected to, nor was it able to, give advice to Mr B on the suitability of the SIPP and/or Store First investment for him personally. To be clear, I'm not making a finding that L&C should have assessed the suitability of the Store First investment for Mr B. I accept L&C had no obligation to give advice to Mr B, or to ensure otherwise the suitability of an investment for him.

And I'm also not saying that L&C shouldn't have allowed the Store First investment into its SIPPs because it was high risk. My finding isn't that L&C should have concluded that Mr B wasn't a candidate for high risk investments or that an investment in Store First was unsuitable for Mr B. Instead, it's my fair and reasonable opinion that there were things L&C knew or ought to have known about the Store First investment and how it was being marketed which ought to have led L&C to conclude it wouldn't be consistent with its regulatory obligations or good practice to allow it into its SIPPs. And that L&C failed to act

with due skill, organise and control its affairs responsibly, or treat Mr B fairly by accepting the Store First investments into his SIPP.

I think the fair and reasonable conclusion based on the evidence available is that L&C shouldn't have accepted Mr B's application to invest in Store First. In my opinion, it ought to have concluded that it would not be consistent with its obligations to do so. To my mind, L&C didn't meet its regulatory obligations or good industry practice at the relevant time, and allowed Mr B to be put at significant risk of detriment as a result.

Acting fairly and reasonably to investors (including Mr B), L&C should have concluded that it wouldn't permit the Store First investment to be held in its SIPPs *at all*. And I'm satisfied that Mr B's pension monies were only transferred to L&C so as to effect the Store First investment. So, I think it's more likely than not that if L&C hadn't permitted the Store First investment to be held in its SIPPs at all that Mr B's pension monies wouldn't have been transferred to L&C. Further, that Mr B wouldn't then have suffered the losses he's suffered as a result of transferring to L&C and investing in Store First.

For the reasons given above, L&C shouldn't have accepted Mr B's application to invest in Store First. And, to be clear, even if I thought L&C had undertaken adequate due diligence on TPO and acted appropriately in accepting Mr B's business from TPO (which, as I've explained earlier, I don't), I'd still consider it fair and reasonable to uphold Mr B's complaint on the basis that L&C didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly, by accepting the Store First investments into his SIPP.

I make this point here to emphasise that while I've concluded *both* that L&C shouldn't have accepted Mr B's business from TPO and also that it shouldn't have accepted his application to invest in Store First, had I only reached the conclusions I've set out above on one of those aspects and not also gone on to reach findings on the other aspect for completeness, I'd still consider it fair and reasonable in all the circumstances to uphold this complaint. That's because L&C didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly by accepting his business from TPO. And because, separately, L&C also didn't act with due skill, care and diligence, organise and control its affairs responsibly, or treat Mr B fairly, by accepting the Store First investments into his SIPP. And to my mind, L&C didn't meet its regulatory obligations or good industry practice at the relevant times, and allowed Mr B to be put at significant risk of detriment as a result.

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

Having carefully reconsidered all of the evidence, 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 previously been made, I've largely repeated what I'd said about this point in my provisional decision.

For the reasons given above, I think L&C shouldn't have accepted Mr B's business from TPO and I also think it shouldn't have accepted the Store First investment into his SIPP. So things shouldn't have got beyond that.

Further, in my view it's fair and reasonable to say that just having Mr B sign 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 the business being introduced by TPO and the Store First investment.

L&C knew that Mr B had signed forms intended to acknowledge, amongst other things, his awareness of some of the risks involved with investing and to indemnify L&C against losses that arose from acting on his instructions. And, in my opinion, relying on the contents of such forms when L&C knew, or ought to have known, that both the type of business it was receiving from TPO and allowing the Store First investment to be held within its SIPPs would put investors 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 for L&C to do would have been to decline to accept Mr B's business from TPO and to refuse to accept the Store First investment in his SIPP.

The Principles exist to ensure regulated firms treat their clients fairly. And I don't think the paperwork Mr B 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, nor do they attempt to absolve, L&C of its regulatory obligations to treat customers fairly when deciding whether to accept or reject investments or business.

L&C has made the point that it complied with COBS 11.2.19R in executing Mr B's written 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 Mr B's applications 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."

So 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 B's applications in the first place.

I'm satisfied that Mr B's L&C SIPP shouldn't have been established and his L&C monies shouldn't have been invested in the Store First holdings. And that the opportunity for L&C to execute investment instructions to invest Mr B's monies in Store First, or proceed in reliance on an indemnity and/or risk disclaimers, shouldn't have arisen at all. I'm firmly of the view that it wasn't fair and reasonable in all the circumstances for L&C to accept Mr B's business from TPO or for it to accept his application to invest in Store First.

