

The complaint

Mrs B complains that an advisor from IC Wealth Financial Planning Limited (ICWFP) sold her an investment which transpired to be a fraud. She says the investment was mis-sold to her, as she was not a sophisticated investor, but a small investor looking to invest her inheritance, and at no time did the advisor mention that the investment was not Financial Conduct Authority (FCA) regulated, or the level of risk associated with the investment.

Background

Mrs B's complaint is focussed on the actions of an advisor I will call Mr A. Mrs B says Mr A advised her to make an investment in Dolphin Trust, also known as the German Property Group (GPG), in early 2018. At this time, Mr A worked for ICWFP and Mrs B had dealt previously with Mr A; both when he worked at ICWFP and, before then, at other businesses. More detail of the history of the relationship between Mrs B and Mr A and/or ICWFP is set out in the summary of the parties' submissions below.

The timeline of the key events is as follows:

- January 2018 (exact date unknown) – Mrs B meets with Mr A, to discuss what to do with a £80,000 sum of inheritance she had received.
- 25 January 2018 – Mrs B signs a “Dolphin Trust Expression Of Interest Form”.
- 25 January 2018 – Mrs B receives an email from “IC Wealth”, asking her to submit documents relating to the expression of interest to info@icwealth.co.uk.
- 25 January 2018 – Mrs B replies to this email, providing a screenshot of a mobile banking statement.
- 25 January 2018 – Mr A replies to Mrs B's email, from info@icwealth.co.uk, explaining that a mobile banking statement is not sufficient – a full statement is required.
- 25 January 2018 – Mrs B sends a further email, attaching a full bank statement.
- 29 January 2018 – Mr A sends Mrs B an email from [name removed]@start.uk.net, attaching a “Loan Note Offer” from Dolphin Trust.
- 29 January 2018 – Mr A calls Mrs B to talk her through the offer - what she needed to sign, get witnessed etc.
- 30 and 31 January 2018 – a transfer of £25,000 (i.e. £50,000 in total) is made to Dolphin Trust/GPG by Mrs B.

Further detail of some of these events is set out in the summary of the parties' submissions below.

ICWFP did not respond to Mrs B's complaint. So, she referred it to us. After the referral was made ICWFP got in touch with us to say the complaint was not one we could consider, as it did not sell the investment to Mrs B (and did not have investment permissions from the Financial Conduct Authority (FCA)) and the investment was, in any event, "unregulated" and therefore not something we could consider. In further submissions, ICWFP said commission for the investment was paid to Mr A personally (a copy bank statement was sent in support of this) and there is no reference to ICWFP on the Dolphin Trust Expression Of Interest Form.

ICWFP then appointed a law firm to make submissions on its behalf. Those submissions were sent across two letters and said, in summary:

- Mr A is a mortgage adviser and insurance adviser and has signed declarations he is in compliance with all FCA regulatory requirements.
- ICWFP has been authorised since 21 November 2012. The history of Mr A's employment by ICWFP is a matter of public record.
- Prior to exercising permissions on behalf of ICWFP Mr A held a Controlled Function role with Start Mortgages Limited (also trading as Start Financial Planning) between 2005 and 2011. Start Mortgages Limited was authorised by the Financial Services Authority (FSA) in relation to mortgages, general insurance and investments.
- The entirety of Mrs B's interactions with ICWFP includes the services originally provided by Start Mortgages Limited.
- In 2008 Start Mortgages Limited arranged a mortgage for Mrs B and building and contents insurance.
- In February 2010 Start Financial Planning arranged an £7,200 ISA (each) for Mrs B and her husband.
- From 2011 a company set up by Mr A's former business partner, a Mr R, called IC Wealth Management Limited, was referred all regulated investment business, including that of Mrs B and her husband, except for that in relation to Dolphin Trust, the investment which was referred to Mrs B by Start.
- IC Wealth Management Limited was set up in January 2011, and was an Appointed Representative of a principal business.
- ICWFP (also trading as IC Wealth as of July 2013) was authorised by the FSA. It was a mortgage and general insurance business.
- In February 2013 ICWFP arranged a life and critical illness plan for Mrs B. This was subsequently renewed in 2014, 2016, 2018 and 2024.
- In March 2013 ICWFP referred Mrs B and her husband to IC Wealth Management Limited in relation to investment business. IC Wealth Management Limited then arranged an ISA.
- In March 2013 IC Wealth Financial Planning Limited referred Mr B's pension transfer request to IC Wealth Management Limited.
- So, IC Wealth Management Limited was referred all regulated investment business

by ICWFP and Mrs B was aware of that fact.

