Complaint

Mr P complains about advice he received from Mr S. He says that following advice from Mr S – on behalf of Wealthmasters Financial Management Ltd (Wealthmasters) – he withdrew £22,220.05 from a collective investment account he had and invested £20,000 in Green Oil. The Green Oil investment is now illiquid and Mr P says the advice he was given was unsuitable. Mr P thinks Wealthmasters is responsible for his losses.

Background

In 2008 Mr P became a client of Mr S' then own regulated business and on 29 May 2008 – on Mr S' recommendation – he took out a collective investment account. This account was closed in 2012 to fund the Green Oil investment that is the subject of this complaint.

Later in 2008 Mr S' regulated firm merged with Wealthmasters and Mr P became a client of Wealthmasters. Mr S continued to be Mr P's adviser, only now as a registered individual of Wealthmasters.

Wealthmasters was appointed as the adviser in respect of the relevant collective investment account.

Over the next few years Mr S held regular meetings with Mr P, these focused on reviewing Mr P's investments. There are numerous instances of documented regulated advice, including reviews of how the collective investment account was invested – meetings seem to have taken place at least annually.

In January 2011, the whole of the collective investment account was switched into cash.

In the most recent documented financial review before the Green Oil investment was made, Mr P's circumstances were recorded as follows:

- Annual salary - £15,000
- Main residence - £155,000
- Current account - £13,000
- ISA - £12,152
- Collective investment account - £22,262
- Structured product - £11,000 (ending in 2016)

It seems there had been discussions about what Mr P should do with his investments at the end of 2011. Mr P says that Mr S recommended that he close the collective investment account with Green Oil in mind as a potential investment (when this was initially discussed) – and, later, advised him to use the available funds to invest in Green Oil.

On 14 December 2011, Mr S sent information about a number of unregulated investments, including Green Oil to Mr P. The footer of the cover letter refers to this being from Mr S' unregulated business. The letter says:

> *"Following our recent meeting you have expressed an interest in Alternative Investments, please therefore find provided our guide to this area for your perusal. I have also enclosed details of several scheme's* [sic] *for your personal consideration and to allow you the opportunity to review Due Diligence carried out by* [name of

> third-party company] and *to facilitate your own research and Due Diligence into these Alternative Investment Opportunities."*

The footer of the letter explains that:

> *"This guide is purely for information purposes and should not be used or relied upon for investment decisions.* [Name of Mr S' unregulated business] *does not provide advice in connection with the suitability of alternative investments or any other type of investment. Alternative Investments are not currently regulated by the Financial Services Authority and are therefore not covered by the Financial Services Compensation Scheme or the Financial Ombudsman Service."*

On 14 February 2012, Mr P signed the disinvestment application for his collective investment Account, in effect closing the account (the monies from which were subsequently used to invest in Green Oil).

Mr P says Mr S advised him to do this and then to use that money to invest in Green Oil – and, that Mr S filled the forms in for him so all he had to do was sign them.

On 16 February 2012, the product provider confirmed that it had closed Mr P's collective investment account, the letter said:

> *"We have closed your investment as requested. Unless we need any additional information from you, the payment will be sent or invested in line with your instructions, within two weeks of the date of this letter.*
>
> *If you have any questions about this letter, please contact your financial adviser to whom a copy has been made available. However, should you need to contact us, please call our Helpdesk on the number shown."*

On 21 February 2012, Mr P signed the application form to invest £20,000 in Green Oil.

Mr P complained to Wealthmasters. I have read and considered his complaint in its entirety. In summary, he said:

- Mr S advised him to take his money out of his collective investment account to invest in Green Oil. That recommendation was unsuitable. Mr S did not carry out sufficient due diligence on the Green Oil investment and the investment and its risks were not properly explained.
- He believed Mr S had been acting on behalf of Wealthmasters. However, he has since been told that Mr S also had an unregulated business. No distinction between the two had ever been made to him. And there were clear conflicts of interest he was not told about.

One of our adjudicators reviewed the complaint and concluded that Mr P's complaint was not one this service could consider.

What Mr P, with the help of a representative, said:

- Mr S recommended that he withdraw money from his collective investment account with Green Oil mentioned as a possible investment.

- He would never have known about Green Oil but for Mr S – who highlighted the potential returns and opportunities from making the investment.
- It was never mentioned during these discussions that Mr S was not acting as his adviser or for Wealthmasters – he always thought Mr S was acting as his adviser and for Wealthmasters.
- Mr S did not tell him that Green Oil was high risk or that it was unregulated.
- There is no way he could have known the difference between regulated and non-regulated investments and/or advice – he trusted Mr S to give him good advice as he has little understanding of these areas.
- The loss of £20,000 is considerable to him.
- He feels he was mis-led by Mr S – a man who he trusted, and thought was an honest and competent adviser.
- He believes Mr S was acting on behalf of Wealthmasters at all times when providing advice – and, even if he was not, he certainly undertook the activity of arranging deals in investments, in that he [as a registered individual of Wealthmasters] made the introduction to his unregulated firm with a view to transactions in investments.

In support of this Mr P submitted that:

> *"Article 25 of the RAO says:*
>
> *Arranging deals in investments*
>
> *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 contractually based 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 paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity.*

The FCA has issued guidance on Article 25(2) in its Perimeter Guidance ("PERG"). PERG 2.7.7B says:

> *"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"*

- It is accepted that Mr S promoted Green Oil.

  And

> *"If that is accepted, he must have been doing so in his capacity as an IFA for*

> *Wealthmasters, otherwise such a promotion/advice is contrary to Section 19 of the Financial Services and Markets Act 2000 (FSMA) which states that a person must not carry on a regulated activity in the UK, or purport to do so, unless he is an authorised or exempt person. This is referred to as the general prohibition and the carrying on a regulated activity in breach of the general prohibition is a criminal offence and may result in certain agreements being unenforceable."*

- Mr P was undoubtedly a client of Wealthmasters.
- The line being drawn between Mr S acting as an adviser for Wealthmasters and Mr S acting for his unregulated firm is artificial.
- It is only through Mr P's documented relationship with Wealthmasters that the investment in Green Oil came about.
- Mr S was Mr P's adviser in respect of his collective investment account, he advised Mr P to encash the account and it is not possible to then conclude that he gave advice in respect of Green Oil just a few days later acting in a different capacity – these transactions are linked.

What Wealthmasters has said:

- It is not responsible for Mr S' actions.
- Mr S was not carrying out the acts complained about as a registered individual of it.
- Instead, it says he was acting on behalf of an unregulated business he had.
- Mr S' contract restricted him from selling products that had not been pre-approved by Wealthmasters, Green Oil had not been approved by it and it was not aware of the investment being made.
- It is not in dispute that advice was given to Mr P on a number of occasions by Wealthmasters – on each occasion according to the client agreement entered into at the time for the specific regulated advice requested.
- Mr P sought specific unregulated guidance from Mr S' unregulated firm on a number of occasions as well. These activities were clearly segregated.
- It is not accurate that Mr P was not aware of this separate entity.
- Any regulated advice was specifically carried out by the regulated company at the time and there was a clear divide between that, and the non-regulated activities carried out by and paid to Mr S' unregulated firm. The introduction of the Green Oil investment followed this model and was clearly distinct.
- Green Oil was not a UCIS, it was a non-regulated product and activities relating to the sale of it were not subject to FSMA, COBS rules or deemed a regulated activity.
- Mr P was an existing client of Mr S' unregulated business, so no referral between the companies took place.
- Mr S' intent in respect of his regulated advice does not confer regulatory advice in respect of his non regulated activities or decisions. It has been established that he received no advice in respect of Green Oil. Mr P's awareness of the product precedes his decisions and he received no advice to move his money prior to deciding to take up the product.

In Mr S' statement he says, amongst other things, that:

> *"The alternative investments were not recommended in my capacity as an adviser of Wealthmasters Financial Management Ltd. They were introduced under* [name of his unregulated business] *as being of interest to the client given his investment*

requirements and diversification from previous objectives discussed. The nature of alternatives were discussed including the types, risks and background. [First name of consumer] *was issued with a* [name of his unregulated business]*"Guide to Alternative Investments" on 14/12/2011, setting out the types and risks inherent with them. The non-regulated nature of them and the typical type and use of assets was discussed. No advice was given by Wealthmasters Financial Management Ltd or* [name of his unregulated business]*,* [first name of the consumer] *was introduced to the schemes and provided with ways in which he could carry out his own personal due diligence. This included but was not limited to Google Maps, Companies House, Australian Land Registry and research independently on the internet for "green oil". The client took as much time as needed to therefore research the project as being suitable for him.*

We met in February 2012 to specifically discuss this. Disclaimers were also issued to confirm the nature, and risks of this type of investment…"

And

"The client had built up experience of investments and implemented a realistic investment portfolio in keeping with the objectives and risk assessments (i.e. Structured Products, Investment Trusts etc) and the funds allocated to the Green Oil alternatives at the time represented around 10% of the client's asset value."

