DRN-5216304

The complaint

MWA FINANCIAL ADVICE LTD ('MWA') previously advised, and serviced, the following accounts for Mr H and his wife –

- Their individual Abrdn (formerly Standard Life ('SL')) Self-Invested Personal Pensions ('SIPPs').
- Their jointly held General Investment Account ('GIA'), which had a holding of units/shares in the M&G Feeder of Property Portfolio (the 'M&G fund') and which also had the function of being a feeder to the SIPPs – parts of the SIPPs' values are in this overall holding.

Mr H and his wife jointly submitted complaints about their SIPPs and their M&G fund holding, which have been separated into three complaints (the joint complaint and their respective individual complaints about their SIPPs). Their joint complaint about the M&G fund holding relates to MWA's failure to execute their instruction, in April 2021, to liquidate it.

They say they discovered, in October 2023, that this had not been done; that at the time of this discovery they wanted to encash their SIPPs and the GIA (including a transfer of the remaining value in the GIA to Mr H's wife's SIPP) in order for each of them to use the liquidated SIPP cash to purchase a 12 years Fixed Term Annuity ('FTA'); that the M&G fund had become suspended and illiquid (and is presently being wound down); and that they have been unable, since then and to date, to carry out their FTA plans.

Their joint complaint about the M&G fund holding problem has been concluded by this service. The present complaint, and this decision, is only about the effects of that problem on Mr H's SIPP and his FTA/retirement income plans.

What happened

On 29 November 2024 I issued a Provisional Decision ('PD') for Mr H's complaint. Both parties were invited to comment on it, and both parties disagreed with it. I will summarise their comments further below. First, I quote from the PD.

With regards to the background of the case, the PD said –

"*I issued the decision in the joint complaint about the M&G fund holding problem. In that decision, I ordered the following redress:*

"***What must MWA do?***

To compensate the complainants fairly, MWA must do the following –

For the overall M&G fund holding –

- *Calculate the total liquidation value that would have been achieved if the complainants' overall M&G fund holding had been sold in May 2021 at the redress price. The result is 'A'.*

- *Calculate interest on A at the redress interest rate (as defined in the PD and as quoted above) from 28 May 2021 up to the point of any capital recovered by the complainants from the M&G fund in or around February 2024. The result is 'B'.*
- *Calculate A plus B. The result is 'C'.*
- *Calculate C minus any capital recovered by the complainants from the M&G fund in or around February 2024. The result is 'D'.*
- *Calculate interest on D at the redress interest rate from the point the complainants recovered any capital from the M&G fund in or around February 2024 to the point they recovered any capital from the M&G fund in or around May 2024. The result is 'E'.*
- *Calculate D plus E. The result is 'F'.*
- *Calculate F minus any capital recovered by the complainants from the M&G fund in or around May 2024. The result is 'G'.*
- *Calculate interest on G at the redress interest rate from the point the complainants recovered any capital from the M&G fund in or around May 2024 to the date of this decision. The result is 'H'.*
- *Calculate G plus H. The result is the redress for investment loss that is due from MWA and must be paid to the complainants.*
- *Provide the calculation for this payment to the complainants in a clear and simple format.*

For the platform costs –

- *If MWA can take ownership of the complainants' M&G fund holding, it must calculate all and any platform fees and charges associated with the holding, and incurred by the complainants, from June 2021 to the date MWA takes ownership of the holding. The total/result must be paid by MWA to the complainants as compensation for the platform costs they have incurred as a direct result of MWA's failure to liquidate the holding in May 2021.*
- *If MWA cannot take ownership of the complainants' M&G fund holding, available evidence and information suggests that closure of the M&G fund could take a further two years to complete. If so, the complainants will continue to have the holding and to be responsible for any associated platform fees/charges. For this reason, and because such an ongoing responsibility will be unfair to them (given the findings in this decision), MWA must calculate all and any platform fees and charges associated with the holding, and incurred (and to be incurred) by the complainants, from June 2021 up to the date two years after the date of this decision. The total/result must be paid by MWA to the complainants as compensation for the platform costs they have incurred and will continue to incur as a direct result of MWAs failure to liquidate the holding in May 2021.*
- *Provide the calculation for this payment to the complainants in a clear and simple format.*

For trouble, distress and inconvenience, pay the complainants £900."

Before the aforementioned decision, MWA had twice attempted to settle Mr H's, and his wife's, complaint, with focus only on a short-term version of their FTA plans. It did this in January 2024 alongside its complaint decision, in which it upheld their complaint. It accepted that it could have sent them "… a letter with an update to [their] portfolio and recommending that [they] contact [MWA] to discuss it, so that [they] were aware of the implication of not engaging with [MWA's] service" – which it did not do.

First, MWA made the following settlement proposal:

"*To resolve this complaint, we would like to offer you the amount of £3,600.00 in full and final settlement.*

The amount of £3,600.00 has been calculated as follows;

- *M&G have confirmed that the proceeds from the M&G Feeder of Property Portfolio fund will be sold down to cash with the final payment being in 18 months.*
- *The annuity you could obtain with the suspended funds is £1,577.00 per year more than what you can currently obtain.*
- *To allow for the sell down process to take up to two years we are offering you a monetary amount equal to the additional amount the annuity you could have obtained would have given you over two years.*
- *We have added 5% interest for the two years to this amount to give £3,477.28.*
- *We have then increased the amount to £3,600.00 for the inconvenience caused.*"

This offer was rejected, so MWA returned with an improved proposal. It said:

"We have considered your comments and amended our offer. We have below detailed below [sic] our final settlement offer.

To resolve this complaint, we would like to offer you the amount of £5,500.00 in full and final settlement.

