

The complaint

Mr T has complained about the actions of MB Capital Limited (“MBC”) in relation to his self-invested personal pension (“SIPP”).

What happened

Mr T is represented by a firm of solicitors. When they originally complained to MBC, they said MBC had failed to do adequate due diligence on the investments held in Mr T’s SIPP. They referred to “toxic” assets and said the lack of due diligence meant Mr T “lost all of the money he invested” because of a failed investment.

However, both MBC and our investigator noted that some of the points made by Mr T’s representatives appeared to be at odds with reality. Most notably, Mr T’s portfolio *didn’t* suffer the catastrophic losses claimed. Our investigator also pointed out that MBC wasn’t responsible for the initial advice to transfer to a SIPP.

Mr T’s complaint has evolved in response to those findings. The parties will be familiar with the path the complaint has taken so I won’t repeat everything that has been said here. Suffice to say, the broad shape of the complaint remains the same in so far as Mr T’s representatives consider MBC responsible *somehow* for the position he finds himself in, which is invested in a pension wrapper, and investment portfolio, neither of which they think is suitable.

As the parties couldn’t settle the complaint informally, it falls to me to make a final 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’m satisfied MBC didn’t advise Mr T to transfer to his SIPP, not least because Mr T has said a different individual and business carried out that advice. Both the individual and business appear on Companies House records and the business appears on the Financial Conduct Authority (FCA) Register (as an appointed representative of another regulated firm). So, in that respect, there would seem little reason to doubt Mr T’s recollections – both the individual and the business he recalls are genuine.

When told this by our investigator, Mr T’s representatives responded to say MBC shouldn’t have taken on Mr T as a client without expressing “concerns” about the suitability of the SIPP. In other words, MBC should have provided some sort of value judgement on the SIPP – which would have been tantamount to advice – in order for Mr T to then be better placed to consider his options. Doing so would, in their view, have been acting in accordance with COBS 9 and the FCA’s Principles which they say MBC ought to have been aware of as a regulated firm.

Putting aside whether the SIPP was unsuitable, I nevertheless disagree with the conclusions drawn by Mr T’s representatives. MBC was initially appointed to manage Mr T’s investments

on an advisory basis. In 2023, MBC was appointed as a discretionary fund manager. But it wasn't appointed to advise on the switch to the SIPP and it didn't have the permissions to do so. It would therefore have potentially been acting in an illegal manner if it had acted in the way Mr T's representatives have argued for. And the principle that advisers can't reasonably consider a transfer to a SIPP without also considering the SIPP's investments (as outlined in a 2013 FCA bulletin) doesn't extend to the inverse situation present here. MBC could, reasonably, manage Mr T's investments without having to take a view on the suitability, or otherwise, of the SIPP wrapper they were housed in.

Turning to Mr T's portfolio, I note here that Mr T's representatives originally referred to a "failing" investment, "toxic" assets and a total loss of funds. Mr T's representatives haven't provided much corroborating evidence to show the construction of the portfolio, and its performance, over time. Perhaps as a result of this, there's also little in the way of any other analysis as to why they think the portfolio was unsuitable. So all I have is a snapshot of Mr T's portfolio at limited intervals and a rather broad-brush complaint. But with those caveats in mind, I see no persuasive reason to uphold Mr T's complaint on this point. His portfolio doesn't appear to have suffered a total loss. I can't see a prevalence of assets that could realistically be described as toxic. Mr T's discretionary fund management agreement lists the type of allowable assets which precludes the type of assets Mr T's representatives seem to have in mind. And Mr T himself didn't raise any particular concerns along these lines when our investigator spoke to him.

Over time, Mr T's representatives appear to have accepted that the portfolio wasn't as toxic as they first thought. But they nevertheless picked out one particular investment as being a cause for concern – the CQS New City High Yield Fund Ltd – which they say is mostly invested in fixed rate bonds which could turn illiquid at any point, making it "high risk, volatile and unsuitable" for Mr T. They say a "good majority" of Mr T's portfolio was invested here.

The first part of the statement is true in so far as it goes. The company in question (an investment company) does mainly invest in fixed rate bonds (mainly corporate bonds) and those bonds could turn illiquid at any point. But these aren't inherently unsuitable assets for a pension scheme. And any asset could turn illiquid – that doesn't get us very far. The fact is, there *wasn't* liquidity problems. The investment regularly paid dividends. It was diversified. And it represented less than 5% of Mr T's entire portfolio which is hardly a "good majority". With all this in mind, I'm not persuaded by the characterisation presented by Mr T's representatives.

Mr T's representatives also say MBC didn't conduct an adequate review of Mr T's attitude-to-risk. Had it done so, they say he would have been classed as "low to medium", which is a slightly more cautious rating than the "balanced" one he was actually assigned. By extension, the argument is that Mr T's portfolio ended up being too high risk for him.

I have more sympathy with this argument in so far as Mr T's attitude-to-risk doesn't appear to have been derived from a particularly in-depth, objective, process. Instead, it appears to have been a result of Mr T choosing the balanced rating from five options presented to him when he went through the "know your client" process with MBC in 2019.

That said, the assessment conducted by Mr T's representatives can hardly be said to have been more robust. And if Mr T really was "low to medium" risk as they say, then it's difficult to see why he wouldn't have chosen something akin to that from the options presented to him given the relatively clear descriptions attached to each one. Mr T chose from five categories – "very cautious", "cautious", "balanced", "risk aware" and "speculative". Mr T chose "balanced", which was described as follows:

"You would like to preserve short term financial security through low risk investments, but

also wish to benefit from the prospect of good long term returns from higher risk investment types.

Preferred outcome – A balanced return of growth and income due to the acceptance of more investment in higher risk types which means this could have a negative effect on capital.”

If Mr T really was slightly more cautious than that – “low to medium” in the view of his representatives – then he would have likely rated himself as “cautious” which had the following description:

“You would prefer most of your investments in low risk investments (such as cash and low risk fixed interest types) but agree that a relative small exposure to some higher risk funds may protect the funds overall from the corrosive effect of inflation.

Preferred outcome – Capital preservation is the key and only moderate returns can be expected.”

It therefore seems more likely to be the case that Mr T was, indeed, a balanced investor – it's the most plausible reason for why he chose that category during the “know your client” process. And, in that light, it's difficult to see how his current benchmark asset allocation is significantly out of line with that given it specifies a minimum of 30% invested in bonds, cash or cash equivalents and a maximum of 70% in global equities. This is in addition to the restrictions on allowable assets which, briefly, restricts assets to standard assets as defined by the FCA and to the following: global equities, government bonds, corporate bonds, mutual funds, exchange traded funds, investment trusts, real estate investment trusts and cash or cash equivalents.

Finally, having listened to a call Mr T had with our investigator, Mr T appears to be seeking some reassurance about everything MBC has done. My role isn't to provide that. My role is to look at Mr T's complaint. And, for the reasons given above, it is not a complaint I will be upholding.

My final decision

For the reasons given above, my final decision is to not uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 August 2025.

Christian Wood
Ombudsman