

## **The complaint**

Mrs S complains that ELEVATION WEALTH MANAGEMENT LIMITED (Elevation) didn't provide her with suitable advice.

Her complaint has been made on her behalf by one of her jointly and severally appointed attorneys.

## **What happened**

Mrs S, and her late husband, carried out financial planning for their future in the 1980s, in around 2016, Elevation say Mrs S moved across to its service, seemingly due to the retirement her previous adviser. Mrs S has appointed lasting power of attorneys to deal with her financial affairs, for ease I'll refer to their actions as if they were hers given they represent her.

The arrangement Mrs S brought to Elevation, which it was to take over advisory services for, was to grow the investment portfolio for the future and to draw an income from to meet Mrs S' expenses that couldn't be met by her pension income alone. Within those expenses included the premium for whole of life (WOL) policy which had been taken out in 1985 to mitigate any future inheritance tax liability and to provide a legacy on her passing.

In more recent times Mrs S' attorney found she was running out of liquid capital to be able to meet her expenses during the period Elevation had been managing her assets. Feeling Mrs S was now in a precarious position for the future given her reliance on her portfolio to help pay towards her care costs, a complaint was made to the firm about several matters.

Her complaint in summary was:

- Elevation hadn't met her objectives, which stressed investment growth over inheritance tax mitigation.
- By not adhering to that, Elevation had led to her liquid capital falling to levels which risked her not being able to meet her financial needs in the future and of incurring tax that ought to have been avoided.
- Elevation misunderstood the accessibility of funds held within the trusts some of her assets had been assigned to.
- By thinking that money was accessible for her it gave unsuitable advice to not make changes to the arrangement.
- While it did later advise to make changes to the life assurance policy, if should've done so in the years before which could've saved around £200,000 in premiums, and potentially inheritance tax if the premiums are considered potentially exempt transfers (PETs).
- It failed to properly understand the working of the life assurance policy.

- Suggesting that a loan could be made out of the trust assets, which would've been a breach of a trust.

Responding to Mrs S' complaint, Elevation said:

- The WOL policy, trusts and assets held were all in place when Mrs S came to them as a new client.
- The advice it provided was suitable as it met her objectives by investing her money for growth and to keep the WOL policy in place.
- The difficulties came from increases in care costs and WOL premium, rather than it failing to properly manage Mrs S' affairs it has responsibility for.
- It advised changes when it thought it was suitable to – converting the WOL policy to a paid-up state.
- It hadn't advised to draw from the inaccessible trusts.

Elevation did offer £500 to acknowledge the distress and inconvenience caused by the situation.

Mrs S was dissatisfied with Elevations response and referred the matter to our service to consider. One of our Investigators considered her complaint but didn't recommend it be upheld. He explained this was because:

- Elevation weren't responsible for the advice that led to Mrs S' arrangements.
- The advice it did give to transfer an ISA in 2020 was suitable.
- The firm may have given incorrect information about the accessibility of the money invested in trust but as that wasn't acted on Mrs S hasn't been detrimented by those events.
- He wasn't persuaded Elevation ought to have explored alternative methods to address the WOL policy sooner than it did.
- A refund of fees paid weren't due as they'd been agreed to and the services provided.

Mrs S responded to disagree with our Investigator's findings, in summary, because:

- She felt key evidence hadn't been fairly considered.
- We hadn't addressed the significance of Elevation's admissions that it hadn't understood the trusts.
- Elevation failed to properly understand Mrs S and provide her with suitable advice.
- All the firm's advice was on the basis Mrs S had access to £560,000 by including trust resources outside of her reach.
- Suitable advice would've been to pay-up the WOL policy sooner than Elevation did.
- Because in her view the advice was unsuitable it wasn't reasonable she was expected to pay the fees Elevation charged.

Our Investigator didn't change their opinion and as an agreement wasn't reached, the complaint was passed to me to decide.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, while I understand the importance and consequences of this matter to Mrs S, I've not been persuaded that I can fairly uphold it. I'd like to assure Mrs S and her attorneys that the delicacy of this matter and the reasons why they feel Elevation hasn't treated them unfairly isn't lost on me. For me to make a direction against Elevation I would need to be persuaded it's more likely than not that Elevation fell below its obligations to Mrs S, and those failings caused her detriment.

