

## **The complaint**

Mr H complains about the consequences arising from the delay caused by London & Colonial Services Limited (trading as L&C Pensions) in purchasing and investing two separate investment trusts into his self-invested personal pension (SIPP) in April 2020.

## **What happened**

In 2017 Mr and Mrs H met with an overseas financial adviser and agreed to transfer their defined benefit pension schemes into new international SIPP plans with L&C Pensions. I understand most of the funds were held within international investment bonds, managed by a third party, which allowed for the opportunity to hold a full range of available funds in the market within it. But it also carried a 1% early redemption penalty per year for 10 years.

Subsequently Mr and Mrs H moved 80% of their funds into a new SIPP with another UK provider, where it remains. But, because of the possible invocation of the 10% early redemption penalty, the remaining 20% remains invested in the SIPP. From this point I'll refer to Mr H solely - as this is his complaint, but Mrs H has a similar complaint which we are also considering.

On 2 April 2020 Mrs H wrote to L&C Pensions – on behalf of her and Mr H, in respect of the ongoing charges which were applied to their plans. In the same letter she asked for their SIPP funds to be invested, in an equal split of 40%, into two separate investment trusts with the residual amount left in cash. On the same day L&C Pensions confirmed receipt of the instruction and said it had instructed the asset provider to carry out the request.

Separately on 3 April 2020 they complained to the overseas jurisdiction responsible for the firm that gave the original transfer advice. They said the advice wasn't suitable and they hadn't been made aware of the early redemption penalty or the rest of the ongoing fees they'd been charged.

But the purchase of the investment trusts wasn't completed until 29 April and 6 May 2020 respectively – and even then, the correct percentages weren't acquired. So Mr H complained to L&C Pensions about the delay and said he wanted to be put back into the position he would have been in without the delay.

In May 2020 L&C Pensions accepted that a delay had occurred and said the asset manager would carry out a loss assessment calculation. Mr H accepted this position although he noted the further delay in completing the calculation.

He said he would like an explanation for how the error occurred and would then like to transfer the funds to another SIPP provider without any penalty.

In June 2020 L&C Pensions said it was still awaiting confirmation that the asset provider had completed the calculation but said it wasn't responsible for any delay as it had sent the instruction within its usual service levels and had requested the correct percentage of each asset to be purchased.

In January 2021 Mr H sent a letter to the asset manager explaining that the matter still hadn't been resolved from the previous year. But he didn't receive a response or any further contact from L&C Pensions. After an automated response from L&C Pensions following a subsequent chase in November 2021 Mr H brought his complaint to us. He explained that:

- L&C Pensions had failed to execute his request to invest 80% of his SIPP funds in a timely manner following the request of April 2020. It had also failed to purchase the full 80% of the two trusts.
- It had failed to honour its promise to put him back into the position that he ought now to be in – and had failed to correspond with him at all since June 2020.
- He hadn't received any annual statements relating to the SIPP and so hadn't been able to confirm the fees he'd been charged or a breakdown of the value of the investments within the plan.
- He had been told to complain about the firm that advised on the transfer to a SIPP and about the charges levied, to the Swiss regulator - and had done so - but hadn't heard anything further.
- Subsequently in November 2018 around 80% of the SIPP was transferred to another provider and he is satisfied with that arrangement. But the remaining 20% remains "trapped" because he is disputing the 10% exit fee to transfer – which is why he decided to invest that money into the two investment trusts until the matter was resolved.
- He wants L&C Pensions to increase his SIPP by any loss suffered as a result of the delay and incorrect purchase. He also would like us to tell L&C Pensions to allow him to transfer the remaining funds – once corrected in value – to his new SIPP without an exit penalty. He would like the fees he's been charged to manage his SIPP to be refunded as well.

One of our investigators looked into the matter. He said that:

- He'd considered the matter of whether Mr H had been financially disadvantaged by not being able to move his funds while he was waiting for compensation to be arranged – but thought Mr H would have been able to do that at any time. So he didn't expect L&C Pensions to refund fees or compensate for any loss of investment opportunity.
- He thought L&C Pensions should pay Mr H £400 for the impact its actions had on him.
- But we didn't have any enforcement powers to punish L&C Pensions for their actions and to ensure others wouldn't be affected. That was the role of the regulator.
- L&C Pensions should pay redress arising from a calculation which compared the current value of Mr H's bond with its notional value had the investment instruction been processed with an investment date of 7 April 2020.

