

The complaint

Mr L complains that MPA Financial Management Limited removed itself as the adviser attached to his pension as an act of malice, which meant his funds were unmanaged and “frozen” until he appointed another adviser.

What happened

I issued my provisional decision on this complaint on 16 May 2023. The background and circumstances to the complaint and the reasons why I was provisionally minded to uphold it in part were set out in that decision. I’ve reproduced the relevant parts of it below and it forms part of this final decision.

Provisional decision

Mr L’s complaint was considered by one of our investigators. He sent his assessment of the complaint to both parties in November 2022. The background and circumstances to the complaint were set out in that assessment. However to recap, Mr L had previously complained about MPA in 2020. He referred the matter to us, and ultimately an Ombudsman issued a decision on his complaint awarding him compensation.

As part of the Ombudsman’s final decision, issued on 18 October 2021, the Ombudsman said:

‘Based on what I’ve seen, the relationship between Mr L and MPA appears to have broken down. It may be best for both parties if he appoints a new adviser, but that of course is up to him.’

Mr L had accepted the Ombudsman’s decision and MPA contacted him on 6 December 2021 to arrange settlement of the Ombudsman’s decision. This was for MPA to pay Mr L a proportion of the ongoing adviser fees it had been paid. In its e-mail to Mr L dated 6 December 2021 MPA said, amongst other things:

‘Secondly, as you currently hold a proportion of your [name of provider] SIPP assets through MPA, with a [name of discretionary fund manager], which [the discretionary fund manager] state can only be held through an IFA, could you please advise us of the IFA who you wish to advise you on these Investments going forward.

I ask this, as when we contact [the discretionary fund manager] to remove MPA as your Independent Financial Adviser (IFA), they will ask us to name the IFA who will be taking over as your IFA.’

Mr L called MPA on 7 December 2021 to discuss settlement of the Ombudsman’s decision, which MPA followed up with an e-mail confirming its adviser needed to discuss Mr L’s ongoing relationship with MPA’s Managing Director. There was a series of e-mails exchanged between Mr L and MPA, but there was no mention that Mr L was retaining MPA as his adviser. Neither Mr L or MPA provided call notes/ or recordings establishing what was discussed between Mr L and the Compliance Manager at MPA. However the investigator

said the e-mails made clear a number of phone calls regarding both the compensation payments and delaying the removal of MPA as Mr L's adviser had taken place. There was then no further correspondence until 14 February 2022.

On 14 February 2022 Mr L called the Compliance Manager at MPA as he had been contacted by the SIPP provider alerting him that he had no financial adviser in place, and that it was now Mr L's responsibility to ensure he had sufficient funds to cover the fund charges. The investigator said this was the first Mr L was aware that MPA had been removed as his adviser.

MPA wrote to Mr L on the same day saying this wasn't a deliberate act, but an unintended consequence of it ensuring it didn't receive any additional ongoing fees from the SIPP provider given the Ombudsman's decision. In its letter, MPA made clear that it was in agreement with the Ombudsman's statement regarding their relationship, and that it also believed it was in Mr L's best interests to find an alternative financial adviser. It formally resigned as Mr L's adviser.

Mr L e-mailed MPA on 15 February 2022 saying he felt MPA had gone behind his back, and he wanted MPA to re-assign itself as his adviser. MPA reissued its letter confirming it had resigned.

Our investigator said when reviewing Mr L's complaint he could see why, based on the tone and language of the exchanges between Mr L and MPA, the Ombudsman had said it might be best for Mr L and MPA to part ways.

The investigator thought it was logical given Mr L's previous complaint was about paying ongoing fees for a service he didn't feel MPA had delivered. He said whilst neither Mr L or MPA were able to provide call recordings or notes from its discussions, it appeared Mr L was only told MPA was no longer acting for him on 14 February 2022.

The investigator said although MPA didn't provide Mr L with advance notice both MPA and Mr L had the right to terminate the relationship. The investigator said it didn't appear that Mr L used MPA for investment services in the period between the initial Ombudsman decision and 14 February 2022. And MPA didn't charge for that period. The investigator said the relationship had essentially been terminated, albeit without a formal resignation from either party.

