

## **The complaint**

Mr H complained about Forester Life Limited trading as Foresters Financial (Foresters). He said he was mis-sold a lifetime individual savings account (LISA) by Foresters. He said it gave him advice that was unsuitable for him. He said this has meant he has incurred losses as well as suffer distress and inconvenience.

## **What happened**

Mr H met with an adviser from Foresters in 2019. He said he told Foresters he was looking to save money for a deposit on a property. He said Foresters gave him advice to open a LISA. He said he explained on numerous occasions to the adviser that he had owned a property before, but the adviser told him that he was eligible to have a LISA and could use money accrued including government contributions for a house deposit in the future.

Mr H said he achieved his goal and had enough money in his LISA to make a deposit on a property but was told by a conveyancer that he was not entitled to the government contributions provided by him having a LISA for the purposes he had in mind, because he had owned a property before.

Mr H said Foresters had given him advice that was unsuitable, and he had been mis-sold the LISA. He said he had to incur a penalty for taking the money out and had to make up the shortfall in funds that he said he had saved up for the property. He thinks Forester are responsible for his losses and for distress and inconvenience it caused him. It complained to Forester about this.

Forester was delayed in its response to Mr H's complaint and offered to pay him £75 compensation for this. When it did respond it said it was unable to uphold his complaint. It pointed to documentation issued at the time and in particular the key information document and suitability report. It said it was clearly stated in these documents that a LISA was meant for first time buyers and / or people saving for later on in life. It said this message would have also been repeated every time Mr H topped up his LISA. It said its adviser has told it that he went through this literature with Mr H. It said after weighing this up, it did not think the plan was sold as Mr H had suggested.

Mr H referred his complaint to our service and an investigator looked into his complaint. The investigator asked Mr H more about the meeting that took place in 2019. Mr H said he asked for a meeting as he wanted to take out a standard ISA to save for a deposit for a property. He said he knew he could not take out a LISA due to owning a property previously in 2015. He said he sold this property in 2017, due to a change in circumstances.

Mr H said he told the adviser on numerous occasions that he did not think he qualified for a LISA due to previously owning a property, but the adviser kept telling him that due to timescales and him no longer owning a property, he would be classed as a first-time buyer. So, Mr H said he took the advisers recommendation and decided to open the account.

Mr H said he was aware it stated in the paperwork that LISA's were for first time buyers, and that is why he questioned the adviser, but he was told it was applicable to him, so he said he

honestly believed he could use it. Mr H said he relied on the advice given, and if he had been given correct advice, he wouldn't have taken the LISA out, as he had no clear use for it.

The investigator looked into Mr H's complaint and concluded that an error or misunderstanding by the adviser from Forester led to him giving Mr H incorrect information about the LISA. He upheld Mr H's complaint and said on balance, it's unlikely Mr H would've forgotten he had a property previously and any deliberate misinformation wouldn't have benefited him. So, he was persuaded by what Mr H had said.

Foresters were not in agreement with the investigator's view. It said it didn't agree with the outcome and felt he had based his decision purely on what Mr H has said despite the evidence provided.

Foresters said the suitability report and other documentation stipulates the terms of a lifetime ISA clearly. It said its advisers are fully trained and it is extremely unlikely that the adviser would have recommended a lifetime ISA, had the customer made them aware they had previously owned one. It said there is no mention of Mr H informing the adviser that he previously owned a property, and no record of this in its notes.

I issued a provisional decision on this complaint on 26 September 2024. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

*"I have carefully read submissions from both sides and in doing so I am currently minded to not uphold Mr H's complaint. I will explain why.*

*First of all, I think it's worth explaining what a LISA is. It is a special sort of individual savings account. It allows people to save either for buying their first home or for later older life and usually retirement. There are detailed and at times complex rules set by HMRC which say that, in specific circumstances, people who have a LISA will receive a 25% contribution from it on their savings. This is paid by HMRC, not by the business that operates the account. But those HMRC rules also say that there can be penalties if people take money out of the LISA at the wrong time, or use it for a different purpose, and the amount clawed back through penalties mirrors the amount HMRC contributed. HMRC has set these rules to ensure people take them out for the purpose that the account was designed for.*

*Mr H said he was given unsuitable advice from Forester. He said the adviser told him he would benefit from having a LISA, even though Mr H had bought a property before. Mr H said he was clear with the adviser about this and told him numerous times that he had been a property owner before. The adviser on the other hand said he couldn't remember specifics about the meeting with Mr H in 2019, only that he would have followed the rules and what Foresters would have wanted him to do. This would have involved completing a suitability report, asking questions provided and noting them down, including detailing what Mr H's circumstances were and recommendations made.*

*It is clear both parties disagree about what happened. Before I go on to make a finding about this, I would firstly like to explain why I don't think it would be fair to award Mr H what he is asking for anyway, even if I were to conclude Forester made mistakes here.*

*If I were to conclude mistakes were made by the adviser, I would consider what impact this would have had on Mr H. The approach that I would take in this scenario, and is the approach normally for our service too, would be to put Mr H back in a position he would have been in but for any mistakes made.*

