

The complaint

Mr and Mrs M have complained that the advice they received from Capital Professional Limited ('CPL') to invest into Stirling Mortimer Cape Verde No.4 Fund wasn't suitable for them. They would like financial compensation for the loss they have incurred.

What happened

Mr and Mrs M were advised in December 2007 to invest £50,000 into the Stirling Mortimer Cape Verde No.4 Fund ('Stirling Mortimer Fund') by (the predecessor business of) CPL. In 2021 they discovered that the Stirling Mortimer Fund wasn't likely to have any value and that the investment exposed them to a higher level of risk than their medium risk profile. They complained to CPL.

CPL thought that Mr and Mrs M had made their complaint too late under the time limits that apply. Mr and Mrs M then brought their complaint to this service. I decided that the complaint hadn't been made too late and the merits could be looked at.

Our investigator who considered the complaint thought it should be upheld. She said;

- The investment was classified as an unregulated collective investment scheme ('UCIS') which was high risk.
- There was limited information from the time of sale, but she didn't think that Mr and Mrs M were sophisticated or high-risk investors which would make them suitable candidates for a UCIS type investment.
- She thought Mr and Mrs M should be compensated by comparing the performance of the Stirling Mortimer Fund with the FTSE UK Private Investors Income Total Return Index.
- She also thought Mr and Mrs M should be paid £150 for the trouble and upset caused in trying to resolve the matter.

CPL wasn't satisfied with the investigator's opinion;

- It was surprised the complaint was upheld based on the recollection of Mr and Mrs M bearing in mind no paperwork had been retained.
- The investigator had said that Mr and Mrs M's recollection was that their priority was to pay off their mortgage and raise their three children. They didn't have much savings at the time and Mr M didn't have an occupational pension. CPL couldn't agree that this tallied with Mr and Mrs M not being concerned about a 34% drop in the value of the investment which they were aware of in March 2018
- If a decision could be made on recollections alone then Mr and Mrs M must recall the investigation into the Stirling Mortimer Fund carried out by the Serious Fraud Office in 2018.

CPL asked that the complaint be decided by an ombudsman, so it has been passed to me.

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.

After doing so, I've reached the same outcome as the investigator and broadly for the same reasons. I'll explain why.

There is limited documentary evidence available from the time of the sale. CPL told us it searched its paper archive files but hasn't been able to provide copies of documentation relating to the advice given to Mr and Mrs M in December 2007. I would say I don't find this surprising because of the time since the sale and businesses aren't obliged to keep paperwork indefinitely. And Mr and Mrs M don't have any point-of-sale correspondence either.

In the absence of such evidence, I will consider Mr and Mrs M's recollections from the time of the sale about their circumstances and investment objectives. Where there is little evidence available from the time of the sale and there is a dispute about what happened, I've based my decision on the balance of probability and what I think most likely happened.

Mr and Mrs M's circumstances

Mr and Mrs M's recollections at the time of the 2007 sale are they were married with three children. They lived in their jointly owned home which was valued at around £220,000 with an outstanding mortgage of £12,000.

Mr M was 53 years of age and had been self-employed since the mid-90's. He was mindful that he wouldn't have an occupational pension upon retirement so was keen to invest into a SIPP and would make lump sum contributions annually depending on how well his business had performed.

Mrs M was 52 years of age and also employed, earning an annual salary of around £25,000.

Mr and Mrs M's attitude to risk

Clearly Mr and Mrs M were seeking advice because they didn't have the knowledge or experience to make an investment decision unaided. CPL needs to be able to demonstrate that it gave suitable advice taking into account Mr and Mrs M's circumstances, understanding and knowledge after ascertaining their attitude to risk.

But, as mentioned above, there is little documentary evidence to show how Mr and Mrs M's investment objectives and attitude to risk were established or that it was discussed whether Mr and Mrs M had the necessary experience and knowledge in order to understand the risk involved. But on the assumption that Mr and Mrs M say they knew their adviser for many years, and Mr M made annual lump sum contributions into his SIPP I don't think it's unreasonable for me to assume they both had some investment experience, but I can't be sure to what extent.

In any event, Mr and Mrs M have said they were prepared to accept a medium attitude to risk with their investments. And with this in mind I've reviewed the other investments they held within their portfolio from a valuation dated March 2018. I fully accept this is ten years later than when their Stirling Mortimer Fund investment took place. But in the absence of any other documents, I've reviewed the level of risk I think their 2018 portfolio exposed them to and considered this along with their recollection of their circumstances and comments about their attitude to risk at the time the advice was given.

In March 2018 Mr and Mrs M's joint assets were valued at just over £930,000 and comprised investments within Mr M's pension plan, an investment bond, cash of £300,000 and the Stirling Mortimer Fund investment. The underlying investments within the pension wrappers and the investment bond are predominantly mainstream collective investments with exposure to both income and capital growth. And that along with the cash held (which I can't know if it was held for an intended purpose) suggest to me that – with the exception of the Stirling Mortimer Fund – the investments held within Mr and Mrs M's portfolio exposed them to no more than a medium investment risk.

