DRN-3410139

The complaint

Mr M is complaining about Wealthwise Corporate Financial Management Ltd (WCFM) an appointed representative (AR) of ValidPath Limited (ValidPath) because he says he received unsuitable advice to invest money held within his self-invested personal pension (SIPP) into an unregulated investment Stirling Mortimer 6 Morocco (Stirling Mortimer). He says the investment was unsuitable because it involved a greater degree of risk than he was willing to accept.

What happened

In 2008, Mr M transferred benefits worth around £73,000 from various pension schemes into a SIPP with Sanlam (previously Merchant Investors). Around £25,000 of this money was used to fund an unregulated investment in the Stirling Mortimer No. 6 Morocco Fund.

A SIPP application form was signed on 4 February 2008, this listed Mr D of WCFM as the financial adviser. And, included ValidPath's FCA (then FSA) number.

A *"note of understanding"* that Mr M appears to have signed for Sanlam on 9 May 2008, includes a declaration that says:

> *"Neither Merchant Investors nor Merchant Investors (Trustee Services) Limited, or any other company within the Merchant Investors Group, has given me any investment advice or exercised its judgement on the merits, suitability or otherwise of the investment."*

Mr M signed an *"Investment Management Agreement"* on 9 May 2008, this records his attitude to risk as *"medium/high"* on a three-point scale of *"low/medium/high"*.

On 12 May 2008, WCFM issued a cover letter addressed to the SIPP provider. This referred to several enclosures including the Stirling Mortimer application form. This was on WCFM stationary and the footer said it was an AR of ValidPath.

On the same date Mr D of WCFM sent the SIPP provider a letter, which said:

> *"Re: Stirling Mortimer Global Property Fund PCC limited*
> *No. 6 Fund MOROCCO*
>
> *We understand that under Guernsey legislation you are required to have terms of business in place with ourselves that confirm the following:-*
>
> *That we have completed verification for all investors we have introduced to Heritage International Fund Managers Limited as administrators of Stirling Mortimer Global Property Fund PCC Limited No. 6 Fund Morocco.*
>
> *That we will inform you of any unsatisfactory conclusion in respect of the verification of our customer.*

That we will keep records in accordance with the relevant anti money laundering legislation operating in our jurisdiction.

That we will provide copies of such verification records to Heritage International Fund Managers Limited including, where applicable, certification that an investor is a qualified investor.

That, in accordance with the statements made on Page 3 of the Cell Particulars, the Investor/s is/are Qualified Investors or within the meaning of the Financial Service and Markets Act 2000 or they is/are Investor/s who have received appropriate professional advice as outlined in paragraph two of Page 3 of the Cell Particulars.

We hereby confirm our agreement of the above terms of business."

Mr M's Sanlam SIPP application was dated 16 May 2008. This records Mr D of WCFM as the financial adviser and he appears to have witnessed Mr M's signature.

WCFM sent further enclosures to the SIPP provider on 19 May 2008 this was also on WCFM stationary, confirming it was an AR of ValidPath.

On the same date a WCFM administrator sent a fax from Mr D of WCFM to the SIPP provider, this said:

"Further to our telephone conversation today. I enclose the OneSIPP Application form which has been completed and signed as necessary. Please let me know if you require anything further."

A transaction history for Mr M's SIPP shows an investment of £25,050 was made on 24 June 2008.

Mr M's application for his Stirling Mortimer investment dated 25 June 2008. This records his financial adviser as Mr D of WCFM and includes WCFM's, as an AR of ValidPath, FCA (then FSA) number.

Background to the complaint

Sadly, the investment failed and Mr M appears to have lost his money. He says he was advised by Mr D of WCFM. Because WCFM was an appointed representative of ValidPath, he thinks it's responsible for his losses.

In his complaint to ValidPath Mr M said:

"I write regarding the Stirling Mortimer Morocco fund. In 2008 on advice endorsed by yourselves I invested £25,000 into the fund and in subsequent years received statements detailing the value of my holding, however my latest statements show the value as zero.

Given that my investor profile indicated my preference was not high risk, I am surprised that this fund was recommended to me at all since it was clearly a higher risk than my preference as evidenced by its failure.

As such I would ask how you plan to compensate me for my loss given that my loss has resulted from poor advice from yourselves."

ValidPath didn't accept Mr M's complaint. It said it had no record of his investment or that he was a client of one of its appointed representatives. It also said it never endorsed investments into the Stirling Mortimer fund and that its use would've been contrary to the guidance it published to its appointed representatives at the time.

When Mr M referred his complaint to us, ValidPath told us:

- This is *"one of a deluge of almost identical cases"* relating to advice allegedly given by WCFM. It then pointed out that WCFM ceased to be its appointed representative in 2010.

- Not only has ValidPath not received any disclosures in relation to the transaction, Mr M isn't listed on its shared practice-management database that all appointed representatives were required to use. This means WCFM acted *"off-piste"* so ValidPath were removed from the process. Based upon logic, ValidPath can't be held responsible for the claim.

- If WCFM did advise Mr M, this breached the clear compliance guidance issued by ValidPath. The outcome he has experienced wouldn't have been possible if that guidance had been followed.

As part of our investigations we asked the SIPP provider for information, amongst other things, it said:

> *"I cannot locate on our records that any specific correspondence was sent out to the client regarding the Stirling Mortimer No.6 Morocco fund. I can confirm that broker information has previously been sent out to Wealthwise, this would have included valuations. Also the client has been receiving annual valuations each February as part of the disclosure process.*
>
> *. . . .*
>
> *I have received confirmation from our Investment Cash team that we priced the Stirling Mortimer No.6 Morocco fund at zero on 21 July 2017, as it was evident from news coverage that that there were serious issues involving the Fraud Squad."*

Our investigator concluded this complaint is one we can consider and that it should be upheld. She felt the evidence shows Mr D carried out regulated activities in connection with Mr M's SIPP and investment and that these were activities ValidPath had accepted responsibility for. She also felt the unregulated investment was unsuitable for Mr M and that he should be compensated accordingly.

