DRN-5145871

The complaint

Mrs C and the estate of Mr C, represented by Mrs P in her capacity as executor of the estate, complains that Mathews Comfort Financial Services Limited (MCF) gave Mrs C and the late Mr C unsuitable advice to invest in two Enterprise Investment Schemes (EIS).

What happened

The late Mr C and Mrs C were clients of MCF and in 2014 Mr C approached them for advice around how to mitigate potential capital gains tax (CGT). In 2015 when the gain was realised, he went back to MCF and they recommended an investment of £248,000 split equally between two schemes – the Octopus EIS and the Eureka EIS.

Mr C passed away in 2020 and during the process of settling his estate, Mrs P complained to MCF and said, in summary:

- The advice to invest in the two schemes was unsuitable as it left Mr and Mrs C too heavily exposed to stock markets
- They were given misleading information about the timescales to exit the schemes and the impact of fees
- They were pressured to make the investments quickly and weren't given enough time to fully reflect upon the advice or seek another opinion

MCF looked into the concerns that had been raised but didn't uphold the complaint. They thought that the recommendation was in line with Mr and Mrs C's attitude to risk (ATR). They noted that they'd had several meetings with Mr C, including a meeting with his accountant, and discussed the schemes in detail before they were put in place. They didn't think they'd applied any pressure to Mr and Mrs C to invest in the schemes or could be held responsible for the market conditions which had impacted the ability to surrender the Eureka scheme.

Mrs P didn't accept their findings and asked for our help. The matter was considered by one of our investigators who didn't think it should be upheld. She was of the opinion that Mr and Mrs C had sufficient investment experience to be able to understand the implications of the schemes which had been explained to them in detail before they were put in place.

She didn't think that the recommendation was outside of Mr and Mrs C's ATR. This was despite Mrs C's ATR not being recorded, but in the investigator's opinion, Mr C was acting on Mrs C's behalf and MCF had no reason to doubt this. She also thought they had been made aware that they might have to hold the investment for a significant period of time, withdrawals were dependent on the performance of the underlying investments and also of any applicable fees.

Mrs P didn't agree and made the following points:

- Mr C was not knowledgeable about investments and was completely dependent upon MCF for advice. He should have been told he was handing over complete control of his money to Octopus, unable to withdraw funds without their agreement. If he had known the true position, she was of the opinion he wouldn't have accepted the recommendation. MCF should have specifically pointed out this before the investment was made as Mr C was relying on their expertise to point out the cons as well as the pros.

- It was unacceptable that the written advice from MCF came six weeks after the money had been invested, far too late to be of any use in helping with the decision making.

- The investigator hadn't given the pressure to invest due consideration. Following a meeting with Octopus on 17 March 2015, MCF sent Mr and Mrs C an email on 18 March saying the fund would close on 20 March and that a £1,300,000 investment had been made into it. Mr and Mrs C made the investment on 19 March, and the written advice from MCF came far too late on 27 April.

- The investigator said that Mr and Mrs C did not object to the suitability letter. But at that time, they knew the money had already been invested so it was too late to object at that point. This further highlighted that the written advice should have been provided before the investment was made. It also gave misleading advice about the performance fee and didn't mention dealing fees that applied.

- The taxable gain was £248,000 but the actual tax payable would have been approximately £45,000. Mr and Mrs C would have been left with c.£200,000 cash after paying tax. Therefore, the investigator was incorrect in stating it was only the CGT that was invested into the EIS, in fact it was the entire proceeds of sale of a business Mr C had spent over 30 years building up which was a significant part of their retirement fund.

- The investigator had accepted MCF's assertion that Mr C had a *'highest medium risk'* tolerance, however this didn't align with the risk profiling report of 14 May 2014 which described him as a moderate risk taker.

- The EIS investments only left Mr and Mrs C with a few thousand pounds in cash. The rest was tied up in pensions and ISAs, largely in stocks and shares. Given their age, the advice should have been that this was a risky strategy, and a greater portion should have been placed in safer, more accessible accounts.

- The illiquid nature of the schemes wasn't explained, and the suitability report very much gave the impression withdrawal was possible and didn't mention they would be losing control of their money. Examples of this was where it was stated: *'Furthermore, any growth in the investment will not incur a capital gains tax liability if you withdraw your funds at any point'* and *'…you may be able to gradually withdraw funds from the investment to make use of your Capital Gains Tax annual exemptions.'*

- The Octopus brochure gave the misleading impression the worst-case scenario is several years to sell specific investments when the reality was an investor might not be able to access their funds at all.

