DRN-5070246

The complaint

Mrs K complains that Bede Wealth Management Limited sold her an unregulated investment when it shouldn't have done.

What happened

In September 2017 Mrs K signed an application to invest £50,000 in MS Wealth Capital Limited ("MSWC"), payment being by way of two tranches of £25,000 each. MSWC was compulsorily struck off on 22 April 2024 and dissolved on 30 April 2024.

Mrs K complained to Bede on the basis that Mr L – its authorised director – had promoted MSWC to her and advised her to surrender her existing investment bond and reinvest in MSWC. Bede didn't uphold her complaint. In short it said that it doesn't promote or advise on unregulated investments and hadn't promoted the investment to her or advised on it. It said that Mr L had completed the withdrawal documents for Mrs K's investment bond and the application for MSWC because she requested he complete these for her. Bede said that Mrs K invested in MSWC of her own volition after considering the documents for the investment.

One of our investigators considered the complaint and found it was both in jurisdiction and that it should be upheld on the merits.

The investigator said that Bede should calculate redress payable to Mrs K on the basis of a comparison between our usual benchmark for someone who wasn't willing to take any risk with their investment. He also said it should pay her £300 for the distress and inconvenience caused.

Bede didn't agree with the opinion of the investigator so the matter was referred to me for review and decision.

I issued a provisional decision upholding the complaint the findings from which are set out below.

"I can only consider the merits of a complaint that we have jurisdiction to consider in the first place. 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 Mrs K 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 Mrs K 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 Mrs K 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 also 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 Mrs K and MSWC are a document headed 'Mutual Non-Disclosure Agreement' dated 14 September 2019 and an account application dated the same date. I have not been provided with a document setting out the terms of the agreement between Mrs K and MSWC but Mrs K's evidence is that under that agreement she would receive 2% each month which would be added to her capital and I accept her evidence on this. I am satisfied that there was an agreement that gave rise to an obligation on the part of MSWC to pay an amount into her account each month and that this amounted to an instrument acknowledging indebtedness.

Turning to whether Bede ever advised Mrs K, it is her evidence that Mr L introduced MSWC to her and Bede doesn't appear to dispute that it provided her with the documents for the investment for her to consider. However, it argues that it did nothing more than this and left Mrs K to consider the paperwork and come to her own decision as to whether or not to invest.

Bede pointed out in its FRL that when it provides advice it will complete a fact find, an attitude to risk profile and a suitability letter, none of which were provided in this case. In other words it relies on the lack of documentation as supporting its contention it didn't advise Mrs K.

However, whilst I accept that where such documents exist it is evidence having been provided, the absence of such documents of itself doesn't necessarily mean such advice wasn't provided. In short, whether advice was or wasn't given is a question of fact and the lack of documentation in this case isn't evidence of itself that advice wasn't given.

The FCA provides guidance to firms on various matters within its Perimeter Guidance manual (PERG) in the Handbook including guidance on what can amount to advice. PERG 8.28.2G states 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"

It is Bede's case that Mrs K, who up to this point had relied on advice when investing, decided without any input from her adviser, Mr L, to surrender the investment bond that Bede received an ongoing adviser fee in respect of and put the proceeds into an unregulated product that it provided the paperwork for and which on the face of it was going to involve leveraged trades which she had no previous experience of.

I place no significant weight on Bede's evidence in this respect. I think it is very unlikely that Mrs K chose to surrender her investment bond and reinvest in MSWC without some input from Mr L. It is Mrs K's evidence that Mr L recommended moving her existing investment

bond to MSWC at a review meeting. She further says that Mr L said that he had previously invested with Marc Sharpe and received good returns. I am mindful she is recalling events from some time ago and as such her memory is unlikely to be entirely accurate or complete.

