DRN-4953228

The complaint

Mr G is represented. His complaint against Mayfair Capital Limited ('MCL') is connected to a separate complaint about Verus Financial Services Limited ('Verus') – 'the Verus case' – he submitted to our service. The Verus case has been determined and concluded. This decision addresses his complaint against MCL, but references will be made to the Verus case.

Mr G was introduced to Verus by an unregulated introducer. In October 2022 Verus recommended that he switch from his Aegon Self-Invested Personal Pension ('SIPP') to a Curtis Banks ('CB') SIPP, and that he use MCL's DFM investment service for the CB SIPP. The Aegon SIPP had a high value (around £800,000). Upon transfer of its value into the CB SIPP it was invested in the Persystemcy SICAV Plc Diversified Fund in Malta ('the fund').

Mr G's holding in the fund is presently worthless.

His complaint is about MCL's role in the case, leading to his financial loss and, overall, to the trouble the matter has caused him. He alleges that Verus' recommendation was unsuitable and was based on false and/or falsified information about him. He says proper due diligence from MCL, on the application submitted for its service, was absent, and that such due diligence would have uncovered key inaccuracies, questionable information and problems in the application (and in the arrangement) which would have prevented the fund investment.

What happened

The findings in our service's decision for the Verus case included the following conclusion –

"*… I uphold Mr G's complaint and I find that but for Verus' failings in the matter, mainly at the outset, he would probably have withdrawn completely from the SIPP switch idea, he would probably not have pursued any advice for the SIPP switch, instead he would have left the Aegon SIPP as it was, and the CB SIPP and the fund investment would never have happened.*

I acknowledge, and have reflected above, Verus' promises to make his position good, but that has yet to happen. Therefore, it remains a task for our service, following the upholding of his complaint, to make provisions for how Verus must redress it, and to order Verus to promptly complete the calculation and payment of redress after his acceptance of this decision is confirmed."

The decision held Verus responsible for Mr G's case and responsible to pay him redress/compensation. Mr G accepted the decision. Thereafter, he has faced problems in obtaining redress owed to him by Verus. The matter has been referred to the regulator. Parallel to that, our service has given him and his representative information in aid their consideration of action in the courts to enforce our Verus case decision.

With regards to Mr G's complaint against MCL, one of our investigators looked into it and concluded it should not be upheld.

She referred to the following background –

Mr G was introduced, by Verus, to MCL in November 2022; in the same month MCL received, from Verus (on Mr G's behalf), the application for its *execution only* investment service and a letter requesting that Mr G be treated as a *professional client*; MCL also received information from Verus on his overall profile, it says it relied on this information and verified some of it through LinkedIn; shortly after investment of the CB SIPP in the fund, the fund became illiquid and the SIPP's holding in it had a zero value; Mr G's complaint focuses on the due diligence and checks he believes MCL were obliged to conduct on the application, but failed to, which would have shown that all the key aspects of the information on his profile were inaccurate.

In her consideration of the case, the investigator clarified that her assessment would be limited to the question of whether (or not) it was reasonable for MCL to rely on the information it was provided by Verus. She noted that, in the Verus case, Mr G's complaint had been upheld and Verus had been found responsible for the unsuitable SIPP switch and the unsuitable fund investment, so these matters will not be revisited.

The investigator cited and explained the rules (as they applied in 2022) in the Conduct of Business Sourcebook ('COBS') section of the regulator's *Handbook* – about the circumstances in which a firm could reasonably rely on information from a client and information (about a client) from another firm. In these respects, she referred to COBS 2.4.4R and COBS 10.2.4R, in the context of information used by a firm in assessing appropriateness of a non-advised service.

Overall, she concluded that these rules are applicable to the circumstances of MCL's involvement, and that it met the requirements within the rules. She accepted that had it done more to verify the information it received from Verus it would have realised that some of that information was inaccurate, but these rules did not require it to do that. She found that, in the circumstances (including the information presented on Mr G's profile) and in the absence of cause for MCL to question the information it received from Verus, the rules allowed it to rely on that information.

Mr G and his representative disagree with this outcome, and they have asked for an Ombudsman's decision. In the main, they say –

- They have reason to believe (based on a particular email) that MCL was involved with Verus in deciding where to invest the CB SIPP, so its service was not execution only, it was misrepresented as such and MCL were aware that the fund was unsuitable for the SIPP. Furthermore, the application form used for the CB SIPP was the "Advised clients" version, and in the *Investment Firm* details section of the form "Investment Manager – ADVISORY" was selected.

