DRN-5155802

## The complaint

Miss K is unhappy that following advice from Nugenis Financial Planning Limited her pension plan failed to deliver the return she was hoping for, she feels the charges were too high for the level of service received, and the firm failed to accommodate her visual impairment.

To put things right she would like her investment loss reinstated, plus a refund of the fees she's paid.

## What happened

From 2019 Miss K was a client of Bartholomew Hawkins Limited ("BHL"), which went into liquidation in October 2020. In September 2020 Miss K signed a client agreement with a different firm Bartholomew Hawkins Asset Management Limited ("BHAL"), which from February 2021 was rebranded as Maven Wealth Ltd ("MW") and is now Nugenis Financial Planning Limited ("Nugenis"). Nugenis is part of the "IWP" network of financial advisers. This decision only covers the advice given by Nugenis, which includes BHAL and MW but not BHL. For ease of reading I'll mainly refer to Nugenis in the decision.

I issued a provisional decision on this complaint in October 2024, in which I set out the background to the complaint and Miss K's personal and financial circumstances in some detail, so I don't need to replicate that here. But essentially in 2019 the original firm BHL reviewed six of Miss K's pension plans with several different providers (which I referred to as plans A to F), and the adviser recommended she consolidate all except two (due to exit penalties) to a self-invested personal pension ("SIPP"). Miss K decided not to proceed at that time as she felt the adviser's fee (reduced from £3,900 to £2,000) was too high.

In August 2020 Miss K consulted BHAM due to concerns about the impact of the pandemic on investment performance. She'd started a new job and intended to retire at 60. She had personal savings of around £85,000 held in cash, an ISA and premium bonds, and had previously gifted her property valued at around £1m to her young daughter to whom she pays monthly rent of £750 until her daughter is 18. Her attitude to risk ("ATR") was classified as "*defensive*". Miss K was again advised to transfer four of her pension plans (totalling around £149,840) to a James Hay SIPP invested in the BHAM "*defensive"* portfolio, managed using its discretionary service. And to switch funds for the two plans she was advised to retain to better match her ATR. The adviser honoured the discounted £2,000 advice fee and set out the ongoing charges Miss K would need to pay. Miss K accepted this advice, and the transfer of the four plans to a new James Hay SIPP was completed in January 2021.

At her first annual review in December 2021 Miss K's objectives and circumstances were updated. Her monthly outgoings, including the rent she paid her daughter, exceeded her income by £500, but she still had £70,000 in savings. Her SIPP was valued at £166,202, and the adviser confirmed the investments remained suitable for her.

In early 2022 Miss K told Nugenis rather than wait until 60 she wanted to start withdrawing £500 per month from her pensions when she turned 55 the following March. She also asked the adviser to review two other pension plans with different providers. At that point her James Hay SIPP had grown around 7.38% which was ahead of benchmark.

In March 2022 four further plans (G to J) totalling around £36,600 were reviewed. The adviser recommended Miss K retain but switch funds for the three smaller plans, due to their competitive charging structure, and add the larger plan to her SIPP, invested in the Nugenis Defensive portfolio. The adviser said he'd charge a fee for the switch to the SIPP but not for the fund switches for the other plans. This advice was confirmed in a pension planning report issued in October 2022.

In August 2022 during another remote meeting a risk questionnaire was completed which assessed Miss K as "31" (defensive). A record of her answers and the results were sent to her in a report dated 1 September 2022. Miss K had requested a copy of the meeting recording, but it hadn't been retained by Nugenis.

The second annual review took place in December 2022, at which point Miss K signed a revised client agreement. This review was followed by a call in January 2023 and the recommendations were confirmed in writing in February 2023. To address her income shortfall, Nugenis recommended that on turning 55, she cash-in two of the smaller plans (totalling around £6,126) taking 25% tax-free. The adviser agreed not to charge a fee for this advice. Subsequently Miss K found she had to deal with one provider herself, as it won't accept instructions from advisers even with the client's authority.

