DRN-5221823

The complaint

MWA FINANCIAL ADVICE LTD ('MWA') previously advised, and serviced, the following accounts for Mrs H and her husband –

- 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.

Mrs H and her husband 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 Mrs H'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 Mrs H's SIPP and her FTA/retirement income plans.

What happened

On 30 November 2024 I issued a Provisional Decision ('PD') for Mrs 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 the couple'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. The couple 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 Mrs H's case, her SIPP and FTA/retirement income plans. The couple's submissions about her position in October 2023 and her position now, with regards to the FTA plans, can be summarised as follows:

- *In October 2023 she was prepared and engaged to liquidate her SIPP (including the part of its value related to the M&G fund holding), to liquidate the holding in the GIA and to use those funds to purchase a 12 years FTA; in the following month she had a quote from Canada Life ('CL') for this purpose; the CL quote was based on complete liquidation of her Abrdn SIPP and of another SIPP she held with Hargreaves*

Lansdown ('HL'), and the transfer of the total proceeds into the FTA.

- *But for the M&G fund holding problem, had the holding been liquidated in 2021 as instructed, based on the likely liquidation values, and had her 2023 FTA plans been executed at the time, CL's offer in November 2023 meant she would have been provided with a total of around £8,300 or more annual income for 12 years.*
- *The M&G fund holding problem meant her Abrdn SIPP could not be completely liquidated as required for the CL quote; she tried to explore an alternative with SL/Abrdn and learnt that it did not offer FTAs but could offer a drawdown pension; she also learnt from it that complete (not partial) liquidation of the SIPP would be required (as was also required by CL).*
- *On advice from MWA she took tax free cash from both of her SIPPs and the HL SIPP's value (around £32,000) to CL, in anticipation of the FTA plan going through. As that plan could not go through, because CL would not accept the Abrdn SIPP's partial value, the value transferred from the HL SIPP has been left with CL without earning any interest.*
- *She continued to look into alternatives and by March 2024 she contacted around three quarters of the annuity providers in the market, all of whom repeated the same as CL and Abrdn – that her SIPP had to be completely (not partially) liquidated, and its full value/proceeds used to purchase the FTA. She also learnt from the firms that the same requirement applied to a drawdown pension.*
- *In May 2024 her new Financial Adviser ('FA') analysed her position. She has shared this analysis with us. The FA refers to his understanding, from Mrs H's instructions, that the FTA plans were frustrated at the time due to the M&G fund holding problem. However, the FA suggested an alternative, in terms of Mrs H drawing income from her 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 could be used alongside an FAD arrangement, how the same usage applied to the pension she had transferred from HL to CL, and how a pension contribution in the current tax year could also be worked into this alternative solution.*
- *The FA noted that, at the time, Mrs H's Abrdn SIPP was valued at £27,070.20, with £24,892.18 held in liquidated cash and £2,178.02 in the suspended M&G fund; and that the joint GIA's value (£2,181.43) was also in the suspended M&G fund.*
- *Mrs H has referred us to the cost of instructing the FA and engaging his services – £3,675 – and she says this cost should be covered by MWA, given its responsibility for the root cause M&G fund holding problem.*
- *Whereas in November 2023 she stood to secure an FTA that provided around £8,300 annual income (for 12 years), as of August 2024 quotations from the market were offering her FTAs that provided around £5,400 annual income.*

MWA has shared evidence of its enquiries with Abrdn, with regards to Mrs H's assertion that the inability to fully transfer her Abrdn SIPP's value into an FTA was/is a major obstacle facing her FTA plans. MWA says she could always have bought 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 Mrs H. MWA says it repeatedly informed the couple, early in the year and thereafter, that their position in the matter could be mitigated, either through another way of achieving the annuity they prefer or through an FAD alternative. It also says it repeatedly urged them to take advice for this reason, but they refused to do so.