- A copy of the completed Qualifying Investor Declaration Form ('QIDF') required for the fund investment has never been disclosed. Mr G did not complete this form, so it is likely to have been completed by MCL – which would go against its claim about an execution only service.

- There are contents in Verus' Suitability Report which suggest a forthcoming advisory service from MCL. MCL never provided such a service, but it has confirmed that it received a copy of the report as part of the application for its service. There is no evidence that it queried or corrected these contents in the report. "*If Mayfair are entitled to rely on information provided by another regulated firm, Verus , then they must be held accountable for accepting these statements in Verus documents are true, and they were providing more than an execution only service*".

- MCL knew that a third party had Power of Attorney ('PoA') over Mr G's affairs, so this should have served as red flag and ground for suspicion that something was wrong, and that he was not in a position to be a professional client selecting his own risky investments. It could not have reasonably relied on information it was given in such circumstances. As a minimum, it should have enquired further and verified the application (including information within it) and arrangement directly with Mr G.

- COBS 2.4.4R states that the firm relying on information from another firm nevertheless remains responsible for concluding the services or transaction in accordance with the applicable requirements. The fund was/is a non-standard asset that is disallowed from being held in a UK SIPP. In concluding its service MCL was responsible to identify this and stop the fund investment. Furthermore – "… *the SIPP trustees Curtis Banks should have checked it was an allowable asset and they also agree it is not and they would have rejected it had they been aware of it at the time*".

- "*So Mayfair and Curtis Banks also need to be held responsible for the transaction happening in the first place as regulations are put in place to stop this sort of transaction. If these two are not responsible who is?*"

- "*The fact that Curtis Banks were effectively bypassed for the instruction is concerning that there were no checks put in place by either party to avoid such an asset being invested into without proper due diligence or process, which it seems neither Mayfair nor Curtis Banks completed before the investment was made*."

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.

Having done so, I have reached the same conclusion expressed by the investigator.

I was the Ombudsman who issued the decision in the Verus case. Therefore, I am familiar with the background relevant to Mr G's complainant against MCL.

Additional points to keep in mind are that I upheld the Verus case; I found that Verus' actions and inactions, as I addressed in the decision, were the root causes of the problems Mr G has faced in the matter; and I concluded that Verus was responsible for the unsuitable SIPP switch and for the unsuitable fund investment which resulted directly from the SIPP switch, and that it must compensate Mr G, on the terms I set out in the decision, for the financial loss he has suffered in the matter.

The implication arising from the outcome of the Verus case is as the investigator observed and summarised. That case is concluded and the matters determined within it cannot be revisited. It is for this reason the investigator's focus was limited to the matter of whether (or not) MCL was reasonable in relying on the information it received from Verus. I will address this too, below, but the fact remains that Verus has already been found liable for redressing Mr G's financial loss in the matter. I appreciate, with empathy, that he and his representative have faced difficulties in getting Verus to settle redress, but he has discretion to enforce the Verus case decision, including the compensation awarded to him within it, in the courts.

This does not automatically mean MCL and/or CB played no roles (with responsibilities) in the matter. I will address MCL's role in this decision, but I do not have a complaint against

CB before me, so I do not make findings related to CB.

I consider that the above sets context for the present complaint, and explains why its scope is very limited.

I understand the arguments Mr G and his representative have made, with regards to what they consider to be conflicting descriptions of MCL's service to his SIPP.

There is no evidence that MCL advised the SIPP switch and no evidence that it recommended the fund investment. Verus was responsible for the former. With regards to the latter, there is evidence of a letter to MCL, with Mr G's signature, instructing the investment.

I must reflect Mr G's position on documentation with his signature. This was one of the features of the Verus case. He disputes the documentation and his signatures within them. In the decision for the Verus case, my summary of his position on this included the following – "*He also never received any information about the fund or about the providers. Paperwork for the overall transaction either had his forged signature(s) on them or the introducer abused his vulnerability and obtained his signature(s) on them with deception and/or without explanation*."

Nevertheless, the instruction letter is a part of the information MCL relied upon. I have not seen evidence of a reason(s) it had or should have had at the time to question it, and it supports the fact that MCL did not advise on the fund investment.

