

The complaint

Mrs K complains that Spectrum Financial Planning (“Spectrum”) recommended an investment in a property fund that was unsuitable for her.

Mrs K is represented by Mr C, who is authorised to act on her behalf. For ease of reference, I will refer to Mrs K as the one bringing the complaint throughout this decision.

What happened

Mrs K was introduced to Spectrum by her financial adviser (Mr S) in 2007 and signed a ‘terms of business’ document with them in April of that year.

In April 2007 Mr S, on behalf of Spectrum, advised Mrs K about her investments. She was advised to invest £100,000 in a collective redemption bond (“the bond”) with £75,000 of that to be invested in the Premier Portfolio Diversified Property Fund (“the fund”). It is the advice to invest in the fund that is the subject of this complaint.

Mr S stopped working with Spectrum in August 2007 and from November 2007 responsibility for Mrs K’s affairs transferred with Mr S to a new provider (“company M”).

The value of the fund fell sharply at the time of the global financial crisis in 2008 and the fund was gated in October of that year, placing restrictions on any withdrawals. The fund was suspended in 2016 and in 2019 the notional value of Mrs K’s investment was £2,465.

This complaint was made on Mrs K’s behalf following a report on her investments. That report was commissioned by the deputies for her property and financial affairs appointed in March 2018 by the Court of Protection after they had obtained details of Mrs K’s investments from Mr S. Mrs K’s complaint is that the advice to invest in the fund was not suitable for her needs.

In response to Mrs K’s complaint, Spectrum said:

- At the time of the advice the fund was a suitable recommendation for Mrs K. It helped to diversify her holdings and was only a small part of her portfolio. To the extent that there were issues with suitability, these only arose in 2008 and came as a consequence of the global financial crisis.
- Responsibility for the advice lay with Mr S rather than Spectrum. Given that Mr S was responsible for the client relationship with Mrs K and recommended the fund to her, he should bear responsibility. Spectrum simply processed the business and their involvement only lasted for a period of four months.
- The fund had a history of performing well from December 2002 to June 2007. The only fault lies with the failure to have reassessed Mrs K’s holding in 2008, against a worsening financial situation. Mr S, and company M, failed to move Mrs K’s money out of the fund in 2008 despite having had the opportunity to do so. It is this failure that is entirely causative of the losses she suffered. Spectrum wrote to Mrs K in September

2007 when Mr S left offering to meet her. Had she agreed to do so, Spectrum would have rebalanced her portfolio at that time.

When the complaint was brought to our service Spectrum argued that it had been made out of time. One of our ombudsmen considered Spectrum's objections and decided in May 2023 that the complaint was one our service could investigate.

Our investigator looked into the merits of Mrs K's complaint and thought it should be upheld. In summary, her findings were:

- Mrs K appeared to have a balanced attitude to risk. The bond was invested entirely in commercial property, placing 100% of the amount invested in a single asset class. She thought that by investing her money in that way Mrs K was being advised to take too much risk.
- Mrs K was advised to invest in offshore funds, in an offshore wrapper, that wouldn't benefit from the protection of the UK financial system. That made the bond a high risk product and exposed Mrs K to more risk than she should have been advised to take.

Mrs K agreed with our investigator's findings. She said she was a vulnerable widow totally reliant on Mr S for advice. The fund was an Unregulated Collective Investment Scheme (UCIS) which should generally only be marketed to specialist or professional investors.

Spectrum disagreed with our investigator's findings. They said, in summary:

- We should only look at Mrs K's investment in the fund and not the other investments made within the bond wrapper. Our service has already found against company M in respect of a complaint about the bond and Mrs K has been compensated for the period from 2016 onwards. Any liability for Spectrum should not extend beyond 2016 and ought to be limited to the period for which they held agency for the bond.
- Our investigator had incorrectly concluded that the majority of Mrs K's assets were held in property funds. The fund represented only 14% of Mrs K's overall portfolio. Her assets were spread over a number of asset classes - £250,000 in interest bearing savings and cash, £170,000 in equity based funds and £100,000 in property funds following the advice. That was a balanced portfolio that overall offered a moderate level of risk, which is what she wanted.
- Mrs K had a secure, escalating income of around £33,000 per annum. That justified her taking some risk with a proportion of her portfolio.
- Our investigator had wrongly assessed the level of risk associated with the fund in 2007. At that time, property funds were generally not considered to be high risk or volatile. They were considered low to medium risk by professionals within the industry.
- The offshore bond was a tax efficient wrapper that could hold independent investment funds. Mrs K was living abroad and so the offshore wrapper was suitable for her for tax purposes. No losses flow from the investment in the fund having been held offshore.
- Company M had custody of Mrs K's investments from November 2007. That company was required to review Mrs K's investments and should have disinvested from the fund in 2008 following the unprecedented shocks to the market during the financial crisis. At most, Spectrum's liability should be limited to the period June 2007 to November 2007 when agency transferred to company M. Spectrum's action was not causative of any loss

suffered, the loss was caused by company M failing to advise Mrs K to disinvest when the economic outlook worsened. The losses were caused by the financial crisis of 2008, which was unforeseeable in 2007.

As Spectrum disagreed with our investigator, the complaint was passed to me for a final decision.

My provisional decision

I gave my provisional decision in November 2023. I said that I had concentrated my findings on what I considered to be the key factors in reaching a fair and reasonable outcome to this complaint. My provisional findings on the key issues are set out below.

Were Spectrum responsible for the advice?

Mrs K signed Spectrum's "terms of business" letter in April 2007. That gave Spectrum authority to act on Mrs K's behalf in advising her on investment products. Mr S's advice to Mrs K about the fund and bond was presented to her on Spectrum headed paper. I was therefore satisfied that in giving the advice Mr S was acting on behalf of Spectrum and that Spectrum were responsible for that advice.

Was the advice suitable?

I stressed that I was not looking at the advice given to Mrs K with the benefit of hindsight. Just because an investment performed badly does not mean it was unsuitable; the key point I was considering was whether the fund was a suitable investment for Mrs K at the time she was given the advice.

Before giving advice, Spectrum should have considered Mrs K's financial situation, her knowledge and experience of investing, and her investment objectives. That would include taking account of her attitude to risk, her purpose in investing, and how long she wanted to invest for. Spectrum should also have made sure they communicated information to Mrs K in a way which was clear, fair and not misleading.

Mr S had been advising Mrs K and her husband since the 1990s and so I thought it was likely he would have been familiar with Mrs K's circumstances and financial situation.

Mr S's advice in April 2007 was set out in a 'justification report' document. At the time of the advice, Mrs K was in her late 60s, a widow and living abroad. Her income came from her UK based pensions and investments and, according to Mr S's report, was adequate to meet her needs.

Mr S's report said that Mrs K had an equity investment portfolio valued at £170,000 and £250,000 in interest bearing savings and cash reserves – a total of £320,000 of investable assets. Mrs K also owned her property which was worth £500,000 and mortgage free.

The report said that Mrs K was looking to reinvest £100,000 of her savings and cash reserves into an equity based investment for tax efficient growth and potential income above that available from bank and building society accounts.

In relation to risk, Mr S's report said that Mrs K wanted "to move towards an 80% balanced to 20% adventurous position with this proportional amount." It seemed that represented a change in Mrs K's attitude to risk. In a fact find carried out in 2005 Mrs K's attitude to risk had been described as "15% cautious, 70% balanced and 15% adventurous."

The report described a balanced investor as someone who was “fairly conservative but will accept a reasonable level of risk”. Mr S also said the following of Mrs K’s attitude to risk:

“However, what we can say with certainty is that you are not now naturally speculative, and you do not want to be exposed to the possibility of long-term loss through either failure of the investment fund itself, or the failure of economic and investment conditions externally.”

Mr S recommended that Mrs K invest the £100,000 into the bond. His report said that he was recommending the bond to maximise tax efficiency and in pursuit of the diversification of Mrs K’s portfolio, thereby reducing investment volatility and risk to particular investment sectors.

Mr S went on to recommend that 75% of the £100,000 be invested in the fund with 25% split across two other investments. He said the objective of the fund was to provide investors with “low volatile capital growth over medium to long term by investing in a diversified portfolio of secure property assets without the need to purchase and manage property directly.” The other two investments were described as having a more adventurous profile.

