DRN-5034389

The complaint

Mr P complains that Bede Wealth Management Limited sold him an unregulated investment when it shouldn't have done.

What happened

Mr P entered into an agreement with MS Wealth Capital Limited (MSWC) through which it agreed to pay him a monthly amount, paying £20,000 into MSWC on 14 August 2017. Mr L, the authorised director of Bede, completed Mr P's application for the investment. MSWC was compulsorily struck off on 22 April 2024 and dissolved on 30 April 2024, by which time the only money Mr P had received back from his investment was £1,040.

Mr P complained to Bede on the basis that Mr L had promoted MSWC to him and advised him to invest in it. Bede didn't uphold his complaint. In summary, it made the following points:

- Mr P had previously worked as a financial adviser alongside Mr L dealing solely with regulated investments, pensions, and mortgages. He had vast experience within financial services and had worked within the investment arena for a considerable time before giving his investment licence up.

- He knew the difference between regulated and unregulated products, having invested in Dolphin Trust in 2015.

- Mr L and Bede don't advise on unregulated products and Mr P had no investments through Bede so it doesn't know on what basis he relied on advice from Mr L as he argues he did.

- When Bede provides advice a fact find, attitude to risk questionnaire, illustration and suitability letter are provided none of which were completed in the case of Mr P's investment in MSWC.

- Mr L has no recollection of a conversation whereby advice was provided to Mr P and he recommended investment in MSWC. Mr P invested having seen the returns his wife had received from her investment the previous year.

- Mr L did disclose that the investment was unregulated and unadvised and the risk associated with such products but Bede and Mr L don't advise on or promote unregulated products.

- Mr P requested the literature for MSWC so he could digest this and make his own mind up and he made his own decision to invest after reviewing the paperwork. Mr L and Bede followed Mr P's instructions.

Mr P referred his complaint to our service and it was considered by one of our investigators. He made findings both on our jurisdiction and, having decided that the complaint was in jurisdiction, the merits of the complaint. In his view he has referred to Marc Sharpe Limited

rather than MSWC but nothing turns on this and I will refer to MSWC throughout. The investigator upheld the complaint and as Bede didn't agree the matter was referred to me for review. I issued a provisional decision explaining why I was satisfied that the complaint was in jurisdiction and that it should be upheld on the merits. The findings from my provisional decision are set out below.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

However, before I can decide what is fair and reasonable I need to be satisfied that we have jurisdiction to consider the merits of the complaint. In many cases where we have jurisdiction this will be apparent without us having to address this specifically. However, in this case, as Bede continues to argue that it had nothing to do with Mr P investing in MSWC, I need to make findings on our jurisdiction to decide if we can consider the merits.

Do we have jurisdiction to consider this complaint?

The rules as to our jurisdiction are set out in the Handbook of the industry regulator, the Financial Conduct Authority (FCA) within the Dispute Resolution (DISP) rules. 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.

I am satisfied there is no issue about where the activity the complaint relates to took place and also that the complaint was made in time – the complaint being made no more than six years from when Mr P invested in 2017 and referred to us no more than six months from when Bede provided its FRL, as required by the rules set out in DISP 2.8.2R.

That leaves the activity to which the complaint relates and whether Mr P is an eligible complainant. Looking at 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 set out the other activities because none of them are relevant in this complaint, so for this complaint to be in jurisdiction it must relate to a regulated activity. What amounts to such an activity is set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the RAO").

The activities identified in the RAO include advising on investments and arranging deals in investments, both of which activities I think are relevant here. If either or both of those activities took place then we have jurisdiction to consider the complaint and will also then be able to consider any activity ancillary to those 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'.

The only documents that I have been provided with as between Mr P and MSWC are a document headed 'Mutual Non-Disclosure Agreement' dated 4 August 2017 and an account application dated the same date. I have not been provided with a signed document setting out the terms of the agreement between Mr P and MSWC.

However, Mr P has provided a document he says he relied on headed "Up to 2% Investment Product – Marc Sharpe Investments'. This referred to up to 2% income per month or up to 2% growth per month added to the value of the investment, payable quarterly, and stated that in the last four years the 2% had been paid in all but two months, when 1.3% was paid. In the circumstances, despite not being provided with the signed terms of agreement between Mr P and MSWC, I am satisfied that the investment was an instrument acknowledging indebtedness and as such a security.

Turning to whether Bede advised Mr P, the complaint made on his behalf by his solicitors refers to Mr P seeking advice from Mr L for his investments because of his lack of experience and that there "was an ongoing conversation about Marc Sharpe being the best

investment around and an opportunity not to be missed". The complaint letter also refers to Mr L promoting the sale of the product on many occasions and that he knew Mr P's attitude to risk was cautious and that he recommended that Mr P invest in MSWC.

