DRN-5016094

The complaint

Ms F complains that Bede Wealth Management Limited ("Bede") sold her an unregulated investment when it shouldn't have.

What happened

Ms F invested £25,000 in Marc Sharpe Limited ("MSL") on 18 October 2016 and received regular monthly payments following this for around 15 months which in the main amounted to 2% of the initial amount paid to MSL and totalled £7,550. The last such payment was received into her bank account on 12 February 2018. MSL was wound up by court order dated 20 November 2019 with the liquidation still ongoing.

Ms F raised a complaint with Mr L of Bede in which she identified various concerns regarding the 'group action' she went along with as well as arguing that Bede had a duty of care to her because it had sold an unregulated investment to her and had responsibility for issues arising after she had invested.

Bede provided a final response rejecting her complaint. I am not going to set out its response regarding the concerns as to the group action because this isn't something we would be able to address in any event. In relation to the other parts of her complaint Bede made the following key points:

- Neither Bede nor Mr L had anything to do with the running of MSL.
- The MSL product was a private managed account giving returns of 2% per month on the investment and after reading literature Ms F completed the paperwork which was reviewed by Marc Sharpe and accepted by MSL and this was prior to her meeting with Mr L on 28 June 2017.
- Marc Sharpe mentioned numerous times in seminars attended by Ms F that the product was unregulated.
- Bede do not advise on unregulated products so no blame can be laid against it.

Ms F didn't accept what Bede had said in its response and referred her complaint to our service. It was considered by one of our investigators who thought that we had jurisdiction to consider the complaint and that it should be upheld.

The investigator said Bede should compare the performance of the MSL investment with our usual benchmark for someone willing to take a small or cautious risk with their investment. He also said that Bede should pay Ms F £300 for the distress and inconvenience caused to her. Bede didn't agree with the investigator so the matter was referred to me for review and decision. I issued a provisional decision the findings from which are set out below.

"Before I can consider the merits of the complaint I need to be satisfied that we have jurisdiction to consider it. In many cases this will be apparent without needing to specifically address this by way of written decision . However, in this case, given the lack of

documentary evidence and the issues that arise from the arguments put forward by Bede, in particular that Ms F was never a client and it didn't promote or otherwise have anything to do with the MSL investment, I think I do need to address jurisdiction.

Do we have jurisdiction to consider the complaint?

The rules under which we operate are set out in the Handbook of the industry regulator, the Financial Conduct Authority (FCA) and can be seen in the Dispute Resolution: Complaints (DISP) section. DISP 2.2.1G explains that our jurisdiction depends on; the type of activity to which the complaint relates; the place where the activity which the complaint relates to took place; the eligibility of the complainant; whether the complaint was referred to us in time.

There is no issue about the place the complaint relates took place. I am also satisfied the complaint was referred in time. Ms F complained to Bede by email dated 15 March 2022 and this was within six years of the event complained – being the sale of the MSL investment in October 2016 – and she referred her complaint to us within six months of the final response Bede sent, dated 16 March 2022.

In terms of the activity the complaint relates to, DISP 2.3.1R states:

The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the following activities:

> *(1) regulated activities (other than auction regulation bidding and administering a benchmark);*
>
> *(2) ……*

or any ancillary activities, including advice, carried on by the firm in connection with them."

I haven't listed all the other activities set out in DISP 2.3.1R because they have no relevance to this complaint. In terms of what amounts to a regulated activity, this is by reference to the activities set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the RAO").

In her complaint to Bede Ms F has referred to it having promoted, introduced, and advised on the MSL investment. The activities identified in the RAO include advising on investments and arranging deals in investments and these are the only two regulated activities set out in the RAO which I think could apply in this complaint. If either or both of those activities took place then we can also look at other actions taken by Bede, such as promoting and introducing the investment, if these are ancillary to one of the regulated activities.