Taking all of the above into consideration I'm persuaded it was more likely that Mr and Mrs M were willing to take some risk with their money. But not too much and not to the extent that they were advised to do – to invest into the Stirling Mortimer Fund. I say this bearing in mind what I think their capacity for risk was – and inevitably because of the time that has passed – based on the balance of probability because of the limited evidence about how the level of risk they were prepared to take was arrived at. Or equally, being given any evidence that would make me think differently.

The advice

In December 2007 Mr and Mrs M, upon the advice of CPL, invested £50,000 into the Stirling Mortimer Fund which was a UCIS. The Stirling Mortimer Fund was a higher risk investment exposed to overseas property development in Cape Verde.

The Financial Conduct Authority ('FCA') has always considered UCIS to be high risk investments. On 1 November 2007 the FCA introduced legislation limiting the type of investor they can be promoted to. These included certified high net investors, certified sophisticated investors, and self-certified sophisticated investors. I haven't seen any evidence, or anything to suggest that Mr and Mrs M would fit into any of those categories or would be viewed as sophisticated investors.

However, even ignoring the above, if I think there may have been a technical breach in the promotion rules, I still may conclude that the advice to invest was suitable for Mr and Mrs M, as part of their overall portfolio, and the breach didn't cause them to invest where they otherwise wouldn't have. But I don't think that is the case here.

I say this because Mr and Mrs M told us they had known their adviser for decades and had built trust over those years and were implicitly reliant upon the advice they were given. They say that because of this they didn't doubt the Stirling Mortimer Fund was suitable for them when they were advised to invest. They say they were told it was registered in Jersey with banker's backing. It was promoted to them as a good investment and were told that once the properties under development were sold, the assets would be wound up and the investors paid up.

I've borne in mind that Mr and Mrs M say they were totally reliant upon the advice given to them – I am persuaded by this – and that they were advised the Stirling Mortimer Fund would expose them to a medium level of risk. I haven't seen anything to suggest that they would have thought otherwise. And while I'm satisfied that taking into account the investments held in 2018 and Mr and Mrs M's circumstances they told us about, I accept it might have been the case that Mr and Mrs M did want to explore the opportunity to make their money grow, but I don't think that would have extended to exposure to an unregulated, higher risk investment exposed to overseas property development.

And because of the time that has passed, and the lack of evidence or information to show how CPL assessed Mr and Mrs M's attitude to risk for this investment I have to take into

account what is known about Mr and Mrs M's circumstances and consider whether the investment recommended was suitable. Their investment behaviour and circumstances don't suggest to me that they wanted anything that would have exposed them to a higher than medium risk investment. So overall and on the balance of probabilities, I don't think the Stirling Mortimer Fund was suitable for and they shouldn't have been advised to invest.

CPL has referred to the 2018 valuation that showed a 34.76% fall in value of the Stirling Mortimer Fund and that by not taking any action about this at the time, Mr and Mrs M were comfortable with the risk. I already decided this point in my jurisdiction decision so won't make any further comment. And similar applies to the investigation into the Stirling Mortimer Global Property Fund by the Serious Fraud Office in 2018. Mr and Mrs M were invested by this time, so this later investigation is irrelevant for their concerns about what they were told at the point of sale.

Overall, and taking into account the limited point of sale documentation and what is known about Mr and Mrs M's circumstances and objectives at the time, I think their money invested into the Stirling Mortimer Fund was exposed to risks I'm not persuaded they were willing or able to take. I am satisfied that the advice Mr and Mrs M were given in 2007 wasn't suitable for them taking account of their personal and financial circumstances that I've already outlined.

So, in the particular circumstances of this complaint, I am upholding it. I think the advice wasn't suitable for Mr and Mrs M. I also think that Mr and Mrs M should be paid £150 for the trouble and upset they have been caused.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs M as close to the position they would probably now be in if they had not been given unsuitable advice.

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

What must CPL do?

To compensate Mr and Mrs M fairly, CPL must:

- Compare the performance of Mr and Mrs M's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- CPL should also add any interest set out below to the compensation payable.
- Pay to Mr and Mrs M £150 for the trouble and upset they have been caused.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Stirling	Still exists	FTSE UK	Date of	Date of my	8% simple per

Mortimer Cape Verde No.4 Fund	but illiquid	Private Investors Income Total Return Index	investment	final decision	year from final decision to settlement (if not settled within 28 days of the business receiving the complainants' acceptance)
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Actual value

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

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mr and Mrs M agree to CPL taking ownership of the investment if it wishes to. If it is not possible for CPL to take ownership, then it may request an undertaking from Mr and Mrs M that they repay to CPL any amount they may receive from the investment in future.

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 have decided on this method of compensation because:

- Mr and Mrs M wanted income with some growth and were 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 a mix of diversified indices representing 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 and Mrs M's circumstances and risk attitude.

My final decision

For the reasons given, I uphold the complaint. My decision is that Capital Professional Limited should pay the amount calculated as set out above.

Capital Professional Limited should provide details of its calculation to Mr and Mrs M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 29 December 2023.

Catherine Langley
Ombudsman