The amount of £5,500.00 has been calculated as follows:

- *The annuity you could obtain with the suspended funds is £1,577.00 per year more than what you can currently obtain.*
- *To allow for the sell down process to take up to two years and six months we are offering you a monetary amount equal to the additional amount the annuity you could have obtained would have given you over two years and six months. This is £3,942.50.*
- *We have added 5% interest for the two years and six months to this amount to give £4,435.31.*
- *We have added the £148.50 that will need to be retained in the Abrdn cash to pay for the Abrdn platform charges.*
- *We have then added £900.00 for the inconvenience caused and rounded up to give a total of £5,500.00."*

This offer was also rejected. Mr H, and his wife, considered that the offer, and MWA's overall approach, was incomplete because it did not address the ongoing and future effects of the M&G fund holding problem.

The redress ordered for the joint complaint, as quoted above, addresses, compensates for and concludes the M&G fund holding problem.

The matter that remains outstanding is, in Mr H's case, his SIPP and FTA plans. His submissions about his position in October 2023 and his position now, with regards to the FTA plans, can be summarised as follows:

- *In October 2023 he was prepared and engaged to liquidate his SIPP (including the part of its value related to the M&G fund holding) and to purchase a 12 years FTA; he had a quote from Canada Life ('CL') for this purpose; his SIPP had previously been crystallised (in around 2016) so the CL quote was based on its complete liquidation and transfer of the proceeds into the FTA.*

- *But for the M&G fund holding problem, had the holding been liquidated in 2021 as instructed, depending on the likely liquidation values, and had his 2023 FTA plans been executed at the time, CL's offer in November 2023 meant a CL FTA would have provided him with a total of around £12,000 or more annual income for 12 years.*
- *The M&G fund holding problem meant his SIPP could not be completely liquidated as required for the CL quote; he tried to explore an alternative with SL/Abrdn and learnt that it did not offer FTAs but could offer a drawdown pension; he also learnt from it that complete (not partial) liquidation of the SIPP would be required (as was also required by CL).*
- *He continued to look into alternatives and by March 2024 he contacted around three quarters of the annuity providers in the market, all of whom repeated the same as CL and Abrdn – that his SIPP had to be completely (not partially) liquidated, and its full value/proceeds used to purchase the FTA. He also learnt from the firms that the same requirement applies to a drawdown pension.*
- *In essence, the combination of his crystallised SIPP and its partial liquidation (due to the M&G fund problem) has meant he has been unable execute his FTA plans. This has also meant the income he planned to be drawing, since October 2023, has yet to be achieved.*
- *In May 2024 his new Financial Adviser ('FA') analysed his position. He has shared this analysis with us. The FA refers to his understanding, from Mr H's instructions, that the FTA plans were frustrated at the time due to the M&G fund holding problem resulting in Mr H's inability to purchase the FTA (inability to do so with a partial transfer of the SIPP's cash). However, the FA suggested an alternative, in terms of Mr H drawing down income from his pension under the Flexi Access Drawdown ('FAD') rules. Furthermore, the FA made suggestions on how periodic recoveries of capital from the M&G fund holding can be used alongside an FAD arrangement, and on how a pension contribution in the current tax year could also be worked into this alternative solution.*
- *The FA noted that, at the time, Mr H's SIPP was valued at £105,855.17, with £98,889.26 held in liquidated cash and £6,965.91 in the suspended M&G fund; and that the joint GIA's value (£2,181.43) was also in the suspended M&G fund.*
- *Mr H has referred us to the cost of instructing the FA and engaging his services – £3,675 – and he argued that the cost should be covered by MWA, given its responsibility for the root cause M&G fund holding problem.*
- *Whereas in November 2023 he stood to secure an FTA that provided £12,000 or more annual income (for 12 years), as of August 2024 quotations from the market were offering FTAs that provided around £7,200 annual income.*

MWA has shared evidence of its enquiries with Abrdn, with regards to Mr H's position that the inability to fully transfer his SIPP's value into an FTA was/is a major obstacle facing his FTA plans. MWA says he could always have pursed an FTA based on a partial transfer of the SIPP's value and it says Abrdn's response on this issue supports its argument. It sent us an email exchange with Abrdn dated 15 and 16 February 2024, in which Abrdn said the following –

"We will allow a partial transfer in the situation where there is suspended funds.

I think the confusion is due to the language that the client is using. We can transfer to another pension scheme so if Canada Life are requesting the transfer into a pension which is then going to buy an annuity this would be fine, and the confusion will be on this point as a pension needs to be transferred to a pension or a pension annuity.

I imagine Canada life will request as a pension transfer and then this will be fine. I have had another fine do a partial transfer to Canada Life so I think it is the way Canada Life request

the transfer that is key here as pension need to go to pensions on transfer."

This (alongside MWA's supporting submission) appears to have been forwarded, by us, to Mr H. MWA says it repeatedly informed Mr H, early in the year and thereafter, that his position in the matter can be mitigated, either through another way of achieving the annuity he prefers or through an FAD alternative. It also says it repeatedly urged him, following his rejection of its settlement offers, to take advice for this reason, but he resisted doing so.

Both sides hold different positions on Mr H's need for advice, in terms of trying to mitigate his FTA plans. In the main, he says he needed MWA's advice for this purpose but was unreasonably denied such advice (and denied assistance overall), despite MWA continuing to remain on record with Abrdn as his adviser (until 5 July 2024 when Abrdn wrote to him to say MWA had withdrawn itself from that capacity).

MWA has cited specific difficulties and detriments it claims to have encountered/endured from Mr H between late 2023 up to around April 2024. Overall and partly (or mainly) for these reasons, it says it was justified and entitled to withdraw its services."