However, there are a number of issues with the information provided in the complaint. Firstly, it isn't in dispute that whilst Bede employed Mr P on a self-employed basis to provide mortgage and protection advice only, he had previously provided investment advice to clients but the reference to him seeking advice from Mr L due to a lack of experience suggests differently. This could be a reference to a lack of experience in unregulated products, as the complaint letter states that he had no experience of unregulated investments. However, that in itself is inaccurate, as I have seen evidence that he invested in Dolphin Trust in 2015. What is more, he did so on the basis he was a self-certified sophisticated investor, which doesn't support what is said about him seeking advice because of his lack of experience.

Moreover, I have been provided with no evidence that Mr P was previously a client of Bede's. In the circumstances, there is nothing to support the suggestion that he had previously sought advice from Mr L because of his lack of experience. I accept there may well have been some discussions between Mr L and Mr P about particular investments, but I think it is more likely than not these fell short of Mr L advising him on any particular investment. And I am not persuaded on the evidence provided that Mr L recommended that Mr P invest in MSWC.

I have therefore considered whether Bede carried out the regulated activity of 'arranging deals in investments'.

There are two limbs to this regulated activity and there is again guidance in PERG as to their application, with PERG 2.7.7G stating:

"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 how Mr P came to be invested in MSWC. He refers to Mr L introducing the investment to him. His evidence by itself isn't persuasive, given he is recalling events from some years ago and his recollection is unlikely to be complete or entirely accurate. However, the limited documentary evidence in my view provides support to what he has said. So, in an email from Marc Sharpe to Mr P and his wife dated 16 June 2020 he refers to a meeting with 'your introducer Mr L' (name anonymised) to discuss all his client portfolio…". Moreover, in an email to Mr P dated

4 August 2020, Mr L 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……". It seems to me this is consistent with what Marc Sharpe said in his email about Mr L being the introducer of the investment to Mr P.

There is also no dispute that Mr L completed the application for the investment on behalf of Mr P. Mr L's explanation for this is he was asked to do so by Mr P but that he doesn't know why and he simply did so as a friend and colleague. I don't find his explanation persuasive, given Mr P's experience of investing. I can see no reason that Mr P would have needed Mr L to complete the application for him nor any reason Mr L would have agreed to do so on his behalf if Mr L wasn't involved with the application. I also take into account Mr P's evidence that he didn't have any contact with MSWC at the time, which I take to mean that it was Mr L that provided the application to MSWC.

In the circumstances I am of the view that Mr L's involvement with Mr P's investment went beyond simply introducing it and that he carried out the regulated activity of arranging deals in investments under Article 25(1) of the RAO. In making that findings I have taken account of the following:

- *Mr L introduced the investment to Mr P.*
- *Mr L completed the application for MSWC on behalf of Mr P.*
- *Mr L sent the application to MSWC.*

I am satisfied that what Bede did was to bring about the investment in MSWC and was of enough importance that without its involvement the investment wouldn't have taken place. So, I am satisfied that what it did amount to arranging deals in investments under Article 25(1) of the RAO.

Even if Bede persuaded me that what it did wasn't significant enough to amount to arrangements under Article 25(1) of the RAO I am satisfied that what it did would amount to arranging deals in investments under Article 25(2). This doesn't require that the arrangements would bring about an investment, simply that the arrangements are made with a view to investment and I am satisfied that the arrangements by Bede were with a view to him investing in MSWC.

Having concluded that this complaint does relate to a regulated activity the remaining issue I need to decide in terms of our jurisdiction, is whether Mr P is an eligible complainant. There are two parts to this. Firstly Mr P has to be one of the categories of person set out in DISP 2.7.3R one of which is that of 'consumer'. This is defined as an individual acting for purposes which are wholly or mainly outside their trade, business, craft, or profession. I have seen nothing that makes me think that Mr P wasn't a consumer within the above definition insofar as his investment in MSWC was concerned.

Secondly, Mr P had to have a complaint arising out of one of the relationships set out in DISP 2.7.6R. The first of these is 'customer' and the second is potential customer. There

was no existing customer relationship between Bede and Mr P prior to his investment in MSWC but given I have found that Bede arranged Mr P's investment in MSWC he was a customer as regards that investment.

The merits of the complaint

Having decided we have jurisdiction to consider the complaint I then need to decide whether Bede did anything wrong in relation to Mr P's investment in MSWC.

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.