Mr H didn't dispute the outcome but believed the redress should be worked out differently. He said that, had the instructions been carried out correctly, he could have worked towards an "exit strategy" which allowed for potentially greater investment returns to cover the exit penalty that was imposed on the plan.

He said that he could have traded the investments at their peak value – they have now both fallen appreciably – so that both he and Mrs H's plans would now be worth around £290,000 more. He said this would have covered the exit penalty and allowed them to transfer the bonds away from L&C Pensions.

He thought that L&C Pensions should restore his residual cash to what it would have been at the time of the purchases – before subsequent fees were taken and eroded the cash balance - and then allow a penalty free "in specie" transfer to a new SIPP provider.

L&C Pensions didn't respond, and the complaint was referred to an ombudsman – so it was passed to me to review.

I issued a provisional decision on 7 November 2022. Here's what I said:

*"The delay in purchasing the investment trusts*

*When we first approached L&C Pensions about this matter it told us that it thought the matter had been settled and that compensation had been paid – which I assume to be the reason it might give for its subsequent non-engagement. But I don't think the matter has been settled, because there's no evidence to show who was responsible for the delay and no explanation to accompany the entry of "compensation" on the transaction sheets. I can understand Mr H's concerns therefore that he doesn't know if the compensation is fair or whether the calculation has been carried out using the correct dates. I'll set out below what I think L&C Pensions needs to do to put this right.*

*I've seen a copy of the letter Mrs H sent to L&C Pensions on 2 April 2020 complaining about the ongoing SIPP fees, and which also contained "our instruction forthwith to invest 40% of each of the net SIPP funds in the xxx Investment Trust and 40% in the xxxx Investment Trust. The remainder will remain in cash in these SIPPs until we have determined next steps in the complaints process." I've also seen that the sales weren't carried out until 29 April and 6 May 2020 respectively – but not for the full 40% of each investment trust. I think that's too long and didn't represent the detail of the actual request.*

*I've also been presented with the subsequent email trail between Mr H and L&C Pensions setting out his request to be put back into the position he should have been had the instruction been carried out correctly.*

*No final response was provided to his complaint although I have seen a copy of a later transaction sheet for Mrs H which showed entries for purchases of two investment trusts on 20 April 2020 followed by further purchases on 10 June 2020. These were then "redeemed and purchased" through the cash account on 18 June 2020 with an entry entitled "complaint compensation". There is also a separate policy valuation page within the information which sets out the value of the cash and the investment trusts. Although I haven't been provided with a similar sheet for Mr H I assume it would reflect the same situation for the sums purchased in his name. L&C Pensions might wish to confirm that in its redress calculations.*

*However, those purchase dates are 18 June 2020, and the purchase price dates are 19 October 2022 - so it's unclear whether any compensation for Mrs H had been calculated from the 29 April 2020 dates (or earlier as set out by the investigator) as they should have been. Again I assume the same situation for Mr H.*

*I'm satisfied that some element of compensation has been applied to the SIPP, but in the absence of any qualifying information I can't be sure what dates were used and how many additional units should have been purchased.*

*And although L&C Pensions has said that it sent Mr H's instruction to the asset manager for action, it hasn't provided any evidence to demonstrate that it did that or given any reasons for the delays that took place. As the SIPP provider and administrator here, I think L&C Pensions was responsible for the purchases being completed in a timely manner. If it believes the asset manager to be responsible it should claim back any redress payable from it.*

*Our investigator believed that the investment should have been carried out by 7 April 2020 –*

*namely four working days. I would normally use the number of working days that were taken when the instruction was actually worked upon until the purchase was made as a guide to what should have happened – but that information isn't available here. So I've decided that the purchases should have been made within one calendar week of the instruction at the latest. I note that L&C Pensions says it had to carry out due diligence of the assets as it wasn't sure they could be held within the bond – so I think the time period I've set out should allow for that extra research to be completed.*