I then made the following provisional findings on merit –

"*As stated above, MWA upheld Mr H's complaint. The only reason the matter remains unresolved is because the parties were unable to agree on settlement. Therefore, settlement (or compensation) is the only issue in dispute.*

It is also quite clear that the M&G fund holding problem is the root cause of the experience Mr H has faced, since October 2023, in trying to put in place his FTA plans. My decision in the joint complaint confirmed that MWA was/is responsible for causing that problem and, as I quoted above, the decision set out redress due from MWA to Mr H (and his wife) to resolve that. This, in addition to MWA upholding Mr H's complaint, reinforces the fact that merits in the present complaint is not in dispute and does not really need to be addressed. Merits in the complaint has been both conceded and established.

With regards to compensation for the present complaint, there are four key areas of consideration. Due to the circumstances of the case, my first task is to address whether (or not) Mr H has incurred an actual financial loss or a loss of opportunity or both. I must also consider whether (or not) compensation for any established actual financial loss and/or loss of opportunity can be quantified. In between these two considerations it will be necessary to look into his obligation to mitigate any actual financial loss and/or lost opportunity. Then I will consider any trouble and inconvenience the matter has caused him.

As things presently stand, there is no actual financial loss to Mr H in his SIPP, in the conventional sense – aided by the redress that has been awarded to him (and his wife) in the joint complaint. To be clear, what I mean is that he has not lost something that he previously had, or to put it in another way his claim is not about a loss of capital invested in his SIPP and it is not about a loss of growth on capital invested in his SIPP. It is also not about a loss of ongoing investment returns in the SIPP. It is his case that liquidation of the SIPP was a part of his FTA plan in late 2023, so the uninvested cash holding that has resulted from that was inevitable, and was wilfully created.

Instead, Mr H's claim is about loss of the opportunity he had in November 2023 to purchase the CL 12 years FTA that was offered to him, on terms (including, or especially, the annual income value) that he says are better than those available in the market since and to date. In other words, his claim is about a loss of opportunity. This prompts an approach towards compensation that differs from the approach that would be used if his complaint was about an actual financial loss. Compensation in his case is about considering what, if anything,

was lost in CL's November 2023 FTA offer and whether (or not) that can be quantified – in the overarching context of his obligation to mitigate. I address these considerations further below.

On balance, I am satisfied that MWA's 2021 failure in the M&G fund holding issue (as I found in the joint complaint) directly led to Mr H's inability to meet the CL offer in November 2023. It appears that CL was not prepared to go through with the arrangement based on a partially liquidated SIPP/partial transfer of the SIPP's value. Mr H's SIPP was in that state because of the suspended M&G fund holding within it (which could not be liquidated), and that holding existed in the SIPP in November 2023 because MWA had wrongly failed to liquidate it, as it was instructed to do, in 2021. As I said above, merit in the complaint is already conceded and established so I do not need to address it. However, I have summarised this finding as a reminder of the direct causal link between MWA's inaction and the November 2023 opportunity that Mr H lost.

It is widely accepted, and quite reasonably required, that a party facing a loss (be that actual or a loss of opportunity) should mitigate such loss. This principle is broadly defined on the basis that a party who has suffered loss has to take reasonable action to minimize the amount of the loss suffered. Of course, the principle is to be applied to the circumstances of each case, and it is also dependent on whether (or not), in those circumstances, mitigation was possible.

In Mr H's case, and for the reasons give below, I am satisfied that mitigation was possible. This means that at a particular point – the 'mitigation point' – he was in a position to do, and could have done, and ought reasonably to have done, something to address the lost opportunity. At that point, he should have pursued an alternative appropriate opportunity. Inevitably, this also affects his claim for compensation. Irrespective of how that claim is to be quantified it is either diluted or stopped at the mitigation point, where MWA's responsibility for the lost opportunity either reduces or ceases and responsibility to embark on an appropriate alternative passes to Mr H.

I accept that he was initially entitled to prefer the specific 12 years FTA plan that he sought to execute, and I accept that MWA's failure disrupted the opportunity he had in November 2023 to realise that plan. However, in broad terms, the idea of mitigation is essentially for a complainant to acknowledge that a loss or lost opportunity has happened and then to promptly seek and execute an appropriate compromise and/or alternative that minimizes the effect of the loss/lost opportunity.

I do not consider that November 2023 was the mitigation point. MWA might argue against this finding, because this was when CL made its offer and it was also when Mr H knew he could not meet the offer, so it could be argued that he knew the opportunity was lost and he should have known then that he had to mitigate.

On balance, I would disagree with such an argument.

Around this time, and thereafter, the parties were still engaged in trying to resolve the matter amicably. MWA's complaint response and its settlement offers were not presented to Mr H until January 2024. Up to that point, I am not persuaded that his obligation to mitigate had been triggered. It was reasonable for him to await MWA's complaint outcome, which, potentially, could have resolved and settled the entire matter. With such prospects, the notion of mitigation was somewhat suspended, and would have been a secondary or future consideration (if the complaint outcome failed to resolve the matter) at the time.

The next consideration is whether (or not) the mitigation point should be in January 2024, when MWA issued its complaint outcome, when its settlement offers were declined by Mr H

and when it made clear that it would negotiate settlement no further (as it did in its email to him of 18 January 2024). On balance, I am satisfied that the mitigation point began around this time. MWA had made it clear that it had no further or better settlement offer to make. Given that Mr H had declined its offers, that also meant there was no resolution to be found in the complaint outcome and the prospects I mentioned above had disappeared. It also meant that mitigation became a necessary consideration.

Having said this and even though it became a necessary consideration, because of the specific circumstances of the case I am not persuaded that Mr H's ability to mitigate, distinct from his efforts to mitigate, existed until May 2024.