ValidPath didn't accept the investigator's assessment. In addition to the points it had made previously, it raised the following issues:

- The documentation from the time of sale doesn't show WCFM was acting as an appointed representative of ValidPath in connection with Mr M's SIPP and investment.

- ValidPath had no agency relationship with Heritage International Fund Managers and it never received commission from it. The relationships WCFM constructed with Mr M and Stirling Mortimer were designed to exclude ValidPath.

- The *"Note of Understanding"* doesn't mention ValidPath at all and contains key disclaimers signed by Mr M that he was responsible for the investment decisions in the SIPP and would continuously monitor the investment. This shows he was making his own investment decisions.

- It also believes Mr M complained about the advice he received too late as he should have known the Stirling Mortimer fund was in trouble as early as 2012. It provided a chronological list of events to support this view and says the history of media coverage on this issue is so extensive, and goes back such a long time, that it's not possible Mr M wasn't aware of the fundamental issue until 2018.

- The SIPP provider told it that annual reports, in which the problems relating to the fund dating back to 2010 were clearly reported, were sent to WCFM. There's no possibility this critical information wasn't available to Mr M through his relationship with WCFM, which continued after it left ValidPath in 2010.

Because agreement couldn't be reached the complaint was escalated to an ombudsman for review. He issued a provisional decision explaining why he thought this complaint is one we can consider and should be upheld.

Mr M told us he accepted the provisional decision. ValidPath didn't accept it and raised the following key points:

- Section 39 of FSMA says ValidPath can only be responsible for activities of WCFM that it accepted responsibility for *in writing*. The view that ValidPath accepted responsibility for unregulated investments like the Stirling Mortimer fund is based on a misunderstanding of the Scope of Permission section of the appointed representative agreement. This is merely a reproduction of the actual wording on the FCA website for information purposes. It didn't in practice allow ValidPath's ARs to access every conceivable investment. If that were the case, it wouldn't have been able to exercise any supervisory or governing function whatsoever.

- An artificial distinction was established between *how* ValidPath accepted responsibility for its appointed representative's activities, and *what* it accepted responsibility for. Actually, it's impossible to disentangle the how from the what, because both are integral to ValidPath's financial intermediation model and to do so would in practice severely impair its operation.

- All requests for new agencies had to be channelled through ValidPath's dedicated agency department, which meant it was able to conduct due diligence on both providers and products. Because ValidPath is a regulated company, dealing with regulated products, a request for an unregulated product would've required particular scrutiny. Requests from other ARs for agencies with Stirling Mortimer, Quadris, Harlequin and other providers had been referred to ValidPath for a decision and all were turned down. So not only did it not accept responsibility in writing for the Stirling Mortimer investment, it's impossible that it would ever have done so.

- WCFM knew the correct procedures but took every effort to circumvent them and dealt direct with Stirling Mortimer without ValidPath's knowledge. There was little to be gained by inventing procedures and advisory standards that don't function as a direct proxy for the regulations. Everything ValidPath had designed, and that WCFM was subject to, was put together to apply FSA regulations and requirements as consistently as possible. That WCFM chose not to comply with any of ValidPath's requirements is almost beside the point – it was the FSA regulations that were being

flouted invisibly, and out of sight from ValidPath. This matter ought to be a burden for the regulatory bodies and my decision should reflect this critical principle.

- The provisional decision didn't refer to ValidPath's *Terms of Business* agreement that must have been provided if WCFM was providing advice as its appointed representative. This says:

> ***"OUR SERVICES***
>
> *Wealthwise Corporate Financial Management Ltd is permitted to arrange (bring about) deals in investments and advice on investments. The particular investment types relate to life assurance, pensions, investments in authorised collective investment schemes Unit Trust PEPs and ISAs."*

  The wording is clear that WCFM was permitted by ValidPath to conduct business in relation to authorised (or regulated) collective investment schemes. It would be impractical to include a form of words that specifically excluded every other possible scheme and the term *'authorised collective investment schemes'* was a perfectly adequate catch-all descriptor. This description certainly wouldn't have applied to the Stirling Mortimer investment.

- The ombudsman seems to have dismissed this on the basis that the investment was made within Mr M's SIPP, but that's an unsustainable line of approach. The complaint is about the investment not the SIPP, and the detriment being complained about relates to the investment not the SIPP. These points, which were acknowledged in the provisional decision, render the 'SIPPness' of the investment as irrelevant in this context, other than the fact that it introduced a statutory responsibility on WCFM in terms of ongoing service.

- WCFM set out to violate the constraints written into ValidPath's terms of business and deliberately hid the evidence of this. This should be seen as the substantive source of Mr M's detriment and it's not appropriate to lay the blame at ValidPath's door.

- Notwithstanding the above, Mr M complained more than three years after he should have become aware he had cause for complaint. Stirling Mortimer funds had been collapsing for many years and the ombudsman service was making awards as early as 2012. He was a retired investor who didn't have years to wait out spells of bad news and the most normal behaviour in that situation would have been to keep a reasonably close eye on things.

- Mr M's account of what he knew about what was happening to the fund and when he knew this have been accepted without criticism. This shouldn't be the case given his original complaint letter dated 21 July 2018 contains a number of falsehoods.

- There was a statutory triennial review of the income drawdown plan due in 2014 and this would have highlighted matters sufficiently that Mr M should've known he had reason to complain. The FCA's definition of a complaint sets the bar low and Mr M didn't need to fully understand the technical issues with the fund, he simply needed to be dissatisfied.

