DRN-5365110

The complaint

Mr B has a self-invested personal pension (SIPP) with London & Colonial Services Limited, now called Pathlines Pensions UK Limited ("L&C"). Mr B invested in unlisted shares in his SIPP. Originally Mr B complained he could not sell the shares or transfer them to a different pension, but his complaint has now expanded to question how L&C allowed the investment to begin with.

What happened

Mr B was a member of a group personal pension ("GPP") arrangement set up by his employer. In 2010 his employer decided to change pension providers. One of Mr B's colleagues recommended Mr B (and other colleagues) speak to an adviser I will call Mr C, at an IFA firm I will refer to as the IFA.

Mr C was a director of the IFA firm. Mr C also had another business I will call the investment company. This was an unregulated and unlisted company whose business involved secured lending, land/property development and joint ventures with other companies.

The IFA's recommendation report is undated. The IFA said it used three risk categories: cautious, balanced and aggressive and Mr B was recorded as having a balanced attitude to risk.

The IFA advised Mr B to transfer his existing GPP to a SIPP with L&C to invest in the investment company.

Mr B's SIPP application was signed on 21 November 2011.

On 24 November 2011 the IFA emailed L&C and said Mr B's application should be processed *"on the basis of him managing his investment himself".*

On 1 December 2011, Mr B's GPP provider transferred almost £46,000 to the L&C SIPP. On the same day L&C wrote to the IFA and to Mr B to confirm the SIPP had been set up.

On 2 December 2011 the IFA sent a completed and signed "Unquoted Share Purchase Application" form for Mr B instructing L&C to buy 40,000 ordinary shares in the investment company at £1 each on 7 December 2011.

On 9 December 2011 Mr C as director of the investment company wrote to L&C to confirm the purchase of the shares.

No other investments were made in Mr B's SIPP.

Some of Mr B's colleagues had received similar advice and had also invested in shares in the investment company.

In 2017 one of Mr B's colleagues tried to draw down their pension and found that the shares could not be sold. Mr B and some of his colleagues began to have concerns about this. Mr B contacted L&C in late October 2017. He asked it to sell his shares. L&C was not able to do so as the shares were unlisted and there was no market for them.

Mr B contacted the Financial Ombudsman Service on 31 October 2017 saying the following:

> *"Thank you very much for letting us contact you, with our recent surprise and concerns about how we are being treated and not being able to move our funds. I'm not sure what angle we have for the case. Maybe London Colonial didn't manage the fund properly or maybe* [the IFA] *passed the management to* [another IFA firm]*. Maybe it's a case of miss sold Pension and no mention of the risks and no mention of unquoted shares.*
>
> *I have sent two emails, one to* [the provider of the employer's new GPP] *requesting to import the London Colonial funds. And one to London Colonial to send request to* [the investment company] *to sell shares and import to* [the provider of the employer's new GPP]*.*
>
> *If there is anything you can do it will be greatly appreciated."*

On 3 November 2017, one of our investigators sent a summary of Mr B's complaint to L&C as follows:

> *"Pension transfer issues.* [L&C] *is unable to place a value on the unquoted shares preventing the transfer."*

A number of Mr B's colleagues also complained to L&C and the Financial Ombudsman Service.

On 2 January 2018 L&C issued its final response letter in reply to Mr B's complaint. It said it had been notified of Mr B's complaint by the Financial Ombudsman Service. It summarised Mr B's concerns as follows:

1) *"You are unhappy that you are unable to transfer your pension away from* [L&C];
2) *You are unhappy that* [L&C] *are unable to place a value on the unquoted shares within your pension in order to facilitate a transfer to your pension with* [the provider of the new GPP]*;*
3) *You feel you may have bee mis-sold your SIPP and or unquoted shares…*"

L&C went on to make a number of points in response to the complaint, including:

- The SIPP could only be transferred if the shares could be sold or if the employer's new pension would accept them as a transfer *in specie*. The shares could not be sold because there were no buyers for the unlisted shares and the employer's new pension provider would not accept them.
- Mr B bought the shares following advice from an IFA not from L&C.
- L&C does not provide advice.
- L&C's role *"in connection with the investment is to satisfy ourselves in our capacity as Trustee and hence the potential owner of the investments, that it is allowed within the Trust and does not breach HMRC regulations and therefore due diligence is limited to this."*

- If Mr B were to find a buyer for the shares he should let L&C know.
- L&C has the right to continue to charge its fees but, in the circumstances, it would not deduct fees from the cash holding, it would just let them accrue to be paid if the shares can ever be sold.
- It understood the IFA had gone into administration. Mr B should contact the Administrators if he thought the investment had been mis-sold to him.

