complaint

Mrs W's complaint against Bespoke Financial Planning (an appointed representative of LLP Services Ltd which is responsible for the advice) is that it provided unsuitable advice to her to invest in the Connaught Income Series One Fund.

She is also concerned that she was not made aware of the problems with the fund that caused the industry regulator to issue warnings about it.

background

I issued my provisional decision on this complaint on 10 August 2015. The background and circumstances to the complaint, and the reasons for my provisional finding which was to uphold the complaint were set out in that decision. A copy is attached and it forms part of this final decision.

I invited both parties to provide any further evidence or arguments that they wanted me to consider before I made my final decision.

LLP responded with several submissions. These ran to several hundred pages which I have read carefully and considered in full. But to summarise, it said:

- LLP services and/or its appointed representatives aren't independent financial advisers.

- The sale had been conducted on an execution only basis. Mrs W had signed execution only agreements. Even if she hadn't received/reviewed the 26 March 2010 letter (saying the sale was execution only) at that time, she would have read it on her return home later that year (or when it had been forwarded to her). A further letter was sent in November 2010. It enclosed the execution only agreement she had signed in October 2008. Mrs W had only referred to not receiving the March 2010 letter. Mrs W had also signed an execution only agreement some time after this investment in 2011. She hadn't questioned her status as an execution only client. And she had dealt with the firm on an execution only basis throughout her relationship with the firm.

- The adjudicator didn't think that the execution only agreement signed in October 2008 should be still considered in effect in February/March 2010. It appeared the ombudsman was in agreement. But Mrs W admitted being in regular contact with the firm but didn't once ask to cancel that agreement. COBS 10.2.4R clearly said a firm was entitled to rely on the information provided by a client unless it was aware that the information was manifestly out of date, inaccurate or incomplete. Mrs W didn't give any reason to believe her status as an execution only client had changed. And this was shown by her signing of the execution only agreement later in 2011.

- It said it found it astonishing that I would believe that someone of Mrs W's professional background and circumstances wouldn't realise they were signing legal documents. It said that my approach to believing Mrs W's unsubstantiated allegations was irrational. And it served to show a highly prejudicial approach to the complaint.

- The provisional decision didn't take into account COBS 10.2.6. This said that "*Depending on the circumstances, a firm may be satisfied that the clients knowledge*

alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, ***a firm may infer knowledge from experience."*** *(its emphasis).*

- The decision hadn't considered all the requirements under COBS 4.12R. And I had reached the wrong conclusion that the firm had not complied with the regulatory requirements surrounding UCIS.

- Mrs W had extensive prior experience in *"…not only different investment schemes, but specifically in UCIS."* Although the initial e-mail about the fund was sent by the firm, Mrs W's decision to invest was not independent from her prior UCIS experience (she had invested in several UCISs in the past). Nor was her understanding of the risks involved in investing in UCIS limited to the risks described in the firm's e-mail (of 11 March 2010). However the provisional decision adopted the view that Mrs W's decision to invest was based solely on the information provided in the firm's e-mails. But this didn't take into account all the other factors. This approach was irrational. And it ignored the duty to consider all the circumstances of the case.

- The extracts of the conversation on 17 March 2010 between Mr W and the firm were incomplete. It gave a distorted view. It was clear that Mrs W's husband had reviewed the investment memorandum issued by the operator. His understanding of it was in line with the information (not advice or opinion) given by the firm. The quotes I had used hadn't included Mr W saying he was comfortable with the information at hand and was the one who confirmed *"okay, lets leave it. Can you get a hundred grand out of both our accounts and pack it in that fund for us please?"* The firm said the decision failed to consider the material fact that the above instruction and behaviour was in line with a client who was aware and understood execution only investments. It said Mrs W didn't ask the firm for advice on whether she should proceed with the investment or whether the amount was suitable.

- Mrs W had provided a misleading picture of her circumstances in an attempt to maintain an illusion that she lived a modest lifestyle and had no idea of what she was getting herself into. It provided details of the substantial farmhouse and grounds that she owned abroad.

- The interpretation of the wording in the e-mail of 24 February describing the investment as a *"nice alternative to cash"* (that Mr and Mrs W understood it to mean the investment had the same level of risk as cash) was unreasonable and irrational. It said *"an alternative"* did not mean *"the same"*; *"alternative"* presented another possibility. Although *"nice alternative"* was a positive phrase it wasn't a personal recommendation to invest. It said that no reasonable unsophisticated person would proceed with an investment of this amount on the basis that one e-mail introduced documentation of the fund as a positive alternative. There was also nothing in the wording of the second e-mail dated 11 March 2010 which would constitute advice.

- The e-mails exchanged shouldn't be considered independently. Nor was it reasonable or rational to conclude that Mrs W proceeded with the investment on the basis that the documentation was initially presented to her as a *"nice alternative to cash."* Particularly when later communication clearly set out the risks in a factual manner. It wasn't subjective or advisory.

- It didn't dispute that Mrs W relied on the e-mails prior to investing. But it disputed that the e-mails contained advice (rather than information). The first e-mail dated 24 February 2010 was an introduction to the information about the fund. The second dated 11 March 2010 listed information generated by the firm's independent due diligence of the fund and all the risks that it presented. It didn't provide advice.

- The decision had failed to take into account PERG 8.28 (3). This referred to particular examples of information. It said the e-mail provided facts about the funds as described in the investment memorandum which had already been given to Mrs W. This wasn't advice.

- It didn't appear that I had taken into account that Mr and Mrs W sought clarification having confirmed that they had read the prospectus. And according to them the fund met what they were looking for "*an excellent return at present time with no obvious major risks."* This showed Mrs W was obviously aware the fund had some risks which she was happy to take in exchange for a higher return.

- Mrs W had alleged that her attitude to risk had changed. However this wasn't true. An e-mail sent to the firm in February 2010 asked it to find something with *"…appreciably better rates (i.e at least in excess of 3% to make it worth changing) available elsewhere even if that means tying the money up for a longer term?"*

- Mrs W had access to her own trading platform from which she directly controlled her investments. This showed her level of comfort in making investment decisions. It said that Mrs W had never considered the correspondence with it as advice and had only used this argument now to support her complaint.

- The fund appeared to the firm to be "bona fide". It said that confirming to an investor that research and due diligence on a fund didn't result in any higher risks than usual didn't amount to a recommendation.

- The decision said that the fund had no track record. However it was launched in April 2008. And quarterly reports had been issued since January 2009 (Mrs W invested in March 2010). The bridging lender behind the fund had a track record as a specialist lender. It appeared to be successful. And the firm had reviewed its audited accounts at that time. It appeared to be a company in good financial standing (it was only later that problems with the company and the information it had provided came to light).

- The fund clearly complied with COBS 10.4.1R. This said that a financial instrument was non-complex if it satisfied a number of criteria. It concluded the fund met these criteria and therefore it was illogical to decide that the fund was complex.

- The decision said the fund had a narrow focus and liquidity risks. This was unsubstantiated and made with hindsight. The fund was supposed to hold a portfolio of short term bridging loans for 3 to 6 months; to a wide range of third party borrowers on reasonable loan to value ratios. All borrowings were supposed to be secured by a first fixed charge over property. It didn't know the conditions and intended operation of the fund wouldn't be met. And the concentration of risk arose from fraud perpetrated by a regulated firm.

- Although the fund itself was not regulated several regulated entities were involved in the management of it. Each had a separate role and responsibility. With several

regulated entities involved it was unreasonable to consider the structure itself as controversial or adding further risks in itself. The perception in the decision that all unregulated funds *"…lead to a relatively high level of risk is not borne out by the facts per se….this is an assessment made with hindsight which is neither fair, reasonable, nor logical when considering this complaint."*

- It provided an analysis of my assessment of the fund by an expert in the field. It considered that in light of all the above its assessment of the fund in the March 2010 e-mail was in line with the information to hand at the time.

- It said I had wrongly interpreted its reliance argument in respect of COBS 2.4.6R and 2.4.8. It wasn't referring to the categorisation of "low risk" described in the investment memorandum. It was referring to the investment strategy and other key multiple representations described throughout the document that had been reviewed, approved and issued by regulated operators at that time. It had relied on these in order to ascertain the viability of the fund and its investment strategy.

- Since the collapse of the fund it had become apparent that there were various misrepresentations by regulated entities involved with the fund. The decision had ignored these despite the firm being entitled to rely on them.

- It didn't consider it was the cause of Mrs W's losses. The operators of the funds were regulated entities and carrying out regulated activities. The operator *at the time* owed a duty of care to Mrs W and was under an obligation to ensure it appropriately reviewed the details within the fund's investment memorandum before issuing it as a financial promotion under section 21 of FSMA. It would clearly be aware investors would rely on it in making investment decisions. The operator had an ongoing duty to ensure its content was clear fair and not misleading. However several of its key representations were misleading or inaccurate. But for the operator's failures in due diligence and provision of misleading information in the investment memorandum, Mrs W would not have invested in the fund.

- The original operator of the fund also reviewed, approved and issued two versions of the information memorandum under section 21 of FSMA. It was substantially the same as that issued by the second operator.