- If it's the case that WCFM didn't forward updates about the fund it received from Sanlam to Mr M, why is ValidPath being held responsible for this? WCFM ceased to

be an appointed representative of ValidPath in 2010, after which it operated as a directly authorised firm.

- On the merits of the case, ValidPath said it concurs that it's likely that the Stirling Mortimer fund was unsuitable but emphasised again that its advisory framework would have prohibited its use.

After receiving ValidPath's additional comments, the ombudsman contacted Sanlam to see if he could obtain further information that might help determine when Mr M should've been aware he had reason to complain. It provided copies of annual valuation statements for his SIPP since 2009. He also asked for information about statutory triennial reviews of Mr M's income drawdown plan and Sanlam said:

> *"With regards to your drawdown query, I can confirm that Mr M has not entered into Capital or Flexi-Access drawdown on his sub-accounts*."

This information was forwarded to ValidPath to give it the opportunity to comment before the ombudsman finalised his decision.

ValidPath's submissions:

ValidPath's made numerous further submissions, after its initial response to the previous provisional decision issued. I've considered these in their entirety. For the sake of clarity and simplicity I've amalgamated my summary of these submissions. And, condensed the summary to what I consider to be the key material arguments. Broadly speaking, ValidPath has raised two key objections a) the complaint has been brought too late and, b) it's not responsible for the activities that are the subject of this complaint. In relation to each ValidPath's raised a number of points I've summarised the crux of these in turn below.

The complaint has been brought too late:

- The issues that plagued Stirling Mortimer were well known, documented and publicised more than three years before the complaint was raised;
- Due to WCFM's ongoing relationship with Mr M, it's implausible that he wasn't reasonably made aware of the problems with the Stirling Mortimer investment more than three years before the complaint was raised;
- Based on the annual statements sent to him by the SIPP provider, it was clear that the Stirling Mortimer investment had consistently gone down in value; and
- A benchmark property index had outperformed the investment by around 140% by July 2015; so
- Mr M ought reasonably to have become aware that he had cause for complaint more than three years before this complaint was raised.

ValidPath's not responsible for the activities complained about:

- WCFM wasn't acting as its agent in relation to the activities complained about and Mr M wasn't ValidPath's client.
- WCFM wasn't permitted to undertake this type of business.
- All product provider agencies are administered at network level, ValidPath didn't have an agency with Stirling Mortimer – WCFM took steps to circumvent this process.
- Schedule 3 of the AR agreement simply lists all of the investments listed in the relevant definition, this doesn't mean that ARs were permitted to advise on any of these investments.

- WCFM was limited to providing services in line with the bespoke terms of business provided to it by ValidPath, this excluded unregulated investments.
- None of the processes put in place were followed and WCFM actively hid these activities from ValidPath.
- It didn't rule out the possibility of advising on unregulated investments, but separate terms applied to these and WCFM never obtained these.

This case has since been passed to me for a decision. We shared further information with ValidPath. It remained of the view that the complaint had been brought too late. Briefly, it said:

- Based on the statements provided, the Stirling Mortimer investment only ever dropped in value.
- By February 2015 it had dropped by 9% as compared to a benchmark property index which went up by 130% between June 2008 and February 2015.
- Stirling Mortimer wasn't named separately but is was the only asset held within the "TB Assets" sub-account which was named and, in any case, the entire pension, the sub-account and the "TB Assets" element within the sub-account all declined in value every year.
- So, it's inconceivable that Mr M didn't have cause for concern before July 2015. And, he would reasonably have been able to express dissatisfaction long before that.
- The pension had continuously lost money and was almost 140% down against the market.
- Two similar complainants, who invested in Stirling Mortimer around the same time, confirmed they became concerned about their investment in 2014 on receiving statements from Sanlam.
- It's clear Mr M ought reasonably to have become aware he had cause for complaint more than three years before he made the complaint in July 2018.
- The complaint had therefore been brought too late.

It provided copies of the information sheets completed by complainants which support the above statements. The sheets have been anonymised. These do confirm that they both became aware of problems with the fund in early 2014. I would note that the forms are almost identical not only in circumstances but also in the precise wording used to describe what happened and when.

I sent my provisional decision to Mr M and ValidPath explaining that I thought this complaint is one we can consider and that it should be upheld. I invited both parties to make any further submissions they would like me to consider. Mr M accepted my decision. ValidPath confirmed that it didn't have anything further to add, beyond the submissions it had already made.

This case has now been passed back to me for a decision. Neither party had anything to add in response to my provisional decision. I took into account all of the submissions made previously and my findings remain as set out within my provisional decision. I've reiterated these below.

What I've decided – and why

I must decide whether we can consider a complaint on the basis of the jurisdiction rules that apply. Having done so, I have concluded the complaint is one we can consider.

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

in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings, on what I consider to be the main points, and reasons for reaching them.

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

When we receive a complaint about the acts or omissions of an appointed representative, the usual jurisdiction tests apply:

- Did the actions being complained about take place when the representative was an appointed representative of the principal?
- Does the complaint relate to an activity we cover?
- Do we have territorial jurisdiction?
- Is the complainant eligible?
- Was the complaint made in time?

In this case, I'm satisfied these tests are met. Mr M is an eligible complainant, we have territorial jurisdiction and WCFM was an appointed representative of ValidPath at the time of the acts complained about. I'll now turn to the issues of jurisdiction that are in dispute, namely whether Mr M complained in time and whether ValidPath can be held responsible for the actions of its appointed representative.

Has the complaint been brought in time?

Our jurisdiction is set out in the Financial Conduct Authority's handbook. These rules are referred to as DISP.