On 5 February 2018 the investment company went into administration.
In an email on 5 February 2018 Mr B asked the Financial Ombudsman Service to look at his complaint.

One of our investigators emailed Mr B the same day. He said:

> *"As mentioned on the phone we can now progress the complaint with* [L&C]. *As part of the complaint we could be able to look at whether due diligence was completed when everything was set up."*

On 15 February 2018 Mr B contacted the investigator again. He said:

> *"We had correspondence about* [the investment company] *going into liquidation. I'm not sure what this means for us. Surely if they are bankrupt we can now get compensation from the government."*

In an email dated 20 February 2018, L&C questioned why the Financial Ombudsman Service was looking at the issue of due diligence given Mr B's initial communication with the investigator was about Mr B not being able to transfer his pension away from L&C, the valuation of the investment company and that he felt he had been mis-sold his SIPP. L&C didn't think it was fair for the investigator to deal with the matter as a due diligence issue given it (L&C) hadn't had an opportunity to answer that complaint. L&C again said that if Mr B felt he'd been mis-sold his pension, this was a matter for the IFA.

In April 2018 the Financial Services Compensation Scheme (FSCS) made a payment in settlement of Mr B's claim in respect of the IFA. As part of the settlement with the FSCS Mr B agreed to assign to the FSCS his right to make claims against third parties in connection with matters relevant to his pension investment. In October 2019 the FSCS reassigned those rights to make a complaint about L&C to Mr B. The reassignment is conditional on Mr B repaying the FSCS the compensation it paid to him from any money recovered from L&C.

In April 2020 one of our investigators wrote to Mr B and L&C with his view about the complaint. He explained that the inquisitorial remit of the Financial Ombudsman Service means we are not restricted to considering a complaint only on the basis of the precise way it is worded by the complainant and that he would consider the due diligence carried out by L&C on the IFA and the investment. (And as noted above L&C had referred to its due diligence in its response to the complaint made by Mr B.)

The investigator thought Mr B's complaint should be upheld. Mr B agreed with the investigator. L&C did not.

As both parties had not agreed with the investigator the complaint was referred to me to determine and I issued a provisional decision on 25 October 2024 in which I explained why I thought Mr B's complaint should be upheld and how L&C should put things right.
L&C said Mr B's complaint is not within the jurisdiction of the Financial Ombudsman Service and should not be considered, because:

- L&C had not been provided with a copy of the assignment of rights from the FSCS to Mr B.
- L&C has not been provided with a copy of the complaint form submitted to the Financial Ombudsman Service within six months of its final response letter of 2 January 2018.

My views on the points made by L&C were passed on to L&C (and Mr B). L&C has not made any further points in response. Nor has it made any comment in response to the points I made about the merits of Mr B's complaint other than in effect to refer me to the earlier points made on its behalf by its lawyers.

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.

The jurisdiction points made by L&C:

Before deciding what is fair and reasonable I have considered L&C's jurisdiction points which must be decided on the basis of the relevant jurisdiction rules and law not on the basis of what is fair and reasonable in the circumstances.

The FSCS reassignment point:

L&C says that until such time as it receives confirmation of whether the FSCS claim made by Mr B was upheld or rejected and the compensation paid, and of reassignment of rights, the Financial Ombudsman Service does not have jurisdiction to consider this complaint. This is not, however, correct.

The jurisdiction of the Financial Ombudsman service is not dependent upon L&C receiving confirmation of those matters.

In my provisional decision I said that a claim had been made to FSCS, a payment made and that rights had been assigned and reassigned – just as I have said above in this decision. So L&C was aware that a claim was made, redress paid and rights reassigned. And essentially the same points were made by the investigator in his opinion letter in April 2020. There is therefore nothing in this point – but a copy of the reassignment has now been sent to L&C.

