DRN-5070255

## The complaint

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

## What happened

Mrs P invested £23,000 in Marc Sharpe Limited ("MSL") in August 2016 following which she received several months of regular payments from the money invested until February 2018 after which such payments stopped. She thereafter applied to withdraw her money from the investment and received a further £5,000 but nothing further. MSL was subsequently wound up by court order dated 20 November 2019 and the liquidation is ongoing.

Mrs P complained to Bede on the basis that Mr L – its authorised director – as her financial adviser had introduced the investment to her. Bede provided a final response letter in which it made the following points:

- At a meeting to review her investment bond Mrs P asked Mr L if there was an alternative investment as she was unhappy with the returns.
- He provided the paperwork for MLS for her to consider but said he was unable to advise on this as it was an unregulated product. The investment was purchased directly by Mrs P after she had considered the paperwork.
- The paperwork was completed by Mrs P herself and was sent along with the cheque to MSL.
- The investment was purchased directly by Mrs P after she had considered the paperwork.
- Bede had nothing to do with the running of MSL.

Mrs P referred the complaint to our service and it was considered by one of our investigators who found it was both in jurisdiction and that it should be upheld on the merits.

The investigator awarded redress based on a comparison between the investment in MSL and our usual benchmark for someone who wasn't willing to take any risk with their investment. He also said it should pay Mrs P £300 for the distress and inconvenience caused.

Bede didn't agree with the opinion of the investigator and it was referred to me for review and decision. I issued a provisional decision on jurisdiction and merits the findings form 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 continue to argue that it had nothing to do with Mrs P investing in MSL and she wasn't its client at the time, 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 P invested in 2016 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 P is an eligible complainant – these two issues often been interlinked. 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").*

*In her letter of complaint dated 22 March 2022 Mrs P referred to Mr L as her financial adviser and said he had introduced MSL to her as an alternative investment plan to her existing investment bond and that he arranged the withdrawal documentation for that bond which she returned to him. She said she received the proceeds of the bond in early August 2016 following which she invested in MSL. Mrs P further said that the cheque for the investment was provided to Bede. She referred to the poor advice research into MSL has affected her health and she held MR L responsible as her financial adviser.*

*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'.*

*Before she invested Mrs P was provided with a document headed "2% Investment Product – Marc Sharpe Investments" which refers to "2% income per month - £25,000 x 2% = £500" or in the alternative 2% growth added to value of investment". Mrs P received this amount for several months following her investment amounting to a total of £11,716.*

*The terms of the agreement between Mrs P and MSL dated 17 August 2016 are not easy to understand – probably deliberately as subsequent events show the investment was in all likelihood not genuine. However, it does include terms that refer to a 'guaranteed monthly profit' and monthly transfer of profit to the client's bank account.*

*Based on the available evidence I am satisfied that the investment was an instrument acknowledging indebtedness and as such a security.*

*Turning to whether Bede ever advised Mrs P, I note she has said that Mr L introduced MSL as an alternative to her current investment bond and she thereafter withdrew her money from the bond in order to put this into MSL.*

*I note that in its FRL Bede refer to a review meeting in respect of Mrs P's bond in which it says she referred to the bond not producing the income or growth she wanted and asked if there was anything better. Bede said that Mr L said there was something potentially better but as this was an unregulated product he couldn't advise on it and he then provided the*

*literature for the product for her to consider and decide what she wanted to do.*

*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 but that it has none of these documents on file. In other words it relies on the lack of documentation as supporting its contention it didn't advise Mrs P.*

*However, whilst I accept that where such documents exist it is evidence of advice having been provided, the absence of such documents of itself doesn't necessarily mean such advice wasn't provided. 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"*

*Even on Bede's case, the context in which Mr L introduced MLS to Mrs P is that he was at that time her investment adviser and this was something better than her existing investment bond. It seems to me more likely than not that in those circumstances - a discussion about her existing investment and an alternative to this – Mrs P would have considered that he was recommending the product to her, regardless of whether or not he said he couldn't advise on it because it was unregulated. In the circumstances I am satisfied that Mr L (and as such Bede) did provide advice to Mrs P about investing in MLS.*

*In short I am persuaded Bede advised Mrs P about MLS because :*

- *There was an existing advisory relationship between Mr L and Mrs P at the time he introduced MLS to her.*
- *The introduction took place in the course of a meeting to discuss her current investment bond.*
- *The introduction was made on the basis that this would provide a better return than her investment bond.*

*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 P on the basis it would provide a better return than her existing investment bond.*

- *Mr L provided Mrs P with the documents she needed to complete to make the investment.*

- *Bede sent the completed documents to MSL along with the cheque Mrs P provided for the investment to be made.*

*I am satisfied that what Bede did was to bring about the investment in MSL 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 MSL.*

