

## **complaint**

Mr and Mrs H complain about the Meteor Senior Life Settlements Sterling Fund they were advised to invest in by Wealthmasters Financial Management Ltd. They say, in brief:

- It is high risk and not suitable for ordinary investors.
- Their attitude was cautious at the time of sale and so it was not suitable for them.
- They have not been able to access their money since the fund was suspended in December 2011.

## **background**

Our adjudicator recommended the complaint should be upheld. In brief, he considered that the fund was not suitable for Mr and Mrs H as it carried a greater degree of risk than they were likely to have wanted to take at the time.

Wealthmasters responded to say it didn't accept the adjudicator's conclusions. It provided some further information about Mr and Mrs H's circumstances at the time of sale and said that it showed they were provided with written confirmation about a change that was made to the original recommendation. It also maintained that the fund was suitable for Mr and Mrs H and was in harmony with their recorded attitude to risk and circumstances.

Because the adjudicator's conclusions were not accepted by the business, the complaint has been referred to me to review.

## **my findings**

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

The fund Mr and Mrs H were advised to invest in has unusual characteristics. It invests in the life assurance policies of US citizens and benefits from insurance pay-outs made on the death of the original policyholders. As the adjudicator noted, complex strategies and calculations are needed to estimate how long these policy holders will live. If these calculations are wrong significant amounts can be lost or access to the investment may be restricted. These types of funds can also have significant liquidity problems due to the nature of the underlying investments. As they are based overseas consumer protection can be reduced.

I have noted the Financial Conduct Authority's (FCA) comments that these are complicated products '*generally unsuitable for mass retail market customers.*' The fund is also an Unregulated Collective Investment Scheme (UCIS) and the FCA limits the promotion of these products.

So, I think it's reasonable to say that the fund has a very significant and material risk of capital loss, which I believe should have been reasonably apparent to the adviser. The fund would suit sophisticated investors likely to appreciate the particular risks. It would normally form part of a large portfolio where such an unusual investment could balance out other risks taken elsewhere.

At the time of sale Mr and Mrs H held the following savings and investments:

- Mr H held £350,000 worth of shares in his business. This was an estimated value as the shares were very illiquid.
- Around £90,000 was held in cash which had been released from Mr H's pension planning.
- £100,000 shares in British Gas – again this was an estimate.
- £2,000 shares in Lloyds TSB.
- Two Individual Savings Accounts with a value of £7,000.
- A Tax Exempt Special Savings Account worth £13,000.

Mr and Mrs H's attitude to risk was recorded such that 80% of their total investment should have been in a category of risk of 'average' or below. Also, in the second recommendation letter issued to Mr and Mrs H it was noted that they wished to invest in a 'moderately cautious' manner.

These categorisations do not seem unreasonable in the circumstances. Clearly Mr and Mrs H could accept *some* risk. However, they don't seem to be particularly sophisticated investors and their portfolio was not particularly large or diversified. And importantly, nearing retirement as they were, it is usual to look to preserve capital as the capacity to replace losses is reduced. I have seen no reason why this would not have applied here.

Overall, I'm not persuaded that Mr and Mrs H were in a position to accept the level risk associated with the Meteor fund, nor that they would have understood the risk of capital loss - and potential loss of access - they faced. If they had done I think it's most likely they wouldn't have proceeded with the recommendation. The 'reason why' letter, while describing the nature of the fund, did not make any particular reference to the unique risks associated with it.

I have noted the business' comments pointing out that Mr and Mrs H in fact had a quite significant sum of cash available and also that the changes to the recommendation - made in light of Mr H asking to reduce the overall size of the investment - were clearly communicated.

But to my mind these points are not material to the consideration of whether the fund itself was suitable for them. Ultimately, the adviser had a responsibility to ensure that his recommendation was consistent with Mr and Mrs H's circumstances and attitude to risk. I accept that the FCA's comments about the fund were made subsequent to the provision of the advice. However, I nevertheless think it is reasonable to expect the adviser to have been aware that the fund featured a level and nature of risk that was too high for Mr and Mrs H. In committing nearly half of their intended investment to it, I am of the view that the adviser made a recommendation that was unsuitable for them.

### **fair compensation**

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

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

To compensate Mr and Mrs H fairly, Wealthmasters must compare

- the performance of Mr and Mrs H's investment with
- the position they would now be in if 50% of their investment had produced a return matching the average return from fixed rate bonds with 12 to 17 months maturity as published by the Bank of England and 50% had performed in line with the APCIMS Stock Market Income Total Return Index ('APCIMS income index')

If there is a loss, Wealthmasters should pay this to Mr and Mrs H.

I have decided on this method of compensation because Mr and Mrs H wanted growth with small risk to their capital.

The average rate from fixed rate bonds would be a fair measure for a consumer who wanted to achieve a reasonable return without risk to their capital. It does not mean that Mr and Mrs H would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to the capital.

The APCIMS income index, which is a combination of diversified indices of different asset classes, mainly UK equities and government bonds would be a fair measure for a consumer who was prepared to take some risk to get a higher return. I consider that Mr and Mrs H's risk profile was in between, as they were prepared to take a small level of risk. I take the view that a 50/50 combination is a reasonable compromise that broadly reflects the sort of return Mr and Mrs H could have obtained from investments suited to their objectives and risk attitude.

Although the comparison may not be an exact one, I consider that it is sufficiently close to assist me in putting Mr and Mrs H into the position they would have been in had they received appropriate advice.

#### **how to calculate the compensation?**

The compensation payable to Mr and Mrs H 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.

The *actual value* is the value Mr and Mrs H will receive if they terminated the investment on the date of my decision.

At present it is my understanding that Mr and Mrs H cannot access the funds they invested in the Meteor Senior Life Settlements Plan. As a result, if the restriction is still in place at the date of settlement, the business should assume an actual value of nil. The business should then take ownership of the plan. Mr and Mrs H would have to agree to facilitate this transfer and any assignment or agreement of that nature. The business would be entitled to any income or capital distributed from the investment in future.

To arrive at the *fair value*, Wealthmasters should work out what 50% of the original investment would be worth if it had produced a return matching the average return for fixed rate bonds for each month from the date of investment to the date of my decision and apply those rates to that part of the investment, on an annually compounded basis.

Wealthmasters should add to that what 50% of the original investment would be worth if it had performed in line with the APCIMS income index from the date of investment to the date of my decision.

Any additional sum that Mr and Mrs H paid into the investment should be added to the *fair value* calculation from the point it was actually paid in.

Any withdrawal or income payment that Mr and Mrs H received from 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. If there are a large number of regular payments, to keep calculations simpler, I will accept if the business totals all such payments and deducts that figure at the end instead of periodically deducting them.

### **my final decision**

For the reasons given, my final decision is that I uphold the complaint. I direct Wealthmasters Financial Management Ltd to pay Mr and Mrs H the amount calculated as set out above.

If my award is not paid within 28 days of Wealthmasters receiving notification that Mr and Mrs H have accepted my decision, simple interest is to be added at a rate of 8% gross a year from the date of my decision to the date of settlement. Income tax may be payable on this interest.

James Harris  
**ombudsman**