Was the complaint referred to the Financial Ombudsman Service within the relevant time limits?

DISP rule 2.8.2R provides:

> "The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:
>
> (1) more than six *months* after the date on which the *respondent* sent the complainant its *final response…"*

The terms in italics in the rules are defined terms.

Mr B first contacted the Financial Ombudsman Service in 2017 before first contacting L&C. We wrote to L&C on 3 November 2017 asking it to investigate Mr B's complaint and send a *'final response'* to him within eight weeks.

L&C says it issued a final response on 2 January 2018. And L&C says Mr B's complaint is not within the jurisdiction of the Financial Ombudsman Service unless Mr B submitted a complaint form to the Financial Ombudsman Service within six months of that final response.

However, the word "refers" in the rule above is not a defined term. And there is no requirement in the DISP rules that a complaint is referred only by means of a completed complaint form. Mr B does not therefore satisfy the requirement of DISP 2.8.2(1)R only by submitting a complaint form within six months of a final response as L&C says.

Mr B did re-contact the Financial Ombudsman Service within six months of the letter of 2 January 2018. This point was recited in the background section of my provisional decision which included the following:

> *"In an email dated 5 February 2018, Mr B asked the Financial Ombudsman to look at his complaint."*

On 5 February 2018 Mr B was asked to confirm he agreed with a declaration set out in an email, which he did by email the same day. That declaration included the words:

> *"I would like the Financial Ombudsman Service to look into my complaint."*

Mr B did not send us a complaint form at this stage and this declaration was in lieu of a complaint form and it does amount to a referral for the purposes of the time limit rule. The complaint was not therefore referred to the Financial Ombudsman Service late and can be considered.

The merits of Mr B's complaint:

L&C has made a number of points, including:

- The High Court decision in the *Adams v Options* case makes it clear that the scope of the duties on the SIPP operator must be based on the contractual agreement between the parties.
- L&C provides an execution only service. It does not give advice. It does not have regulatory permission to give advice.
- The rules and guidance do not extend the duties on L&C. Finding otherwise would be wrong in law.
- Nothing in the rules required L&C to reject an investment on the basis it was high risk.
- The investigator referred to publications from the regulator that post-date Mr B's investment and so are not relevant.
- Most of the documents referred to by the Financial Ombudsman Service are not formal guidance in any event.
- L&C did not cause Mr B's loss. This was caused by the IFA as shown by the point that the FSCS has made a payment to Mr B.
- It was not clear from Mr B's SIPP application that he intended to invest in the shares so there was no reason not to accept his application to open a SIPP and transfer his existing pension into it.

- Bearing all those points in mind, there is no reason to conclude that L&C did not act fairly and reasonably.

Relevant considerations:

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

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

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

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

The legal background:

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

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

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

The case law:

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

a wider scope which means complaints might be upheld, and compensation awarded, in circumstances where a court would not do the same.

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

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

The Principles for Businesses:

The Principles for Businesses ("the Principles"), which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (see PRIN 1.1.2G). The Principles apply even when the regulated firm provides its services on a non-advisory basis, in a way appropriate to that relationship.
Principles 2, 3 and 6 are of particular relevance here. They provide:

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

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

The regulatory publications and good industry practice:

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

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

The 2009 Report included:

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

The Report also included:

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

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

Although I have not quoted all the above-mentioned publications, I have considered them all in their entirety.

The 2009 and 2012 Thematic Review Reports and the *"Dear CEO"* letter are not formal guidance (whereas the 2013 finalised guidance is). However, all of the publications provide a reminder that the Principles for Businesses apply and are an indication of the kinds of things a SIPP operator might do to ensure it is treating its customers fairly and produce the outcomes envisaged by the Principles. In that respect, the publications which set out the regulators' expectations of what SIPP operators should be doing also go some way to indicate what I consider amounts to good industry practice, and I'm therefore satisfied it's appropriate to take them into account (as did the ombudsman whose decision was upheld by the court in the *Berkeley Burke* case).

Points to note about the SIPP publications include:

- The Principles on which the comments made in the publications are based have existed throughout the period covered by this complaint.
- The comments made in the publications apply to SIPP operators that provide a non-advisory service.
- Neither court in the *Adams* case considered the publications in the context of deciding what was fair and reasonable in all the circumstances. As already mentioned, the court has a different approach and was deciding different issues.
- What should be done by the SIPP operator to meet the regulatory obligations on it will always depend upon the circumstances.