Mr H needed advice and assistance to look into and secure an alternative appropriate retirement income solution in the aftermath of the lost November 2023 opportunity. I have noted MWA's claims about him previously being elusive in response to its attempts to arrange reviews with him. However, following this lost opportunity, I am satisfied with evidence showing that he was fully engaged with MWA and he held it responsible for finding an appropriate solution for him. It is in this context that he made notable efforts to mitigate, and in which he has referred to how his efforts were frustrated by MWA's reluctance to give him advice and/or assistance.

MWA says it repeatedly told him to seek advice/assistance elsewhere. However, this created a mixed, confusing and, I consider, detrimental message. MWA remained as adviser for the SIPP on Abrdn's records up to July 2024. That presented a reasonable basis on which Mr H was entitled to expect an advisory service, or at least some degree of an advisory service, from MWA, and on which Abrdn was entitled to expect MWA to have a role to play in advising on or arranging any alternative retirement income solution for him. He reported to us, at the time, that he faced obstacles in the latter regard, with his attempts to liaise directly with Abrdn being met by a requirement or suggestion that he had to go through MWA. It was pointless and somewhat damaging for MWA to avoid, as it appears to have done, its role as adviser in the matter whilst wilfully maintaining its official status as adviser for his SIPP.

I do not say or suggest that the confusion and detriment caused to Mr H was never ending or that, in the face of MWA's reluctance to assist, he should not have been proactive in seeking assistance elsewhere (which, in itself, can reasonably be viewed as part of his wider obligation to mitigate). Neither was the case. It is quite clear that Mr H eventually undertook the need to find advice and assistance elsewhere. That is what led to him meeting with the FA and then to the FA's suggestions, in May 2024, of the alternative solution(s) I summarised above.

Should Mr H have sought alternative advice elsewhere earlier? On balance, I do not consider that he was unduly late in doing so. Between January and May, he shared with our service and with MWA feedback on his ongoing efforts to search for solutions across the market. He also sought to discuss his feedback, and to explore the matter, with MWA. This signified a notable compromise on his part. Due to its reluctance to engage, he no longer looked to MWA to take the lead. Instead, he took the lead himself, but he also appears to have expected, as a minimum, meaningful input from MWA on what he was feeding back from the market.

As MWA's inaction in 2021 directly caused Mr H's predicament in 2024, and as it remained the official adviser for the SIPP at the time, I too consider that it should have given such meaningful input (which should at least have given him information or a form of guidance towards a tangible alternative solution) as a minimum. There is some evidence, in a submission by Mr H, of an attempt by his MWA adviser to do something akin to this in May – where he supposedly suggested that a solution could be explored for Mr H within an Abrdn FAD arrangement – but this does not appear to have developed any further.

If MWA is minded to refer to its reasons for disengaging from Mr H, at the time, the point to note is that none of those reasons led it to officially withdraw itself, as adviser for the SIPP, at the time. Therefore, I am not persuaded that they stand as reasons for it not doing as I have described above.

Evidence of the FA's suggestions to Mr H in May 2024 shows me that a viable and seemingly appropriate alternative retirement income solution was identified and available to him in this month. It also appears to have been a solution that was close, in overall value, to the opportunity he lost in November 2023. Even if it did not quite match the lost opportunity, in a general sense, it seems reasonably clear from the FA's email that there was room for the FA and Mr H to engage in further considerations to explore and achieve such a match. For this reason, and from this point onwards, I do not consider that MWA can reasonably be held responsible for the lost opportunity. At this point, Mr H was able to mitigate. He ought reasonably to have embarked upon putting in place the available appropriate alternative solution identified by the FA – or, if he wished, he could have done so with another appropriate alternative that he and the FA could have considered.

He has referred to the FA's costs and to his belief that they should be covered by MWA. On balance, I disagree. MWA's wrongdoings, as mentioned above, should not be confused with the notion that it had an unqualified and unlimited obligation to advise Mr H. It did not have such an obligation. Its duty to provide an advisory service to him was qualified by, and limited to, the terms agreed for that service and its legal/regulatory obligations. The agreed terms permitted it to terminate the service.

The circumstances in which it disengaged from Mr H and the way it did so created unfair effects/impacts on him, and I address this separately below. Its wrongdoings in this respect also breached its regulatory obligation to uphold Mr H's best interests and to treat him fairly. However, the point I am making here is that MWA could not have been forced to advise him if, as is clear, it did not wish to. It was contractually entitled to terminate its service. It eventually did that, properly, when it withdrew itself from Abrdn's records, and it could be said that it did that through its actions even earlier. It was inevitable that Mr H would need to appoint a new adviser if he required advice, and that was always going to be at a cost to him. In these circumstances, I am not persuaded that MWA should have to cover the costs of appointing the FA, or any new adviser.

I understand the point Mr H has made about MWA terminating its service in order to distance itself from the problem it caused. If true, this was possibly its motive. Equally, it is also possible that the difficulties it claims to have experienced from him at the time, if true, was its motive. In any case, the point remains that it was entitled to terminate its service and, thereafter, if Mr H wanted advice from elsewhere he had to pay for it.

For all the reasons given above, and on balance, I am satisfied that MWA caused Mr H's loss of opportunity in November 2023; that its responsibility in this respect continued up to May 2024, when he was in a position to mitigate and was responsible for doing so; and that by May 2024 the option(s) of mitigation available to him was such that closely compared with, or closely matched, the overall value of the lost opportunity, so I do not find that the consequences of the lost opportunity continued beyond this month."

With regards to redress/compensation, I said as follows –

"*The next consideration is about quantifying compensation for the consequences of the lost opportunity in the six months between November 2023 and May 2024*.

