

## **The complaint**

Mrs J has complained about the advice she was given by Stirling House Financial Services Limited trading as The Stirling House Partnership (Stirling House).

In particular, she says the advice wasn't suitable and she wasn't given all the necessary information, regarding what the advice was and what the charges were.

## **What happened**

Mrs J has said that she met with an adviser from Stirling House on several occasions, from May 2022. This was following the unexpected passing of her husband in April 2022. Following this, Mrs J was advised to transfer pensions from her late husband, which amounted to approximately £300,000. She was also advised to invest approximately £220,000 into an individual savings account (ISA) and general investment account (GIA). Mrs J was also advised to take out a whole of life policy (WOL). However, she cancelled this before it could commence.

At the end of 2022, Mrs J complained to Stirling House. Amongst several complaint points, she said that:

- The advice to invest in the WOL, ISA and GIA was not suitable. In particular, she says there was insufficient regard for the income she needed and her future needs and objectives.
- She wasn't made aware what she was investing into and what the charges were.
- Information was completed on her behalf, and she wasn't given any of the relevant paperwork.

Stirling House responded to Mrs J in full in March 2023. They didn't uphold her complaint. They said the advice she had received was suitable and that she had been provided with all the relevant documentation explaining the investments and the charges that applied. They said this had happened over several meetings and that Mrs J had signed the paperwork. They did note she had been incorrectly recorded as an experienced investor and they also offered her £300 as a gesture of goodwill.

Mrs J didn't accept this and brought her complaint to our service for an independent review. Our investigator looked into it but thought Stirling House had acted fairly. He said the ISA and GIA advice was suitable and noted the WOL was cancelled prior to inception. He felt the information was clear and on a balance of probabilities was provided to Mrs J. He concluded Stirling House didn't need to do anything further than pay the £300 they had offered.

Mrs J didn't accept this and provided a full response. Whilst she confirmed she was happy with the pension transfers, she maintained that the advice to invest in the ISA, GIA and WOL was unsuitable. She stated this was mainly because they weren't appropriate to her circumstances as she had earmarked the funds for a house move and gifts to her son.

As no agreement was reached, the case has been passed to me to reach a decision. I issued my provisional decision on 21 March 2024. An extract from which, forms part of my decision below.

“My provisional decision

Many points have been made in relation to this complaint – I’ve tried to set out the key issues I think are important here. And I’ve answered them below in turn.

At the time of the advice, Mrs J had sadly and suddenly become widowed. Whilst she had two adult children and no dependants, she has described herself as vulnerable and having lost a spouse who took responsibility for the household finances. Whilst she was self-employed, she was recorded as having insufficient income to meet her liabilities. Mrs J has even said that her income was less than half of that recorded in the fact-find document.

Mrs J was recorded as living in her own home, without a mortgage. She was not recorded as having any other liabilities, savings or investments. She had received and was in the process of receiving, a total of approximately £220,000 from lump sum payments from her late husband’s pensions. As well as from a death in service benefit. She was also going to receive a further £300,000 from the late Mr J’s pensions, which she was transferring into a beneficiary drawdown plan. Aside from this, she was to receive approximately £40,000 from another pension, which would make up her cash reserve and emergency fund.

Mrs J has said she never completed a risk questionnaire. However, Stirling House have provided us with a signed and dated copy from June 2022. Mrs J was classified as wanting 100% long term growth, with a risk score of 45/100. This attitude to risk was described as, “You have sufficient cash liquidity and are looking to invest medium – long term for growth. It is unlikely that you would seek to make cash withdrawals”. Whilst I appreciate the investment advice (100% of the £220,000 into a growth fund OEIC) matched the allocated risk rating. I don’t believe that was a true reflection of Mrs J’s circumstances, objectives and needs at the time.

Further, I am not sure how Mrs J was given a risk rating of 45/100 and higher than balanced, when her answers included that she didn’t want to take any risk, didn’t want any uncertainty and would rather invest in a bank account than shares. Stirling House’s own documentation seems to suggest to me that a risk score of 45 should mean an investment allocation which includes defensive and balanced products, not 100% growth. However, aside from the dubious risk rating, I believe her circumstances and lack of capacity for loss made clear that she wasn’t in a position to take the risk that this one fund posed.