It's well established in this matter that Mrs S moved her holdings to Elevation's management from her previous adviser, including most the assets that are part of this dispute. Elevation then isn't responsible for any advice or servicing of those products and arrangements before Mrs S became its customer. Because Elevation inherited much of Mrs S' affairs stemming from the advice from another firm, it's relevant in my view that Elevation is limited to what it can do given this arrangement was already in place. It would however need to ensure any recommendations it made were suitable for Mrs S within the confines of the arrangement that was already in place.

The most pressing matter in this complaint is Mrs S' depleting capital and whether Elevation has on balance caused or worsened that position by not providing suitable advice or fairly administering the assets under its management.

The WOL policy was, as I've mentioned, already in place prior to Elevation taking over management of her assets, with it being incepted around 1985. These policies typically work by providing at the outset a high level of life cover for a relatively low premium. Part of the premium is used to pay the life cover cost, and the rest is invested with the aim of growing it for the future to pay, or offset, the higher life cover costs as the life assured gets older, which is typical given the cost of cover increases with age as the likelihood of a claim being paid increases.

Mrs S' policy appears to have been taken out on a "maximum" basis which means that the premium is more heavily directed towards providing the life cover. As a smaller proportion of the premium is being invested, the policy is more likely to fail future reviews as there is a smaller pot to grow the invested capital to use for offsetting the future higher cost of providing life cover to Mrs S. That usually means that in the future the premium will need to increase to maintain the sum assured, and as Mrs S becomes older those premiums can increase substantially and sharply. As I've said, Elevation didn't advise this policy and I mention this only because the workings of this policy are relevant to the situation at hand.

In Mrs S' situation, she held quite a large policy, a sum assured of around £2m, which in recent years has required significant increases to the premium as Mrs S has become older and the prospects of a claim become more likely, in the manner I've described above. From the records I've been provided with I can see the premium changed as follows – figures are approximate:

2018 – £51,000  
2019 – £61,000  
2020 – £67,000  
2021 – £73,000  
2022 – £90,000  
2023 – £111,000

As can be seen in a manner of six years the premium more than doubled until 2024 when no further premiums became due following Elevation's advice to convert the WOL policy to a paid-up status. That meant from then no further premiums would be paid into the policy, but that the costs for life cover would instead be deducted from the invested value of the policy, which was around £1.5m at the time. Assuming the policy remains in force and isn't surrendered then this leads to the investment value of the policy reducing as each premium is paid until either a claim is made or the policy exhausts itself and lapses without value.

Along with the escalating price of Mrs S premium, the cost of her care had also increased substantially, from around £42,000 in 2020 to £65,500 in 2023. These two factors together had caused an increased stress on Mrs S' financial resources and cash flow, in particular from late 2022 onwards.

In determining this matter then I've thought about what consideration Elevation gave to those factors when it gave advice, the advice it did give and whether on balance that was suitable in the circumstances..

The evidence available for the more recent years is more limited than I would expect to see, but I'm satisfied I have seen enough to have a fair understanding of Mrs S' circumstances based on the fact-finds, reports and other considerations the parties have been able to provide me with. I am able to make adverse inferences from the lack of evidence that in my view ought to be available, but I need to balance that with the evidence that has been provided as to what I think most likely happened.

Given the evidence I have been provided with, based in particular on the fact-finds dated 2020 and 2024, I think it's likely the case Mrs S' typically had the following resources,:

- Income each month of around £8,054 in 2020, decreasing to £7,243 by 2024, from her pension entitlements and income drawn from her investment portfolio.
- Expenditure of around £1,210 each month, excluding the WOL policy premium which was paid annually.

- When taking into account her income and expenditure as a whole annually, she had a monthly disposable income of around £1,145.
- Her wealth was held in an investment portfolio made up of ISAs, general investment accounts, and investment bonds.