And

"The client was introduced to the product having expressed an interest during discussions in such plans. Details were therefore provided in keeping with the request and stated needs."

Because agreement could not be reached the complaint was escalated to me for my consideration. I sent my provisional decision, which is attached and forms part of this decision, to Mr P and Wealthmasters. I said I thought we could consider the complaint against Wealthmasters, as Wealthmasters is responsible for the advice Mr P complains about, and that the advice was unsuitable. I also set out how Wealthmasters should put things right. I said that I would consider anything either party wanted to add.

Mr P accepted my findings. Wealthmasters disagreed and made further submissions.

Wealthmasters' final submissions:

- Key facts that are material to the outcome of the complaint are in dispute.
- Extensive documentation has been provided to support its position, we should be relying on contemporaneous evidence ahead of assertions made by Mr P.
- The documentation was provided by Mr S' unregulated business not Wealthmasters to highlight that the introduction was not regulated and not covered by the ombudsman.
- Wealthmasters played no role in the events complained about and it certainly is not liable for them.
- The outcome reached involves concluding that Mr P would have done something differently if he had been advised differently, such a strong assertion cannot reasonably be reached on the basis of the case file alone and the file does not support the conclusion reached.

- It is not reasonable to base the outcome of the complaint on assertions made by Mr P.
- The case law cited is not relevant to this case. Mr P withdrawing the funds from his investment account and investing in Green Oil were isolated incidents. Mr P withdrew his funds from the investment account because of concerns about market volatility and later decided to use these funds to invest in Green Oil. This action was reasonable and just as likely.
- Mr P had lots of experience with capital at risk products and had received documentation clearly outlining the risks involved. He was capable of doing what he did without advice.
- The likely scenario supported by documentary evidence has been ignored. The actions taken by Mr P were not as a result of guidance received from Wealthmasters, for which it can be held liable.
- My findings in relation to apparent authority are unfair on the basis that:

    - The evidence provided does not support reaching this finding, the only thing that supports it are the unsubstantiated claims made by Mr P after the event.
    - Based on Mr P's ongoing use of the unregulated services of Mr S' unregulated business, the distinct documentation, risk warnings and confirmation that no advice was being provided, it is highly likely he understood he was dealing with Mr S' unregulated business and the nature of those dealings.
    - Mr P had experience of receiving regulated advice from Wealthmasters, so he knew of the documentation that was provided in the course of this such as: fact finds, terms of business and recommendation reports.
    - It is highly unlikely that Mr P did not know the process and requirements when he sought advice.

- My findings on vicarious liability are not reflected by the established facts of the case:

    - Mr S was not Wealthmasters' employee but he was bound by a strict contract, setting out his duties when undertaking business for which it accepted responsibility.
    - As documented the two entities involved are completely separate Mr S' unregulated business and Wealthmasters) with different names, branding and activities that could not likely be confused.
    - Mr P had experience with both entities and understood the processes and the associated documentation.
    - No evidence has been provided showing Wealthmasters' involvement in the transaction complained about.
    - The entire assessment is based on an unfounded assertion.

- If Mr P did receive advice, which it denies, the process would be akin to execution-only. He researched the investment and the risks involved and decided to go ahead from an informed position – it cannot be held liable for this.

Because agreement could not be reached the complaint was passed back to me for final decision.

My findings

I have looked at all of the information provided by both parties in order to decide whether this complaint is one we can consider. And, having done so, I have concluded the complaint is one we can consider. I have then considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The parties to this complaint have provided detailed submissions to support their position and I am grateful to them, for taking the time to do so. I have considered these submissions in their entirety.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

I am required to take into account *all* of the evidence submitted by both parties when making my decision and I reconsidered all of this before making my final decision. It is for me to decide how much weight to attach to a particular piece of evidence.

The responses to my provisional decision cover a number of different points and arguments. I have broken these down into the below topics and addressed them in turn. My attached provisional decision forms part of this decision – a number of the arguments raised by Wealthmasters in response to my provisional decision cover issues that I have already considered and addressed within that decision, so I have not repeated my findings in respect of all of these at length again.

I have reconsidered all the evidence and arguments both parties have provided on this complaint including the responses to my provisional decision. Having done so, I remain of the view that this complaint is one we can consider, that Wealthmasters is responsible for the advice complained about, the advice was unsuitable and Wealthmasters should compensate Mr P for the losses he suffered.

In my provisional decision I found that:

- Mr P's complaint is about an act or omission in relation to the carrying on of the regulated activity of giving investment advice.

- Mr S was acting for Wealthmasters when undertaking the activities complained about.

- Wealthmasters represented to Mr P that Mr S had authority to conduct business of the same type as the business he did conduct. Mr P relied on those representations. Apparent authority therefore operated and Wealthmasters is responsible for the acts Mr P complains about.

- In addition, Wealthmasters is vicariously liable for the investment advice Mr S gave to Mr P. Although he was not an employee of Wealthmasters', he was an approved person with responsibility for carrying on Wealthmasters' business of advising its customers and arranging the investments recommended. As such he carried on activities as an integral part of Wealthmasters' business and had a sufficient relationship to Wealthmasters for vicarious liability to arise. Mr S' advice was so

closely connected to Wealthmasters' business activities as to make it just to hold Wealthmasters liable for it.

- Wealthmasters is also liable to Mr P under section 150 of the Financial Services and Markets Act 2000.
- Mr P's complaint is therefore within the jurisdiction of the Financial Ombudsman Service.
- Mr S' advice was unsuitable for Mr P in light of his circumstances.
- Mr P acted on the advice and suffered loss as a result of it.
- It is fair and reasonable for Wealthmasters to compensate Mr P for that loss.

Consistency

Wealthmasters has highlighted a number of cases that it believes contradict the outcome reached in this case. I understand that it feels strongly about this and that consistency is important. However, having taken into account its comments and the cases it refers to, I remain satisfied that my findings in relation to the merits of this complaint are fair and reasonable in the circumstances of this complaint.

Regulated activity (evidence of advice)

Wealthmasters says that Mr S did not advise Mr P in relation to the investment complained about.

It is not in dispute that Mr P had an ongoing advisory relationship with Wealthmasters. It says that Mr P also had an ongoing relationship with Mr S' unregulated business. I have not been provided with evidence of this. The only documentation issued on Mr S' unregulated business' stationary was a cover letter and alternative investment guide (around the time of the sale). And I remain of the view that the available evidence and sequence of events support the finding that Mr S (on behalf of Wealthmasters) advised Mr P to close his collective investment account to invest in Green Oil.

Wealthmasters held regular reviews with Mr P during which it advised him on his investments. One of the investments that formed part of these reviews was the investment that was disinvested and closed – and monies from which were used to make the Green Oil investment. Wealthmasters has argued that these were separate events i.e. Mr P decided to encash his investment and later decided to invest in Green Oil.

The information about alternative investments was sent to Mr P in December 2011 provided that:

> *"Following our recent meeting you have expressed an interest in Alternative Investments, please therefore find provided our guide to this area for your perusal. I have also enclosed details of several scheme's* [sic] *for your personal consideration and to allow you the opportunity to review Due Diligence carried out by* [name of third-party company] and *to facilitate your own research and Due Diligence into these Alternative Investment Opportunities."*

Based on this letter and submissions from both parties I think that the subject of alternative investments came about through a meeting between Mr P and Mr S. I have not been provided with any evidence of this meeting being anything other than one of Mr P's regular investment reviews with Mr S, acting for Wealthmasters.

I do not think that Mr P was an experienced investor. Throughout his relationship with Mr S, he appears to have been reliant on Mr S' advice. Based on Mr P's experience and circumstances I think it is most likely that the subject of alternative investments was raised by Mr S not him. The sequence of events does not support the closing of Mr P's collective investment account and investment in Green Oil being separate unrelated events. Mr P met with Mr S. During this meeting alternative investments were discussed, and shortly after this the collective investment account was closed and when the money became available this was invested in Green Oil. I think it is most likely that it would have taken a recommendation from Mr S for Mr P to pursue this course of action. And, as I mention above, I am satisfied Mr S was acting for Wealthmasters at this meeting – I have seen nothing to suggest this was separate from the usual interaction between Mr P and Mr S, acting as Wealthmaster's advisor. Furthermore, it is only in his capacity as registered individual of Wealthmasters that Mr S could provide investment advice. Mr S' unregulated business could not provide investment advice and its cover letter providing information about alternative investments confirmed that it was not providing advice.

Taking everything into account, including the evidence provided and sequence of events, I think that Mr P closed his collective investment account in order to make the Green Oil investment and that he was advised to do so by Mr S, whilst Mr S was acting for Wealthmasters.

I recognise that Wealthmasters strongly disagrees that advice was given and that it was responsible for any such advice but my findings remain as set out in my provisional decision for the reasons set out within that decision and above.

Apparent authority

In relation to this, I need to consider whether Wealthmasters placed Mr S in a position which would objectively carry Wealthmasters' authority for Mr S to conduct business of the *type* he did in fact conduct.

