

## The complaint

Mr M is represented. He says Mayfair Capital Limited ('MCL') is responsible for losses incurred from unsuitable investments made within his Self-Invested Personal Pension ('SIPP').

MCL disputes his claim and says it inherited the SIPP in a 2017 account transfer; it was not Mr M's financial adviser; it properly assessed his investor profile upon the account transfer; the investments it made with him were suitable; and they were agreed by him, with full disclosure (to him) and understanding (by him) of the associated risks.

## What happened

One of our investigators looked into the matter and concluded that the complaint should be upheld. He mainly found as follows:

- The SIPP's investments were previously managed by Logic Investments ('Logic'). In 2016 MCL began onboarding some of Logic's customers and on 11 May 2017 Mr M's SIPP management account was transferred from Logic to MCL. His complaint against MCL was made in July 2022.
- MCL confirms there is no financial adviser linked to the account. Mr M does not recall initiating the transfer, but MCL says he did. The individual/firm who he says facilitated it was possibly an unauthorised introducer, as there is no trace of him (or the firm) in the regulator's register or in the records of Companies House. In these circumstances, Logic and MCL probably somehow initiated the transfer, because it was not advised and there appears to have been no clear and obvious benefit to Mr M to move the account.
- MCL relied on the Know-Your-Customer ('KYC') information for Mr M it inherited from Logic, without verifying its accuracy. Due to that, it missed inconsistencies within the information that ought to have been noted and addressed. Information about his total net worth included the value of his home, without that value his net liquid assets outside the SIPP were worth £25,000. It was unclear whether (or not) the SIPP was his only retirement provision. Information that said he was prepared to expose 37% of the SIPP (£15,000) to high risks and speculative investments was inconsistent with the medium risk investor profile he was given, especially as MCL did not know the sort of investment exposure he had outside of the SIPP.
- MCL says the KYC information was less than 12 months old and Mr M knew he was to update his adviser on any changes. However, MCL knew no adviser was linked to the account.
- MCL did not properly assess Mr M's profile, which it was required by regulation to do. In addition, shortly after the transfer the SIPP was worth around £36,500; evidence of the contents of the SIPP after the transfer shows that it lacked diversification in 2017 (exposure to only five holdings, three of which were in the same mining sector); in 2018 leveraged overseas Exchange Traded Notes ('ETN') holdings were introduced

to the SIPP, which exposed it to higher risks (including currency risks); in 2019 the ETN holdings were replaced by Exchange Traded Funds ('ETF') holdings and more mainstream stock trading; and by 2023 the SIPP's value had fallen by around 60% (around £22,000) to £14,500.

- Overall, the following were unsuitable for Mr M's profile – the lack of diversification; the exposure to higher risks, overseas holdings and currency risks; and the short-term speculative stock trading.

The investigator set out how redress for Mr M should be approached, using his medium risk profile to inform the selected redress benchmark, and limiting the redress calculation to the period between the transfer and the date of settlement. He also found that he should be paid £250 for the distress and inconvenience the complaint matter had caused him.

MCL did not consider it fair to be held fully responsible for Mr M's loss. It contends that it acted on his investment instructions. It shared email evidence from 2016 in which an investment instruction was issued by him to Logic for what it describes as a significant portion of the SIPP (at a value of £10,800). The email was put to Mr M and he said he could not recall it. He insisted that he had never requested a trade and had only ever acted on advice. The evidence did not alter the investigator's view. He noted that as of the transfer from Logic, the SIPP did not match Mr M's profile so MCL should have advised him to rebalance its contents.

The matter was referred to an Ombudsman.

### **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 consider it helpful to set out the following parameters for this decision:

- Mr M's case is about the alleged unsuitability of investments within his SIPP and the loss of value that he says resulted from that. The complaint submissions made by his solicitors allege specific regulatory breaches by MCL in the matter, in support of the core claims about unsuitability and loss. This service is not the regulator so the alleged breaches will not be addressed in isolation, instead they are implicit within my treatment of the core claims.
- The complaint is about MCL. It took over the role of investment manager for the SIPP in May 2017. It disputes being Mr M's financial adviser. Investment management can be based on a discretionary, advisory or execution-only service. Neither party refers to a discretionary service, so that is irrelevant. MCL appears to have argued, or at least suggested, that it managed the SIPP on an execution-only basis, but the evidence it refers to for support is from 2016 (prior to it taking over the SIPP's management in 2017). In contrast, there are common accounts between both parties that describe an arrangement in which investment recommendations for the SIPP's portfolio were made by MCL and approved by Mr M before being executed. Examples of MCL's accounts are in its complaint response, where it said "*Mayfair Capital provided investment advice within the SIPP itself once the funds were received ...*" and "*... balanced advice was provided on every transaction with the client confirming that they were happy to proceed*". Furthermore, there is an *Authority To Deal* form for the SIPP signed by an official of MCL's on 5 April 2017, which describes MCL as 'financial advisor' for the SIPP. Overall, I am satisfied that an advisory investment management service was provided by MCL to Mr M's SIPP.

- In the context of its advisory investment management service, the advisory element triggered MCL's regulatory responsibility to give suitable advice (and the responsibility to properly assess Mr M's profile for this purpose).
- Given that the complaint is about MCL, my consideration of the SIPP portfolio's suitability (and the matters associated with that) must begin at the point MCL received the transfer of the SIPP account. My consideration is also confined to its role as advisory investment manager for the SIPP's portfolio. In other words, MCL cannot reasonably be held responsible for the state of the SIPP portfolio it inherited because it played no role in advising the portfolio's contents prior to the transfer; its responsibility relates to how it advised management of the portfolio after the transfer.
- I note the investigator's brief consideration of the circumstances leading to the transfer of the SIPP, and I understand why he looked into that. However, given that the complaint is about what happened after the transfer, it does not appear necessary to be drawn into what happened prior to that, especially as the relevant circumstances are unclear.

I am not persuaded by the notion of MCL relying on Logic's KYC information for Mr M. I acknowledge that the information (which was from August 2016) was less than a year old when MCL took over the SIPP. However, it would have been acutely aware that it had undertaken full responsibility for suitably advising the management of the SIPP's portfolio thereafter. The need to ensure it was satisfied with information about Mr M, with the assessment of his profile and with the suitability of the portfolio's contents was paramount. It could not reasonably rely on anything Logic had previously done as a basis to discharge its new and ongoing responsibilities. MCL, not Logic, held those responsibilities.

As such, regardless of the fact the KYC information was relatively recent, it was incumbent upon MCL to review and verify its contents – or to conduct its own KYC exercise afresh – before proceeding to review Mr M's investor profile and the contents of his SIPP.

MCL received the SIPP portfolio with around £10,300 in cash and around £28,300 worth of in specie investments within it. In April 2017, the month before the transfer, around £20,000 (in market value) of the investments were in three mining companies. This amounted to around 70% of all the portfolio's investments, and just over 50% of the entire portfolio's market value. In the rest of the portfolio were the cash holding and a BMW stock holding.

Presented with a portfolio in which just over half of it (and around 70% of the investments in it) was committed to a single sector, MCL ought reasonably to have identified a need to rebalance it for the sake of diversification. There is no evidence of an insistent instruction from Mr M that opposed such rebalancing. In August 2017, three months after the transfer, the same three mining sector holdings remained and they occupied even more of the portfolio – around 60% (in terms of market value).

My first key observation is that MCL failed, at the outset, to address a somewhat obvious problem with diversification within the portfolio.

MCL advised the ongoing management of the portfolio, so the underlying investments changed over time. On balance, I do not consider it appropriate to isolate every individual change it recommended. Isolating these events creates the risk of redefining MCL's role unfairly. It did not give advice for isolated investments and/or trades. It was engaged in the ongoing advised management of the portfolio. Its role should therefore be considered in the context of how the portfolio was managed overall and, to provide added substance, with due regard to the key moments of changes in its composition.

As I said above, MCL began its role in 2017 with a failure to rebalance the portfolio and address the lack of diversification. Based on account statements and investment activity evidence, between 2018 and 2023 the portfolio behaved broadly as follows:

- Around late 2018 only one of the mining sector holdings remained. It appears to have been illiquid and it had a nil market value in the relevant account statement. The remainder of the portfolio held corporate bonds, GBP cash and USD cash.

[The portfolio held GBP cash until late 2021; then a GBP cash holding reappears in the 2023 account statement; the portfolio held USD cash from 2018 up to 2023.]