The investigator considered the points that had been raised, but wasn't minded to change her opinion. She highlighted evidence MCF had provided which showed the CGT liability was £248,000. She didn't think Mr C wanted a low-risk option and pointed to meeting notes which said he '*wasn't that interested in the low risk option and preferred Eureka. He does* *understand risk as has always taken high risk with investments he would prefer this route.'*

She accepted the suitability letter hadn't been sent until after the investment had been put in place. However, she thought that Mr C had been put in an informed position due to the meetings and discussions he'd had with MCF prior to making the investment. She didn't agree that he'd been pressured into making the investment as MCF, in her opinion, had simply been making him aware of the deadline to invest as it was a closed-ended fund.

Mrs P noted the investigator's comments and made the following points:

- The schemes were briefly discussed in a meeting on 5 February 2015. At this point, MCF should have compiled an investment report incorporating the advantages and disadvantages for Mr and Mrs C to consider and digest. There was plenty of time before the investment was made on 19 March 2015 for this to be produced. The fact the advice report of 27 April 2015 was six weeks late does not appear to have been considered.

- The meetings very much focused on the positives of the schemes and the negatives were never covered. This was evidenced in MCF's email to Mr C dated 18 March 2015 which begins, '*Dear …., It was good to meet this week to discuss the EIS investments which was all very positive.' From the meeting notes of 17 March 2015, in relation to the EIS fund, they stated, '…. They use proven technology but do not expect to see much growth going forward. It really is a tax play with capital preservation.'*

- This fund had lost 50% of its value, completely against what Mr and Mrs C had been told. Nowhere was there any mention of the disadvantages being discussed, let alone the fact they would lose all control/access to their money.

- The notes from 17 March 2015 also stated, '*We also discussed selling some of the EIS investments to use up CGT allowances in the future and can be used to supplement income £22,000. This was appealing.*' This was another example of MCF setting the expectation of withdrawal being possible, and not explaining the true situation. It was therefore understandable why Mr C was keen as he'd only heard the positives. Had he known the true position he would never have invested.

- The agenda for the meeting on 5 February 2015 showed that the EIS was the 12th and final item, so it was unlikely much time was spent discussing the proposed investments. This is confirmed in MCF's follow up email which said: '*Our main discussions centred around the land sale, income generation and tax efficiency.'* It hardly mentioned EIS and did not mention disadvantages.

- There was no advice regarding the illiquid nature of the investments, the fact they would be handing over control of their money to Octopus - unable to withdraw at all. The report of 27 April gave the impression withdrawal would be possible within a reasonable timeframe. Mrs C now found herself in a position where she was unable to gain access to the funds at all and may never see a penny of the investment.

- Mr C and his former business partner had purchased the property from which they ran their business and over time had renovated and extended the building. When it was sold Mr and Mrs C had received half the proceeds. The CGT calculation from Mr and Mrs C's accountant showed that Mrs C's CGT liability in respect of the sale of the property was c.£30,000 and Mr C's was c.£15,000.

The investigator wasn't persuaded to change her opinion so the complaint was passed to me to decide. I recently issued a provisional decision where I said:

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

Having done so I think this complaint should be upheld and I will now explain why. In making their recommendation, MCF had a responsibility to make sure it was suitable for Mr and Mrs C. The information they then supplied to Mr and Mrs C about the recommendation needed to be fair, clear and not misleading.

With this in mind, I've firstly considered the information MCF obtained about Mr and Mrs C's circumstances at the time leading up to the advice. The fact find document they completed in 2014 showed that Mr and Mrs C were both in their mid-70s, owned their own house with no remaining mortgage, had a joint annual income from pensions and investments of c.£17,000 with annual expenditure of c.£30,000. Mr C was due to retire in a few months' time and he wanted advice on moving his investments and pensions to a new provider as his provider at the time wouldn't be able to continue their relationship with him in the near future.

He had around £270,000 in a SIPP from which he was looking to take around £18,000 per year to meet his expenditure needs. He and Mrs C had other investments mainly in collective investments and direct shares worth c.£230,000 and also £25,000 in cash savings and land valued at approximately £275,000. Mr C was noted as 'having a working practical knowledge about how investments work, and I have some prior experience in this area.' Mrs C was noted as having 'some knowledge of investments gained from reading the newspapers, and limited prior experience of investing.'