Mr S’s report didn’t provide much more information about the fund, and I’d not seen copies of any other documents that might have been provided to Mrs K at the time. I understood however that the fund was a UCIS which invested in a portfolio of commercial properties.

In their submissions to our service Spectrum had noted that the Financial Service and Markets Act 2000 (FSMA) had cautioned the use of UCIS for unqualified, inexperienced investors. They said that the revised Conduct of Business rules (COBS) about UCIS were not published until late 2007, after Mrs K had invested and by which point Spectrum no longer had authority to act for her.

I noted that, in line with what Spectrum had said, Section 238 of FSMA prohibited authorised firms from promoting UCIS except where certain exemptions applied. The FSMA 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 permitted promotion to certain individuals, including certified high net worth individuals, certified sophisticated investors and self-certified sophisticated investors. I’d not seen any evidence that Mr S took any steps to obtain any of the certifications for Mrs K and I didn’t think she could have been viewed as a sophisticated investor.

Spectrum had provided information to show that the fund was a high performing and low volatility investment at the time Mrs K invested. They said that, despite the protections that were in place around the promotion of UCIS, the fund was therefore a suitable investment for Mrs K. I thought carefully about what Spectrum had said, but I wasn’t satisfied that Mr S’s advice was suitable for Mrs K.

A UCIS was widely considered to be a higher risk investment and legislation had cautioned the promotion of UCIS to unqualified, inexperienced investors. I’d seen no reference in Mr S’s advice to the fact that the fund was a UCIS or to the lack of restrictions and protections that applied to such a scheme. They were not regulated, and investors had no access to the Financial Services Compensation Scheme.

Given what I’d said about Mrs K’s attitude to risk and her desire not to be exposed to the possibility of long-term loss, I didn’t think the fund was a suitable investment for her. It was recommended to her as a low volatility investment without taking account of the fact it was a UCIS.

Mrs K was advised to invest £75,000 out of her total assets of £320,000 in the fund. So about 23% of all her investable assets were being put in a UCIS focused on the commercial property sector. A further £25,000 (8%) was to be invested in what were described as more adventurous products. Mrs K had an existing equity portfolio of £170,000, so over half of her investable assets were already in equities and at risk of capital loss.

By investing £75,000 in a UCIS I thought Mrs K was exposing too much of her money to a high level of risk. Although Mrs K was receiving some income, I'd not seen evidence that she had the capacity to recoup any losses she might face from a high risk UCIS investment, particularly as a significant proportion of her assets were already exposed to the risk of capital loss. I didn't therefore think the advice was suitable and was also not persuaded that the level of risk she was taking was brought sufficiently to her attention.

If Mrs K had understood the extent of her overall exposure to risk, I thought she would have concluded that the fund would expose her to more risk than she wanted to take. And if she had been given suitable advice, I thought she would most likely have invested differently. I said that I had therefore decided to uphold Mrs K's complaint.

Extent of Spectrum's responsibility

Mr S's advice to invest in the fund was given in April 2007 and Spectrum had said that the fund was purchased for Mrs K's bond on 1 August 2007.

Spectrum had said that Mr S resigned from his role with them with effect from 29 August 2007. They wrote to Mrs K in September 2007 to confirm Mr S's resignation and said he would be in touch to transfer her affairs to a new business. The letter added that, if for whatever reason a transfer did not take place, Spectrum would continue to look after Mrs K's affairs. I understood that responsibility for Mrs K's affairs transferred to company M on 13 November 2007.

Spectrum said the global financial situation deteriorated significantly in the year between the transfer of Mrs K's affairs and the gating of the fund in October 2008. They said that events in that period should have led company M to switch Mrs K out of the fund, as they did with the two other investments in the bond, to minimise her losses. Spectrum said they would have advised Mrs K to withdraw from the fund if they had retained responsibility for her affairs. They said that they should therefore only be liable for the losses Mrs K suffered up to November 2007.

I considered carefully what Spectrum had said in deciding what it would be fair and reasonable to tell them to do to compensate Mrs K for the unsuitable advice she was given. I made clear again that I was not looking at that question with the benefit of hindsight and what we know now about the performance of the fund.