However, the investment bond start date was 28 July 2014, so a review in or around August 2017 would be consistent with the start date of the bond and I have seen no persuasive evidence that the meeting between Mr L and Mrs K in which he introduced MSWC to her was for any other reason. What she has said is also consistent with the sequence of events and what Mr L did – introducing the investment, completing the surrender forms for the investment bond, and completing the application for MSWC. In the circumstances I accept what Mrs K has said about what happened.

Even if I accepted that he said nothing at all to Mrs K – which I think is unlikely - and simply provided her with the documents for MSWC, I think it is more likely than not she would have understood him to have done so on the basis she should consider investing in it. In other words, what he did was objectively likely to influence her decision to sell her investment bond and purchase and buy MSWC – and was therefore advice – given the existing advisory relationship that she was paying for and the documents being provided in the course of reviewing her existing investment bond.

Bede argues that what Mr L did, providing Mrs K with the paperwork for MSWC, completing the surrender documents for her investment bond and completing the application for the MSWC investment was carried out by him personally and not on behalf of Bede. This is not credible in my view, given the existing advisory relationship and the introduction of the investment in the course of reviewing her existing investment.

In the circumstances I am satisfied that Mr L (and as such Bede) did provide advice to Mrs K about investing in MSWC for the following reasons:

- *There was an existing advisory relationship between Mr L and Mrs K at the time he introduced MSWC to her.*
- *The introduction took place in the course of a meeting to review her current investment bond.*
- *Mr L recommended MSWC in place of her investment bond.*
- *The introduction was made on the basis that Mr L had himself invested and received good returns.*

I am mindful that this is a provisional decision and that as such further evidence may be provided which would lead me to change my finding on this. So, I have also 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.”

Having considered the limited evidence in this case I am satisfied that Bede carried out the regulated activity of arranging deals in investments under the first limb of the regulated activity set out in Article 25(1) of the RAO. In making that findings I have taken account of the following:

- *Mr L introduced the investment to Mrs K and recommended she invest in it in place of her existing investment bond.*
- *Mr L completed the necessary surrender documents for her investment bond so she could reinvest the proceeds in MSWC.*
- *Mr L completed the application for MSWC on behalf of Mrs K.*
- *Bede sent the application to MSWC along with the cheques Mrs K provided for the investment to be made.*

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.

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 her 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 Mrs K is an eligible complainant. There are two parts to this. Firstly Mrs K 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 Mrs K wasn’t a consumer within the above definition.

Secondly, Mrs K had to have a complaint arising out of one of the relationships set out in DISP 2.7.6R. The first of these as that of customer. There was obviously an existing customer relationship between Bede and Mrs K at the time it introduced MSWC to her. The

introduction was in the course of a review meeting about an existing investment. I don't think there is any question that Mrs K's complaint arises out of her having a customer relationship with Bede, given the findings I have made above.

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 Mrs K's investment in MSWC.

I am satisfied on the evidence provided in this complaint that Bede promoted MSWC to Mrs K. This isn't a regulated activity but I am able to consider this if it is ancillary to a regulated activity. I have set out above when considering jurisdiction how Mrs K came to be invested in MSWC and I am satisfied that what it did amounted to promotion of MSWC to Mrs K and this was ancillary to Bede advising her to invest in MSWC and/or arranging the investment.

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 Mrs K was anything other than a retail client in relation to her investment in MSWC. The definition of 'non-mainstream pooled investments includes 'unregulated collective investment schemes'. It isn't in dispute that MSWC was unregulated and I am currently 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 Mrs K and that in doing so it was in breach of its regulatory obligations. I am satisfied that Mrs K invested in MSWC because it was promoted to her – I am not satisfied that she would otherwise have invested in it. As such, if Bede had complied with its regulatory obligations so far as promotion is concerned Mrs K wouldn't have been invested in MSWC and I uphold the complaint on that basis.

Having considered the evidence and given the findings I have already made on jurisdiction I am satisfied that there are other regulatory failings on the part of Bede which provide both additional and alternative grounds for this complaint being upheld and redress awarded.

