

## The complaint

Mrs G has complained about the advice given to her by Mayfair Capital Ltd ('Mayfair') to transfer her personal pension into a self-invested personal pension ('SIPP').

Mayfair were appointed representatives of Logic Investments Ltd ('Logic') at that time.

Following the establishment of the SIPP and the transfer in of Mrs G's existing Friends Life pension, Logic then introduced Mrs G to Jarvis Investment Management Ltd ('Jarvis').

Mrs G has stated that the investments subsequently made with her pension monies were unsuitable and have caused financial loss.

Mrs G is being represented in this complaint however for ease of reference I have only referred to Mrs G throughout the decision below.

## What happened

Mrs G had a pension with Friends Life. This was valued at around £13,000.

In July 2016 Mrs G applied to transfer this pension to a Lifetime SIPP.

On 21 July 2016 Mrs G was sent a welcome confirming the application form for her new Lifetime SIPP has been received. This letter also explained that should Mrs G have any questions about the new pension, Mayfair should be contacted for further information.

The £13,900 proceeds from Mrs G's previous Friends Life pension were paid into the new Lifetime SIPP later in July 2016.

On 12 August 2016 Mrs G signed the authority to deal form for clients introduced to Jarvis by Mayfair. The application form for the Lifetime SIPP was also signed on this date, with this stating that an "*elective*" SIPP had been chosen by Mrs G.

Whilst the pension monies had been transferred from Friends Life, no investments were made, with the funds remaining in cash.

Mrs G completed a know your customer ('KYC') process with Logic in November 2017. This document was not dated but confirmed Mrs G was:

- Aged 56, living with her partner, and employed part time.
- Income was £600 with outgoings of £400 a month.
- The family home was recorded as being worth £275,000 with an outstanding mortgage of £124,000.
- Savings and investments were recorded as £13,000 in cash with no other investments held.
- Mrs G's investment objective was recorded as "*seeking a balance of income and capital*"

*appreciation*” and her attitude to risk (‘ATR’) was termed “*Medium Risk*”.

The document also confirmed that pension savings were limited to the Lifetime SIPP, that Mrs G was willing to risk £6,000 of this amount in high-risk investments, and that Mrs G could afford to lose 60% of her pension savings without this affecting her lifestyle.

Within this form, Mrs G selected the options for both an execution only and advisory services and noted that Mrs G had a history of trading in various types of investments, albeit less than three times per year.

A further signed and dated KYC document was completed over the phone on 13 November 2016. This held different income and expenditure figures (income of £1,000 per month with outgoing of £500 each month), savings had reduced to £3,000 in cash, with there being minor changes to the value of the home / mortgage.

This document also noted the types of investment held by Mrs G in the past, with the answers being contradictory to those included in the previous KYC document.

Based on advice from Logic, investments were then made with the pension transfer proceeds on 27 November 2017. The monies were invested into the LF Partners UCITS Fund of Funds and exchange traded fixed income securities including an Audley Funding Corporate Bond and an Escher Marwick investment.

In January 2019 due to under-performance the LF Partners investment was sold. Mrs G rejected the opportunity to re-invest the proceeds and decided to move her pension away from the Lifetime SIPP.

Whilst full disinvestment instructions were provided to Logic, some of the underlying investments held are illiquid cannot yet be sold.

Unhappy with her pension and the advice she had received, Mrs G registered her complaint with Logic in March 2023.

Logic issued their complaint response on 19 April 2023. This did not uphold the complaint and stated that the SIPP had been opened on an execution only basis. Additionally, whilst the subsequent investments Mrs G made had not performed as expected, Logic had concluded these had met Mrs G’s risk profile and objectives at the time.

Mrs G subsequently referred her complaint to this service.

Our investigator looked into things and upheld the complaint. Whilst Mrs G and Logic disagreed on how the new SIPP commenced, based on the evidence available and the balance of probabilities, the investigator concluded that it was unlikely Mrs G sourced a new SIPP provider and instigated the transfer of her existing pension without advice or input from Logic.

Additionally, the new investments made in November 2017 were deemed unsuitable with the investigator concluding that had appropriate service and advice been given Mrs G would likely have retained her existing Friends Life pension.

Logic have not provided any response to the findings issued and as such the case has been passed to me for a final decision.

## **What I've decided – and why**

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

When considering what 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.

### *Initial transfer of the Friends Life pension*

The first area I have considered are the circumstances surrounding the opening of the new Lifetime SIPP and the transfer in of Mrs G's existing Friends Life pension.

Within their evidence Logic have stated that they gave no advice to Mrs G and have provided a copy of the Lifetime SIPP application form signed by Mrs G showing that that SIPP was an "*elective*" SIPP, opened with no advice.

Despite this I have concluded that the most likely outcome in this case was that Mayfair (and therefore Logic) were involved in the setting up of the new SIPP.

In considering the content of the application form, a point of concern would be that this was dated weeks after the welcome letter had already been sent. In addition, Mayfair's involvement in the setting up of the SIPP (as a minimum) is strongly indicated by confirmation within this welcome letter that they should be contacted in the first instance should Mrs G have any questions.

If Mayfair were not involved in the setting up of the SIPP, I can see no reason why Lifetime would include such a statement in their welcome letter.

Finally, I have considered Mrs G's personal circumstances. Mrs G was an inexperienced investor, holding only a £13,000 pension which was invested in generic funds. I consider it unlikely that Mrs G would seek to transfer this without advice, especially given the specialist nature of the Lifetime SIPP subsequently set up.