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

MWA has cited specific difficulties and detriments it claims to have encountered/endured from Mrs H's husband, acting on their joint behalf, from late 2023 and up to around April 2024. Partly (or mainly) for this reason, it says it was justified and entitled to withdraw its services."

I made the following provisional findings on merit –

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

I have noted some references, in her and her husband's submissions, to MWA's advice to her, in late 2023, to crystallise her SIPP being allegedly unsuitable. If she considers this to be an additional complaint issue, I do not find that I am in a position to address it. It does not appear to have been a specific complaint put to MWA for its response, which must be her first step before it can be referred to our service. As stated at the outset of this PD, Mrs H's (and her husband's) complaint mainly features the M&G fund holding problem and its effects on their retirement income plans.

It is quite clear that the M&G fund holding problem is the root cause of the experience she has faced, since October 2023, in trying to put in place her 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 the couple to resolve that. This, in addition to MWA upholding her 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) Mrs 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 Mrs H's obligation to mitigate any actual financial loss or lost opportunity. Then I will consider any trouble and inconvenience the matter has caused her.

As things presently stand, there is no actual financial loss to Mrs H in her Abrdn SIPP, in the conventional sense – aided by the redress that has been awarded in the joint complaint. To be clear, what I mean is that she has not lost something that she previously had, or to put it in another way her claim is not about a loss of capital invested in the SIPP and it is not about a loss of growth on capital invested in the SIPP. It is also not about a loss of ongoing

investment returns in the SIPP. It is her case that liquidation of the SIPP was a part of her FTA plans, so the uninvested cash holding that has resulted from that was inevitable, and was wilfully created.

Instead, her claim is about loss of the opportunity she had in November 2023 to purchase the CL 12 years FTA that was offered to her, on terms (including or especially the annual income value) that he says are significantly better than those available in the market since and to date. In other words, her claim is about a loss of opportunity. This prompts an approach towards compensation that differs from the approach that would be used if the claim was about an actual financial loss. Compensation in her 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 her 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 Mrs 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. Her 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 Mrs 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 Mrs H's case, and for the reasons I give below, I am satisfied that mitigation was possible. This means that at a particular point – the 'mitigation point' – she 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, she should have pursued an alternative appropriate opportunity. Inevitably, this also affects her 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 Mrs H.

I accept that she was initially entitled to prefer the specific 12 years FTA plan that she sought to execute, and I accept that MWA's failure disrupted the opportunity she 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 put in place 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 Mrs H knew she could not meet the offer, so it could be argued that she knew the opportunity was lost and she should have known then that she 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 Mrs H until January 2024. Up to that point, I am not persuaded that her obligation to mitigate had been triggered. It was reasonable for her 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 Mrs H and when it made clear that it would not negotiate any further (as it did in its email to the couple 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 Mrs 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 Mrs H's ability to mitigate (that is, being able to execute a form of mitigation), distinct from her efforts in trying to mitigate (that is, her efforts in trying to find a form of mitigation), existed until May 2024.

She 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 the couple previously being elusive in response to its attempts to arrange reviews. However, following the lost opportunity, I am satisfied with evidence showing that they were fully engaged with MWA. It is in this context that they made notable efforts to mitigate, and in which they have referred to how those efforts were frustrated by MWA's reluctance to give advice and/or assistance.

MWA says it repeatedly told them to seek advice/assistance elsewhere. However, this created a mixed, confusing and, I consider, detrimental message. It remained as adviser for their SIPPs on Abrdn's records up to July 2024. That presented a reasonable basis on which Mrs 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 her. The couple reported to us, at the time, that they faced obstacles in the latter regard, with their attempts to liaise directly with Abrdn being met by a requirement (or suggestion) that they 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 the SIPPs.

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

Should Mrs H have sought alternative advice elsewhere sooner? On balance, I do not consider that she was unduly late in doing so. Between January and May, the couple shared with our service and with MWA feedback on their ongoing efforts to search for solutions

across the market. They also sought to discuss this feedback, and to explore the matter, with MWA. This signified a notable compromise on their part. Due to its reluctance to engage, they no longer looked to MWA to take the lead. Instead, they took the lead themselves, but expected, as a minimum, meaningful input from MWA on what was being fed back from the market.