#### *Fair compensation*

*My aim is that Mr H should be put as closely as possible into the position he would probably now be in if the correct percentage of investment had been purchased without the delays that occurred.*

*I'm satisfied that what I've set out below is fair and reasonable given Mr H's circumstances and objectives when he invested.*

#### *What must L&C Pensions do?*

*So, if any final decision remains along these lines, to compensate Mr H fairly, L&C Pensions must:*

*Compare the current value of the bonds with the notional value of the bonds had the correct percentage been purchased by 9 April following the instruction of 2 April 2020.*

*If the notional value is greater than the actual value there is a loss and compensation is payable.*

*L&C Pensions should also add any interest set out below to the compensation payable. If there is a loss, L&C Pensions should pay into Mr H's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.*

*If L&C Pensions is unable to pay the compensation into Mr H's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr H won't be able to reclaim any of the reduction after compensation is paid. The notional allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.*

*It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr H 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%.*

*If either L&C Pensions or Mr H dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr H receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.*

*Income tax may be payable on any interest paid. If L&C Pensions deducts income tax from the interest, it should tell Mr H how much has been taken off. L&C Pensions should give Mr H a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the*

*tax on interest from HM Revenue & Customs if appropriate.*

*Any additional sum that Mr H paid into the investment should be added to the fair value calculation at the point it was actually paid in.*

*Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if L&C Pensions totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.*

*The request for a refund of fees and a penalty free exit from the investment bond*

*In Mrs H's letter of 2 April 2020 she and Mr H spoke about the 1% yearly fee "on the original face value of our SIPPs which you continue to levy." They also referenced the early redemption penalty which I'll turn to later. And looking at Mrs H's transaction statement I can see quarterly fixed and management charges amounting to over £4,000, which I'm sure would have caused Mr H some concern – assuming his were at the same level - especially as they were also being deducted during the process of answering his complaint which he says hasn't been finalised.*

*However as there's no regulatory guidance on "excessive fees" I've taken a fair and reasonable view of what might be considered an appropriate level of fees, taking into account what might generally be seen in the industry.*

*I have considered this matter carefully, but I don't think L&C Pensions should have to refund its fees in this case.*

*I say that for two reasons. Firstly L&C Pensions is entitled to set its fees, within reason, at what it considers to be an appropriate level for the work it does in administering a SIPP. Then it was for the adviser who recommended the bonds in 2017 to make his recommendation based on a number of factors – one of which was fees and the effect of them on an investment. So I don't think it's fair to say the fees were excessive. But I would have expected Mr H to have been made aware of the level of fees that would be applied. I note that in his 2017 suitability report the adviser set out the operational costs. It's not entirely clear what these were but they were noted to be "a year 1 set up fee of £180 plus an annual fee of £350 with an annual bond charge of 0.90% of the initial transfer."*

*But of more relevance to Mr H's complaint is the illustration that was provided to Mrs H by the adviser dated 25 April 2017 regarding the bond. This noted quarterly management charges of 0.225% with a quarterly fixed fee of £100. I've applied these charges to the fees that were taken from the bond, and I think they're broadly in line. So I think Mr H was made aware of the fees, which is what I would have expected to see.*

*As I've said previously, although Mr H might regard the fees as "excessive" I can't reasonably say that they are and as Mr H was made aware of them before he took out the bond there's nothing to support the claim that L&C Pensions should have to refund them on that basis.*

*The "non-negotiable" early redemption penalty that Mr and Mrs H spoke about was noted in the illustration which said, "if the policy is surrendered in the first 10 years, surrender penalties will be applicable." This was further explained in the application form which set out*

an “early encashment charge” as “10% of the total premium amount reducing by 1% p.a for 10 years. There are no early encashment charges after 10 years.”

So Mr H was made aware of the charge at inception and while I can understand his frustration that it can't now be waived – even in light of L&C Pensions' actions in not answering his complaint about the delayed and incorrect purchases – it wouldn't be fair for me to tell it to waive the charge and I don't think L&C Pensions have done anything wrong in continuing its implementation.