DISP 2.8.2:

> *"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*
>
> *…*
>
> *(2) more than:*
>
> *(a) six years after the event complained of; or (if later)*
> *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*
>
> *unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*
>
> *unless:*
>
> *(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances;*
>
> *…"*

In line with the above, we *cannot* consider a complaint where it has been brought:

- More than six years after the event took place; *or, if later,*
- More than three years after the complainant became aware, or *ought reasonably* to have become aware, that they had cause for complaint; unless
- The business consents to us looking into the complaint despite it having been brought out of time; or
- Exceptional circumstances apply, for example, where the complainant has been incapacitated – and, as a result of this, was unable to bring the complaint to this service within the applicable time limits.

It isn't in dispute that the event happened more than six years before the complaint was raised. So, I've focused on whether or not Mr M became – or ought reasonably to have become – aware of his cause for complaint more than three years before he referred the complaint.

ValidPath say that the press coverage, drop in value of the investments and the meetings that Mr M ought to have been having with WCFM ought reasonably to have led to Mr M becoming aware that he had cause for complaint more than three years before he raised the complaint.

The press coverage ValidPath referenced are predominantly articles in the financial press. I wouldn't necessarily expect a retail client to be aware of these. There wasn't a national press campaign or prolific coverage to the point that it would be reasonable to conclude Mr M ought reasonably to have become aware of the problems faced by the investment – or that the investment wasn't suitable for him – via media coverage.

ValidPath's arguments as to why the complaint should be time-barred focus heavily on what WCFM ought to have known and relayed to Mr M and what *should've* been discussed in meetings WCFM *ought* to have had with Mr M. The test is what Mr M knew or ought reasonably to have known – this is based on information available to him. I can't decide what Mr M knew – or ought to have known – based on what WCFM ought to have done, in the absence of evidence that it actually did this. I haven't been provided with any evidence that Mr M had meetings with WCFM within which he was told about any problems with the investment more than three years before the complaint was raised.

In making the above findings, I acknowledge there was an ongoing relationship with WCFM. However, I haven't seen any evidence that WCFM actually held regular reviews with Mr M or that it discussed the problems with Stirling Mortimer during any such meetings. To be clear, I don't disagree with ValidPath that under the circumstances WCFM should've held meetings with Mr M and that it should've *at least* informed him about the issues with Stirling Mortimer. But, that's not evidence that this happened – or, in turn, that Mr M knew or ought reasonably to have known that he had cause for complaint.

We have copies of the annual statements Mr M received in respect of his SIPP. Based on these, the SIPP provider didn't drop the value of the investment on the annual statements provided to Mr M until 2017. In the absence of evidence that Mr M was otherwise made aware of the issues with the Stirling Mortimer investment, I think these would've reassured him that the investment retained significant value. Mr M complained to ValidPath within a reasonable timeframe of receiving the 2017 annual statement.

Most recently ValidPath submitted that based on the statements provided, the Stirling Mortimer investment only ever dropped in value. By February 2015 it had dropped by 9% as

compared to a benchmark property index which went up by 130% between June 2008 and February 2015. So, it's not feasible that Mr M reasonably didn't become aware that he had cause for complaint.

It also provided copies of the information sheets completed by complainants in support of the above statements. The sheets have been anonymised. These do both confirm that the complainants who completed the sheets both became aware of problems with the fund in early 2014. As noted in the background to this complaint, the forms are almost identical not only in circumstances but also in the precise wording used to describe what happened and when.

I wouldn't necessarily expect a retail client, like Mr M, to actively check a benchmark or compare one investment to others that may be a reasonable comparison to assess its performance. It hasn't been suggested that Mr M wasn't willing to accept any risk or that he was led to believe the investment was capital protected, such that any drop in the investment should've led him to become aware that he had cause for complaint on the basis that the investment was unsuitable or mis-sold. I don't think the fact that it may have been clear that the investment wasn't performing as hoped is sufficient.

Whilst it's possible that some investors may have become aware earlier that they had cause for complaint, I don't think this means that Mr M should necessarily have become aware at that stage. There are numerous reasons why different individuals may reasonably become aware of a problem/their cause for complaint at different times, such as their:

- experience/knowledge
- expectations of the investment
- reasons for having concerns
- receipt of different information about the investment

I'm not persuaded that Mr M ought reasonably to have become aware that he had cause for complaint more than three years before he complained in this instance.

Taking everything into account, I think the complaint has been brought in time.

Other jurisdiction considerations

The Financial Services and Markets Act 2000 (FSMA) Section 22 (Regulated Activities) provides that:

> *(1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and –*
>
> *(a) relates to an investment of a specified kind; or*
>
> *(b) in the case of an activity of a kind which is also specified for the purposes of this paragraph, is carried on in relation to property of any kind.*

DISP 2.3.1R says:

> *"The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the following activities:*
>
> *(1) regulated activities (other than auction regulation bidding); …*

or any ancillary activities, including advice, carried on by the firm in connection with them."

And

DISP 2.3.3G, which is guidance for the interpretation of our compulsory jurisdiction, says:

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

Under section 39(3) of FSMA:

> "*The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility".*

Exemption of ARs

FSMA says under Article 19, '*The general prohibition'*, that:

(1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is –

(a) an authorised person; or

(b) an exempt person.

(2) The prohibition is referred to in this Act as the general prohibition.

Article 39 of FSMA sets out the exemption of ARs to the above, in so far as relevant, it says:

(1) If a person (other than an authorised person) –

(a) is a party to a contract with an authorised person ("his principal") which –

(i) permits or requires him to carry on business of a prescribed description, and

(ii) complies with such requirements as may be prescribed, and

(b) is someone for whose activities in carrying on the whole or part of that business his principal has accepted responsibility in writing,

he is exempt from the general prohibition in relation to any regulated activity comprised in the carrying on of that business for which his principal has accepted responsibility.