- It provided a copy of meeting minutes dated 26 September 2009 attended by representatives of the original operator which showed that it was aware of various misrepresentations in the information memorandum. And also that the specialist lender was in serious financial difficulties. However it failed to warn the new operator of these issues. And it failed investors (including Mrs W) by not suspending the fund; not reporting the irregularities to the regulator; not notifying investors and then simply resigning and effectively washing its hands of the matter.

- It said it was not the entity that had passed on misleading information onto Mrs W. My decision had failed to consider that the so called reassurances were a factual list of risks put to Mrs W in line with the financial promotion and investment strategy that had been issued by the operator. It considered I had evaluated its assessment of the risks as transpired after the event (in effect using hindsight) rather than against how they would've been considered given the information provided at that time.

- Another fund whose strategy was based on short term bridging loans was launched around 2010. This had been very successful. If no fraudulent activity had taken place the Connaught fund would have had the potential to be equally successful with no high risks.

- The investor notice published by the regulator on its website in May 2011 couldn't be characterised as a warning. It just warned against the description in the fund memorandum of it being low risk. It didn't think this was relevant to Mrs W because it didn't consider her to be low risk; she was an execution only investor, it never recommended the fund and it hadn't relied on the description of low risk in the investment memorandum.

- The former CEO of the specialist finance partner had taken on the role of whistle-blower and alerted the regulator to irregularities in its accounts in January 2011. However the regulator had clearly failed to adequately warn the marketplace. It provided a table setting out the concerns about the regulator's overview of the fund.

- It provided a copy of a witness statement and further evidence from one of its directors which had been provided in support of a judicial review. The director, with one of the firm's other directors, had conducted a full investigation of the collapse of the fund and gathered a substantial amount of evidence about it. This had been passed onto the fund's liquidators as well as the police. They had personally brought a criminal complaint against several directors involved in the overall management of the fund.

- High court action had been brought against the operators of the fund by the liquidators on behalf of investors. Mrs W is involved in these proceedings which is a material factor in the complaint. DISP 3.3.4R provided that I could dismiss a complaint without further consideration if it was the subject of current court proceedings. The subject matter of Mrs W's complaint was the loss of investment due to the collapse of the fund in 2012. It was likely that, as an investor, Mrs W would be called as a witness in the High Court Action. The complaints were 'intertwined' and it thought the complaint should be dismissed.

- The 8% return was not surprisingly high when compared to the 5% offered by banks at the time the fund was launched. The performance of the fund had been positive since its launch in 2008.

- It considered I had ignored its evidence about its own analysis of the fund and its risks. It hadn't just relied on the Information Memorandum. It also said I had ignored its evidence about the chain of causation without consideration on its relevance in these complaints. Or how the misleading statements made in the memorandum had a direct impact on its assessment of the fund. And therefore on whether it had assessed it as a suitable investment to bring it to Mrs W's attention.

- Although the redress proposed in the provisional decision made allowance for any compensation received to be returned to the firm this was irrational, unfair and unreasonable. This was because by making such provision I was effectively accepting the premise that other parties were liable for Mrs W's losses. Any compensation provided by LLP Services would effectively be an interim payment for

the purpose of Mrs W avoiding having to wait to receive compensation from the actual culprits.

- A finding against it would likely place the firm into liquidation. Mrs W would then have to file a claim with the Financial Services Compensation Scheme (FSCS). It attended a meeting where it was made clear that the FSCS considered the chain of causation as a material point. To date no investor claims had been upheld. It was extremely unlikely that Mrs W would be awarded compensation via the ombudsman and FSCS route.

- It made further requests for an oral hearing. It considered this was the only fair method to determine the true position on the various material factors on which the complaint turned.

- Mr W had claimed he was incensed by the firm's claim that he had said *"Can you get a hundred grand out of both our accounts and pack it into the fund for us please."* Mr W had said he would never use such language. However the firm provided a recording of the telephone conversation which clearly showed Mr W had said this. It said this cast serious doubts on the evidence provided by Mr and Mrs W. It said that I should re-assess whether it was reasonable to override contemporaneous evidence in favour of Mr and Mrs W's unsubstantiated claims.

- It referred to internal e-mails sent by another ombudsman providing instructions on how to handle complaints about this fund. It referred to the other cases about this fund that had published final decisions that it said had all been upheld. It said all decisions contained the exact wording as instructed in the ombudsman's e-mail and there were striking similarities with my provisional decision. It said I had not made an independent judgement on the matter and as such had predetermined the complaint which was unlawful.

- My position that no complaint had been brought against any other party was untenable. The regulator was currently investigating the same entities which withheld crucial information. Although I had said no complaint had been brought against any other party, I had the power under DISP 3.5.2 to inform a complainant that it would be appropriate for them to complain against another respondent (for example the scheme operators or specialist finance partner). In light of all the evidence put forward, I had enough material to review and assess the various breaches of conduct by each and every entity.

- It couldn't be asserted that the regulator's investigation had no relevance to these complaints. It was apparent from the ombudsman's e-mail that we had stayed assessment of most complaints for a period pending the FCA led negotiations between the fund and regulated operators. To now say that no complaint had been made against other entities and the pending investigations had no bearing. It merely emphasised our irrational and prejudicial approach on the matter.

- It didn't think it would be fair and reasonable to hold it liable for the losses incurred by Mrs W when she was an execution only client; the risks were clearly set out to her in writing; she was a sophisticated investor with extensive experience in UCIS; she had reviewed the fund's investment memorandum; and other regulated firms involved

with the fund had failed in their responsibilities which was the cause of Mrs W's losses.

Mrs W said, in summary:

- LLP had claimed it wasn't an Independent Financial Adviser. But it had clearly acted in that capacity for a number of years. From the outset it had introduced and recommended investments to her and Mr W which they would never have found on their own.

- Mrs W set out the background and circumstances in which she came to have the assets from which to make this investment. She realised the value from a business she had worked non-stop to build up over her lifetime.

- There was no change in the way they conducted their relationship with the firm after they had signed the execution only agreements. LLP didn't change the way it acted or the advisory role it played after this had been signed.

- Although they had previously made investments in UCISs it was only after they had changed adviser that they became aware that it was an unusual type of investment. The claimed "sophistication" came through investments introduced by the firm.

- They had become concerned about the risks presented by some of their investments and had started investing in deposits. It was only on receipt of the e-mail in 2010 introducing *"…a nice alternative to cash"* that they considered the investment. As their acceptance of risk was now low they asked a number of questions and received re-assurances before deciding to make the investment. The overall impression they got was that the fund presented a very low risk to capital.

- Mrs W disputed the information given about a telephone conversation between the firm and Mr W on 17 March 2010. She said the language quoted would be (for Mr W) *"…completely out of character."*

I wrote to both parties by letter dated 4 July 2016 to set out my thoughts on whether the complaint should be dismissed because Mrs W was a party to the liquidator's proceedings in the High Court against the operators of the fund.

In summary, I said that the High Court action was by the liquidators and was against the operators of the fund. And in my view the documentation for that claim clearly showed who it was against and didn't prevent Mrs W from making a claim against LLP Services Ltd. Mrs W had made a complaint to LLP Services which she had subsequently referred to this service. The subject matter of the complaint here was about LLP Services Ltd's role in Mrs W investing her money in the Connaught Fund. I was satisfied that I could decide this complaint.

LLP Services Ltd responded to say, in summary, that all of the legal actions undertaken by the liquidators of the Connaught Fund were made with the objective of recouping losses incurred by investors in the fund. This included Mrs W. My view that the deed of assignment didn't preclude Mrs W from bringing a separate claim against LLP Services needed to be reviewed in light of the substance of the complaints. DISP 3.3.4 related to the *"subject matter of the complaint"*. DISP 3.3.4R (9) provided that I could dismiss a complaint if I considered that:

"the subject matter of the complaint is the subject of current court proceedings, unless proceedings are stayed or sisted (by agreement of all parties, or order of the court) so that the matter may be considered by the Financial Ombudsman Service"

It said that irrespective of the wording of the deed, I had the responsibility to review the substance of the proceedings currently ongoing by the liquidators to assess whether the complaint should be dismissed. The court actions against negligent valuers, negligent solicitors and negligent auditors were all about the same subject matter - the loss incurred by the investors.

It said the liquidators were anticipating further recoveries of monies and until all these avenues were closed it wasn't possible to say with any certainty what Mrs W's loss was. It said it would be irresponsible and prejudicial to force it to pay compensation when it wasn't in a position to calculate the loss. It said this could in effect be nominal once the liquidators had amassed compensation from all the negligent parties.

The firm re-iterated that it hadn't provided advice. It also said it had previously provided evidence that showed Mr and Mrs W had tried to mislead us by distorting facts and/or their recollections of events. It said the complaint should be dismissed under DISP 3.3.4R(2) as it was frivolous and vexatious.

my findings

A significant amount of evidence has been provided about the complaint which I have outlined briefly above and in my provisional decision. Whilst I have read and considered all the evidence and arguments that have been presented to decide what is fair and reasonable in the circumstances of this complaint, I have focused below on what I consider is material to deciding a fair outcome.