#### The possible investment loss caused by not being able to trade the investments

In his response to our initial assessment Mr H explained to us why he thought our redress recommendation didn't take into account the full effect of L&C Pensions' actions on his retirement planning and “exit strategy” for paying the early retirement charge on his bond and transferring to another provider, to rid himself of the ongoing difficult situation. He said that his strategy – when purchasing the funds in April 2020, was to invest to earn some investment growth and then sell the funds as close to their peak value as possible. He said this would then have been returned to the cash fund to cover the exit fees.

He said L&C Pensions' actions have impacted him in two ways. Firstly, the delay in resolving the issue over the incorrect purchases meant that the investment trusts passed their peak prices some time ago and have since fallen in value, so he says he's lost the opportunity to obtain the investment growth and cover the exit fees. He also says that the quarterly SIPP fees have continued to be applied which means the cash fund is now significantly depleted.

Mr H has been consistent in setting out this strategy to us and I have no reason to dispute his intentions, so I've thought very carefully about this matter. But I don't think it would be fair for me to award him compensation for this “loss of investment opportunity” for the following reasons.

Firstly Mr H says he intended to sell the assets “at the peak of the price” and I've seen from their submissions that Mr and Mrs H are quite experienced, knowledgeable investors with regards to their own investments. But to disinvest at the very highest price of an asset isn't an easy thing to do. It wouldn't be clear when the market had in fact peaked until some falls had been experienced soon after – so I don't think Mr H would have been able to sell at the levels he would have hoped, and that would make it almost impossible to make a judgement about when he would have sold the assets and how much investment return might have been made. So I think it's impossible to quantify Mr H's request for compensation.

But even if I am wrong in my assumption of what might have been achievable, I note the purchase of the investment trusts was made in April and June 2020 even though the percentage allocations weren't correct. So, if Mr H wanted to follow his “exit strategy”, I would have expected him to mitigate his position to demonstrate the intention of that strategy which I think ought to have led to him selling the purchases that were made in April and June 2020.

But I haven't seen anything to support the idea that he tried or discussed doing that during the complaint process. I also note he said the funds “peaked” in November 2021 and January 2023 respectively so it would have been possible to make some of the returns he spoke about if he'd gone ahead with selling the shares that he did hold at that time. Had Mr H mitigated his position I may have been persuaded about his ultimate intention, but as he didn't it's difficult for me to support his claim for lost investment opportunity based on what did happen.

## Compensation

*Although I don't think there's enough evidence to support the idea of a refund of fees or to tell L&C Pensions to compensate Mr H for the investment growth he lost out on from being unable to trade his funds in the way he wished to, I don't take lightly the impact this matter has had on him. Over a period of three years L&C Pensions has failed to give him a satisfactory answer to his complaint about its error as well as failing to respond to him regarding his other complaint points. I think this matter has disrupted Mr H's retirement planning and would have given him real concern about whether he had lost funds (or growth) from his SIPP permanently.*

*I think some of Mr H's issues here do stem from the initial transfer advice he was given in 2017 – which isn't L&C Pensions' responsibility. But even so I think L&C Pensions' actions – as I've set out above, would have had a significant impact on Mr H and caused him a great deal of trouble and upset over an extended period of time. So I think L&C Pensions should pay compensation of £750.*

## Responses to the provisional decision

L&C Pensions didn't respond, but Mr H made a number of additional points in respect of the redress I'd set out and the other complaint points.

- He made a number of comments and "corrections" to the information contained within the provisional decision'
- He said that when he complained about the delay in executing his instructions L&C Pensions made it clear that if he suffered any detriment because of market movements as a result, the provider would compensate his SIPP accordingly.
- The lack of (timely) provision of annual plan statements from L&C Pensions was an ongoing problem which made it difficult to review and manage his pension accurately. He also understands that most major providers also offer full online access – which isn't something L&C Pensions has ever offered.
- It would have been difficult for him to have moved the funds while the investigation was ongoing because of the lack of answers and "basic" services like statements. And also the lack of clarity around the compensation that was paid, the fees applicable to the plan, and the available transfer balance.
- He cited a number of reasons why L&C Pensions were, in his view, "*unfit to continue as a regulated provider of financial services.*"
- If L&C Pensions had contacted him when the "compensation" payment was made to the account he would have requested full details of the calculation which would have highlighted that the purchase of further shares was required as set out in his original purchase instruction. This would have set him on the road to being put back into the position he ought then to be in.
- While he welcomed the redress methodology I'd set out, he had some further considerations for me.