- ICWFP, in accordance with its FCA authorisation, dealt solely with Mrs B's and her husband's insurance business and IC Wealth Management Limited dealt solely with Mrs B's and her husband's investments, namely the pension transfer and the ISAs.
- ICWFP and IC Wealth Management Limited shared premises for a number of years, and there was a consolidation of back-office services including email under a brand "IC Wealth".
- In relation to the Dolphin Trust investment, beyond the email exchange about identify documents, there are no email communications or documents that reference IC Wealth or IC Wealth Management Limited. Mrs B's investment in Dolphin Trust was via Start.
- An investment in Dolphin Trust was not regulated by the FCA. As the FCA made clear the only avenue for compensation for investors into Dolphin Trust was in instances where that investment was into a regulated product and the advice was provided by an FCA authorised business.
- The 25 January 2018 emails between the info@icwealth.co.uk email address and Mrs B contain no reference to an investment in Dolphin Trust, either in the text or the subject line or the name of the attachment. There is no link between these emails and Mrs B's investment in Dolphin Trust.
- It can be inferred that the email of 29 January 2018 attaching the Loan Note Offer came from Start.
- Commission payments made to Start for introducing clients to Dolphin Trust were paid into Mr A's personal account. Mr A has provided evidence of this arrangement in relation to another investor in Dolphin who was introduced by Start.
- The application documents for Ms B's investment in Dolphin Trust make no reference to IC Wealth.

After Start Mortgages Limited ceased to be authorised in March 2011 it changed its name to Start Investment Management Limited. It therefore appears that the law firm's references to "Start" in relation to the Dolphin Trust investment refer to Start Investment Management Limited. That business was never authorised by the FSA or FCA.

The law firm submitted a number of contemporaneous documents relating to some of the historical transactions Mrs B had entered into with Start Mortgages Limited or ICWFP.

Our investigator's view

Our investigator concluded the complaint was one we could consider and should be upheld. He said, in summary:

- He was satisfied Dolphin was an investment under the relevant rules.
- Mr A arranged this investment for Mrs B. He was therefore satisfied there was a regulated activity of arranging deals in an investment.
- He thought it more likely than not that Mr A was acting on ICWFP's behalf when

dealing with the investment.

- The investment was arranged in January 2018, and he was satisfied that during this period Mr A was working at ICWFP. He did not believe there was any dispute that the person who was involved in the transaction was Mr A.
- He was satisfied ICWFP was responsible for Mr A's actions in relation to the Dolphin investment.
- Under the relevant FCA rules, the Dolphin investment should not have been promoted to Mrs B.
- Also, had ICWFP carried out some due diligence into the investment, it would likely have identified issues with it; which offers further reason why it was not fair and reasonable to promote it to Mrs B.
- It is therefore fair to ask ICWFP to compensate Mrs B for the loss she has suffered through making the investment.

Responses to the investigator's view

ICWFP did not accept the view. It said, in summary.

- The current owner of ICWFP was not the owner and authorised person with the FCA at the time of the investment.
- Mrs B is clearly outside of the time scale for making this complaint.
- As previously disclosed, any commissions from this transaction were not paid to IC Wealth. If this was a regulated sale, the commission under FCA requirements would have to have been paid to IC Wealth, and it was not.
- There was a letter sent to Mrs B about the investment on 28 January 2018 from Start Investment Management.
- The investment application has absolutely no reference to ICWFP. Any regulated firm must disclose the FCA number and regulated entity on an application to indicate under what jurisdiction the client is being advised.
- ICWFP has never had investment permissions and has never conducted any investment business as per FCA regulations. The company does in fact not have an investment advisor to be able to provide such advice.
- It is providing copies of article about Dolphin Trust/GPG. These articles clearly state *"the overseas investment scheme GPG, including Dolphin and its associated entities, operates outside the purview of the FCA authorisation"* and *"UK customers who invested directly in GPG or through self-invested personal pensions schemes (SIPPS) or small self-administered schemes (SASS) may be eligible for compensation."*
- So, this was a non-regulated investment outside FCA jurisdiction and the only customers who possibly may be eligible for a claim would have invested into a SIPP or a SASS via the scheme. Mrs B did not invest into a SIPP or SASS.

Mr A submitted a copy of the letter from Start Investment Management dated 28 January 2018.

Mrs B accepted the view. We asked her for her comments on the 28 January 2018 letter ICWFP had submitted. She said she had no recollection of receiving the letter and noted:

- It is not on headed paper.
- It is dated 28 January 2018 – a Sunday
- The meta data of the letter shows the PDF was created on 15 January 2025. She did not think it plausible Start Investment Management had just now posted the letter to IC Wealth, which had then scanned it on 15 January 2025. It is much more likely Start would have sent it by email and ICWFP then forwarded it to us.