I note that the case law does not say that apparent authority operates only when a principal has represented that an agent has authority to carry out a specific act. Apparent authority also operates where a principal has represented that its agent has its authority to carry out a more general class of acts.

For example, Diplock LJ in *Freeman & Lockyer* referred to a representation that the agent has authority to enter on behalf of the principal into a contract "*of a kind within the scope of the 'apparent' authority*". And in *Armagas*, Lord Keith said that in the commonly encountered case apparent authority "*is general in character*" arising when the agent is placed in a position generally regarded as carrying "*authority to enter into transactions of the kind in question*".

In *Hely-Hutchinson*, Lord Denning said that people who see a managing director acting as a managing director "*are entitled to assume that he has the usual authority of a managing director*". I consider that "*the usual authority of a managing director*" includes a wide variety of acts.

Here, for the reasons I have already given in my provisional decision I am satisfied that Wealthmasters represented to Mr P that Mr S had its authority to carry out the acts which an independent financial adviser would usually have authority to do – including giving investment advice.

Wealthmasters did not specifically mention the Green Oil investment in its representations, but that is not determinative. Neither is the point that Mr S did not have actual authority to give the advice he gave. Mr S had Wealthmasters' apparent authority to act on its behalf in advising Mr P to surrender existing investments to reinvest in Green Oil, because he had Wealthmasters' more general apparent authority to act on its behalf in giving him that kind of investment advice.

Wealthmaster's representations as to the authority of Mr S

Descriptions of an individual's status contained in business stationery can, as the courts have found, be relevant representations creating apparent authority. This was the finding in *Martin v Britannia Life*, by Jonathan Parker J on apparent authority based on the contents of a business card.

Obtaining approval from the Regulator for Mr S to advise Wealthmasters' customers about investments was also part of the conduct by which Wealthmasters held him out to the world in general as authorised to do that.

The fact that this amounts to a representation does not mean that Wealthmasters would be liable for anything said or done by Mr S relating to anything which might broadly amount to financial advice. The cases of both *Martin v Britannia* and *Anderson v Sense* show how such matters can be applied (and limited) in practice.

I am not saying in this case there was a holding out that everything Mr S might do was authorised. But, to the extent that he gave advice to Wealthmasters' customers such as Mr P, about his investments, this was the type of business he was held out as carrying on for Wealthmasters.

It remains my finding that Wealthmasters did represent to Mr P through its conduct that Mr S had its authority to act on its behalf in carrying on the activities complained about.

Reasonable Reliance

Wealthmasters says that it is highly likely Mr P would have been aware that Mr S was acting for his unregulated business not Wealthmasters. Mr P had experience in dealing with both companies and knew the process followed when Wealthmasters gave regulated advice. This in addition to the distinct literature would have made it apparent that Mr S was not giving advice on behalf of Wealthmasters.

Mr P did have lots of experience dealing with Wealthmasters, he had an ongoing advisory relationship with Mr S – through which he received investment advice, including in relation to the investment that was closed to invest in Green Oil. Wealthmasters says he also had experience of dealing with Mr S' unregulated business but – other than the cover letter and alternative investment guide – I have not been provided with evidence of a relationship between Mr P and Mr S' unregulated business. The cover letter explicitly says that Mr S' unregulated business was *only* providing information, so I don't think this reasonably would

have led Mr P to conclude that the advice I have found he received came from Mr S' unregulated business. Instead, I am satisfied Mr P understood he was being advised by Mr S in his capacity as an advisor for Wealthmasters, as he had in the past.

Given the ongoing relationship between Mr S as agent of Wealthmasters and Mr P, and that the relevant investment had been advised on via that relationship, and that there is no evidence that Mr S was (or held himself out to have been) acting in a capacity other than as an advisor of Wealthmasters when he gave advice, I think Mr P reasonably relied that Mr S was acting as his investment adviser on behalf of Wealthmasters. Mr P was a retail client who appears to have consistently followed the advice of Mr S of Wealthmasters and, based on his submissions, it seems he trusted Mr S to act in his best interests.

We have not seen evidence of terms of business, fact-find or suitability letter in relation to the advice complained about in this instance. In the other instances of advice, we have evidence of, Wealthmasters did provide such documents, this means there was a difference in the process. Mr P was an inexperienced retail investor and I am not persuaded that he would consider this to be significant. I have not been provided with any evidence a distinct process was highlighted and clearly explained to Mr P, such that he ought to have realised the significance of the normal documentation not being issued. I remain of the view Mr P, as a retail client, reasonably proceeded throughout on the footing that Mr S was acting as Wealthmasters' advisor.

I have found that this was a straightforward matter of a client dealing with his existing Wealthmasters adviser because he was a Wealthmasters adviser. The same Wealthmasters adviser who had previously provided recommendations in relation to the collective investment account (encashed to make the Green Oil investment) and was now recommending changes. There is insufficient evidence to find that Mr P knew or should have known that Mr S was acting in any capacity other than a Wealthmasters adviser. Mr P proceeded on the basis that Mr S was acting in every respect as the agent of Wealthmasters with authority from Wealthmasters so to act.

Vicarious liability

Wealthmasters does not agree that it is vicariously liable for the acts Mr P complains about. I considered this matter in my provisional decision and said that the tests laid down by the Supreme Court in *Cox* and *Mohamud* were applicable in this case. Since my provisional decision was issued, vicarious liability has been considered by the Court in *WM Morrisons Supermarkets plc v Various Claimants* [2020], *and Barclays Bank plc v Various Claimants* [2020]. However, I have not reviewed this matter in light of these new authorities because my decision is that it is clear that Wealthmasters is liable for the acts of Mr S here by virtue of apparent authority.

Statutory responsibility under section 150 FSMA

In my provisional decision I set out that section 150 FSMA provided an alternative route by which Wealthmasters is responsible. I have not reviewed this issue as my decision is that Wealthmasters are liable for Mr S' acts by virtue of apparent authority.

My findings as to the merits of the complaint

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

Neither party has made any further submissions on my findings in relation to the suitability of the advice in this instance or the way I said things should be put right. And I remain satisfied that the findings set out in my attached provisional decision are fair and reasonable in the circumstances.

Wealthmasters did comment that if advice was given – which it denies – the process was more akin to execution-only because Mr P did his own due diligence and then decided to make the investment. I do not agree that the advice here could be seen as akin to a execution-only process. Mr S, acting for Wealthmasters, advised Mr P to make the investment in Green Oil, and the regulatory obligations associated with the provision of advice therefore apply. Wealthmasters is therefore responsible for the suitability of the advice. And I am not persuaded that Mr P was an insistent client or that he was otherwise likely to go against suitable advice from his adviser, had this been given.

I remain of the view that Mr P's complaint should be upheld, and it is fair and reasonable for Wealthmasters to compensate him for the losses he has suffered as a result of the unsuitable advice. In addition to the financial losses Mr P has suffered, I think the unsuitable advice and resultant losses have caused him distress and inconvenience, Wealthmasters should compensate Mr P for this as well.

Fair compensation

I am satisfied that if Mr S, giving the advice for which Wealthmasters is responsible, had acted fairly and reasonably and fulfilled his regulatory obligation to give suitable advice this would have put a stop to the transaction and Mr P would never have invested in Green Oil. Because of this, I find that Wealthmasters should compensate Mr P for the full measure of his losses as set out below.

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

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

What should Wealthmasters do?

To compensate Mr P fairly, Wealthmasters must:

- Compare the performance of Mr P's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

  Wealthmasters should also pay interest as set out below.

- Pay to Mr P £350 for the distress caused by the loss of a significant amount of his investments.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
the monies invested in Green Oil	still exists	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mr P agrees to Wealthmasters taking ownership of the investment, if it wishes to. If it is not possible for Wealthmasters to take ownership, then it may request an undertaking from Mr P that he repays to Wealthmasters any amount he 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, Wealthmasters 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 additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if Wealthmasters totals all those payments and deducts that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Capital growth with a small risk to his capital would have been suitable for Mr P.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr P's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr P into that position. It does not mean that Mr P would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr P could have obtained from investments suited to his objective and risk attitude.

My final decision

For the reasons set out in this decision and the attached provisional decision, this complaint does fall within my jurisdiction.

I uphold the complaint. My decision is that Wealthmasters Financial Management Ltd should pay the amount calculated as set out above.

Wealthmasters Financial Management Ltd should provide details of its calculation to Mr P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr P either to accept or reject my decision before 23 January 2021.

Nicola Curnow
ombudsman

COPY OF PROVISIONAL FINDINGS

I have looked at all of the information provided by both parties in order to decide whether this complaint is one we can consider. And, having done so, I have concluded the complaint is one we can consider. I have then considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have addressed each point in turn below.

The parties to this complaint have provided detailed submissions to support their position and I am grateful to them for taking the time to do so. I have considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings and reasons for reaching
them.

My provisional findings on jurisdiction

The ombudsman service operates under a set of rules and guidance that tell us what we can

and cannot look at. These are published as part of the Financial Conduct Authority's (FCA) Handbook – in a section called "*Dispute Resolution: complaints*" (the DISP rules). Under DISP 2.3.1R, this service can only consider a complaint under our compulsory jurisdiction if it relates to:

- an act or omission by a firm in carrying on one or more of the listed activities (which includes regulated activities); or
- any ancillary activities carried on by a firm in connection with those activities.