He thought it was unfair that, after avoiding any discussion about the matter for three and a half years, L&C Pensions should be allowed to settle for a compensation figure that was some £30,000 lower than he thought it ought to have been on 18 June 2020. He thought that the compensation figure L&C Pensions *may* have already paid into his account should be ignored and not taken into account when calculating the actual loss he'd suffered here. And he also thought that to include the compensation as an offset in the calculation would further reduce his compensation by around £11,000 because of subsequent share price movements.

- I hadn't set out the interest rate that should be applied to any compensation from

9 April 2020 to the date it eventually is paid. His proposal was to use a bank base rate of 5.25% applied daily to the full amount payable.

- He presumed that, as the “compensation” L&C Pensions said it already paid was paid into his pension plan, there would be no need to make this payment directly to him after the deduction of tax. He thought any compensation due now should be able to be paid into the plan as it was before. He also suggested that both he and Mrs H would be non-taxpayers initially in retirement, so he didn’t think my assumption that they would be basic rate tax payers would automatically follow.
- He wanted to set out the position with regards to the fees which applied to the plan. He explained that the ongoing charge was set at 1% of the “*original aggregate balances*” for 10 years after inception. But he’d calculated the charges equated to 1.1% of the aggregate initial investments and 5.8% of the remaining funds – after the 2019 transfer – according to the latest valuations. He didn’t think this was fair and wanted me to reconsider my provisional conclusions.
- He set out the background to the advice process from 2017. His conclusion based on that sequence of events was that he disagreed with my assessment that the charge was explained to him – and was fair. He said that if both he and Mrs H paid the 1% fee over the full 10 years they would pay over £236,000 plus ancillary charges. And even though they transferred 80% of the funds in 2019 they have paid £82,000 in the ensuing three and a half years. He also thought that L&C Pensions had mismanaged the administration of his plan, and this didn’t justify such fees in any case.
- He hasn’t been provided with a breakdown of the fees and commissions that were paid to his adviser – despite repeated requests. He explained that he had recently received correspondence setting out the fees payable on redemption – which didn’t include an early redemption charge. But the correspondence also said that these fees “*do not include any fees that may be payable to your Financial Advisor or Investment Provider.*” He said that, having not engaged an adviser since 2018, he assumed that no fees will be payable in that respect, but reserved the right to complain further under the consumer duty regulations if any are applied. He said that he is now going to request the transfer of his remaining funds – in cash - to his other SIPP provider. He wanted me to confirm this transfer wouldn’t affect the payment of any compensation due.
- He didn’t agree with my findings regarding the lost investment opportunity. He said that it would have been quite straightforward to sell the investment trusts – the purpose of which in the first place was to build up enough growth to cover the early encashment or exit charge. He thought he could have sold the trusts when the value met the level of the charge and therefore he wouldn’t have needed to “second guess” the markets or try to sell at the peak value. He believed that as L&C Pensions didn’t engage with him about the dispute and therefore he was unaware of the true position of the value of the trusts, it wasn’t possible to try to sell the investments as that would have been “*shooting in the dark.*” So he thought the level of compensation due from that part of his claim ought to be the value of the early exit charge as set out in the quotation of December 2019 – namely £180,105 plus interest.

### **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.

And having carefully considered Mr H’s further submissions and responses to my provisional decision, I see no reason to depart from my findings. I know this outcome will disappoint Mr H who thinks that the redress methodology I’ve set out doesn’t fully reflect the investment loss he’s suffered, and that I haven’t made allowances for the growth he expected to crystallise from the investment trusts after he purchased them in April 2020 – in an attempt



to offset the early exit penalty he would be charged to move the remainder of his funds to his other SIPP provider.