It is difficult and unsafe to do this in the context of Mr H's 12 years FTA plan. That plan was

not limited to six months, it was for 12 years. Furthermore, and importantly, the plan was based on him using his SIPP's liquidated capital to purchase the FTA, so he would no longer have had that capital thereafter (instead, he would have the FTA income for 12 years). In contrast, any compensation presently awarded to him would be in addition to the SIPP's capital which, I believe, he still has. Even if no longer has that capital, I believe he had it between November 2023 and May 2024, so compensation for the consequences of the lost opportunity during this period cannot reasonably ignore that.

I consider that an approach guided by the value of the 12 years FTA (minus the SIPP's capital value) can fairly and reasonably be used to quantify compensation for the consequences of the lost opportunity during the aforementioned six months.

Evidence of the settlement negotiations between the parties is helpful in this respect. It presents figures that appear to have been broadly agreed between them – if this is not the case, this PD provides an opportunity for them to say so, and any relevant and accurate figures in this respect can be presented by them and considered in my final decision.

The settlement calculations refer to an annual income of £11,138 (based on application of the SIPP's full liquidated value (minus tax-free cash) of £105,897.89 to the 12 years FTA) as what could have been available to Mr H, but for the problems he faced. Over 12 years, the total income would be £133.656. In other words, the gain for Mr H over 12 years would be £133,656 (the total income) minus £105,897.89 (the SIPP capital outlay). The result, for the 12 years period, is a gain of £27,758.11. For one year, the result is a gain of £2,313.18, so for six months the result is a gain of £1,156.59.

Overall, and based on the above calculation, I consider that net compensation for the opportunity that Mr H lost between November 2023 and May 2024 can be quantified as £1,156.59. This will be the award I will make in my final decision, in this respect, if I retain the above findings.

I have considered the trouble, distress and inconvenience caused to Mr H in the matter. Early in this PD I quoted the redress I ordered in my decision for the joint complaint. The orders in that decision included an award to him (and his wife) for the trouble and inconvenience caused by the M&G fund holding problem. Therefore, I do not duplicate that in the present case, and I have focused only on the trouble and inconvenience caused to him in his attempts to resolve his retirement income plans, which began in October 2023 with the FTA plan. I have also focused on impacts upon him, as opposed to punitive considerations towards actions or inactions by MWA. It is beyond my remit and powers to make punitive awards.

In summary, Mr H faced the following key troubling, distressing and inconvenient events – the shock of realising, in October 2023, that his SIPP was not ready for the FTA plan as it ought to have been; the loss of the CL offer in November 2023; the troubles he faced in being abandoned to resolve the matter himself, up to May 2024; and the ongoing distress he was caused, up to May 2024, by not knowing how his situation could be resolved.

Our service's guidance on how we approach awards for trouble, distress and inconvenience can be found on our website, at the following link – https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience. Under this guidance, awards between £750 and £1,500 can be considered where a firm's wrongdoing has caused substantial distress, upset and worry, and where it has caused serious disruption and an impact felt over many months or even over a year.

I consider that, in the present case, the impact upon Mr H fits this description. Given the

events summarised above, with the serious impacts and disruptions within them happening over the course of around seven months, I find it fair and reasonable to award him £1,000. Unless comments from the parties on this PD change my mind, this will be the award for trouble, distress and inconvenience I will make in my final decision."

In response to the PD's findings (on merit and redress), Mr H mainly said the following –

- It must be noted that the initial problem was about the suspended M&G fund holding preventing his FTA plan in late 2023. That was MWA's fault, but it declined his suggestion at the time for it to pay him for the holding, as a straightforward resolution. Events thereafter led to the problem being compounded, to the extent that he could no longer, and will no longer be able to, execute his FTA plan. MWA bears responsibility for this. Furthermore, it is a fact – not opinion – that the FTA cannot be bought with part-crystallised funds.

- Contrary to what the PD says, his case *is* about loss of ongoing investment returns and a financial loss, because his SIPP has been in cash (on a low interest rate) since December 2023, as advised by MWA, and he has been unable to do anything with it since then due to MWA's wrongdoings. The financial loss arising from this must be redressed. Furthermore, in reality MWA caused his lost opportunity in May 2021, but he did not find out about it until October 2023.

- I am wrong to place a duty to mitigate upon him in the way that I did in the PD. Our service did not advise him to mitigate at the time he referred his complaint to us. Furthermore, any such mitigation was hindered by the fact that he did not (and still does not) have the M&G fund holding's proceeds in hand, he did not know how capital recovery from the M&G fund would progress, there was ambiguity over the possibility of his preferred FTA plan and he was prevented from obtaining information on his SIPP because MWA did not remove itself from his SIPP account.

- Furthermore, I am wrong to say he was in a position to mitigate and should have done so in May 2024. What the FA presented to him at the time was his *sales pitch*, what he set out was not his (Mr H's) preferred option because the proposal's characteristics were not the same as those of the FTA he wanted, so it was not (and is not) a solution for him. Only in early November 2024 was he able to put in place his new adviser, given the problems and complexities in his case – those problems having effects to the extent that some advisers were discouraged by them from offering their services.

- The lost opportunity related to his FTA plan has been and will remain ongoing.

- For these reasons, the mitigation point must be 31 December 2024. It is also arguable that mitigation should not even be relevant to his case, given the circumstances of the case and given the fact that no available alternative could and can match the FTA that MWA's wrongdoings have permanently deprived him of. In this respect, I am wrong to say – as I did in the PD – that the FA's proposal "… *closely compared with, or closely matched, the overall value of the lost opportunity*". The correct approach is to compare what he could have achieved in the FTA plan in October 2023 with what he can achieve now, and compensate him for the difference.