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

If MWA is minded to refer to its reasons for disengaging from the couple, 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 described above.

Evidence of the FA's suggestions to Mrs H in May 2024 shows me that a viable and seemingly appropriate alternative retirement income solution was identified and available to her in this month. It also appears to have been a solution that was close, in overall value, to the opportunity she lost in November 2023. Even if it was not, and even if it did not quite match the lost opportunity, it seems reasonably clear from the FA's email that there was room for him and her 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, Mrs H was able to mitigate. She ought reasonably to have embarked upon putting in place the available appropriate alternative solution identified by the FA – or, if she wished, she could have done so with another appropriate alternative that they could have considered.

She has referred to the FA's costs and she says 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 her. It did not have such an obligation. Its duty to provide an advisory service to her 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 Mrs H and the way it did so created unfair effects/impacts on her, and I address this separately below. Its wrongdoings in this respect also breached its regulatory obligations to uphold her best interests and to treat her fairly.

However, the point I am making here is that MWA could not have been forced to advise her 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/inactions even earlier. It was inevitable that Mrs H would need to appoint a new adviser if she required advice, and that was always going to be at a cost to her. 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 her and her husband have 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 her husband

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 Mrs H wanted advice from elsewhere she had to pay for it.

For all the reasons given above, and on balance, I am satisfied that MWA caused Mrs H's loss of opportunity in November 2023; that its responsibility in this respect continued up to May 2024, when she was able to mitigate and was responsible for doing so; and that by May 2024 the option(s) of mitigation available to her was such that closely compared with, or closely matched, or could have closely compared with and/or 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 Mrs 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 using her SIPP's liquidated capital to purchase the FTA, so she would no longer have had that capital thereafter (instead, she would have had the FTA income for 12 years).

In contrast, any compensation presently awarded to her would be in addition to the SIPP's capital which, I believe, she still has. Even if she no longer has that capital, I believe she 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 – based on the Abrdn SIPP (which is the only SIPP, belonging to Mrs H, affected by the M&G fund holding problem), and on that SIPP's value being topped up by the GIA's value (as was her plan), and on a deduction of tax-free cash – refer to an annual income of £3,015 purchased, in a 12 years FTA, by the net total value of £29,725.81. This is presented as what could have been available to her but for the lost opportunity.

Over 12 years, the total income would be £36,180, so the total gain for her over 12 years would be £36,180 (the total income) minus £29,725.81 (the total capital outlay). The result, for the 12 years period, is a gain of £6,454.19. For one year, the result is a gain of £537.85, so for six months the result is a gain of £268.93 (rounded up).

Overall, and based on the above calculation, I consider that net compensation for the opportunity that Mrs H lost between November 2023 and May 2024 can be quantified as £268.93. This is 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 Mrs 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 the couple 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 Mrs H in the pursuit of her retirement income plans, which began in October 2023 with the FTA plan. I have also focused on impacts upon her, as opposed to punitive considerations towards actions or inactions by MWA. It is beyond my remit and powers to make punitive awards.

In summary, Mrs H faced the following key troubling, distressing and inconvenient events – the shock of realising, in October 2023, that her 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 she faced in being abandoned to resolve the matter himself, up to May 2024; and the ongoing distress she was caused, up to May 2024, by not knowing how her 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 Mrs 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 her £1,000. Unless comments from the parties change my mind, this is the award for trouble, distress and inconvenience I will make in my final decision."

In response to the PD, MWA maintained, and 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 the couple of 18 January 2024, in which it was made clear to them that they needed to seek advice elsewhere. It says it previously and subsequently made clear to them that it was their responsibility to act, and that, in response, Mrs H's husband verbally confirmed, multiple times, that they had been seeking advice elsewhere.

