

The complaint

Mr W says he's suffered a financial loss as a result of unsuitable advice and poor service from SI Capital Ltd.

What happened

Mr W signed an application form on 25 January 2011 to establish a SIPP (self invested personal pension). He'd be transferring in pension benefits held with three providers. The application form confirmed that no financial adviser had been involved and Mr W hadn't received advice in connection with the establishment of the SIPP.

On 27 January 2011 Mr W applied for a Trust Share account with Simple Investments, which later changed its name to SI Capital Limited. For ease I've referred to SI Capital throughout. The account was to be held in Mr W's SIPP and the application form was signed by him and on behalf of the SIPP trustees. A box was ticked to say that online access should be given. The account was provided by The Share Centre (TSC) (which is now Interactive Investor) on SI Capital's behalf and operated in accordance with TSC's terms of business.

We've also seen what appear to be extracts – two pages signed by Mr W on 27 January 2011 – from SI Capital's terms and conditions. The first signature was to say he'd read and understood the risk warnings set out – it appears some 16 were given but the page we've seen only shows the last three. The other page appears to be the final one of the terms and conditions which Mr W signed to say he accepted.

In March 2011 Mr W also applied for an ISA account with SI Capital, with a DIY ISA selected. Mr W has also complained about SI Capital's management of his ISA. But I mention that for completeness only as we've dealt with that complaint under separate reference and so it doesn't form part of Mr W's current complaint.

SI Capital wrote to Mr W on 28 March 2011 to confirm that his share dealing account had been opened and setting out how he could access his account online to view account information, monitor his portfolio holdings and value and check his account balance. He'd be sent a PIN in the next few days which he'd need to enter.

SI Capital completed a fact find in April 2011. It recorded Mr W's and his wife's financial circumstances. In summary, their approximate net worth was £6.2 million plus Mr W's pension from a former employer. He had 10 years' experience in dealing in traditional shares, over 15 years' in private equity and he'd been involved in M&A and understood leverage. He wanted to achieve income and capital growth. His attitude to risk (ATR) was 100% high risk. He didn't have a financial adviser and didn't wish to be referred to one. There's also a fact find review dated 4 February 2015. At section 4, about investment objectives and ATR (in relation to SI Capital's services), Mr W's current risk profile is recorded as speculative.

We've seen various valuations issued by SI Capital – annual valuations were issued in April and bi annual valuations in October. There are also a number of online portfolio and stock valuations. The SIPP provider was also able to supply a fairly large number of contract notes

which show the specific stock purchased or sold and the cost or proceeds, plus commission and stamp duty for purchases.

In 2023, through his representative, his adviser, Mr W complained to SI Capital. The adviser said she'd had difficulty in understanding the original purchase price of the shares and relevant paperwork hadn't been received. After review and discussion with Mr W it appeared the investments selected by SI Capital weren't suitable given Mr W's ATR and the risks weren't fully explained and documented. He'd lost money from his pension fund and he believed various share purchases suggested to him were to generate commission for SI Capital and not for his benefit. SI Capital was asked to provide various documents, including copies of its client agreement and terms of business showing fees, charges and commission; all advice reports or emails suggesting stock; and ATR questionnaires and risk profilers.

SI Capital issued a final response on 5 September 2023. It didn't uphold the complaint. SI Capital referred to the fact find completed on 7 April 2011 which recorded that Mr W wanted to achieve income and capital growth and that 100% of the account was to be high risk with what that included set out. SI Capital pointed to Mr W's investment experience and his high net worth. SI Capital said that, at the relevant time, it only held advisory and execution only permissions with the FCA (Financial Conduct Authority) and wasn't able to trade or invest at its discretion. Every trade would've been run past Mr W or his wife and only executed if they'd agreed to it. Contract notes every time he'd agreed to trade had been sent and quarterly statements issued.

Mr W remained unhappy and his complaint was referred to this service.

One of our investigators looked into what had happened but he didn't uphold the complaint. He said Mr W was a high net worth individual with many years' experience of investing in direct equities and he'd been involved with private equity and leverage. He was a high risk investor who understood what he was doing. He also had capacity for loss and the investment was a small proportion of his total net worth. He didn't seek financial advice and he didn't want a financial adviser. High risk investment was suitable for Mr W. He'd have to have agreed to all trades. There was no evidence that trades had been suggested simply to generate fees.