So I'll set out my reasons for reaching the same outcome, and answer Mr H's further points below.

### The delay in purchasing the investment trusts

There's no dispute that Mr H's request of 2 April 2020 to "*invest 40% of each of the net SIPP funds in the xxx Investment Trust and 40% in the xxxx Investment Trust*" wasn't carried out when it should have been and when it was it didn't represent the amounts that had been requested.

And Mr H is right to say that L&C Pensions made it clear to him that if he suffered any financial loss because of adverse market movements resulting from the delay he would be compensated for that loss accordingly. L&C Pensions then told us that it thought the matter had been resolved and that compensation – which was calculated in June 2020 – was subsequently added to the plan.

I have seen evidence to show that some element of compensation - noted as "*complaint compensation*" was paid to Mr H's SIPP, but the details of that compensation weren't disclosed. Therefore it's not possible to determine if it does represent the loss that Mr H suffered. In order to do that I would have expected L&C Pensions to provide a breakdown of any calculation that was carried out in order to show that any redress was based on the date the investment instruction should have been completed and that the amount of shares purchased was also correct. I would also have expected to see how L&C Pensions compensated Mr H for any subsequent investment loss suffered.

Of course, L&C Pensions argued that the delay was caused by the asset manager as it said it passed Mr H's instructions to the manager without delay. But L&C Pensions hasn't provided any evidence to substantiate that claim so I think, in the absence of such evidence, it was responsible for the instruction being completed in a timely manner as it was Mr H's SIPP provider. I said in my provisional decision that L&C Pensions ought to reclaim any redress payable from the asset manager if it believes that's where the fault lies.

So I think L&C Pensions needs to carry out a loss assessment as set below to compensate Mr H for the error. I think the investment trusts ought to have been purchased within one calendar week of Mr H's written instruction as I think this allows for the due diligence L&C Pensions says it needed to carry out on the assets and whether they could be held within the SIPP.

But Mr H also had some concerns about the methodology I set out in my provisional decision. He said that if L&C Pensions had provided him with a breakdown of the redress calculation in 2020 he could have highlighted any errors and ensured that the purchase of further shares was carried out so that he didn't suffer further investment loss.

He thought that my redress formula allowed L&C Pensions to settle on a compensation figure some £30,00 less than it should have been. Furthermore, he thought that if the "compensation" L&C Pensions had already paid was included in the calculation and offset against what I asked it to do - then he would be a further £11,000 worse off.

He also questioned why I hadn't added interest to any investment loss – which he thought should be at the rate of 5.75%.

I've thought carefully about the points Mr H has raised here but I think they've been dealt with by my redress methodology. I say that because I'm going to ask L&C Pensions to set out the position Mr H ought to have been in, had the investments been purchased on 9 April 2020 compared to the actual position he is now in. This means that any subsequent share movements are included in the calculation and there's no requirement for interest to be added because the calculation is brought up to the date of my decision. In addition, any compensation Mr H has already received is now part of his SIPP value, so to offset that amount would mean that he would benefit beyond the loss he's suffered. So I think it's fair to include the compensation already paid, in the calculation.

So I'm satisfied that what I'm going to set out puts Mr H back as close to the position he'd now be in had the investments been purchased correctly – and in a timely manner.

### **Fair compensation**

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if the correct percentage of investment had been purchased without the delays that occurred.

### **What must L&C Pensions do?**

To compensate Mr H fairly, L&C Pensions must:

Compare the current value of the investment trusts with their notional value had the correct percentage been purchased by 9 April following the instruction of 2 April 2020. If Mr H has subsequently completed the transfer of his assets as he's told us he intends to do before the calculation is undertaken, then the date of any transfer should be used instead of the current value.

If the notional value is greater than the current value there is a loss and compensation is payable.

L&C Pensions should also add any interest set out below to the compensation payable.

