

## **complaint**

Mr L's complaint against Peter Morris and Company is about the advice received for his personal pension and later the Self Invested Personal Pension (SIPP). He considers that the advice to invest in Connaught Income Fund series 1 was reckless and not in his best interests. He has said he was led to believe the fund was low risk and would produce good returns.

## **background**

I issued my provisional decision on 20 November 2012. The background to the complaint was set out in that document. I concluded that the advice to transfer to the SIPP and invest in the fund was inappropriate as Mr L did not meet the definition of qualified investor, and the funds were unsuitable because of the risks involved. I considered that Mr L could have rebalanced his portfolio by remaining in his existing personal pension.

Mr L had no further comments to make.

The business replied and I explained in my letter of 28 February 2013 that as this investment took place at a different time and there were separate advice points at which advice was given that it would be dealt with as a separate complaint. I have already issued a final decision concerning the other fund. This decision deals with the advice to invest in the Connaught Income fund only.

Peter Morris and Company said in summary –

- Mr L fell within Category 2 of COBS 4.12 and he took reasonable steps to ensure the investment was suitable and he was provided with sufficient information to allow him to make an informed decision.
- It was aware of the rule in regards to promotion of UCIS and due diligence was carried out on the fund.
- Mr L has appointed a new IFA in May 2010 and the fund should have been reviewed.
- The fund is subject to fraud and the allegations of fraud have been lodged with the City of London Police.
- The regulator is aware of the fraud issues and have not investigated.

It is difficult for him to demonstrate that fraud was a major cause of loss, and that a hearing should take place.

My letter of 19 August 2013 confirmed that I did not consider a hearing was necessary.

Peter Morris and Company's representatives submitted a 17 page letter which in summary said –

- Just because there is no suitability letter does not mean that Mr L was not a suitable candidate for Connaught fund. On the basis of his attitude risk, objectives and circumstances, the fund was arguably suitable.

- Mr L was a category 2 person under COBS 4.12. He had experience of shares which exposed him to risk and capital loss. Jointly Mr and Mrs L had significant holdings in pensions, shares and personal
- The fund was suitable and what happened after could not have been foreseen at the point of sale. The impact of the global economic crisis on markets in general, meant that any other funds, not the traditional type of funds had to be looked at. How was any adviser to be able to risk profile its client appropriately for the prevailing market conditions *and* match a portfolio to that risk profile.
- It is true that the FSA in 2011 stated that in its view UCIS funds would be unsuitable for all but a small minority of retail clients. It is also true that having signed sophisticated investor certificates for other investors does not necessitate in all cases that the client actually has the required sophistication to fit that bill. However Mr L had shares, was a director and had a balanced attitude to risk and the adviser felt compelled to look at other investments.
- The literature for the Connaught fund purported to pay 8.5% on a gross annual basis. It was stated that it would continue to do so until December 2014. The fund was launched in 2008 and was renamed removing the phrase 'low risk' from its title. The literature described the fund as low risk and the adviser sold it as a good investment and he was confident that it would perform as it had done. It appears reasonable to have drawn the conclusion that the fund could meet Mr L's objective of giving him the chance to maintain his capital in light of his annuity income and achieve growth, but without taking too much risk.

The business said that as Mr L had changed advisers that following the regulator's warning about the Connaught fund that it should have been sold. It was established with Mr L that this was the case and the revised method of redress taking account of the funds being sold was issued in my letter of 4 November 2013.

Mr L had no further comments.

Peter Morris and Company said that the redress had only changed because it had challenged the point about the change of adviser, and that the complaint against him was in regards to the Connaught fund being suspended. He also disagrees that there was no evidence of fraud in regards to the fund. It also submitted that Mr L had not lost out as a result of the advice as he had made a gain from the time the funds were invested in Connaught until the date the funds were sold.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The Connaught Income Fund is a UCIS, and it is subject to the restrictions on promotion set out in Financial Services and Markets Act 2000. A UCIS cannot be promoted to the general public and an adviser is precluded from promoting a UCIS unless there is a relevant exemption available under the FSMA (Promotion of Collective Investment Schemes (Exemptions) Order 2001 (the PCIS Order) or COB (up to 31 October 2007) or COBS (from 1 November 2007). The examples of investors where there is a relevant exemption include high net worth individuals or sophisticated investors.

Peter Morris and Company has said that Mr L is a Category 2 investor. This is a person for whom the business has taken reasonable steps to ensure that investment in the collective investment suitable. However, there is no provision for such steps to be taken retrospectively. I have seen nothing to suggest that at the time the business did consider that Mr L was a Category 2 investor.

In my view whether Peter Morris and Company did or did not comply with the restrictions on promotion is immaterial as I do not consider the recommendation was suitable for Mr L. The Connaught Income Fund was a specialist fund with a limited track record. It offered bridging finance and bridging loans were provided principally to property developers. The performance of the fund could be adversely affected by any fall in demand for bridging finance, and falling property values would add to the risks and the ability to recover the full loan amount as well as other risks associated with this type of specialist investment.

I disagree that providing a copy of the prospectus or information about the fund makes an unsuitable investment suitable. Mr L was relying on Peter Morris and Company to provide suitable advice. Overall, I consider that the risks of investing in the fund were not sufficiently explained to Mr L and that the investment represented a greater risk than he was willing to take. Although Mr L has signed a sophisticated investor form, his existing investments do not indicate that he held investments to justify that assessment.

I have noted the points Peter Morris and Company made about the loss being caused as a result of fraud by parties operating the fund. I have not seen substantive evidence to support this. In my view the fact that this has been reported to the police does not mean that any finding of wrongdoing will result. I consider that Mr L's loss has been caused by the unsuitable advice he was given to transfer to the SIPP and then to invest in the fund, which he would not have been in had Mr L not been given unsuitable advice. I am therefore satisfied Peter Morris and Company is liable to compensate Mr L for any loss he has sustained as a result of its unsuitable advice.

The suggested method of redress takes account of the fact that Mr L has sold his holdings in the Connaught funds. Peter Morris and Company has been given the opportunity to comment on this issue before I issued my final decision. However, even if he made a gain in regards to his investment within the Connaught fund, the issue is that the fund was unsuitable and the method of redress compares with an index, albeit that even using this method there may not be a loss.

#### **my final decision**

I uphold the complaint and order Peter Morris and Company to compensate Mr L using the following method and this takes account of the Connaught fund being sold.

- A = Calculate the notional transfer value of the Connaught fund assuming the same investments were made but the returns were in line with APCIMS Stock Market Income (Total Return) Index up to the date the funds were sold.
- B = the value of the Connaught fund at the date it was sold.
- C = A - B, representing the investment loss to the date of calculation;

- D = the amount in C to be adjusted by the returns in line with the APCIMS Stock Market Income (Total Return) Index from the date of calculation to the date of payment.

Redress should be a payment should be made to enhance the value of the SIPP to the amount calculated in A plus D. If it cannot be accepted into Mr L's SIPP it should be paid to him as a lump sum less his marginal rate of tax.

I have arranged for a calculation to be made of the loss. That indicates that the investment would have been worth £33,598.46 on 19 August 2012, if invested in line with the APCIMS Stock Market Income (Total Return) Index. The loss at the date of this decision is £6,251.94. Peter Morris and Company should satisfy itself that the calculation is correct before making payment to Mr L.

Roy Milne  
**ombudsman**