DRN-4765598

The complaint

Mr R complains that the advice he was given by Logic Investments Ltd on how to invest his pension was unsuitable.

What happened

Mr R's complaint was considered by one of our investigators. He sent his assessment of it to both parties on 20 December 2023. The background and circumstances to the complaint were set out in that assessment. However to recap, Mr R had been advised to transfer the defined benefits in his occupational pension scheme to a self-invested personal pension ("SIPP") in 2016. The advice to transfer had been given by another firm (which I will refer to as Firm A) – not Logic. The transfer value was around £162,000. Mr R took some of his tax-free cash, and the remaining funds, around £135,000, were to be invested through Logic.

Mr R's circumstances at the time were recorded as:

- He was in his mid-fifties
- He was self-employed with a monthly post-tax income of £2,170.
- He owned his main residence valued at approximately £160,000. It had an outstanding mortgage of around £11,000.
- The total value of all his pensions was around £162,000.
- He had around £8,000 in savings or investments.

The application document also recorded Mr R:

- Was considered as having "good" investment knowledge, but had had no professional experience or qualifications within the financial sector.
- Had previously invested in major shares, but didn't have any other investment related experience.
- His percentage capacity for loss was 100%.
- Was considered as having a medium attitude to risk out of three options – low, medium and high.
- Had a "balanced" attitude toward his investment objectives.

The investigator said he had only considered the suitability of the investment recommendations made by Logic – he hadn't considered the suitability of the advice to transfer which had been given by Firm A. The investigator said he didn't think the investment recommendations made were suitable for Mr R's circumstances. He thought that, overall, the advice given put Mr R's pension funds at additional unsuitable risk.

Logic had said it had assessed Mr R's suitability for its investment services as part of its 'know your client' work undertaken during the onboarding process. The investigator noted that within the application to open a trading account Mr R had said he had a balanced investment objective and a medium attitude to risk. And that he'd indicated he wanted to obtain both income and capital appreciation. But the investigator thought that anybody, when asked, would be interested in this, and didn't think it demonstrated a thorough assessment had been made.

The investigator noted Logic had said Mr R had confirmed that his preferred product class included Global Large Cap Equities and speculative High-Risk Investments, including FTSE Small Cap and AIM Shares. The investigator said COBS 9.2.2R (referring to the regulator's Conduct of Business Sourcebook) required Logic to gather sufficient information to have a reasonable basis for believing Mr R could bear any related investment risks. It also required Logic to ensure that Mr R had the necessary experience and knowledge to understand the risks involved in the transaction or in the management of his portfolio.

The investigator said the information available showed Mr R had very limited to no previous relevant investment experience. So overall, he didn't think there was sufficient evidence to show Mr R understood or was aware of the relevant risks associated with the types of investments, even though he might have ticked to say he understood.

The investigator said that even if he accepted that Mr R understood the nature of the investments recommended, Logic still needed to take account of his capacity for loss. The application noted Mr R's percentage capacity for loss was 100%. But the investigator said taking Mr R's circumstances into account, he didn't agree this was the case.

The investigator said this was Mr R's only pension, and he only had limited other savings and investments. He said based on Mr R's employment earnings, he appeared to have little opportunity to recoup any losses made, or save further for retirement with future contributions or through another arrangement.

The investigator said he wasn't satisfied that Mr R had the capacity to take significant risk with his pension funds, and therefore he didn't think Logic should have had a belief that he was able to bear the investment risks associated with its investment proposals.

The investigator said his view wasn't that Mr R wasn't willing to take any risk at all. But he thought the medium attitude to risk selected on the form wasn't fully considered. He said in his view, the process by which information was gathered in relation to Mr R's understanding of risk and his attitude wasn't sufficient to enable Logic to make an appropriate assessment. He thought had it followed a more robust procedure, it would have likely identified that a low or low- medium approach was more appropriate.

The investigator noted Logic had said that at any one time the amount invested in high-risk smaller equities was 20%. It explained this was only 5% above the example composition as stated in the SIPP brochure. The investigator said it was evident that some of the investments recommended for Mr R were high-risk and highly speculative, outside of his attitude to risk and capacity for loss in respect of his pension funds.

The investigator said he thought Mr R didn't come close to being someone who was suited to investing in high-risk or speculative investments, given his profile and investment experience at the time. He said the pension was his only provision for retirement, and was of a relatively modest in size.

The investigator said he thought the investments Logic recommended were unsuitable, and meant Mr R was exposed to far more risk than was appropriate. The investigator didn't think Mr R had the capacity for loss to justify the recommended investments.

Logic didn't agree with the investigator's findings. It said, in summary, that the evidence suggested that Logic wasn't solely responsible for the investments held in the pension following the pension transfer. It said Firm A was also responsible for assessing his suitability for Logic's Balanced Portfolio following its own fact finding and suitability assessment.

It said Firm A was responsible for ensuring that Logic's investment services and in particular Logic's Balanced portfolio was suitable for Mr R's circumstances. And this was evidenced by Firm A's suitability assessment which was provided to Mr R, and which included all the examples of Logic's composite portfolios and details of the percentage weightings in each key asset class for each portfolio.

