DRN-5411910

The complaint

Mrs P complains about investment advice she received from Murdoch Asset Management Limited (MAML). She says some of her investments do not reflect her attitude to risk. She is also unhappy about charges being deducted from cash and investments held in her portfolio.

What happened

Mrs P initially met with MAML in March 2020. At this point she held most of her assets in cash. A risk tolerance questionnaire was completed by the adviser before a recommendation was made. Mrs P was assessed as having a "prudent" risk profile.

In August 2020, a report was issued recommending Mrs P invest into the Prudent portfolio model, within her Individual Savings Account (ISA), General Investment Account (GIA) and self-invested personal pension (SIPP). Mrs P asked for the placing of her cash funds into the investments to be phased, so as not to expose her money to risk all at once.

In October 2020, a change was made to the advice, and the funds in her SIPP were now to be invested at an increased level of risk into the Active portfolio. A letter was issued by MAML on 30 October 2020 providing this update.

Further discussion about the planned investment continued over the next few months. The investments eventually began to be placed from April 2021.

In July 2022, a review meeting was held between Mrs P and MAML. The focus of the recommendation made was mainly around a transfer of her portfolio to a new platform and rebalancing her investments. Another meeting was held in August 2022 where her investment portfolio was discussed further. During these meetings Mrs P raised concerns about her portfolio – including the level of risk she was exposed to. Further communications continued as Mrs P began to raise concerns about the advice process.

In December 2022, Mrs P raised a complaint with MAML about her investments not reflecting her attitude to risk. She also raised concerns about the charges deducted from the cash held in her Fidelity account while awaiting advice and investment, and fees deducted from the Woodford fund that was suspended. She was unhappy about how the review meetings and subsequent review letters reflected the discussions held.

MAML responded to the complaint but didn't uphold it. As Mrs P remained unhappy with the response she'd received, she referred her complaint to this service for an independent review.

I issued a provisional decision in February 2025. This is what I said:

"I'm satisfied the crux of the complaint related to the suitability of the original advice Mrs P received when she first became a client of MAML in 2020. So, I will focus my findings on this, but I will also consider the additional points raised in relation to the platform selected for the portfolio and the concerns about the charges applied to the portfolio by MAML.

Advice

Mrs P received advice over a number of months during 2020, with a number of letters sent covering the recommendations that were being put forward. As the process extended over several months, it meant that her investments didn't begin to be placed until April 2021. The portfolio advice Mrs P received covered three distinct products – her ISA, GIA and SIPP.

Having reviewed everything, I'm satisfied that I don't need to further consider or make any finding about the recommendation to invest the funds held in the ISA and GIA under the 'Prudent' portfolio. Mrs P's comments suggest she accepts this was in line with the level of risk she was prepared to take. What appears to be at the heart of her concerns is the advice to invest her SIPP under a riskier strategy - the 'Active' portfolio. She says this exposed her to more risk than she was prepared to take. So this is what I'm considering here.

MAML has provided details of the different model portfolios it uses to manage client investments. The Prudent portfolio which Mrs P's ISA and GIA funds were invested in was seen as three on a risk scale from one to seven. But the Active portfolio is two levels higher, at five out of seven. Mrs P maintains that she didn't want to take this level of risk with her pension. But MAML say this was agreed with her during the advice process.

I've looked at the available evidence surrounding how the recommendation was made.

The risk tolerance report completed in May 2020 indicates that MAML assessed Mrs P as having a risk tolerance slightly-lower-than-average and placed her as level four out of the seven risk groups. This was based on a series of questions she was asked about her attitude to risk.

The first suitability letter was sent in August 2020. This recorded Mrs P's objectives for her pension as:

- *"To provide flexibility and tax efficiency in the payment of pension benefits to your beneficiaries after your death; either as a pension or lump sum.*
- *To draw flexible income or capital in retirement, meaning it is likely Income Drawdown would be the most suitable retirement strategy.*
- *Capital growth over the long-term through investing in funds with the ability to perform above the average."*

In the attitude to risk section, she is recorded as having a Prudent risk profile, with reference to the questionnaire she completed. This is described as having some tolerance for investment risk and accepting the potential for some loss in the short term. It also explains portfolios in this category generally consists of an even split of low and medium risk assets.