The investigator noted that Mr L had said he'd asked MPA to defer it removing itself as his adviser as he was moving to a new house and wasn't in a position to appoint a new adviser. However the investigator said as Mr L had now confirmed that his move was complete, it was reasonable to assume he was now able to find a new adviser for his investments.

Mr L said he would be charged 'thousands of pounds' to find a new adviser and complained that he had paid MPA fees already. The investigator said Mr L's previous complaint had dealt fully with what Mr L considered were inappropriate ongoing fees, and this shouldn't form part of this complaint. And he said a new adviser's fee depended on the adviser, and he didn't think MPA was responsible for any charges incurred appointing a new adviser.

The investigator said it was clear that the relationship between Mr L and MPA has been strained throughout. He said MPA had made Mr L aware he would need to seek a new adviser in its e-mail dated 6 December 2021, but it didn't appear he had taken steps to do so.

The investigator didn't think it would be fair for MPA to be forced to remain as Mr L's adviser despite the difficult relationship. He thought it was Mr L's responsibility to find a new adviser.

The investigator said he was satisfied that MPA acted within its rights in their termination of the business relationship, and it wasn't responsible for any charges or time delays in appointing a new adviser.

Mr L didn't agree with the investigator's assessment and asked for his complaint to be passed to an ombudsman.

What I've provisionally 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've come to a different conclusion to the investigator about MPA providing notice to Mr L; I don't think it was reasonable for MPA to end the relationship without providing a reasonable and set notice period. However having said that, I don't think the losses that Mr L has claimed flow from MPA's failure to provide such notice.

I accept that MPA had asked Mr L for details of a new adviser in December 2021 and indicated its intention to not act for him itself. However I note that in its final response to Mr L dated 25 August 2022 MPA said that shortly after the Ombudsman's final decision on Mr L's original complaint it had instructed the SIPP provider to turn off its ongoing fees. And that due to an error on the SIPP provider's part it had removed MPA as the agent, so MPA couldn't access information on Mr L's plan. It went onto say:

"Prior to this you had asked...our Compliance Manager to delay severing the relationship with MPA as you were moving house and initially, we agreed to do so. However when this error occurred with [the SIPP provider] we couldn't access any information on your plan it felt appropriate to resign."

Like the investigator, I'm satisfied it was reasonable for MPA to want to end the relationship in the circumstances – I've seen no evidence of malice - the previous Ombudsman had suggested it was the best course, and MPA told Mr L of its intention in December 2021.

However, although I accept Mr L may have been aware of MPA's longer-term intention, the evidence suggests he wasn't aware from what date that would be, and the first time he was told it was actually no longer acting for him was 14 February 2022. MPA didn't provide any notice period at this point. I accept that Mr L had been alerted to its ultimate intention – but didn't know when.

The notice period for either party to end their agreement or relationship is usually set out in a Terms of Business/ Client Agreement or some similar document. The only document that refers to a notice period I have seen is the MPA Client Service Agreement. This said that Mr L was required to give written notice if he wished to cancel the agreement for MPA to provide ongoing services. And that it would then cease payments taken for those services within 7 business days. The agreement was silent about the amount of notice that MPA was required to provide to Mr L.

Section 228 of the Financial Services and Markets Act 2000 requires that I determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the complaint. The FCA's Principles for Business require that firms must pay due regard to the interests of its customers and treat them fairly. Whilst I accept that there doesn't appear to be any express agreement between Mr L and MPA about the amount of notice it needed to give Mr L, I think in meeting its obligation to pay due regard to Mr L's interests and treat him fairly, MPA should have given some notice.

In my experience of these types of agreement, notice of 14 to 28 days is commonly given. MPA had already told Mr L of its ultimate intention not to act for him. And in all the circumstances, I think 28 days' notice would have been reasonable.

Mr L has said that he wasn't able to arrange an alternative adviser for several months given all the regulatory and due diligence requirements in order to do so. I accept that Mr L wasn't an expert, and he would have needed to have found an adviser and gone through the process of appointing one. But in my experience it shouldn't ordinarily take several months; MPA had alerted Mr L of its intention in December 2021, and if it had given specific notice on 14 February 2022 I think there should have been sufficient time for Mr L to appoint a new adviser.