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

Having carefully reconsidered all of the evidence, 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 previously 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 B's complaint about L&C. However, I accept that other parties were involved in the transactions complained about – including TPO and Jackson Francis.

Regarding TPO, Mr B pursued a complaint against TPO with the FSCS. The FSCS upheld Mr B's complaint, it calculated Mr B's losses to be in excess of £50,000 and paid him its limit of £50,000 compensation. Following this the FSCS provided Mr B with a reassignment of rights.

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).

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 B fairly.

The starting point therefore, is that it would be fair to require L&C to pay Mr B 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 B for his loss.

I accept that other parties, including TPO and/or Jackson Francis, might have some responsibility for initiating the course of action that led to Mr B'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 B 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 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 B to the full extent of the financial losses he's suffered due to L&C's failings. And, having carefully considered everything, I don't think that it would be appropriate or fair in the circumstances to reduce the compensation amount that L&C is liable to pay to Mr B.

To be clear, I'm not making a finding that L&C should have assessed the suitability of the SIPP or the Store First holdings for Mr B. I accept that L&C wasn't obligated to give advice to Mr B, or otherwise to ensure the suitability of the pension wrapper or investments 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 B taking responsibility for his own investment decisions

In reaching my conclusions in this case I've thought about 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 B'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 B's business from TPO or accepted his application to invest in Store First *at all*. That should have been the end of the matter – if either of those things had happened, I'm satisfied the arrangement for Mr B 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 initial and ongoing due diligence on TPO and the Store First investment and reach the right conclusions. I think it failed to do this. And just having Mr B 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.

TPO was a regulated firm with the necessary permissions to advise Mr B on his pension provisions. I'm satisfied that in his dealings with it, Mr B trusted TPO to act in his best interests. Mr B 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 B being aware of the risks. L&C says that Mr B signed documents confirming that the Store First investment was high risk. L&C hasn't provided us with copies of the documents that it says Mr B signed confirming that the Store First investment was high risk. And, as I explain below, I don't agree that the evidence we've seen to date supports the contention that it's more likely than not that Mr B *understood* the Store First investment was high risk. But, in any eventuality, this is a secondary point because, as mentioned above, if L&C had acted in accordance with its regulatory obligations and good industry practice I'm satisfied the arrangement for Mr B wouldn't have come about in the first place.

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

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

L&C says the point of no return was when Mr B accepted the CETV quote from his DB scheme and requested a transfer, and this took place before L&C had any basis to refuse any business. But I don't agree. Because when TPO sent Mr B's completed SIPP application form to L&C on 3 October 2012, its covering letter said Mr B "*wishes to transfer their pension benefits*" from his DB scheme. And it asked L&C to liaise with Mr B's DB scheme in respect of the transfer. Given this, I'm satisfied that when L&C received Mr B's SIPP application form, Mr B's pension benefits were still within his DB scheme and would only be transferred when L&C set up his new SIPP.

From the correspondence I've seen, I think that Mr B's pension monies were transferred to L&C to make the Store First investment. That position seems to be supported by the contents of TPO's suitability letter to Mr B, which says that TPO have been advised by Jackson Francis that Mr B wished to effect a transfer to a SIPP with the intention of making specific investments that were not permitted within his current pension arrangement.

L&C says that if it hadn't accepted Mr B's application from TPO and/or permitted the Store First investment in its SIPPs, that the transfer and investment would still have been effected with a different SIPP provider. But I don't think it's fair and reasonable to say that L&C shouldn't compensate Mr B for his loss on the basis of speculation that another SIPP

operator would have made the same mistakes as I've found L&C did. I think it's fair instead to assume that another SIPP provider would have complied with its regulatory obligations and good industry practice, and therefore wouldn't have accepted Mr B's business from TPO or permitted the Store First investment into its SIPPs.

In the circumstances, I'm satisfied it's fair and reasonable to conclude that if L&C had refused to accept Mr B's application from TPO and/or hadn't permitted the Store First investment in its SIPPs, the transactions wouldn't still have gone ahead and Mr B would have retained his monies in his DB scheme.

It appears Mr B received a pension commencement lump sum of £7,190.26 and gross income of £4,400.52 after his DB scheme benefits were transferred. And I acknowledge Mr B says a pension commencement lump sum was attractive. But Mr B also says that if he'd known there were risks attached to the investment, he wouldn't have gone ahead and would have been able to manage without the lump sum. Further, I've not seen any evidence to suggest Mr B had a pressing need for the lump sum or income.