A risk profiling report was also completed in 2014. It was recorded as being for Mr and Mrs C, but it only appears to have been based on Mr C's responses, however the meeting notes show that Mrs C was present.

The outcome of the profiling was an assessment of a profile of 7 out of 10 – highest medium risk. This was summarised as 'Your priority is likely to be making higher returns on your investments but you are still probably concerned about losing money due to rises and falls. Your preferred investment portfolio will contain mainly higher-risk investments such as shares with fewer low-risk investments such as bonds.'

There was some discussion around their future needs. It was noted that Mr C was looking to drawdown a tax-free cash payment from his SIPP and needed to generate around £18,000 per annum in order to meet his and Mrs C's income needs. He wanted to use some of the drawn down funds to pay for a new kitchen and would invest the remainder in ISAs. He would also potentially withdraw a further £100,000 from the SIPP in order to purchase a property overseas. There was then some discussion around the sale of the land which Mr C's accountant had said would result in a potential tax bill of c.£75,000. MCF then discussed EIS with Mr and Mrs C as a way to negate the tax bill and said they would discuss it further with Mr C closer to the time of the sale.

It was noted that Mr C's investments were predominantly 100% equities which MCF thought was too high a risk and lacked diversification. However, Mr C said he was comfortable with risk and was happy to move to a moderately adventurous fund.

The talks progressed further in the February 2015 meeting. At this time, the land had been sold and Mr and Mrs C were receiving £137,500 each with a potential tax liability of £30,000 each. Mr C had no plans for his capital but needed to generate £4,000 per quarter for his expenditure needs.

The notes from the meeting say: 'We reviewed the land sale and my previous suggestion of using an EIS to defer CG Tax. Mr C is very interested in this and keen to move forward. I explained how they operate from a tax perspective, investment and risk. He is happy with the tax side, although Mrs C may not have income tax to reclaim. I need to find out from the accountant exactly what the taxable gain is as we will only commit this amount to the EIS. I gave him the EIS guide.

I discussed the possibility of using Octopus and why. He was happy with the and I explained the Eureka v EIS. He wasn't that interested in the low risk option and preferred Eureka. He does understand risk as has always taken high risk with investments HE would prefer this route. I need to email him the brochure as I didn't have one with me.'

There was a further meeting in March 2015 between Mr C, his accountant (R), MCF and a representative from Octopus (J) where further discussions about the EIS took place:

'We met to discuss the proposed EIS investments and the issues around that. R confirmed the chargeable gain is going to be circa £124K each. The property had an initial cost of £30K hence why this is so high, it includes the overage payment in 2017 which may change. R did not feel it would be much different at all. So we are looking at an investment of £248K if we would like to defer the full gain.

We discussed EIS in general and the tax incentives around these. There is some implications depending on the EIS selected which J has outlined. Of course, there will be little income tax relief. R does not believe Mr and Mrs C will pay much at all in the way of income tax, but possibly there could have been some for last year. We are of course making this investment for the CGT play and BPR.'

Another notable comment was: 'We also discussed selling some of the EIS investments to use up CGT allowances in the future and can be used to supplement income £22,000. This was appealing.'

A standalone EIS suitability report was produced and sent to Mr and Mrs C on 27 April 2015.

The report set out the objective behind the recommendation as:

'Your objectives at this time are to engage in a tax planning investment strategy to attempt to mitigate the capital gains tax liability that has arisen on the sale of land you own. In addition, you would also like to utilise an investment strategy that can provide shelter to your funds from inheritance tax.'

It went on to say:

'Why this recommendation is suitable tor you

- *You have a combined capital gain of £248,000 producing a taxable liability of £34,720 each which you will be able to defer by investing the gains in recognised EIS schemes.*
- *As long as you remain invested, the capital gains liability will be deferred and, if you hold the shares until death, the liability will be extinguished.*
- *Depending on performance and liquidity, you may be able to gradually withdraw funds from the investment to make use of each of your Capital Gains Tax annual exemptions. This will enable you to gradually reduce the overall liability you currently have.*

- *After holding the shares for two years, you will qualify for BPR and this will enable your investment to fall outside of your estate for inheritance tax purposes for as long as you hold the shares.*

- *Any investment growth attained in your shares will not be liable to capital gains tax.*

- *Mr C, you will be able to claim income tax relief on your income tax liabilities and although this will only equate to approximately £500, it is an additional tax benefit. Mrs C you do not have a liability to income tax and so you are unable to claim any relief.*

