

The complaint

Mrs L, in her capacity as administrator of Mr L's estate and as the beneficiary of his pension, has complained that Mayfair Capital Limited invested Mr L's pension funds in investments that weren't suitable for him.

What happened

In 2017 Mr L received advice from an independent financial advisor (who I'll refer to as "P") to switch his existing personal pension to a self-invested personal pension ("SIPP"), and to then have Mayfair manage and advise him on the investments within the SIPP.

Mayfair sent Mr L a 'welcome letter' in July 2017 which said it would provide an advisory service and that it had categorised him as a medium risk investor. It later proposed some initial trades for Mr L's funds. Along with other investments, it recommended £6,400 be invested in NQ Minerals shares ("the shares") and £6,400 to be invested in Corporate Bonds ("the bonds").

Mr L sadly passed away in September 2018. Mrs L told Mayfair and no further investments were made.

Mrs L later complained as she was unhappy with the loss of value and felt Mr L had received unsuitable advice about the investments. Mayfair felt the investment advice given was suitable for Mr L.

Our investigator thought the complaint should be upheld. In summary, he felt Mr L was an inexperienced investor and had limited capacity for loss. So he felt the recommendation to invest a significant amount of Mr L's funds in high risk, illiquid bonds and high risk shares was unsuitable and made his investment portfolio exceed the risk he was prepared to take. Using a formula our investigator calculated what he thought was suitable compensation.

Mayfair accepted our investigator's assessment but Mrs L didn't. She thought the compensation was insufficient to cover her losses. The matter has therefore been passed to me to consider.

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.

Mrs L has made various comments about things that have happened and information she was given/not given by Mayfair, P and the SIPP provider. She's also made a related complaint to us against P about its involvement in this matter. This complaint concerns Mayfair's involvement and this decision only relates to Mayfair's actions. I'm looking at the complaint about P separately.

Investment advice

I think the issue over whether or not Mayfair provided Mr L with suitable advice and/or invested on his behalf in an appropriate manner is no longer in dispute. I say this because our investigator specifically/said:

- the bonds – were unsuitable as they were non-mainstream pooled investments and shouldn't have been promoted/offered to Mr L; and even if they weren't non-mainstream pooled investments they were unsuitable anyway as they represented the entire fixed interest element of the portfolio, were illiquid, and were high risk (meaning there was significant risk of capital loss – and Mr L had a limited capacity for loss as he had limited pension savings)
- the shares – represented the entire smaller companies element of the portfolio, were high risk and carried a significant risk of capital loss that, as above, Mr L couldn't afford
- both investments – comprised roughly one-third of Mr L's entire investment portfolio, and meant the portfolio as a whole wasn't consistent with Mr L's attitude to risk.

In response to our investigator's assessment Mayfair said it didn't dispute anything in respect of the bonds. It made some comments about the shares but these were more to do with the suggested compensation rather than the conclusion reached that they were unsuitable. And as Mayfair ended up agreeing to a compensation settlement it, in my view, effectively agreed that both investments were unsuitable.

I don't therefore feel the need to focus on this point further. The real issue for me to decide is what Mayfair now needs to do to put things right.

Putting things right

In January 2019 Mrs L asked P about taking the death benefits from the pension. P told her, wrongly, that she'd have to pay tax on the money she received so it advised her to keep the pension running. Mrs L wouldn't have been liable to pay any tax at that time had she chosen to take the death benefits. Mayfair isn't responsible for the misinformation P gave Mrs L in this respect but I mention it here because I think it's important to determining fair compensation in this complaint. This is because had P correctly advised Mrs L I think she would most likely have taken the death benefits in/around January 2019 and then used the money to put towards a property she bought.

My aim is to put Mrs L as close as reasonably possible to the position she would have been in in January 2019 but for the unsuitable investment advice. I nevertheless need to take account of the fact that in the complaint about P I've concluded that P (rather than Mayfair) was responsible for some losses that the pension might have suffered. The failings here are in respect of the two investments. As I've said, other failings – including the information P gave Mrs L about her potential tax liability – aren't Mayfair's responsibility.

My first consideration is in respect of the potential loss suffered. The investigator used a formula to calculate how much he felt Mayfair should pay. However, the final compensation figure he came to was only an approximation (eg the index growth figures weren't exact) in an attempt to come to bring the parties together to come to an agreeable settlement. We don't have the capacity or expertise to carry out the exact calculations. So rather than come to a precise figure my redress will be formulaic, along the same lines as that suggested by our investigator.