Mr L has said that as a result of having no adviser in place his fund was frozen and the fund manager wasn't able to make changes to his fund to stem losses. I think if the fund manager hadn't been able to make changes that he'd intended prior to 14 February 2022, he would likely have alerted Mr L to this restriction. I'm not aware this was the case.

For the reasons I've explained above, I think 28 days' notice from 14 February would have been reasonable, meaning I think Mr L could have had alternative arrangements in place by around 14 March 2022. The graph that Mr L has provided showing fund performance shows the value of his fund didn't change significantly during this period – in fact may have increased slightly. However even if taken from the start of January 2022, Mr L's fund appears to have performed on average as well or better than a range of other funds. Benchmarks that can be used as indicators of market wide fund performance for different degrees of risk show a general downtrend in returns, for all degrees of risk, during the period 1 January 2022 to 14 March 2022. Mr L's fund, according to his graph, fell in value by around 6 to 8%. However even the cautious benchmark fell by around the same amount – the balanced benchmark by 8 to 10%, and the aggressive by about 12%.

Mr L's fund didn't perform badly in the period 14 February 2022 to 14 March 2022 (it may have increased slightly, and performed marginally better than the benchmarks I've referred to above by around 0.5 to 1%). And it performed as well or better than the benchmarks for the period January 2022 to 14 March 2022 as I've explained above. I've seen no persuasive evidence that not having an adviser attached to his plan caused Mr L losses for the period up to 14 March 2022.

Taking all the above into account and in all the circumstances

- I think MPA should have provided Mr L with a set notice period of its resignation as his adviser*
- I don't think the lack of a set notice period caused the financial losses that Mr L has claimed*
- I do think it caused Mr L a degree of distress and inconvenience.*

My provisional decision

Accordingly, my provisional decision is that I uphold Mr L's complaint in part.

I intend to order that MPA Financial Management Limited pays Mr L compensation of £250 for the distress and inconvenience caused by the matter.

I asked Mr L and MPA to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr L said, in summary, that he was disappointed with the suggested compensation of £250. He said he thought it was insulting for the undue stress and upset MPA's actions had caused him. He asked that I contact the DFM to accurately ascertain his losses. And his financial planner to find out why it took several months from the time he authorised her to re-activate his account. He thought it was fair that his losses be calculated on the time his account was frozen. Mr L also said the compensation didn't compensate him for the time he'd spent on the complaint, never mind his actual financial losses.

MPA said that it didn't agree with my provisional decision. It said, in summary, that Mr L had had several months to find an adviser following the adjudication and it had tried as hard as it could to satisfy Mr L's claims for delay due to his moving house. My provisional decision had stated Mr L had had enough time to find an adviser but had then said MPA should have given him an extra month. It didn't agree with this, albeit said that it would respect the ultimate decision.

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've taken into account what both parties have said in response to my provisional decision but having done so I've seen no reason to depart from the findings set out in that decision.

My role here is to assess if MPA did anything wrong and, as I explained in my provisional decision, whilst I think it should have given some notice, in my opinion Mr L could reasonably have had alternative arrangements in place by 14 March 2022. So I don't think its responsible for the whole period suggested by Mr L. I accept this would have caused a degree of distress and inconvenience to Mr L, but only for the limited period that, in my opinion, MPA are responsible for. I'm satisfied that the £250 is fair in all the circumstances.

Exactly what the DFM would or wouldn't have done during the period MPA was responsible for, and then, if it would otherwise have made different decisions during that period, what it would have done subsequently to change the make-up of the fund, is a matter of speculation. As I've said, Mr L's fund's performance was comparable or better than a number of benchmarks against which 'losses' might be compared against during the period up to 14 March 2022. I've seen no persuasive reason for any need to contact the DFM.

My final decision

My final decision is that I uphold Mr L's complaint in part.

I order that MPA Financial Management Limited pays Mr L compensation of £250 for the distress and inconvenience caused by the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 7 July 2023.

David Ashley
Ombudsman