I have found that Mrs K was advised to invest in MSWC and COBS 9.2 sets out what a firm needs to do before advising a client to invest. Under COBS 9.2.1(2)R a firm must obtain the necessary information regarding a client's knowledge and experience "in the investment field relevant to the specific designated investment", their financial situation, and their investment objectives so as to make the recommendation to invest. COBS 9.2.2R sets out in more detail the sort of information that a firm is required to obtain, including 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.

Mrs K was an existing client at the time and so Bede will have had some information required by the above rules. However, I am not persuaded that it had all the necessary information required by the above rules that would have allowed it to assess suitability. COBS 9.2.6R makes clear that where the information isn't obtained a firm must not make a personal recommendation to the client. In the circumstances Bede was in breach of that rule when it advised Mrs K to invest in MSWC. This provides a further reason for upholding this complaint and awarding redress.

Moreover, even if Bede had obtained the information required by the above rules, I am not satisfied that it could reasonably have concluded that MSWC was a suitable investment for her. Her investment experience was limited to an investment bond. MSWC on the face of it

involved margined trades and was supposedly going to return 2% each month – 24% annually – and as such was presented as a very high risk investment. The application completed by Mr L showed Mrs K had no experience of margin trading and whilst there is an indication that she nevertheless understood the risks of such investment, I think this is very doubtful.

The application also identifies Mrs K's investment appetite as 'balanced-adventurous'. There is no explanation as to how this was determined or the sort of investment such a risk appetite would include. It is doubtful in my view that Mrs K had any understanding of what this meant and insofar as it is suggested that the high risk margin trading MSWC was supposedly going to undertake was in accordance with Mrs K's risk appetite. I reject that argument. She was at the time invested in the 'secure capital option' for her investment bond and whilst risk appetites can and do change it is not credible in my view that her risk appetite changed to the extent that not only was she no longer wanting any capital protection but was willing to risk the entirety of her investment.

The application also contains information about Mrs K's financial position which indicates that she was retired with an annual income of £20,000 and investments and savings of only £60,000. It is therefore doubtful that she had the capacity to take the sort of risk associated with margin trading.

Even if Bede didn't advise Mrs K and only arranged the investment I think it failed to comply with its regulatory obligations.

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 Mrs K'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 her investment in MSWC.

I have seen no evidence that Mrs K's experience extended beyond the investment bond she was already invested in. There is nothing that suggests she had experience of an investment such as MSWC, which on the face of it was going to be carrying out margined trades. As I have already said, in her application Mrs K confirmed she didn't have experience of such trades and it is doubtful she did understand the risks, even though on the application it said she did.

In the circumstances, based on the available evidence, if Bede had assessed appropriateness as it should have done, it couldn't reasonably have concluded the investment was appropriate for Mrs K. This would have meant that it would have had to have warned her about this, in accordance with COBS 10.3.1R. If Mrs K had then wanted to proceed despite the warning then Bede would have done nothing wrong with proceeding with making arrangements for her to invest. However, given Mrs K only invested in MSWC because it was introduced to her by Bede in the first place, I am not satisfied she would have gone ahead with the investment if it had at the time informed her it wasn't appropriate for her.

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 the Handbook under PRIN 2.1.1R..

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 promote and 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 Mrs K. 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, it appears to accept it didn't carry out any due diligence on MSWC, as I have found it was bound to do to comply with its regulatory obligations.

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. 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.

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 2.1.1R. 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. 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 upholding this complaint for the following reasons:

- *Bede introduced and promoted MSWC to Mrs K 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 Mrs K to surrender her existing investment bond and reinvest in MSWC without assessing suitability, as it was required to do in accordance with COBS 9.2.*

- *MSWC wasn't a suitable investment for Mrs K in any event.*

- *Bede arranged the investment in MSWC without assessing its appropriateness for Mrs K as it was required to do under COBS 10.*

- *If it had assessed appropriateness it would have concluded that MSWC wasn't appropriate for Mrs K 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 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 Mrs K."*

I gave both parties the opportunity of responding. Mrs K accepted my provisional decision but Bede didn't. Its solicitors made the following key points on its behalf:

- Bede didn't provide an introduction and/or advice and/or arrangement in relation to her investment in MSWC.