- A roughly similar composition (as in late 2018) existed around late 2019. However, the notable difference was that the mining sector holding regained some value. Earlier in the year, there was short-term trading in ETNs.
- ETFs featured in the portfolio in 2020. The mining sector holding remained. Earlier in the year the corporate bonds showed nil values in the relevant account statement. By late 2020 they appear to have been consolidated and renamed, but they showed a consolidated nil value – this continued to be the case up to 2023.
- Early in 2021 the portfolio had five holdings – the two cash holdings, the consolidated bond holding, the mining sector holding and an ETF holding. By late 2021 there were more ETF holdings and there were overseas stock holdings.
- In 2022 the portfolio appears to have been broadly similar to what it was in late 2021. By May 2023, it no longer held ETFs, the nil value consolidated bond holding remained, the mining sector holding remained, and two overseas stock holdings remained.

Mr M's profile at the point of the transfer in 2017 was key to how MCL approached its management of the portfolio. There does not appear to be evidence of changes from him thereafter, so it seems the same profile should have been relevant to the ongoing management of the portfolio. Unfortunately, a 2017 profile was never properly established. Instead, MCL seems to have proceeded mainly on information from the 2016 profile.

It could argue that this, on its own, did not create a problem, especially if there is no evidence of a significant change in Mr M's circumstances between August 2016 and May 2017. However, I consider that it was problem because, as I said above, MCL needed to satisfy itself about the assessment of his profile, in order to properly advise on the portfolio's management. Firms routinely conduct profile and portfolio reviews, afresh, in circumstances where they inherit or receive transferred accounts/portfolios and it should have done the same. Had it done that, it would probably have noted and addressed the flaws and gaps in the pre-existing KYC information that the investigator referred to.

In that information, Mr M was presented as having quite a high capacity for loss (60-70%), yet his net liquid worth was around £25,000. The SIPP itself was worth less than £40,000 and there was no information about any additional pension arrangement. Applying a capacity of loss of up to 70% to these amounts creates significant impacts – around £7,000 surviving in the former and around £12,000 surviving in the latter. If the SIPP, alone, lost 70% of its value (around £28,000) Mr M's net liquid capital of £25,000 was insufficient to cover that loss. Available information suggests that he had around £2,000 per month in net disposable income. If this was verified to be accurate, it would have taken him over a year to use all such disposable income to cover a 70% loss in the SIPP.

The above illustrates how information on Mr M's capacity for loss was either wrong or, at best, doubtful. The same applies to information about his capacity for high risk/speculative investments in the SIPP. This capacity was defined as being £15,000. However, this was almost half the value of the SIPP. The same body of information said the composition for the SIPP was to be a combination of medium-risk and high-risk investments. Exposure of almost half the SIPP to high-risk investments and the rest to medium-risk investments would not have produced a result to match Mr M's medium-risk investor profile. Instead, it would probably have produced an overall, and mismatching, effect of a majority high risk (or a high to medium risk) portfolio.

I repeat, MCL should have reviewed Mr M's profile and the SIPP's portfolio afresh at the outset. It failed to do that, and missed the need to address important flaws or, at least, doubts in the profile it inherited. This adds to its failure to address the lack of diversification in the portfolio it inherited. In this context, the portfolio's advised management between 2017 to 2023, as summarised above, happened based on an unreliable and arguably inaccurate investor profile. Therefore, it can reasonably be said that, because of this and by implication, MCL's advice for the portfolio's management was, and was destined to be, unsuitable. In other words, its initial and ongoing advice were fundamentally affected by use of the unreliable/inaccurate investor profile.

Further findings relate to the portfolio's journey, which is also summarised above. The values of the cash holdings fluctuated over time. The overall impression given is not that they existed for the defined purpose of counter-balancing the risk-based investments/trading taking place but that, especially with regards to the GBP holding, they existed following liquidations and pending use for new investments/trading.

The ETN holdings presented higher risks to the portfolio, given their unsecured nature and the credit and liquidity risks that can be associated with them. Evidence suggests that those traded in the SIPP had arguably added risks in terms of being leveraged (thereby increasing the scope for potential loss, in return for the increased scope for potential gains).

In comparison to gilts (or government bonds), corporate bonds can hold higher risks (due to them generally having higher credit risks). The summary above shows how such higher risks materialised in the SIPP's corporate bond holdings and affected the portfolio between 2018 and 2023. I have not considered their suitability based on the losses they caused. I have done so with regards to their existence in the portfolio prior to their loss of value and at times when the ETN and other short term speculative trading was taking place. They appear to have contributed to the increasing exposure to risks, in the portfolio, during these periods. The currency risks in the overseas stock trading that took place also had a similar effect.