I think it's worth clarifying that a finding of whether advice was or wasn't given largely turned on the content of the documentary evidence available. So although I have taken into account all the other evidence presented by both parties, I have given most weight to that contemporaneous documentary evidence in deciding if advice was given. This is a matter of record.

So given this starting point, I think what needs to be considered is:

- Was Mrs W given advice?
- If so, was that advice suitable?
- If not, was that due to failures by the firm?
- If so, did the firm's unsuitable advice cause the losses Mrs W incurred?

- Was Mrs W given advice?

The firm has said that it didn't provide advice and only provided information. It has said I failed to take into account PERG 8.28.3 in deciding advice was given. PERG 8.28.3 provides examples of what information may involve. However, as I referred to in my provisional decision, PERG 8.28.4(3) goes onto say that in the regulator's opinion:

Such information may take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation. For example a person may provide information on a selected, rather than balanced basis which would tend to influence the decision of the recipient.

I explained why I considered that advice had been given in my provisional decision. In particular I highlighted that the firm had said:

"Attached are some documents on the Connaught Income fund which is a nice alternative to cash." It went onto explain some features of the fund. When Mr W responded to question whether the fund was *"too good to be true"* given its high return the firm also said:

The fund was originally launched when base rates were 5% (they then rose to 5.5%) so the differential was not that great at outset.

It went onto say that *"The track record of the fund has been excellent and has always paid the mandated interest throughout"* and

"The minimum investment is £20,000 so you could consider investing a smaller proportion of the cash available in your SIPP?....Just to let you know, we have several clients who have already invested in this fund and others looking to invest before the 31st March close. The source of investments has varied from personal, pensions and corporate funds. So good mix of investors if that gives you any comfort?

The transcript of the telephone call also shows the firm said:

I have to say, actually, the more set of eyes that we have had look at it, the more comfortable we've become with it because, basically, as you know, we have property people on our books and they have gone through it with a fine tooth comb…..On balance, the closer I've looked at it, the more comfortable I've become with it…. I can see one or two scenarios where potentially it gets tricky and that is if there is a stampede to the exit at the time. But you know, people are unlikely to stampede to the exit simultaneously, if it's getting 8% and there's no prospect of getting anything comparable ...So, if you had to sell a lot of stock in a hurry, then there might be a requirement to, sort of, wind it out over a longer period of time. But I can't see anybody interested in doing that right now to be honest."

I have only quoted what I consider are the relevant extracts from the e-mails/conversations above to demonstrate why I consider the firm wasn't merely providing information here – that information was accompanied with the firm's own opinions and value judgements about the fund. Even if I were to agree with the firm's argument that these statements were merely intended as information about the fund under PERG 8.28.3 (which I do not), I have taken into account what the regulator has said about such statements taking on the nature of advice if the circumstances in which it is provided take on the force of a recommendation.

In my view, the relationship that already existed between Mrs W and the firm since 2001 and the various interactions between them since then, and in particular the language used by the firm in its introduction of the fund to Mrs W as a "*nice alternative to cash*", did provide the context in which such 'information' took on the force of a recommendation – a recommendation that is tantamount to advice. As a regulated and authorised firm, it was for LLP to have been aware of its execution-only and advisory obligations whilst interacting with Mrs W.

In my view, the firm's statements about the fund influenced Mrs W's decision to invest. I accept that it did also provide a lot of factual information. But what's material in my view is that what it said also constituted advice.

Although execution only agreements had been signed (in October 2008), this does not necessarily mean that this transaction was carried out on an execution only basis. I explained in my provisional decision why I thought advice was given. And that execution only had a specific meaning in the regulatory context. If a firm provides advice but the investor signs an execution only agreement it doesn't change the fact that advice has been given. So even if the firm had *intended* for the transaction to be execution only, I'm not persuaded it was in this case.

But then I have considered whether, although it may not be an execution only sale in technical terms, Mrs W may not have relied on the 'advice' given by the firm (if, for example, her relationship with the firm was ordinarily on an execution only basis; it was likely she understood the transaction to be execution only at the time; and she made the decision to invest on her own understanding of the product and its risks). In those circumstances, there is no link between the 'advice' given by the firm, Mrs W's decision to invest, and any losses flowing from it.

Although I think the e-mails exchanged/conversations at the time of the investment are persuasive evidence about the nature of Mrs W's interactions with the firm in relation to this fund, I agree with the firm that these shouldn't be considered in isolation. I have taken into account the surrounding circumstances – for example the execution only agreements; Mrs W's background and experience of investing in UCISs, and that she had been given a copy of the information memorandum and Mr W had acknowledged they had read it.

However even given all these factors I'm not persuaded that Mrs W had the level of knowledge required to assess all the risks that this particular product presented. The firm was acting in its professional capacity. It was the expert in the matter – so it would be reasonable to assume Mrs W would be influenced by what it said. I accept that the firm provided a lot of information in the e-mails and its telephone conversation. But in my view it also strayed into providing advice for the reasons I explained. The firm has acknowledged that Mrs W relied on the e-mails it sent prior to investing. And even though Mr W may have said he was comfortable with the information at hand, I'm satisfied from the nature of the exchanges at the time – considered in the whole and not extracts in isolation – that they did constitute advice and that Mrs W did rely on it.

I should say that even if the firm hadn't technically provided "advice" that wouldn't necessarily be the end of the matter. If I accepted that the sale was execution only the firm would still be under a duty to provide fair, clear and not misleading information. In my view it misrepresented the risks of the fund and caused Mrs W to make a decision to invest that she would otherwise not have made.

- If so, was that advice suitable?

Mrs W was in a position to take some risks with this money - she had built up significant assets and savings. So she had the capacity to accept some losses. So I think suitability depends on her objectives for this particular capital. She had been recorded as a medium risk investor some 14 months before. And she had a history of investing in risk based funds. Mrs W has subsequently said that she didn't want to take risks with this particular money – which the firm disputes. So I have to consider all the evidence available to determine what I consider was most likely to have been the position at the time.

Again, I have relied largely on the content of the contemporaneous documentary evidence available. I accept that the word "alternative" does not necessarily mean "the same". However I've considered its ordinary meaning in the context of the e-mail exchanges as a whole at the time. The subject heading of the initial e-mail dated 24 February was about the bank in which Mrs W held cash on deposit. And the introduction said *"Attached are some documents on The Connaught Income fund which is a nice alternative to cash."* After describing the features of the product it finished:

"Let us know what you think, if you prefer a more conventional cash deposit arrangement we can see what's available, however unless you are prepared to lock away for 3-5 years the rates are fairly poor at the moment."

So the e-mail was about existing cash on deposit. It said the product was *"…a nice alternative **to** cash", (my emphasis),* not a nice alternative *for* her cash. And it goes onto say that if Mrs W prefers a *"…more conventional cash deposit arrangement"* it can see what's available. So if Mrs W wasn't minded to invest in this product the other possibility was *"a more conventional cash deposit".* The context of all this suggests to me that the intention was for something similar to a cash deposit. I accept that in a return e-mail sent by Mr W on behalf of them both he went onto say they wanted *"no obvious major risks"* and *"an investment that can't bomb out".* He also queried whether they could *"lose all or most of the money* "and said that he felt *"very vulnerable"* at that time. These might suggest Mr and Mrs W were concerned about not taking major risks. However I have considered that this exchange was in the context of the initial e-mail giving the impression the fund presented similar risks to cash. So taking everything into account, I'm persuaded that Mrs W was only willing to accept limited risks with this money at that time.

As the firm treated Mrs W as an execution only client the type of information and fact find that I would usually expect to see isn't available. By blurring the lines and doing more than simply facilitating a new investment the firm didn't take into account Mrs W's circumstances at the time the investment was made. The e-mail exchange prior to the investment happening suggests to me that Mrs W was looking for something as an alternative to cash. That she had invested in UCIS in the past didn't mean she was necessarily willing to accept risks with this money. Treating her as an execution only client whilst giving her more than an execution only service put her in a more precarious position than she should have been; either as an execution only client finding her own investments and relying on her own judgement; or as an advised client relying on the firm's judgement. This sits uncomfortably part way between the two. In all the circumstances I have concluded the risks of this investment were greater than Mrs W wanted to accept for this money**.**

So was the fund suitable for this objective? The firm has said that given the regulated parties involved in the fund, its structure, and the controls in place, that the fund was low risk. It

disagrees it had no track record. And it has provided a report from a subject expert to support its view.

The expert's report (and the firm) went into detail about the controls in place. It said they limited the risks presented by the fund (in how it was intended to be operated). It found that in summary, *"…the fund and its structure needed more controls in place but does not appear to be high risk or overly complicated."* It went onto conclude *"Overall the risks of the fund seemed to be quite acceptable for a relatively low or low risk investor as part of a diversified portfolio."*

Whilst the fund may not have been *'overly complicated'* to a professional I don't agree with its conclusion that the fund *"…can easily be understood by non-investment specialists".* And it's not entirely clear to me whether the conclusion that it was *"…acceptable for a relatively low or low risk investor as part of a diversified portfolio"* was in the context that this fund presented a low risk element of that portfolio in itself, or that it presented appreciable risks itself, but was reasonable where the portfolio was balanced with lower or no risk investments.