- Mrs K instructed Bede that she wanted to withdraw from her Metlife bond because Metlife had informed her it wasn't accepting further investment into the bond.

- Bede arranged for the withdrawal in accordance with Mrs K's instructions and the proceeds were sent to her directly.

- The only evidence that Mrs K was advised to withdraw her funds from the Mettlife bond is Mrs K's recollection.

- Bede didn't advise Mrs K to invest in MSWC and didn't provide her with any information about that product as the information was provided to her by her close friend Mr P who at the time was a financial adviser.

- Bede had no duty to undertake any due diligence in relation to anything other than the regulated products Mrs K instructed it on.

- It is clear that Bede didn't arrange the investment in MSWC as she obtained the literature from Mr P and made the decision of her own volition to go ahead with investing.

- The provisional decision doesn't appear to have considered the agreement between Bede and Mr P in any detail and if this had been considered it would have been clear that Mr P wasn't an agent for Bede and wasn't providing advice on its behalf and as such Bede didn't provide advice and our service doesn't therefore have jurisdiction to consider the complaint.

- Mrs K has said that she was provided with the documentation by Bede but then said

she had to obtain a copy from another investor and she is being deliberately evasive about this key point.

- Mrs K confirmed in a conversation with Mr L in or around 2020 that it was Mr P that provided her with the information and persuaded her to invest in MSWC.

- Mrs K has said she didn't have knowledge of the information in the application form but it includes personal information as well as passwords which couldn't have been included without her input.

- The ombudsman has failed to determine whether Mrs B is a credible witness and have found facts on incomplete and incorrect information provided by someone who would benefit form a decision against Bede and on that basis the key findings should be reconsidered and the provisional decision overturned.

- Bede were never involved with MSWC and promoting or arranging investment in their products.

- Mr L's involvement with MSWC has only ever been in a personal capacity and as an investor and he filled in the application for Mrs K in his personal capacity, assisting a friend and this doesn't create a liability for Bede.

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.

I have considered everything that Bede has said in response to my provisional decision through its solicitors but I am not persuaded that I should significantly change the findings in my provisional decision as regards either our jurisdiction or the merits, which form part of the findings in this final decision unless I state to the contrary.

Do we have jurisdiction to consider the complaint?

I have set out in my provisional decision why we have jurisdiction to consider the complaint and my findings on that stand. However, I will address the issues that Bede has raised in response to my provisional decision. In short Bede argues that it had nothing to do with Mrs K investing in MSWC – in which case no regulated activity would have taken place and we wouldn't have jurisdiction to consider the complaint.

Bede argues that I have failed to determine if Mrs K is a credible witness. It is for me to decide what weight to give to the evidence provided by the parties. In terms of Mrs K's evidence, I accept what she has said subject to the caveat that her recollection of events is unlikely to be complete or entirely accurate. This isn't because I think she will have deliberately said something she knows isn't accurate but because everyone's memory is affected over time. That doesn't mean I need to dismiss everything she has said where the overall circumstances and/or where there is other evidence that supports what she has said.

Mr L's recollection of events is also unlikely to be entirely accurate or complete but in his case there is documentary evidence that contradicts what Bede has said happened. In particular Bede has sought to argue that it wasn't Mr L but Mr P that introduced MSWC to Mrs K. However, Mr L confirmed in writing to Mrs K in an email dated 4 August 2020 that he was the introducer of the investment. It isn't likely in my view that Mr L misremembered whether or not he was the introducer and Bede's argument that it was instead Mr P when Mr L has already accepted it was him means I place no real weight on what he now suggests

happened. What Mr L said about being the introducer also provides support to Mrs K recollection of what happened at the time.

