DRN-4086374

The complaint

Mr F complains he was mis-sold an investment by Mayfair Capital Limited (MCL) into two bonds. He was told his money was safe and would be returned after five years but has now found out this has been extended for a further two years. He is concerned about losing the money he invested for his pension.

What happened

In July 2017, MCL purchased two bonds for Mr F as part of an advisory service it provided for his self-invested personal pension (SIPP). Approximately £10,500 was invested into the bonds, with an expected maturity date in five years' time.

In February 2022, Mr F made inquiries with MCL about the maturity of his investments as he wanted to return the funds to his pension. MCL informed him the term had been extended and his investments would no longer be maturing after five years - but instead it would be in a further two years' time in 2024. Mr F was unhappy with this explanation, so raised a complaint. He said he was never told the term could be extended without his agreement and was now worried he may not get anything back.

MCL responded to the complaint but didn't uphold it. In summary it said:

- Its investment into the bonds, made up of the Corporate Bond element of Mr F's portfolio, had been disappointing. It felt confident that this was a relatively safe investment but due to the outbreak of Covid-19, there had been a material impact on the issuing company and as a result the maturity was extended.
- The bonds are currently showing a zero value, but it still believes Mr F will receive the principle of the investment when they mature in 2024.
- It didn't agree to return Mr F's original investment on the basis that the facts of the investment were presented to him at the outset, and he agreed to proceed acknowledging the risk warnings in the onboarding documentation.

Mr F asked our service to complete an independent review of his complaint. One of our investigators looked into it and upheld the complaint. He was persuaded Mr F was willing and able to take some risk with his pension funds with the hope of achieving returns that would keep pace with inflation and provide real growth. But considering his personal and financial circumstances, he had a limited amount of income and assets on which he could rely to provide for him in retirement. He was not persuaded Mr F was in a position to invest any proportion of his pension funds in higher risk or speculative investments. Overall, he found it was inappropriate for MCL to recommend Mr F invest a proportion of his limited pension funds into the bonds.

MCL didn't accept the investigator's conclusions. In summary it said:

- Mr F indicated that he was comfortable with 15% in high-risk investments – and this is not unusual for a balanced portfolio.
- Mr F came to MCL via an IFA who would have presented the brochure and the type of asset allocation he would have expected to receive, and he also went through MCL's Know Your Client (KYC) process.
- The bonds were at the time considered an Investment Grade "A" rated product from

an internationally recognised rating agency (therefore not considered as high risk). MCL and Mr F felt comfortable with the investment for this reason.
- Although, the bonds haven't performed as expected, Covid-19 had a significant impact on the product, and it has been extended because of exceptional circumstances. While an extension wasn't discussed, this is a lesser extent to the core risk warning which states all investments can go to zero.

As no agreement could be reached the complaint has been passed to me to reach a 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.

The information provided by the parties indicates that MCL was providing an advisory investment management service to Mr F's SIPP. This advisory element triggered MCL's regulatory responsibility to give suitable advice (and the responsibility to properly assess Mr F's profile for this purpose).

The complaint made by Mr F is specifically in respect of two bonds that were held within his portfolio. His complaint was triggered by the underperformance of bonds leading to an extension of the redemption date and concerns whether his capital will be returned. Mr F says he wasn't aware of this possibility when MCL advised him.

So, I've looked at the available evidence to decide whether (or not) the bonds were suitable for Mr F. The bonds in question were a non-standard, speculative, and illiquid investment, which broadly speaking, is not commonly a suitable type of investment for most retail client pensions, or at least not in any significant proportion. This means good reasons and particular circumstances would probably have been needed to justify such an investment.

Mr F says, prior to investing his pension through MCL, he had dealt with another advisor who had assessed him as having a cautious attitude to risk. He said he had no intention of investing in high-risk products and just followed the advice he was given.

MCL's KYC process collected information in relation to Mr F's circumstances at the time. He was employed and living in rented accommodation. He had around £1,000 in cash but no other investments, aside from the £72,000 set aside for investment within his pension. I haven't seen evidence of him previously investing in unregulated products or schemes. MCL made a different assessment of Mr F's attitude to risk and found him to have a medium attitude to risk, with the other options being low and high.

The bond appears to have been invested in corporate debt in the asset based lending and corporate peer-to-peer sector. Mr F has provided a copy of factsheets he received about the bonds. Returns were dependent on the repayment of loans by borrowers. This type of investment carries inherent risks – for example, the risk of illiquidity if/when the relevant debt isn't repaid due to third party borrowers not meeting commitments and even when secured there is also a risk in the event of default the value of the security may not be sufficient to return. The multifaceted risk of this type of investment means capital might not readily be recoverable leading to a total loss and promised interest payments not made.

The information I've seen about Mr F circumstances suggest he had limited funds available and not much experience of risk-based investment. He was in his 50s, so not that many years from his state retirement age. He also only had a modest level of funds to invest in his pension. From what I've seen, Mr F didn't have much in the way of capacity for loss as this appears to be his only pension provision. The investment into these bonds made up nearly 15% of all of his pension savings. The idea of placing his pensions funds in a high-risk unregulated investment doesn't fit his apparent capacity for loss.

While I note MCL recorded Mr F as having a medium attitude to risk, I'm not persuaded his circumstances support this. As mentioned above he doesn't appear to have much in the way of investment experience and a limited capacity for loss. In addition to this, I've seen evidence to support Mr F's claims that his previous IFA considered him to be have a cautious attitude to risk at time, before MCL reassessed him. This appears to be more in line with I've seen of his circumstances. This all leads me to the conclusion that this type of investment wasn't suitable for Mr F.

I have noted MCL comments about the bonds having "A" grading, so were considered safer. I also acknowledge wat MCL says about the impact Covid-19 had on the bonds' performance. But these points don't change the nature of the bonds or make them appropriate for retail client pensions. The nature of the bonds - a non-standard, speculative, and illiquid investment which wasn't appropriate to be held in most retail client pensions - should have led MCL to question whether they would be suitable for someone in Mr F's circumstances and not recommended them.

Overall and at the time of the investment, Mr F's profile did not fit that of an investor seeking a high-risk and sophisticated investment. On balance and for the reasons given above, I don't think the bonds were suitable for Mr F and shouldn't have been recommended to add to his portfolio.

Putting things right

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

I take the view that Mr F would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr F's circumstances and objectives when he invested.

What must MCL do?

To compensate Mr F fairly, MCL must:

- Compare the performance of Mr F's investments 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.

- MCL should pay into Mr F's pension plan to increase its value by the total 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 total amount into Mr F'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 total amount 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 F won't be able to reclaim any of the reduction after compensation is paid.

– The *notional* allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age.

– For example, if Mr F is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr F would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

– Pay Mr F £300 for distress caused by the loss of a significant proportion of his pension investment.

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

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
CBF Ltd Bonds	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	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.

It may be difficult to find the *actual value* of the investments. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. MCL should take ownership of the illiquid investments by paying a commercial value acceptable to the pension provider. The amount MCL pays should be included in the actual value before compensation is calculated.

If MCL is unable to purchase the investment, the *actual value* should be assumed to be nil for the purpose of calculation. MCL may require that Mr F provides an undertaking to pay MCL any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. MCL will need to meet any costs in drawing up the undertaking.

Fair value

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

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr F wanted Capital growth and was willing to accept some investment risk.

- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr F's circumstances and risk attitude.

My final decision

I uphold the complaint. My decision is that Mayfair Capital Limited should pay the amount calculated as set out above.

Mayfair Capital Limited should provide details of its calculation to Mr F in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 12 January 2024.

Daniel Little
Ombudsman