Further submissions from Mrs B

After the complaint had been allocated to me, I asked Mrs B for some further detail of the events leading up to her investment in Dolphin Trust. Her response, in summary, was as follows:

- In February 2008 she had sought financial advice on a new mortgage as her fixed term mortgage was coming to an end. She had been recommended an advisor at Start Financial Planning by a colleague and arranged a meeting with him at my home. She was then introduced to Mr A, who arranged a life insurance policy.
- She continued to periodically have review meetings of her life insurance policy with Mr A at her home.
- At one of these review meetings she and her husband discussed his modest investments with Mr A, and it was decided that Mr B's money would be best placed in an ISA, and as she was not in a position to use her own ISA allowance, Mr B would use her allowance.
- In 2013 at a review meeting with Mr A, he suggested that the ISAs they had were not performing at a sufficient return and recommended that they transfer the investment to a new product.
- At this time Mr A introduced them to another gentleman to complete the transfer, and the intermediary details on the paperwork mentioned IC Wealth Management Ltd.
- She has only ever met with Mr A, and always of an evening at her home.
- She contacted Mr A at ICWFP in January 2018 by telephone to arrange a meeting at her home.
- The initial discussion about the Dolphin investment took place at her home on a Tuesday or Wednesday the week 8 to 12 January, or during the week 15 to 19 January 2018. She does not have the exact date as this would have been in her work calendar and she no longer has access to that.
- She requested the meeting with Mr A to discuss the recent inheritance she had received following the death of her grandmother. She had £80,000 but was interested in whether to settle her mortgage of around £50,000 and possibly take out an ISA, as

she had done previously, with the remaining in an easy access account, as her daughter had just started university and would require financial support from her.

- The meeting took in excess of three hours with Mr A using glossy brochures extolling the positive rate of return that she would receive from the Dolphin Trust investment, and that this would be better use of her funds than settling her mortgage whilst the rates were so low.
- Mr A spent many hours "selling" the Dolphin investment, convincing her that it was a safe investment, that he himself had invested and that it would be perfect for her needs. Unfortunately, the meeting was not documented.
- She trusted Mr A as she had dealt with him for many years and thus agreed to invest £30,000 for three years.
- When she received the paperwork Mr A explained that she needed to invest £50,000 for five years as that was what the investment on offer required and she did not feel she could challenge him at that stage, plus she had no reason to doubt his advice after many years of dealing with him.
- Mr A pursued her diligently to complete the investment. The emails she has provided show she was dealing with the arrangements when she was at work, and was told that the information required had to be sent as a matter of urgency. This was the same when it came to transferring the money; the same pressure was used during her working day but this time by phone, hence there are no email records to provide proof, only confirmation that the funds had been received.
- The email to her of 29 January 2018 contained the Dolphin Trust Loan letter Note Offer. Mr A then rang her to instruct her to get it signed and witnessed ASAP. She did this whilst at work, with a colleague as a witness, the next day.
- The bank transfer took place on Tuesday 30 January and Wednesday 31 January 2018. She could not transfer the whole £50,000 so had to complete two payments of £25,000. Mr A was on the phone to her during this time, until she successfully completed the total transfer.
- She only ever dealt with Mr A in connection with the Dolphin Trust investment. She did receive an email from someone unnamed at IC Wealth (the 25 January 2018 email referred to above) instructing her to email a copy of a utility bill for ID verification purposes. However, her main and constant contact was Mr A.

My provisional decision

I recently issued a provisional decision. My decision, in summary, was that Mrs B's complaint had been made in time, and related to a regulated activity carried out by ICWFP. I concluded that ICWFP had given Mrs B advice to make the investment, and that the advice was unsuitable; and it was therefore fair and reasonable to ask ICWFP to compensate Mr B for the loss she suffered through making the investment.

Responses to my provisional decision

Mrs B accepted my decision. She said she had no further submissions to make.

ICWFP did not respond directly to the decision. Mr A sent further submissions from his Start Investment Management Limited email address. We have asked ICWFP to confirm whether the submissions were sent on its behalf, but it has not done so. ICWFP was however copied into emails from Start to us; so, it was aware of the submissions. The response sent by Mr A said, in summary:

- Mr A was not acting on behalf of ICWFP in this case. The whole decision is based on one email sent from ICWFP asking for money laundering documents.
- Mrs B signed a statement stating she was a sophisticated investor, which has been submitted to us. Why is she saying she is not now? It does not believe we have even asked her that fundamental question.
- No commissions were ever paid to ICWFP.
- None of the documents Mrs B signed make any reference to ICWFP as the advising business.
- All the Dolphin sales aids clearly stated this was a product not regulated by FCA and this was a non regulated sale at the time.
- ICWFP does not have investment permissions. It cannot advise on investments.
- We have not provided any clear evidence as to why all the above have been considered. It appears Mrs B has pushed me into this decision.

