

The complaint

Mr W complains about the advice he says he received from Logic Investments Ltd to switch his personal pension plans to a Self-Invested Personal Pension (SIPP).

What happened

I issued my provisional decision on this complaint on 7 March 2022. The background and circumstances to the complaint, and the reasons why I was minded to uphold the complaint were set out in that decision. I have copied the relevant parts of it here, and it forms part of this final decision.

“Mr W says he was approached in 2016 by a representative of Mayfair Capital and offered a free review of his pension. At the time, Mayfair Capital was an appointed representative of Logic and is therefore as principal, is responsible for the actions of Mayfair Capital. So for ease I will refer to Logic from now on.

Mr W had two personal pension plans, both with a provider I’ll refer to as A. These pensions were subsequently moved to a SIPP with another provider, B. His previous provider confirmed this in a letter to Mr W dated 23 November 2016. Logic, through its appointed representative Mayfair, then advised him in connection with the SIPP investments. Mr W considers the SIPP was mis-sold and says that Logic advised him to move his pension to a SIPP. He wants Logic to put him into the position he would now be in if he hadn’t arranged the SIPP.

Our investigator recommended the complaint be upheld. From the available evidence she wasn’t persuaded that, as had been asserted by Logic, the SIPP transfer was an ‘execution only’ transaction. And despite Logic’s records, the investigator concluded Mr W was a cautious investor with a low capacity for loss. She didn’t think it was suitable for Mr W to take high risk with his pension and so wasn’t persuaded the SIPP investments Logic advised Mr W to make were appropriate for his attitude to risk.

To put things right, the investigator said Logic should pay into Mr W’s pension plan the difference between the notional value of his investments if they’d remained invested as they had with A and the actual value of investments. She also provided an alternative methodology if it wasn’t possible to obtain a notional value. The investigator said Logic should also pay £300 to Mr W for the trouble and upset caused.

Mr W agreed with the investigator’s conclusions, but Logic didn’t. It said it hadn’t given Mr W advice in connection with his pension transfer or arranging the pension switch. Logic also said Mr W had signed a ‘Know Your Client’ form that said he had a good level of experience and investment knowledge and a high attitude to risk. It disputed that Mr W was a cautious investor, and said that the investments made weren’t unsuitable for Mr W.

As agreement couldn’t be reached, the complaint has been passed to me for a decision.

What I’ve provisionally 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 is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. It is my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant as a result of this.

The parties to this complaint have provided detailed submissions to support their position and I am grateful to them for doing so. I have considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings and reasons for reaching them.

I've seen evidence to show Mr W's SIPP application was received by the SIPP provider in October 2016. B's 'New SIPP Checklist' records 'Mayfair Capital Ltd' as Mr W's independent financial adviser and the firm is also named on the electronic data sheet supplied to the provider.

Logic seems to suggest it didn't have any contact with Mr W before his SIPP application was submitted and it is adamant that no advice was provided. Logic has also provided a letter that Mr W signed dated 13 January 2017, which suggests it was acting on an 'execution only' basis. But this was signed several weeks after Mr W had made his SIPP application. And I think it's worth noting that, in the application form, Mr W ticked the boxes requesting both an execution only and advisory service. Logic has said that an execution only document was sent to Mr W to remind him that this was the service he'd agreed and that he could seek financial advice, but I think it would have been good practice to understand why Mr W had ticked both boxes. I would suggest that it's unusual for someone who is confident that they don't need advice to have indicated that they might. And I can't find anything which explains why the "advisory" part of Mr W's request wasn't explored and discounted.

Regardless, from what I've seen I think at minimum Logic did help to arrange the SIPP. For example, I've seen that B provided confirmation that Mr W's application was received in an email to Logic on 24 October 2016. And another email was sent to Logic on 28 November 2016 letting it know that Mr W's pension transfers had been received. Since Logic arranged the SIPP, I still need to consider whether there was anything about the application that should've caused Logic to question whether it was appropriate for Mr W to proceed with the SIPP.

The industry regulator, Financial Conduct Authority (FCA), sets out requirements on the firms it regulates in its Conduct of Business Sourcebook (COBS). COBS 10.2 requires a business to carry out an appropriateness assessment, by asking questions about the customer's experience and knowledge of the product they plan to invest in. This is to determine whether the customer understands the risks involved. I haven't seen anything to suggest that Logic made those sorts of enquiries with Mr W.