Some of the investment bonds were held in trust, which email evidence from 2018 demonstrates Elevation weren't fully aware of all the details. I say this because an internal email I've seen shows her adviser being frustrated that Elevation's records for Mrs S either didn't fully or clearly note what was in trust, when and who the trustees were. It also shows that on that realisation the adviser collated information about which bonds were held in trust, the date the trust started and the trustee details. The information he sets out there appears to be consistent with what has been said elsewhere in the file by the parties about those trusts.

Included within those were three "Prudential" trusts, two discretionary and one absolute, of which Mrs S was a trustee along with other named parties. It's said by Mrs S' solicitor that those trusts included a settlor exclusion which meant Mrs S wasn't able to benefit from them, which Mrs S' representatives say Elevation ought to have known as it had been provided with copies of the trust deeds in 2016 when it was first engaged. It is part of Mrs S' complaint that Elevation allowed her to draw from those trusts when she wasn't permitted to and had wrongly considered those assets as part of her available wealth to meet her expenditure. Before getting onto the suitability of how Elevation managed Mrs S' portfolio, I'll address this matter.

I've not seen evidence to clearly demonstrate precisely what Elevation knew about the inner workings of those trusts, nor have I seen evidence of the restrictions these trusts are said by Mrs S' solicitor to apply. Neither party has provided the trust deeds, and I've not seen Elevation hold them given it couldn't or hasn't provided them as part of its evidence file, although that doesn't mean Mrs S, or her attorneys, hadn't provided Elevation with them. But I'm not persuaded in any event that prevents me from reaching a fair outcome with the evidence I do have. It is quite possible that Mrs S was restricted from benefiting under one or more of the "Prudential" trusts but even if such restrictions in place, the onus is also on the trustees to be aware of the exclusions and ensure the trusts are being managed in line with them.

I don't consider then Elevation can be wholly responsible if the funds were administered in a manner outside of the trust's rules. The trustees of those trusts are best placed to know and understand the workings of the trust given their duties to the trust themselves, of which there is some crossover between those who are the trustees of those trusts and those representing Mrs S under the power of attorney in place for her financial affairs.

It's unclear when Elevation did become actually aware of any such restriction. I note that until sometime between January 2020 and April 2021 the Prudential investment bonds stopped appearing on Elevation's summary of assets for Mrs S' portfolio. It is feasibly then sometime around that point Elevation realised those trusts needed to be considered outside of Mrs S' available assets, but I've not seen evidence to show anything in particular triggering Elevation to think that, particularly as in 2023 it still seemed uncertain about the trust's rules. The clearest view of this is when Mrs S' solicitor raised concerns about the usage of those trust assets in the August 2023 review meeting, which was attended by Mrs S' representatives, her solicitor and Elevation. A statement provided by Mrs S' solicitor explains that she raised concerns about those trusts being involved in discussions around how to meet Mrs S' income needs.

But even if I was persuaded Elevation ought to have known or understood more about the trust restrictions than it appears to have, I've not seen it provided advice to take withdrawals from those investment bonds or that if it wrongly counted them within Mrs S' wealth, that would've led to it providing Mrs S with unsuitable advice about how to manage her portfolio and income needs. I say this because the advice Elevation gave included transferring an ISA to its management and around how to free up capital to meet Mrs S' needs, which would have to come from her available portfolio. It isn't the case in my view that if Elevation wrongly considered the trust assets as available for use that wouldn't materially impact Mrs S' circumstances unless it advised to draw from those trusts, which I've not seen from either party that on balance it did.

From the limited information I have about the withdrawals from the Prudential trusts, those appear to be much smaller than say the WOL premium and Elevation don't know what those were for, suggesting in my view that it's likely that it was disconnected from those decisions. On balance then I think it's more likely that came from decision/s by the trustees in executing their distribution and/or administration duties than Elevation recommending withdrawal from those when there is an absence of such evidence. While discussion took place about drawing those assets in the 2023 meeting, I'm satisfied those didn't go ahead and so Mrs S hasn't lost out by any action being taken that shouldn't have happened.