What I've decided – and why

The complaint is against ICWFP and ICWFP has not authorised any other parties to act for it. So, strictly speaking, ICWFP has made no response to my provisional decision. It is however clearly aware of the submissions Mr A has made and Mr A also holds a Significant Management Controlled Function at ICWFP. So, I have considered the submissions made by Mr A. Although, in any event, they only repeat submissions which have been previously made by or for ICWFP; they do not raise any new points or provide any new evidence.

Having reconsidered all the available evidence and arguments, I have not been persuaded to depart from my provisional decision. And, as neither party have provided any further evidence or made any further substantive submissions, I see no reason to depart from my provisional findings. I have therefore largely repeated my provisional findings below, as my final findings.

Jurisdiction

The first step I need to take is to establish whether this complaint is one I can consider. ICWFP, or the law firm on its behalf, says there are a number of reasons why this complaint cannot be considered. In summary, it has said:

- The complaint is out of time (I assume by this it means it has been made outside the time limits set out in the relevant FCA rules).
- The investment was unregulated, and this was therefore unregulated business which was not covered by the FCA.
- It did not sell the investment to Mrs B – Start Investment Management did.

I have again considered all the available evidence and arguments, and remain satisfied this complaint is one I can consider against ICWFP. The first two points ICWFP has made are, in my view, based on a misunderstanding of the rules under which it operates. And the final point is not supported by the available evidence. I will set my findings out in more detail below.

Time limits

ICWFP says the complaint has been made too late. It has not explained why it has reached this view.

The relevant rules are at DISP 2.8.2R of the FCA Handbook. That says:

“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

1. more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or

2. more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received”

ICWFP did not send a final response to Mrs B. The part of the rule which gives Mrs B six months to refer to us following such a response is not therefore a relevant consideration here.

In terms of the remainder, in this case the event complained of took place in January 2018. The complaint was submitted to ICWFP on 27 September 2023 and referred to us on 14 December 2023. It was therefore made, and referred to us, within six years of the event complained of. It has, accordingly, been made within the relevant time limits.

Regulated activities and ICWFP's responsibility

We can consider a complaint under our compulsory jurisdiction if it relates to an act or omission by a firm (business) in the carrying on of one or more listed activities, (including regulated activities), or any ancillary activities carried on by the firm in connection with those activities, (DISP2.3.1R).

Complaints about acts or omissions by a business include complaints about acts or omissions in respect of activities for which the business is responsible. So there are two questions to be considered before I can decide whether this complaint falls within the compulsory jurisdiction of this service:

1. Were the acts about which Mrs B complains done in the carrying on of a regulated activity, or an ancillary activity carried on in connection with a regulated activity?

2. Were those acts the acts of ICWFP?

I have considered these questions in turn.

Regulated activity

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO) sets out what activities require FCA authorisation i.e. are regulated activities. It essentially sets out that specified activities, carried on in relation to specified investments, are regulated activities.

In terms of a specified activity, Article 53 (3) of the RAO provides the following:

“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, exchanging, redeeming, holding or underwriting a particular investment which is a security, structured deposit or a relevant investment, or

(ii) exercising or not exercising any right conferred by such an investment to buy, sell, subscribe for, exchange or redeem such an investment.”

It does not appear to be disputed Mr A advised Mrs B to make the investment in the Dolphin Trust. And I am satisfied that he did.

On this point, I find Mrs B's testimony plausible and persuasive. It seems to me to be an honest account of events to Mrs B's recollection and the most likely explanation for how she ended up making the Dolphin Trust investment. I think it very unlikely she would have made the investment without a positive recommendation from someone she trusted i.e. Mr A. And it appears ICWFP and Mr A himself do not dispute that Mr A advised Mrs B to make the investment (setting aside the dispute about who Mr A was acting for when he gave the advice).

Having considered Mrs B's testimony alongside the other available evidence I am satisfied of the following:

- Mrs B did not find the investment of her own volition; she only became aware of it after contacting Mr A.
- Mrs B was not initially seeking to make an investment of this type – she only decided to make the investment following a lengthy sales process conducted by Mr A.
- The sales process involved Mr A explaining – by reference to Mrs B's personal and financial circumstances – why an investment in Dolphin Trust was suitable for her. For example, Mr A explained it was safe and would offer a better return on her money than repaying her mortgage, given the low rate of interest payable.
- Mr B did not determine the investment amount – Mr A told her how much she should invest. He also told her which specific Dolphin Trust investment she should invest in.
- Mrs B agreed to make the investment because she trusted Mr A, as he had acted as

her advisor for a number of years and, in her view, had always met her needs and acted in her best interests.

- Mr A was involved with the Dolphin Trust investment. He sold it to others (we have at least one other complaint against ICWFP in which similar testimony has been made by a consumer with no connection to Mrs B).

I am therefore satisfied Mr A gave Mrs B advice on the merits of buying the Dolphin Trust investment. So, Mr A carried out a specified activity. The next point to consider therefore is whether he did so in relation to a specified investment.