Logic said its Balanced portfolio as described to Firm A and Mr R, clearly said there was a 15% allocation reserved for speculative investments, such as smaller equities and high yield bonds, and 35% was reserved for investment grade bonds. It said Firm A had the choice of which Logic portfolio to recommend to Mr R.

It said Firm A's suitability letter recommended Logic Investments Balanced Portfolio as being in line with Mr R's objectives and risk profile

Logic said it hadn't solely relied on its own information gathering. It had also considered information provided by Mr R himself within Firm A's Fact Find and suitability report.

Logic provided a summary of its KYC Suitability Form which was subsequently sent to Mr R for him to check and sign. This recorded, amongst other things, that he had an overall Medium attitude to investment risk; preferred a "Balanced" portfolio of investments; his financial investment knowledge and experience was "Good"; he had a total net worth including property of £157,000.; his percentage capacity for loss was 100%; he had 1 years' experience investing in major shares on an execution only basis at an average trade size of £1,000; he preferred product classes included Global Large Cap Equities, and Speculative High-Risk Investments including FTSE Small Cap and AIM shares; he understood the main risks associated with share investments, and he confirmed that he had read and understood all of the risk warnings.

Logic provided a summary of the transactions in high-risk investments. It said the maximum total amount invested in high-risk smaller equities at any one time was 20%, which was 5% above the example composition as stated in Logic's SIPP Brochure and in Firm A's suitability report. It said if Mr R was to sell his remaining high-risk investments (as on 28th August 2023) he would have made a total profit of £1,772. Therefore Mr R's losses weren't due to him investing in high-risk investments.

Logic said trade suitability reports with accompanying key information documents were provided to Mr R summarising Logic's understanding of his investment objectives and attitude to risk before he decided to accept Logic's advice. It provided copies of such reports.

Logic said Mr R signed Bespoke Discretionary Managed Account Service Forms in January 2020 and this service replaced the advisory service. It said the client mandate Mr R signed at the same time confirmed that he wanted a Balanced Portfolio. And Mr R had consistently confirmed that he was a medium risk investor who wanted to continue investing in a Balanced Portfolio. He was given plenty of opportunities to inform Logic of any changes in his circumstances, including any change to his attitude to risk.

Overall, Logic didn't agree with the investigator's assessment that it hadn't acted fairly in all the circumstances.

The investigator responded to say that whilst he acknowledged that Firm A had its own responsibilities, he thought Logic still needed to provide suitable recommendations when giving advice to Mr R.

The investigator said Mr R had said he was cold called and told he could access his pension and achieve better returns elsewhere. He was then put in touch with Logic. The investigator said the evidence suggested Logic had then introduced Mr R to Firm A for pension transfer advice.

The investigator noted Logic's Client Agreement said it would give advice, as well as act or arrange the purchase and sale of investments. He also noted Logic's e-mail to Mr R dated 20 July 2016 said it deemed the arrangement a suitable one for Mr R, and it had taken different factors into consideration as part of its assessment.

The investigator said in view of all the above, he didn't think Logic should have relied on the advice given by Firm A that the balanced portfolio was appropriate. He thought the fact-finding process conducted by Logic was insufficient. And overall, his view was that Logic should bear responsibility for the investment recommendations made within Mr R's SIPP.

The investigator acknowledged that an attitude to risk assessment was carried out as part of the fact-find process which showed Mr R to be a balanced investor. But he said an important part of an overall assessment when advising on investments was the client's capacity for loss. He said as he'd previously explained, this was Mr R's only pension. And it was modest in nature. He said Mr R was also close to retirement age and had limited other means, and ways, to save for his retirement.

The investigator said he therefore didn't agree that Mr R had 100% capacity for loss. He thought instead that Mr R's capacity for loss was low. He said this was an important consideration when determining the appropriate level of risk it was appropriate for Mr R to take. The investigator thought Logic ought to have identified a lower risk approach was more suitable given Mr R's circumstances.

The investigator said it was clear that a number of higher risk investments were included in the portfolio – for example 'NQ Minerals', 'Equatorial Mining' and 'Orclass Co'. He said whilst Logic might argue that these were included as they were in line with the model balanced portfolio recommended, he thought putting as much as 20% of Mr R's pension in this type of investment wasn't suitable. The investigator didn't think the investments were appropriate for someone with Mr R's investment experience and attitude to risk.

The investigator said that as Logic didn't agree with his findings he would pass the complaint to an Ombudsman 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.

Having done so I've come to the same conclusions as the investigator, and largely for the same reasons.

I accept that Firm A advised Mr R to transfer his defined benefit pension and recommended he invest in Logic's Balanced Portfolio. So I recognise that it can be argued that Firm A's actions may have also separately caused Mr R a loss.

However it's clear that Logic had a direct relationship with Mr R, was advising Mr R on the suitability of its services and the investments in his SIPP, and so was bound by the regulator's rules to provide suitable advice.