Article 53 of the RAO deals with the regulated activity of advising on investments. It states:

53. Advising a person is a specified kind of activity if the advice is—

(a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and

(b) advice on the merits of his doing any of the following (whether as principal or agent)—

> *(i) buying, selling, subscribing for or underwriting a particular investment which is a security or a relevant investment, or*
>
> *(ii) exercising any right conferred by such an investment to buy, sell, subscribe*

for or underwrite such an investment."

Arranging deals in investments is made up of two parts as set out in article 25 of the RAO, which at the time of investment stated:

25. (1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—

(a) a security,

(b) a relevant investment, or

(c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity.

Both advising on investments and arranging deals in investments requires that the investment is a security or relevant investment.

The RAO defines a security as any investment of the kind specified by any of articles 76 to 82. The only investment within the specified articles that I think could apply is 'instruments creating or acknowledging indebtedness' (article 77). The article refers to specific types of such instruments but it also includes a catch all - 'any other instrument creating or acknowledging indebtedness'.

Ms F invested in MSL having been provided with a document headed "2% Investment Product – Marc Sharpe Investments" which refers to "2% income per month - £25,000 x 2% = £500". Ms F received 2% each month for the first 15 months of her investment – save for two months when she received a lower sum.

The agreement between Ms F and MSL dated 18 October 2016 is contradictory in parts but makes reference to instructing the transfer of the monthly profit to the client's bank account to commence one month from the commencement date and every month thereafter. There is also reference to any dispute over the 'guaranteed monthly profit' payable to the client being referred to the company accountants. Ms F invested in MSL based on her understanding from the documents provided to her that MSL would pay her a monthly amount. Based on the available evidence I am satisfied that the investment was an instrument acknowledging indebtedness.

I now turn to whether Bede either advised Ms F about the investment or arranged it. In terms of advice I need to be satisfied that she was given advice on the merits of making such an investment. I note that Bede has argued it wasn't authorised to promote or advise on unregulated products but whether it carried out those activities isn't based on it being authorised to do so. Rather it is a question of fact determined by what it actually did. In other words, if it advised Ms F to invest (or arranged the investment) then it carried out those regulated activities regardless of what permissions it has from the FCA and as such the complaint relates to an activity that comes within our jurisdiction.

Normally when a firm provided advice there will be documentation that shows this, such as a fact find and suitability letter that sets out the advice given. There are no such documents in

this case but that doesn't of itself mean that Bede didn't advise Ms F. She says that in autumn 2016 she was on track to reinvest with the firm she had previously been invested with but was persuaded by Mr L, the authorised director of Bede, to invest in MSL instead, because the income was greater that she could get through other investments. I am mindful she is recalling events from a long time ago and her memories are unlikely to be complete or necessarily entirely accurate and there is no supporting documentary evidence.

Having said that, I think it is unlikely her recollection is completely wrong such that there was no discussion between her and Mr L about the interest payable. I have also considered the guidance provided by the FCA in its Perimeter Guidance manual ("PERG"). This makes it clear that regulated advice includes:

"any communication with a customer which in the particular context it is given goes beyond the mere provision of information and is objectively likely to influence the customer's decision whether or not to buy or sell" (PERG 8.28.2G).

As well as the discussion between Mr L and Ms F about the interest she would get from MSL the following is relevant in my view:

- *Ms F and Mr L had a previous relationship when he worked for a previous firm.*
- *Mr L had asked Ms F to provide an authority that allowed him to obtain information about her existing investment with that previous firm which she had agreed to.*
- *That previous investment had come to an end and Ms F was looking to reinvest the balance of the proceeds after paying off her mortgage.*
- *Ms F wasn't an experienced investor with knowledge of different types of investment and is unlikely to have chosen an investment herself without advice.*
- *Bede introduced the investment to Ms F.*
- *Given the previous relationship with Mr L she is likely to have understood any investment he specifically referred to as being an investment he was advising her to invest in.*

So it is clear, I have found Bede was the introducer because Mr L was identified as the introducer of the investment in an email from Marc Sharpe to Ms F dated 12 June 2020, in which he said:

"Your Introducer Mr L (name anonymised); he and I have met on a number of occasions to discuss all his client portfolio to ensure that we did what was best for them…… "

And Mr L confirmed he was an introducer in a letter to Ms F dated 4 August 2020 in which he stated:

"I am writing to you as a Client and Investor myself, but also as I made an introduction to Marc Sharpe as long ago as 2016 in some cases, to provide an update on the Discretionary Managed Accounts (Managed Accounts) that Marc Sharpe was managing on yours, mine and others behalf."

