

The complaint

Mr W has complained that Mayfair Capital Limited ('MCL') advised him to invest his pension fund in assets that were not suitable for him.

Mr W's complaint has been brought on his behalf by a representative.

What happened

I have previously issued a provisional decision regarding this complaint. The following represents excerpts from my provisional decision, outlining the background to this complaint and my provisional findings, and forms part of this final decision:

"In July 2019 Mr W was advised by a financial adviser (which is separate to MCL and I will refer to as 'Adviser B') to transfer benefits from a defined benefits pension scheme into a self-invested personal pension ('SIPP'). In October 2019 Mr W completed an application form to open a trading account with MCL and funds from Mr W's SIPP were placed into the trading account in February 2020.

In December 2023 Mr W's representative complained to MCL that the advisory investment management service it had provided Mr W with had not been suitable for his circumstances. It said that Mr W had been advised by MCL to place a significant proportion of his portfolio into one particular non-mainstream and speculative investment (which I will refer to as 'M shares'). The representative described Mr W as a cautious investor. It said advising Mr W to place as much money as he did in M shares, together with the risk ratings of some of the other investments that it recommended, meant that the trading strategy MCL advised on was inconsistent with Mr W's attitude to risk ('ATR').

Although MCL acknowledged receipt of the complaint, it provided no response to it, and subsequently Mr W brought a complaint to this service.

Despite requests for its submissions, MCL did not provide any evidence to our investigator before he issued his view on the case. Mr W's representative was able to provide some documents relating to the advisory service MCL provided.

Our investigator upheld this complaint. His view was that MCL hadn't properly assessed Mr W's ATR, or taken into account his capacity for loss. He said that Mr W did not have a long investment window to make up any losses he suffered on his trading account, and didn't have experience of the asset types that MCL recommended. The investigator's view was that Mr W had a cautious ATR, and he commented that his SIPP made up the majority of his pension savings.

Taking into account the proportion of the portfolio that MCL recommended investing in M shares, and the other assets that it had also recommended, the investigator concluded that the portfolio MCL had advised Mr W to hold was too high risk for him. He proposed that MCL calculate whether it had caused Mr W a loss by comparing the portfolio's performance against an average rate available from fixed rate bonds, and compensate based on any loss identified.

Mr W's representative said that Mr W agreed with the investigator's findings.

MCL disagreed with the investigator's assessment. It provided documentary evidence that had previously been forwarded by Mr W's representative. Referring to its trading account application form, MCL noted that Mr W was recorded as being a medium risk investor, seeking a balanced investment strategy. It commented that as an advisory client Mr W gave his permission for each recommended trade, and that taking into account withdrawals which had been made, the account had been profitable.

The investigator responded that based on Mr W's wider circumstances, his view remained that Mr W's ATR was lower than the medium rating MCL had recorded. Acknowledging MCL's comment that the portfolio had performed well, he still considered the loss calculation should be carried out to determine if any redress was due to Mr W as a result of the investment advice MCL provided.

In reply MCL referenced other complaints that had been brought to this service by Mr W's representative in respect of different consumers. In each of those cases, the consumers had also been advised by Adviser B. MCL commented that this service had not upheld those other complaints, concluding that Adviser B "if anyone, acted in an unprofessional manner and not Mayfair Capital."

MCL highlighted that its trading account application form showed Mr W had an income higher than his outgoings in 2019. It said that Mr W's wife was also receiving a pension, and the outstanding mortgage Mr and Mrs W had of £9,000 was relatively small. Mr W was recorded as having a good understanding of financial and economic affairs, and having worked in a professional capacity in the financial sector for at least one year. MCL said that Mr W had indicated a 10% loss within 12 months would cause him concern, and it commented that that had not happened since he'd been an MCL client.

MCL referred to Adviser B's transfer suitability report, in which Mr W's ATR was classified as 'high medium risk'. Whilst the investigator had said that Mr W didn't have a long investment horizon or sufficient capacity for loss to justify an ATR of medium, MCL said that in communication with Adviser B, Mr W had been presented as looking to invest for ten or more years. MCL's view was that based on the information provided, it was reasonable to consider that Mr W had a medium ATR, and it said that the portfolio it recommended did not stray from this. It said the investigator's view suggested that it should have disregarded Mr W's will, and also Adviser B's recommendation when it had found Mr W suitable for MCL's service. MCL commented that it had never previously been told that its 'know your customer' form was inadequate for assessing a client's suitability, and it felt this invalidated the good work it had done for Mr W.