- He disputes, with reasons, MWA's claim that he was elusive in response to its attempts to arrange reviews with him.

- He disputes the PD's findings on his claim for compensation to cover the cost of a

new adviser. I have missed the following crucial point – but for MWA's wrongdoings, he would have executed his FTA plan through the CL offer and, thereafter, his position would have been service free (with no need for advice or advice charges); instead, because of MWA's wrongdoings and its decision to terminate its service, he is facing the cost of a new adviser; therefore, this specific cost has resulted directly from MWA's wrongdoings, and it should be compensated for. He would not have needed a new adviser if MWA had not caused the problems it caused.

- With regards to the redress calculation in the PD –

  "*Canada Life quotation £11,506.08 based on £105,000.00 purchase price, this should be the figure used, giving a 12-year total income of £138,072.96 total income giving a £33,072.96 12 year gain.*

  So for 1 year £2,756.08 plus £,3675 1 off [sic] *Advisor fee = £6,431.08 this is the figure I would accept*."

- With regards to redress overall –

  "*MWA must compensate me for the consequences of their actions.*

  Additional costs to me due to this are –

  a) The appointment of a Financial Advisor £3675
  b) No income for 12 months
  c) I have had to use my Tax free sums to survive, so my plans to put the money into an ISA could not be achieved, tax free savings loss
  d) Any potential solution to take an income now will have additional costs associated, compared to the FTA I wished to purchase.
  e) The problem still exists, I do not have the full fund available to me todate [sic]*!*"

- On the PD's £1,000 award for trouble distress and inconvenience –

  "*This amount does not cover the full term of this issue as the trouble, distress and inconvenience continues to this day and until all the settlement funds are in my bank. This is further exasperated dealing with the Ombudsman Service for nearly 12 months*."

Mr H has also stated, or at least suggested, that the PD exhibits bias in favour of MWA. He refers to the request, in the PD's preamble, for MWA to confirm if it accepts the PD. He also says he noted that the PD addressed MWA first throughout, thereby giving the impression of bias in its favour.

MWA maintains, and has referred to, its original stance on the merits of and redress in the complaint. In addition, it says the mitigation point, for any redress, should be set at its email to Mr H of 18 January 2024, in which it was made clear to him that he needed to seek advice elsewhere. It says it previously and subsequently made clear to him that it was his responsibility to act, and that, in response, he verbally confirmed, multiple times, that he had been seeking advice elsewhere.

It also says that it remained on Abrdn's records at Mr H's request, to enable his continuing access to the Abrdn account through the MWA portal, and that the fact it remained on the records did not imply ongoing service provision.

MWA also repeated that the reasons it terminated its service were because Mr H was not

paying fees and because of difficulties it encountered from him.

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.

I have reviewed the complaint in light of the comments received from both parties in response to the PD. Having done so, I have not been persuaded to depart from the main findings and conclusions in the PD. Overall, on balance and for the reasons given in the PD I retain those main findings and conclusions, and I incorporate them into this decision.

I have noted Mr H's perception of bias in the PD. I can confirm that no such bias existed in my consideration of his case, in reaching my findings and in the drafting of the PD.

As he is aware, the invitation to MWA in the preamble of the PD was coupled with reference to him too. The purpose was to aid my consideration of whether (or not) a final decision would be necessary if both parties accepted the PD. The relevant text was –

"*If MWA FINANCIAL ADVICE LTD accepts my provisional decision, it should let me know. If Mr H also accepts, I may or may not arrange for the complaint to be closed as resolved at this stage without a final decision*."

It is clear from the above that consideration of whether (or not) to issue a final decision would be prompted *only* if *both parties* accepted the PD. It was never a matter dependent only on MWA's response.

As quoted above, the PD's background summary began with reference to the resolved joint complaint and then reference to MWA conceding Mr H's individual complaint and making settlement offers. I considered these to be logical context for his individual complaint, because it showed that the root cause issue had been separately resolved, that merit in his case had been conceded by MWA and that, as I proceeded to address, the only issue in dispute was compensation/redress. It is clear in the other contents of the background and in the findings of the PD – as quoted above – that I featured Mr H and his position(s) in the matter significantly.

There was no bias, in favour of either party, within my consideration of the case, my findings and the drafting of the PD. The PD was drafted in the way I considered helpful to set out the facts, relevant evidence and my findings.

With regards to MWA's responses to the PD's findings, the PD already addressed its original position on the complaint, and I do not accept any of its comments on mitigation.

The PD explains (as quoted above) the reasons why its email of 18 January 2024 cannot reasonably be the mitigation point. I do not propose to repeat that explanation, and I do not consider that it has said anything in its comments that defeats or calls those reasons into question.

A similar point applies to what it has stated about remaining on Abrdn's records. The PD gave reasons why MWA caused detrimental confusion in this respect and why, as it remained on the records, it should have done more. In response, it essentially says it kept itself on the records upon Mr H's request (in order for him to use the MWA portal to access the SIPP) and on the understanding that an ongoing service was not to be assumed from that (and that one did not exist). I have seen enough in the case to be aware that Mr H's position on this differs. In any case, the points made about this matter in the PD (as quoted

above) still stand, despite this submission from MWA.

I have already found that MWA was contractually entitled to terminate its service, so I do not consider it necessary to treat the termination reasons it has repeated – other than to note that the non-payment of fees circumstances it has referred to appear to have been partly connected to an agreement in a specific history of events between the parties, which I do not need to go into; so MWA's reference to it should not be misunderstood as a simple/isolated matter of Mr H failing to pay owed fees; as far as I am aware, that was not the case and there was more to the matter.