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

*Secondly, Mrs P 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 P at the time it introduced MSL to her. The introduction was in the course of a review meeting about an existing investment and on the basis MSL would provide a better return. I don’t think there is any question that Mrs P 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 P's investment in MSL.*

*I am satisfied on the evidence provided in this complaint that Bede promoted MSL to Mrs P. 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 P came to be invested in MSL and I am satisfied that the promotion of MSL to Mrs P was ancillary to Bede advising on MSL 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 2016). I have seen no evidence that would lead me to think that Mrs P was anything other than a retail client in relation to her investment in MSL. The definition of 'non-mainstream pooled investments includes 'unregulated collective investment schemes'. It isn't in dispute that MSL 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 P and in doing so it was in breach of its regulatory obligations. I am satisfied that Mrs P invested in MSL 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 P wouldn't have been invested in MSL 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 P was advised to invest in MSL 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 P was an existing client at the time and so Bede may have had some information required by the above rules. However, there is no way in my view it had all the information required by the above rules in order to assess suitability and as COBS 9.2.6R makes clear, in those circumstances it must not make a personal recommendation to the client and Bede was in breach of that rule when it advised Mrs P to invest in MSL. 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 MSL was a suitable investment for her. Her investment experience on the face of it was limited to an investment bond and given MSL was promising returns of 2% each month – 24% annually – it was quite obviously a very high risk investment.*

*Even if Bede didn't advise Mrs P 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 MSL comes within the definition. I am also satisfied that Bede knew that Mrs 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 her investment in MSL.*

*Under COBS 10.2.1R Bede was required to obtain information about Mrs P's knowledge and experience in the investment field relevant to the MSL investment to enable it to assess whether it was appropriate for her. As I have said, Bede will have had some information about Mrs P given she was an existing client in relation to an investment bond she had taken out in 2014. However, I am not satisfied this would have been enough for it to be able to assess appropriateness and it shouldn't therefore have proceeded with making arrangements for her to invest in MSL.*

*I am also not satisfied that if Bede had sought further information from Mrs P in order to comply with COBS 10.2.1R such information would have allowed it to reasonably conclude that MSL was appropriate for her. I have seen no evidence that her experience extended beyond the investment bond she was already invested in. There is nothing that suggests she had experience of an investment such as MSL -which used terms such as leveraged trades and stop losses.*

*The fact that Bede would have reasonably concluded that the investment wasn't appropriate for Mrs P would have meant that it would have had to have warned her about this, in accordance with COBS 10.3.1R. If Mrs P 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 P only invested in MSL 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 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 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 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 such as Mrs P. In its response to the opinion of the investigator Bede said that as it doesn't offer or promote unregulated products there was no reason for it carry out due diligence on MSL. This appears on the face of it to be an admission that it didn't carry out any due diligence on MSL.*

*Even on the limited information it did have – indicating that MSL had achieved an annual return of 24% on the total amount clients invested 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 understand how such high returns 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 2.2.1R. 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 upholding this complaint for the following reasons:*

- *Bede introduced and promoted MSL to Mrs P 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 P 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 Mrs P in any event.*

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

- *If it had assessed appropriateness it would have concluded that MSL wasn't appropriate for Mrs P 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, or arrange for, retail clients such as Mrs P.*

I gave both parties the opportunity of responding and providing any further information they wanted me to consider before making my final decision. Solicitors responded on behalf of Bede setting out why it didn't agree with my provisional decision. In summary the solicitors made the following key points.

- Any information provided to Mrs P about MSL was provided by her husband Mr P and at no time did Bede provide an introduction and/or advice and/or arrangement in relation to her investment in MSL.

- In or around July 2016 Mrs P instructed Bede that she wanted to withdraw her funds from her investment bond for a possible face lift which Mr L arranged with the funds being provided to her directly.

- There is no evidence to support the finding in the provisional decision that Mrs P was advised to withdraw her funds from the investment bond to invest in MSL.

- As Bede were only ever instructed in relation to the investment bond it had no duty to carry out due diligence on any other products and didn't do so.

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

- Should it be found that Mr P introduced and/or advised and/or arranged the investment in MSL he was acting outside the scope of the agreement with Bede and it isn't liable for his actions.

- At no time did Bede advise Mrs P that MSL was a better investment than her current investment bond.

- The ombudsman has failed to determine if Mrs P is a credible witness and has found facts on incomplete and incorrect information provided by someone who would benefit from a decision against Bede.

- Mrs P has stated both that the literature was provided to her during a meeting with Bede but also that Mr L advised Mr P who then advised her so her recollection is inconsistent on this crucial point and she cannot be held as a reliable witness.

- The inconsistencies should be considered fatal to the ability of the ombudsman to uphold the decision.