I noted that Spectrum had said they would have conducted regular reviews of Mrs K's investments. However, I noted too that the terms of business agreed between Spectrum and Mrs K said, "with regard to investments we have arranged for you, these will not be kept under review unless we have been specifically asked to do so by you." So, I said I couldn't be sure at what point Spectrum would have conducted a review of Mrs K's investments if she had remained their customer.

The fund would have been considered a longer term investment and I noted that Mr S's initial advice had said that encashment should always be avoided in the short term. Mrs K had held the fund for just over a year before it was gated, and restrictions placed on withdrawals. Although events leading up to the global financial crisis were developing over that period, and the fund did fall in value, I wasn't persuaded that either Spectrum or any

other provider would necessarily have advised Mrs K that she should disinvest from a fund that she had held for such a short period.

By giving her unsuitable advice, Spectrum were responsible for Mrs K being invested in the fund. And overall, I didn't think I'd seen enough evidence to say that anyone other than Spectrum should be held responsible for Mrs K being invested in the fund at the time it was gated and for the losses she suffered (except for any losses in the period referred to in the next paragraph).

I said I was not looking in my decision at the actions of company M or any other third party. Our service had previously considered a complaint from Mrs K about company M. Our investigator found that company M were responsible for any losses Mrs K suffered from 1 August 2016 when her circumstances changed significantly due to her declining health.

Based on everything I'd seen, I thought it would be fair and reasonable for Spectrum to compensate Mrs K for the losses she had suffered as a result of being invested in the fund, from the date she invested up until 31 July 2016.

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

I set out how Spectrum should compensate Mrs K based on a comparison of the performance of her investment with a benchmark that I thought was a reasonable measure of comparison given Mrs K's circumstances, objectives and attitude to risk at the time she invested.

Responses to my provisional decision

Mrs K was satisfied with my provisional decision and didn't provide any comments or further information.

Spectrum did not accept my provisional decision. They said the decision making process of the ombudsman service was flawed and that responsibility for the losses suffered by Mrs K does not sit with them.

In their summary Spectrum said that Mrs K's complaint is based upon two points: that the advice provided at the point of sale was wrong and that Spectrum should be held responsible for the collapse of the fund in 2008. They say they have clearly demonstrated with hard facts and supporting views that this was not the case in the first instance, nor could it have been the case in the second.

Spectrum have said they assume the decision to uphold the complaint has been made with the 'wisdom of hindsight' and any facts deemed contrary to the hindsight methodology simply disregarded. The hindsight arguments of the complainant should be balanced against the facts of the matter available at the point of sale submitted by Spectrum.

On the suitability of the advice given to Mrs K, Spectrum offered the following more detailed comments:

- At the time of the advice Mrs K had a secure, escalating income from her pensions of £33,000 a year, which was higher than the average UK salary. She had £170,000 in equities, £250,000 in cash, had no debts and was not financially vulnerable in any sense of the word.

- The fact that the fund was a UCIS did not of itself make it inherently risky or unsafe, it simply meant that the investment was unregulated in the UK. To hold that the investment was unsuitable based on a regulatory categorisation is an unfair and inaccurate generalisation. The fact that an investment is regulated is no guarantee of it being either low volatility or low risk.
- They have provided contemporary evidence confirming that the volatility rating of the fund was significantly below that of equities. The fund had over five years of consistent and reliable performance statistics at the point of sale and by reference to the quoted performance statistics for both the fund itself and the property market sector as a whole, the fund did not reflect any higher level of risk than property funds generally. It was not designed to generate high performance returns, rather a predictable and consistent income stream.
- The only conclusion that can be reached based on the information available at the time they had agency for the investment is that the fund was low volatility, low risk and perfectly acceptable as part of a balanced portfolio.