In this letter a recommendation was made for Mrs P to invest her SIPP under the Prudent portfolio and phase the cash held over a period of nine months. It is also noted MAML intended to use her existing platform operator as they offer all the funds within its preferred Prudent portfolio.

Following this, it appears there was a reconsideration of the advice and further discussion was held about the level of risk for the SIPP. A change was made to invest the SIPP at a higher risk level under the Active portfolio. I've listened to a telephone call from 29 October 2020 where there was a conversation about this between the adviser and Mrs P. The adviser attempts to clarify the strategy for the SIPP as Mrs P is unsure what was being recommended. The adviser confirms that "we've pushed it up a couple of notches from a risk perspective" and explained the Prudent portfolio is three out of seven and that they talked *about moving to a five out of seven, going the other side of mid-risk. The adviser agreed to follow up in writing.*

A letter dated 30 October 2020 was sent to Mrs P by MAML. This confirmed that her SIPP would be invested in the Active portfolio and provided a chart showing the split between cash, medium and high risk. It also confirmed that Mrs P would "like to adopt a higher risk approach to this investment." While this did provide some clarification, I haven't seen anything to say MAML explained the reasons why the level of risk Mrs P was being recommended had extended two levels above the assessment it made of her profile. I think this is critical omission from both the call and letter, as the other evidence I've seen indicates Mrs P was worried about increasing the risk for her investments.

I've also seen further email exchanges between Mrs P and MAML that suggest she wasn't clear about the level of risk she agreeing to take. This includes an email sent on 8 December 2020 where she raised a concern about inconsistent messages between verbal discussions and the written follow up recommendation. She states she agrees her GIA should be moved to Prudent growth and her SIPP would be invested at the next level up. But this wasn't an accurate understanding, as she was recommended to go two levels up for the SIPP investment. And when MAML responded on 9 December 2020 it referred to her taking a Balanced risk, level four of seven. So inaccurate information was provided by the adviser, and no further clarification about the reason for the risk level. I think this response only added to Mrs P's confusion about the level of risk she was agreeing to. She sent a further email in February 2021 asking about the combination of funds being used. Within her email she makes a statement saying "Going forward I am anxious about introducing any high risk funds. I am looking for some diversity over the whole portfolio (to spread risk) and given that my attitude to risk is broadly 'prudent' I would assume that this limits the number of funds within your fund pool significantly". I haven't seen that this led to any changes to the recommendation to follow the 'Active' portfolio advice, despite Mrs P raising her aversion to higher risk funds.

It is clear from the queries Mrs P was raising that she was concerned about risk and market volatility. In my view, the evidence indicates she didn't understand the level of risk she was agreeing to with her SIPP investment. I'm not persuaded the clarifications given to her were sufficient to help her understand what she was agreeing to – particularly the reason why she was increasing the level of risk beyond the next level up. And at times the responses from MAML were inconsistent at best and misleading at worst, so I think contributed to her misunderstanding.

I've also considered Mrs P's objectives, experience, and circumstances at the time. I note she was looking for capital growth over the long-term through investing in funds with the ability to perform above the average. She did have sufficient income for her needs, some investment experience and a large amount of deposit-based savings. I note at the time of investing Mrs P was already above her state pension age, and while it doesn't seem she had immediate plans to retire it is recorded the age she intended to retire was in three years' time. So, I think this does limit her investment horizon to achieve growth before retirement. I also note from her submissions that she was holding cash in her SIPP prior to the advice as she was cautious about investing again in anything too risky due to the losses suffered in the Woodford fund. She favoured a phasing of her investment as she was concerned about market movements.