It also says that it remained on Abrdn's records at their request, to enable them to continue accessing 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 they were not paying fees and because of difficulties it encountered from Mrs H's husband.

In response to the PD, Mrs H recapped on her case's background, going back to her FTA plan in October 2023 and including references to the CL FTA offer (a copy of which she attached to her comments) and an FTA offer from MWA, and the events that followed (including a personal development in her life during this period). She summarised why other options at the time did not meet her requirements, and said – "… *a lifetime annuity will accept Partial crystallised funds, but this does not work for me as the income reduces drastically. Drawdown is an option, but comes with a level of risk, management and platform fees etc. I purposely wanted an Hassle Free income, each month with no worries* …".

In this context, she disagrees with the PD's finding that a viable alternative solution was available to her. She said – "*I am being forced to employ the services of another financial advisor (an unknown in an industry that has shown to be totally untrustworthy!) to help me find some solution to receive an income at a cost to my Sipp funds. Then to probably have to employ those services for the longer term. The process to find another advisor was a very*

stressful exercise as once the situation was explained, many chose not to take us on. so this become a prolonged effort whilst dealing with our complaints through yourselves. This has only been completed and I received my first income yesterday 12th December! 12 months latter than I should have, because of the failure of MWA no on else."

Mrs H considers that the evidence she, and her husband, shared about the FA's proposal in May 2024 has been unfairly misused against her. She said –

"*Firstly this was provided to you as an example of the potential costs and a totally different outcome that I face to find a possible solution. BUT don't lose that fact my retirement plans were not for this. this is the only outcome available due to MWA. Also this was salesman mode, The timescales involved to finally obtain my income should not be considered my responsibility … our new advisors once past the sales stage had to conduct a very thorough due diligence process for the higher management and compliance section of the company to agree to take us on as clients. This has only just been completed. Again this is due to MWA not us. This should not or would not have happened if MWA had did what we asked …*

a) My aim was to not have any FA but an income each month for 12 years. What I now have could not be more different
b) We had to endure all the attitude from MWA , the feeling of being abandoned at what could not be a worse time in my life
c) To have to endure the additional tasks of finding a alternative FA, something I am forced to have done.
d) To have to wait for 11 months for a decision
e) To have to wait for 12 months for an income,
e) To have to deal with MWA demands for information because your previous decision was a calculation, basically everything always comes back to effect us in some manner.

So to state that all this deserves an award of £1000 is an insult!

WE strongly believe that the date of Mitigation should reflect the full struggle we have endured and be set at the 9th November 2024 Your Final Decision as this date was when we are now in a position to make decisions on what funds we actually will receive and plan how we can arrange an income. Until your final decision we were still looking at possible strategies based on unavailable funds with M&G."

Mrs H also commented on the crystallisation of her SIPP, and said – "*My funds were NOT crystallised until MWA advised me to take my Tax free money before transfer to Canada Life. This is huge in the overall issue as it is this that prevented my 12 year FTA going forward*."

With regards to the PD's provisions for calculating redress, she said – "*You use a value of the M&G holding as stated in MWA 's offer letter. This figure is incorrect as you should use the what the value was at the point of instruction to sell may 2021, (The calculation) which still has to be revealed. I have the quotation from Canada Life from which the percentage gain can be calculated over 12 years and then calculated for 12 months, as this is the true view and timescale involved*."

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.

With regards to MWA's response 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 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 a request to do so (in order for the couple 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 none existed). I have seen enough in the case to be aware that the couple'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 and/or isolated matter of Mrs 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 Mrs H's comments.

I note that she has mentioned, again, the matter of crystallisation of her SIPP. In this respect, I retain the finding made in the PD (as quoted above), and I have not seen anything in her comments that calls that finding into question.

I am very familiar with the background and events in her case. As stated above, I have dealt with all the three complaints, belonging to her and her husband, handled in our service. I accept that the specific FTA plan she had in October 2023, and the specific CL FTA offer associated with that, became essentially impossible following the problems that arose in the M&G fund holding, and following the events that ensued.