Either way, whilst I have carefully considered what the report (and the firm) has said, and accept that the fund did have some controls in place, in my view these in themselves only provided to limit some of the fund's risks. The fund was subject to a variety of other risks and I consider it presented a greater degree of risk than Mrs W had wanted to take with this money at that time. And I do not agree with the firm's characterisation of this fund as a "*nice alternative to cash*".

It was a fairly new, unregulated fund and its track record was limited at most – it had been running less than 2 years when Mrs W invested in it and reports on it had been issued for just over 1 year. I note the report said the specialist lender had been operating successfully for about 5 years. But again in my view this was still a short term window for a relatively small operator in a specialised market. The success of the fund was heavily dependent on the single lender operating in a narrow market.

The fund was unregulated and didn't have the protections or restrictions on investments offered by regulated funds. I don't agree that bridging finance is a low risk form of lending in itself. And although the fund was limited to lending a maximum of 15% of its value in one transaction, this could mean the fund's returns being dependent on the success of a relatively limited number of loans.

So the performance of the specialist partner and the fund were strongly linked. The business model/the fund could be adversely affected by a number of market factors (albeit I accept its actual failure may have been because of the other factors outlined by the firm – however these risks were still present). Any fall in demand for bridging finance generally or from businesses and/or individuals able to meet the specialist's preferred criteria could affect the fund. Although property prices have generally risen over the longer term they are still subject to material falls over periods of time. Falling property values would add to the risks and although lendings were made on conservative loan to value ratios if properties needed to be sold in distressed circumstances and prices were falling there was material liquidity risks in terms of selling such properties and recovering the loans in full.

In its final response letter the firm itself said:

"At the time of the investment, the Fund was considered to be a medium risk investment by us as it was not as low risk as a bank deposit and the guarantee of the Fund ...was not as strong as the covenant of a bank."

Although I have carefully considered the firm's representations about the risks presented by the fund, I'm not persuaded that it was suitable for the limited degree of risk that Mrs W wanted to take. In my view it presented greater risks.

- If not, was that due to failures by the firm?

Should the firm have realised the risks the fund presented? Importantly, the starting point is that I don't think a fund purporting to "guarantee" such a high return can reasonably be considered lower risk. The firm/expert's report has said the return wasn't surprisingly high in the context of the circumstances at the time and in the context of banks pulling out of this area of lending. They have referred to another fund/and lender that operated in a similar way and produced similarly high returns. However no description of the risks presented by these other funds/lenders has been given. And in my experience the link between risk and return is a well-known principle of investment. At the time Mrs W invested, this was a return significantly higher than that offered by more conventional (and genuinely lower risk) investments. I think this in itself ought to have alerted the firm that its risks weren't low or limited.

This conclusion is consistent with the view of the regulator. The June 2013 policy statement on the distribution of unregulated collective investment schemes said the following:

"While improved competence requirements and the introduction of adviser charging will reduce the likelihood of unsuitable advice, the search for yield and belief in low-risk, high-return investments (which do not exist in reality) remain and can lead ordinary retail investors to mistake the risks they would take…".

Whilst these comments were made after the transaction, this isn't a new stance by the FCA but a confirmation of an existing and long held view. Indeed, Mr W raised the matter at the time but the firm provided re-assurances.

As I have referred to above, I accept that the information memorandum given at the time provided details of controls and guarantees that, on face value, limited some of the fund's risks. But there remained the underlying risks that I have described above. And I think the firm should have recognised them even though they may not have been specifically outlined in the memorandum.

So overall I'm not persuaded the firm's reliance argument in respect of COBS 2.4.6R and 2.4.8. DISP 2.4.6R (2) is relevant here. It says:

"A firm will be taken to be in compliance with any rule in this sourcebook that requires it to obtain information to the extent it can show it was reasonable for it to rely on information provided to it in writing by another person."

"It will generally be reasonable (in accordance with COBS 2.4.6R (2)) for a firm to rely on information provided to it in writing by an unconnected authorised person or a professional firm, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information."

This makes clear that relying on information is conditional on the reliance being '*reasonable'*. Although I accept that there were multiple representations in the fund memorandum about limiting risk, I'm satisfied the headline 8% plus return ought to have alerted a professional firm to - initially at least - treat its claims with some suspicion. It was providing a disproportionate 'guaranteed' rate of return. I don't agree with the firm's view that such a guaranteed high rate of return wouldn't have seemed unlikely at the time. So in this context I think the firm should have been careful to investigate further and on doing so have identified the risks I have described. This is irrespective of any misrepresentations by regulated entities contained in the fund literature or the apparent controls/guarantees that were in place.

The firm has said the fund was non-complex as it complied with the requirements of COBS 10.4.1. However this required that:

"…adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument."

Given that the risks presented by this fund don't appear to have been readily understood by the firm, I don't think it can reasonably be said they should be readily understood by an average retail client. In turn, I don't think it's likely that Mrs W would have been in a better position than the firm to assess and understand its risks and make an informed judgement about it.

So in the circumstances I'm satisfied that the firm should have identified that the fund presented appreciable risks and wasn't suitable for Mrs W's objective– irrespective of any failures by other parties.

- Did the firm's unsuitable advice cause the losses Mrs W incurred?

For the reasons explained, I'm not persuaded this is a case where, although it wasn't technically an execution only sale, Mrs W would have made the same decision to invest despite what the firm said about the fund's risks. I don't think the firm provided a balanced view of the fund and I'm satisfied it provided advice and influenced Mrs W's decision to invest.

So, in summary, I'm satisfied that: advice was given; Mrs W wanted a lower risk investment for this money; the fund wasn't suitable for that purpose; the firm should have been aware from the information available at the time that this was the case; that it provided unsuitable advice and therefore there is a causal link between the firm's unsuitable advice and Mrs W's decision to invest.

However the firm has argued that the losses weren't caused by any error or omission on its part. It considers it was caused by fraud and other errors or omissions by other parties – some of those parties being regulated entities.

I'm aware of the allegations of mismanagement and fraud. And I have taken into account what the firm has said about the misrepresentations in the information memorandum. And the other parties' failures in meeting their responsibilities in terms of that memorandum and passing on relevant information that they were aware of at the time. However, as I have explained above, I think the firm should have identified the underlying risks the fund

presented on the information generally available at the time and despite any failings by the other parties.

Although DISP 3.5.2G provides that I may inform a complainant that it might be appropriate to complain against another respondent, I think Mrs W is likely to be already aware of the other parties' involvement. However I have no powers to compel Mrs W to make a complaint against another party. As I explained in my provisional decision, although there may have been shortcomings in the management of the fund or some of the parties acted fraudulently, Mrs W hasn't brought a complaint to us against any other party. So it's not appropriate for me to comment about the conduct of those other parties – we have only been asked to consider the complaint against LLP Services Ltd.

The firm has said that this service has a predetermined approach to complaints involving this fund. It has referred to the similarities of other published final decisions. And internal e-mails sent by another ombudsman with 'instructions' about how to handle complaints about this fund.

In my view it's sensible and reasonable that we provide guidance to our caseworkers on the type of things they should consider when approaching cases. But that is quite different from saying there should only be one outcome or having pre-determined outcomes. Whilst I took the content of the e-mails into account, I did so in the context of their relevance to this particular complaint. The outcome of this case turned on its own individual circumstances. And I have fully complied with my duty to determine this complaint in accordance with what I consider to be fair and reasonable in all the circumstances of *this* case.

The firm has provided lengthy submissions about the fund and the other parties involved. However, for the reasons I have outlined above and in my provisional decision, I don't agree with its view on the relevance of those matters. In the particular circumstances here, if the firm had only provided the investment memorandum and Mrs W had invested on the back of it, the outcome would likely have been different. But that's not what happened. I have made my own independent decision having carefully considered the circumstances and merits of this particular case.

The firm has said that as Mrs W is a party to the High Court action being brought by the fund's liquidator I shouldn't consider this complaint – it should be dismissed as it's materially related. It's also said it was apparent that we had stayed our assessment of complaints for a period pending FCA led negotiations. I have taken all the above into account in deciding whether it's fair and reasonable to make an award to Mrs W now.

In my view the subject matter of the complaint isn't the same as the matter brought by the liquidators. As I explained in my letter of 4 July 2016, Mrs W had made a complaint to LLP Services Ltd which he had subsequently referred to us. The subject matter of the complaint brought here was about LLP Services role in Mrs W investing her money in the Connaught Fund. This isn't what is being considered in the courts.

I'm required under the Financial Services and Markets Act 2000 (FSMA) to determine complaints quickly and with minimum formality. Mrs W wouldn't have been in the investment if the firm hadn't provided unsuitable advice. I'm aware that some compensation is going to be paid to Mrs W because of a settlement recently agreed between one of the operators of the fund and the liquidators. And it's also possible that there may be further payments in the future, for example from work being carried out by the regulator.