Mrs B's investment was in loan notes issued by Dolphin Capital 80 KG, a Special Purpose Vehicle (SPV). The objective of the investment was to fund a specific development of a German listed building. Investors were to put up money to fund a development and to receive a fixed return over a fixed period for doing so. The investments involved a SPV being set up for each development, which would issue loan notes, and the investors purportedly receiving a share of a charge on the relevant property as security.

In my view, this amounts to a form of arrangement intended to pool investors' money to fund a development and to provide them with the right, through securities issued (i.e. the loan notes), to a share of the returns generated by that development (in the form of an offered fixed return, in this instance). And to give investors a right to a portion of the property in question (through the charge). It therefore appears to be an Unregulated Collective Investment Scheme (UCIS). So, it was a specified investment - units of a collective investment scheme (Art 81 of the RAO).

If that analysis is incorrect, the alternative is that the investment was an instrument creating or acknowledging indebtedness, which is defined as follows (Art 77 of the RAO):

"Any of the following—

(a) debentures;

(b) debenture stock;

(c) loan stock;

(d) bonds;

(e) certificates of deposit;

(f) any other instruments creating or acknowledging a present or future indebtedness."

If the investment was not a UCIS it, in my view, falls within this definition, and was therefore a specified investment on that basis.

So, I am satisfied the Dolphin Trust investment was a specified investment. Mr A therefore carried on the regulated activity of advising on investments.

Pausing there, I note ICWFP has referred to various articles/publications which were published following the failure of Dolphin Trust/GPG. All three of the articles focus on those who invested through pensions, and say that investors may have recourse to a regulated advisor through the regulated complaints process; and, if they invested through one, should complain to the advisor in these circumstances. But they do not say those who did not invest through pensions do *not* have access to the regulated complaints process. So, although they

focus on those who invested through pensions, they do not amount to evidence that advice was unregulated; they are consistent with the findings I have set out above. The relevant considerations to determine this point are, in any event, set out in the legislation I have quoted above.

In a similar vein, I do not think the Dolphin “sales aids” referred to in the submissions made by Mr A amount to evidence that advice was unregulated.

I will now turn to the question of whether the advice was the act of ICWFP which, in my view, in this case means whether Mr A acting in his capacity of employee of ICWFP when giving the advice.

Acts of ICWFP

The submissions from ICWFP and its legal representative refer to a number of businesses:

- IC Wealth Management Limited
- ICWFP
- Start Mortgages/ Start Financial Planning
- Start Investment Management

There is also reference to “IC Wealth”, which is described as a trading name of both ICWFP and IC Wealth Management Limited.

The FCA Register and Companies House confirm the following:

- Start Mortgages (which had a trading name of Start Financial Planning registered on the FCA Register) ceased to be authorised in 2011.
- IC Wealth Management Limited (which appears in the FCA Register as “*i C Wealth Management*”) was an appointed representative of a principal business from 2011 to 2020. It had no registered trading names on the Register.
- ICWFP was authorised from 2013 and has the trading name “*i C Wealth*” listed on the FCA Register, effective from July 2013 to date.
- Start Mortgages/ Start Financial Planning changed its name to Start Investment Management in 2011 (which, as mentioned, was never FCA authorised).

As an aside, I note there is reference to a business called 3 Sixti Ltd in the footer of the emails of 25 January 2018 to Mrs B from ICWFP. And the FCA Register records it had a trading name “*i C Wealth*” from 5 June 2013 to 9 November 2017.

So, it seems Start Mortgages/Start Financial Planning was replaced in 2011 by IC Wealth Management Limited and then in 2013 by IC Wealth Management Limited and ICWFP. And that only the latter had the trading name IC Wealth registered, albeit, it seems, with typographical errors (that trading name having only been registered to 3 Sixti Ltd otherwise).

The evidence shows Mrs B had relationships with two businesses at the time of approaching ICWFP for advice on what to do with her inheritance - ICWFP and IC Wealth Management Limited. And it seems that, save for a call to ICWFP’s offices during which she left the message which prompted the 25 January 2018 email from ICWFP Mrs B dealt exclusively with Mr A in relation to the investment.

Mr A was associated with ICWFP at the time of the Dolphin Trust investment. And he has

been the director of Start Investment Management (or its predecessor, Start Mortgages/ Start Financial Planning) since 2005. There is no evidence to show he was associated with any other business at the time, including IC Wealth Management Limited.

Pulling all this together there are, in my view, two possibilities – that the advice in relation to the Dolphin Trust investment was given by Mr A acting for ICWFP or acting for Start Investment Management. And that any reference to “IC Wealth” in this context means ICWFP (which is consistent with the FCA Register entries).