So, to compensate Mrs L fairly Mayfair should:

- i. use the sums Mr L invested in the bonds and the shares

- ii. calculate the growth on the figure in “i” from the dates the investments were made until 15 January 2019, using the FTSE UK Private Investors Income Total Return Index as a benchmark, and add this growth to the figure in “i”
- iii. calculate the value of the shares as of 15 January 2019 and deduct this from the figure in “ii”
- iv. to the figure in “iii”, add 2.81% compound interest from 29 September 2019 to the date of this decision
- v. to the figure in “iv”, add £800 in recognition of the £1,000 the SIPP provider will keep in the SIPP to cover ongoing fees, and £150 for the distress and inconvenience caused by the advice
- vi. pay the amount in “v” Mrs L.

Mayfair should also provide the details of the calculation to Mrs L in a clear, simple format.

It's possible that income tax might be payable on any interest paid. If Mayfair considers that it's required by HM Revenue & Customs to deduct income tax from the interest it should tell Mrs L how much it's taken off. It should also give her a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

I think it's fair for the start point of the calculations to be the amounts Mr L invested in the shares and bonds because Mayfair's liability is only for losses in respect of these investments. It's not possible to know precisely how Mr L would otherwise have invested the money, but it seems that he was willing to accept some risk to the investment in order to achieve capital, and the FTSE UK Private Investors Income Total Return Index is a fair measure for someone who was prepared to take some risk to get a higher return. It's fair to deduct the value of the shares as of 15 January 2019 because these could have been sold at that point and likely would have been had Mrs L chosen at that point to take the death benefits (had she been correctly advised by P).

The interest rate used is fair because Mrs L would most likely have used the funds from the death benefits to buy the property (which in turn would have reduced the amount she needed to borrow).

The compensation amount for the ongoing fees is fair because the SIPP provider said the SIPP couldn't be closed until all the investments held within it had been sold; so if Mrs L now started taking death benefits it would retain £1,000 in the SIPP to cover future charges. It's not fair for Mrs L to have to pay these ongoing charges because had there not been investments in the bonds she would have been able to take all the death benefits in January 2019. I've allowed for £800 because £1,000 in the SIPP is equivalent to £800 that Mrs L would receive as she now has to pay tax on the death benefits. The £150 suggested for the distress and inconvenience Mrs L has suffered as a result of the unsuitable investments is fair.

When responding to our investigator Mrs L made various comments on why she felt the compensation was insufficient. Some of the comments related to issues she felt were caused by being given incorrect advice about being taxed on the death benefits. I've dealt with those in my decision on the complaint against P. In respect of the unsuitable investments, Mrs L felt she should have the original investment returned in full.

As I said earlier, my aim is to put Mrs L as close as reasonably possible to the position she would have been in in January 2019 but for *Mayfair's* wrongdoing. For the bonds, I think the compensation does, in effect, reimburse Mrs L for the cost of the original investment. This is because the above calculations are based on the amount originally invested plus the growth that would have been experienced up to January 2019 using the index comparison. There's no deduction in the rest of the formula in respect of the bonds.

For the shares, the calculation again starts by taking the amount originally invested plus the growth that would have been experienced up to January 2019 using the index comparison. The difference here is that a deduction has been made. As I've said above, I think this is fair because if Mrs L had been correctly advised by P in January 2019 she would have taken the death benefits at that point. And in doing so the shares could and would have been sold. Accordingly, if there has been any loss in value of the shares from January 2019 I don't think that's strictly as a result of the unsuitable investment advice.

My second consideration is in respect of what should happen to the investments still held within the SIPP. The above redress calculation essentially compensates Mrs L for the full amount invested in the bonds. However, they're illiquid – meaning they need to be held in the SIPP until they become liquid (which I understand won't be until around May 2024). But as Mrs L will already have been compensated for the bonds, it's inequitable for her to then also receive the value of them once they're able to be redeemed. Accordingly, I think it's fair if Mayfair wish to require that Mrs L provide an undertaking to pay it any amount she might receive from the bonds in the future. Mayfair will need to meet any costs in drawing up the undertaking.

No undertaking is needed in respect of the shares as Mayfair isn't compensating Mrs L in full for these.

My final decision

I uphold this complaint. I require Mayfair Capital Limited to settle this matter as outlined under the 'Putting things right' heading above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 22 April 2023.

Paul Daniel
Ombudsman