The business for which an AR can be exempt is set out in FSMA 2000 (Appointed Representatives) Regulations 2001 (2001 No. 1217) this includes advising on investments and arranging deals in investments.

So, for me to conclude that this is a complaint that we can consider I need to consider three questions:

1. What are the acts that are the subject of this complaint?

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

3. Were those acts the acts of the principal firm, ValidPath?

What are the acts that are the subject of this complaint?

Mr M complains that, given what's happened in respect of the Stirling Mortimer investment, the investment wasn't suitable for him. He says he was looking to consolidate a few pensions and WCFM recommended the SIPP he transferred into and the subsequent investments.

In his original complaint to ValidPath he said:

> *"In 2008 on advice endorsed by yourselves I invested £25,000 into the fund and in subsequent years received statements detailing the value of my holding, however my latest statements show the value as zero.*
>
> *Given that my investor profile indicated my preference was not high risk, I am surprised that this fund was recommended to me at all since it was clearly a higher risk than my preference as evidenced by its failure."*

In his submissions to us he said:

> *"I was prepared to accept a small degree of risk – I was concerned about investments with a high potential to decline and preferred safer (possibly slower growth) investments."*

And that it was his objective:

> *"To generate capital growth as I was 50 and with only 15 years to retirement and this being my only provision it was imperative to take action."*

Based on his submissions, I think his complaint is focused on the advice to invest in Stirling Mortimer not the wider transaction. In particular, that the fund was higher risk than was suitable for him and shouldn't have been recommended to him.

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

Regulated activities are set out in Part II of FSMA (Regulated Activities) Order 2001 (RAO). They include:

- Advising on investments where the advice relates to "*buying, selling, subscribing for or underwriting a particular investment which is a security or a contractually based investment*" (article 53 RAO).

- Arranging deals in investments "*for another person…to buy, sell, subscribe for or underwrite a particular investment*" which is a security or relevant investment (article 25 RAO).

There's limited evidence from the point of sale. I think it's clear that WCFM was acting as Mr M's adviser in respect of the initial transfer and subsequent investment in Stirling Mortimer.

WCFM and Mr M had an ongoing advisory relationship. The application and investment manager forms were submitted by WCFM and listed it as Mr M's adviser in respect of the transactions. There's no evidence that Mr M was an experienced investor or that he came across the Stirling Mortimer investments himself or through the involvement of another party. Based on Mr M's circumstances and what he's told us. I think it's more likely than not that Mr M's investment in the Stirling Mortimer fund came about as a result of advice given to him by WCFM to invest in that fund.

I also note that WCFM submitted the application forms for the investments including Stirling Mortimer to the SIPP provider, thereby making arrangements.

Taking all of this into account, I think that it is more likely than not that WCFM did advise Mr M to invest in Stirling Mortimer and made arrangements for Mr M to make this investment.

Further, it's my view that these activities qualify as the regulated activities of 'advising on investments' and 'arranging deals in investments', as defined in the RAO.

It isn't contested that the Stirling Mortimer investment was a specified investment. There is, unfortunately, very little information available now regarding the details of the fund and how it operated. I'm aware that the fund was part of the Stirling Mortimer Global Property Fund PCC Ltd ("SMGPF"), a protected cell company with limited liability based in Guernsey. My understanding is that the fund had at least some of the features of a collective investment scheme (funds were pooled together and investors did not have day to day control over their management) but it was neither authorised nor recognised by the FSA or FCA (in other words, if it was a collective investment scheme, it would've been a UCIS). I'm also aware that investors like Mr M were effectively purchasing shares in the fund and I've seen Mr M's subscription contract which showed the subscription on his behalf of preference shares in the Stirling Mortimer fund. I accept that there's, in turn, likely to be more than one possible basis on which the activity was regulated under the RAO.

Overall, I am satisfied that Mr M's complaint relates to activities done in the carrying on of the regulated activities of advising on investments and arranging deals in investments.

The next question is whether that business was business for which ValidPath had accepted responsibility. To the extent that it was merely the purchase of shares, I can see no effective restriction on the carrying on of that activity in the AR Agreement. ValidPath originally said that the Stirling Mortimer investment was a UCIS and that such business was expressly restricted by operation of the Terms of Business that would've been applicable between Mr M and WCFM.

More recently ValidPath's said that Stirling Mortimer wasn't a collective investment, but it maintains that the Terms of Business restricted WCFM from advising on such investments. And, overall, that this wasn't business that WCFM was permitted to undertake or for which it, in turn, had accepted responsibility. I've given careful thought to what ValidPath's said in this regard in the following section of this decision.

Were those acts the acts of the principal firm, ValidPath*?*

As set out above, DISP 2.3.3G says:

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

It follows that the question then is: were the advising and arranging activities conducted by WCFM for Mr M activities for which ValidPath is responsible?

When I'm considering responsibility by way of s39 FSMA, the test is: were those activities done in the carrying on of business for which ValidPath has accepted responsibility?

ValidPath's adamant that it isn't responsible for the sale of the Stirling Mortimer investment and any advice given in respect of this. Its assertions are based on a number of arguments, in particular:

- WCFM wasn't acting as its agent in relation to the sale of the Stirling Mortimer investment complained about.
- It didn't authorise WCFM to undertake the type of business that's the subject of this complaint.
- The way in which WCFM went about undertaking the business is in breach of the compliance and procedural requirements in place.
- WCFM actively hid its activities.

At the time of the advice WCFM was an AR of ValidPath. This is confirmed by the FCA's register and I've not seen any evidence that would lead me to conclude that WCFM was acting in any capacity other than as AR of ValidPath at the time of the activities in question. It's clear from the available paperwork that WCFM was and had been acting as Mr M's investment adviser in respect of his pension.