And the guidance at DISP 2.3.3G says:

> *Complaints about acts or omissions include those in respect of activities for which the firm…is responsible (including business of any appointed representative or* ***agent for which the firm…has accepted responsibility****)*.

This means there are three questions I need to answer to decide whether this complaint can be considered under our compulsory jurisdiction:

1. What are the acts that are the subject of Mr P's complaint?

2. Were the acts about which Mr P complains done in the carrying on of a regulated activity or an ancillary activity carried on in connection with a regulated activity?

3. Were those acts ones for which Wealthmasters was responsible?

What are the acts that are the subject of Mr P's complaint?

Mr P's complaint focuses on the losses he suffered as a result of investing in Green Oil. He says that he was advised to encash his collective investment account in order to invest in Green Oil. So, I think that Mr P's complaint encompasses advice to encash his collective investment account, advice to invest in Green Oil and the facilitation of all of this – Mr P says that Mr S completed all of the forms so he just had to sign them.

Were the acts about which Mr P complains done in the carrying on of a regulated activity or an ancillary activity carried on in connection with a regulated activity?

Regulated activities are set out in Part II of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO). They include:

- Advising on investments where the advice relates to "*buying, selling, subscribing for or underwriting a particular investment which is a security or a contractually based investment*" (article 53 RAO).
- Arranging deals in investments "*for another person…to buy, sell, subscribe for or underwrite a particular investment*" which is a security or relevant investment (article 25 RAO).

Wealthmasters says that no regulated activity was undertaken by it in respect of the complaint raised. Whereas Mr P says that Mr S, in his capacity as adviser for Wealthmasters, advised him to encash his collective investment account in order to invest in Green Oil. There is limited documentary evidence from the time of sale and, as noted above, the testimony provided by the parties involved is contradictory.

It is not in dispute that Mr S, in his capacity as adviser for Wealthmasters, had been providing Mr P with regulated advice for a number of years prior to Mr P investing in Green Oil. Mr S also recommended that Mr P take out the investment that was encashed to invest in Green Oil. Numerous investment reviews were held. These included revising how the relevant collective investment account was invested.

In accordance with Mr S' testimony Mr P was introduced to alternative investments following a discussion they had, during which he expressed an interest in such investments. I think it is most likely that this discussion took place during one of Mr P's regular meetings with Mr S (of Wealthmasters) to discuss his investments. Shortly after this the collective investment account was encashed – and, once the monies were received the application to invest in Green Oil was signed and submitted. Taking into account the sequence of events and the information we have, I think it is clear that the investment was encashed in order to invest in Green Oil.

I think it is more likely than not that Mr S recommended this course of action. Mr S had an ongoing advisory relationship with Mr P. Throughout this Mr P was reliant on Mr S' advice in respect of his investments. The relevant collective investment account formed part of the portfolio Mr S was reviewing on a regular basis. I think it would have taken a recommendation from Mr S for Mr P to have pursued the course of action that he did, particularly when taking into account his investment experience. In turn, I think that Mr S' actions – in respect of the complaint raised – amounted to the regulated activity of advising on investments. I think Mr S' actions most likely also amounted to making arrangements in investments but having found that Mr S gave advice I have focused on this.

Having concluded that the acts that are the subject of the complaint were carried on in connection with a regulated activity, I have gone on to consider if those acts were acts for which Wealthmasters was responsible.

Were those acts ones for which Wealthmasters was responsible?

As set out above, DISP 2.3.3G says:

> *Complaints about acts or omissions include those in respect of activities for which the firm…is responsible (including business of any appointed representative or agent for which the firm…has accepted responsibility)*.

There are two parts to this question and the answer needs to be yes to both in order for me to conclude Wealthmasters was responsible for Mr S's actions:

1. Was Mr S acting on behalf of Wealthmasters when the acts complained about happened?
2. And if Mr S was acting on behalf of Wealthmasters, was it business Wealthmasters had accepted responsibility for?

Was Mr S acting on behalf of Wealthmasters when the acts complained about happened?

Around the time Mr P invested in Green Oil, Mr S acted in two different capacities – on behalf of Wealthmasters (which was regulated); and on behalf of his own unregulated business. If he was carrying out regulated activities – as I have concluded he was – he ought to have been acting on behalf of Wealthmasters at the time.

Mr P says he never knowingly had dealings with Mr S' unregulated business. He said he had historically had dealings with it under its previous name when it was a regulated business. But he said that since it had changed its name and become unregulated, his business had all been with Wealthmasters as far as he was aware.

Wealthmasters has provided:

- A cover letter to Mr P dated 14 December 2011 which said:

  > *Following our recent meeting you have expressed an interest in Alternative Investments, please therefore find provided our guide to this area for your perusal. I have also enclosed details of several scheme's for your personal consideration and to allow you the opportunity to review Due Diligence carried out by* [a third party] *and to facilitate your own research and Due Diligence*

into these Alternative Investment Opportunities…

This guide is purely for information purposes and should not be used or relied upon for investment decisions. [Mr S' unregulated business] *does not provide advice in connection with the suitability of alternative investments or any other type of investment. Alternative Investments are Not currently regulated by the Financial Services Authority and are therefore not covered by the Financial Services Compensation Scheme or the Financial Ombudsman Service.*

- An alternative investments guide – which it has provided as a sample of what would've been included with the above cover letter. This appears to be from Mr S' unregulated business.

- A commission voucher for Mr P's investment – dated 13 March 2012. This read:

  Claimed By:

  [Mr S's unregulated business]

  And it included an email address for Mr S that is linked to his unregulated business.

Taking everything into account, I am satisfied Mr S only had access to information about Mr P's investment because of his role as a registered individual of Wealthmasters. And, I think it is most likely that he held himself out as acting as a registered individual of Wealthmasters when carrying out regulated activities. Indeed, Mr S could not legitimately undertake regulated activities in his unregulated capacity and I am not persuaded that Mr S would intentionally act in breach of the general prohibition.

Wealthmasters says it received no fees or commission in respect of the transaction complained about. I accept this may be the case. But that does not mean Mr S was not advising Mr P in his role as a registered individual of Wealthmasters when he recommended Mr P withdraw money from the collective investment account he had at the time. I am satisfied he was.

As I've already explained, Mr S acted for Wealthmasters and his unregulated business. So, Mr S was one man with two hats, so to speak.

For the reasons set out above I believe the process of advice and encashment began with Mr S wearing his Wealthmasters hat. It does seem as though there was some involvement from Mr S in his unregulated capacity – that is reflected in the paperwork I have been provided with. Specifically, the promotional material in relation to alternative investments was issued by Mr S' unregulated business. That literature highlighted that the business did not and could not give advice. The fact that the promotional literature was issued by Mr S' unregulated business does not mean Wealthmasters has no responsibility for what happened from that point.

The evidence points to the Green Oil investment being in Mr S' contemplation when he was acting for Wealthmasters. I think it is most likely that the conversation about alternatives came about via one of Mr P's regular meetings with Mr S (as adviser for Wealthmasters). I have also found that Mr S, in his capacity as adviser for Wealthmasters, recommended that Mr P encash his collective investment account – the purpose of this was to invest in Green Oil. Mr S knew his later intentions when giving Mr P the advice to withdraw money from his collective investment account. The evidence does not support there being a clear separation between the disinvestment and the Green Oil investment. It is clear to me that the disinvestment was intended to facilitate the investment Mr P made. So, the disinvestment and the Green Oil investment were intrinsically linked.

In saying this, I note the alert issued by the regulator in January 2013 which said:

If you give regulated advice and the recommendation will enable investment in unregulated items you cannot separate out the unregulated elements from the regulated elements.

I acknowledge this came after the events complained about here. But I do not think this means it is not relevant to this complaint. I say this because the alert was a reminder of existing obligations.

I have concluded that Mr S was acting on behalf of Wealthmasters when he advised Mr P to encash his collective investment account in order to make the Green Oil investment. So, I have gone on to consider whether this was business for which Wealthmasters had accepted responsibility.

Was it business Wealthmasters had accepted responsibility for?

There are a number of ways in which a principal can be responsible for its agent's activities (actual, apparent, vicarious).

Wealthmasters relationship with Mr S:

The FCA register lists Mr S under "Individuals" in Wealthmasters Financial Management Ltd.'s listing, this says:

This list shows the individual(s) who works for, or used to work for, this firm and is considered an approved person.
…

[Mr S' full name] [Mr S' reference number] *Active*

On Mr S' individual page he is listed as active:

Mr [Mr S' full name] *Status: Active (Reference number* [Mr S' reference number]*)*

> *This is an individual (and some firms) that can perform some tasks in an authorised firm. These individuals and firms are known as 'approved persons' and the tasks as 'controlled functions'.*

Under controlled functions it is recorded that he is currently CF30 Customer at Wealthmasters and has been since early 2011.

