

## **complaint**

Mr and Mrs G's complaint concerns the advice they received from Neales Financial Management Limited ("Neales") to invest in the EEA Life Settlements Fund. This is an Unregulated Collective Investment Scheme ("UCIS"). They say it should not have been recommended, as they were unsuitable clients to invest in UCIS products. Also, the risks involved were greater than they wanted to take.

## **background**

I issued my provisional decision about this complaint, copy attached, to both parties in January 2016. In summary, I didn't think the advice Mr and Mrs G were given by Neales was suitable.

Mr and Mrs G responded accepting my provisional decision. They also confirmed Mr G had received repayments on his investments of £13,569.20 in December 2015 and £1,765.45 in September 2014. Mrs G had received £5,614.36 in January 2016 and £730.47 in October 2014.

Neales confirmed it had received my provisional decision, but it made no response.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. But I've not had any further submissions that cause me to alter my opinion. So my final decision remains the same as I set out in my provisional decision.

To clarify, as Mr and Mrs G made separate investments, and have received different payments from the fund on different dates, Neales should carry out separate calculations for Mr and Mrs G.

## **fair compensation**

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

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

## **what should Neales do?**

To compensate Mr and Mrs G fairly, Neales must:

- Compare the performance of Mr and Mrs G'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.

Neales should also pay interest as set out below.

- Pay to Mr and Mrs G £200 for the trouble and upset they have been caused.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
EEA Life Settlements Fund	still exists	for half the investment: FTSE WMA Stock Market 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 and Mrs G agree to Neales taking ownership of the investment, if it wishes to. If it is not possible for Neales to take ownership, then it may request an undertaking from Mr and Mrs G that they repay to Neales any amount they 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, Neales should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity 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 Neales 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:

- Mr and Mrs G wanted capital growth with a small risk to their capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.
- The WMA 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 and Mrs G's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs G into that position. It does not mean that Mr and Mrs G would have invested 50% of their 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 and Mrs G could have obtained from investments suited to their objective and risk attitude.

### **my final decision**

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

Neales Financial Management Limited should provide details of its calculation to Mr and Mrs G in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 8 April 2016.

Doug Mansell  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

Mr and Mrs G's complaint concerns the advice they received from Neales Financial Management Limited ("Neales") to invest in the EEA Life Settlements Fund. This is an Unregulated Collective Investment Scheme ("UCIS"). They say it should not have been recommended, as they were unsuitable clients to invest in UCIS products. Also, the risks involved were greater than they wanted to take.

### **background**

In 2009, as a result of advice from Neales, Mr G invested £60,000 and Mrs G invested £25,000 in the EEA Life Settlements Fund.

In 2015, Mr and Mrs G complained to Neales as outlined above, but it didn't uphold the complaint. Neales said the advice was suitable. Mr and Mrs G then referred the complaint to this service.

One of our adjudicators investigated the complaint, and thought it should succeed. He noted Neales had provided no evidence that Mr and Mrs G's circumstances, objectives or attitude to risk had been assessed or that they had received any form of suitability report. He didn't think the risks posed by the EEA Life Settlements Fund were suitable for what he considered were low or cautious risk investors.

The adjudicator also hadn't seen evidence Neales had taken appropriate steps to ensure Mr and Mrs G were customers to whom a UCIS should have been recommended. Nor that Mr and Mrs G were made aware of the particular risks attached to this investment.

Neales didn't agree. It was disappointed the adjudicator had mainly focused on the EEA Life Settlements Fund being a UCIS. But he'd paid no attention to the evidence submitted which showed Mr and Mrs G met with the exemptions within the regulator's rules for the promotion of this type of product. Even the limited evidence it had supplied showed Mr and Mrs G were experienced investors with sufficient funds to warrant such an investment. Mr G's capital came from an inheritance, and so was new money. Mrs G's capital came from a bond which was underperforming substantially.

Also, the fund was marketed as a low risk investment. It was entitled to rely on this risk assessment when advising Mr and Mrs G. They were given the relevant product literature, so were able to understand the risks for themselves.

The fund performed as expected for a number of years, until the failure of other unrelated funds caused by an announcement by the regulator. The EEA Life Settlements Fund was suspended to protect investors. But it remains liquid and functional. Mr and Mrs G had received some distributions, and are due to receive more payments in the future.

Mr and Mrs G commented, through their representative, that they have been unable to find any suitability letters for this advice. They don't think these were issued. Also, it is false for Neales to say they had considerable assets. Mr and Mrs G have only received about £700 of their initial investment back from the fund. Even if they were able to sell their shares, the nominal value is much less than when they invested. But they are unable to sell them, so the value should be taken to be nil.