I now turn to Mr H's comments. I address them as follows –

- I understand the causation factors he has repeated and highlighted. The factual events in his case are broadly undisputed, and as I noted in the PD MWA already accepts merit in his complaint. It is redress and compensation that is in dispute. In this respect, I do not accept his arguments that there has been an actual financial loss (and that such loss is ongoing).

- He refers to a financial loss arising from the cash in his SIPP that has remained in place since December 2023, earning a low rate of interest. If the suggestion is that the cash could otherwise have been invested, available evidence – including his own evidence – stands in conflict. His retirement income plan led directly to his decision to liquidate the SIPP, which is when the M&G fund holding became a problem. There is correspondence from him to MWA referring to his *instruction* to liquidate the SIPP and his submissions to us have referred to the same. Therefore, overall, I retain the conclusion in the PD that said –

  "*As things presently stand, there is no actual financial loss to Mr H in his SIPP, in the conventional sense – aided by the redress that has been awarded to him (and his wife) in the joint complaint. To be clear, what I mean is that he has not lost something that he previously had, or to put it in another way his claim is not about a loss of capital invested in his SIPP and it is not about a loss of growth on capital invested in his SIPP. It is also not about a loss of ongoing investment returns in the SIPP. It is his case that liquidation of the SIPP was a part of his FTA plan in late 2023, so the uninvested cash holding that has resulted from that was inevitable, and was wilfully created.*"

- MWA did not cause him a lost opportunity in May 2021. Its wrongdoing in 2021 is a distinct matter. It is related to the M&G fund holding liquidation instruction in that year, it has been addressed and concluded in the joint complaint, and it is acknowledged as the root cause of the problem that hindered execution of his FTA/retirement income plan in 2023. However, there was no FTA/retirement income plan to execute in 2021, so it cannot factually be said that an opportunity in that respect was lost in 2021.

- Our service does not give advice, so it was not our responsibility to advise Mr H on his obligation to mitigate. I do not accept the argument that the obligation should not apply to him. It is an obligation that applies quite generally in cases where loss or lost opportunity has been caused, and the reasoning behind it is broadly as I explained in the PD.

- I note his reference to the problems and complexities in his case. However, I gave allowance for these in the PD by using the FA's advice in May 2024 as the mitigation point. I am satisfied with evidence showing that by this time/point Mr H was aware of

the need to mitigate. Regardless of whether (or not) he was aware of an *obligation* to do so, he knew as a matter of fact that he needed to look into and pursue an alternative (which, in essence, was mitigation). That is why he found his way to the FA and reached the point of receiving an outline of an alternative solution from the FA. He was in a position to mitigate at this time and ought reasonably to have done so. By this time, he knew his original FTA plan could no longer be accomplished (because of the M&G fund holding problem), he knew he could not find another FTA offer in the market (he has described the efforts he exhausted, before May, in trying, unsuccessfully, to do so) and he knew MWA would not assist him in securing an alternative, so it would not have been reasonable for him to dismiss or delay pursuing the viable alternative proposal the FA presented to him.

- I am not persuaded that he has said anything to justify extending this point to the date of 31 December 2024 that he has asserted. It is evident that he was, and probably remains, reluctant to pursue anything other than his preferred FTA. He repeated that this was/is his preference throughout his comments on the PD, and I understand his strength of feeling on the matter. However, the point of mitigation is as I explained in the PD, and the obligation to do so cannot reasonably be met (or dismissed) by a stance in which required action is delayed and eventually/reluctantly taken because reasonable and viable alternatives are not *preferred*. Evidence of the FA's input in May 2024 shows that it was not his *sales pit*ch and that it would be unfair to dismiss it as such. It presented a viable and reasonable alternative to Mr H (mitigation), and it did so in reasonably clear terms. If, as it appears, he did not use this to mitigate at the time (with or without the particular FA) because the proposal did not match his preference (which appears to be what he has described in his comments) that is not ground to waive or adjust his obligation to mitigate.

- I am aware that a drawdown arrangement is not the same as the FTA Mr H preferred. However, I am not persuaded that I was wrong to describe the former, in the context of the overall solution suggested by the FA, as "… *a solution that was close, in overall value, to the opportunity* [Mr H] *lost in November 2023*". The details in the FA's email, where he refers to potential values to be derived from his proposal, support this description. It should be noted that I also said –

  "*Even if it did not quite match the lost opportunity, in a general sense, it seems reasonably clear from the FA's email that there was room for the FA and Mr H to engage in further considerations to explore and achieve such a match. For this reason, and from this point onwards, I do not consider that MWA can reasonably be held responsible for the lost opportunity. At this point, Mr H was able to mitigate. He ought reasonably to have embarked upon putting in place the available appropriate alternative solution identified by the FA – or, if he wished, he could have done so with another appropriate alternative that he and the FA could have considered.*"

  Overall, I am satisfied that I qualified the statement sufficiently.

- I understand Mr H's position on the matter of the cost of a new adviser. In another case, depending on the circumstances, there could be a basis to consider and/or award compensation for such cost. In his case, on balance, I do not find such a basis.
- I should begin by highlighting that the trouble, distress and inconvenience that he faced has been considered inclusive of the trouble he has encountered in finding a new adviser. In this respect, the PD's findings clearly referred to what he had faced between October 2023 and May 2024, so an element of his position on the matter of having to find a new adviser has been compensated for.

- With regards to the cost, in isolation, the circumstances in his case show that he always wanted and/or was always going to need new/initial advice for the implementation of his FTA/retirement income plan. It is his evidence that he contacted MWA for such advice in October 2023, which is when the M&G fund holding problem was discovered. Therefore, the need for initial advice, for this purpose, did not arise because of the problem. It already existed, and would have existed even if the problem was not there. This is unsurprising, given that he – like any client in his position – was reasonably entitled to decide that he wanted his FTA/retirement income plan (and the important considerations within it) to be informed by professional/regulated advice.