L&C Pensions should pay into Mr H's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If L&C Pensions is unable to pay the total amount into Mr H's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr H won't be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr H is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr H would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If L&C Pensions deducts income tax from the interest it should tell Mr H how much has been taken off. L&C Pensions should give

Mr H a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Mr H said that any redress should be paid into his plan as L&C Pensions had managed to do that previously with the “compensation” it paid. He said there was therefore no need to make the payment directly to him, after deducting tax, and that his plan should remain uncrystallised. I’ve set out above that this should be the first course of action L&C Pensions should undertake, but I have also set out an alternative should payment into the plan no longer be possible. But if that’s the case L&C Pensions need to provide evidence to show precisely why that situation may have changed.

### **Additional interest**

8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance). If Mr H has transferred the assets before this calculation is completed then L&C Pensions should run its comparison to that date and then add interest at the same rate to the loss from that date until the date of the calculation.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I’ll accept if L&C Pensions totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

### **The question of the plan’s fees and the early exit penalty for transferring within the first 10 years.**

Mr H wanted me to reconsider my position regarding the fees that were deducted from his plan. He says they aren’t fair and would amount to £236,000 for him and Mrs H over the full 10 year term of the investment and they have already paid £82,000 in the three and a half years since 80% of the fund was transferred to another provider. He thought the fees were excessive and also that L&C Pensions’ administration of his plan was poor and didn’t justify such a level fees. In addition, he said that my assertion that the fees were explained to him was wrong and that the sale of the plan was done in such a way that he wasn’t made aware of them or their full effect.

But as I explained in my provisional decision the sale of the plan initially was carried out by an overseas adviser who isn’t under our jurisdiction. It was his responsibility to explain the features of the plan he advised including all the applicable fees. So any complaint about the suitability of the sale and whether Mr H had been made aware of how it worked – including its fees - was the adviser’s responsibility. I know Mr H has already complained to the overseas regulator – without success so far – but I’m simply not allowed to consider any complaint against the adviser here.

However, the adviser did provide a suitability report and an illustration which set out the fees involved. I’ve seen a copy of these documents and as set out in my provisional decision I’m satisfied that the fees were broadly in line with what has been deducted from the fund. So I think Mr H was made aware of the charges even though he believes them to be excessive. L&C Pensions is entitled to charge whatever fees it thinks are appropriate for the work involved in managing the plan and for any early encashment charges it thinks are relevant. I think it needed to have made Mr H aware of the charges – which I think has been the case here through the documents I’ve mentioned.

But there simply aren't sufficient grounds for me to support the idea that the fees are excessive or unjustified. I haven't been provided with any evidence to show that L&C Pensions hasn't fulfilled its administrative duties since 2017, although I've taken into account the error that forms the basis of Mr H's complaint and his further point about the lack of statements and delay in providing a breakdown of the fees paid to his adviser. But I have considered those (in) actions and I've taken its failure to provide that information and to satisfactorily answer his complaint into account through the amount of compensation I've awarded for the impact these matters had on him.

With regards to the early redemption penalty that applied during the first 10 years, I've seen that the illustration explained that "*if the policy is surrendered in the first 10 years, surrender penalties will be applicable.*" While the application form confirmed that the penalty would be "*10% of the total premium amount reducing by 1% p.a for 10 years.*" So again, while I know Mr H regards this as excessive, there's nothing to support that claim and I think he was made aware of the level of charges involved. It wouldn't therefore be fair for me to tell L&C Pensions to waive that fee.

Mr H has now told us that he's received an up to date redemption statement from L&C Pensions which doesn't include an early redemption charge but does also refer to fees which may be payable to his adviser, although he says he hasn't engaged an adviser since 2018. He says he's begun the process of transferring his plan to the other provider and does not expect any of those fees to be included. I've confirmed to Mr H in the section above that any compensation due to him won't be affected by any subsequent transfer and I've set out how L&C Pensions should deal with this. But it wouldn't be fair for me to tell L&C Pensions to waive any fees that it hasn't charged, although this doesn't exclude Mr H's right to make a further complaint if he believes the transfer isn't carried out on the terms that he thinks have been confirmed.