Mr W didn't accept the investigator's view. His representative said it didn't seem correct to assume no advice was given when trades clearly happened.

As agreement couldn't be reached the complaint has been referred to me to decide.

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 agree with the investigator's view and the reasons he gave as to why he was unable to uphold the complaint.

As I've said above, Mr W's complaint about his ISA has been considered under a separate reference so I'm only looking at his complaint about his SIPP.

Jurisdiction – whether Mr W's complaint is one that we can consider – has been mentioned. SI Capital has suggested that the complaint has been made outside the applicable time limits. Here I agree with the view expressed by the investigator and the reasons he gave as to why the complaint had been made in time. Mr W is complaining about what's happened since SI Capital first began to act for him. So some of the share purchases and sales

would've happened more than six years before he complained in 2023. But others will have been within that period. The position is similar in terms of fees paid by Mr W. And the investigator said that, in any event, Mr W's complaint had been made within three years of when he became aware he had cause for complaint – which was when he'd instructed his new adviser in 2021. So on that basis his complaint had been made in time.

Although I've considered everything that's been provided, I haven't seen all the documentation. For example, we asked SI Capital for a complete copy of its terms and conditions which hasn't been forthcoming. And, although we've been provided with some of the contract notes in respect of some of the share purchases and sales, we haven't seen all of them. But, in any event, it's not possible for us to carry out a full audit, given that Mr W's SIPP was set up in 2011 – we can't examine each and every trade. I'm satisfied I can fairly decide the complaint based on the information that has been provided.

Mr W's main complaint is that SI Capital gave him unsuitable advice. SI Capital's position is that Mr W was an execution only client so SI Capital's role was limited to processing trades as requested by Mr W.

Mr W's share dealing account is operated on SI Capital's behalf by TSC (now Interactive Investor). TSC's terms of business included the following:

'1.11 Unless you have sought specific investment advice from TSC's Advice team in accordance with the Advice terms of business set out within Section 5 of these terms of business, all transactions are carried out on your own initiative (ie 'execution only'). TSC is, therefore, not responsible for advising you on the suitability of the services or transactions provided or offered by TSC. You will not benefit from the protection of the FSA's rules relating to suitability which would require TSC to ensure that a product or service is suitable for you when taking into account your knowledge and experience in the relevant investment field, your financial situation and your investment objectives.'

So that supports what SI Capital has said about just providing an execution only service.

Mr W didn't seek advice in connection with the setting up of the SIPP. The SIPP provider has confirmed that no financial adviser was attached to the SIPP and the first indication of involvement of a financial adviser was a letter of authority from Mr W's current representative on 16 July 2020. As I've noted above, the fact find completed in April 2011 recorded that Mr W didn't have a financial adviser and didn't wish to be referred to one. That suggests he was confident, in line with his considerable investment experience, in making his own decisions without the benefit of financial advice. And that supports a finding that the service SI Capital was to provide wasn't advisory as Mr W didn't want or need that.

SI Capital says that every trade was 'run past' Mr W or his wife. Mr W's own evidence is that SI Capital suggested or 'proposed' trades so I don't think he's saying that shares were bought or sold without his knowledge or agreement. In any event I think he'd have known what trades had been placed.

Section 6 of TSC's terms and conditions is about Dealing. Section 6.9 says that a contract note will be sent, either in paper or electronic format, following a transaction (except where otherwise permitted by the FSA's rules). Any query in relation to the contract note should be raised within five business days of receipt so that any matters arising can be promptly resolved, otherwise TSC will assume the contents of the contract note are accepted. And, prior to receiving the contract note, for information about the status of the order, a member of TSC's Dealing team can be contacted or the status of the order can be viewed online, at the web address given.

I note here that, on the application for the account, Mr W ticked the box to say statements and contract notes should be sent by email. We've not seen all the contract notes (and which would be impractical anyway) but there's evidence that contract notes for the trades with details of the price and commission and any other expenses were issued. Those contract notes appear to have been issued to the SIPP administrator. I'm not sure if copies were emailed direct to Mr W. But he had online access to his account so he could access the details.

And I understand that SI Capital sent statements in April and October each year. Further, if Mr W hadn't signed into his account during the quarter, a short summary statement would be sent. All in all I think Mr W would've been aware as to what was going on with his account. He had considerable investment experience and expertise and so he'd have understood the information that was available or provided to him. And, if he'd have seen transactions he didn't recognise, he could've queried them.