In the circumstances I am satisfied that Bede carried on the regulated activity of advising on investments.

However, I accept that this is finely balanced so I have also considered if the complaint

relates to the regulated activity of arranging deals in investments. As Article 25 of the RAO makes clear, there are two limbs to arranging deals in investments. There is some guidance in PERG as to their application.

PERG 2.7.7BG states:

"The activity of arranging (bringing about) deals in investments is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, arrangements that bring it about). The activity of making arrangements with a view to transactions in investments is concerned with arrangements of an ongoing nature whose purpose is to facilitate the entering into of transactions by other parties. This activity has a potentially broad scope and typically applies in one of two scenarios. These are where a person provides arrangements of some kind:

(1) to enable or assist investors to deal with or through a particular firm (such as the arrangements made by introducers); or

(2) to facilitate the entering into of transactions directly by the parties (such as multilateral trading facilities of any kind other than those excluded under article 25(3) of the Regulated Activities Order, exchanges, clearing houses and service companies (for example, persons who provide communication facilities for the routing of orders or the negotiation of transactions))."

And PERG 8.32.2G states:

"Article 25(1) applies only where the arrangements bring about or would bring about the particular transaction in question. This is because of the exclusion in article 26. In the FCA's view, a person brings about or would bring about a transaction only if his involvement in the chain of events leading to the transaction is of enough importance that without that involvement it would not take place. The second limb (article 25(2)) is potentially much wider as it does not require that the arrangements would bring about particular transactions. It is this limb which is of potential relevance within the scope of this guidance."

I have considered the evidence as to how Ms F came to be invested in MSL with the above guidance in mind. I have already referred to the evidence that shows that Mr L introduced the investment to Ms F. It is also Ms F's evidence that a Bede employee attended at her home with the documents needed for her to complete which he took away along with her cheque of £25,000 for the investment. Bede hasn't challenged this but argues that the employee, who was known to Ms F, wasn't acting for it at the time. I am not persuaded by what it has said, especially given that Mr L was the introducer of MSL to Ms F.

I think when looked at as a whole the actions by Bede – the introduction of the investment, attending on Ms F with the documents for her to complete and then sending the documents and cheque to MSL were significant and were of enough importance that without them the investment wouldn't have taken place. I am therefore satisfied that Bede was carrying on the regulated activity of arranging deals in investments under Article 25(1) of the RAO.

Even if Bede were to persuade me that I was wrong about the arrangements coming with Article 25(1) they would in my view undoubtedly amount to arranging deals in investments under Article 25(2). This doesn't require that the arrangements would bring about a particular transaction, only that the arrangements are made with a view to making an investment.

I am satisfied that introducing the investment and providing the necessary documents for Ms F to complete for her to invest in would amount to arranging deals in investments under Article 25(2) if they weren't arrangements under Article 25(1).

I am also satisfied that Ms F is an eligible complainant. There are two parts to this. Firstly she has to be one of the categories of person set out under DISP 2.7.3R. Based on the information in this complaint I am satisfied she is a consumer – she is an individual acting for purposes which are wholly or mainly outside her trade, business, craft, or profession.

Secondly she has to have a complaint that arises out of one of the relationships set out in DISP2.7.6. The first of these is that customer and I am satisfied based on the findings I have already made that she was a customer of Bede's in relation to her complaint about being invested in the MSL.

The merits of the complaint

Having decided we have jurisdiction to consider this complaint I now turn to the merits.