On the collapse of the fund and the extent of Spectrum's responsibility for Mrs K's losses, Spectrum said:

- The fund did not, in and of itself, fail. They quoted the ombudsman who decided (in May 2023) that Mrs K's complaint was one our service could investigate and said in his decision:
 - "The investigator said the collapse of the Premier fund was due to the financial crisis of 2008"; and
 - "As I have said, the volatility of the (Premier) fund following the financial crash of 2008 wasn't surprising."
- It was the external degradation of the fund's asset class during the course of 2008 that, as the ombudsman confirmed in May 2023, precipitated the collapse of the fund, along with virtually every other property fund available to the retail investor. At the time of the point of sale in May/June 2007, no one could have been expected to foresee the events that took place 15 months later.
- The fact that the 2008 crash and the impact it had on property investments were not reasonably foreseeable means an IFA giving advice in 2007 should not be held accountable for consequences that ensued solely as a result of the crash.
- Spectrum has been made entirely responsible for a fund over which it had no control or access from September 2007. The fund was subsequently badly managed by the firm that assumed control and who have subsequently accepted liability for their mismanagement.
- The provisional decision absolves company M of responsibility for the losses Mrs K suffered despite their having had agency of the investment for around a year prior to it being gated. The red flags in the wider economy during 2008 would have given any reasonable financial adviser concerns about the investment market and property funds in particular. Company M should have advised Mrs K to sell the fund in 2008 along with other property funds in the bond. It was not within Spectrum's power to advise Mrs K in 2008 and it is neither fair nor reasonable to hold them responsible for company M's failure to do so.
- Correspondence on file confirms Spectrum's efforts to maintain monitoring and review

of Mrs K's investments but she declined to respond and there was nothing more they could have done. To disregard this fact is glaringly unfair.

- While remaining of the view that they should not have to pay any redress to Mrs K, Spectrum commented that any compensation should be proportionate to their responsibility. They also said that the proposed award of interest of 8% per year on Mrs K's loss from July 2016 to the date of settlement was unjustified and unnecessarily punitive given that base rates were so low for much of that period.

What I've decided – and why

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

I've looked carefully at all the information provided by both parties, including Spectrum's detailed response to my provisional decision. I've concentrated my findings on what I consider to be the key factors in reaching a fair and reasonable outcome.

Was the advice suitable?

For the avoidance of doubt, I would like to stress again that I'm not looking at the advice given to Mrs K with the benefit of hindsight. I accept that Spectrum could not have foreseen the global financial crisis or the collapse of the fund itself. The key point I need to determine is whether the fund was a suitable investment for Mrs K at the time she was given the advice.

Mrs K's circumstances, investment aims and attitude to risk are not in dispute. She could rely on a healthy income from her pensions, was not financially vulnerable and had some experience of making investments. It is clear that Mrs K was prepared to accept some risk: her attitude to risk was described as 80% balanced and 20% adventurous, but Mr S said she did not want to be exposed to the possibility of long-term loss.

Spectrum maintain that the fund was low volatility, low risk and perfectly acceptable as part of a balanced portfolio suitable for Mrs K. They have provided evidence that the fund had five years of consistent and reliable performance and that its volatility rating was significantly below that of equities.

I've considered what Spectrum have said but I think the data they have referred to is mainly about the performance of the fund. And I don't agree that performance considerations are directly relevant to determining the suitability of the fund for Mrs K.

As I set out in my provisional decision, the fund was a UCIS. There is the risk of significant, even total, loss of the investment in a UCIS and legislation prohibited authorised firms from promoting them except where certain exemptions applied. Although Mrs K had some investment experience, she was an 'ordinary' investor and not someone who could have been viewed as either a high net worth individual or a sophisticated investor.

The adviser should have been aware that a UCIS was widely considered to be a high risk investment and one which should, generally speaking, only have been marketed to sophisticated or professional investors. The performance of the fund prior to it being recommended to Mrs K does not change my finding that it was not fair and reasonable for Spectrum to recommend it as a suitable investment for Mrs K.

In making my finding, I have also taken account of the fact that over half of Mrs K's investable assets were already invested in equities and at risk of capital loss. By investing

£75,000 of her remaining money in a UCIS I think her overall portfolio was being exposed to more risk than she wanted to take, and I've not seen evidence that she had sufficient capacity to recoup any losses she might face.

Spectrum also had an obligation to provide Mrs K with information that was clear, fair and not misleading. I'm not persuaded that they provided Mrs K with clear information about the fund, including that it was a UCIS, or that the level of risk she was taking was brought sufficiently to her attention.

If Mrs K had understood the extent of her overall exposure to risk, I think she would have concluded that the fund would expose her to more risk than she wanted to take. And if she had been given suitable advice, I think she would most likely have invested differently. I have therefore decided to uphold Mrs K's complaint and will now look again at what Spectrum should do to put things right.