In other words, I am not persuaded to draw the inference, as appears to have been drawn in Mr G's and his representative's arguments, that MCL did more than provide an execution only service. The application for its service shows that the 'execution only' version was selected.

It is true that the Suitability Report from Verus suggests more than an execution only service from MCL, but evidence shows MCL provided no more than that level of service. It is not clear whether (or not) between MCL and Verus, and unknown to Mr G, the report's description was queried and/or corrected. If MCL did this, it is possible Verus – the report's author – might have undertaken to issue a correction, but did not do so. I do not say this happened and I do not have evidence to determine this, but it was possible. In any case, I do not consider it safe to assume that MCL's sight of the report at the time (and the lack of evidence on its correction of the description) means it agreed to an advisory service and/or that it provided one. Evidence that it did neither outweighs such an assumption.

I note the argument that MCL's entitlement to rely on information in the report can be extended to it taking ownership of the report's description of the investment service sought, but I disagree.

It was one thing for MCL to rely on information from Verus, in the report, about Verus' client. In the absence of cause to doubt such information, and as I address further below, MCL could reasonably have expected that Verus' knowledge of its own client meant the information was reliable. It would have been another thing for MCL to notice that Verus had wrongly described, in the report issued to its client, the service sought from MCL. The application for MCL's service confirmed selection of the execution only service, so that reasonably confirmed/clarified the matter for MCL. It is also noteworthy that the same Suitability Report confirms that MCL's service was recommended as follows – "*Mayfair Capital Ltd <u>with full self investment</u>*" [my emphasis].

There is no evidence that MCL completed the QIDF on behalf of Mr G, so I do not have

grounds to make a finding on this. There is also a lack of evidence to establish, on balance, that Verus and MCL worked together, early and onwards, in his SIPP switch and investment arrangement in the manner his representative says they have reason to believe. Neither the email they have referred to nor the contents of the CB SIPP application form presents such evidence. The meaning of the former – in as far as is relevant to Mr G and his case – is somewhat unclear, and the latter was advised and arranged by Verus, so MCL cannot reasonably be held responsible for an application form that, it appears, it did not complete.

Mr G and his representative have made a number of points related to the due diligence expected from a SIPP provider in terms of the types of investments allowed and/or made within a SIPP. MCL was not the relevant SIPP provider, CB was. As I said above, I do not have a complaint against CB before me, so I do not make any findings related to CB.

The regulator's Handbook includes Principles for Businesses that were binding on MCL's role in Mr G's case. That role was defined by its execution only service, so instead of having the duty to determine suitability, it had the duty to determine *appropriateness* of its non-advisory execution only service for him. This does not appear to be in dispute, so I do not need to set out the regulatory provisions on the duty to assess appropriateness. The issue in dispute is the information on which MCL relied, in concluding that its service was appropriate for Mr G.

Principles 2, 3 and 6 require, in broad terms, firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly. In terms of customers' interests, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the client's best interests rule which, as the title suggests, requires firms to uphold their clients' best interests at all relevant times.
Case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – also confirms that The Principles are ever present requirements that firms must comply with.

The above serves as part of the overarching requirements MCL was bound to uphold in its service to Mr G, but they apply in the context of the nature of the service it delivered. In providing its service for the execution of the fund investment, its position is that it upheld these requirements in the sense that it relied on, and was entitled to rely on, the information it received from Verus to determine that its service and the execution was appropriate for him.

I mentioned, above, Mr G's position on the documentation holding his signatures. However, I have not seen evidence that MCL knew or ought reasonably to have known there was a problem in this respect. As such, I do not find that it had cause to doubt documentation purporting to be directly from him. In terms of its reliance on such documentation, the following is relevant –

"***COBS 10.2.4 R 03/01/2018***
A firm is entitled to rely on the information provided by a client unless it is aware that the information is manifestly out of date, inaccurate or incomplete."

A similar message is conveyed in the following (for MiFID cases) –

"***COBS 10A.2.6 UK 01/01/2021***
55(3) An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete."

I have not found that MCL knew or ought to have known that documentation signed by Mr G was out of date, inaccurate or incomplete.