So for these reasons and those outlined in my provisional decision, I'm satisfied it would be fair and reasonable in the circumstances to make an award for the whole of the loss now whilst making allowance for the possibility of some or all of Mrs W's money being returned to her in the future - notwithstanding arguments about a break in the chain of "causation" and the "remoteness" of the loss from the (poor) advice given. I don't think it would be fair to expect Mrs W to wait for the outcome of what might be protracted negotiations or court proceedings to see if some compensation from some other source might be forthcoming. The firm was acting in its professional capacity. And I think if it had alerted Mrs W to the fund's risks I'm satisfied she wouldn't have invested in the fund. I'm not persuaded that the complaint should be dismissed under DISP in accordance with DISP 3.3.4(9).

The firm has also said that it had previously provided evidence that showed Mr and Mrs W have tried to mislead us by distorting facts and/or their recollections of events, and that the complaint should be dismissed under DISP 3.3.4R(2) as it was frivolous and vexatious.

The firm has said Mr W's strong denial that he had said something the firm had referred to in his conversations with it should cast serious doubts about the credibility of Mr and Mrs W's evidence. Having provided a recording of that conversation it's clear the firm's version of what was said is correct. However I don't think it necessarily follows that all of Mr and Mrs W's verbal evidence is therefore tainted. The outcome of the complaint itself doesn't turn on this particular piece of evidence. However I realise the point the firm makes is that it casts some doubt on Mr and Mrs W's other evidence/recollections. As I have explained above, in making my decision I have placed most weight on the written evidence that was available from the time. Whilst I have taken Mr and Mrs W's recollections into account, I have placed appropriate weight on them in making a decision in the context of all the evidence that is available. I don't think the complaint is frivolous or vexatious and therefore I don't think it should be dismissed.

I said in my provisional decision that I didn't think that the firm had complied with the regulatory and legislative requirements surrounding UCIS. But I *didn't consider* it was inappropriate to provide details about these types of investment to Mrs W given all the circumstances. I don't think the complaint turns on this point in any event. The key consideration here is whether advice was given, and the suitability of that advice; not whether the fund could or should have been promoted to Mrs W.

The firm has made a further request for an oral hearing. I explained in my letter of 4 December 2015 why I didn't consider a hearing was necessary. And my position on that hasn't changed in view of the further submissions provided by both parties. As I explained in that letter, I have relied largely on the contemporaneous documentation available. And both parties have had sufficient opportunity to provide their own evidence and indeed have done so with lengthy representations. I'm satisfied they have had the opportunity to put their cases forward in detail and that I am able to make a fair decision on the written evidence.

I'm aware that my decision and the outcome of the complaint could have significant consequences for both parties. But, ultimately, I have to make the decision that I think is fair and reasonable in all the circumstances as set out in FSMA. It is for the FSCS to determine any complaints that are made to it in accordance with its own rules and procedures.

As I explained in my provisional decision, the FCA's Principles for Business set out the fundamental obligations that LLP Services were bound by. In my view, it failed to meet those obligations.

In summary, it was the firm who contacted Mrs W and initiated the transaction. I'm not persuaded it was an execution only sale – in my view the firm provided advice. And I don't consider the advice was suitable in the circumstances. I consider there was enough information about the fund (paying an 8% return) for the firm to have identified it presented a greater degree of risk than Mrs W wanted to accept with this money - it was a long way from a fund presenting 'cash type' risks. So it missed the mark by a wide margin. It treated the matter as execution only and therefore didn't obtain the relevant background information to ensure that the fund was suitable for Mrs W's objectives. And when Mr W alerted it to the possibility that the return provided seemed too good to be true, it provided positive reassurances. So I think the firm completely disregarded the interests of Mrs W. Mrs W shouldn't have been in the fund from the outset. And it resulted in her being wrongfully exposed to the real risk of significant capital loss, and placed in an investment that he wouldn't otherwise have been in.

my final decision

Accordingly, for the reasons outlined above and in my provisional decision, my final decision is that I uphold the complaint.

I order LLP Services Ltd to calculate and pay Mrs W the amount of compensation produced by the calculation as set out below - up to a maximum of £150,000, plus any interest as provided for.

fair compensation

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

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

what should LLP Services do?

To compensate Mrs W fairly, LLP Services Ltd must compare the performance of her investment with that of the benchmark shown below.

The compensation payable is 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.

LLP Services Ltd should also pay any interest.

In addition, LLP Services Ltd should pay Mrs W £250 for the distress and inconvenience this matter has caused.

investment name	status	benchmark	from (“start date”)	to (“end date”)	additional interest
Connaught Income fund	still exists	average rate from fixed rate bonds	date of investment	date of my decision	8% simple p.a. from date of decision (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.

My understanding is that the investment in the Connaught Fund currently has no realisable value. So, for the purposes of the calculation, the actual value should be assumed to be zero. Some compensation may be paid to Mrs W as a result of the work currently being carried out by the regulator. I therefore think it reasonable to make allowance for this possibility.

It is also possible that some other return might be paid from the Connaught Income Fund. So, in exchange for the compensation payable by the business, Mrs W should agree to transfer her holding in the fund to it, if possible, to allow it to benefit from any compensation or other payment that might be made in relation to the holding. If it is not possible to transfer the investment, Mrs W should give an undertaking to the business to repay to it any amount she may receive in relation to the investment in future, whether it is a compensation payment or any other sort of return.

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, LLP Services 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.

additional investments, income and fees

Any additional sum that Mrs W paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

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

how to pay compensation?

If there is a loss, LLP Services Ltd should pay such amount as may be required into Mrs W's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

If LLP Services is unable to pay the total amount into Mrs W's pension plan, it should pay that amount direct to her. The amount should be reduced to notionally allow for the income tax that would otherwise have been paid in retirement.

The notional allowance should be calculated using Mrs W's marginal rate of tax at retirement. For example, if Mrs W would be a higher rate taxpayer at retirement she would have been able to take 25% as a tax-free lump sum but the remaining 75% would have been subject to income tax at her marginal rate of tax. So the *notional* allowance for tax would equate to a 30% reduction in the total amount (40% on 75%).

why is this remedy suitable?

I have decided on this method of compensation because Mrs W didn't want to accept any material risk to her capital. The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.

Mrs W has not yet used the pension plan to buy an annuity.

LLP Services Ltd may request an undertaking from Mrs W to either repay to it any amount received from the investment thereafter or if possible to transfer the investment at that point.

Mrs W should be aware that any such amount would be paid into her pension plan so she may have to realise other assets in order to meet the undertaking.

recommendation:

If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that the business pays Mrs W the balance plus any interest on the balance as set out above.

If the business does not pay the recommended amount, any undertaking from Mrs W should apply only to such amounts as might be received that together with the compensation paid by the business exceed the full fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs W to let me know whether she accepts or rejects my decision before 3 October 2016.

David Ashley
ombudsman

Copy of provisional decision

complaint

Mrs W's complaint against Bespoke Financial Planning (an appointed representative of LLP Services Ltd which is responsible for the advice) is that it inappropriately advised her to invest in the Connaught Income Series One Fund. She's also concerned that it failed to alert her of problems with the fund when the industry regulator issued warnings about it.

background

Mrs W has said that she received advice from 2001 onwards from who she considered to be her financial adviser. She invested her pension fund in a range of investments over a period of time. Mrs W invested £100,000 into the Connaught Income fund in March 2010. A further sum of approximately £34,000 was invested in November 2010.

The firm says that it's a highly specialised business dealing only in unregulated collective investment schemes, offshore pensions and annuities. It said that 99% of its business is carried out on an execution only basis and it doesn't offer general advice.

The firm says Mr and Mrs W are very wealthy and spend much of their time abroad. They had a history of investments in unregulated collective investment schemes and in this case they instructed the business to proceed with the investment. It's also said that the complaint should be directed at the fund itself given it's subject to fraud and an investigation by the Metropolitan police.

The firm has provided a range of documents to show the nature of the relationship between it and Mr and Mrs W:

- Intermediate Customer Agreements signed in December 2005 and May 2007.
- An Execution – Only Services Agreement – dated 20 October 2008. This referred to the European Union's Market in Financial Instruments Directive (MiFID) and that Mr and Mrs W had been classified as "Retail Clients".

Mrs W signed this agreement on 21 October 2008. A similar agreement was also signed in 2011.

- Execution only fact find – dated 21 October 2008.

This classified Mrs W as being a medium risk investor. The investment experience section was marked with "yes" in regards to having experience of investing in different investment schemes, understanding risk and that she had previously actively invested in unregulated collective investment schemes in the previous 30 months.

Mrs W signed the fact find on 21 October 2008.

Mrs W has said that when she visited England she made arrangements to visit the firm for advice and that the Connaught Income (Series One) fund was brought to her attention by the adviser in February 2010.