There is the following available evidence relative to the question of who Mr A was acting for:

- The history of Mrs B’s relationship with Mr A, Start Mortgages and ICWFP.
- Mrs B’s recollections of the events leading up to the investment.
- The 25 January 2018 emails between Mr A/ICWFP and Mrs B.
- The investment application forms – the Dolphin Trust Expression Of Interest Form and Loan Note Offer.
- The copy letter dated 28 January 2018 provided by ICWFP, which is described as being from Start Investment Management.
- The 29 January 2018 email to Mrs B sent by Mr A from a “start.uk.net” email address.
- A bank statement, which Mr A says is for his personal account and shows a commission payment relating to a Dolphin Trust investment.

This evidence presents a mixed picture. But it does not follow that I must find ICWFP is not responsible. Ultimately, I need to make a reasonable finding of fact based on the balance of probabilities, by determining what weight I should attach to the available evidence, and considering what is likely to have happened, in the circumstances.

In my view, having carefully considered the available evidence, it is reasonable to find that Mr A was acting for ICWFP rather than Start Investment Management when giving the advice which is the subject of this complaint. I have set out my finding in more detail below.

It does not appear to be disputed Mr A was employed by ICWFP at the time of the investment – the law firm confirmed this when making submissions on ICWFP’s behalf. And that is consistent with the available evidence, which includes advice letters sent by ICWFP to Mrs B’s husband in 2017 and 2018, which are signed by Mr A, letters from policy providers to ICWFP which are addressed to Mr A, the email exchange I set out below, and Mrs B’s testimony.

Pausing there, I note Mr A is not listed on the FCA Register as having a Controlled Function at ICWFP at this time (his only entry is for a Significant Management function from December 2019). However, that is not consistent with the evidence I mention, which clearly shows Mr A was carrying out activities associated with a Controlled Function at ICWFP before December 2019, such as advising on and arranging life assurance policies. I do not know whether the absence of a Controlled Function prior to December 2019 is an error in the Register or whether Mr A was carrying out a Controlled Function without permission from the FCA; but, in any event, it is not, in my view, evidence that Mr A was not working for ICWFP at the time, given the evidence available otherwise.

At the outset of the relevant events, Mrs B only had a relationship with one of the two businesses for which Mr A could have been acting – ICWFP. And I am satisfied she contacted Mr A in the first instance in his capacity as ICWFP’s advisor – the capacity in which she had always previously dealt with him. She did not contact Start Investment Management – there is no evidence she knew of that business’ existence, other than in its earlier authorised form, when it traded as Start Mortgages.

Mrs B also does not appear to have had a relationship with Mr A personally; the relationship was one of advisor and client.

So, at the point of arriving to meet Mrs B, Mr A was acting in his capacity as an advisor for ICWFP. There is no record of the meeting – only Mrs B's recollections. And, as mentioned, I find Mrs B's recollections plausible and persuasive.

Mrs B has no recollection of Mr A beginning the meeting by "switching hats" i.e. by explaining he could not offer investment advice as her advisor at ICWFP but could instead introduce her to Start Investment Management. And there is no evidence otherwise to suggest that happened. Ordinarily, if a new business is being engaged, some sort of contract would be entered into, setting out the services the business was to offer, the terms under which those services were to be offered, and the costs associated with them etc. Here, there is no such documentation.

On the other hand, Mrs B had an established relationship with ICWFP. Mrs B had received and signed Terms of Business with ICWFP, and ICWFP (specifically, Mr A in his capacity as an advisor at ICWFP) had met with her regularly. Fact-finds etc had been completed, with a number of protection products having been recommended to her by ICWFP. ICWFP had handed investment business over to IC Wealth Management Limited but, in instances where that had happened, there is documentation to record it (in contrast to there being no such documentation relating to Start Investment Management, as mentioned).

The only reference to Start Investment Management is the letter dated 28 January 2018 and the 29 January 2018 email from [name removed]@start.uk.net.

In respect of these, I think the first point to consider is that they both post-date the advice. So, even if I accept they show Mr A was acting for Start Investment Management when it came to arranging the investment, they are not evidence he was acting in the same capacity when giving advice to Mrs B. I do not find them persuasive evidence of Start Investment Management's involvement, in any event.

The 28 January 2018 letter lacks basic professional standards. It is just a blank piece of paper with "Start Investment Management" typed out above the sender's address (which is the same as ICWFP's address). It is also not congruous with the other available evidence. All other correspondence to Mrs B was by email. And it does not fit into the timeline of events – it says the application for the investment had been forwarded to Dolphin Trust and policy documents would be sent within 14 days. But the ultimate application (in the form of the Loan Note Offer) was not sent to Mrs B for completion until after this date (via the 29 January 2018 email). I am not therefore persuaded this letter was sent at the time of events, even if it was created then.