Having considered the limited evidence available I am satisfied that Bede promoted the investment to Ms F. Promotion of an investment of itself isn't a regulated activity but is an activity we are able to consider where it is ancillary to a regulated activity. It isn't the case that a complaint which involves both promotion of an investment and a regulated activity automatically means the promotion is ancillary. However, in this case, given the sequence of events I am satisfied that the promotion is properly considered as being ancillary to Bede advising on MSL and/or arranging the investment.

The rules set out in FCA's Conduct of Business Sourcebook (COBS) didn't permit the promotion of 'non-mainstream pooled investments' to retail clients at the time. This was explained in COBS 4.12.1R – now replaced but in force in 2016. So, if Ms F was a retail client and MSL a non-mainstream investment Bede should never have promoted it to Ms F.

Based on the available information about Ms F I am satisfied that she couldn't have been categorised as anything other than a retail client at the time. As for whether MSL was a 'non-mainstream pooled investment' the definition for this includes various types of investment but the only one that I think could apply to MSL is that of 'unregulated collective investment scheme'. There is no dispute that MSL was unregulated and the meaning of 'collective investment scheme' is broad enough that I am satisfied that MSL could be categorised as such.

In the circumstances I am currently of the view that Bede shouldn't have promoted MSL to Ms F because she was a retail client and MSL was a non-mainstream pooled investment and that in doing so it was in breach of its regulatory obligations. I am satisfied that Ms F only invested in MSL as a result of it being promoted to her and that she wouldn't otherwise have invested in it. In the circumstances I am satisfied that if Bede had complied with its regulatory obligations Ms F wouldn't have invested in MSL and that this complaint should be upheld accordingly and Bede should pay the redress I have set out below.

Even if I am wrong about MSL being a non-mainstream pooled investment and coming within COBS 4.12.1R, I think there were other regulatory failings on the part of Bede which mean this complaint should be upheld in any event.

I have found that Ms F was advised to invest in MSL and under COBS 9.2 Bede was therefore required to assess its suitability for her. COBS 9.2.1(2)R required it to obtain the necessary information regarding Ms F's knowledge and experience "in the investment field relevant to the specific designated investment", her financial situation and her investment objectives so as to allow it to make the recommendation to invest in MSL. COBS 9.2.2R sets out more detail about the information firms need to obtain from clients in order – which includes their risk appetite, risk capacity, purpose of the investment and information on the source of their income, assets, investments, real property, and regular financial

commitments.

I have seen no evidence that Bede sought the information set out in COBS 9.2.2R and without this it wasn't in a position to assess suitability. COBS 9.2.6R makes clear that where a firm doesn't obtain the necessary information to assess suitability it must not make a recommendation. So Bede should never have advised Ms F to invest in MSL. Moreover, based on what I have seen, even if it had obtained the information it should have done, MSL wasn't suitable for Ms F in any event and should never have been recommended to her.

I have also considered the position if Bede didn't advise Ms F to invest in MSL and only arranged the investment. A firm that arranges or deals in relation to non-readily realisable securities for a retail client - where the firm is aware, or ought to be, that the application or order made by the client is in response to a direct offer financial promotion – must comply with the provisions in COBS 10. In short a firm must assess the appropriateness of the investment (COBS 10.2).

A 'non-readily realisable security' includes a non-mainstream pooled investment but has a wider meaning and I am satisfied that MSL comes within the definition. I am also satisfied that Bede knew that Ms F's application for the investment was in response to a direct offer financial promotion. I am therefore satisfied that Bede needed to comply with the provisions in COBS 10 in relation to Ms F's investment in MSL before making arrangements for her to invest.

Under COBS 10.2.1R Bede was required to obtain information about Ms F's knowledge and experience in the investment field relevant to the MSL investment to enable it to assess whether it was appropriate for her. Bede never obtained any such information from Ms F so wasn't in a position to carry out any assessment as to the appropriateness of MSL for her. It should therefore not have proceeded with making arrangements for her to invest in it. This is another reason why I think this complaint should be upheld and redress awarded.