I'm satisfied Mrs P was prepared to increase the level of risk she took with her SIPP in order to meet her objectives, and she was in a position to do so. But I'm not persuaded the evidence supports she was prepared to take the amount of risk MAML recommended. Despite her relatively strong financial position and capacity for loss, the information recorded about her attitude to risk, and the queries she raised, indicate to me that she shouldn't have *been exposed to the level of risk the Active portfolio presented. This is supported by her reluctance towards higher risk funds and her desire to take a cautious approach to entering the market by phasing in her cash to risk based investments. So, I intend on upholding this part of Mrs P's complaint. Later in my decision, I will consider what MAML need to do to put this right.*

I note that Mrs P has raised concerns about the subsequent advice she received from MAML in 2022 as part of the financial review that took place at that time. But Mrs P has stated she didn't invest anything further after the recommendations made in the original advice were placed in 2021. So, I understand the additional investments and rebalancing to the portfolio discussed in the 2022 review didn't go ahead after the complaint procedure commenced. There is reference to a recommendation for a platform switch in 2022, but I will deal with this separately. But in respect of the contents of the 2022 review and the other recommendations made, these didn't go ahead so I can't say there has been a direct loss suffered by Mrs P in relation to this.

I acknowledge there was an error within the August 2022 recommendation report, which incorrectly refers to Mrs P's existing investments following the Balanced portfolio. This has caused significant confusion, as despite it being an error, this was Mrs P's understanding of the strategy for her SIPP. I've seen that a revised report was sent on 22 September 2022, which confirmed the Prudent strategy for the ISA and GIA, and the Active portfolio for the SIPP – in line with the existing arrangements. So, despite no further investments going ahead, MAML's handling of this review and further recommendation did contribute to the overall worry and concerns Mrs P has with the advice she received on her portfolio. I also think it supports my conclusions above that MAML was at times inconsistent at best and misleading at worst, and that Mrs P wasn't aware or in agreement to her SIPP being invested at the level of risk recommended originally.

Fees charged by MAML

I'm satisfied that MAML clearly set out the charges it would be taking for the advisory service provided. These included an ongoing advice charge at a rate of 0.75% of the total portfolio. This was set out on several occasions throughout the various communications, recommendations and reviews that MAML completed for Mrs P. So I'm satisfied Mrs P would have been aware of the charges that were to be applied.

When MAML took on Mrs P as a client she did have existing investments. These included funds she had invested in the suspended Woodford fund. At the time it provided advice, the status of this fund meant access to the monies held within it was restricted and the outlook overall was uncertain. But I can see these investments were considered as part of the overall portfolio advice that was given – including the impact on offsetting losses on the funds for tax purposes in the future once the situation had been resolved.

Mrs P has questioned whether it is reasonable for MAML to include these investments as part of the overall fee she paid for the advisory services. I do understand why she has raised this point, as the suspension did prevent MAML from making any specific recommendation in respect of this fund.

On balance, I think it was fair for MAML to apply the charges it did despite the suspension of the fund. MAML had no control over the suspension, or what would happen in the future with regards to the value of Mrs P's holdings. The charges it set out were based on the whole portfolio, and not split between different products or funds. I find this to be reasonable approach for MAML to take as it was providing advice over the whole portfolio. And it did still have to consider the suspended fund as part of the broader picture even when not making any direct recommendations about it. I appreciate the value of the units held within the fund *were uncertain due to the suspension, and in hindsight the value has depreciated significantly. But, it was reasonable for MAML to base its valuation on the information it received from Fidelity for this fund. In my view, it didn't have any other reasonable basis for attributing anything different.*

In summary, I accept MAML was providing advisory services across the whole portfolio, so I don't think it would be practical or reasonable to exclude a suspended fund from its charges. I'm also conscious that the Woodford fund equated to a relatively small proportion of the overall portfolio – and in turn the fee paid. In conclusion on this point, I find the fees were set out clearly and the basis on which they would be applied was across the whole portfolio, so I haven't found that MAML should be required to refund any of the fees it received due to Mrs P holding units in a suspended fund.

I also note Mrs P raised concerns that she was charged fees on a contribution she made to her pension in March 2022, which remained as a cash balance rather than invested. I note from the 28 March 2022 letter MAML sent that it was explained Mrs P wished "…to leave this money as cash due to market uncertainty." And it was further explained by MAML it would be happy to recommend a suitable portfolio for these funds should Mrs P decide she wants to invest them. So, the fact these funds were left as cash appears to be as a result of MAML acting on the discussions it held with Mrs P. Again, as this money formed part of the wider portfolio it was advising on, I'm not currently of the view that MAML would be expected to remove them from the advisory charges it applied.