The 29 January 2018 email, other than the "start.uk.net" domain name, makes no reference to Start Investment Management. It is, in any event, evidence relating to the arrangement of the investment, not the advice to make it. Its purpose was to forward the investment application (which took the form of a Loan Note Offer) for completion to Mrs B.

Turning to the 25 January 2018 emails, I think it is telling that, following the initial meeting where the investment was recommended, Mrs B called ICWFP, and left a message to ask where to send the documents needed for the investment application to proceed. If she was dealing with Start Investment Management at this point, it is not clear why she would have contacted ICWFP in relation to this.

Mrs B received the following response in the first of the 25 January 2018 emails:

"Dear [Mrs B]

Thanks for your message on our answerphone this morning.

*The email address you need to submit the documents which [Mr A] requested is
info@icwealth.co.uk.*

Please would you submit as a matter of urgency.

Kind regards

I C Wealth"

If Mr A was representing Start Investment Management I would expect the response to Mrs B to explain that, and to say Mrs B needed to contact Start Investment Management. However, it not only fails to do this but provides an "icwealth.co.uk" email address as the one to use to submit the documents relating to the investment.

ICWFP says the emails do not mention the investment. But the message Mrs B left for ICWFP was clearly about the investment and the email clearly relates to it; and was understood to do so. It refers to the documents Mr A requested and a matter of urgency. So, the sender clearly knows what it relates to, as they have an understanding Mr A has requested documents, and they could not have made an assessment of urgency if they did not know what the request related to. Mrs B also had no other business with ICWFP at the time.

The response from Mr A's personal email address at "@icwealth.co.uk" is in a similar vein. It says:

"Hi [Mrs B].

[Mrs B] we can not accept a mobile phone statement , only a utility or bank statement.

Kind regards

[Mr A]

*[Mr A]. (Hons), CEMAP
Director
www.icwealth.co.uk"*

Mr A signs this email off in the capacity of a director of ICWFP (although in fact he was not a registered director at the business). So, he was clearly acting for ICWFP at the time.

I therefore find these emails to be persuasive evidence Mr A did act for ICWFP when giving advice. They are consistent with Mrs B's recollections, and show the next contact from Mrs B following the advice; and therefore establish a direct connection between the advice given to Mrs B and the work needed to enact it.

ICWFP says the Dolphin Trust Expression Of Interest Form and Loan Note Offer make no reference to ICWFP, and this is evidence it was not involved (and the submissions from Start following my provisional decision repeat this point). I am not persuaded by this.

The copy Expression Of Interest Form we have been provided with is only partly completed. It has a section to record the "Accredited Introducer Name", but that section is blank.

There are two pages attached to the Expression Of Interest Form which carry the title “*Appropriateness and Client Categorisation Questionnaire*”. It is not clear whether they are part of the form, or a separate form. But they are also only partly completed. The agent introducing the application is required to complete tables setting out what category of client the applicant falls into and providing confirmation an appropriateness test has been carried out. But this section has been left entirely blank.

Pausing there, I note Mr A says, in the submissions following my provisional decision, that Mrs B signed a statement stating she was a sophisticated investor. However, I have seen no evidence that is the case. The client categorisation section of the form is, as mentioned, blank. There is a “Certificate for Execution by High Net Worth Statement” attached to the form, which Mrs B has signed, but this makes no reference to any introducer or advisor. I acknowledge this point is also relevant to the merits of the complaint. I will therefore return to it when I consider the merits of Mrs B’s complaint below.

So, I do not think this form is evidence Start Investment Management gave the advice to Mrs B. It makes no reference to ICWFP but it makes no reference to Start Investment Management either. It is incomplete; and therefore makes no reference to any introducing or advising business.

The Loan Note Offer has no section to record the details of any business involved in bringing about the application. So, it provides no evidence on this point.

The bank statement submitted by Mr A purports to show a payment of Dolphin Trust commission. However, the payment highlighted was made to Mr A over a year after Mrs B’s investment was made, and does not appear to have any connection to her or Dolphin Trust – it was from a company called “Innovationist” and bears a reference name which appears to have no connection to Mrs B. So, this is not evidence that commission was paid to Mr A personally for Mrs B’s investment. In any event, if commission was paid to Mr A directly that is not necessarily evidence he was acting for Start Investment Management rather than ICWFP when giving advice. And I note there is no suggestion that commission was paid to Start Investment Management.

The final point I think it is important to have in mind is that, in my view, it is unlikely Mr A would have wanted to introduce Start Investment Management to Mrs B at the point of giving her advice. He would have been motivated to sell the investment – which I understand offered significant commission payments – and therefore keen to leverage his existing relationship with Mrs B, which formed the basis of her trust in him. So, I think it likely he continued in the role in which Mrs B knew him i.e. as an advisor for ICWFP.