And even if I were to accept that Logic provided Mr W with an execution only service, it still doesn't necessarily follow that it was appropriate for it to arrange the SIPP. If it knew Mr W

hadn't taken financial advice, it had an obligation under COBS 2.1.1 to act in his best interests. I'm not persuaded it did so in this instance.

Logic says that by signing its trading account application (which it's referred to as a 'Know Your Customer' document) dated 5 December 2016, Mr W agreed to the statements in that application about his experience of investments and attitude to risk. I accept that the application suggests Mr W was a fairly regular trader in collective investments, major shares, AIM shares and gilts and bonds. It also indicates Mr W was willing to expose up to 25% of his SIPP to high risk or speculative investments, and that he preferred an 'Adventurous' SIPP portfolio model. But I note that the application appears to have been filled out on a computer and given to Mr W to sign. I haven't seen any evidence of a meeting or discussion with Mr W where he provided the information that ended up on the form. And such meetings are usually the forum in which to address potential anomalies in the information provided, which I address further below. I've also taken account of Mr W's circumstances at the time. He was 53 years of age, working as a self-employed painter and decorator earning approximately £23,000 a year. He had a mortgage and £2,000 in savings. He had no other investments, except for the personal pensions being transferred worth around £81,000.

Taking all of this into account, on balance I think it would've been reasonable for Logic to question whether the information on the application form was an accurate reflection of Mr W's investment experience or his attitude to risk. From what I've seen of his circumstances at the time, I think it's unlikely Mr W would've taken the initiative to transfer his only pension provision to a SIPP without some sort of prompt from a third party. And I think this should've been apparent to Logic too.

Logic says that Mr W was several years away from retirement and wanted to maximise the capital return on his personal pension investments. I note Logic's points, but I'm not persuaded they mean Mr W's attitude to risk was high, or that this should have been accepted without question in the presence of other factors which might suggest otherwise. For example, that Mr W had no other retirement provision or substantial savings, coupled with his income and employment status leave me unable to conclude that he was either prepared, or in a position, to take a high level of investment risk with his pension. And Mr W's recorded investment experience was quite limited, certainly in terms of the value of investments which he had apparently exposed to investment in shares.

I think it would've been reasonable for Logic to take an overall view of Mr W's circumstances and pension provision. And had it done so, I don't consider it would've been reasonable for the business to accept without further investigation that he was a high-risk investor. In light of Mr W's overall circumstances, I think it would've been reasonable for Logic to realise that the information in his application form may not have been an accurate representation of his attitude to risk. So I consider it would've been reasonable for Logic to carry out further checks with Mr W to make sure the SIPP was suitable for him – which would likely have revealed the true nature of his investment experience, attitude to risk and financial situation. I'm not persuaded that it did that. If Logic had made further enquiries with Mr W, I think it's unlikely that it could reasonably have concluded that the transfer of his personal pension provision to the SIPP was in his best interests.

So I consider the performance of Mr W's pension should be measured against how it would've performed if it had remained invested in his previous pension plans. If Mr W's pension has suffered a loss, Logic should pay an amount representing that loss into Mr W's pension. It should also pay £300 for the trouble and upset caused — specifically the worry that all of his pension provision has been exposed to high risk investments.

Taking all the above into account, I said my provisional decision was the complaint should be upheld and I explained how Logic should put things right.

I invited both parties to provide any further evidence or arguments that they wanted me to consider before I made my final decision.

Logic responded that it accepted “as the principal firm” that it “had regulatory responsibility for the account of Mr [W] until 3rd April 2017 and it accepted responsibility for any losses that Mr [W] may have suffered up until this date.” But it said it didn’t “accept that the SIPP wrapper is the issue here. It is what was invested in within that wrapper.”

And so it thought I was wrong, and incorrect in law, to suggest it was responsible for any losses that occurred after Mayfair Capital ceased to be its appointed representative and became authorised in its own right on 3 April 2017. Logic said it didn’t have access to Mr W’s account details following this time “as the account documentation proves he was always a client of Mayfair and not Logic. From 3rd April 2017 Logic did not have permission from Mr W to provide him with investment advice and execute transactions on his account.”