Turning now to the application of the advisory services Elevation provided Mrs S with. When Elevation advised, or reviewed, Mrs S' portfolio, it needed to ensure the advice it gave her was suitable. In summary that means Elevation would be obligated to provide a personal recommendation to her based on the information it had taken and knew about Mrs S' objectives, circumstances and her knowledge and experience of investing.

Elevation's records demonstrate that she had two main objectives, which were consistently recorded and sent to Mrs S' attorney as being:

*"To continue to grow your investment portfolio where possible and facilitate the ability to draw capital for funding [Mrs S'] continuous costs, including the [WOL policy]. This will give [Mrs S] more financial security and options in the future."*

There are then, in my view, two elements key to Elevation's considerations as to what its advice needed to take into account – investing for growth in line with her risk tolerance to provide additional income when needed, and to keep the WOL policy premiums funded. The importance of the WOL policy being in place is also confirmed in other documentation, such as the advice to convert it to paid up in 2024 itself. It's noted within the report sent then that keeping the sum assured at the level it was – around £2m – was more important than reducing the sum assured by around 35% which led to the advice to keeping the sum assured at the same level. It is on balance then likely that sum assured was of significant importance to Mrs S, and by keeping the premium at that level in a paid up status would more quickly deplete the pot the policy would fund itself from. And funding that, along with Mrs S' other expenditure not covered from her income alone, was to come from her portfolio.

Mrs S' representatives have said that the portfolio growth was paramount and the WOL policy secondary to that. But I don't agree that Elevation ought to have considered the priority to be as Mrs S' representatives describe. In my view they have equal weighting and that had been as communicated as such with sufficient clarity, as above, and I've not seen evidence of that being questioned or challenged by Mrs S or her representatives.

In my view the broad plan here was that Mrs S, on her passing, wanted to leave a tax efficient legacy from the £2m from the payout of her WOL policy, and her portfolio was intended to be used to both pay those premiums when her income could no longer, and to draw from that portfolio for any other in-life needs that couldn't be met by her income. I think that is important context as such a plan can be successful if things go as intended, there is sufficient income and portfolio growth to meet in-life needs and also able to pass a large legacy to pass to her beneficiaries in a tax efficient manner. But there is also a risk, in particular when complex care is later needed or living a long life, which are both relevant to Mrs S, that the portfolio and other assets are exhausted in-life and the policy can't be funded anymore, which could one way or the other lead her £2m policy to lapse without value. Elevation and Mrs S would then need to carefully balance those needs to mitigate that risk materialising.

Until recent years, this plan appears to have provided Mrs S with enough income and growth to meet her expenditure, including her care needs and policy premium, and provide the legacy through the WOL policy. Unfortunately however more recently increases in inflation has led to significant increases in her general expenditure, most notably the cost of her care and the increase in insuring her life. Around 2022 her long held position of being able to manage all those factors within her income and capital was becoming more difficult. In my view it ought to have been apparent to Elevation around the time of the August 2023 meeting that significant change needed to be considered to assist Mrs S being able to fund her expenditure needs for the rest of her life, if it was possible to do so.

There is commentary in the summary of the November 2022 meeting about the impact of wider market performance, which had globally been afflicted from low or negative growth, on Mrs S' portfolio. Which along with her increasing care and WOL policy premium costs caused her to increase her reliance on drawing from her portfolio to supplement her income. While this was an unfortunate tipping point for Mrs S, I'm not persuaded at this stage Elevation needed to recommend significant changes to her arrangements. Realistically I think there was at this time little Elevation would be able to do. I say this because Mrs S' care costs were essential and given what I've said above about the WOL policy, the same appears to be the same for that. I'm not aware of Mrs S having any further capital to invest and so to meet her needs and I think its likely overall that Elevation was limited in what it could practically and reasonably advise at the time.