Transfer of portfolio to a new platform

Lastly, I have considered the points made about Mrs P switching the platform that she held her investments on. I can see that there were some discussions both initially in 2020 and then again as part of the recommendations made in 2022. But ultimately Mrs P never changed platforms.

From the original advice, I can't see that MAML ever provided a recommendation to switch. Despite the discussion held, the evidence I've seen indicates that it found it suitable to remain on the Fidelity platform. There was a clear recommendation to switch in 2022, but as already explained this didn't proceed and was effectively superseded by the complaint process. And it appears the switch recommended didn't involve a change in funds, just the platform they were held on.

Having considered this point, even if there were failings by MAML around not executing a switch (which for clarity I haven't concluded there were), I'm not satisfied Mrs P has suffered a loss. There is some evidence to suggest the alternative platform's charges were higher too. From Mrs P's comments it appears she accepts that the switch not being completed isn't something that can now be put right. But I appreciate she has highlighted this as part of her overall concerns about conflicting advice and how the recommendations were formulated by MAML.

For the reasons given, I don't intend to require MAML to do anything further in regard to this complaint point."

Mrs P responded and provided details of the value of her funds in her SIPP at the point she liquidated them in June 2023. She confirmed she was happy to accept the provisional decision.

MAML responded to acknowledge the provisional decision. It said it was happy to accept the provisional decision in relation to the investigation into the risk aspects of this complaint.

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.

As both parties have indicated they accept the findings, and neither party has provided further arguments in response to my provisional findings, I've got no reason to change the outcome I set out above.

In conclusion, I'm persuaded the advice Mrs P received to invest her SIPP was unsuitable as the evidence indicates she wasn't prepared to take the amount of risk MAML recommended. I also find MAML's handling of the situation caused Mrs P distress and inconvenience. I've set out below what needs to be done to put things right.

For the reasons given above, I don't uphold the other aspects of the complaint in relation to the fees charged and the platform transfer.

Putting things right

My aim is that Mrs P should be put as closely as possible into the position she would probably now be in if she had been given suitable advice. Mrs P has confirmed she liquidated her SIPP investments in June 2023.

I think Mrs P would have invested differently. It's not possible to say *precisely* what she would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mrs P's circumstances and objectives when she invested in her SIPP.

What must MAML do?

To compensate Mrs P fairly, MAML must:

- Compare the performance of Mrs P's SIPP investment with that of the MAML's 'Balanced' portfolio model. If the *actual value* is greater than the *fair value*, no compensation is payable. If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- MAML should also add any interest set out below to the compensation payable.

- If there is a loss, MAML should pay into Mrs P's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If MAML is unable to pay the compensation into Mrs P's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount - it isn't a payment of tax to HMRC, so Mrs P won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mrs P's actual or expected marginal rate of tax at her selected retirement age.

- It's reasonable to assume that Mrs P is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs P would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay Mrs P £300 for the distress and inconvenience she has suffered as a result of the service she has received from MAML. She has experienced, frustration, upset and inconvenience as a result of the lack of clarity provided by MAML during the advisory service it provided. There have been errors in reports sent to her that needed correcting and there has been confusion and contradictions, which meant she needed to contact MAML for further explanations.

Income tax may be payable on any interest paid. If MAML deducts income tax from the interest, it should tell Mrs P how much has been taken off. MAML should give Mrs P a tax deduction certificate in respect of interest if Mrs P asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
MAML Active Portfolio	No longer exists	MAML Balanced Portfolio	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

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

Fair value

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

As the investment was phased in each additional sum that Mrs P paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mrs P wanted Capital growth with a small increase to the level of risk she was taking in the Prudent strategy she had adopted with the rest of her investment portfolio.

- MAML's Balanced portfolio would be a fair measure for someone who wanted to achieve the above. I consider this broadly reflects the sort of return Mrs P could have obtained from investments suited to her objective and risk attitude.

- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

I uphold the complaint. My decision is that Murdoch Asset Management Limited should pay the amount calculated as set out above.

Murdoch Asset Management Limited should provide details of its calculation to Mrs P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 18 April 2025.

Daniel Little
Ombudsman