I am acutely aware that Mrs H experienced a lost opportunity in this respect, and I have taken on board what she has said about the reasons and rationale behind the specific FTA/retirement income plan that she had.

However, a duty to mitigate existed nevertheless.

I do not consider this to be news to her. It is evident from her and her husband's efforts that they initially tried their best to save their respective specific FTA plans. However, it is their evidence that, in time, they learnt from the market that the FTA they wanted could not be achieved, given the state of their SIPPs. That, quite naturally, led them to consider alternatives. That search for alternatives led Mrs H to the FA I referred to in the PD and to the proposal he presented to her. All of this happened in the overall spirit of mitigation, regardless of whether (or not) Mrs H consciously considered it as such. I do not accept that I misused evidence about input from the FA. It is evidence that is relevant to the matter of mitigation, so I could not reasonably ignore it.

It was a somewhat natural course of action for Mrs H to look into minimising the effects of the problems caused by the suspended M&G fund holding (primarily, the problem caused by MWA's wrongdoings). By engaging with the FA, she did that. I do not imagine that she engaged with him, and that she had him looking into an alternative retirement income solution, if she did not intend to consider an alternative retirement income solution, so the implication is that she had that intention.

In May 2024 the FA set out a viable proposal for an alternative retirement income solution. The problem appears to be that Mrs H did not follow-up on this *at the time*. I acknowledge her reference to recent developments in this respect, but those developments do not remove or dilute the fact that she was in a position to pursue the proposed alternative retirement income solution in May 2024. Had she done that, the developments that happened only recently (around November/December 2024) would probably have happened around May 2024.

On balance, I do not accept the argument, or suggestion, that Mrs H needed to await the outcome of the joint complaint about the M&G fund holding problem – that is, the decision of 9 November 2024 that she has mentioned – before she could proceed with the FA's proposal. The proposal's contents clearly extend to recognising the state of the holding as it was at the time, and the FA clearly incorporated that into what he set out – including, as I said in the PD, "… *suggestions on how periodic recoveries of capital from the M&G fund holding could be used alongside an FAD arrangement* …". Therefore, there was nothing in the proposal that depended on the outcome of any of her complaints.

The issue is not just about the *intact* value of the opportunity Mrs H lost, and it is also not about redressing a claim based wholly on that intact value. A significant part of her focus appears to be on this, which is understandable in the circumstances. However, it is clear from the facts and from her actions that she reached the point, in May 2024, where she knew the opportunity had been lost, she knew that she had to put in place an alternative and a viable alternative was available to her. This cannot reasonably be discounted and, importantly, it defines how her complaint should be fairly and reasonably approached. I am aware that an FAD arrangement is not what she wanted, but it was a viable alternative, and this is supported by evidence that it (or something similar) is the arrangement she now appears to have used.

The issue to resolve is about compensating Mrs H for the value of the lost opportunity, up to May 2024 – when she was in a position to pursue a viable alternative retirement income solution, the same (or similar) alternative retirement income solution that she appears to have now put in place. Hence this (May 2024) being the end point for the redress provisions set out in the PD.

Mrs H has commented on the cost of her new adviser.

I should draw a distinction between the *initial advice* cost of advice she has faced and any *ongoing cost* for ongoing service. Her comments appear to cite both.

I have not seen evidence that, in her case, the latter is or will be inescapable. I do not say or suggest that an ongoing advice service is not needed for an FAD arrangement, but it is also not automatically mandatory. It is likely to be a matter that depends on the circumstances and characteristics of the arrangement she has in place. Furthermore, she appears to have previously had an ongoing advice service from MWA, so even if the cost of a similar service with a new adviser is something she will be facing, that would seem akin to the arrangement she previously had – in other words, it does not appear to be a new cost arising from the complaint issue.