L&C's position in broad terms:

In broad terms L&C's position is:

- It carried out due diligence to a degree that was appropriate for its role as non-advisory SIPP operator.
- Its due diligence did not reveal any cause for concern at the time.
- It was not reasonably required to do more.
- It did not cause Mr B to suffer any loss.

L&C's due diligence:

L&C did make various checks on the IFA and the investment company consistent with its understanding of what was appropriate. For example, it checked the IFA was regulated by the FSA. And in early 2009 L&C entered into an Intermediary Agreement with the IFA. L&C also checked the shares in the investment company was a type of investment permitted by the Trust that governed the SIPP and HMRC's regulations. There is no dispute the investment should not have been permitted on this ground.

L&C continued monitoring the activities of the IFA and the investment company after its initial due diligence. L&C has provided copies of internal email correspondence. The first emails we have received are from 2011. At that time some employees of L&C started expressing some concerns about the investment company. L&C was thinking about the amount being invested in the investment company, the fixed nature of the share price, the connection between the adviser and the investment company, and its creditworthiness. For example, in October 2011 an email from one of L&C's directors included:

> *"I'm a bit uncomfortable about the connection between the IFA and the investment companies. IFAs advising their clients to put money into our SIPP and then invest in their associated companies might be the sort of trend that the FSA are expecting us to identify, monitor and possibly report on? I'm not saying I think there's anything untoward going on but we should probably consider, decide and document etc etc."*

In a letter to the investment company in September 2012, L&C said it was asking questions having noted a recent very large investment request, and large amounts of money being place with the investment company, so it was asking for more information "*as a matter of good governance"*. (I note here that this thinking about matters of "good governance" was after the first FSA Report referred to above and before the second was published in 2012.)

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

In its final response letter L&C said its due diligence was limited to checking an investment was allowed within the Trust (governing the SIPP) and HMRC regulations.

I'm satisfied that to meet its regulatory obligations when conducting its non-advisory SIPP business, L&C was required to consider whether to accept or reject particular investments and/or referrals of business with the Principles in mind. I say this based on the overarching nature of the Principles (as is clear from the case law) and based on good industry practice. I am also satisfied that bearing in mind the Principles and good industry practice that its obligation was not confined *only* to rejecting an investment on the basis it was not allowed by the SIPP Trust or HMRC regulations.

I am satisfied that to meet its regulatory obligations when conducting its operation of its non-advisory SIPP business a SIPP operator should for example reasonably refuse an investment if the SIPP operator had serious concerns about *"possible instances of financial crime and consumer detriment such as unsuitable SIPPs".* Or, for example if the SIPP operator had concerns that the investment might not be genuine, or not be secure or might be impaired in some way.

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

I am satisfied that in order to comply with its regulatory obligations, a non-advisory SIPP operator should have due diligence processes in place to check any firms introducing business to them and the investments they are asked to make on behalf of members or potential members. And L&C should have used the knowledge it gained from its due diligence checks to decide whether to accept such business and/or allow a particular investment.

My view about the due diligence carried out by L&C:

L&C's due diligence on the IFA before accepting introductions from it, consisted of L&C asking Mr C, the director of the IFA, to complete an Intermediary Application which asked a number of questions. L&C then entered an Intermediary Agreement with the IFA following completion of the application. The FSA Register was also checked to ensure the IFA and Mr C were appropriately authorised (which they were).

From around June 2009 Mr C told L&C that he (or the IFA) wanted to introduce prospective L&C SIPP clients to the investment in shares in the investment company. L&C then carried out some checks on the investment company to ensure its shares could be held in its SIPP and that it met HMRC requirements.

L&C requested, and received, information from both Mr C and the investment company's accountant about its business activities. The documents and information provided to L&C showed that the investment company's principal trading activity was in *"secured lending and property development".*

So L&C did carry out some relevant checks. However, I don't think L&C went far enough to meet its regulatory obligations and good industry practice since it was largely focused on two points: whether the investment was permitted by the Trust and whether it was permitted by HMRC.