Mr P argues that Mr L promoted MSWC to him. I am satisfied that in providing the paperwork for MSWC including the application Mr L promoted the investment. Promotion isn't a regulated activity and as such I can only consider this if it is ancillary to a regulated activity but given the findings I have made as to Mr L arranging the investment I am satisfied the promotion of the investment by Mr L was ancillary to a regulated activity.

The rules set out in the Conduct of Business Sourcebook (COBS) at the time didn't permit the promotion of 'non-mainstream pooled investments' to retail clients as set out in COBS 4.12.1R (now replaced but in force in August/September 2017). I have seen no evidence that would lead me to think that Mr P was anything other than a retail client in relation to his investment in MSWC and Bede hasn't suggested otherwise. The definition of 'non-mainstream pooled investments includes 'unregulated collective investment schemes'. It isn't in dispute that MSWC was unregulated and I am persuaded that it could amount to a collective investment scheme, albeit there is some ambiguity about what the investment actually involved.

I am therefore currently of the view that Bede shouldn't have promoted the investment to Mr P and that in doing so it was in breach of its regulatory obligations. I acknowledge that Mr P was already aware of investments provided by Marc Sharpe, as his wife had invested in another such investment the previous year offering the same monthly payment as MSWC, which she had been receiving since her investment. This raises the possibility that he may have gone ahead regardless of any promotion. However, that isn't the only issue with what Bede did.

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 MSWC comes within the definition. I am also satisfied

that Bede knew that Mr P'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 his investment in MSWC. It didn't do so and was therefore in breach of its regulatory obligations.

However, I also have to consider what, more likely than not, would have happened if it had assessed appropriateness. The purpose of such assessment would be to enable it to determine whether Mr P had the necessary experience and knowledge in order to understand the risks involved in relation to the product offered or demanded (COBS 10.2.1(2)R.)

The information it was required to get included the type of investment and transaction Mr P was familiar with, the nature, volume and frequency of his transactions and the period these have been carried out and his level of education, profession, or former profession. Whilst Bede may not have sought such information from Mr P in relation to his investment in MSWC it isn't in dispute that he had previously advised on regulated investments for a considerable period of time – on his evidence between 1989 and 2014. It also isn't in dispute that Mr P invested in Dolphin Trust, another unregulated investment, in 2015. He has said that he can't remember if he was aware that Dolphin Trust was unregulated at the time but I think it is unlikely he wouldn't have known this.

In making that investment Mr P also signed a certificate to confirm he was a self-certified sophisticated investor. I have asked him about this and he has said that Dolphin Trust was the only other unregulated product he ever invested in and that there is no way he can be classed as a self-certified sophisticated investor. There is no question that he signed a statement confirming he was a self-certified sophisticated investor so either he satisfied the necessary criteria to be classified as such or he signed knowing he didn't meet the criteria. I am unable to say which is more likely than not and therefore cannot say that he wasn't a self-certified sophisticated investor at the time.

In the circumstances, on the information currently available, even if Bede had assessed appropriateness, I am unable to reasonably find that this would have led to it concluding that MSWC wasn't appropriate for Mr P such that it would have been necessary for it to warn him of this, as required by COBS 10.3.1R.

However, that isn't the end of the matter, as in addition to the rules I have already referred to, the FCA requires all firms to comply with the High Level Principles (PRIN) set out in PRIN 2.1.1R in its Handbook.

I think the following three 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 MSWC 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 gave reasonable assurance that it was in the client's interests for Bede to arrange the investment as well as allow it to provide the information clients needed to decide whether they should invest in it.

I have been provided with no evidence that Bede looked into MSWC 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 such as Mr P. Bede has maintained throughout this complaint that it doesn't offer or promote unregulated products and as such there was no reason for it carry out due diligence on MSWC - so has admitted it didn't carry out any due diligence as it should have done.

Even on the limited information it did have, 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 appears to have been the case. It should have been obvious to Bede that it needed further information from MSWC to understand how the high returns it was purporting to provide to investors were achievable and had been achieved previously before it introduced and arranged the investment for Mr P.

In failing to carry out 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.

There was an apparent connection between Mr L and Marc Sharpe – Mr L was a director of MS Wealth Limited, another Marc Sharpe company. This raises the possibility that Bede didn't manage the potential conflict arising from this fairly, as required by Principle 8. However, Mr P has confirmed that he was aware of Mr L having a relationship with Marc Sharpe in any event so it isn't clear whether there was any failing on the part of Bede and I am not going to make any findings on this.

In summary, I am upholding this complaint because Bede failed to carry out any reasonable due diligence on MSWC 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, or arrange for, retail clients such as Mr P."