An email sent on 24 February 2010 headed with the name of a bank in which Mrs W held money on deposit said "*Attached are some documents on The Connaught Income fund which is a nice alternative to cash (the fund is based on short term property bridging finance)….Let us know what you think, if you would prefer a more conventional cash deposit arrangement we can see what's available, however unless you are prepared to lock away for 3-5 years the rates are fairly poor at the moment."*

The reply back by email, on 7 March 2010 stated the adviser "…*has recently sent us the details of the interesting investment possibility you mentioned as an alternative to our bank deposit. We have read the prospectus he forwarded and the "fund" appears to be just what we are looking for i.e. an excellent return at the present time with no obvious major risks. However thereby is the rub. In the financial world if something looks* [too] *good to be true it's because generally it is!*

Now an 8% guaranteed net return against say 3% from any bank that is also liquid after the first 5 months with just 1 months' notice seems too good. So what is the potential pitfall a la matrix#1 that we are missing? That was also offering semi guaranteed 8% but at a time when that level of return was not exceptional. We need an investment that can't bomb out – is there any possibility with this one that we could lose all or most of the money we put with them – and so what would be the mechanism?? Can I ask whether you are putting any of your money with them?

We feel very vulnerable at the moment and also out of touch having been….in the Caribbean since the start of the year. If there is ANY positive news about our current holdings we would love to hear…"

The advisers reply, on 11 March 2010, referred to helping with their concerns and that *"The fund was originally launched when base rates were 5% (they then rose to 5.5%) so the differential was not that great at outset. And the markets capitulated in the following months the fund continued to do exactly what it set out to so. Since bridging rates are not dependent on base rates the fund can continue to offer the 8.15%-8.5% irrespective of the Bank of England's forecasts. The current LTV in the fund is 64% so there is significant extra equity in the property portfolio however the nature of property remains that the investment is not inherently liquid and if there were huge redemptions then there is a possibility that the fund would need to place a hold on redemptions. The fund currently holds 10% in cash and has a rolling debenture on* {its partner firm's} *cash fund (approximately another 10%) the fund can then access existing lending lines not currently used by* {its partner firm}. *In total the fund could accommodate approximately 20% redemptions in a month but if the redemption rate was higher than that, investors may have to wait for the loans to redeem before they could access their investment. 40% is a high hurdle rate however I would suggest that liquidity is probably the highest risk in the fund. It is also an unregulated investment scheme so it is not covered by FSCS. This is fairly irrelevant for larger investment which would only be covered up to £48,000.*

The fund is not geared in any way (so will not be held to ransom over any bank refinancing etc). The fund has first charge on assets it lends against the event of default. The fund also has the rolling debenture with {its partner firm}, *so has several layers of protection.*

The track record has been excellent and has always paid the mandated interest throughout. All redemptions to date have been paid without delay.

Whilst we cannot rule out the theoretical risk of a complete crash in property prices, it would take a downturn of more than 36% before the fund could not recoup its position (based on the current LTV average of 64%) this is assuming all loans also went in to default (current default rate if 0%).

…Just to let you know, we have several clients who have already invested in to this fund and others looking to invest before 31st March close. The course of investments has varied from personal, pensions and corporate funds. So good mix of investors if that gives you any comfort?

Mrs W confirmed she would like to invest £100,000 and leave the remainder in cash on bank deposit.

A letter acknowledging her instructions, on 26 March 2010, said "*This investment has been made on an Execution only basis in accordance with your Execution Only Services Agreement signed on 21 October 2008 (copy enclosed)."* Mrs W says she did not receive this at the time as it was sent to her home address – and she was away travelling.

In November 2010 there's an email from Mrs W referring to additional money going into a further Connaught Income fund if the adviser was still happy with it. A further investment was then made.

In March 2011 the Financial Services Authority issued a warning on the fund which was not shared with Mrs W by the business.

Mrs W made a complaint to the firm. The complaint was subsequently referred to us and investigated by one of our adjudicators.

The adjudicator recommended that the complaint should be upheld. In summary, she said:

- The evidence suggested that advice had been given. This was based on the meeting notes which indicated there were regular meetings and discussions about issues like drawdown limits, changes in legislation and other matters, as would be expected in a situation when there was a client/adviser relationship, rather than just business transactions on a non-advised basis.
- The execution only agreement completed referred to only "appropriate" investments being put forward. This indicated that even if advice wasn't being given only appropriate investments would be put forward, and that they could expect some kind of assessment of the appropriateness of the investment would take place before it was put forward.
- Mr and Mrs W's background and experience didn't put them in a position to understand the complex nature of this Unregulated Collective Investment Scheme (UCIS).
- The investment was described as an alternative to cash. The subsequent email from Mr W indicated that he was worried about the investment being too good to be true. The response talked about the potential for risks and the adjudicator considered it was giving advice in relation to the appropriateness of the fund. As a result of this email Mrs W decided to invest a significant amount in the fund.
- The adjudicator didn't consider that the fund represented an equivalent risk to a cash fund. It was an unusual and specialist fund, operating within very specific criteria; it had a limited track record; it offered bridging finance in partnership with another firm, a specialist in short term or bridging finance market and had a number of risks.
- The nature of the fund meant liquidity issues could (and did) occur, preventing investors from accessing their funds. Taken together, all the aspects of the fund meant it could suffer significant losses, the nature and extent of which would be very difficult to predict or estimate beforehand.
- She appreciated that the literature on the fund was positive and referred to a number of safeguards aimed at lowering risk. But it seemed that overall it should have been clear to the firm that the fund posed a number of substantial risks.
- She considered that Mrs W was only invested in the Connaught fund on the basis that it was presented to her as an appropriate investment. It was not an investment she had pro-actively sought or brought to the attention of the firm themselves. The adjudicator considered it presented significant risks to capital, and that Mrs W would not have invested in the fund but for the firm's inappropriate advice.
- It was acknowledged the business had pointed out the loss was caused as a result of alleged fraud by parties involved in the management or operation of the fund. But she considered Mrs W's loss was due to the unsuitable advice to invest in the fund, and regardless of the fraud issue she would not have been invested in the fund, and affected by the fraud, if she had not been given unsuitable advice.

The firm did not agree. It said, in summary:

- No advice or recommendation had been given to Mrs W. She had signed an execution only agreement in 2008 (and 2011). Mrs W hadn't provided a letter of advice or recommendation signed by the firm; an e-mail from the firm containing advice or a recommendation; correspondence relating to previous advice; e-mails from the consumer's requesting advice, any meeting notes providing details of advice. No documentation had been provided to indicate that advice had been given.
- The meeting notes referred to by the adjudicator had been incorrectly analysed. They did not demonstrate that advice had been given.
- There was no record that Mrs W wanted only to consider low risk investments.
- The fund was not a typical UCIS. It was held out to be a low to medium risk fund.
- The allegations of fraud within the fund should be given more consideration and weight. The firm could not have foreseen that the fund would not be operated in accordance with the Investment Memorandum. The firm could not be held responsible for the losses arising from the fraudulent running of the fund.

- Mrs W had declined a discretionary fund management agreement. She preferred instead to make her own investment choices. It said that investment opportunities presented to Mrs W were appropriate given Mr and Mrs W's previous investment experience.
- Mrs W had originally been classified as an "Intermediate Customer".
- Mr and Mrs W were sophisticated investors who turned a failing business into a profitable one and sold it for over £2.3million. She was a trustee of a SSAS, and they had made large numbers of investments in UCIS's and used online facilities on their yacht to deal in securities on an execution only basis. It said she had invested in a number of high risk ventures of which it provided details.
- Mrs W had freely signed the Execution-Only Services Agreements and Retail Client Information forms. These clearly said the business was transacted on an 'execution only' basis and without provision of investment advice.
- It considered the fund was an "appropriate" investment opportunity for Mrs W as an execution only client. It said she had sufficient knowledge and experience (as provided in COBS 10.2.1, 10.2.2, 10.2.6 and 10.2.8). It was "appropriate" because it was a low to medium risk investment opportunity and was not a complex UCIS. Not all UCIS were considered high risk in 2010.
- The liquidators were seeking the recovery of funds for investors.
- It provided a copy of the City of London Police '*National Lead Force Referral Form'* with details of the complaint made against the Connaught fund managers. It also provided signed witness statements from firm employees who had dealings with Mrs W.

Mrs W said, in summary:

- She was not a sophisticated investor. She provided background information about her business dealings and source of wealth. She said that the previous SSAS arrangement was set up on the advice of her accountants and that her previous investments were arranged on the advice of the firm.
- Mr and Mrs W's capital came from rental income from their former business premises and latterly from the capital raised by selling that premises. The capital had previously been used to generate bank interest returns, which is why so much was left on deposit, as the interest generated covered their needs. It was also because their SIPP had built up a cash fund that was invested successfully, following the adviser's recommendations, that they felt they could trust his advice again.
- The firm found and promoted the fund as being a 'good low risk' for the cash available at that time and were fully aware that Mr and Mrs W had already suffered various investment failures which were blamed on 'bad luck' and the timing of the banking crisis. As a result of which Mrs W was seeking to preserve her remaining pension fund.
- She frequently sought reassurance from the adviser about the safety of the fund and the ability to move the fund if there was any cause for concern, such as an FSA warning, which was issued but which she wasn't made aware of.
- She disputed being a medium risk investor at the time.

my provisional findings

A significant amount of evidence has been provided about the complaint which I have outlined briefly above. Whilst I have read and considered all the evidence and arguments that have been presented to decide what is fair and reasonable in the circumstances of this complaint, I have focused below on what I consider is material to deciding a fair outcome.