With regards to information about him passed from Verus to MCL, the following is relevant –

"***COBS 2.4.4 R 01/01/2021***
(1) This rule applies if a firm (F1), in the course of performing MiFID or equivalent third country business, receives an instruction to provide an investment or ancillary service on behalf of a client (C) through another firm (F2), if F2 is:
(a) a MiFID investment firm or a third country investment firm; or
(b) an investment firm that is:
(i) a firm; and
(ii) subject to equivalent relevant requirements.
(2) F1 may rely upon:
(a) any information about C transmitted to it by F2; and
(b) any recommendations in respect of the service or transaction that have been provided to C by F2.
(3) F2 will remain responsible for:
(a) the completeness and accuracy of any information about C transmitted by it to F1; and
(b) the suitability for C of any advice or recommendations provided to C.
(4) F1 will remain responsible for concluding the services or transaction based on any such information or recommendations in accordance with the applicable requirements under the regulatory system." [my emphasis]

This guidance is also helpful –

"***COBS 2.4.5 G 01/01/2021***
(1) If F1 is required to perform a suitability assessment or an appropriateness assessment under COBS 9A or COBS 10A, it may rely upon a suitability assessment performed by F2, if F2 was subject to the requirements for assessing suitability in COBS 9A (excluding the basic advice rules) in performing that assessment.
(2) If F1 is required to perform an appropriateness assessment under COBS 10A, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in COBS 10A.2 in performing that assessment."
[my emphasis]

The above provisions support the conclusion that MCL was entitled to rely on information about Mr G from Verus (including Verus' suitability assessment) in conducting its (MCL's) appropriateness assessment for Mr G and his SIPP. Based on the information it received about him, I do not find it was wrong to determine that its execution only service and execution of the instruction to invest in the fund were inappropriate for him.

As the parties are aware, the information essentially presented him as an experienced professional client (with very compelling and/or credible grounds for this classification) with a high-risk profile, who sought to self-invest the SIPP in a matching profile. The instruction that subsequently followed, to invest in the fund (which was a high-risk product), was consistent with this profile. We now know, as I found in the Verus case, that the profile was fundamentally wrong in many (if not all) key aspects, but MCL did not know, and had no reason to know, or suspect this.

With regards to *suspicion*, Mr G and his representative have highlighted information about the existence a PoA related to him at the time. They say MCL were informed about, and aware of, this and that this alone should have led it to question, with suspicion, some or all of the information it had received. They say notice of the PoA conveyed his incapability, so he

could not have also been a professional client prepared to self-invest his SIPP.

There was a letter from Mr G to MCL, again with his signature (which, along with the letter, he disputes). It stated –

"*I would like to appoint [the named third party] as my Power of Attorney/Proxy.*

Please allow him to make my investment decisions."

On balance, I do not consider that this ought reasonably to have prompted MCL to question the information it had received. The Suitability Report, a copy of which it received, had confirmed that Mr G was in good health, was employed, had the characteristics to support his professional client classification and, notably, that he did not have a PoA at the time. The introduction to MCL then happened a month after the report, so it would not have been unreasonable for MCL to conclude that the appointment of a PoA to 'make investment decisions' in the SIPP, as expressed in the letter, was only for that purpose, and that the appointment had arisen as part of the overall transaction.

Nothing in the instruction, as quoted above, said or suggested the PoA was pre-existing or that it related to an incapability on Mr G's part. Even if he and his representative say his incapability could have been inferred from it, it could equally be said that the letter read as his preference to simply appoint the particular individual to make investment decisions for him, and nothing else. That appointment could have been for a variety of reasons. Given confirmation of the professional client classification and the profile information it received I am not persuaded that, in the circumstances, MCL should have asked for and queried the reasons.

I acknowledge that the communication was inaccurate. There was/is a PoA for Mr G but it had/has nothing to do with the individual named in the letter. The PoA rests with his representative. However, again, there is nothing to show that MCL knew or ought reasonably to have known this at the time.

Overall, on balance and for all the above reasons, I am not persuaded that MCL was wrong to rely on the information it received from Verus about Mr G. I do not find ground to uphold his complaint. I do agree with the investigator's view that MCL would probably have discovered problems in the arrangement if it had gone beyond relying on the information from Verus. The facts show that direct engagement with Mr G at the time would probably have led to this. However, MCL was providing a non-advisory/execution only service, it was not obliged to assess suitability (which would probably have led to such engagement), and it was within the relevant rules by relying on information, for its appropriateness assessment, provided by Verus.

My final decision

For the reasons given above, I do not uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 January 2025.

Roy Kuku
Ombudsman