So, overall, I'm not satisfied it's more likely than not that a transfer would have been effected elsewhere at the time, and with monies being invested in holdings that weren't Store First, just so as to access the pension commencement lump sum and pension income. And, on balance, I think it's more likely than not that if L&C hadn't accepted Mr B's business from TPO and/or permitted the Store First investments in its SIPP, that Mr B's monies would have remained invested in his DB Scheme.

However, Mr B has had the benefit of the pension commencement lump sum and income payments, so it's only fair and reasonable they're allowed for in any redress calculation to avoid Mr B being overcompensated.

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."

In this case, Mr B says he understood that his pension monies were being moved into a pension arrangement without risk. L&C says that the investment purchase request form shows that Mr B understood the investment was high risk.

As I've mentioned, I've seen the investment purchase request form completed in relation to Mr B and this simply says 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's bespoke to the Store First investment. I can see why the term *may* might have been used because of this, but I don't agree the contents of that form support the contention that Mr B *understood* the Store First investment was high risk.

So in this case, I've seen no evidence to show Mr B proceeded in the knowledge that the investment he was making was high risk and speculative. Or that Mr B was determined to move forward with the transaction in order to take advantage of a cash incentive. Or that he was paid a cash incentive by any of the parties involved. On balance, I'm satisfied that Mr B, unlike Mr Adams, wasn't eager to complete the transaction for reasons other than securing the best pension for himself.

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 B's application from TPO and/or to permit

Store First investments in its SIPP, the transactions this complaint concerns wouldn't still have gone ahead.

Overall, I do think it's fair and reasonable to direct L&C to pay Mr B compensation in the circumstances. While I accept that other parties might have some responsibility for initiating the course of action that's led to Mr B'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 to accept Mr B's applications when it had the opportunity to do so. And I'm satisfied that Mr B wouldn't have established the L&C SIPP, transferred monies in from his DB scheme and taken a pension commencement lump sum or pension income, or invested in Store First 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 B. 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 B for the full measure of his loss. L&C accepted Mr B's business from TPO and the Store First investments into its SIPP and, but for L&C's failings, I'm satisfied that Mr B's pension monies wouldn't have been transferred to L&C and invested in Store First.

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. However, that fact shouldn't impact on Mr B's right to fair compensation from L&C for the full amount of his loss. The key point here is that but for L&C's failings, Mr B wouldn't have suffered the loss he's suffered. As such, I'm of the opinion that it's appropriate and fair in the circumstances for L&C to compensate Mr B to the full extent of the financial losses he's suffered due to its failings, and notwithstanding any failings by other firms involved in the transactions.

I've seen nothing to suggest Mr B has previously sold any of his Store First holdings. But whether or not Mr B has previously managed to sell any of his Store First holdings doesn't alter my opinion that, but for L&C's failings, Mr B's pension monies wouldn't have been transferred to L&C and invested in Store First. Further, and from a redress perspective, I'm satisfied that L&C will need to check whether there are still any Store First investments held in Mr B's SIPP when it's performing the first step of the redress calculation I've set out below.

In conclusion

Taking all of the above into consideration, I think that in the circumstances of this case it's fair and reasonable for me to conclude that L&C should have decided not to accept business from TPO and/or to accept the Store First investment to be held in its SIPP *before* it had received Mr B's application from TPO. I conclude that if L&C hadn't accepted Mr B's introduction from TPO and/or the Store First investment to be held in its SIPP, Mr B wouldn't have established a L&C SIPP, transferred his DB Scheme monies into it or invested in Store First.

For the reasons I've set out, I also think it's fair and reasonable to direct L&C to compensate Mr B for the loss he's suffered as a result of L&C accepting his business from TPO and permitting him to invest his L&C monies in Store First.

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

My aim is to return Mr B 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 B's business from TPO and *before* permitting Mr B to invest his L&C monies in Store First.

L&C should calculate fair compensation by comparing the current position to the position Mr B would be in if he'd not transferred from his DB scheme. In summary, L&C should:

1. Take ownership of the Store First investments if possible.
2. Calculate and pay compensation for the loss Mr B's pension provisions have suffered as a result of L&C accepting his applications.
3. Pay Mr B £500 for the distress and inconvenience he's suffered.

I explain how L&C should carry out these steps in further detail below.

1. Take ownership of the Store First investments if possible.

In order for the SIPP to be closed and further SIPP fees to be prevented, any remaining Store First investments need to be removed from Mr B's SIPP. To do this, L&C should calculate an amount it's willing to accept for Mr B's Store First investments and pay that sum into Mr B's SIPP and take ownership of the Store First investments. Any sums paid into the SIPP to purchase the Store First investments will then make up part of the current actual value of the SIPP.