*Mr H was looking to invest additional funds. So, I think on balance, he would have gone ahead and invested the same amount that he did in his LISA, into a regular stocks and shares ISA, in a similar fund. The only difference being that he wouldn't have received a 25% contribution from HMRC to his savings every time he added funds to his LISA, and then when he went to withdraw the funds, he wouldn't have had to pay the 25% penalty that HMRC applied, to claw back the contributions it made.*

*As I have already explained, HMRC's rules on LISAs are there to ensure that investors use the scheme for the purposes that it is designed for: saving for a first-time purchase of a property or saving for older age. So, the contributions HMRC makes, it seeks to reclaim through penalties if the LISA is not used for either purpose. With this in mind, Mr H didn't lose out when he paid the 25% penalty for withdrawing his funds, it was more a case of him offsetting against the contributions HMRC made when he added funds to his account.*

*The reason why I think this is relevant, is because Mr H has asked Forester to pay the extra money that he was expecting i.e., the HMRC 25% contribution to his savings. But by his own admissions he was not a first-time buyer, so he was not entitled to the amount he is requesting. If I were to award this, it would mean Mr H would be put in a better position than if Forester hadn't made the recommendation, and that wouldn't be fair or in line with the approach I have mentioned.*

*That being said, I don't currently need to make that finding in the circumstances of Mr H's complaint. This is because, I am currently not upholding his complaint. I say this because after looking through the documentation and submissions made, on balance, I don't think Forester Life made an unsuitable recommendation to Mr H.*

*Mr H has been clear about what he recalls happened in the meeting. He said he told the adviser on numerous occasions that he had owned a property before, but the adviser kept telling him that due to the time that has passed and him no longer owning a property, that he would be classed as a first-time buyer again. So, he took the erroneous advice.*

*I acknowledge what Mr H has said here, and I don't doubt that he has put forward to the best of his recollections what happened.*

*But I have also looked through the documentation that was completed by the adviser at the meeting, this included a suitability report and key information document that would have been provided to Mr H. The suitability report in particular, on this occasion, is a detailed record kept of the meeting, compiled by the adviser, and agreed upon by Mr H. I have considered what has been said in this document as it is a contemporary report of what was discussed and recorded down.*

*The adviser said he followed the documentation questions and asked what was in the suitability report, and I can see that this report has been completed. I can see the following was discussed and recorded down:*

*"I explained that the lifetime ISA is specifically designed for saving towards the purchase of a first home. I then asked if you were thinking of investing towards a first house purchase. You said that you were.*

*I explained that the lifetime ISA is also specifically designed for savings towards later life (age 60 or older). I then asked you if you were thinking of saving towards later life. You said that you were.*

*I explained that additional risks apply to the lifetime ISA.*

*If you cash in your investment from a lifetime ISA before age 60, other than towards the purchase of your first home, then a government penalty of 25% will apply to the value and you may get back less than you have paid in.*

*Having explained these additional risks of investing in a lifetime ISA, including the government charge for withdrawal in certain circumstances, I asked if you were happy to proceed. You said you were, and I therefore recommended the lifetime element of the Forester Life ISA to you.”*

*When I read this within the suitability document, I can see a detailed discussion was noted down between the parties and that according to this, the purpose of the lifetime ISA was discussed along with the risks of these not been followed. I think on balance, if a conversation was had between the parties about Mr H's previous property ownership, considering the level of detail that was recorded in the report, it would have most likely been recorded here. Instead, I can see the adviser has discussed the purpose of the LISA and the risks associated with withdrawal. He then went on to recommend the LISA, based on the answers Mr H provided and then Mr H agreed to have it.*

*It is possible that the adviser didn't make any notes, after having a conversation with Mr H about him having a property, as he said, on numerous occasions, but on balance I am not persuaded that this was the case or that he mistakenly gave the wrong advice here. All of the documentation in front of both parties, that both would have seen, clearly spelt out what the LISA was for and what it wasn't for. I can see in the suitability report, written out that the adviser asked Mr H if he required a LISA as either a first-time buyer of a property or for older age, and on both occasions, it is recorded down that Mr H said that he did.*

*So, although I do have regard for what Mr H has said, on balance and based on the documentation that was completed by Mr H and the adviser at the time, I am not persuaded Foresters made any mistakes when it recommended the LISA. Instead, I think the adviser recommended it based on the answers Mr H gave, displayed in the suitability report, and he agreed to have it.*

*Based on everything I have read and the findings I have given, I currently do not uphold Mr H's complaint.*

*Finally, Foresters has offered Mr H £75 compensation because it took a long time to respond to his complaint. I think this is a fair and reasonable offer in the circumstances.”*

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision. Mr H did not respond by the deadline I set. Foresters responded on 1 October 2024 and said it had no further comments to make.

### **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.

Neither party has anything further to add that I feel I need to comment on or that will change the outcome of this complaint. So, because of this, I don't see any reason to depart from my findings within my provisional decision. So, I don't uphold Mr H's complaint that he was mis-sold a LISA.

Foresters has offered to pay Mr H £75 compensation because it took a long time to respond to his complaint. I concluded in my provisional decision that it was a fair and

reasonable offer in the circumstances, and I have no reason to change that finding. So, Foresters should now pay that amount.

### **My final decision**

Forester Life Limited has already made an offer to pay £75 to settle the complaint and I think this offer is fair in all the circumstances. So, my decision is that Forester Life Limited should pay £75.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 November 2024.

Mark Richardson  
**Ombudsman**