The investigator confirmed that this complaint would be passed to an ombudsman for review.

What I've provisionally 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.

Initially I should comment on MCL's referencing of other cases that have been brought to this service. MCL has said that in these cases, and in Mr W's case, the consumer was advised by Adviser B. It has highlighted that these other cases were not upheld. I note what MCL has said, but I should emphasise that we consider each complaint on its own merits,

based on its own set of circumstances. That being the case, this is what I have done when considering Mr W's complaint.

The crux of this complaint relates to the recommendations to invest his pension fund that MCL provided Mr W. It's MCL's position that Mr W had a medium ATR, and this was reflected in the advice to invest that it gave him.

MCL has referred to the transfer suitability report of Adviser B produced in July 2019 in which Mr W was classified as having a 'high medium' ATR, and said that he wanted to invest for ten years or more. Although I appreciate that Mr W's MCL trading account was opened only a few months after Adviser B's report, MCL was taking on the responsibility for advising on the pension fund's investment. As such it needed to ensure it was satisfied with the assessment of Mr W's ATR, and that it knew what his objectives were in terms of his pension fund.

This was also explained in MCL's own documentation. At the start of MCL's trading account application it confirmed that it needed to take steps to ensure it knew facts about Mr W's "financial position, investment objectives and risk profile that we might reasonably need to know in order to assess the suitability of our advice."

On the application form, Mr W was recorded as being employed earning just under £1,500 a month. He had £6,000 in cash savings. His pension savings were recorded as being around £86,000, and I understand this represented the amount that was held in the SIPP which MCL was to advise on the investment of. Mr W had a mortgage of £9,500 and other liabilities of £2,000. His wife's pension was noted as being £3,200 a year.

As MCL has highlighted, on its application form it was recorded that Mr W had a good understanding of "general financial and economic affairs". The form also stated that he'd worked in the financial sector for at least one year in a professional position which required "knowledge of the nature and risks associated with the products that you wish to invest in". The form said Mr W did not have any other professional experience or qualifications which would assist him in understanding risks associated with the products he wished to invest in.

In the next section, Mr W was asked if he'd ever invested in certain listed products. His response was that he'd never invested in any collective investments, gilts, bonds, 'major' shares, smaller cap shares or those listed on AIM, derivatives or other investments such as property or wine.

MCL has focused on Mr W's recorded good overall understanding of general financial and economic affairs, and his work in the financial sector for at least one year. However, MCL's form confirms that Mr W had never invested in collective investments, bonds or mainstream shares, let alone more specialist and higher risk assets such as AIM shares.

It seems to me that having a good understanding generally of financial and economic affairs does not necessarily mean that a consumer has a good understanding of the range of products that they could invest their own pension savings in, or the risks that attach to those investments. MCL's application form stated that Mr W had at least one year's experience in a professional position which required knowledge of the risks of products he wanted to invest in. But there was no further detail about what exactly Mr W's professional position had been in the financial sector. And the type of business that the form recorded Mr W had been employed in for the previous five years does not appear to have been related to the financial sector.

Taking all of the above into account, in terms of investment of his own assets, on balance my view is that Mr W would reasonably be described as inexperienced. It was therefore

incumbent on MCL to ensure that Mr W had an understanding of the nature of the risks that the investments it recommended to him entailed, and also to ensure that these investments were suitable for Mr W's circumstances.

In terms of overall investment objectives, MCL's application form stated that Mr W was seeking both income and capital growth. For overall ATR three options were available, and Mr W was asked to pick one that was the best description for him. The form recorded Mr W as being medium risk, meaning he was "equally concerned about limiting my losses, as I am about achieving returns". Low risk was described as more concerned about limiting losses than achieving returns, and the high risk description was in essence the opposite of low risk. There is no further explanation or detail on the form about how Mr W's recorded ATR was determined by MCL.