Under historic controlled functions – in so far as relevant – it is listed that he had been:

- CF1 Director – Wealthmasters Financial Management Ltd; and
- CF30 Customer – Wealthmasters Financial Management

On companies house it is recorded that Mr S had been an officer of Wealthmasters.

The agreement between Wealthmasters and Mr S, which appointed him as its registered individual and set out the business for which Wealthmasters accepted responsibility, said:

> ***WHEREAS***
> *A. The Company is regulated by the Financial Services Authority (FSA) Registration Number 536087 and wishes to appoint the Consultant* [Mr S] *as an agent of the Company to carry Investment Business as defined in the FSA Supervision Manual and Non-Regulated Business and advisory services under the terms of this Agreement.*
>
> *B. The Consultant has agreed to become a Consultant of the Company to carry out all Investment business and Non-regulated Business and advisory services through the Company to the exclusion of any other parties in accordance with Clause 3 of this Agreement*

and to act at all times in compliance with the applicable rules and regulations applicable from time to time of the FSA and of any other regulation applicable to the Agreement.

And

1. DEFINITIONS

In this Agreement to the following expressions shall have the meanings set out below:-
…
"Applications" means applications for any Contract or services of the kinds from time to time dealt in or provided by the Company;…
…

"Contract (s)" means any policies of assurance, annuity contracts, pension plans or policies, permanent health insurance policies, medical insurance policies, terms assurance, any business regulated by the FSA and also insurance or financial products and services of any such nature as shall for the time being offered or dealt with by the Company (whether regulated under the Act or not);
…

"Institution" means any assurance or insurance Company, life office, fund manager, unit trust manager, stockbroker, finance house, financial institution, trust Company or any other similar institution approved by the Company with which the Company has, for the time being, established an agency for Contracts from time to time for the purposes of this Agreement;

"Investment" means any investment business as defined in the glossary of the FSA Handbook;…

2. APPOINTMENT

2.1.1 The Company hereby grants to the Consultant with effect from the date hereof to provide advice comprising Regulated and Non-Regulated Business and to obtain Applications upon the terms set out in this Agreement subject to the Consultant at all times being properly registered with the FSA as a registered individual.

And

3.5 The Consultant shall only submit Applications to Institutions approved by the Company;

3.8 The Company in its absolute discretion may impose restrictions upon the type of advice that the Consultant may give to Clients from time to time. The Consultant shall comply strictly with any such restrictions upon being notified by the Company in writing.

And

5.2 All Applications must be accompanied by the following documents:-

5.2.1 A completed "Confidential Client Questionnaire" Form and "Suitability Report" in a form prescribed by the Company demonstrating that the Consultant has given proper consideration to the Client's circumstances and requirements and has given the best advice appropriate

The agreement gives Mr S authority to give investment advice, there does not appear to be any restriction on the type of investment advice as such. The agreement also authorises Mr S to

undertake non-regulated activities on behalf of Wealthmasters. It does, however, seek to limit Mr S to submitting application only to those providers which Wealthmasters has approved.

I am not persuaded that this would stop Wealthmasters from being responsible for Mr S' advice to encash the collective investment account. I think that that advice falls within the scope of authority provided to Mr S under the agreement – and, the encashment advice was sufficiently closely linked to the sale of Green Oil.

The process followed and lack of documentation produced is not compliant with the process Wealthmasters prescribed. Again, I don't think that the absence of paperwork proves that Mr S was not acting on Wealthmasters' behalf – or, that it is not responsible for his actions as a result of the process followed.

That said, in order for Mr S to be acting with actual authority, he had to be acting honestly and on behalf of the principal (Wealthmasters).

In this instance, Mr S was moving Mr P's investment away from an investment on Wealthmasters books to an unregulated product that his unregulated firm not Wealthmasters received commission for. Given the involvement (at least to a degree) of Mr S' unregulated firm and that the transaction appears to be in the interests of that firm rather than Wealthmasters, I think it is possible that Mr S was not acting with actual authority in line with the above. So, I have gone on to think about whether or not there are any other ways in which Wealthmasters could be responsible for the advice that Mr P complains about.

What is apparent authority?

In an agency relationship, a principal may limit the actual authority of his agent. But if the agent acts outside of that actual authority, the case law shows that a principal may still be liable to third parties for the agent's acts if those acts were within the agent's "apparent authority". This is the case even if the agent was acting fraudulently and in furtherance of his own interest – provided the agent is acting within his apparent authority.

This type of authority was described by Diplock LJ in *Freeman* & *Lockyer v Buckhurst Properties (Mangal) Ltd* [1964] 2 QB 480:

> *"An "apparent" or "ostensible" authority…is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.*
>
> *In ordinary business dealings the contractor at the time of entering into the contract can in the nature of things hardly ever rely on the "actual" authority of the agent. His information as to the authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. All that the contractor can know is what they tell him, which may or may not be true. In the ultimate analysis he relies either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, that is, warranty of authority..."*

Although Diplock LJ referred to "contractors", the law on apparent authority applies to any third party – such as Mr P in this instance – dealing with the agents of a principal.

In Hely-Hutchinson v Brayhead Ltd [1968] 1 QB 549, Lord Denning said (at 583):

> *"Ostensible or apparent authority is the authority of an agent as it appears to others. It often coincides with actual authority. Thus, when the board appoint one of their number to be managing director, they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the usual scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual authority of a managing director but sometimes ostensible authority exceeds actual authority. For instance, when the board appoint the managing director they may expressly limit his authority by saying he is not to order goods worth more than £500 without the sanction of the board, in that case his actual authority is subject to the £500 limitation, but his ostensible authority includes all the usual authority of a managing director. The company is bound by his ostensible authority in his dealings with those who do not know of the limitation. He may himself do the "holding-out". Thus, if he orders goods worth £1,000 and signs himself "Managing Director for and on behalf of the company," the company is bound to the other party who does not know of the £500 limitation."*

So, where a person, by words or conduct, represents or permits it to be represented that an agent has authority to act on his behalf he is bound by the acts of that agent with respect to anyone dealing with the agent on the faith of any such representation, to the same extent as if the agent had the authority that the agent was represented to have, even if the agent had no such actual authority.

What kinds of representation are capable of giving rise to apparent authority?

Apparent authority cannot arise on the basis of representations made by the agent alone. For apparent authority to arise there must be a representation by the principal that the agent has its authority to act. As Diplock LJ said in Freeman:

> *“The representation which creates "apparent" authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal’s business with other persons. By so doing the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the kind which an agent so acting in the conduct of his principal’s business has usually "actual" authority to enter into.”*

In Martin v Britannia Life Ltd [1999]12 WLUK 726, Parker J quoted the relevant principle as stated in Article 74 in Bowstead and Reynolds on Agency 16th edition:

> *“Where a person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf he is bound by the acts of that other person with respect to anyone dealing with him as an agent on the faith of any such representation, to the same extent as if such other person had the authority that he was represented to have, even though he had no such actual authority.”*

In the more recent case of Anderson v Sense Network [2018] EWHC 2834 Comm, Jacobs J referenced and agreed with Parker J’s approach:

> *“As far as apparent authority is concerned, it is clear from the decision in Martin (in particular paragraph 5.3.3) that, in order to establish apparent authority, it is necessary for the claimants to establish a representation made by Sense [the alleged principal], which was intended to be acted on and which was in fact acted on by the claimants, that MFSS [the alleged agent] was authorised by Sense to give advice in connection with the scheme…*
>
> *I also agree with Sense that there is nothing in the "status" disclosure – i.e. the compulsory wording relating to the status of MFSS and Sense appearing at the foot of the stationery and*

> *elsewhere – which can be read as containing any relevant representation as to MFSS's authority to do what they were doing in this case: i.e. running the scheme and advising in relation to it. The "status" disclosure did no more than identify the regulatory status of MFSS and Sense and the relationship between them. I did not consider that the Claimants had provided any persuasive reason as to how the statements on which they relied relating to "status disclosure" could lead to the conclusion that MFSS was authorised to provide advice on the scheme that was being promoted. In my view, a case of ostensible authority requires much more than an assertion that Sense conferred a "badge of respectability" on MFSS. As Martin shows, it requires a representation that there was authority to give advice of the type that was given…the relevant question is whether the firm has 'knowingly or even unwittingly led a customer to believe that an appointed representative or other agent is authorised to conduct business on its behalf of a type that he is not in fact authorised to conduct'. …*
>
> *Nor is there any analogy with the facts or conclusions in Martin. That case was not concerned with any representation alleged to arise from "status" disclosure. In Martin, the representation by the principal that the agent was a financial adviser acting for an insurance company was regarded as a sufficient representation that the adviser could advise on matters (the mortgage in that case) which were ancillary to insurance products. In the present case, there is nothing in the "status disclosure" which contains any representation that MFSS or its financial advisers could operate or advise in connection with a deposit scheme that MFSS was running."*

The representation may be general in character. In Armagas Ltd v Mundogas SA [1985] UKHL 11, Lord Keith said:

> *"In the commonly encountered case, the ostensible authority is general in character, arising when the principal has placed the agent in a position which in the outside world is generally regarded as carrying authority to enter into transactions of the kind in question. Ostensible general authority may also arise where the agent has had a course of dealing with a particular contractor and the principal has acquiesced in this course of dealing and honoured transactions arising out of it."*

Must the third party rely on the representation?