As is now known, the investment company went into administration in 2018 which was some time after the investment was made by Mr B in 2011. And I accept the failure of the investment and its timing could not have been foreseen in 2011 as such. However, that does not mean that it was unforeseeable that such a problem could or even might well happen (given the high-risk nature of the investment) or that the investment could reasonably have been viewed as giving no cause for concern in the circumstances in 2011, before Mr B's SIPP application was received.

To be clear I do not say the investment should not have been allowed because it was high risk. SIPP investors may choose to invest in high-risk investments. The issue here is not about investment risk (as normally understood).

L&C was aware of, or should reasonably have identified, potential risks of consumer detriment associated with the business the IFA was proposing to introduce. And I consider these risks should have been identified before L&C accepted Mr B's application.

In particular, I do not think there were sufficient systems and controls put in place to manage the clear conflict of interest between Mr C and the investment he was introducing clients to. Mr C was an IFA who was recommending clients transfer their pensions to L&C SIPPs and invest in unquoted shares in a company he was sole director of. He also owned shares in that company. L&C was aware of this set up from the outset. And it ought to have had serious concerns about this from the start. This is particularly so given that the investment was in the form of unlisted shares which are difficult to value and to sell; and are a form of investment that is not suitable for most retail investors even where there is no connection between the adviser and the SIPP member.

L&C should have realised it was unlikely the IFA was acting in the best interests of its clients when L&C was first made aware the IFA intended to recommend to its clients that they invest shares in the investment company. It should therefore have decided not to do further business with the IFA when the potential investment in the shares of the connected investment company was first discussed.

Further, by the time of Mr B's SIPP application in late November 2011 and investment in early December 2011, it should have been clear that all (or most) of the IFA's clients with L&C SIPPs were investing in the same connected high risk, esoteric investment.

In my view, L&C should have concluded, given the potential risks of consumer detriment from the pattern of business being introduced to it by the IFA (if not before) that it should not continue to accept SIPP applications from the IFA. And in my view that should have been a refusal to accept any and all applications not just applications that were known to involve the connected shares at the outset. This is because L&C should reasonably have had concerns about the IFA and its willingness or ability to act reasonably and in its clients' best interests. This would have been the fair and reasonable step to take in the circumstances.

It is therefore my view that if L&C had acted appropriately it would not have accepted Mr B's SIPP application from the IFA and his application to invest in shares in the investment company.

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

I accept that the IFA had 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 non-advisory SIPP operator, the arrangement for Mr B would not have come about in the first place.

L&C's failure to act in accordance with its regulatory obligation and good industry practice has caused Mr B to suffer financial loss in his pension and to suffer distress and inconvenience. I consider the substantial loss of Mr B's pension provision - around ten years of his and his employer's contributions to his pension – will inevitably have caused him considerable worry an upset.

Putting things right

I consider L&C failed to comply with its own regulatory obligations and good industry practice in not refusing Mr B's SIPP and investment applications. My aim in awarding fair compensation will be to put Mr B back into the position he would likely have been in had it

not been for L&C's failings. Had L&C acted appropriately, I think it's most likely that Mr B would have left his existing GPP pension where it was.

In light of the above, L&C should:

- Obtain the notional transfer value of Mr B's exiting GPP pension.
- Calculate the actual transfer value of Mr B's SIPP, including any outstanding charges.
- Pay a commercial value to buy any illiquid investments (or treat them as having a zero value).
- Pay an amount into Mr B's SIPP so as to increase the transfer value to equal the notional values established. These payments should take account of any available tax relief and the effect of charges.
- If the SIPP needs to be kept open only because of any illiquid investments and is used only or substantially to hold these investment, then any future SIPP fees should be waived until the SIPP is closed.
- If Mr B has paid any fees or charges from funds outside his pension, L&C should also refund these to Mr B. And interest at the rate of 8% simple per year from the date of payment to the date of refund should be added to this.
- Pay Mr B £500 to compensate him for the distress and inconvenience he's been caused.

I've set out below in more detail how L&C should go about calculating compensation.