- Bede has not been involved with MSL and/or promoting and/or arranging its products and Mr L's involvement with MSL has always been in a personal capacity and he forwarded the application and cheque on behalf of Mrs P in a personal capacity not on behalf of Bede.

- 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.

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 on behalf of Bede in response to my provisional decision but am not persuaded that I should change the findings made in my provisional decision as to either our jurisdiction or the merits of the complaint, which findings form part of the findings in this final decision unless I state to the contrary. I will briefly address the points made by the solicitors, which are in the main arguments that relate to our jurisdiction rather than the merits.

The solicitors have suggested that I didn't consider the agreement between Bede and Mr P in any detail and that if I had considered it correctly it would have been clear that he wasn't acting as agent for Bede and we therefore don't have jurisdiction.

However, I made no reference to it at all in my provisional decision. This was because it wasn't relevant, given I was satisfied that it was Mr L acting on behalf of Bede who had introduced, advised on, and arranged the investment in MSL. I have seen nothing that persuades me that I should change the findings I made about this in my provisional decision.

The solicitors argue that Mrs P isn't a reliable witness because she has referred to being provided with the literature for MSL in a meeting with Bede but also that Mr L advised Mr P who then advised her. However, Bede's own evidence supports the findings I have made.

As I pointed out in my provisional decision, the contents of its FRL confirmed that it was the introducer. I set out below the relevant extract from the FRL in full.

*"Whilst reviewing your Metlife bond in August 2016 (you invested into this bond in July 2014) you mentioned that the bond was not producing the growth or income you desired. You asked if there was anything better as you had been disappointed in the returns from the Metlife Bond. Yourself, your husband, and your friend attended this meeting. I said there is potentially, but as these were in an unregulated capacity, I was unable to advise on these products. You asked for the literature on this product. I expressed that you read them, digest the information as I can't advise on these types of products."*

The argument now put by the solicitors as to Mr P providing the information about MSL and to Mrs P wanting to withdraw funds from her investment bond for a possible face lift, isn't consistent with what Bede stated in its FRL. The above extract confirms that Bede introduced MSL and provided the literature for it to Mrs P. Insofar as any inconsistency

between what is set out in the FRL and what the solicitors now say is concerned, I place more weight on what Bede said in its FRL.

Moreover, given Bede accepted that MSL was introduced to Mrs P in the course of a meeting in which Mr L reviewed her existing investment and provided the literature for the investment to her on the basis that this was potentially a better investment, I am satisfied that as well as introducing MSL to Mrs P Bede also advised her on it, as explained in my provisional decision.

The explanation in the FRL as to MSL being introduced to Mrs P in the course of a review of her existing investment also makes it clear in my view that Mr L was acting on behalf of Bede when he introduced MSL and advised on it and not in a personal capacity.

In the circumstances I am satisfied both that we have jurisdiction to consider this complaint and that it should be upheld on the merits for the reasons set out in my provisional decision and above. I have considered what the solicitors have said about the potential impact on Bede of this complaint and others I have considered being upheld. However, whilst I acknowledge this and have sympathy with the position my decision puts Bede in, this isn't a basis for me not to uphold the complaint.

In summary I am satisfied it is fair and reasonable to uphold the complaint for the following reasons.

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

- Bede advised Mrs P 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 Mrs P in any event.

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

- If it had assessed appropriateness it would have concluded that MSL wasn't appropriate for Mrs P 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 in breach of its regulatory responsibilities.

- 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 P.

**Putting things right**

The solicitors stated that the redress was disputed but without providing any arguments in support. In the circumstances I see no reason to change the redress that was set out in my provisional decision.

The investigator awarded redress that required Bede to compare Mrs P's investment in MSL with our usual benchmark for someone who wasn't willing to take any risk with their money. I

also think that redress should be calculated by reference to a benchmark but I have come to a different conclusion as to the benchmark that should be used.

This is because there is no basis for thinking that Mrs P wasn't willing to take some risk with her money given she wanted a better return than her investment bond and had used the proceeds of that bond to make the investment. If she hadn't invested in MSL she would either have kept her money in the bond or moved it to another product that gave her a better return. Either way, she wouldn't have been unwilling to take any risk.

**Fair compensation**

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

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

**What should Bede do?**

To compensate Mrs P fairly, Bede must:

- Compare the performance of Mrs 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 Mrs P £300 for distress and inconvenience caused by the loss of a significant part 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.

The investment is illiquid (meaning it could not be readily sold on the open market), as MSL has been wound up so the *actual value* should be assumed to be zero. This is provided Mrs P 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 Mrs P 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:

- Mrs P 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 P'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 P into that position. It does not mean that Mrs P 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 P 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 P to accept or reject my decision before 27 December 2024.

Philip Gibbons
**Ombudsman**