I can’t see much regard for Mrs J’s future needs and objectives, or how these might change as she went through the grief of the sudden loss of her husband. The documentation is unclear, but I believe the plan was that she was to be left with approximately £40,000 in savings (which she was yet to receive from one of the pension plans). I don’t believe this cash reserve was enough. This is especially the case as Mrs J has provided us with correspondence with the adviser, where he was aware prior to the recommendation and investment, that Mrs J was looking to gift her sons approximately £15,000 each and also was in the process of attempting to move home. This meant she wasn’t left with enough cash reserve. and I am not surprised to see that she has ended up withdrawing a large amount in the short term. From the investment that should be seen as longer term.

This situation of insufficient income has been recognised by the advisor. Income from employment, rent from her sons and a DWP payment was not going to be sufficient for her monthly expenditure. The adviser has recommended a growth fund in an attempt to maintain the £2,000 monthly income that was needing to be generated. However, I don't think this was a suitable recommendation. This higher risk approach (as well as leaving Mrs J with insufficient cash reserves), also carried a lack of diversification which increased the risk. The whole amount was invested into one fund. I appreciate the fund itself is diversified but 60- 80% of it is invested into non-UK equities.

Mrs J has raised several other points in relation to this complaint and the advice she was given – I haven't addressed each one individually. Instead, I've focused on what I consider to be the pertinent points. That isn't meant as a discourtesy, it simply reflects the informal nature of our Service. Mrs J has also complained about the advice she was given to invest in a whole of life policy. However, I agree with the investigator that as she didn't go ahead with it and the recommendation was given as part of a whole package of advice, she hasn't suffered any loss even if I did consider it to have been mis-sold. So, I also haven't gone on to consider that further.

Mrs J has raised issues with being asked to provide a blank cheque. However, I am satisfied with the answer given that this was for verification purposes and not for the advisor to choose whatever investment amount. I think the investment amount was made clear in paperwork that Mrs J signed to confirm she'd read. I also think the charges applied were made sufficiently clear in the paperwork. I know Mrs J says she didn't receive anything. However, she signed the paperwork to say she did and I would have expected some further evidence of her requesting the paperwork on this amongst the messages and emails, if she hadn't received it.

In summary, I don't believe Mrs J was given suitable advice. She was left with insufficient cash reserves to meet her upcoming needs and objectives, that the adviser was clearly made aware of. Investing the full £220,000 into one growth fund also carried much more risk than Mrs J was willing to take. She didn't have sufficient capacity for loss that such an investment could bring about.

Mrs J responded in full. Amongst her points in response, she said:

- Maintained that the advice was wholly unsuitable, and that Stirling House hadn't met what was required of them. Including misinformation in the fact find.
- She wasn't left with sufficient funds for a property purchase and to gift her son. Both intentions that the advisor was aware of.
- A significant shortfall against her expenditure needs meant she was forced to make withdrawals.
- She had been led to believe that the amount would be invested as cash.
- She maintains the whole of life policy recommendation did incur a cost with an initial advice fee.
- She doesn't think she should have taken any risk with this investment and so the benchmark I have proposed is not appropriate.

Stirling House also responded in full. Amongst their points in response, they said:

- Mrs J was left with approximately £85,000 cash in her account after the investment, rather than £70,000 stated would be left, in the suitability letter.
- Mrs J had already gifted to one of her sons prior to the investment.

- Mrs J contacted the advisor through her brother, to seek investment advice.
- They accepted (as they have previously) that Mrs J was not an experienced investor. However, they stated she did have experience of the elected fund, through being a trustee.
- There was a monthly income shortfall of £2,000 and the investment needed to work hard to attempt to meet that.
- A reasonable cash reserve was left (and not over the £85,000 protection limit) and the plan was to utilise her ISA allowance every year through switches.
- Stirling House shouldn't be punished for the loss crystallised by Mrs J surrendering the investment early.
- Stirling House weren't aware Mrs J would need £100,000 (on top of the equity realised from her house sale) to purchase her new home.

