

The complaint

Mr T complains that Argentous Private Clients Limited ('APC') facilitated the transfer of his group personal pension benefits to a Self-Invested personal pension ('SIPP') and subsequent unregulated investments which have since failed and caused Mr T substantial losses.

What happened

In 2015 Mr T was called by a separate unregulated firm, Argentous Limited ('AL'), who offered to review his pension. In a meeting they discussed the benefits of investment into commercial property and Clean Energy Bonds. Mr T says AL told him the commercial property opportunities were still 'in the pipeline' and he therefore should invest in the Clean Energy Bonds. In order to do this Mr T needed to switch his group personal pension into a SIPP.

Mr T then sent a letter to APC which said:

"I met with one of the Partners of Argentous and am interested in certain alternative investments. I would like to consider funding these through my pension funds. Please find attached a letter authorising you, as a separate regulated company, to approach my pension providers to ascertain the values of these plans. I am not asking for advice on the suitability of my pension funds or investments at this time."

He also signed the letter of authority for APC to submit to his existing pension provider.

APC then contacted the existing pension provider in September 2015 and requested information about Mr T's pension and transfer paperwork.

Mr T completed several documents in October 2015:

- A SIPP application. The witness for the application was the individual at AL who had promoted the Clear Energy Bond to Mr T. All sections in the application form which related to details of a financial adviser being involved were crossed out.
- A letter of authority allowing SIPPclub, another unregulated entity, to request information from the SIPP provider to ensure his application for the SIPP would progress efficiently. The declaration Mr T signed said that the SIPP application was introduced without advice from an Independent Financial adviser.
- A SIPP assessment questionnaire which was completed online but then printed out and signed by Mr T. His answers confirmed that he had been introduced to the SIPP by the individual at AL. He was asked to describe the investment transactions with which he was familiar. His response was 'stock market and peer to peer, loan notes'. Mr T also confirmed his role as a credit analyst for 15 years and noted this as relevant to his investment experience and future investment intentions. He confirmed his income as £100,000 per year and that he had pensions worth £140,000 in total.

- Statements for certified high net worth individuals and certified sophisticated investors where he confirmed his understanding that this meant he could receive promotions that were not approved by a regulated firm or which might not conform with FCA rules. And he signed to accept that he could lose property and other assets by making investment decisions based on financial promotions.

The SIPP application pack from the SIPP provider also came with a checklist of documents that needed to be completed. One of these was a Professional Advisers Form. This was described as follows:

'To avoid the need to have your decision to set up a [SIPP] and the subsequent investment choices 'signed off' by an Independent Financial Adviser, please ask your solicitor, your accountant or your Independent Financial Adviser to complete this form. If you don't have a professional adviser, please complete the form yourself and provide copies of the relevant documents to evidence what criteria you meet'

This form was signed by APC. It confirmed that Mr T was earning £100,000 per year or more and that he had made two or more investments in an unlisted company in the last two years. With their signature they confirmed:

'I hereby confirm the above information to be true. I believe my client has sufficient financial acumen to be able to make pension and investment choices without having to consult an Independent Financial Adviser.'

We contacted Mr T's pension provider to request any correspondence they had in relation to this transfer. This shows that after they provided the information to APC about Mr T's pension in mid October 2015, they received a direct transfer request from the SIPP provider in early November 2015 and the transfer was then arranged directly between providers. Mr T was informed on 17 November 2015 by his former pension provider that payment to the SIPP had been made.

Mr T said he transferred around £100,000 and subsequently invested £30,000 into Clear Energy Bonds. He transferred a further £10,000 into this investment in June 2016. He came across the Dolphin Trust investment via the SIPPclub into which he invested another £30,000 in December 2015. Both Dolphin Trust and Clear Energy Bonds failed. The remaining £30,000 were invested into a property crowd funding scheme which he says had no links to Argentous or the SIPPclub and which performed as expected.

In 2018 Mr T transferred his pension to a Small Self Administered Scheme ('SSAS') in order to pursue property investment. He says he was introduced to this idea by other third parties.