It was stated that a decrease of up to 10% in value within a twelve month period would begin to cause Mr W concern, although the form didn't define whether this applied to individual holdings or the portfolio value as a whole. A section entitled 'Preferred Product Classes & Asset Allocations', which was for advisory clients like Mr W, asked for the maximum percentage of the portfolio that Mr W wished to invest in products or investment classes. However, this section of the form does not appear to have been filled in for Mr W. Consequently in my view it is difficult to know how exactly asset allocation between different investment classes was explained to Mr W by MCL, and whether the attaching levels of risk were also explained to him.

MCL's form stated that Mr W was looking to invest for ten years or more. However, Mr W's intended retirement age recorded by Adviser B in July 2019 was age 66, which suggested he was only looking to invest his SIPP funds for about six years. Taking into account that Mr W was around age 60 when he applied for the MCL trading account, and the SIPP funds he placed with MCL represented a significant portion of his pension benefits, it seems to me it was unlikely that the funds would be invested for ten years or more. Based on the limited other assets that Mr W is recorded to have had in October 2019 when he applied for the MCL trading account, I consider it was more likely than not that Mr W would require the funds for his retirement within about six years of them being invested.

That being the case, I consider the level of volatility Mr W's SIPP funds could reasonably be exposed to was limited, and this limited the level of risk that was suitable for Mr W's circumstances. As I explained above, my view is that Mr W was an inexperienced investor with regard to his own assets, including his pension funds. Although MCL recorded Mr W as having a medium ATR, in my opinion it's difficult to reconcile this rating with Mr W's financial situation. Overall, my view is that it is more likely that for these pension funds, Mr W would reasonably be described as having a cautious ATR, as his representative has said.

The portfolio recommended by MCL for the SIPP funds included just over 17% being invested in M shares, this being at outset the largest single holding. MCL has not provided any details about why it recommended investing such a significant proportion of the funds in this one holding, and it's also not provided any details about these particular shares. Online information indicates that M shares were listed overseas and represented an investment company that acquired small to medium sized enterprises. From the limited information I've seen, my view is that M shares represented too high a risk for Mr W's objectives and his ATR.

A further seven holdings were recommended to Mr W when his SIPP funds were initially invested in February 2020. MCL has also not provided further details about any of these holdings. However taking into account what I've said about the size of the investment in M shares, it does not seem to me that the overall investment recommendations made by MCL

on its trading account to Mr W were suitable for his cautious ATR and his financial needs at this time.

I note MCL has stated that Mr W's trading account was profitable, but this does not mean that the recommendations it made were suitable for Mr W's circumstances. The redress calculation detailed below will determine whether MCL's actions have caused Mr W a loss.

In terms of the redress calculation, I have come to a different view to the investigator about the benchmarks which should be used for this. In my view, it's reasonable to conclude that as a cautious investor, Mr W was willing to take a small amount of risk with his SIPP funds. For that reason, I currently intend to require MCL to determine whether its actions caused a loss for Mr W by carrying out the following calculation."

Responses to my provisional decision

Neither Mr W or his representative nor MCL responded to the provisional 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.

Having done so, and taking into account that the parties did not make further submissions to my provisional decision, I do not consider that I have reason to alter the conclusions reached in that provisional decision.

Fair compensation

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr W would have invested differently. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr W's circumstances and objectives when he invested.

What must MCL do?

To compensate Mr W fairly, MCL must:

- Compare the performance of Mr W's investment with that of the benchmark shown below. 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.

- MCL should also add any interest set out below to the compensation payable.
- If there is a loss, MCL should pay into Mr W'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 MCL is unable to pay the compensation into Mr W's pension plan, it should pay that amount direct to him. 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 Mr W won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr W 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%.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Mr W's SIPP	Still exists and liquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable 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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, MCL should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the portfolio should be deducted from the fair value calculation 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'll accept if MCL totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr W wanted income with some growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- 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's a fair measure for someone who was prepared to take some risk to get a higher return.

I consider that Mr W's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr W into that position. It does not mean that Mr W would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr W could have obtained from investments suited to his objective and risk attitude.

My final decision

My final decision is that I uphold this complaint and require Mayfair Capital Limited to pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 June 2025.

John Swain
Ombudsman