When considering this I don't think it was likely unsuitable that Elevation instead at this time advised to increase her monthly income payments from her holdings so she could meet her income needs. I say this because the capital erosion was a more recent occurrence, and as I've mentioned was likely to occur if Mrs S, as she has, lived a long life. I have thought about Mrs S' representatives' position that Elevation ought to have around this time recommended Mrs S converted her policy to a paid-up status to prevent further premiums coming from her capital so she could focus her spending on her care. But I'm not persuaded Elevation not doing so means the advice it did give was unsuitable.

I say this because there are potentially significant risks involved in converting the policy to paid up as Elevation later advised for 2024, which would be a delicate balance for Elevation when considering whether it would be a suitable recommendation to change that policy status. By doing so a year earlier, the policy would have, depending on the timing, both the ~£90,000 and ~£111,000 premiums being deducted from the fund value. And while on one hand that would temporarily increase Mrs S' liquid cash, those premiums would instead come from the policy's investment value. In the short term that might have been preferable, but as I'm mentioned above over a longer term than that it would increase the risk of the policy lapsing without value should the investment element later become exhausted through future reductions of its value from the premiums being deducted from it. It's important to

point out here that as this was a reviewable policy and seemingly had been failing its reviews which given the frequency of premium increases had been annual for some time, I think is likely the premium would continue to increase beyond the £111,000 which was last paid – with those increases becoming more significant as the cost of providing the life cover become more expensive given how it increases with age. In time that could cause the policy to lapse without value if Mrs S survived past the point at which it ran out of money to fund itself.

Given maintaining the WOL policy was an important objective of Mrs S', making such a change by making a recommendation too soon could lead to an unsuitable recommendation being made. In my view, without the benefit of hindsight, given the significant change making a policy on the terms Mrs S had paid-up I think it would likely have been too early for Elevation to have advised such a change.

By August 2023 when the status of the WOL policy was considered and the paid-up recommendation made, Mrs S' circumstances had worsened sooner and more significantly than I think was reasonably expected, due to the mix of continued poor market performance, increases in inflation and Mrs S' general living costs, her care and the WOL premium. I think that along with Mrs S being two years older and contributing into the policy during that time meant the balance tipped more towards making a change to the policy becoming more of a suitable option for Mrs S.

I say this because when Elevation did advise that change it included in its analysis the factors why it considered now was the time to recommend such a step. This concluded based on ONS data, Mrs S as an 86 year old female not in a care home, had an average life expectancy of around another 7 years. Compared with that it assessed that based on the WOL policy's investment value of around £1.6m at the current premium of £111,000 it would last around another 14 years.

I don't think the life expectancy assessment, given it was based on recognised ONS data, was an unreasonable one to make. However, the policy in reality in my view was likely to last less than 14 years given Elevation was only able to base it on the most recent premium. In actuality the premium would likely increase, potentially quite significantly given Mrs S' age and the £2m sum assured, each year and exhaust the investment fund of the policy much more quickly than that.

While that 14 year period was likely an overstatement, I think the recommendation to make the change at that time was suitable. I say this because by this time Mrs S' situation had become noticeably more difficult and on balance I think it's likely the policy had a reasonable prospect to maintain itself within Mrs S' lifetime, as her objectives required, if the recommendation was accepted as it was. I'm not satisfied that the impact of the advice being given earlier would've held sufficient prospect to meet Mrs S' objectives and so I don't find it unreasonable Elevation didn't consider that further before it did. It follows for that reason I'm not persuaded Elevation should've advised alternative action sooner, including whether to convert the WOL policy to a paid up status.

Given I'm satisfied the advice given was suitable and as Mrs S had agreed, on several occasions, to Elevation's fee structure, I can't fairly direct it to refund the fees it charged her when it provided those services.

Elevation offered Mrs S £500 to apologise for the service she felt Elevation had provided her. It did in communicating that offer require Mrs S to respond within a specific timeframe. It has since told our service that the offer remains open. I can't direct Elevation here to pay that offer given I've not found it fell below its obligations, if Mrs S would now like to accept that offer then her representatives can discuss that further with Elevation.

**My final decision**

For the reasons given above, I don't uphold Mrs S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 29 April 2026.

Ken Roberts  
**Ombudsman**