I have also considered whether Bede could have made arrangements for Ms F to invest in MSL if it had complied with COBS 10.2.1R and sought information from her about her investment experience and knowledge. Having done so I am not satisfied that it could. Based on the information provided in this complaint Ms F's experience and knowledge was limited to the investment bond she had - with the firm Mr L had previously worked for - and her pension.

From what she has said the investment bond came to an end in 2016 and it was the remaining proceeds from this – after repayment of her mortgage – that was used to invest in MSL. There is nothing to suggest that she had knowledge and experience of an investment such as MSL - for which terms such as leveraged trades and stop losses were used.

So, on the face of it, if Bede had obtained the information it should have done from Ms F it could not reasonably have concluded that MSL was an appropriate investment for her. The rules would in the circumstances have then required it to warn Ms F that MSL wasn't appropriate for her. If it had done so there is no reason to think that she would have proceeded to invest in it, given she only came to be invested in MSL because it was introduced to her by Bede in the first place. This is another reason why I think this complaint should be upheld and redress awarded to Ms F.

I think there are yet further failings on the part of Bede in relation to Ms F's investment in MSL.

The FCA require all firms to comply with the High Level Principles (PRIN) set out in its Handbook. The Principles are set out under PRIN 2.1.1R and I think the following two are

particularly relevant in this complaint:

Principle 2 - Skill, care, and diligence: A firm must conduct its business with due skill, care, and diligence.

Principle 6 - Customers' interests: A firm must pay due regard to the interest of its customers and treat them fairly.

Principle 7 – Communications with clients - A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

In addition to the Principles, COBS 2.1.1(1)R states:

"A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)."

I have considered what Bede reasonably should have done in the course of introducing and arranging the investment in MSL with the above rules in mind. I think it is reasonable to have expected it to carry out due diligence that allowed it to understand the investment and reasonably conclude that it was in the client's best interests for Bede to promote and arrange the investment as well as allow it to provide the information clients needed to decide whether to invest.

I have been provided with no evidence that Bede looked into MSL at all, never mind carried out any reasonable due diligence that would have provided assurance that it was appropriate to promote it to, and arrange it for, retail clients. Even based on the limited information it did have, which indicated MSL had achieved returns of 2% each month – an annual return of 24% - and would continue to do so Bede should have concluded the investment was at best extremely high risk and inappropriate for most if not all retail clients or at worst wasn't legitimate – which I think is probably the case given the administrators for MSL cannot say it wasn't a Ponzi scheme. It should have been obvious to Bede that it needed further information from MSL to show how it had previously achieved the return indicated – given it purported to have done so – and how it was going to be able to continue paying such a high return going forwards.

I have been provided with no evidence that Bede looked into MSL at all, never mind carried out any reasonable due diligence that would have provided assurance that it was appropriate to promote it to, and arrange it for, retail clients. In failing to carry out any, or any reasonable due diligence, Bede failed to comply with its obligations under Principle 2, Principle 6, and COBS 2.2.1R. Its failure to carry out reasonable due diligence also means that it didn't pay any due regard to the information needs of its clients or provide information that was clear, fair, and not misleading. So it also failed to comply with Principle 7 as well.

I also think Bede was potentially in breach of Principle 8, which requires firms to manage conflicts of interest fairly, given there was an apparent connection between Mr L and Marc Sharpe – Mr L was a director of MS Wealth Limited, another Marc Sharpe company linked to MSL. However, I don't think I need to make any detailed findings on this given the findings I have already made.

In summary, I am satisfied that this complaint should be upheld for the following reasons.