It's documented that WCFM, as AR of ValidPath, was acting as Mr M's adviser in respect of the switch that made the investment in Stirling Mortimer possible and the investment itself. There's no suitability report that we've seen but WCFM is listed as the adviser on all of the relevant documentation this includes reference to ValidPath's FCA (then FSA) number, and footers on letters referring to WCFM's status as an AR of ValidPath. As a result, I've found that it is more likely than not that the advice to invest in Stirling Mortimer was given by WCFM.

The available paperwork from WCFM includes the cover letter submitting the application for Stirling Mortimer – along with other documents – to the SIPP provider; these included a footer stating that WCFM was an AR of ValidPath. In light of the documentation referenced and other circumstances of the complaint, I'm satisfied that WCFM was acting as AR of ValidPath when undertaking the acts complained about.

So, I've gone on to consider if the acts that are the subject of this complaint comprise business for which ValidPath had accepted responsibility.

To answer this, I've carefully considered the scope of the authority provided by ValidPath to WCFM by means of the appointed representative agreement.

ValidPath says it sent WCFM an agreement for it to execute, but WCFM didn't return this and in turn it doesn't have a copy of a signed agreement.

Instead, ValidPath has provided a copy of an agreement which another of its ARs was subject to and said that the same terms applied to WCFM. I've seen nothing to indicate that might not be the case. I therefore consider it reasonable to accept this standard agreement as indicative of the appointed representative contract agreed between ValidPath and WCFM.

That contract set out the business for which ValidPath accepted responsibility. I've reviewed the agreement carefully. In short, my view is that ValidPath had accepted responsibility for the activities of WCFM that are the subject of Mr M's complaint. I'll explain my view below.

In so far as is relevant, the agreement provided that:

2. *The Company accepts responsibility for the activities of the Member carrying on investment business of the kind and for the purposes for which the Member is hereby appointed.*

3. *The Member hereby agrees to act as an agent on behalf of the Company in respect of the – Products (as defined herein) pursuant to the written Terms and Conditions and hereby confirms he/she has read and fully understood to the same Terms and Conditions.*

The functions of the member are defined as:

> *2.1 The member is appointed for the purpose of procuring or endeavouring to procure clients and prospective Clients to enter into Contracts and (for that purpose) giving advice to clients and prospective clients about entering into such Contracts.*

The relevant terms of the clause are defined as:

- ***Contracts*** are defined as *contract(s) for the Products entered into or to be entered into by the client with the Institutions.*

- ***Products*** are defined as *policies of assurance, annuity contracts, pensions plans or policies and such other products and services (including but without limitation critical illness and permanent health insurance policies) and term assurance policies as shall from time to time be dealt in by the Company subject (in the case of investment business) to the provisions of Schedule 3.*

- ***Institutions*** are defined as *any insurance or assurance company, life office, broker, unit trust manager, stockbroker, building society, bank, finance house or other financial institution.*

The member's duties are set out under clause 4:

> *"The Member and the Controller(s) shall have the following obligations to the Company and shall abide by and procure that Registered Individuals abide by the following rules and regulations:*
>
> - *the Member and the Controller(s) agree and covenant to carry on investment business activities strictly in accordance with paragraph 10, and Schedule 3 (see also FSA Scope of Permission)."*

Clause 10.2 limits the AR's activities:

> *"The Member shall limit its activities in relation to investment business and conduct and transact only those classes of investment in relation to which the Company has authorisation, as detailed in Schedule 3"*

Schedule 3 sets out that:

> *"In accordance with paragraphs 4.1 and 10 above, the Member, its Controller(s), Officers and Registered Individuals agree to partake in the following investment business activity only, for which the Company is authorised to transact by the FSA under its scope of permissions notice…"*

Schedule 3 states that the relevant 'Regulated Activity' is 'Advising on investments' and the 'Investment Types' are as follows:

- Certificates representing certain security
- Debenture
- Government and public security
- Life Policy
- Rights to or interests in investments (Contractually Based Investments)
- Rights to or interests in investments (Security)
- Share
- Stakeholder pension scheme
- Unit
- Warrant

It follows that in order for ValidPath to accept responsibility, the relevant activity by WCFM must be of a 'kind' for which WFCM was appointed and for a 'purpose' for which WCFM was appointed. Clause 2.1 explains the 'purpose' of the appointment, namely procuring clients 'to enter into Contracts and (for that purpose) giving advice to clients and prospective clients about entering into such Contracts'. It follows that any advice to actual or prospective clients about entering into a Contract that's directed towards procuring the client to enter into a Contract is within the AR agreement's 'purpose'. It's therefore important to establish what are, and aren't, 'Contracts' under the AR agreement and this turns on the definitions of 'contracts', 'institutions' and 'products' (above).

Contracts are defined within the AR agreement, as set out above, as *"contract(s) for the **Products** entered into or to be entered into by the client with the **Institutions"*** [my emphasis].

It's clear from Schedule 3 that permitted investment types included a 'unit'. A 'unit' is defined in the regulator's Handbook Glossary as units in a collective investment scheme (art 81 RAO), which, if it met the definition of a UCIS, would squarely cover the Stirling Mortimer investment. However, even if it doesn't meet the definition of a UCIS permitted investment types also include shares. As I've said above, Mr M purchased preference shares in the Stirling Mortimer fund.

An 'institution' is defined as including a 'financial institution'. This is further defined in the AR agreement, but it's given a broad definition generally and its meaning will depend on the context in which it is used. In this case, it seems fairly clear that a financial institution was intended to cover the range of institutions that might provide the type of investment contract permitted by Schedule 3. From this, it seems reasonable to say that either Heritage International Fund Managers Limited, as administrators of Stirling Mortimer Global Property Fund PCC Limited, or Stirling Mortimer itself would qualify as an 'institution' as required.