The principal's representation that its agent has its authority to act on its behalf will only fix the principal with liability to the third party (Mr P in this instance) if the third party relied on that representation.

In Anderson, Jacobs J summarised the approach to be taken as to whether or not there is sufficient evidence of reliance on the representation as follows:

> *"a relevant ingredient of a case based on apparent authority is reliance on the faith of the representation alleged: see Bowstead and Reynolds on Agency 21st edition, paragraph [8-010] and [8-024]; Martin paragraph 5.3.3. In Martin, Jonathan Parker J. held that the relevant representation in that case (namely that the adviser was authorised to give financial advice concerning a remortgage of the property) was acted on by the plaintiffs 'in that each of them proceeded throughout on the footing that in giving advice [the adviser] was acting in every respect as the agent of [the alleged principal] with authority from [the alleged principal] so to act'."*

On the particular facts of that case, Jacobs J placed weight on the fact the majority of the claimants had never heard of the defendant, Sense Network, and that those who had heard of it made their decision to invest in the relevant scheme before they saw the stationery which they later said contained the representation on which they relied.

As the case law makes clear, whether or not a claimant has relied on a representation is dependent on the circumstances of that individual case.

Here, I must consider whether, on the facts of this individual case:

- Wealthmasters made a representation to Mr P that Mr S had its authority to act on its behalf in carrying out the activities that are the subject of this complaint; and
- Mr P relied on that representation in entering into the transactions that are the subject of this complaint.

Having considered the law in this area, including Lord Keith's comments in *Armagas*, so far as representations are concerned I need to decide whether Wealthmasters placed Mr S in a position which would objectively generally be regarded as carrying its authority to enter into transactions such as the investment in Green Oil and the surrender of the existing investment in order to do so. Put another way, did Wealthmasters knowingly – or even unwittingly – lead Mr P to believe that Mr S was authorised to conduct business on its behalf of a type (namely, advising and arranging investments) that, in the circumstances, Mr S did not have actual authority to undertake?

I also need to decide whether Mr P relied on any representation Wealthmasters made. Having considered Parker J's comments in Martin, if Mr P proceeded throughout on the footing that in giving advice Mr S was acting in every respect as the agent of Wealthmasters with authority from Wealthmasters so to act, then this suggests I should conclude that Mr P relied on Wealthmasters' representation.

Who was Mr S acting for when he carried out the acts complained of?

In this case, I have found that it is more likely than not that Mr S advised Mr P on the merits of encashing his existing investment. I think Mr S also advised on investing in Green Oil.

As I have said above, I have found that Mr S was acting as an agent of Wealthmasters when he gave advice to Mr P to surrender his existing investment in order to invest in Green Oil. Indeed, this is the only capacity within which Mr S could legally give this advice. Although some promotional literature was issued by Mr S' unregulated business, this confirms that it was not giving advice. I remain of the view that it is most likely that Mr S advised Mr P to encash his existing investment in order to invest in Green Oil.

Mr P has said that he understood Mr S to be acting as Wealthmasters' adviser when he gave that advice. I accept that it is more likely than not that this was the case.

Did Wealthmasters represent to Mr P that Mr S had the relevant authority?

Mr P had an ongoing relationship with Mr S [as investment adviser on behalf of Wealthmasters]. This dated back a number of years to when Mr S had been directly authorised. During this time, Mr S gave Mr P investment advice several times (including in relation to the investment which was surrendered in order to invest in Green Oil).

I have not seen any evidence that Mr P received a terms of business agreement in relation to the disputed advice. Generally, taking the wider evidence into account. I am satisfied that in principle Mr S was authorised to:

- Advise on the surrender of an existing investment in order to make new investments, such as Green Oil; and
- Advise on the merits of making an investment such as Green Oil.

Prior to and around the time of the advice that is the subject of this complaint Mr S undertook such activities as those that are the subject of this complaint on behalf of Wealthmasters as part of his ongoing relationship with Mr P.

A client agreement from 2011 between Mr P and Wealthmasters provided, amongst other things, that:

> *"Wealthmasters Financial Management is authorised and regulated by the Financial Services Authority (FSA). Our Registration Number is 473876. You can check this on the FSA's Register…"*

And

> *"Wealthmasters Financial Management classifies all clients as 'retail clients' for investment business…this means you are afforded all protections under the rules of the Financial Services Authority (FSA)."*

And

> *"Wealthmasters Financial Management is permitted to advise on and arrange (bring about) deals in investments and non-investment insurance contracts."*

And

> *"**Investments** – We offer products from the whole market."*

The activities that are the subject of this complaint are activities that fall within the class of activities that IFAs are usually authorised to do. Any restrictions on the authority to give such advice would not have been visible to Mr P. So, for example, he would not know that an adviser should only recommend approved investments or should present the advice in certain ways.

Wealthmasters placed Mr S in a position which would, in the outside world, generally be regarded as having authority to carry out the acts Mr P complains about. Wealthmasters authorised Mr S to give investment advice on its behalf. Wealthmasters arranged for Mr S to appear on the FCA (then FSA) register in respect of Wealthmasters as an approved person. And Mr S was approved to carry on the controlled function CF30 at the time of the disputed advice.

Based on the available information, Wealthmasters presented itself to consumers as an independent financial adviser that offered products and gave advice on the whole of the market based on its assessment of the client's needs. I have not seen any evidence that clients – in this case Mr P – were provided with information about the agent only being authorised in relation to approved products.

Generally, I think it was Wealthmasters' intention for it to be understood that Mr S was authorised to give investment advice on its behalf and for clients to act on that representation. It is clear that giving investment advice is a key aspect of Wealthmasters' business and an integral part of it carrying on that business was for people to treat Mr S as having authority to give investment advice and act on this accordingly.

To be clear, I am not saying that Wealthmasters should or could be held liable for all of Mr S' acts and omissions – but, I do think that it may be responsible for acts or omissions involving transactions of the kind that it represented Mr S had the authority to carry out.

Did Mr P rely on Wealthmasters representation?

Mr P has told us that he believed Mr S was acting as his adviser and an agent of Wealthmasters throughout the transaction complained about. Taking everything into account, I think that Mr P proceeded on the footing that that was the case and that he did so reasonably.

At the time of the advice complained about Mr P had an ongoing relationship with Mr S that dated back several years. This appears to have consistently been with Mr S in his capacity as investment adviser. Mr S gave Mr P investment advice as an agent of Wealthmasters on numerous occasions, including in relation to the investment that was ultimately encashed in order to make the Green Oil investment, which Wealthmasters was the investment manager of. Mr P appears to have consistently

followed the advice he received and he did so on the basis that Mr S was his investment adviser and I think he did so in this instance too. I believe this transaction came about through one of Mr P's regular meetings with Mr S as investment adviser for Wealthmasters and that it is in that capacity that he recommended that Mr P encash his investment account.

I have not seen any evidence that a separate process/relationship was explained to and agreed by Mr P. As I have explained, some correspondence (an alternative investment guide and the cover letter) was produced by Mr S' unregulated business. The correspondence issued confirmed that that business was not giving advice. I do not think that Mr P is likely to have appreciated the significance of this information coming from Mr S' unregulated business – and, in any case, the paperwork confirmed that no advice was being given by that business, so I don't think this reasonably would have led Mr P to conclude that the advice he received came from Mr S' unregulated business. I am not persuaded that Mr P knew or that he should have known that Mr S was acting in any capacity other than as Wealthmasters' adviser in respect of the advice that is the subject of this complaint.

Is it just for Wealthmasters to be required to bear any losses caused by Mr S?

The courts have taken into account whether it is just to require a principal to bear a loss caused by the wrongdoing of his agent. I have considered whether it is just to hold Wealthmasters responsible for any detriment Mr P has suffered as a result of the advice he received from Mr S.

I think it is just to hold Wealthmasters responsible for the consequences of its putting Mr S in the position where Mr P could suffer loss as a result of his actions. In particular, I note:

- Wealthmasters was in a position to monitor Mr S' actions.
- The advice came about through Mr S' ongoing relationship with Mr P as Wealthmasters' adviser.
- Wealthmasters' agency agreement acknowledges that it will be held responsible for the wrongs of its agents and includes and requires the agent to provide it with an indemnity it respect of any losses etc. it suffers as result of such wrongs.

So overall, I consider that it is just for Wealthmasters to be required to bear any losses caused by any wrong doing done by Mr S whilst carrying on a controlled function assigned to him by Wealthmasters.

Vicarious liability

I think it is also appropriate for me to consider whether Wealthmasters is vicariously liable for the actions of Mr S – independently of whether apparent authority also operated such as to fix Wealthmasters with liability for the actions of its agent in this instance.

What is vicarious liability?