If L&C's unable to purchase the Store First investments, the actual value of any Store First 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 Mr B's SIPP.

I think that is fair because I think it's unlikely the Store First investments will have any significant realisable value in the future. Further, I understand Mr B has the option of returning his Store First investments to the freeholder for nil consideration. And that should enable Mr B to close his SIPP if L&C is unable to take ownership of his Store First investments.

In the event the Store First investments remain in the SIPP, as L&C is unable to purchase them and Mr B decides not to transfer them to the freeholder, Mr B should be aware that he will be liable for all future costs associated with the investment such as the ongoing SIPP fees, business rates, ground rent and any other charges. He should also be aware it's unlikely he will be able to make a further complaint about these costs.

2. Calculate and pay compensation for the loss Mr B's pension provisions have suffered as a result of L&C accepting his applications.

A fair and reasonable outcome would be for L&C to put Mr B, as far as possible, into the position he'd now be in if it hadn't accepted his application from TPO. As explained above, had this occurred I consider it's more likely than not Mr B would have remained in his DB Scheme.

L&C must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy

statement PS22/13 and set out in the regulator's handbook in DISP App 4:
<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

It's my understanding that Mr B has not yet retired but plans to retire at age 65. Neither Mr B or L&C have disputed my understanding. So, compensation should be based on Mr B taking benefits at age 65.

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

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

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

I acknowledge that Mr B has received a sum of compensation from the FSCS, and that he has had the use of the monies received from the FSCS. The terms of Mr B's reassignment of rights require him to return compensation paid by the FSCS in the event this complaint is successful, and I understand that the FSCS will ordinarily enforce the terms of the assignment if required. So, I think it's fair and reasonable to make no *permanent* deduction in the redress calculation for the compensation Mr B received from the FSCS. And it will be for Mr B to make the arrangements to make any repayments he needs to make to the FSCS. However, I do think it's fair and reasonable for some allowance to be made for the sum(s) Mr B actually received from the FSCS and has had the use of for a period of the time covered by the calculation.

As such, for the purposes of the calculation that's being carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4, if it wishes, L&C *may* notionally, for the period from the point of their payment through until the valuation date (as per the DISP App 4 definition of that term), allow for the payment(s) Mr B received from the FSCS following the claim about TPO, as an income withdrawal payment. Where such an allowance is made then L&C must also, at the end of the calculation, allow for a notional addition to the overall calculated loss that's equivalent to the payment(s) Mr B received from the FSCS following the claim about TPO. The effect of this notional addition will be to increase the overall loss calculated using the most recent financial assumptions in line with

PS22/13 and DISP App 4, by a sum that's equivalent to the payment(s) Mr B received from the FSCS.

Redress paid to Mr B as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, L&C may make a notional deduction to cash lump sum payments to take account of tax that Mr B would otherwise pay on income from his pension.

At the time of the transfer, Mr B was age 53 and his pension provision was worth around £30,000. Mr B hasn't disagreed with what was said in my provisional decision about it being reasonable to assume he is likely to be a basic rate taxpayer in retirement. L&C does dispute this, but I haven't seen any evidence that makes me think it's more likely than not Mr B will be anything other than a basic rate taxpayer in retirement.

On balance, and having carefully considered all of the evidence we've received, I think it's fair and reasonable to conclude it is more likely than not that Mr B will be a basic rate tax payer at his selected retirement age. So the reduction would equal 20%. However, if Mr B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

3. Pay Mr B £500 for the distress he's suffered.

In addition to the financial loss that Mr B has suffered as a result of the problems with his pension, I think Mr B was caused distress by the loss of a significant portion of his pension provision as a result of L&C accepting his business from TPO and permitting him to invest his L&C monies in Store First. So I think it's fair for L&C to compensate him for this as well.

My final decision

For the reasons given, it's my decision that Mr B's complaint should be upheld and that London & Colonial Services Limited must pay fair redress as set out above.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business 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 London & Colonial Services Limited should pay the amount produced by that calculation up to the maximum of £160,000 (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 £160,000, I recommend that London & Colonial Services Limited pay Mr B the balance plus any interest on the balance as set out above.

The recommendation isn't part of my determination or award. London & Colonial Services Limited doesn't have to do what I recommend. It's unlikely that Mr B could accept a decision and go to court to ask for the balance and Mr B may want to get independent legal advice before deciding whether to accept my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 26 February 2024.

Ailsa Wiltshire
Ombudsman