In terms of the initial advice cost, in another case, depending on the circumstances, there could be a basis to consider and/or award compensation for such cost. In Mrs H's case, on balance, I do not find grounds to do so.

Evidence shows that she always wanted and/or was always going to need advice for the implementation of her FTA/retirement income plan. She (and her husband) initially contacted MWA for such advice in October 2023. The need for new/initial advice in this respect did not arise because of the M&G fund holding problem. It existed before she was aware of the problem and it would have existed even if the problem was not there, because it was about the distinct matter of putting in place an FTA, or retirement income, arrangement.

Any initial advice sought and obtained from a regulated adviser for the FTA/retirement income plan would have come at a cost. If such advice was obtained from MWA it could, in principle and without prejudice to any of the circumstances related to fees issue it has mentioned, have applied a charge for that (for *new advice*, distinct from any ongoing reviews of previous advice). If obtained elsewhere, any FA would also have applied a charge. Indeed, in the CL FTA offer document that Mrs H has shared, there is reference to a fee deduction for her intermediary's services in arranging the plan.

For these reasons and those in the PD, and because I am not persuaded that the need for initial advice on her FTA/retirement income plan arose because of MWA's wrongdoing, I do not consider that it should have to cover the cost of Mrs H obtaining alternative advice.

I accept that the nature of the advice she needed after MWA's wrongdoing was different from the advice she 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 she intended to take advice for that in any case.

I assure Mrs H that there was absolutely no intention to insult her by reaching the award of £1,000 for trouble, distress and inconvenience stated in the PD. Indeed, the award sought to give due regard to the profound trouble (to use a single overarching description) the complaint matter has caused her.

On balance, I am not persuaded to increase the award. I am satisfied that I have taken into account all the valid and relevant aspects (of trouble, distress and inconvenience) listed in her comments and evident in the case, inclusive of the trouble she has encountered in finding a new adviser. The grounds for the award do not cover the period up to November 2024 that she 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 her.

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 Mrs H's comment that the figures in the PD are inaccurate – for which, and in terms of correcting the figures, she has shared the CL FTA offer document. 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.

I note Mrs H has also referred to the value of her M&G fund holding in May 2021, but I consider this to be an error, because the present case is not about that holding.

Putting things right

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

Redress to Mrs H for the lost opportunity in her 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 Mrs H received the CL FTA offer that she could not proceed with, because of MWA's wrongdoings. The end of the period for redress is May 2024 when she 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 Mrs H fairly, MWA must do the following –

- Liaise with Mrs H to obtain the actual details of the annual fixed term annuity income figure and the net SIPP Capital (including the GIA top-up) Outlay figure (for purchasing the fixed term annuity) in the CL FTA offer made to her 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 (including the GIA top-up) 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 Mrs H as net compensation for the value of the opportunity MWA caused her to lose, in the CL FTA offer, during the six months between November 2023 and May 2024.

- In addition, pay Mrs 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 Mrs 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 – based on the Abrdn SIPP (which is the only SIPP, belonging to Mrs H, affected by the M&G fund holding problem), and on that SIPP's value being topped up by the GIA's value (as was her plan), and on a deduction of tax-free cash – refer to an annual income of £3,015 purchased, in a 12 years FTA, by the net total value of £29,725.81. This is presented as what could have been available to her but for the lost opportunity.

Over 12 years, the total income would be £36,180, so the total gain for her over 12 years

would be £36,180 (the total income) minus £29,725.81 (the total capital outlay). The result, for the 12 years period, is a gain of £6,454.19. For one year, the result is a gain of £537.85, so for six months the result is a gain of £268.93 (rounded up).

Overall, and based on the above calculation, I consider that net compensation for the opportunity that Mrs H lost between November 2023 and May 2024 can be quantified as £268.93. This is 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 Mrs H the total of £268.93 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 her 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 Mrs H's complaint, and I order MWA FINANCIAL ADVICE LTD to calculate and pay her compensation and redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 16 January 2025.

Roy Kuku
Ombudsman