Vicarious liability is a common law principle of strict, no-fault liability for wrongs committed by another person.

Not all relationships are capable of giving rise to vicarious liability. The classic example of a relationship which can give rise to vicarious liability is the employment relationship, but Mr S was not an employee of Wealthmasters. However, the employment relationship is not the only relationship capable of giving rise to vicarious liability.

Broadly, there is a two stage test to decide whether vicarious liability can apply:

- Stage one is to ask whether there is a sufficient relationship between the wrongdoer and the principal (*Cox v Ministry of Justice* [2016] UKSC 10).
- Stage two is to ask whether the wrongdoing itself was sufficiently connected to the wrongdoer's duties on behalf of the principal for it to be just for the principal to be held liable (*Mohamud WM Morrison Supermarkets plc* [2016] UKSC 11).

There is some uncertainty in the law as to how widely the test in *Cox* should be applied. I note that in *Frederick v Positive Solutions* [2018] EWCA Civ 431 the Court of Appeal explicitly declined to decide whether the test in *Cox* applied to the relevant principal's relationship with one of its registered individuals.

If it were the case that vicarious liability could never have anything to do with principals and agents, then I consider it likely that the Court of Appeal would have simply said so. But, in any event, the relationship between Mr S and Wealthmasters was not just an agency relationship. Mr S was registered with the FCA (then FSA) as an 'approved person' able to carry out regulated activities on Wealthmasters' behalf, and this complaint is about the regulated activities of advising on and arranging deals in investments. I consider that it would be wrong for me to simply ignore or set aside the regulatory background in reaching my decision.

I am not aware of any case law concerning the exact set of circumstances that Mr P complains about. But that does not prevent me from applying the law as I understand it to be applicable. In *Cox*, Lord Reed said:

> *"the words used by judges are not to be treated as if they were the words of a statute. Where a case concerns circumstances which have not previously been the subject of an authoritative judicial decision, it may be valuable to stand back and consider whether the imposition of vicarious liability would be fair, just and reasonable."*

If Mr P had directed his complaint to a court instead of this service, I think it is likely that the court would have to have applied the approach suggested by Lord Reed. So, I have done the same.

The 'stage one test'

It is now accepted that a variety of relationships, not just those of employer and employee, may be capable of giving rise to vicarious liability. In *Cox*, Lord Reed said:

> *"The result [of the approach adopted by Lord Phillips in Various Claimants v Catholic Child Welfare Society [2012] UKSC 56; [2013] 2 AC 1] is that a relationship other than one of employment is in principle capable of giving rise to vicarious liability where harm is wrongfully done by an individual who carries on activities as an integral part of the business activities carried on by a defendant and for its benefit (rather than his activities being entirely attributable to the conduct of a recognisably independent business of his own or of a third party), and where the commission of the wrongful act is a risk created by the defendant by assigning those activities to the individual in question."*

I am satisfied that Mr S carried on activities (giving investment advice) as an integral part of the business activities carried on by Wealthmasters – and, that he was carrying on such activities in undertaking the activities that are the subject of this complaint. I say this because:

- I consider that the provision of, and subsequent implementation of, investment advice is an integral part of Wealthmasters' business.
- It was Mr S' job to give investment advice on Wealthmasters behalf in accordance with his contract.
- Mr S' title referenced in Wealthmasters' literature was 'Principal Consultant'.
- Wealthmasters' status as an authorised firm meant that it was not in breach of the general prohibition when it gave investment advice to members of the public. So, when Mr S gave investment advice on behalf of Wealthmasters, carrying out Wealthmasters' business activities, Mr S was not in breach of the general prohibition either.
- Mr S was given permission by Wealthmasters to give investment advice and it had appointed him to carry out the controlled function of "CF1 Director" and then "CF30 Customer".

SUP 10A.10.7 defines CF30 or the customer function as:

"The customer function is the function of:

(1) advising on investments other than a non-investment insurance contract (but not this is advising on investments in the course of carrying on the activity of giving basic advice on a stakeholder product) and performing other functions related to this such as dealing and arranging;

(2) giving advice to clients solely in connection with corporate finance business and performing other functions related to this;

(3) giving advice or performing related activities in connection with pension transfers, pension conversions or pension opt-outs for retail clients;

(4) giving advice to a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate;

(5) dealing, as principal or as agent, and arranging (bringing about) deals in investments other than a non-investment insurance contract with, for, or in connection with customers where the dealing or arranging deals is governed by COBS 11 (Dealing and managing);

(6) in relation to bidding in emissions auctions, acting as a 'bidder's representative' within the meaning of subparagraph 3 of article 6(3) of the auction regulation."

I think it is clear that Mr S was engaged to carry out activities that were an integral part of Wealthmasters' business.

I note that the FCA has issued guidance as to when it considers a person to be carrying on a business in their own right, set out in PERG 2.3.5 to 2.3.11. Although the guidance was published some time after the events Mr P complains of took place, the relevant parts of the legislation (in respect of permissions to give regulated financial advice) have not changed substantively. I therefore consider it appropriate for me to take into account the guidance in PERG, which says:

> *"In practice, a person is only likely to fall outside the general prohibition on the grounds that he is not carrying on his own business if he is an employee or performing a role very similar to an employee".*

Wealthmasters clearly intended Mr S to fall outside the general prohibition when acting on Wealthmasters' behalf in giving and implementing investment advice. As I have said, I consider that the only way in which Mr S could have fallen outside the general prohibition – in relation to the investment advice complained about – would be on the basis that he was carrying on Wealthmasters' business rather than his own. In my view, the guidance therefore provides support for the contention that Mr S' relationship with Wealthmasters was very similar to employment relationships.

I am also satisfied that Mr S' activities were not entirely attributable to the conduct of a recognisably independent business his. As I have explained, I am satisfied that Mr S was acting on behalf of Wealthmasters when undertaking the activities that are the subject of this complaint – in particular, when he advised Mr P to encash his collective investment account in order to invest in Green Oil. Mr S did have his own unregulated business (which appears to have provided promotional material about Green Oil) but the activities Mr P complains about concern the giving of regulated investment advice – and those activities fall entirely within Wealthmasters' business.

In allowing Mr S to give investment advice on its behalf, Wealthmasters was creating the risk that he might make errors or act negligently in doing so. Wealthmasters assigned to Mr S the customer facing task of giving regulated financial advice to Wealthmasters' customers, and it is always possible for that task to be carried out negligently. I am therefore satisfied that the activities complained about were entirely attributable to Wealthmasters.

The 'stage two test'

The stage two test asks whether the wrongdoer's action is so closely connected with the business activities of his principal as to make it just to hold the principal liable.

As Lord Dyson said in Mohamud, the test requires a court to *"make an evaluative judgment in each case having regard to all the circumstances and having regard to the assistance provided by previous decisions on the facts of other cases".* That is not a precise test, but the courts have recognised the inevitability of imprecision given *"the infinite range of circumstances where the issue of vicarious liability arises"*.

In the particular circumstances of this complaint, I consider that it is just for Wealthmasters to be held responsible for the actions Mr P complains about. I note:

- I think Mr S gave Mr P investment advice, that activity is closely linked to the business activities of Wealthmasters, a firm which provided investment advice to its customers (including Mr P).
- If Wealthmasters is not vicariously liable here, then Mr P's ability to obtain compensation would depend on whether the investment adviser he dealt with was an employee of Wealthmasters. In Cox, the court suggested it would have been unreasonable and unfair for the claimant's ability to receive compensation for the injury she suffered while working in a prison kitchen to depend on whether the worker who injured her was an employee or a prisoner. I consider that argument has even more relevance here – at least Mrs Cox is likely to have either known or had the ability to find out who was an employee and who was a prisoner. But Mr P had no way of knowing Mr S' employment status.
- Wealthmasters received no benefit from the acts Mr P complains about, and in particular it did not receive any commission. But as Lord Toulson explained in Mohamud, vicarious liability can apply even where an employee has abused his position in a way that cannot possibly have been of benefit to his employer – such as carrying out a private fraud or assaulting a customer. In Frederick, the principal was found not to be vicariously liable despite having received commission. The commission issue is not determinative.

I acknowledge that the conclusions I have reached are different to the conclusions reached by the court in *Frederick*. In that case, the principal was found not to be vicariously liable for the conduct of a named Mr Warren.