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

- Mr P was a financial adviser with over 30 years of experience in the industry and had previously advised on investments before giving up his licence and was well versed in regulated and unregulated products.

- The provisional decision hasn't considered the agreement between Mr P and Bede in any detail and if it had his industry experience means that he isn't a consumer.

- At the time Mr P was acting under the agreement with Bede selling Mortgages and protection and wasn't a customer of Bede's and therefore our service doesn't have

jurisdiction to deal with the complaint.

- Bede wasn't the introducer of MSWC and didn't provide advice in relation to it.

- Mr P had previously invested in Dolphin Trust, an unregulated product, so he was a well informed investor who utilised his own knowledge when deciding to invest in MSWC.

- Mr P held no investments with Bede and no advice was given as to his previous investment in Dolphin Trust

- Mr P would have known the process involved in order for him to be customer of Bede's and it is extraordinary that he would attempt to assert that he was a customer for investment products.

- As Bede didn't introduce, advise on, or arrange Mr P investment in MSWC he wasn't a customer in this regard either.

- Mr P had provided literature and advice in respect of MSWC to other investors, including his wife, before he invested in MSWC himself and it is clear he invested based on his own knowledge.

- The provisional decision accepts that Mr P had no contact with MSWC at the time but that is incorrect, as he previously introduced other investors and provided them with advice. So, it cannot be said he didn't have prior knowledge or involvement with MSWC.

- Mr P provided incorrect information in his application to MSWC as he confirmed he had no previous experience in the industry.

- Mr P was acting within his trade or profession when considering whether he should invest in MSWC and therefore he wasn't a consumer and our service doesn't have jurisdiction.

- Bede had no involvement with MSWC and Mr L's involvement has only been in a personal capacity as an investor.

- Mr L accepts he helped Mr P out with his application to MSWC but this was in a personal capacity not as a director of Bede.

- Mr P and Mr L had a personal relationship and it wasn't uncommon for them to provide assistance to each other personally and this didn't constitute a professional relationship between Bede and Mr P.

- At no time was Mr L acting in his capacity as a representative of Bede's and he didn't provide any introductions and/or advice to Mr P.

- All the information within the application form was provided to Mr L by Mr P and if Mr L hadn't completed the application, he would still have invested based on the returns his wife had received from her investment and his returns from his previous investment with Dolphin Trust.

- The provisional decision relies on an email from Mr L to Mr P dated 4 August 2020 in which he refers to an introduction of Marc Sharpe but it is clear that as Mr L was an investor himself in a personal capacity, any introductions were personal and not

carried out in his capacity as director of Bede.

- Bede didn't have any agreement with MSWC to introduce clients and didn't receive any benefit from MSWC because it had no involvement with MSWC.

- The redress awarded is disputed.

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 considered everything the solicitors have said I am not persuaded that I should change the outcome as set out in my provisional decision, the findings from which form part of this final decision unless I state to the contrary. In the main the arguments put by the solicitors go to the issue of our jurisdiction to consider the merits of the complaint, which I will address first.

Why we have jurisdiction to consider this complaint

I found that we did have jurisdiction to consider the complaint when I made my provisional decision and nothing that Bede has said persuades me that the findings that I made about this were wrong and as such I see no reason to depart from what I set out in my provisional decision. However, I will briefly address the main points raised by the solicitors in the response to my provisional decision.

The solicitors argue that Mr P's industry experience means that he wasn't a consumer as regards his investment in MSWC and as such we don't have jurisdiction – as that would mean he wasn't an eligible complainant. However, someone who works within the financial services industry can still be a consumer. The meaning of 'consumer' under DISP 2.7.3R is "*an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession".* I have seen nothing that makes me think that the purpose of Mr P's investment in MSWC was in relation to his trade, business, craft, or profession. From what I have seen I am satisfied that it was purely a personal investment by him and as such he was a consumer as regards that investment.

The solicitors also seek to argue that Mr P wasn't a customer of Bede's but given my finding that it introduced and arranged the investment on his behalf I am satisfied that he was a customer for those purposes. If I had found that Bede didn't arrange the investment that would be different, but in that case not only wouldn't he be a customer but no regulated activity would have taken place, so we wouldn't have jurisdiction in any event.