- *Bede introduced and promoted MSL to Ms F when it shouldn't have done so because it was non-mainstream pooled investment and as such not an investment that could be promoted to retail clients under COBS 4.*

- *Bede advised Ms F to invest in MSL without assessing suitability, as it was required to do in accordance with COBS 9.2, before advising her to invest.*

- *MSL wasn't a suitable investment for Ms F in any event.*

- *Bede arranged the investment in MSL without assessing its appropriateness for Ms F as it was required to do under COBS 10.*

- *If it had assessed appropriateness it would have concluded that MSL wasn't appropriate for Ms F and if it had warned her accordingly, as it was required to, she wouldn't have proceeded with the investment.*

- *Bede failed to carry out any or any reasonable due diligence on MSL and was accordingly in breach of Principle 2, Principle 6, and Principle 7 as well as COBS 2.1.1R .*

- *If it had carried out reasonable due diligence it is more likely than not it would have concluded that it was either very high risk or that it wasn't a legitimate investment and in either case not a product it should introduce to retail clients such as Ms F."*

I gave both parties the opportunity of responding and providing any further information they wanted me to consider before making my final decision. Ms F agreed with my provisional decision but Bede didn't. Its solicitors made the following key points:

- At no time was Ms F a customer of Bede's and it therefore didn't introduce and/or advise and/or arrange an unregulated investment.

- The ombudsman has made a finding of fact in circumstances where it is admitted there is no evidence to back this up.

- Ms F is an unreliable witness.

- If the ombudsman had considered the contract for services between Bede and Mr P properly it would have been clear that he wasn't an agent for Bede and was therefore not providing advice on its behalf.

- As Mr P wasn't an agent and as such Bede didn't provide advice, our service doesn't have jurisdiction.

- As Bede only provided regulated advice if it is found that Mr P introduced MSL to Ms F or advised her about it he was acting outside the scope of his appointment and Bede aren't liable for this.

- Should the ombudsman continue to assert that Mr P provided an introduction and or advised Ms F about MSL as agent for Bede then he is put to strict proof of the same.

- Mr L had limited knowledge of Ms F when she was a client of SJP as she was a client of Mr P's at that time.

- Mr P was in contact with Ms F through his personal email not his email address with Bede showing their personal relationship which communication started as early as April 2016 and continued throughout her investment in MSL.

- Ms F couldn't have believed Mr P was providing any service for Bede when he was contacting her through his personal email.

- The letter of authority Ms F gave to Bede to obtain information from SJP limited it to obtaining information on request and in any event expired in January 2016.

- No further instructions were received by Bede from Ms F and it is clear she wasn't its client and no introduction or advice was provided by Bede.

- The ombudsman has found as a fact that Ms F was a consumer and customer of Bede's that there is evidence that it arranged for Ms F to invest in MSL and advised her to invest rather than continue her current investment and he is put to strict proof of this given he has found Ms F isn't a credible witness and there is no supporting documentary evidence.

- The finding by the ombudsman that Bede introduced MSL to Ms F is based on an email from Marc Sharpe dated 12 June 2020 and a letter to Ms F dated 4 August 2020 but Bede had no introducers agreement with MSL and Ms F stated in an email dated 15 June 2020 that it was Mr P that had provided the flyer about MSL.

- Ms F has referred to meetings with MSL at the offices of Bede but although MSL had several meetings at the same business park as Bede these didn't take place in Bede's offices.

- Ms F hasn't stated who the employee was that attended at her home with the paperwork for MSL but didn't name Mr L and it is concluded this was Mr P.

- Ms F states she didn't have any dealings with Marc Sharpe but she attended a meeting with MSL and had email correspondence with him so her testimony is inconsistent.

- It is clear that Ms F has been evasive in the information she has provided in the complaint and hasn't included relevant or pertinent information.

- Ms F refers to payments due from MSL being made by Mr L but this is factually incorrect as the initial payments were made by the company Marc Sharpe set up in Dubai and then changed to Bushell and Weightman Consultancy Ltd due to the need to have a UK paymaster and it has no connection to Bede.

- Mr L's involvement with MSL has only ever been in a personal capacity and as an investor in the same and he only attended meetings in that capacity.

- Mr L became a director of Marc Sharpe Wealth Limited when Marc Sharpe was looking to become an appointed representative of Bede's but when that didn't proceed the company was dissolved. There was no conflict of interest as Marc Sharpe Wealth Limited and MSL were two separate and distinct companies.