However, the facts in Frederick are so different to the facts here that I do not consider that the same outcome is inevitable in this complaint. In particular, I note:

- In Frederick, the claimants were approached by a Mr Qureshi – who was not a registered individual of the defendant. Mr Qureshi induced them to invest in a property scheme, which he was running jointly with Mr Warren. The claimants "had no personal dealings with [Mr] Warren and did not meet him or receive any written communications from him…there was no semblance of an advice process". Here, Mr P had personal dealings with Mr S, Wealthmasters' registered individual. He met with Mr S who provided him with advice. Mr S carried out business activities of a type that had been specifically assigned to him by Wealthmasters, and which he could only (lawfully) perform on behalf of Wealthmasters.
- Mr Warren submitted "dishonest and fraudulent" mortgage applications for loans on behalf of the claimants. Mr P makes no allegation of fraud. He only complains about the suitability of the advice. Mr P's allegation is one of negligence and/or breach of statutory duty. He does not say as such that Mr S was dishonest. There is therefore no need for me to consider whether Wealthmasters would have been vicariously liable for any dishonest acts by Mr S.
- Mr Warren was only able to submit the mortgage applications in the way he did because he was an agent of the principal. But the claimants in Frederick did not say they had *"suffer[ed] any loss through the actual re-mortgaging or their receipt of monies from [the lender]*". Instead, they suffered losses only when they handed the money over to Mr Warren (or to the

company of which Mr Warren and Mr Qureshi were directors). In contrast, Mr P says he suffered losses as a direct result of the advice given to him by Mr S, in his capacity as a Wealthmasters' financial adviser, to surrender his collective investment account and invest in Green Oil.

What if the tests in Cox and Mohamud are not applicable to this complaint?

I recognise that a court might take the view that the specific tests set out in Cox and Mohamud are not applicable to Mr S, Wealthmasters, and the specific acts Mr P complains about. The applicability of those tests to agency relationships is unclear, as is their applicability to some or all of the reliance-based torts, possibly including negligent misstatement.

Even if those specific tests are not applied, I still consider that it would be appropriate for a court to consider whether Wealthmasters is vicariously liable for the actions of Mr S. The earlier cases, including *Armagas* and the *Christian Brothers* case [2012] UKSC 56, make clear that justice is the court's overriding concern in such matters. Where the claimant and the defendant are both innocent parties, the court will consider whether the circumstances under which the wrongdoer committed his wrong were such as to make it just for the defendant to bear the loss.

Bearing in mind the regulatory position, I consider that in the particular circumstances of this case it is just to require Wealthmasters to bear any loss caused by negligent investment advice provided by Mr S.

From a public policy point of view, one of the purposes of FSMA was to make provisions for the protection of consumers. The approved person regime was one of the ways in which both FSMA and the FSA gave effect to that protection. Mr S was a Wealthmasters' approved person. In view of section 59(1) of FSMA, I consider that when Mr S carried out the regulated activity of advising on investments, and arranging deals in investments, those activities were the activities of Wealthmasters. Wealthmasters is clearly responsible for its own activities. I see no support in FSMA – or anywhere else – for the belief that Wealthmasters responsibility for its approved persons was dependent on the precise nature of its contracts with those people (agency/non-agency). Similarly, I do not see anything to suggest Wealthmasters' responsibility depends on whether the approved person's conduct is classified in terms of one type of tort ("reliance-based") or another. I would be surprised if a court were to take the view that such distinctions were relevant to the outcome of this complaint.

I therefore consider that Wealthmasters is vicariously liable for the acts Mr P complains about regardless of whether Mr S carried out those acts with apparent authority on behalf of Wealthmasters. (However, as I have said I consider that Mr S did in fact act with Wealthmasters' apparent authority when he carried out the acts complained of.)

Statutory responsibility under section 150 of FSMA

For the reasons I've give above, I am satisfied that when Mr S gave the advice complained of, he was acting in his capacity as Wealthmasters' approved person for the purpose of carrying on Wealthmasters' regulated business. He was not carrying on a business of his own.

That means Wealthmasters is subject to the Conduct of Business (COBS) suitability rules in respect of Mr S' advice. If Mr S' advice was not suitable, then (subject to the recognised defences) Wealthmasters is responsible in damages to Mr P under the statutory cause of action provided by section 150 of FSMA. I therefore consider that section 150 of FSMA provides an alternative route by which Wealthmasters is responsible for the acts complained of.

Summary of my provisional findings on jurisdiction

Having considered all of the circumstances here, as well as the legal authorities, I am provisionally satisfied that:

- Wealthmasters represented to Mr P that Mr S had Wealthmasters' authority to advise on the encashment of his existing investment and the re-investment in Green Oil.
- In addition – or in the alternative – Wealthmasters is vicariously liable for the acts Mr P complains about.
- Wealthmasters also has statutory responsibility under section 150 of FSMA for the acts complained about.

I have found that Wealthmasters is responsible for the acts that are the subject of this complaint, so I have gone on to consider the merits of the complaint. Even if I am wrong about one or two of the above three conclusions, I still consider that the third means that Mr P's complaint about Wealthmasters falls within my jurisdiction.

My provisional findings on merits

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

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

It is my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant.

Suitability of the investment

Mr S has said in his statement, amongst other things that:

> [Mr P's first name] *became a client in 2008 having recently been made redundant from* [name of his employer] *and had started up his own business as a* [details of Mr P's work].

And

> [Mr P's first name] *has built up a significant level of investment knowledge and experience during our discussions over the years and in keeping with his attitude to risk had built a varied portfolio and profited from it as highlighted on page 27 with the list of investments, including:-*
>
> *Structured products*
> *Investment/Unit Trusts*
> *ISA's*

And

> [Mr P's first name] *was deemed to of* [sic] *had a Realistic attitude to risk for the regulated investments at the time:-*
>
> *An investor adopting this risk category would like to preserve short term financial security through low risk: investments, but also wish to benefit from the prospect of good long term returns from higher risk investment types, which may include some*

> *lower risk share/equity based investments.*
>
> *Those funds invested represented a small portion of the client's overall Net asset value.*
> *…*
>
> *Clients would have been Risk Assessed at several occasions during the regulated investments on risk profile questionnaires due to the investment/retirement objectives. Those funds invested represented a small portion of the clients overall Net Asset Value.*
>
> *During our meeting to specifically discuss Green Oil,* [consumer's first name] *already had the* [Mr S' unregulated firm] *literature as mentioned previously including a guide to alternatives, Risk Disclaimer, due diligence and the clear distinction that the non regulated introduction was by* [Mr S's unregulated firm] *was explained and stressed. This was the sole purpose of the meeting.*

And

> [Mr P's first name]*, having carried out enquiries of his own, and in light of the amount to be invested as a percentage of his overall assets was prepared to consider the investment, the risk* [sic] *were apparent to him as well as having been provided with copies of the Due Diligence that had been carried out. At no point was it guaranteed as safe, the measures used to help protect his interest were explained regards ownership of the land, the harvesting, the income streams etc.*
>
> *Any correspondence in respect of the Green Oil application processing would have been via* [Mr S's unregulated firm]*. Correspondence from Wealthmasters Financial Management Ltd after this point referring to the above would have been to issue a valuation of the clients overall assets which were issued regularly*.

Based on the evidence I have seen; Mr P had limited investment experience. At the time of the advice he had invested in a couple of structured products and held ISAs and the collective investment account – these were taken out on the advice of Mr S and regularly reviewed by him. He also had a workplace pension from a previous employer. I am not convinced that this amounted to Mr P having significant investment experience or that it meant he understood the risks involved with investing in a high risk unregulated esoteric investment.

Mr S also makes a number of references to this investment being a small part of a varied portfolio. I disagree. At the beginning of 2011, it was recorded that Mr P had an income of £15,000 and his main residence was valued at £155,000 – in terms of savings and investments he had:

- ISA (this was moved to a structured capital at risk product on the advice of Mr S in February 2011) – £12,152
- Current account – £13,000
- Structured product – £11,100
- Collective Investments – £22,262

So, he had just under £60,000 in investments and savings (we do not have details of his pension entitlement), that includes his current account. £20,000 of that was invested in Green Oil. Looking at Mr P's circumstances I cannot agree with Mr S's assessment – £20,000 was a small proportion of Mr P's investable assets.

By the time the Green Oil investment was made over half of Mr P's investable assets outside of monies held in his current account were tied up in structured products and the rest was about to be put into a single unregulated esoteric investment; that is not what I would consider to be a varied

portfolio – nor is it one that I think was suitable for an individual with a relatively modest portfolio and income.

Taking everything into account, I am satisfied that Mr S' advice to encash Mr P's collective investment account in order to invest in Green Oil was not suitable. In light of Mr P's circumstances, I think that a cautious to moderate investment would have been suitable for Mr P. I think this could have been achieved via Mr P's existing investment account or by reinvestment via a different investment wrapper, so long as this did not result in Mr P incurring additional fees unnecessarily. If Mr P had been given suitable advice, I think he would have listened to this.

Having found that Wealthmasters is responsible for the unsuitable advice, it is fair and reasonable that it compensate Mr P in full for the losses he has suffered as a result of that advice. In addition to the financial loss that Mr P had suffered, I think that losing a large portion of his investments has caused him a significant amount of distress and upset.

In summary, I have found that:

- On balance, it is more likely than not, that Mr S did recommend that Mr P encash his collective investment account in order to invest in Green Oil.
- Despite the issues raised, Wealthmasters is responsible for that advice.
- The advice was not suitable for Mr P in light of his circumstances.

In turn I think it is fair for Wealthmasters to compensate Mr P for the financial loss he has suffered. In addition, I think that the loss of a considerable amount of his savings would have caused Mr P significant distress and that Wealthmasters should compensate him for this.