#### *The loss of investment opportunity and possible growth to cover the exit fee*

Mr H didn't agree with my findings regarding the lost investment opportunity. He explained that his strategy regarding the investment trusts was quite simply to purchase these investments and, at the time when their growth had covered the outstanding exit charge, he could transfer his assets to the other provider having offset the early redemption penalty. So he didn't think he needed to "second guess" the markets and try to sell at "peak value."

He also refuted my claim that he could have mitigated his loss by selling the investment trusts that had been purchased – even if the amounts weren't completely correct. He said the lack of answers from L&C Pensions about the correction of its error and the lack of statements setting out his position (L&C Pensions doesn't offer an online facility) meant he would have been "*shooting in the dark*" if he had tried to mitigate his position. Mr H wanted redress of around £180,000 – to cover the early redemption charge – as compensation for this part of his complaint.

I have some sympathy for Mr H's position here. I do understand the strategy that he's set out of using the trust's growth to cover the exit charge in place at that time. And I'm persuaded that he wouldn't have needed to "play the markets" when selling – which it's agreed would have been difficult to do – as long as the growth on the trust covered the charge at some point. But to uphold this part of the complaint would mean making my decision on the basis of hindsight which I don't think is fair or reasonable for me to do. As I said in my provisional decision I would expect some degree of mitigation here to demonstrate Mr H's intended strategy.

Although the purchase of the investments was both delayed and incorrect (in terms of number of units) Mr H did acquire a portion of the investments he wanted. I think he could have made some of the returns he required if he'd gone ahead with the sale of the shares that he did hold – especially as he said they peaked in value in November 2021 and January 2023 respectively. I know Mr H says he couldn't pursue the strategy while the dispute was ongoing, and he didn't have sight of plan statements to show him the position of the plan. But I think he could have demonstrated his investment strategy if he'd shown intention of that strategy – namely selling to cover some of the exit charge - with the shares that he did hold.

And, although he says, quite correctly, that L&C Pensions didn't fully engage with him during the complaint process and there was no communication after June 2020, I haven't seen any evidence that he referred to his "strategy" or even complained that L&C Pensions was preventing him from achieving his goal during the correspondence they did have. Indeed, in Mrs H's email from 1 June 2020 they set out their expectations from the complaint resolution, which was to receive a cash refund for the difference in value from the shares which they then wanted to transfer into the other SIPP's – without charge. They also wanted L&C Pensions to waive the exit charge on the residual funds. So I can't reasonably say there's sufficient evidence to support the idea that Mr H suffered an investment loss – equivalent to the value of the exit charge – based on what I've seen.

I haven't seen enough evidence that Mr H adopted his investment strategy with even the portion of shares that he could have used to cover some of the exit charge or that he made L&C Pensions aware of a strategy that it was preventing him from adopting. It's difficult for me to conclude that Mr H would have followed the particular plan he's told us about if there's no contemporaneous evidence to support his intention to do so. So I can't safely conclude that L&C Pensions was responsible for that investment loss and that it should compensate Mr H accordingly.

### **Putting things right**

I've set out above what L&C Pensions needs to do to compensate Mr H for the delayed and incorrect share purchases. But I don't think it needs to do anything more regarding the lost investment opportunity or the fees that it applied to the plan. But, I have also considered the impact that L&C Pensions' actions have had on Mr H over a period of three years. L&C Pensions failed to give him a satisfactory answer to his complaint about its error as well as failing to respond to him regarding his other complaint points.

It also hasn't provided the information he requested - including the plan statements that he wanted in order to understand the position and value of the funds. I've thought carefully about how this impacted Mr H's retirement planning and the concern he would have had about the loss of funds and growth from his SIPP.

So I think L&C Pensions should pay Mr H £750 for the significant distress and inconvenience caused by these matters.

### **My final decision**

For the reasons that I've given I uphold Mr H's complaint against London & Colonial Services Limited trading as L&C Pensions. My decision is that London & Colonial Services Limited trading as L&C Pensions should pay the amount calculated as set out above.

London & Colonial Services Limited trading as L&C Pensions should provide details of its calculation to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 January 2024.

Keith Lawrence  
**Ombudsman**