Treatment of the illiquid assets held in the SIPP:

I think it would be best if any illiquid shares could be removed from Mr B's SIPP. Mr B would then be able to close the SIPP if he wishes. That would then allow him to stop paying or incurring fees for the SIPP. The calculation of value of illiquid investments may prove difficult, as there is no market for them. For calculating compensation, L&C should establish an amount it's willing to accept for the investments as a commercial value. It should pay the sum agreed plus any costs and take ownership of the investment.

If L&C is able to purchase the illiquid investment then the price to buy the holding will be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding). If L&C is unable, or if there are any difficulties in buying Mr B's illiquid investment, it should give the holding a nil value for the purposes of calculating compensation.

L&C may ask Mr B to provide an undertaking to account to it for the net amount of any further payment the SIPP may receive from the investment thereafter. The undertaking should allow for the effect of tax and charges on the amount Mr B may receive from the investment from that point, and any eventual sums he would be able to access from the SIPP. L&C will need to meet any costs in drawing up the undertaking.

Calculate the loss Mr B has suffered as a result of making the transfer:

L&C should contact Mr B's former GPP provider. It should ask the provider to calculate the notional value for the policy as at the date of my final decision. For the purposes of the notional calculation the provider should assume no money would have been transferred away from the pension, and the money in the policy would have remained invested in an identical manner to that which existed prior to the transfer.

Any contributions or withdrawals Mr B has made will need to be taken into account whether the notional value is established by the former GPP provider or calculated as set out below.

Any withdrawal out of the SIPP should be deducted at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. The same applies for any contributions made, these should be added to the notional calculation from the date they were actually paid, so any growth they would have experienced is allowed for.

If there are any difficulties in obtaining a notional valuation from the former GPP provider, then L&C should instead arrive at a notional valuation by assuming the monies would have experienced a return in line with the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return index). That is a reasonable proxy for the type of return that could have been achieved over the period in question.

I acknowledge 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 to allow for a *temporary* notional deduction equivalent to the payment Mr B actually received from the FSCS for a period of the calculation, so that the payment ceases to accrue any return in the calculation during that period.

As such, if it wishes, L&C may make an allowance in the form of a notional deduction equivalent to the payment Mr B received from the FSCS following the claim about the IFA, and on the date the payment was actually paid to Mr B. Where such a deduction is made there must also be a corresponding notional addition, at the date of my final decision equivalent to the FSCS payment notionally deducted earlier in the calculation.

To do this, L&C should ask Mr B's former GPP provider to allow for the relevant notional deduction in the manner specified above. The total notional deductions allowed for shouldn't equate to any more than the actual payment from the FSCS that Mr B received. L&C must also then allow for a corresponding notional addition as at the date of my final decision, equivalent to the FSCS payment notionally deducted by the provider of Mr B's previous pension.

Where there are any difficulties in obtaining notional valuations from the previous pension provider, L&C can instead allow for both the notional deduction and addition in the notional calculation it performs, provided it does so in accordance with the approach set out above.

The notional value of Mr B's former GPP (established in line with the above) less the current value of the SIPP is Mr B's loss.

Pay an amount into Mr B's SIPP so that the transfer value is increased by the loss calculated above:

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate. This should be taken to be 20% making a notional deduction of 15% overall from the loss to reflect this.

SIPP fees:

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

Interest:

The compensation resulting from this loss assessment above must be paid to Mr B or into his SIPP within 28 days of the date L&C receives notification of his acceptance of my final decision. The calculation should be carried out as at the date of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of payment if the compensation is not paid within 28 days.

Income tax may be payable on any interest paid. If L&C deducts income tax from the interest, it should tell Mr B how much has been taken off. L&C should give Mr B a tax deduction certificate if he asks for one (in relation to any interest in respect of this part of this redress), so he can reclaim the tax from HMRC if appropriate.

Calculations:

L&C should provide Mr B with details of its calculations of fair redress as set out above in a straightforward manner which should be understandable to a lay person rather than a pensions or finance expert.

Distress and inconvenience:

I consider the substantial loss of Mr B's pension provision will have caused Mr B distress and inconvenience as mentioned above. L&C should pay Mr B £500 to compensate Mr B for the distress and inconvenience it has caused him.

My final decision

My final decision is that I uphold Mr B's complaint against Pathlines Pensions UK Limited and require it to pay fair compensation to Mr B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 March 2025.

Philip Roberts
Ombudsman