The Connaught fund is an unregulated collective investment scheme (UCIS). Section 238 of the Financial Services and Markets Act 2000 imposes a statutory restriction on the promotion of collective investment schemes to retail customers. There are a number of exemptions which can be relied on as set out in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes (Exemptions) Order 2001 (the PCIS Order) or (COBS) 4.12 R (4) in the Conduct of Business Sourcebook.

The PCIS Order exemptions include certain high net worth individuals or sophisticated investors. The firm says that Mrs W was both a high net worth and knowledgeable investor. However the PCIS Order is quite prescriptive and sets out standard wording for statements that need to be signed. I haven't seen any evidence of such statements signed in 2010 when the Connaught fund was recommended. And it doesn't appear that the firm recorded which COBS exception it considered applied in 2010. When the Connaught investment was arranged I can only see that the fact it was a UCIS was briefly mentioned in an e-mail to Mrs W and in the investment brochure.

So on the one hand, I don't think the firm complied with the regulatory and legislative requirements surrounding UCIS when the Connaught investment was made. But on the other, it is not in dispute that Mrs W was a high net worth individual. And in 2008 Mrs W invested in another UCIS and at that time she had signed a Retail Client Information Form which recorded that she was an active investor in UCIS or had been over the previous 30 months. Whilst I am not persuaded that she was a particularly sophisticated investor, in that she had any specialist knowledge of these types of schemes, Mrs W did have some experience of investing into them. So in the context of her overall wealth and all the circumstances, I don't think it was inappropriate to provide details about these types of investment to Mrs W.

The firm has said that the investments were arranged on an execution only basis. It has said that it held meetings with Mr and Mrs W to provide information about possible investments. And that the meetings provided a good opportunity for Mr and Mrs W to seek information and, on the basis of such information, take investment decisions without advice. It has said:

"We made Mr and Mrs W aware of a series of investments which might be of interest to them but we did not give advice or make any recommendations….All we did was provide information on which Mr and Mrs W could make informed choices."

The firm has referred to the Execution Only Services Agreement signed in October 2008. This recorded that Mrs W was classified as a "Retail Client" and said:

"*As a Retail Client you have asked us to arrange for an investment to be made without the provision of investment advice or a personal recommendation."*

And that it sent a letter to Mrs W dated 26 March 2010 which said that the investment had been made in accordance with the execution only agreement dated 21 October 2008. As I explained above, Mrs W has said that she didn't receive this letter as she was travelling abroad at that time.

The firm says this signed agreement and the fact that none of the relevant documentation that is usually associated with giving advice has been provided clearly shows that it wasn't an advised sale. However, even in these circumstances, it doesn't necessarily follow that this is always the case. An execution only transaction was defined in the glossary of the regulator's handbook as:

a transaction executed by a firm upon the specific instructions of a client where the firm does not give advice on investments relating to the merits of the transaction and in relation to which the rules on assessment of appropriateness (COBS 10) do not apply.
The Perimeter Guidance in the regulator's handbook provided further guidance about what constituted advice at the time.

PERG 8.28.1

In the FSA's view, advice requires an element of opinion on the part of the adviser. In effect, it is a recommendation as to a course of action. Information on the other hand, involves statements of fact or figures.

8.28.4 said that providing information may take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation. For example:

(3) a person may provide information on a selected, rather than balanced, basis which would tend to influence the decision of the recipient.

It's clear that Mrs W was an existing client of the firm and held meetings where a number of financial matters were discussed. And it appears that the firm would send Mrs W information about investments that it considered were appropriate for her to consider investing into.

Where a firm provides a personal recommendation about the suitability of a product it is required to obtain full details of the client's circumstances and objectives and provide a report detailing why it considers a recommendation is suitable. It is not entirely clear to me whether Mrs W is saying that the firm went this far. But as I have said above, an execution only sale has a specific meaning. And whilst I think the firm may have intended to provide an execution only service, in my view, its commentary and the views it expressed in its correspondence with Mrs W constituted advice. It described the fund as a "*nice alternative to cash"* – its own judgement of it. And when Mrs W went back to query the fund's risks the firm provided its own opinion of those risks.

So I can understand why Mrs W thought that the firm was providing advice. And I consider the advice was clearly a key factor in Mrs W's decision to invest in the fund. Mrs W had signed an execution only agreement some 14 months earlier. I have seen no evidence to show that the firm made it clear from the outset of this transaction that it intended not to offer any guidance about the product. And having reviewed the content of the e-mail exchange between Mrs W and the firm, I'm not persuaded this was an execution only transaction. I consider the firm provided advice. And having concluded that advice was given, it follows that the regulator's rules on suitability when providing investment advice applied. The firm was obliged to *" …take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client."*

In addition, the regulator's Principles for Business applied. So the firm was under the fundamental obligation to pay due regard to the interests of its customers and treat them fairly; pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and take reasonable care to ensure the suitability of its advice and discretionary decisions for any *customer* who is entitled to rely upon its judgment.

In my view the firm failed to meet these standards.

As referred to above, in the e-mail dated 24 February 2010 the firm said:

"Attached are some documents on the Connaught Income fund which is a nice alternative to cash. "

I think this would reasonably have given Mrs W the impression that the risks presented by the fund were similar to those presented by cash. However this was clearly not the case.

In my view the information available to the firm at the time should have alerted it that it did not represent the same risks as cash. Risk and return are invariably linked. The fund was designed to generate a fixed return for investors of over 8%. This was at a time when the Bank of England base rate was 0.5% and was disproportionally higher than term deposit rates and bond yields. I think even at face value this disparity ought to have alerted an adviser to the fact that this was highly unlikely to be low risk.

This was a specialist fund involving bridging finance. It had no track record and a complex structure with several parties involved. The fund had a narrow focus and clearly had significant liquidity risks. The money invested with typical terms of up to 9 months. Borrowing money from investors who need to give 1 months' notice and lend this to borrowers for periods up to 9 months has the potential for liquidity problems. Also the fact that the fund was unregulated meant it had additional risks in itself, such as lack of regulatory protections, and was not just confined to investment risk.

Mrs W had questioned the viability of a fund that provided 8% guaranteed returns. Mr and Mrs W's e-mail referred to *"…the interesting investment possibility you mentioned as an alternative to our bank*

deposit." Mrs W has said in making her complaint that she wanted a low risk investment. Whilst Mrs W may have previously been recorded as accepting a medium degree of risk, this was about 14 months before. The money used to invest represented money that Mrs W had on deposit. Diversification is considered good industry practice, so it would be prudent and not unusual for Mrs W to have wanted to take different risks with different parts of her capital.

The description of the risks presented by the fund in the email correspondence was reassuring – it provided the impression there was limited risk unless there were exceptional circumstances. And the adviser said in his conversation on 17 March 2010 that:

"I have to say, actually, the more set of eyes that we've had look at it [the Connaught fund]*, the more comfortable we've become with it because, basically, as you know, we have property people on our books and they've gone through it with a fine tooth comb."*

I accept that the adviser did explain that there could be some situations where "*potentially it gets tricky"* such as *"if there is a stampede to the exit simultaneously."* Or that he could not *"…rule out the theoretical risk of a complete crash in property prices."* But in my view the overall impression that Mrs W would have been given was that this fund presented very little risk to capital.

I note that in the firm's final response letter it said:

"At the time of the investment, the Fund was considered to be a medium risk investment by us as it was not as low risk as a bank deposit and the guarantee of the Fund ...was not as strong as the covenant of a bank."

However this does not appear to be how it was described to Mrs W at the time.

The firm has said that it carried out comprehensive due diligence on the fund and was entitled to rely on the information provided by the operator of the fund which was a regulated entity.

I note that COBS 2.4.6 R (2) provided that:

"A firm will be taken to be in compliance with any rule in this sourcebook that requires it to obtain information to the extent that it can show it was reasonable for it to rely on information provided to it in writing by another person".

And COBS 2.4.8 G said:

It will generally be reasonable (in accordance with COBS 2.4.6R(2)) for a firm to rely on information provided to it in writing by an unconnected authorised person or a professional firm, unless it is aware or ought to reasonably be aware of any fact that would give reasonable grounds to question the accuracy of that information.

Whilst I accept that some of the literature about the fund referred to 'low risk', opinions about risk do not, in my view, constitute "information" – in the context of the reliance on others rule. "Information" refers to facts, not opinions, such as assessments of risk. The duty of a firm to advise on the suitability of investments cannot be delegated to, or discharged by reliance on others. In my view it was for the business to reach its own view on the risk associated with the investment, and ensure its suitability for the consumer.

In summary, I am satisfied that Mrs W wanted an investment for this portion of her capital that presented little material risk. Although I consider she had some experience of investments I do not consider she had the level of expertise and knowledge of the firm, and that she relied on the advice and information provided by the firm in deciding to invest.