- The circumstances leading to MWA's termination of service can be debated, but as I said in the PD it was contractually entitled to terminate its service, and it did so. Any professional advice sought and obtained for the FTA/retirement income plan would ordinarily have come at a cost. I do not wish to be drawn into the particular circumstances related to fees for MWA's service in 2023/24 because they are not relevant to the present complaint. The point is that professional advice comes at a cost, so if such advice was obtained from within MWA it could or would, in principle and without prejudice to the circumstances, have applied a charge for that (for *new advice*, distinct from any ongoing reviews of previous advice) – and if obtained elsewhere, any FA would have applied a charge too.

- In the above circumstances, for the reasons in the PD and because I am not persuaded that the need for advice arose because of MWA's wrongdoing, I do not consider that it should have to cover the cost of Mr H obtaining alternative advice. I accept that the nature of the advice he needed after MWA's wrongdoing was, to an extent, different from the advice he previously needed, due to the problem(s) caused by the M&G fund holding issue. However, the subject remained broadly the same – retirement income planning – and he intended to take advice on that in any case.

- I had understood, based on correspondence between the parties at the time of their settlement discussions, that the annual annuity income and SIPP capital outlay figures used in calculating MWA's settlement offer(s) were agreed. I have reviewed evidence on this and my understanding remains the same – that the figures used appear to have been agreed at the time, and that settlement was unsuccessful for reasons unrelated to those figures. However, I also acknowledge Mr H's disagreement in this respect, and I will address this in my redress provisions below by ordering both parties to, primarily, liaise with each other to evidence the actual details of CL's November 2023 FTA offer.

- On balance, I am not persuaded to increase the award for trouble, distress and inconvenience. I should also note, that in his wider comments Mr H had previously suggested a £1,000 award, which is what the PD concluded. I appreciate that his present position suggests more should be awarded, but I have not seen a basis to reasonably do so, in the case or in his comments on the PD. It is true that the grounds for the award does not cover the 12 months period that he has asserted. However, for the reasons already addressed I consider that mitigation should have happened in May 2024. Had that been the case, there would have been a corresponding effect, at the time, to stem the trouble, distress and inconvenience the matter had caused him.

Putting things right

I order MWA to pay Mr H £1,000 for the trouble, distress and inconvenience caused to him in this complaint. My reasons are as stated in the PD.

Redress to Mr H for the lost opportunity in his complaint, caused by MWA, was also determined and reasoned in the PD. Those reasons (quoted above) continue to apply, so I will not repeat them.

The beginning of the period for redress is November 2023 when Mr H received the CL FTA offer that he could not proceed with, because of MWA's wrongdoings. The end of the period for redress is May 2024 when he was able to mitigate the matter and ought reasonably to have done so – and when, for this reason, MWA's responsibility for the lost opportunity ends.

What must MWA do?

To compensate Mr H fairly, MWA must do the following –

- Liaise with Mr H to obtain the actual details of the annual fixed term annuity income figure and the net SIPP Capital Outlay figure (for purchasing the fixed term annuity) in the CL FTA offer made to him in November 2023. This information should be evidenced, to reflect the actual offer made by CL.

- Calculate the annual fixed term annuity income figure multiplied by 12 (representing the 12 years basis of the CL FTA offer). The result is the 'Total FTA Income'.

- Calculate the Total FTA Income minus the net SIPP Capital Outlay figure. The result is the '12 years Gain'.

- Calculate the 12 years Gain divided by 12. The result is the '1 year Gain'.

- Calculate the 1 year Gain divided by 2. The result is the '6 months Gain'.

- Pay the total of the 6 months Gain to Mr H as net compensation for the value of the opportunity MWA caused him to lose, in the CL FTA offer, during the six months between November 2023 and May 2024.

- In addition, pay Mr H interest on the 6 months Gain, from 1 June 2024 to the date of settlement, at the rate of 8% simple per year. This is to bring the value of the redress up to date.

- Provide the calculations to Mr H in a clear and simple format.

As I quoted above, in the previous section, the PD set out the following for the calculation of redress –

"*The settlement calculations refer to an annual income of £11,138 (based on application of the SIPP's full liquidated value (minus tax-free cash) of £105,897.89 to the 12 years FTA) as what could have been available to Mr H, but for the problems he faced. Over 12 years, the total income would be £133.656. In other words, the gain for Mr H over 12 years would be £133,656 (the total income) minus £105,897.89 (the SIPP capital outlay). The result, for the 12 years period, is a gain of £27,758.11. For one year, the result is a gain of £2,313.18, so for six months the result is a gain of £1,156.59.*

Overall, and based on the above calculation, I consider that net compensation for the opportunity that Mr H lost between November 2023 and May 2024 can be quantified as £1,156.59. This will be the award I will make in my final decision, in this respect, if I retain the above findings."

If, for any reason, the actual details of the November 2023 CL offer cannot be obtained and/or evidenced, and if, because of that, the orders above cannot be calculated or executed, then as an alternative I order MWA to pay Mr H the total of £1,156.59 on the basis of the analysis and calculations quoted above; in addition, and for the same reason given in the orders above, I order MWA to pay him interest on this amount, from 1 June 2024 to the date of settlement, at the rate of 8% simple per year. I have used this as a compromise alternative for redress because, as I said above, it uses figures that appear to have been previously agreed between the parties.

My final decision

For the reasons given above, I uphold Mr H's complaint, and I order MWA FINANCIAL ADVICE LTD to calculate and pay him compensation and redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept

or reject my decision before 16 January 2025.

Roy Kuku
Ombudsman