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.

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

I have considered everything that the solicitors have said in response to my provisional decision but am not persuaded I should change my conclusion or the findings significantly, which form part of the findings in this final decision unless I state to the contrary. In large part the points made by the solicitors are ones made by Bede when the complaint was referred to our service and were considered by me before I issued my provisional decision. I will however provide some further findings on the points raised in response to my provisional decision, which in the main go to the issue of our jurisdiction to consider the complaint rather than the merits.

Bede argues through its solicitors that if the agreement between it and Mr P had been considered properly it would have been clear that he wasn't its agent and wasn't providing advice on its behalf. I made no reference to Mr P or the agreement he had with Bede in the findings within my provisional decision. I didn't find he had introduced MSL to Ms F or advised her about it but that Mr L had. In the circumstances there was no need to refer to the agreement between Mr P and Bede because this had no relevance to Ms F's investment in MSL.

Bede argues that the employee of Bede's that attended at her home with the documents for MSL was more likely than not Mr P. It also refers to an email from Ms F to Mr L dated 15 June 2020 in which she refers to Mr P giving her the 'flyer' - being the document headed *"2% Investment Product – Marc Sharpe Investments"* referred to in my provisional findings. It argues that Mr P wasn't acting for Bede in providing the flyer or the documents for the investment to Ms F.

However, Mr L has on more than one occasion stated he was the introducer of the investment not just as regards Ms F but as regards other investors that invested in a Marc Sharpe company whose complaints I have considered. In the circumstances insofar as it was Mr P that provided the flyer and documents to Ms F, I don't accept that he was acting on his own behalf. I think it is more likely than not he was acting on the instruction of Mr L as the introducer of the investment and as such Bede. In the circumstances I am still of the view that the agreement between Bede and Mr P is irrelevant to the issues in this complaint.

In short, the argument that Bede continues to put forward through its solicitors that it had nothing to do with Ms F's investment into MSL - whether that be introducing, arranging, or advising in respect of the investment - isn't in my view supported by the evidence in this case which, whilst limited, in my view makes it more likely than not Bede did at the least introduce and arrange the investment and more likely than not advised on it.

The argument that Bede didn't introduce MSL isn't consistent with Mr L's own statements about this. In my provisional decision I referred to his email to Ms F of 4 August 2020 in which he identified himself as the introducer, which email followed an email from Marc Sharpe a couple of months earlier which also identified Mr L as the introducer. However, Mr L made reference to being the introducer in other correspondence, with the administrators for the company.

In an email dated 3 July 2020 to the administrator Mr L stated:

"*I emailed Marc Sharpe to ask where the clients introduced were sitting, if they were with Marc Sharpe Ltd or Marc Sharpe Wealth Capital.*

I have not had a reply as yet to that email sent last week. (however you looked into this and confirmed, but not evidenced that the clients sit within MSWC)

I believe clients introduced (for clarity not advised), were initially in Private Managed Accounts under Marc Sharpe Ltd, but in 2018 when the new Mifid rules came about, a lot of them were moved/switched to Marc Sharpe Wealth Capital. I also believe some did not move as the initial contract had slightly better terms."

And in a further email dated 11 September 2020 to the administrators he stated:

"I have received your letter regarding Marc Sharpe Limited however it seems that some of the clients I introduced have also received this letter but the majority of them have not."

In the circumstances, based on Mr L's own various written statements I am satisfied that it is more likely than not he and as such Bede introduced MSL to Ms F, contrary to the argument put forward by it previously and through its solicitors in response to my provisional decision.

The fact that Bede has sought to argue both before I issued my provisional decision and in response to it that Mr L wasn't the introducer when he identified that he was more than once in my view brings into question the evidence he has put forward where there isn't anything to corroborate what he has said. In the circumstances I place very little weight on what he says happened where there is no documentary evidence to support this.