Even if I accept that the Mayfair only assisted in the setting up of the SIPP on an execution only basis and provided no advice on the suitability of the SIPP or the transfer of the Friends Life pension, it does not mean that Mayfair acted appropriately.

COBS 2.1.1 confirms Mayfair had an obligation to act in Mrs G's best interests and I do not believe allowing Mrs G to transfer her only personal pension provision without advice, with a view to placing the monies in specialised investments, was in line with this obligation.

Whilst Mayfair became directly authorised in April 2017, their likely actions in facilitating or advising on the setting up of the Lifetime SIPP and the transfer of the Friends Life pension came before this, when they were appointed representatives of Logic. As such, responsibility for these actions' rests with Logic.

I note that the plan was for Mrs G to become a client of Mayfair once their direct authorisation process was complete, however this never happened. Mrs G remained a client of Logic, with the November 2017 investments being based on their advice.

As such, Logic is also responsible for the suitability of these investments.

#### *The suitability of the November 2017 investments*

The suitability of the investment recommendations was based on the KYC documents completed at that time. This raises significant concerns as there are material differences between these documents.

Whilst a medium / balanced ATR is consistently recorded, Mrs G has different income and disposable income figures, significantly different cash-based savings, and has indicated different and contradictory answers when establishing her investment experience.

Information in these areas is key to establishing a customer's capacity to take risks with their money and their ability to understand the agreed level of risk and the consequences of potential losses.

The fact that Logic did not record accurate and consistent information in these key areas means that the advice to purchase the recommended investments cannot be considered suitable. Logic should have identified the contradictions in these key areas and asked further questions to better understand Mrs G's circumstances to ensure the suitability of their recommendations.

I have considered the content of the initial KYC document states that Mrs G was willing to take a high risk with £6,000 of her investment, and that 60% losses could be tolerated however I believe the already identified inconsistencies between KYC documents raises questions over these answers. Even if these answers are accurate, I remain of the opinion that the file does not provide sufficient information about Mrs G's investment experience or capacity for loss to deem such high levels of risk suitable.

Whilst a medium risk approach may have been appropriate for Mrs G, as per the findings already issued by our investigator, the recommended investments were not generic medium risk funds and I do not consider them consistent with Mrs G's ATR or her investment experience.

#### *Summary*

Overall, I have concluded that were it not for Logic's involvement with Mrs G, it is most likely that her pre-existing Friends Life pension would have remained in force.

I do not consider it reasonable to conclude that Mrs G, given her investment experience, would choose to move a long-standing pension arrangement into a non-mainstream SIPP with a view to investing the monies in high risk, specialised investments that were not suited to her investment experience or capacity for loss.

#### **Putting things right**

My aim is that Mrs G should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs G would have remained with her previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mrs G's circumstances and objectives when she invested.

## What must Logic do?

To compensate Mrs G fairly, Logic must:

- Compare the performance of Mrs G's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- Logic should also add any interest set out below to the compensation payable.
- Logic should pay into Mrs G'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 Logic is unable to pay the total amount into Mrs G's pension plan, it should pay that amount direct to her. 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 Mrs G won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mrs G's actual or expected marginal rate of tax at her selected retirement age.
- In line with the outcome communicated by our investigator, I consider it reasonable to assume Mrs G is likely to be a non-taxpayer at the selected retirement age, so no reduction should be made in this case. This assumption is based on the content of Logic's KYC document which indicates the transferred pension was Mrs G's only personal pension provision at that time. Also, I note that our investigator asked each party to provide any additional commentary or evidence should they wish to challenge this assumption in the findings issued in September 2023, and as no additional commentary has been provided, I see no reason to change the assumption made by the investigator.

Income tax may be payable on any interest paid. If Logic deducts income tax from the interest it should tell Mrs G how much has been taken off. Logic should give Mrs G a tax deduction certificate in respect of interest if Mrs G asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Lifetime SIPP	Some liquid/some illiquid	Notional value from previous provider	Date of transfer	Date of my final decision	n/a

### **Actual value**

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. Logic should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Logic pays should be included in the actual value before compensation is calculated.

If Logic is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. Logic may require that Mrs G provides an undertaking to pay Logic any amount she may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Logic will need to meet any costs in drawing up the undertaking.

### **Notional Value**

This is the value of Mrs G's investment had it remained with the previous provider until the end date. Logic should request that the previous provider calculate this value.

Any withdrawal from the Lifetime SIPP should be deducted from the notional 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 Logic totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Logic will need to determine a fair value for Mrs G's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

The Lifetime SIPP only exists because of illiquid assets. In order for the Lifetime SIPP to be closed and further fees that are charged to be prevented, those assets need to be removed. I've set out above how this might be achieved by Logic taking over the illiquid assets, or this is something that Mrs G can discuss with the provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If Logic is unable to purchase the illiquid assets, to provide certainty to all parties I think it's fair that it pays Mrs G an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the Lifetime SIPP to be closed.

### **Why is this remedy suitable?**

I've decided on this method of compensation because:

- Mrs G wanted Capital growth and was willing to accept some investment risk.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a

fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs G's circumstances and risk attitude.

### **My final decision**

In line with the rationale above I am upholding this complaint against Logic Investments Ltd and require them to calculate and pay redress in line with the instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 21 May 2024.

John Rogowski  
**Ombudsman**