Overall and on balance I consider that the SIPP's portfolio was managed, on MCL's unsuitable advice, beyond a medium risk profile. That mismatched Mr M's medium risk profile.

For all the above reasons, my conclusion is that MCL's advice for the management of Mr M's SIPP portfolio was unsuitable.

## **Putting things right**

### **fair compensation**

In deciding what is fair my aim is to put Mr M as close as possible to the position he would probably now be in if MCL had not given him unsuitable advice for the investment of his SIPP portfolio.

I consider that, with suitable advice, the portfolio would have been invested, and would have behaved, differently. It is not possible to say precisely how the portfolio would have been suitably invested, and how it would have performed, but I am satisfied that redress to Mr M should be based on the benchmark in the table below. The benchmark matches the medium risk profile he had, and I explain below why it has been selected.

Mr M's case features a transfer of his SIPP portfolio to MCL. As I stated in the previous section, MCL should have conducted reviews of his profile and of the suitability of the portfolio's contents at the outset. This would have taken some time, and I consider it fair to reflect a reasonable period of time in the redress calculation for this purpose. Having received the transfer on 11 May 2017, it ought reasonably to have concluded these reviews (up to and including the provision and execution of its advice) within around a month and a half. Therefore, the portfolio should have been suitably rebalanced from 1 July 2017 onwards, and this will stand as the 'start date' for the calculation of redress.

Mr M is ordered to engage meaningfully and co-operatively with MCL to provide it with all information and documentation, relevant to its calculation of redress, that it does not already have.

To compensate Mr M fairly, MCL must do the following:

- Compare the performance of Mr M's SIPP portfolio with that of the benchmark shown below. If the fair value is greater than the actual value the difference must be paid to him in compensation. If the actual value is greater than the fair value, no compensation is payable.
- Pay any interest set out below. Income tax may be payable on any interest paid. If MCL is required by HM Revenue & Customs to deduct income tax from the interest, it must tell Mr M the deduction amount and give him a tax deduction certificate if he asks for one, for him to reclaim the tax from HM Revenue & Customs if appropriate.
- Pay the compensation into Mr M's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation should not be paid into his pension plan if it would conflict with any existing protection or allowance. If the compensation (and any interest) cannot be paid into his pension plan, pay it directly to him. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. For example, if he is or is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If he has been or would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Provide the details of the calculations to Mr M in a clear and simple format.
- Pay Mr M £250 compensation for the distress and inconvenience the complaint matter has caused him, especially in terms of having to witness a 60% loss in his pension's value following unsuitable advisory management from MCL.

| investment name       | status       | Benchmark  | from<br>("start date") | to<br>("end date") | additional interest |
|-----------------------|--------------|--|------------------------|--------------------|---------------------|
| Mr M's SIPP Portfolio | still exists | FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index) | 1 July 2017            | date of settlement | not applicable      |

### ***actual value***

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

If at the end date the investment (or any part(s) of it) is illiquid the *actual value* of the illiquid investment (or its illiquid part(s)) should be assumed to be zero. This is provided Mr M agrees to MCL taking ownership of the illiquid investment (or its illiquid part(s)), if it wishes to. If that is not possible then MCL may request an undertaking from Mr M – to be drawn up at MCL's expense – that he repays to MCL any amount he may receive from the illiquid investment (or its illiquid part(s)) in future.

### ***fair value***

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

Any withdrawal, income or other payment out of the investment should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if MCL totals all those payments and deducts that figure at the end instead of deducting periodically.

### ***why is this remedy suitable?***

- Mr M had a medium ATR.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It is a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr M's medium ATR can be found in this benchmark. It broadly reflects the sort of return he could have obtained from the SIPP portfolio had it been suitably rebalanced, and thereafter suitably invested.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000, £375,000 or £415,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr M's case, the complaint event occurred before 1 April 2019 (it began in 2017) and the complaint was referred to us after 1 April 2022, so the applicable compensation limit would be £170,000.

### **My final decision**

For the reasons given above, I uphold Mr M's complaint. I order Mayfair Capital Limited to calculate and pay redress to him as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 August 2023.

Roy Kuku  
**Ombudsman**