Miss K wasn't happy with the performance of her plan, so rather than wait for the next annual review, Miss K requested a meeting in September 2023 where she handed the adviser a complaint letter. Nugenis responded to the complaint in October 2023 offering compensation of £600.

Unhappy with this Miss K referred her complaint to this service, making the following points (in summary)

- The value of her SIPP had fallen by around £20,000 to £163,800, which underperforms the benchmark
- Nugenis hadn't explained that six per cent growth wasn't achievable with a plan invested in accordance with her defensive ATR
- She disputed the assessment of her ATR, as she hadn't completed the questionnaire
- If she'd known losing so much money was possible, she never would have moved her pensions to the SIPP
- The service she received didn't reflect the high fees she'd paid
- Data protection breaches
- Nugenis hadn't accommodated her visual impairment or recognised her as a vulnerable client.

Nugenis's position was (in summary)

- Pensions should be viewed as a long-term investment, so Miss K was assessing performance over too short a period.
- The funds had been invested in line with her ATR which had been correctly assessed, but values can fluctuate over time. Nugenis cannot be held responsible if investments don't deliver the consumer's desired level of growth.
- Miss K wasn't obliged to accept the advice, and had since brought forward her proposed retirement date, intending to draw a level of income which was unsustainable long-term.
- Miss K's decisions to gift her property and the majority of her savings to her daughter have impacted her retirement plans but were taken without advice.

- Miss K’s personal data had not been leaked or shared, she’d been emailed information relating to another client, which she confirmed had been deleted.
- Nugenis should’ve retained the video recording of the meeting which had been deleted in error but had provided Miss K a written record of the meeting.
- Nugenis was aware of Miss K’s visual impairment, but it wasn’t possible to produce everything in the large font she required. But she was clearly computer literate so could adjust the font size herself.
- The fees and charges were set out in the client agreement and recommendation letters, they represent good value, and several times Nugenis waived fees it was entitled to charge
- Nugenis wasn’t initially given details of all Miss K’s plans and isn’t obliged to advise on plans they haven’t been given authority over.
- Miss K had received a service beyond the agreement, but as she expected a higher level of service than the fees she was prepared to pay, Nugenis gave her one month’s notice and terminated their agreement with effect from November 2023.
- But in view of the distress and inconvenience caused by the data breach, failing to disclose the annual fees and charges during 2021 and because they could have responded better to her needs offered compensation of £600.

Our investigator reviewed the complaint, and overall felt the £600 offered was fair, so didn’t require Nugenis to do more.

*Provisional findings*

I considered Miss K’s complaints under three headings: switch suitability and investment performance, attitude to risk and risk warnings, and customer service and charges.

Miss K’s monthly income shortfall arose from the significant rent she was paying to her daughter, even after resuming paid employment. And I couldn’t hold Nugenis responsible for gifting the bulk of her cash savings to her daughter, without seeking advice, rather than using them to supplement her income.

Overall given Miss K’s circumstances and objectives, I couldn’t say the advice to consolidate the majority of her pension plans, apart from the ones with exit penalties, and invest them in accordance with her attitude to risk was unsuitable. A SIPP provides the flexibility she wanted, as not all her plans allowed flexi-access drawdown. A SIPP with platform access enabled Miss K to keep track of her pensions, which was harder when she had several individual plans held with various providers all invested differently. And although Miss K still considered it too high, Nugenis had honoured the discounted advice fee.

I agreed that pensions should be viewed over the long-term, and a couple of years is too short a timescale on which to judge performance. All investments come with some risk, and even cash is eroded by inflation. While I hadn’t seen a record of every contact, I was satisfied the risks had been explained to Miss K in the suitability reports.