In its submissions to this service, ValidPath's referred to its product provider agencies. It says it didn't have an agency with Stirling Mortimer and that it was for ValidPath as the authorised firm to enter into agency agreements. ValidPath says that because it had no agency agreement with Stirling Mortimer – because WCFM hadn't followed the established process – this wasn't business for which it had accepted responsibility. The AR agreement didn't limit the institutions WCFM could deal with to those with which ValidPath had an agency agreement. I've carefully considered what ValidPath's said but I'm not persuaded that the terms of the AR agreement preclude WCFM from advising Mr M to invest in Stirling Mortimer or that this wasn't business for which it accepted responsibility.

All in all, in my view, advice to Mr M to invest in Stirling Mortimer is advice on investments in line with ValidPath's permissions as set out in Schedule 3 and there's nothing within the definitions of contracts, products or institutions respectively which would preclude this advice from being in line with the purpose and scope of WCFM's appointment.

Taking all of this into account, I think that by way of the AR agreement, ValidPath permitted WCFM to advise Mr M on its behalf on the merits of utilising a portion of his pension to invest in Stirling Mortimer.

The next question is whether there are any other provisions which may restrict the scope of that permission.

The Terms of Business

I note that the Terms of Business submitted by ValidPath as applicable between WCFM and Mr M provided that:

> *"Wealthwise Corporate Financial Management Ltd is permitted to arrange (bring about) deals in investments and advice on investments. The particular investment types relate to life assurance, pensions, investments in* ***authorised collective investment schemes****, Unit Trust PEPs and ISAs* [my emphasis]*."*

ValidPath originally said this meant that bringing about deals in *unauthorised* collective schemes was prohibited under the relevant terms of business. And, that even if Stirling Mortimer wasn't a collective investment, it maintains that, unregulated/unauthorised investments – such as Stirling Mortimer – weren't permitted under its Terms of Business provided to WCFM.

At the outset, I note of course that the Terms of Business were distinct from the appointed representative agreement. When signed they were agreed between WCFM and its client and were designed to set out the services and obligations offered by WCFM to its client. They were directed at the relationship between WCFM and its client. The appointed representative agreement on the other hand, was a contract that spoke to the obligations and duties in the relationship between WCFM and Validpath.

It follows that, because they were distinct agreements, the apparent restriction on the scope of the permissions (outlined above) will only have the effect ValidPath says it has if we can reasonably say that the restriction was *incorporated into* the AR agreement (if it isn't, then the restrictions in the Terms of Business will merely regulate the dealings between WCFM and Mr M and not between ValidPath and WCFM).

With this in mind, I note that the Terms of Business are referenced in the AR agreement, in that it specifies that these needed to be provided to every client in a timely manner, in the format prescribed by ValidPath and in compliance with the regulator's rules. Clause 4.4 reads:

> *"The Member shall conduct business with a client only on the Company's Terms of Business (which shall be supplied timeously to every client) in the format prescribed by the Company and in compliance with the FSA rules as amended from time to time."*

I've therefore considered whether that clause might have effectively incorporated the Terms of Business into the AR agreement.

Clause 4.4 appears to be directed at two matters:

(a) It requires that the client agreements entered into between WCFM and its clients shall be provided in good time on ValidPath's prescribed Terms of Business. It is in turn aimed at the establishment of the contract in the prescribed form – i.e. WCFM is only to use ValidPath's Terms of Business and must provide those to the client at an early stage. It doesn't seem to create a duty owed by WCFM to ValidPath to comply with the provisions contained in that form.

(b) It requires that in conducting business with clients, WCFM must comply with FSA Rules.

Neither of those matters specifically concerns either the kinds of products that can be sold or the purpose for which they can be sold. Given that those matters are both the subject of very specific delimitation in the AR agreement and Schedule 3, it seems doubtful to me that Clause 4.4 is intended to impact them. If that were the case, I would expect to see clear language to that effect. I recognise that ValidPath's interpretation might be implied from the words 'shall conduct business with a client only on the Company's Terms of Business', but I consider the plain, sensible interpretation is that the clause is aimed at compliance with the *form* and *timing* of the Terms of Business and not with the scope of responsibility, which is more clearly expressed with some particularity in Schedule 3 of the AR agreement.

In making this point, I also note that in any event, the relevant clause under 'our Services' in the Terms of Business, which tells the client the particular investment types to which WCFM's arranging and advice will relate, appears to me to be informational, rather than prescriptive and binding on WCFM – i.e. it can more readily be interpreted as an informal summary for the client of the 'kinds' of products identified in the AR agreement. It doesn't have the force of an operative contractual condition that prohibits WCFM from giving the customer other kinds of advice.

The Terms of Business also set out that:

> *"With regard to investments which we have arranged for you, these will not be kept under review but we will advise you upon your request. However, at our discretion, and unless we hear from you to the contrary, we may contact you in the future without your prior consent should we wish to discuss the relative merits of an investment or service we feel may be of interest to you. Any telephone contact will be between the hours of 9.00am to 9.00pm. In some circumstances, we may recommend an unregulated contract such as an unregulated collective investment scheme: separate terms apply to such business."*

The terms of business do make reference to unregulated contracts but ValidPath, when asked about this, said that as denoted separate terms of business would apply to these and WCFM never requested these be provided to it.

In any case, I tend to think that if there were any conflict between the AR agreement and Terms of Business as to the scope of the former, I would expect the AR agreement's terms and conditions to be definitive rather than the more informational terms in the Terms of Business, as they are specifically and clearly aimed at establishing the permitted kinds of products.

All in all, it's my view that the scope of the permissions is confined to the relevant provisions in the AR agreement and that the meaning of those provisions isn't affected by the operation of the Terms of Business, which regulates the relationship between WCFM and the client and in doing so, merely provides information about the type of investments that may be recommended to them.