As the complaint remains unresolved, it has been referred to me for a final decision.

### **my provisional findings**

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

Unfortunately, because there is little documentary evidence from the time the advice was given, it's difficult to know what Mr and Mrs G were told about the EEA Life Settlements Fund.

When responding to the complaint, Neales said there was a meeting in June 2009 to discuss Mr and Mrs G's investments. They wanted to reduce their level of risk following the banking crisis. Neales said they were interested in lower risk investments which could give better returns than building society accounts. The EEA Life Settlements Fund was recommended as a low risk investment.

As has been noted above, the fund was a UCIS. This type of product can only be promoted to certain classes of investor.

Neales should have been aware there are strict rules regarding the promotion of UCIS. This is because they are viewed as appropriate only for those individuals who could understand the specific nature of the risks or could take those risks. These rules also applied at the time of this recommendation.

Essentially, s238 of the Financial Services and Markets Act 2000 (FSMA) prohibited authorised firms from promoting UCIS except where:

- i. An exemption in the FSMA 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 ("the Order") applies; or
- ii. An exemption under COB 3 in the FCA Handbook (then FSA Handbook) applies.

'Promoting', in this context, means the communication, in the course of business, of an invitation or inducement to engage in investment activity in relation to UCIS.

The Order permits promotion to certain individuals, including the following:

- Certified high net worth individuals (art 21);
- Certified sophisticated investors (art 23);
- Self-certified sophisticated investors (art 23A).

The circumstances in which COB 3 permits promotion of UCIS include promotion to:

- Category 1: A person who is already, or has been in the last 30 months, a participant in a UCIS;
- Category 2: A person for whom the authorised person has taken reasonable steps to ensure that the scheme is suitable and who is either an established client or a newly accepted client of the authorised person, or of a firm in the same group as the authorised person;
- Category 6: An exempt person, if the promotion relates to a regulated activity in respect of which the person is exempt;
- Category 7: An eligible counterparty or professional client.

Similar requirements (which apply to later promotions) apply from 2007 under COBS.

I have not seen evidence Neales obtained any of the above certification for Mr and Mrs G. Simply knowing the customers for several years is not sufficient.

I've also not seen evidence Mr and Mrs G were made aware the fund was a UCIS, and the risks this type of investment represented. In fact, there's no real evidence what they were told about it. Neales say Mr and Mrs G were given product literature. But even if that's correct, it wouldn't be sufficient to make them aware of the nature of the investment and the risks involved.

Neales also indicate the fund was recommended to be in line with the low risk approach Mr and Mr G wanted. But I don't think it met this description.

The structure of the EEA Life Settlements Fund meant it invested in traded life assurance policies. Investment within this sector carries a number of inherent risks. These include illiquidity and longevity of policy due to an ageing population and advances in medical science. As all the policies making up the fund were based overseas, there was also a currency risk. The fund also depended on the financial stability of the underlying insurance companies.

In 2012, the then regulator, the Financial Services Authority issued guidance about the sale of life Settlements funds. It essentially said they had a very high risk; the risks were opaque and largely misunderstood by both consumers and advising businesses. But these risks were not new, and were always inherent in this type of investment. They were relevant at the time Mr and Mrs G invested.

Overall, I think the risks posed by this fund meant it was not suitable for Mr and Mrs G. Where the capital to be invested came from doesn't alter this.

Further, although Neales say the fund remains liquid and functional, it's still the case that Mr and Mrs G can't currently access their capital. I've taken this into account in the method of compensation to be applied.

But I'm also mindful that it seems Mr and Mrs G wanted to take a low degree of risk. So this should also be reflected in the method calculation. I am therefore taking a different approach to that proposed by the adjudicator, in relation to the benchmarks to be used.

I also think this matter will have caused Mr and Mrs G some trouble and upset. So Neales should pay them the sum of £200 in acknowledgement of this.

### **fair compensation**

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

I think Mr and Mrs G would have invested differently. It is not possible to say *precisely* what they would have done, but I am satisfied what I have set out below is fair and reasonable given Mr and Mrs G's circumstances and objectives when they invested.

### **what should Neales do?**

To compensate Mr and Mrs G fairly, Neales must:

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### **my provisional decision**

I uphold the complaint. My provisional decision is that Neales Financial Management Limited should pay the amount calculated as set out above.

Doug Mansell  
**ombudsman**