Bede's argument that Mr L didn't introduce and arrange the investment in MSWC isn't persuasive. I made reference to the email from Mr L of 4 August 2020 in which he referred to introducing Marc Sharpe. The solicitors argue, as Bede did before my provisional decision and as they have argued in other similar complaints that I have already issued final decisions on, that Mr L wasn't the introducer. However, no explanation has been provided as to why he would have identified himself as such in the above email if he wasn't the introducer nor why Marc Sharpe would also have indicated he was the introducer when he wasn't. In the absence of any persuasive argument or evidence that would explain this it is fair and reasonable to conclude that it is more likely than not he was the introducer.

As regards Bede arranging the investment in MSWC, the solicitors don't dispute that Mr L completed the application on behalf of Mr P but argue that this was done on a personal basis. I don't accept Bede's evidence on this point. It has referred to Mr P's 30 years of

industry experience in support of other arguments that it or its solicitors have put, as I have referred to above. I can see no reason that someone with Mr P's apparent experience would have needed Mr L's assistance in completing the application. In the circumstances I think it more likely than not that Mr L completed the application because he was acting for Mr P on behalf of Bede.

I am not persuaded that Mr L was acting in his personal capacity when he arranged the investment in MSWC. There isn't any evidence to support this beyond Mr L's statement to this effect, which I don't find persuasive. I am therefore still of the view that Bede arranged the investment in MSWC for Mr P and that he was its customer for that purpose. I would add that I haven't seen evidence that Mr L was authorised to carry out the regulated activity of arranging deals in investments other than on behalf of Bede.

In all the circumstances I am satisfied that we have jurisdiction to consider this complaint for the reasons explained in my provisional decision and above.

The merits of the complaint

Bede has continued to point to Mr P's industry experience and to him utilising his own knowledge and experience when deciding to invest in MSWC. However, I have found that Bede introduced the investment in the first place and arranged it for Mr P and that it should have carried out due diligence on MSWC before it did so – but didn't. I also found that it appeared to be the case that the investment wasn't legitimate.

I have considered this point further and, in my view, it is more likely than not that if Bede had sought further information about MSWC, as it should have done, it is very unlikely that MSWC could have provided information that would have supported the high returns (2% each month) it was purporting were both achievable and had previously been achieved.

In short, I think it is more likely than not that if Bede had carried out the enquiries it should have done then it is more likely than not it would have concluded that the information provided by MSWC wasn't accurate and that the investment was unlikely to be genuine. In those circumstances it would be reasonable to have expected it to further conclude that it shouldn't introduce and arrange the investment for anyone including Mr P.

In the circumstances I am not satisfied that Mr P's knowledge and experience has any real relevance in this case. If Bede had done what it should have done then he wouldn't have known about the investment in the first place - or if he had it would have made him aware that it was unlikely to be genuine. In either case, there is no reasonable basis for finding he would then have gone ahead with the investment.

In short, I am satisfied that Mr P only invested because Bede introduced the investment to him and then arranged the investment and I have seen nothing that makes me think he would have gone ahead without its involvement.

In making that finding I have taken into account the fact that Mr P's wife was already invested and had received returns from her investment. Given the findings I have already made I don't think this I don't think this is relevant to whether Mr P would have invested in MSWC. Moreover, Mrs P complained to Bede separately and that complaint was referred to our service and was upheld by me on the basis that she wouldn't have invested but for failings on the part of Bede.

In the circumstances and in any event, I am not satisfied that it would be fair or reasonable to take into account that Mrs P's wife was already invested in deciding whether Mr P would have invested without Bede's involvement, when she wouldn't have invested if Bede had

done what it should have done as regards her investment.

Putting things right

The solicitors say that the redress is disputed but haven't provided any explanation as to what the dispute is, so I can see no reason to change the redress set out in my provisional decision. The investigator awarded redress that required Bede to compare Mr P's investment in MSWC with our usual benchmark for someone who wasn't willing to take any risk with their money. I have taken a different view as to the redress that should be awarded in this case, as I have seen nothing to make me think that Mr P wouldn't have been willing to take some risk with his investment.

In the circumstances I think awarding redress by way of comparison with our usual benchmark for someone willing to take a small risk with their money is fair and reasonable.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr P as close to the position he would probably now be in if he had not invested in MSWC.

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

What should Bede do?

To compensate Mr P fairly, Bede must:

- Compare the performance of Mr P'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 Mr P £300 for distress and inconvenience caused by the almost total loss of the money he invested.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
MSWC	No longer exists	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 ceased to be held	8% simple per year from the end date to the date of settlement

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, 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.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr P wanted Capital 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 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 Mr P'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 P into that position. It does not mean that Mr P would have invested 50% of his 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 Mr P could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold this complaint for the reasons I have set out above. Bede Wealth Management Limited must pay Mr P the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 March 2025.

Philip Gibbons
Ombudsman