For the reasons outlined above, I consider the advice provided by the firm was unsuitable. And that the misleading information caused Mrs W to make a decision that she would otherwise not have

made. So in all the circumstances, I consider that her complaint about the investment in the Connaught fund should succeed.

I note that Mrs W has also said:

"...we made it clear that we would not invest in this fund unless Bespoke kept us informed of any potentially negative information – or even rumours heard – about the fund or any delays in remitting the due interest payments to allow us the opportunity of withdrawing our funds. (To us, a key benefit of this fund was the fact that it offered return of funds at one month's notice."

Clearly, I cannot determine with any reasonable degree of certainty exactly what was said when the investment was arranged. But I haven't seen sufficient evidence to conclude that this condition was agreed by the firm at the time.

As I consider that Mrs W was advised inappropriately, I have to consider whether the firm's failures caused the losses that Mrs W has claimed.

The firm has referred to allegations of fraud within the fund and said that it would not have been able to foresee that it would not be operated in accordance with the Investment Memorandum. It has said that it should not be held responsible for losses arising from this.
There may have been shortcomings in the management of the fund. Some of the parties involved have been accused of acting fraudulently. But I am not in a position to make any comment about the conduct of those involved in the management of the fund or any other parties involved with it. No complaint has been brought against any other party – we have only been asked to consider the complaint against LLP Services.

A court might conclude that Mrs W's losses don't flow directly from the poor advice and misleading information given by the firm. And on this basis, a court might not require the firm to compensate Mrs W – notwithstanding the breach of duty. But in assessing fair compensation, I'm not limited to the position a court might take.

If fraud did take place (and, as mentioned, I am not in a position to say this), it may be there has been a break in the 'chain of causation'. That might mean it wouldn't be fair to say that all of the losses suffered by a consumer flow from the firm's failures. That will depend on the particular circumstances of the case.

In this particular case it was LLP Services Ltd who contacted Mrs W and said it had an investment that was a *"…nice alternative to cash".* So it was the firm that originally initiated the matter. And when Mrs W queried the investment saying it had been suggested as an alternative to her bank, that she didn't want any *"obvious major risks",* and that it appeared *"too good",* the firm gave reassurances that its risks were limited. I am satisfied that Mrs W relied on those positive assurances in making her decision to invest.

I accept that Mrs W's e-mail suggests that she would have accepted some risk. But the starting point was that she had been prompted to consider the investment in the context that it was an alternative to cash. And she had then said that it was an alternative for her money on deposit. So I think in this context and given her overall comments, I am persuaded that she was only willing to accept limited risk for these monies.

Yet Mrs W was invested in a fund that did have material risks to capital. It was targeting a return of over 8% in an environment of low returns. So I think this ought to have alerted the firm that there were likely to be material risks associated with this fund.

So I currently think:

- The firm initiated the transaction.

- It failed to comply with the regulatory and legislative requirements surrounding UCIS. If it had complied with the requirements and provided the necessary warnings about the transaction this may well have alerted Mrs W to the risks presented by it.
- Its role was more than to merely provide information about an investment – it gave its own opinion about the fund and provided advice about it.
- It relied on information that was over 14 months old to determine that Mrs W was a medium risk investor. Mrs W was getting nearer to a potential vesting date and so her appetite to risk could easily have changed. It then misrepresented the fund's risks and provided unsuitable advice for Mrs W's requirements.

This all resulted in Mrs W being wrongfully exposed to the real risk of significant capital loss, and placed in an investment that she wouldn't otherwise have been in. Had it not been for the firm's unsuitable advice, Mrs W would not have made the investment. The firm incorrectly assessed the risks associated with the fund saying it was an alternative to cash. This missed the mark by a wide margin. It treated the matter as execution only and therefore didn't obtain the relevant background information to ensure that the fund was suitable for Mrs W's objectives. And when Mrs W alerted it to the possibility that the return provided seemed too good to be true, it provided positive reassurances.

So I don't think a conclusion that there were shortcomings in the management of the fund (not that I am aware of whether there were or not) changes the causation here. In my view the firm should have clearly identified the fund presented material risks to capital. It was a long way from a fund presenting 'cash type' risks to the Connaught fund – it was far removed from an alternative to cash. So although the firm may not have been able to have foreseen the fund's problems, Mrs W shouldn't have been in the fund from the outset.

So I think the advice completely disregarded the interests of Mrs W. In the circumstances, I conclude that it would be fair and reasonable to make an award for the whole of the loss in the particular circumstances of this case whilst making allowance for the possibility of some or all of Mrs W's money being returned to her in the future – notwithstanding arguments about a break in the chain of "causation" and the "remoteness" of the loss from the (poor) advice given.

If LLP Services considers other parties to be wholly or partly responsible for the loss it is free to pursue them. I am aware that some compensation may be paid to Mrs W as a result of the work currently being carried out by the regulator. It is also possible that the liquidators of the fund will obtain some return for investors in the fund. If Mrs W is going to be compensated in full now, LLP Services should benefit from these payments if they are made. I have hence made allowance for this in my compensation award below.

The Financial Conduct Authority (FCA) has also recently announced that it is focused on securing fair redress for those who invested in the Connaught Income Funds. The possibility of a compensation payment arising from the FCA's work is considered in the 'fair compensation' section below.

The redress I have set out below follows that suggested by the adjudicator. My understanding is that, because the asset is held in a pension arrangement, assignment is precluded. But it may be possible for ownership to be transferred to the business by it purchasing Mrs W's holding in the Connaught fund from the SIPP. But this will depend on whether Mrs W's SIPP provider can facilitate this (which may depend on whether a value for the holding can be determined) and whether the Connaught fund administrator is able to re-register the holding to the business.

As the adjudicator commented it may be that if the fund is being wound up it may not be possible to transfer ownership. But in case a transfer is possible I have included below provision for LLP Services Ltd to purchase the holding. But I have also made alternative directions in case that does not prove possible or practicable.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs W as

close as possible to the position she would probably now be in if she had not been given misleading information.

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

what should LLP Services do?

To compensate Mrs W fairly, LLP Services Limited must compare the performance of her investment with that of the benchmark shown below.

The compensation payable is 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.

LLP Services Ltd should also pay any interest, as set out below.

In addition, LLP Services Ltd should pay Mrs W £250 for the distress and inconvenience this matter has caused.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Connaught Income fund	still exists	average rate from fixed rate bonds	date of investment	date of my decision	8% simple p.a. from date of decision (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.

My understanding is that the investment in the Connaught Fund currently has no realisable value. So, for the purposes of the calculation, the actual value should be assumed to be zero. The Financial Conduct Authority (FCA) has recently announced that it is to investigate the operators of the Connaught Income Fund. It has said that it has not reached any conclusion that any wrongdoing has occurred. But that is one of the possible outcomes of its investigation. So it is possible that some compensation might be payable in relation to Mrs W's holding in the Connaught Income Fund. I therefore think it reasonable to make allowance for this possibility.

It is also possible that some other return might be paid from the Connaught Income Fund. So, in exchange for the compensation payable by the business, Mrs W should agree to transfer her holding in the fund to it, if possible, to allow it to benefit from any compensation or other payment that might be made in relation to the holding. If it is not possible to transfer the investment, Mrs W should give an undertaking to the business to repay to it any amount she may receive in relation to the investment in future, whether it is a compensation payment or any other sort of return.

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, LLP Services 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.

additional investments, income and fees

Any additional sum that Mrs W paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

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

how to pay compensation?

If there is a loss, LLP Services Ltd should pay such amount as may be required into Mrs W's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

If LLP Services is unable to pay the total amount into Mrs W's pension plan, it should pay that amount direct to her. The amount should be reduced to notionally allow for the income tax that would otherwise have been paid.

The notional allowance should be calculated using Mrs W's marginal rate of tax at retirement. For example, if Mrs W would be a higher rate taxpayer at retirement she would have been able to take 25% as a tax-free lump sum but the remaining 75% would have been subject to income tax at his marginal rate of tax. So the *notional* allowance for tax would equate to a 30% reduction in the total amount (40% on 75%).

why is this remedy suitable?

I have decided on this method of compensation because Mrs W didn't want to accept any material risk to her capital. The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

Mrs W has not yet used the pension plan to purchase an annuity.

LLP Services Ltd may request an undertaking from Mrs W to either repay to it any amount received from the investment thereafter or if possible to transfers the investment at that point.

Mrs W should be aware that any such amount would be paid into her pension plan so she may have to realise other assets in order to meet the undertaking.

my provisional decision

My provisional decision is to uphold the complaint.

I intend to say that fair compensation should be calculated as set out above. My provisional decision is that the LLP Services Ltd should pay Mrs W the amount produced by that calculation – up to a maximum of £150,000, plus any interest as set out above.

If the business does not pay the recommended amount, any undertaking from Mrs W should apply only to such amounts as might be received that together with the compensation paid by the business exceed the full fair compensation as set out above.

recommendation:

If the amount produced by the calculation of fair compensation exceeded £150,000, I would recommend that the business pays Mrs W the balance plus any interest on the balance as set out above.

David Ashley
ombudsman