The solicitors have sought to argue that I found that Ms F isn't a credible witness but that isn't the effect of my finding that her recollection of events from so long ago is unlikely to be entirely accurate or complete. No one recalling events from so long ago is likely to be able to recall everything that was said or recall everything entirely accurately but this doesn't mean that I need to reject everything Ms F has said.

I note that Bede has stated that payments made to Ms F following her investment were made through Bushell and Weightman Consultancy Ltd (Bushell) which it argues has no connection to Bede. I made no finding as to the payments Ms F received in respect of her investment, as it isn't central to the issues in my view. However, as Bede has raised this I will briefly comment on what it has said.

I am not persuaded there is no connection between the two companies given that information from Companies House show that Bushell was incorporated in February 2017 and the only director is Mrs L, who was a director of Bede at the time of incorporation pf Bushell until her resignation as a director of Bede on 31 March 2017. She is also shown as having the same address as Mr L. I think the fact that Bushell was set up by a director of Bede to facilitate payments from MSL to investors including Ms F shows that Bede had more involvement with MSL than has been suggested.

Whilst this of itself doesn't provide evidence that Ms F was advised to invest in MSL by Bede or that it arranged the investment, in my view it does add some weight to the findings I made about it having done so. Put another way, there is no good reason on the face of it that a director of Bede would set up a separate company to facilitate payments from MSL to investors unless Bede had some relationship with MSL in the first place.

Insofar as Bede seeks to argue that anything done by Mr L was done in his personal capacity and not on its behalf, I reject any such argument in the absence of any evidence to support this.

In summary, I am satisfied that Bede did introduce MSL to Ms F and that it carried out the regulated activities of arranging deals in investments and advising on investments. I am also satisfied that Ms F was a consumer as regards her investment in MSL, in that there is no basis for thinking that she was acting for purposes within her trade, business, craft or profession - and I don't think Bede seriously argues that she was. I am also satisfied that Ms F was a customer of Bede's in relation to her investment in MSL, given my findings that it both arranged and advised on MSL.

In terms of the merits of the complaint, in summary I am satisfied that this complaint should be upheld for the following reasons:

- Bede introduced and promoted MSL to Ms F when it shouldn't have done so because it was non-mainstream pooled investment and as such not an investment that could be promoted to retail clients under COBS 4.

- Bede advised Ms F to invest in MSL without assessing suitability, as it was required to do in accordance with COBS 9.2, before advising her to invest.

- MSL wasn't a suitable investment for Ms F in any event.

- Even if Bede didn't advise Ms F it arranged the investment in MSL without assessing its appropriateness for Ms F as it was required to do under COBS 10.

- If it had assessed appropriateness it would have concluded that MSL wasn't appropriate for Ms F and if it had warned her accordingly, as it was required to, she wouldn't have proceeded with the investment.

- Bede failed to carry out any or any reasonable due diligence on MSL and was accordingly in breach of its regulatory obligations.

- If it had carried out reasonable due diligence it is more likely than not it would have concluded that it was either very high risk or that it wasn't a legitimate investment and in either case not a product it should introduce to retail clients such as Ms F.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Ms F as close to the position she would probably now be in if she had not invested in MSL.

I think Ms F would have invested differently. It is not possible to say *precisely* what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Ms F's circumstances and objectives when she invested.

What should Bede do?

To compensate Ms F fairly, Bede must:

- Compare the performance of Ms F's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

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

- Pay Ms F £300 for distress and inconvenience caused by the loss of most of the money she invested.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
MSL	Still exists but illiquid	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.

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 Ms F agrees to Bede taking ownership of the investment if it wishes to. If it is not possible for Bede to take ownership, then it may request an undertaking from Ms F that she repays to Bede any amount she 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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Bede 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, income or other distributions paid out of the investments 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 is a large number of regular payments, to keep calculations simpler, I'll accept if Bede totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

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

My final decision

I uphold the complaint for the reasons I have explained. Bede Wealth Management Limited must pay Ms F the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 27 December 2024.

Philip Gibbons
Ombudsman