I understood Miss K’s concern about the performance of her plan, but a fall in value doesn’t mean the advice was wrong. Recent market volatility was due to external factors such as the pandemic and the war in Ukraine, and in 2022 lower risk investments such as bonds were particularly affected by the mini budget, which would’ve particularly impacted “*defensive”* portfolios weighted in lower risk assets. While Miss K had a monthly income shortfall, I’d seen no evidence Nugenis promised an investment return of 6%, indeed its reports made clear performance couldn’t be guaranteed. And the initial advice was based on a longer investment horizon of Miss K retiring at 60 rather than 55. Miss K had described herself as “*very risk averse*” and said she would not have invested at all if she’d known it was possible the value of her plan could drop. But prior to switching to the SIPP I thought Miss K was aware her various pensions were subject to fluctuations in value, as concerns about the impact of the pandemic on investment performance was what prompted her to seek advice.

Miss K's attitude to risk ("ATR") was assessed as "*defensive",* and accordingly her plan was invested in Nugenis' defensive portfolio, described as "*a low-risk total return active investment strategy"* with a large proportion in fixed-income assets*.* It's the lowest risk one offered (the others are cautious, balanced, growth and aggressive). Miss K's recorded ATR score of 31 in August 2022 is lower than 97% of scores, so it would be difficult to score lower than that. Miss K says she didn't complete the questionnaire herself and gave examples of where her answers would've differed from the form. But even if a score lower than defensive was possible, unless her funds were retained in cash it doesn't necessarily follow she'd avoid her fund losing value completely. In any case, I thought Miss K understood she'd need to accept some risk in order to achieve the level of growth she was hoping for in a relatively short timeframe. I was satisfied the meeting notes showed this was explained to her, as was the risk of her funds depleting prematurely due to the unsustainable level of withdrawals she was considering. So I thought Miss K's plan had been invested in accordance with her ATR, which I couldn't say had been inaccurately assessed.

I said Nugenis was entitled to charge for its professional services, which included an initial advice fee, and the ongoing advice fee of 1% of the plan value covered annual reviews of Miss K's circumstances and investments. The fees were set out in the client agreement and suitability reports, and Nugenis had honoured the substantially reduced initial advice fee of £2,000 negotiated with BHL in 2019. I'd also seen several references to the adviser waiving his normal advice fee for pieces of work, which he wasn't obliged to do. As the ongoing advice fee was a percentage of the value, it would increase as the value rises or more funds are added to the SIPP, but wouldn't apply to plans held outside the SIPP or which she cashed in.

The suitability reports provided comparisons of fees and charges as part of the recommendation, and it was made clear SIPP fees plus an investment management service would mean Miss K paying higher charges but that she hadn't been receiving ongoing financial advice with her existing plans. The charges were detailed within suitability reports in 2020 and 2022, but I didn't think Miss K had been particularly disadvantaged by the lack of a report in 2021, as the advice process had continued into early 2022 when there were several discussions and meetings. Miss K was entitled to an annual review every December, but the evidence showed more frequent contact than that, including services provided free of charge. I had the impression Miss K expected a higher level of personal service than the fee she was prepared to pay. But I couldn't say she hadn't received an appropriate level of service from Nugenis, or that it should refund any fees to her.

I recognised Nugenis' decision to terminate the relationship was unwelcome, but it was entitled to do so. And Miss K had been given the appropriate notice period, allowing time to seek advice elsewhere if she wished, or simply manage her investments herself.

Miss K originally had at least twelve plans with various providers, and I couldn't be sure which ones had been shared at the initial meeting, although I'd seen one plan she queried had been switched into a workplace plan in 2019. But Nugenis could only advise on the plans it had authority over. And as Miss K was dissatisfied with the performance of her SIPP, I couldn't say she'd lost out by the other plans not being switched in sooner.

While data breaches are concerning, I was satisfied Miss K's personal data hadn't been compromised. I didn't think she'd been disadvantaged by erroneously receiving an email containing information relating to another client which she confirmed she'd deleted, and I'd seen no evidence of the material she allegedly received in the post. I agreed Nugenis shouldn't have deleted the recording of the August 2022 remote meeting as Miss K had specifically asked for it. But, as she received a written record of the advice given during that meeting, I didn't consider this caused significant detriment.