Extent of Spectrum's responsibility

To be clear, I am not looking in this decision at where responsibility lies for the collapse of the fund, although it is apparent that the financial crash was a significant factor. Spectrum were not responsible for the fund's performance and could not have foreseen what would happen to Mrs K's investment.

What I am looking at – having found that Spectrum's advice to Mrs K was not suitable – is whether they should be responsible for her losses as a result of being invested in the fund.

When our service finds that a business has made a mistake, our approach is to consider what should have happened if nothing had gone wrong. In this case, I have found that if Mrs K had been given suitable advice she would most likely have invested differently. I think my aim should therefore be, as far as possible, to put Mrs K in the position she would probably now be in if she had not been given unsuitable advice. That is what the compensation award I set out in my provisional decision was intended to do.

In response to my provisional decision, Spectrum have said I have absolved company M of responsibility for the losses Mrs K suffered despite their having had agency of her investments for around a year before the fund was gated. Spectrum say it isn't fair and reasonable to hold them responsible for company M's failure to advise Mrs K to sell the fund in 2008.

I've considered carefully everything Spectrum have said on this point, including about events leading up to the global financial crisis, but I have come to the same conclusion as I set out in my provisional decision.

Spectrum's advice, which as per their terms of business with Mrs K appears to have been given on a one off basis, was to invest in the fund for the long term. Mr S's report advised "taking a minimum of a five to six year" view for the investments he recommended and said that encashment should always be avoided in the short term. There's no suggestion that Mrs K's investment in the fund was a short term proposition or that it was something that would be subject to regular review. I'm not persuaded therefore, because of the advice Spectrum gave when Mrs K invested in the fund, that Mrs K is likely to have had it reviewed before it was gated, and restrictions placed on withdrawals.

By giving her unsuitable advice in April 2007, Spectrum were responsible for Mrs K being invested in the fund. But for that advice, I think Mrs K would have made investments that were suitable for her needs. And overall, I've not seen enough evidence to say that anyone other than Spectrum should be held responsible for Mrs K being invested in the fund at the

time it was gated and for the losses she suffered as a result (except for any losses she suffered from August 2016 when her circumstances changed significantly due to her declining health).

I note what Spectrum have said about the impact of such an award but, based on everything I've seen, I think it would be fair and reasonable for them to compensate Mrs K for the losses she has suffered as a result of being invested in the fund, from the date she invested up until 31 July 2016.

In response to my provisional decision, Spectrum said that the award of interest of 8% per year on Mrs K's loss from 31 July 2016 to the date of settlement was unjustified and unnecessarily punitive given that base rates were so low for much of that period. The payment of interest on top of an award is to compensate a consumer for being "deprived" of the use of the amount awarded. In most cases, we can't be sure what the cost has been to a consumer of money not being available to them and a rate of 8% simple interest per year is appropriate compensation. And based on the evidence I've seen I think that is fair and reasonable in Mrs K's case.

Putting things right

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

I take the view that Mrs K 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 K's circumstances and objectives when she invested.

What must Spectrum do?

To compensate Mrs K fairly, Spectrum must:

- Compare the performance of Mrs K's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Spectrum should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Premier Portfolio Diversified Property Fund	No longer exists	FTSE UK Private Investors Income Total Return Index	Date of investment	31 July 2016	8% simple per year on any loss from the end date to the date of settlement

Actual value

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

Fair value

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

Any withdrawal, income or other distributions paid out of the investments 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 Spectrum totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs K 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 a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- 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 Mrs K's circumstances and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend the business to pay the balance.

Spectrum Financial Planning should provide details of its calculation to Mrs K in a clear, simple format.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Spectrum Financial Planning pays Mrs K the balance plus any interest on that amount as set out above.

This recommendation is not part of my determination or award. It does not bind Spectrum Financial Planning. It is unlikely that Mrs K can accept my decision and go to court to ask for the balance. Mrs K may want to consider getting independent legal advice before deciding whether to accept this decision.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Spectrum Financial Planning

should pay Mrs K the amount produced by that calculation – up to a maximum of £160,000 plus any interest set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 1 April 2024.

Matthew Young
Ombudsman