It seems Mr W's position is that, although he gave authority for the trades, he did so because he'd been advised by SI Capital. It's impossible to say now, where a large number of sales and purchases have taken place, many of which were some years ago, exactly how each came about and what may have been discussed between Mr W and SI Capital in each case. It would be open to SI Capital to provide generic information to Mr W, for example, commentary about stock market movements generally, to assist him in making informed decisions and which wouldn't amount to giving investment advice or making a personal recommendation.

Advising on investments is a regulated activity under Article 53(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544). It's defined as giving advice to a person in his capacity as an investor or potential investor, on the merits of buying, selling, holding, subscribing for or underwriting a particular investment. Usually there's a written recommendation, such as a suitability letter, to confirm the advice that's being given. But sometimes what's said can stray into advice territory.

Here, although I recognise that's a possibility, I don't think there's enough evidence to say that's what actually happened. The fact that trades were executed doesn't necessarily mean they were on advice from SI Capital as opposed to being undertaken on Mr W's execution only instructions and when, as I've said, I think Mr W was better placed than others to make his own investment decisions and had indicated he didn't want to instruct a financial adviser.

Further, and in any event, even if I thought advice had been given (although to be clear I think there's insufficient evidence to support that) I don't see a complaint that SI Capital had recommended investments which were unsuitable – because they were too high risk – could succeed. I say that because Mr W had indicated he wanted to take a high degree of risk with this particular account – his ATR had been assessed as high or speculative. And his overall financial position meant he had the capacity to withstand any loss that might result. And he had considerable investment experience, so he'd have known the degree of risk that he was taking and what the result might be.

Mr W is also unhappy about SI Capital's charges. As I've mentioned, we did ask SI Capital to provide a full copy of its terms of business which Mr W appears to have signed on 27 January 2011 and which might've included details of SI Capital's charges or at least referred to where they were set out. We haven't seen exactly what was set out in writing as to SI Capital's charges. However, in the interests of bringing this matter to a conclusion, I've gone on to consider the charges aspect of the complaint anyway. I think I can fairly reach a decision about that even if, ideally, I'd have liked further information from SI Capital.

First, I think it's unlikely, when Mr W first instructed SI Capital, that he wouldn't have been provided with details of SI Capital's charges. I think he'd have wanted to know what he'd be paying. And I think SI Capital would've also wanted to ensure that Mr W had agreed to pay their fees. However, SI Capital's charges were shown on the annual statements issued. For example, the valuation dated 5 April 2012 shows a debit for SI Capital's annual fees of £360 (on 3 January 2012). And the following year's valuation shows a debit (on 3 January 2013) of £480 for SI Capital's annual fee. So Mr W would've seen what SI Capital was being paid.

I think later statements gave more detailed information, both as to SI Capital's annual fee and other costs. The valuation dated 5 April 2019 shows SI Capital's annual fee of £480 had been debited from the cash account on 4 December 2018. There's a section in the valuation headed '*Your costs 9 January 2018 – 5 April 2019*' which shows SI Capital's charges of £480 plus investment management charges of £136.33. It was explained that SI Capital's charges were for operating the account – for example, an administration fee, dealing commission, stamp duty etc – and which were deducted from the account. The investment management charges were for managing the investment - for example, an Annual Management Charge (AMC) charged by the investment manager, not SI Capital, and which charges didn't show on Mr W's account but were incorporated in the investments themselves. There was also a section headed '*How have these costs affected the value of your account?*' and which gave a figure of 0.92%, based on the total charges of £616.33 between the dates given. It appears this was a new cost breakdown introduced as a result of the Markets in Financial Instruments Directive II (MIFID II) which came into effect in January 2018. I think it was relatively easy for Mr W to see how much he'd paid in charges, including as to SI Capital's fees.

In summary, I can't say that any investment losses Mr W has sustained resulted from unsuitable advice from SI Capital – from what I've seen SI Capital didn't provide advice. And, in any event, given Mr W's ATR, capacity for loss and investment experience, I can't see that high risk investments were unsuitable for him anyway. I haven't seen anything to suggest that trades were undertaken without Mr W's authority or knowledge. He'd have seen them and could've queried any he didn't agree with. I also think he was made aware of the charges he was paying to SI Capital.

My final decision

I'm not upholding the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 May 2025.

Lesley Stead
Ombudsman