In 2019 Mr T complained to us. He said he was persuaded by APC to transfer his pension into a SIPP and invest into Clean Energy and he was unhappy he was losing his funds. We raised a complaint with APC on Mr T's behalf. APC told Mr T that they didn't advise him and that he was introduced to the SIPP and investment by AL which was a separate company.

Mr T didn't pursue his complaint further with us but complained to the Financial Services Compensation Service (FSCS) about the SIPP provider instead. The FSCS told him in 2021 that his claim against the SIPP provider could not be considered as he needed to complain against the adviser which they said was APC.

Mr T complained to us in 2022. He said APC facilitated the unregulated investment and that there was a conflict of interest as individuals at APC, AL and Clean Energies Investment (CEI) were all connected. APC's director was a main shareholder of AL and CEI and her husband was the founder of APC and AL and former director of CEI.

APC raised objections that this was the same complaint that had been raised in 2019 and that this had been brought too late. They also said they hadn't advised Mr T and thought he wasn't an eligible complainant. They reiterated that AL was a separate entity.

Our investigator explained the complaint had been made in time and that whilst APC had not given any advice their actions still amounted to a regulated activity. APC accepted this and agreed for us to look into the merits of the complaint.

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 issued a provisional decision in which I explained that the complaint was in our jurisdiction but that I wasn't planning to uphold the complaint.

With regards to the merits I said:

I understand Mr T's concerns that individuals at AL, APC and CEI were connected and there is no doubt in my mind that individuals at APC would have had an interest in Mr T investing in CEI.

However, I can't look at complaints against individuals and CEI and AL are both unregulated businesses. So all I can consider are the actions of APC as a regulated firm and whether their actions caused Mr T's financial losses.

And having considered everything I think on balance Mr T would have ended up investing like he did with or without APC's involvement. I'll explain why.

There is no dispute that the idea of investing into CEI came from AL and that they were the driver in this. It's also clear from correspondence I've seen that Mr T was aware APC was a different company and that they wouldn't give him advice. He only asked them to request the information from his existing provider.

Mr T thinks that his previous pension provider wouldn't have released his funds if they had known that he would invest in unregulated investments and that APC's regulated status was the reason they did. However, I don't agree. Mr T's pension transfer didn't need the involvement of a regulated adviser. Mr T could have asked for his pension details himself and it was the SIPP provider who requested the transfer. So even if APC hadn't asked for the pension details, I don't see any reason why the transfer would not have gone ahead.

I then considered the professional adviser form APC signed for Mr T. There is no dispute that Mr T met the criteria of a high net worth individual. Mr T says he didn't invest in unlisted investments before, so this statement was incorrect. I don't know what Mr T told APC at the time. However, Mr T completed the SIPP assessment questionnaire saying he was familiar with 'stock market and peer to peer, loan notes'. The latter two are alternative investments. Mr T also confirmed his role as a credit analyst for 15 years and noted this as relevant to his investment experience and future investment intentions. And he completed separate high net worth and sophisticated investor declarations himself.

So I think based on the information APC had, it wasn't unreasonable to confirm that Mr T had sufficient financial acumen to be able to make pension and investment choices without having to consult an independent financial adviser.

The declaration didn't need to be signed by a regulated financial adviser. Mr T could have signed this himself or found an accountant or solicitor to sign this for him.

I've considered whether APC's involvement as a regulated firm facilitated any action that couldn't have happened without them. I think it's likely that APC got involved to make the process quicker. However, for the reasons set out above, I think Mr T could have proceeded in any event. From what I've seen Mr T knew he was investing into alternative investments and that he wasn't receiving any advice from a regulated entity.

So even if APC had not been involved, I think Mr T would have ended up transferring his pension and investing as he did. He was obviously interested in alternative, tax-efficient investments which is evidenced by him investing in Dolphin, crowd-funding opportunities and later on moving to a SSAS (without APC's involvement).

So in conclusion I don't think APC's actions here have caused Mr T's losses and therefore I I'm not intending to uphold his complaint.

No further comments or information were provided by the parties, so I see no reason to change my decision.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 19 February 2024.

Nina Walter
Ombudsman