Bede has said that I didn't consider the agreement between it and Mr P in any detail in my provisional decision. However, I made no reference to it at all. This is because that agreement is only relevant if I was of the view that Mr P had some significant involvement in Mrs K investing in MSWC. I have found that it was Mr L that introduced, advised on, and arranged the investment. I am still of that view based on the evidence in this case and in the circumstances I am satisfied that I don't need to make any findings on the agreement between Bede and Mr P.

Bede argue that Mr L didn't advise Mrs K to come out of her investment bond and she did so because she was informed she couldn't invest into it further. It says that all Mr K did was send the withdrawal form to the provider, on her instructions. I don't accept what Bede has said about this. Mrs K invested by way of lump sum payment in 2014 and made no further payments into the bond before cashing it in. There is nothing to suggest that she was interested in paying anything further into the bond as of 2017 such that if the provider wasn't going to allow it this would have triggered her into cashing in the bond. Moreover, the documentary evidence I have seen includes documents from the bond provider in response to a DSAR. There isn't anything in those documents which shows Mrs K was notified in 2017 about not being able to make further contributions to the bond.

In the circumstances I am still of the view that Mrs L cashed in the bond in order to invest in MSWC having been advised to do so by Mr L, as explained in my provisional decision. In any event, even on Bede's case Mrs K discussed encashing the bond with Mr L and I think it unlikely any such discussion wouldn't have included what she might otherwise invest in. Put another way, I think it is unlikely that a discussion about cashing in of the bond would have been limited only to that and not what Mrs K should then do with her money if she did cash in, given Mr L was her adviser in respect of the bond.

Bede seeks to argue that Mr L was acting in a personal capacity and not for it when he completed the application for the investment in MSWC. There is nothing to support this and I am not persuaded that this was the case given the existing advisory relationship he had with Mrs K and the findings I have made above.

In summary I am satisfied that:

- The complaint relates to the regulated activities of advising on investments and/or arranging deals in investments.

- Mrs K is an eligible complainant as she is a consumer and customer of Bede in respect of the investment in MSWC.

In the circumstances I am satisfied that we have jurisdiction to consider this complaint.

The merits of the complaint

Bede has provided no response to the findings I made in my provisional decision as to MSWC being unsuitable for Mrs K or in the alternative that it wasn't appropriate for her. There is therefore no basis for me changing the findings set out in my provisional decision on those two issues.

In summary I am upholding this complaint for the following reasons:

- Mrs K was advised to invest MSWC by Mr L acting for Bede and the investment

wasn’t suitable.

- Further or in the alternative Mr L on behalf of Bede arranged the investment in MSWC without assessing whether it was appropriate.

- If Bede had assessed if MSWC was appropriate it would have concluded that it wasn’t and warned Mrs K accordingly and she wouldn’t have gone ahead with the investment.

- Bede failed to carry out any due diligence on MSWC as it should have done. If it had done so it would have concluded it wasn’t a legitimate investment and that it shouldn’t therefore introduce, advise on or arrange the investment for its clients.

Putting things right

The investigator awarded redress that required Bede to compare Mrs K’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 there is nothing to suggest she was risk averse, given the money she invested in MSWC was from an existing risk based investment.

It seems to me that if Mrs K hadn’t invested in MSWC one possibility is that she wouldn’t have surrendered her investment bond. So, redress could be based on a comparison between her investment in MSWC and the investment bond. However, I think it is fair and reasonable to use a benchmark, given I cannot be certain she would have remained in the bond rather than invest in something else.

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 in the circumstances.

Fair compensation

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

I think Mrs K 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 Mrs K's circumstances and objectives when she invested.

What should Bede do?

To compensate Mrs K fairly, Bede must:

- Compare the performance of Mrs K'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 Mrs K £300 for distress and inconvenience caused by the total loss 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
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:

- Mrs K 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 Mrs K’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 Mrs K into that position. It does not mean that Mrs K 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 Mrs K could have obtained from investments suited to her 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 the amount calculated as set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 20 December 2024.

Philip Gibbons
Ombudsman