- *Spreading your investments between two EIS will hopefully diversify your investments and avoid having your funds overly exposed to one investment.*

Please be aware of the following possible disadvantages

- *Higher charges on the new plan (there are no explicit charges on deposit accounts, but this is reflected in the interest rates which are currently extremely low).*

- *No guarantee of returns.*

- *Additional risk; your cash holdings are only exposed to inflation risk, from low returns, but investments are subject to a range of market risks, as detailed in the appendices.*

- *Your investment must be held for a minimum period of 2 years to be eligible for business property relief*

- *This is a higher risk investment and is not covered by the Financial Services Compensation Scheme.'*

While Mr and Mrs C had some investment experience, I can't see that they had any experience of any type of venture capital scheme like an EIS, or any other type of higher risk investment. Their only investment experience was in mainstream products and while it isn't uncommon for an investor to agree to increase their risk level to gain benefits such as tax relief, that decision should be made on the basis of clear, fair and not misleading information.

This is particularly relevant when the increased risk level leads to an investment into a product that is widely considered to involve significant risk – as is the case with EIS. It is therefore crucial that MCF identified and clearly explained the risks to Mr and Mrs C. From what I've seen, the risk of significant losses wasn't sufficiently made clear to Mr and Mrs C. MCF put a lot of emphasis on the tax benefits of EIS and the potential to make a return, but not much on the high-risk nature of the schemes and the real risk of losing all of the capital sum.

I think this is further evidenced by the cash flow presentation MCF conducted with Mr C in March 2015. MCF looked at four main scenarios making the following assumptions RPI 3% p.a., CPI 2.5%, investment returns – Eureka EIS 7%, Octopus EIS 3%, General Investments (SIPP / ISA / GIA) 5.5%, residential property returns – 3%, savings growth rates – 3%. The four scenarios were:

1. Mr and Mrs C's position at the time without the land sale

2. *The position post-land sale, where the funds were put into an investment account*
3. *The position post-land sale, where the funds were invested into an EIS with CGT deferred*
4. *A version of 3 but assuming the EIS were to not perform as anticipated – the Eureka EIS reducing in value by 5% p.a. for as long as it was held and suffering a 35% loss in 2017*

The main benefit was shown to be in reducing inheritance tax (IHT) liability. But no projection can be guaranteed, and I note that there wasn't a scenario presented where both the schemes didn't perform as anticipated and the capital was depleted. The projection was also presented in a positive light with both schemes assuming a decent rate of return. I don't think that there was a fair comparison of simply paying the tax and investing in a suitable investment and looking at other strategies to mitigate IHT versus investing in the schemes where the risk involved was significant and could result in losing most or all of their investment.

I don't think Mr and Mrs C's capacity for loss was correctly considered. They had a need for income which was to be met by drawing down Mr C's SIPP, but it was also recorded that 'He is concerned about Mrs C, she has no pension plans so this is for her as much as him. The objective would be to pass the pot onto Mrs C who can then continue in her own right and make the appropriate decisions at that time. She does take medication for blood pressure and has a pace maker.'

So even though MCF recorded that 'You do not have any specific goals in mind for this investment and are happy to commit these funds for the long term in order to take advantage of the capital gains tax deferral benefits available. Even if the value of this investment were to decrease, you would be happy to leave the funds invested for the long term to recoup the losses and any short term declines in value would not impact on your lifestyle.' I don't think enough consideration was given to Mr and Mrs C's position if they lost a significant portion or all of the funds.

Taking both of these factors into account, I don't think Mr and Mrs C were given a suitable recommendation for their circumstances by MCF or were put in a fully informed position about the level of risk they were being advised to take. I'm not persuaded that the potential CGT or IHT benefits would have been more important to Mr and Mrs C than capital preservation considering their income deficit at the time of the advice. Therefore I think MCF needs to take action to put things right.'

Putting things right

Fair compensation

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

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

What should MCF do?

To compensate the estate of Mr C and Mrs C fairly, MCF must:

- *Compare the performance of each of Mrs and Mr C's investments with that of the benchmark shown below.*
- *A separate calculation should be carried out for the estate of Mr C and Mrs C and for each investment.*
- *MCF 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*
Octopus EIS	*Surrendered*	*FTSE UK Private Investors Income Total Return Index*	*Date of Investment*	*Date ceased to be held*	*8% simple per year on any loss from the end date to the date of settlement*
Eureka EIS	*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)*

For each investment:

Actual value

This means the actual amount paid or payable from the investment at the end date. If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the actual value is. In such a case the actual value should be assumed to be zero. This is provided the estate of Mr C and Mrs C agree to MCF taking ownership of the investment, if it wishes to. If it is not possible for MCF to take ownership, then it may request an undertaking from the estate of Mr C and Mrs C that they repay MCF any amount they may receive from the investment in future.