For completion, I also acknowledge ICWFP’s submission (repeated by Mr A following my provisional decision) that it did not have permission to give investment advice. But the rules (DISP 2.3.1R) only require the business to meet the definition of a “firm”, which is an “authorised person”, not for the acts in question to fall within the permissions granted to the business by the FCA. So, the scope of ICWFP’s permissions is not a relevant consideration to establishing whether the complaint is one I can consider. ICWFP was an authorised person and, for the reasons I have set out, I am satisfied it carried out a regulated activity.

Overall, I am satisfied that Mr A was acting for ICWFP, not Start Investment Management, when giving Mrs B advice to make the Dolphin Trust investment. And this complaint is therefore about a regulated activity carried on by ICWFP. So, it is one I can consider against ICWFP.

What is fair and reasonable in the circumstances?

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

As the authorised business, ICWFP, was giving advice to Mrs B its regulatory obligations required it to take reasonable steps to ensure the recommendation of the Dolphin Trust investment was suitable for Mrs B. The relevant rules are set out at COBS 9.2.1 R:

“(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.”

Dolphin Trust was an unregulated investment (i.e. its operation/management was not subject to any regulation) and based on a single overseas property development. The risks associated with it were complex and multi-factorial, and Dolphin Trust had a limited track record. So, ICWFP ought to have recognised it was a high risk investment, which was unlikely to be suitable for the vast majority of retail clients and, if it was suitable for any such clients, only as a small percentage of an overall diversified portfolio.

Mrs B was an investor with limited experience. It seems the inheritance money she wanted to discuss with ICWFP represented the majority of her assets other than her home. She had existing liabilities – including her mortgage. And it is clear she did not want to (nor could afford to) take significant risks when investing the inheritance money.

ICWFP advised Mrs B to invest £50,000 in the Dolphin Trust. In the circumstances, that was clearly unsuitable advice. I do not think ICWFP should have advised Mrs B to invest in Dolphin Trust *at all*, and definitely not to the extent that it advised her to invest.

I note Mrs B signed a High Net Worth statement – and that it appears the statement was not consistent with her circumstances. But ICWFP did know Mrs B's circumstances (or at least, ought to have done, had it met its regulatory obligations when giving advice). So, I do not think the statement, in itself, gave ICWFP a reasonable basis to conclude that a £50,000 investment in the Dolphin Trust was suitable for Mrs B. And I would draw the same conclusion even if the statement *was* accurate; even if Mrs B did meet the High Net Worth investor criteria it did not automatically follow that a £50,000 investment in the Dolphin Trust was suitable for her.

I remain of the view that Mr A exploited his existing relationship with Mrs B as her advisor at ICWFP to recommend the investment to her. And, in doing so, put his interests above Mrs B's, by advising her to make a clearly unsuitable investment. And I am satisfied it is therefore fair and reasonable to ask ICWFP to compensate Mrs B for the loss she has suffered through making the investment.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs B as close to the position she would probably now be in if she had not been given unsuitable advice. Were it not for the unsuitable advice, Mrs B would not have invested in the Dolphin Trust investment. I think Mrs B would have acted differently.

Mrs B's original plan involved a combination of paying off some of her mortgage, investing in an ISA and keeping some money on deposit, to have available to support her daughter. I think it likely she would have followed this plan, had she not been advised to make the Dolphin Trust investment. But it is not possible to say *precisely* what she would have done, and I am therefore satisfied that what I have set out below is fair and reasonable given Mrs B's circumstances and objectives when she invested.

What should ICWFP do?

To compensate Mrs B fairly, ICWFP must:

- Compare the performance of Mrs B'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.
- ICWFP should also add any interest set out below to the compensation payable.
- Pay Mrs B £500 for the significant upset caused by the loss of the majority of her inheritance.

Income tax may be payable on any interest awarded.

Portfolio name	Benchmark	From ("start date")	To ("end date")	Additional interest
Dolphin Trust Investment	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 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 paid from the investment at the end date. I am aware the German Property Group companies have entered a bankruptcy process. In this case, I think it fair to simply run this calculation to date, rather than attempt to establish a date at which the investment ended. I think this is the fairest way to establish the loss Mrs B has suffered to 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, ICWFP 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 income paid by the Dolphin Trust Investment 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 ICWFP totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs B wanted to invest some of her money for capital growth, and likely would have done so with some risk to her capital. And I think it likely she would have used the remainder to repay some of her mortgage, and keep some money on deposit to help her daughter.
- 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.
- The average rate for the fixed rate bonds would be a fair measure for money kept on deposit. And likely offers a broadly similar return to the rate payable on Mrs B's mortgage.
- This does not mean I think that Mrs B 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 loss Mrs B has likely suffered.

My final decision

I uphold the complaint. My decision is that IC Wealth Financial Planning Limited should pay the amount calculated as set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 13 October 2025.

John Pattinson
Ombudsman