Each firm had its own roles, responsibilities and regulatory obligations. Logic made its own assessment of the suitability of its services to Mr R and the suitability of the underlying investments it recommended. If Logic had met its regulatory obligations and provided suitable advice, its likely Mr R would have accepted its advice and wouldn't have been in the Balanced Portfolio. And if it had provided suitable advice it wouldn't in any event be liable for any losses claimed by Mr R - irrespective of the actions of Firm A. So I think it's fair and reasonable in the particular circumstances for Logic to compensate Mr R for the losses that resulted from its own failings.

As explained by the investigator, the FCA's (Financial Conduct Authority) COBS rules required that Logic had to have a reasonable basis for believing that Mr R was able to financially bear the investment risks associated with transaction. Mr R may have agreed to accept a Balanced portfolio/medium risk. But Logic was acting in its professional capacity, and was obliged to consider whether the make-up of the that Balanced risk portfolio was consistent with Mr R's circumstances – whether he was in a position to accept the risks it presented.

The £135,000 available to invest in the SIPP represented Mr R's entire pension provision. He had limited other savings and investments – approximately £8,000 in cash. Mr R's earnings from employment were around £1,200 a month - the remainder of his income was made up from family allowance. Mr R was in his mid-fifties and given his circumstances, as the investigator said, he had limited means to pay significant sums into a pension going forward or make up for any significant losses suffered by the SIPP, it was highly likely the £135,000 would represent the majority of his private pension provision which he would rely on during retirement. Therefore, like the investigator, I think in reality Mr R had a limited capacity for loss.

Logic has said that at times the portfolio had up to 20% in speculative investments. It also held other investments presenting appreciable risks. In my view the portfolio was unbalanced, having a significant proportion exposed to higher risks when considered in the context of Mr R's particular circumstances – as I have said above, in my opinion he had limited capacity for loss.

Like the investigator, I don't think the portfolio was suitable for Mr R - it presented a greater degree of risk than was suitable for Mr R's particular circumstances. I don't think, on the information available, it was reasonable for Logic to have a reasonable basis for believing that Mr R was able financially to bear the related investment risks presented by the portfolio. In my opinion Mr R wasn't in a position to absorb the kind of losses that the type and mix of investments in the SIPP exposed him to.

So for the reasons outlined by the investigator and above, I'm not persuaded the portfolio was suitable in the particular circumstances.

Putting things right

Fair compensation

In assessing what would be fair compensation, my aim is to put Mr R as close as possible to the position he would probably now be in if he had been given suitable advice.

I think Mr R would have invested differently. It's not possible to say precisely what he would've done, but I'm satisfied that what I've set out below is fair and reasonable given Mr R's circumstances and objectives when he invested.

What should Logic Investments Ltd do?

To compensate Mr R fairly Logic Investments Ltd should:

- Compare the performance of Mr R's investment with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.

- Logic Investments Ltd should also add any interest set out below to the compensation payable.

investment	Benchmark	from ("start date")	to ("end date")	additional interest
Logic investment portfolio	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half; average rate from fixed rate bonds	Date of investme nt	Date of this final decision	8% simple a year from date of this final decision to date of settlement if settlement isn't made within 28 days of Logic Investments Ltd being notified of Mr R's acceptance of this decision

- If there is a loss, Logic Investments Ltd should pay into Mr R's pension plan, to increase its value by the amount of the compensation and any interest. Logic Investments Ltd should allow for the effect of charges and any available tax relief. Logic Investments Ltd shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If Logic Investments Ltd is unable to pay the compensation into Mr R's pension plan it should pay that amount direct to him. But had it been possible to pay into the plan it would've 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 R won't be able to reclaim any of the reduction after compensation is paid.

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

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

- Logic Investments Ltd should provide details of the calculation to Mr R in a clear, simple format.

Actual value

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

If, at the end date, any investment in the portfolio is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio. So, Logic Investments Ltd you should take ownership of any illiquid investments within the portfolio by paying a commercial value acceptable to the pension provider. This should be included in the actual value before compensation is calculated.

If Logic Investments Ltd is unable to purchase any illiquid investment the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. Logic Investments Ltd may wish to require that Mr R provides an undertaking to pay it any amount he may receive from that investment in the future. The undertaking must allow for any tax and charges that would be incurred on drawing it from the pension plan. Logic will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the fair value when using the fixed rate bonds as the benchmark, Logic should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England.

The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

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 Logic investment 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's a large number of regular payments, to keep calculations simpler, I'll accept if Logic total all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr R wanted Capital growth but was suited to only accepting limited risk to his capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

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

- I consider that Mr R's risk profile was in between, in the sense that he should have been advised to take limited risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr R into that position. It doesn’t mean that Mr R would’ve invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr R could have obtained from investments suited to his objectives.

My final decision

My final decision is that I uphold Mr R’s complaint.

I order Logic Investments Ltd to calculate and pay compensation due to Mr R as I have set out above under ‘Putting things right’.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 30 August 2024.

David Ashley
Ombudsman