Nothing further was received from Mr W.

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.

In response to my provisional findings, Logic noted what the regulator has said when an appointed representative moves to be authorised:

Your principal will become responsible for any regulated business you did while you were its appointed representative. You will need to agree with your principal how they can have direct access to your client files in case of a client complaint.

If you want to carry on dealing with your existing customers you should check that your agreement with your principal allows you to do this.

If you become directly authorised by us you will become responsible for, among other things:

- *having professional indemnity insurance*
- *compliance, and*
- *the liabilities of your business*

You will need to ensure you have systems in place to cope with these obligations.

I understand the argument Logic is making here, but as far as I am aware, there are no complaint issues that arise after 3 April 2017 other than in respect of the original sale of the SIPP and selection of the ‘adventurous’ investment portfolio. I’ve only seen a client agreement from when Mayfair was acting as the appointed representative of Logic and it’s not clear what, if any further role Mayfair has acted in regard to Mr W’s SIPP. Regardless, I remain satisfied that Mr W should not have been sold the SIPP in the first place.

Accordingly, my view is that Logic remains responsible for the financial consequences of that sale, regardless of whether it was removed as the adviser when Mayfair became independently authorised on 3 April 2017. I appreciate that Logic says it wasn’t privy to any information after this date and therefore can’t be held responsible for advice given since then. But the complaint, as far as I can see, is based on the suitability of the switch to the SIPP and the advice to invest in high-risk investments; not any subsequent advice given later on. And as noted above, after an appointed representative is authorised, the principal

becomes responsible for any regulated business the appointed representative conducted while it was an appointed representative.

And while a court might conclude that Mr W's loss has not flowed directly from the switch to the SIPP, in assessing fair compensation, I'm not limited to the position a court might take. It may be there has been a break in the "chain of causation". That might mean it would not be fair to say that all of the losses suffered flowed from the sale of the SIPP. That will depend on the particular circumstances of the case. For example, no liability will arise for an adviser who has given suitable advice; even if fraud later takes place, but the position is different where the consumer would not have been in the investment in the first place without the unsuitable advice (or the absence of advice that should have been given). In that situation, it may be fair to assess compensation on our usual basis. I consider this to be the case for Mr W.

This is notwithstanding any arguments about a break in the "chain of causation". I am satisfied that Mr W would not have moved his pensions if Logic had done what it should have when the switch occurred in 2016. As such, I consider it fair and reasonable to hold Logic responsible for the whole of the loss suffered by Mr W. I am not asking Logic to account for loss that goes beyond the consequences of its failings; I am satisfied that but for those failings Mr W wouldn't have lost out as he has. That other parties might also be responsible for that same loss is a distinct matter, which I am not able to determine. However, that fact should not impact on Mr W's right to compensation for the full amount of his loss.

Therefore, I've seen no reason to depart from my provisional decision outlined above which was to uphold Mr W's complaint.

Putting things right

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if he had been given suitable advice. I take the view that, if Logic had acted in his best interests, Mr W would have remained in his existing pension plans.

What should Logic do?

To compensate Mr W fairly, Logic Investment Ltd must:

- Compare the performance of Mr W's SIPP with the notional value of his existing pension plans, had they remained in place.

If the notional value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the notional no compensation is payable.

If there is a loss, Logic should pay into Mr W's SIPP to increase its value by the total amount of the compensation. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the SIPP if it would conflict with any existing protection or allowance.

If Logic is unable to pay the total amount into Mr W's SIPP, 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.

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

For example, if Mr W 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 W would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation. I have assumed that Mr W would have been a basic rate taxpayer, so a 15% reduction should apply.

- Provide the details of the calculation to Mr W in a clear, simple format.
- Pay to Mr W £300 for the trouble and upset this matter has caused.

Income tax may be payable on any interest paid. If you consider that you're required by HM Revenue & Customs to deduct income tax from that interest, you should tell Mr W how much you've taken off. You should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given, my decision is that I uphold Mr W's complaint. Logic Investments Ltd should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 April 2022.

Jennifer Wood
Ombudsman