While I hadn't addressed every point Miss K raised about the adviser's failings, I thought Nugenis should have responded better to her sight impairment. It should've been able to accommodate her reasonable adjustment to receive written material in large print. I'd seen this sometimes happened, but compliance was inconsistent, so Miss K would've found communication frustrating and problematic, even though she could use computer software to magnify the font. It might not be possible to obtain large-print fund information sheets produced by third parties, but Nugenis should have ensured its own correspondence complied with her requirements. As this didn't always happen, it affected her ability to understand and respond to the information about her finances which had a significant impact on her. But I thought the compensation Nugenis had offered of £600 was about right to address that.

*Responses to the provisional decision*

Nugenis didn't have any comments.

Miss K responded to say she disagreed with two of my findings:

- She was sure her plan hadn't outperformed the benchmark as Nugenis claimed, and in fact has significantly underperformed, which is the main crux of her complaint.
- And she reiterated not being present when her ATR questionnaire was completed. She was under the impression a "*defensive*" portfolio could only lose a maximum of ten per cent, and the loss on her portfolio had exceeded that.

So I'm now in a position to issue the 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.

As Miss K hasn't challenged my findings on her other points I'll focus on these two issues.

*Plan performance against benchmark*

In response to Miss K's concern that her plan had not outperformed the benchmark, Nugenis provided me with a graph showing the performance of its Defensive portfolio compared to the ARC Cautious portfolio over a ten-year period to October 2023. ARC is a professional research company which produces financial performance data sourced from over 350,000 portfolios from over 120 firms and is widely used and respected by the industry.

This graph (which the investigator can provide to Miss K if she wishes) shows that overall the Nugenis portfolio has consistently outperformed the ARC cautious portfolio over that period, but both lines on the graph move in a consistent way. Both dropped significantly between 2019 and 2020 due to the external factors mentioned earlier, but they both quickly recovered, peaking in October 2021 before dropping (but not so far) in 2022, due to the mini budget, then rising again in 2023. The graph suggests that the timing of Miss K's investments meant around the time she complained the value of her plan was lower than her initial investment in 2020.

The adviser sent Miss K an email in August 2023 confirming that her plan value (based on her original investment) in November 2021 had risen to £165,905 a gain of £7,476 (4.72%), in November 2022 it was £140,673 a fall of £17,756 (12.62%) and in August 2023 after Miss K had transferred in an additional £20,735 the value was £164,085, a fall of £15,709 (8.49%). He explained "*There was a huge drop in 2022 – to provide context, 2022 was the worst year in circa 200 years for low risk / defensive investors such as yourself as bond markets collapsed"* and he provided her with some market commentary on the bond market in 2022 to support this. I don't have a current valuation of Miss K's plan, but I think markets have continued to recover since 2022.

Significant volatility can be alarming, but less than three years is a short period in investment terms, and pensions are expected to be a long-term investment. I bear in mind Miss K's original intention on which the advice was based, was not to access these funds for around seven years until she turned 60, and in the meantime she had plenty of liquid savings with which to supplement her income. Instead, without seeking advice, she decided to gift her savings to her daughter rather than use them to address her income shortfall, and to access her pension five years earlier than originally planned, limiting the time available to make up the lost growth. This was not a course of action Nugenis recommended, and indeed Miss K was warned withdrawing that level of income was unsustainable. It's possible other investments have done better than the Nugenis defensive portfolio, but I don't find comparison with the ARC portfolio to be unreasonable. And overall I remain satisfied the recommended investments were suitable for Miss K's stated objectives at the time and have outperformed an industry standard cautious benchmark. So Nugenis doesn't need to reinstate Miss K's investment loss or refund the charges she's paid.