### **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, I am satisfied that the outcome and award I put forward in my provisional decision, was fair. Let me explain why.

I appreciate Mrs J responding with further comments and thoughts. I note her concerns regarding the sale and in particular that there was misinformation and insufficient reserves for gifts and expenditure needs. I won't comment on these concerns further, as I am already concluding that the investment was mis-sold.

Mrs J has reiterated concerns about the sale of a whole of life policy (the annual premium was taken from the invested amount). I noted in my provisional decision that I hadn't considered the sale as the policy never went ahead. Mrs J has said there was still a loss as the advice fee was paid including this amount. However, I don't agree there is any further loss here. I haven't seen any evidence of a separate fee for the WOL policy. Mrs J paid an advice fee for the whole original invested amount only. Which I have concluded was mis-sold and so the redress will be calculated on this.

Mrs J has also argued that the redress benchmark used isn't correct and that she wasn't in a position to take any risk with the investment. She has said the comparison should be to if she had been advised to keep the whole amount in deposit accounts. However, I don't agree. I think she was in a position to take some risk and I think she wanted to. It is important to note that the evidence suggests she sought the advice herself through a family member. Mrs J also had an expenditure shortfall, which I noted in my provisional decision. Meaning the investment did need to do some work to meet the shortfall and her expenditure needs.

I also appreciate Stirling House's comments in response to my provisional decision. They have provided evidence that Mrs J was actually left with a larger cash reserve, following the investment. This is of £85,000 rather than the £70,000 stated, as they said a gift had already been made and was no longer due. However, I still remain of the opinion that this was insufficient considering Mrs J's stated needs and objectives.

I note Stirling House have also said that they were wrong to classify Mrs J as an experienced investor and what was meant by this. And that they planned to switch amounts into ISA wrappers each tax year. I acknowledge these comments, but they don't change the outcome I have reached.

Stirling House have also said that they weren't aware that Mrs J would require so much

extra, on top of the equity from her house sale, for the purchase of her new house. However, I think there was a requirement on them to understand Mrs J's full circumstances and needs when advising her. They were aware she was looking to move home, and I think it should have become apparent that Mrs J would need further funds for what she wanted to do.

In Stirling House's response, they have also said that Mrs J crystalised her loss by surrendering the investment early, and that they shouldn't be punished for that. Whilst I understand that it should have been seen as a long-term investment, I believe it was mis-sold partly as it didn't leave Mrs J with enough of a cash reserve. It is not surprising that she therefore had to access funds.

In summary, my decision remains as I outset provisionally previously. The investment advice left Mrs J with insufficient cash reserves and by investing in one fund, place her at more risk than she was willing to take. Or had the capacity for loss to take. I am satisfied she was wanting and able to take some risk with the investment and that's why I believe things should be put right as set out below.

### **Putting things right**

#### **Fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Mrs J as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Mrs J would have invested differently. It is not possible to say precisely what

she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs J's circumstances and objectives when she invested. What must Stirling House do?

To compensate Mrs J fairly, Stirling House must:

- Compare the performance of Mrs J's investment with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investments. If the actual value is greater than the fair value, no compensation is payable.
- Stirling House should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
ISA and GIA	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

### Actual value

This means the actual amount payable from the investment at the end date.

### Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the fair value when using the fixed rate bonds as the benchmark, Stirling House should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis. Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

Any withdrawal should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Stirling House totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs J wanted Income with some growth with a small risk to her capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.
- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs J's risk profile was in between, in the sense that she was

prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs J into that position. It does not mean that Mrs J would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs J could have obtained from investments suited to her objective and risk attitude.

### **My final decision**

My final decision, for the reasons set out above, is that I uphold this complaint and Stirling House Financial Services Limited trading as The Stirling House Partnership, should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 12 June 2024.

Yoni Smith  
**Ombudsman**