Fair value

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

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

Any withdrawal, income or other 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 MCF 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.*

I don't believe Mr and Mrs C received any tax rebates as a result of this investment – but if they did, those should be treated in the same manner as withdrawals for the purpose of this calculation.

Why is this remedy suitable?

I have chosen this method of compensation because:

- *Mrs and Mr C wanted Capital growth and were 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 and Mr C's circumstances and risk attitude.*

- *The additional interest is for being deprived of the use of any compensation money since the end date.*

Responses to my provisional decision

MCF didn't respond to my provisional decision. Mrs P responded on behalf of the estate of Mr C and Mrs C and accepted my findings. She also asked for me to consider additional compensation to reflect the time she's spent on the complaint and also for potential fees she might incur from an accountant in order to calculate the compensation.

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.

Having reconsidered all the available evidence and new submissions, I see no reason to depart from my provisional findings. I note the points made by Mrs P about the time she's spent on this complaint, but we don't generally make specific awards for time spent. Instead, we consider the overall impact a business's mistake has had on a complainant. The complainants in this case are the estate of Mr C and Mrs C.

From what I've seen, it has been Mrs P who has been caused inconvenience in trying to resolve the complaint, not Mrs C or the late Mr C. I am unable to make an award for the impact a representative or an executor of an estate has personally experienced, so I'm unable to compensate Mrs P for the impact she's experienced.

I also don't think I need to make an award for the costs of calculating the compensation. It is

MCF who will make the calculation so there should be no reason why Mrs C or the estate of Mr C needs to incur any further costs. Therefore, for the reasons I gave in my provisional decision, I think this complaint should be upheld and MCF needs to put things right as I've set out below.

Putting things right

Fair compensation

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

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

What should MCF do?

To compensate the estate of Mr C and Mrs C fairly, MCF must:

- Compare the performance of each of Mrs and Mr C's investments with that of the benchmark shown below.
- A separate calculation should be carried out for the estate of Mr C and Mrs C and for each investment.
- MCF 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
Octopus EIS	Surrendered	FTSE UK Private Investors Income Total Return Index	Date of Investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement
Eureka EIS	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)

For each investment:

Actual value

This means the actual amount paid or payable from the investment at the end date. If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the actual value is. In such a case the actual value should be assumed to be zero. This is provided the estate of Mr C and Mrs C agree to MCF taking ownership of the investment, if it wishes to. If it is not possible for MCF to take ownership, then it may request an undertaking from the estate of Mr C and Mrs C that they repay MCF any amount they may receive from the investment in future.

Fair value

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

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

Any withdrawal, income or other 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 MCF 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.

I don't believe Mr and Mrs C received any tax rebates as a result of this investment – but if they did, those should be treated in the same manner as withdrawals for the purpose of this calculation.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs and Mr C wanted Capital growth and were 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 and Mr C'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

My final decision is that I uphold this complaint.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £170,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £170,000, I may recommend that Mathews

Comfort Financial Services Limited pays the balance.

Mathews Comfort Financial Services Limited should provide details of their calculation to the Mrs C and the estate of Mr C in a clear, simple format.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My provisional decision is that Mathews Comfort Financial Services Limited should pay the amount produced by that calculation up to the maximum of £170,000 plus any interest set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £170,000, I recommend that Mathews Comfort Financial Services Limited pays the estate of Mr C and Mrs C the balance plus any interest on that amount as set out above.

If Mathews Comfort Financial Services Limited does not pay the full fair compensation, then any investment currently illiquid should be retained by the estate of Mr C and Mrs C. This is until any future benefit that she may receive from the investment together with the compensation paid by Mathews Comfort Financial Services Limited (excluding any interest) equates to the full fair compensation as set out above.

Mathews Comfort Financial Services Limited may request an undertaking from the estate of Mr C and Mrs C that either they repay to Mathews Comfort Financial Services Limited any amount they may receive from the investment thereafter or if possible, transfers the investment at that point.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs C and the estate of Mr C to accept or reject my decision before 12 December 2024.

Marc Purnell
Ombudsman