*Attitude to risk*

Miss K may not have completed the ATR questionnaire herself. As many meetings with the adviser were remote, it's likely it was completed by the adviser reading out the questions and noting her responses. But I've said that even if Miss K had responded to some questions differently to the recorded answers, it's unlikely her ATR could be lower than "*defensive*" as it's the lowest rating, below "cautious". Nugenis defines a defensive investor as one who is "*only prepared to take on a very small degree of risk with their financial decisions…*" and "*it is usually most important for them that the value of their investments does not fall…"* But while the risk is minimised, funds invested in this way are not immune from falling in value. And in any case prior to consolidating them within her SIPP, Miss K's existing plans were "*money purchase*" so would've been invested and subject to market fluctuations, she just might not have been so aware of this from annual statements, rather than having platform access at any time.

In relation to Miss K's understanding that a defensive portfolio couldn't fall by more than 10 per cent I looked at Q20 in the ATR questionnaire which read "*When making an investment, return and risk usually go hand-in-hand. Investments which produce above average returns are usually of above average risk. With this in mind, how much of the funds you have available to invest would you be willing to place in investments where both returns and risks are expected to be above average"?* And then there were eleven options from "*1 = none"* to *"11 = 100%"*.

Of these the second box has been ticked, signifying Miss K would only be prepared to subject 10% of her investments to higher risk. So perhaps she interpreted this to mean only 10% of her fund would be subject to any risk, or the fall would be limited to 10%. But Miss K didn't answer "*none"* to Q20, so I think she accepted the need to take *some* investment risk, particularly as she's been clear throughout she hoped her portfolio would generate returns of 6% to accommodate income withdrawals of £500 per month (£6,000 per year). And the advice was based on taking benefits at age 60, whereas only two years after the initial investment she brought this forward by five years, meaning her plans would start to reduce sooner with a shorter investment horizon in which to generate a return.

Q21 read "*Think of the average rate of return you would expect to earn on an investment portfolio over the next ten years. How does this compare with what you think you would earn if you invested the money with bank deposits?*".

And this time there's a list of six options from "*1= about the same as bank deposits"* to *"6 = more than three times the rate as bank deposits*". Box 4 has been ticked "*About two and a half times the rate from bank deposits".* At the relevant time, Bank of England base rate had been 0.1% since December 2020, in May 2022 it was raised to 1%, and in August 2022 around the time the questionnaire was completed it was 1.75%, meaning Miss K seems to have expected her portfolio to achieve a return of around 4%, significantly higher than the minimal risk option of bank deposits.

In any case, the questionnaire wasn't intended to predict the future investment performance of Miss K's plan, which isn't possible given the unexpected economic shocks which can occur. It's simply a way to gauge the degree of risk she felt comfortable with, to determine the investment strategy, and to explore her understanding of the link between risk and reward. And of course, it doesn't factor in the tax advantages of holding funds within a pension compared to bank deposits. The questionnaire overall is scored out of 100, the average score being 50 with two/thirds of scores within 10 points of the average, whereas only one in one thousand people score less than 20 (or more than 80). Miss K expected her score to be 20/100, even lower than her actual score of 31. So while Miss K clearly has a very cautious ATR, she also expected her plan to deliver growth of two and a half times more than a minimal risk bank deposit. And while it may have been Miss K's interpretation, I'm satisfied she wasn't led to believe her portfolio couldn't fall by more than 10% of its value.

Having reviewed everything again, I understand Miss K's anxiety about her plan falling in value, but that doesn't mean Nugenis' advice was unsuitable, and I was satisfied she'd been charged in line with the client agreement. I'm sorry to hear of Miss K's poor health, and I'd expect the adviser to be empathetic, but that doesn't mean providing a service outside the fee structure and client agreement. But her sight impairment is a vulnerability which Nugenis should've accommodated, and I remain of the view its key failure was the way it communicated with Miss K. Even if she had access to assistive tools, and Nugenis had little control over third party material, it should've ensured its own communication was provided in the larger font she requested, and it's clear this didn't always happen. But I think the £600 offered is sufficient to put things right.

So I don't uphold this complaint as the offer made by Nugenis Financial Planning Limited to put things right is fair and I'm not asking them to do more.

## My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 5 January 2025.

Sarah Milne
**Ombudsman**