Compliance breaches

ValidPath's also argued that a number of its internal processes hadn't been followed by WCFM when conducting the activities in question, and that in turn the activities fell outside the scope of its accepted responsibility. However, I should make it clear that a failure to follow a requirement that regulates the manner in which an authorised activity is conducted doesn't necessarily put that activity outside the operation of s39 (as an activity for which the principal firm didn't accept responsibility).

I accept that there are processes that WCFM didn't follow when transacting the relevant business for Mr M. For example, it didn't complete the appropriate paperwork and the business wasn't reported to ValidPath. In my view these requirements are standards to be met in respect of how an AR should go about undertaking business on behalf of ValidPath rather than effective restrictions on the type of business they can undertake.

Failure to follow such processes in this instance doesn't mean that ValidPath isn't responsible for the advice complained about. In *Anderson v SenseNetwork* [2018] EWHC 2834, in the High Court decision that was later upheld by the Court of Appeal, the judge said that:

> *"139. I … agree with the Claimants that the authorities indicate that it is appropriate to take a broad approach when seeking to identify the "business for which he has accepted responsibility".* ***The fact that there may not be actual authority for a particular transaction, for example because of breach of an obligation not to offer an inducement (Ovcharenko), or because there was no authority to advise on a related transaction (TenetConnect), or because certain duties needed to be fulfilled before a product was offered, does not mean that the transaction in question falls outside the scope of the relevant "business" for which responsibility is taken*** [my emphasis]. *Equally, the approach must not be so broad that it becomes divorced from the terms of the very AR agreement relied upon in support of the case that the principal has accepted responsibility for the business in question."*

Taking everything into account, I'm of the view that WCFM's failure to follow certain procedures doesn't alter the effect of s39 in this case and I'm satisfied that we can consider Mr M's complaint against ValidPath.

I've taken into account everything ValidPath has submitted about WCFM's behaviour – and it's clear that there have been problems in the relationship – but, I'm satisfied that this doesn't mean that ValidPath isn't responsible for its former AR's activities which are the subject of this complaint. Having concluded that this is a complaint we can consider, I've gone on to consider the merits of the complaint.

Merits of the complaint

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

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

WCFM was required to follow the relevant rules set out by the regulator. These include the overarching Principles for Businesses – principles 1 (*integrity*), 2 (*due skill, care and diligence*), 6 (*customers' interests*) and 9 (*reasonable care)* are of particular relevance here.

Amongst other things, to fulfil its duties WCFM had to know its client, act in his best interests and give suitable advice.

As I've mentioned on a number of occasions, there isn't a lot of paperwork from the point of sale. Based on what I have seen I'm not persuaded that WCFM gathered enough information about Mr M's circumstances and knowledge to satisfy the above requirements.

Mr M says it was his understanding that the Stirling Mortimer investment was relatively low risk – that wasn't the case.

Mr M says the Stirling Mortimer investment involved a greater degree of risk than he was willing to accept and in his complaint form, he described his attitude to risk as "balanced". This is broadly consistent with the "Investment Management Agreement" he appears to have signed for Sanlam in 2008 that records his attitude to risk as "medium/high".

But the Stirling Mortimer investment was an esoteric, high-risk investment. The fact it was an unregulated investment also meant Mr M wouldn't be covered by the Financial Services Compensation Scheme (FSCS) if it failed. While the evidence indicates Mr M was willing to accept some risk with the money in his SIPP, I don't believe he was a particularly knowledgeable or sophisticated investor who should have been advised to put funds from within his pension into an investment of this type.

Taking everything into account, I think the Stirling Mortimer investment was unsuitable for Mr M and that he shouldn't have been advised to make it. It's for this reason that I uphold his complaint.

It hasn't been suggested that Mr M was an insistent client or that he was otherwise likely to go against suitable advice from his adviser. But, for the sake of completeness, I've considered this – and, I haven't seen anything that would lead me to conclude that Mr M was likely to disregard suitable advice. I find that Mr M wouldn't have invested in Stirling Mortimer had suitable advice been given by WCFM.

Under the circumstances, I find that it's fair and reasonable for ValidPath to compensate Mr M for the financial losses he's suffered as a result of the unsuitable advice to invest in Stirling Mortimer. In addition to the financial loss established, I think that the loss of a significant amount of his pension provision caused Mr M much distress and inconvenience and that ValidPath should compensate him for this.

Putting things right

My aim is that Mr M should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

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

What must ValidPath do?

To compensate Mr M fairly, ValidPath must:

- Compare the performance of Mr M's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value there is a loss and compensation is payable.

- ValidPath should add interest as set out below:

- ValidPath should pay into Mr M's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If ValidPath is unable to pay the total amount into Mr M's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr M won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age.

- For example, if Mr M is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr M would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mr M £500 for the distress and inconvenience caused by the loss of a substantial sum from his pension provision.

Income tax may be payable on any interest paid. If ValidPath deducts income tax from the interest it should tell Mr M how much has been taken off. ValidPath should give Mr M a tax deduction certificate in respect of interest if Mr M asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Stirling Mortimer Investment	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28

					days of the business receiving the complainant's acceptance)

Actual value

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

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. ValidPath should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount ValidPath pays should be included in the actual value before compensation is calculated.

If ValidPath is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. ValidPath may require that Mr M provides an undertaking to pay ValidPath any amount he may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. ValidPath will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Stirling Mortimer 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 is a large number of regular payments, to keep calculations simpler, I'll accept if ValidPath totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr M wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr M's circumstances and risk attitude.

My final decision

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

ValidPath Limited should provide details of its calculation to Mr M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 April 2022.

Nicola Curnow
Ombudsman