

## **complaint**

The complaint is about the advice given to Mr and Mrs K to invest in a Meteor Prima Plus Plan 2 ("Meteor") by Professional Wealth Management Ltd ("PWM"). Mr and Mrs K have said that:

- PWM unnecessarily put their capital at risk.
- They were not made aware that they could lose all of their capital with this investment or that it was a 'warrant'.
- The investment had a greater risk than their 'risk profiles'.
- They should have been fully informed about the counterparty, Lehman Brothers ("Lehmans"), the fall in its financial rating and the uncertainties it was facing.
- They say they would have cancelled the plan if they had been given that information.

## **background**

The background to this complaint is outlined in my provisional decision issued on 13 March 2014. A copy of this is attached and forms part of this final decision.

Mr and Mrs K responded and did not agree with my provisional decision. They said had they been made aware of the financial downgrade of Lehmans they would not have proceeded with the investment. In order to support this Mr K provided some further information about their circumstances, these were briefly as follows:

- He referred to his professional background and its relevance to his state of knowledge.
- Further he stated his work did not require him to have even the most basic knowledge of financial markets.
- His income in 2008 and 2009 was far lower than that stated earlier, it was around £80,000.
- Mr and Mrs K had invested before but they were not sophisticated investors and they did not want to take a risk.
- Their business related borrowing, or overseas property investments, do not change this.
- They did not complain earlier as they were waiting for the situation about Lehmans Brothers to become clear. They were also aware of the potential problems making a complaint can bring.

PWM responded and agreed with my provisional decision. It said that:

- Meteor did not inform Mr K about the downgrade despite having the opportunity to do so.

- If it had informed Mr K of the downgrade it would have informed him that Lehman's had a low risk of failure and it would still have advised him to proceed.

I have noted all of the other information that PWM provided.

### **my findings**

I have reconsidered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. However, my findings remain as in my previous decision and largely for the same reasons. I will not repeat all of the conclusions I reached in my earlier decision as they are attached to this document. I will respond to the points made by Mr and Mrs K.

As before, I still consider that the plan was suitable for Mr and Mrs K. I consider it is clear that they did understand (or ought reasonably to have understood) the risk of the plan and accepted counterparty risk in general. I accept that Mr K earned less than I said in my earlier document but I still consider that investment was not a large part of their earnings or assets overall. I note the plan was discussed at length with Mr K and he was informed that Lehman's was the counterparty. I still consider that they were prepared to take a risk over the longer term to provide a reasonable return.

Mr K has said that he was not an expert in banking issues and was not a sophisticated investor. I note the information he has provided to support this. Earlier I said that Mr K was a sophisticated and knowledgeable investor when compared to the general public and many other investment clients. I still consider this to be the case and for the same reasons. Investing in, for example, film partnerships and foreign property is relatively sophisticated. His business arrangements also demonstrate a level of sophistication – even if they are the norm within his industry. It follows that I think it would be unreasonable to say that Mr K was not capable of understanding this product. As before I still consider that he did.

So the question I still need to consider is would Mr and Mrs K have proceeded to withdraw from this (suitable) investment had they been given full information about the downgrade of Lehman's.

I am not persuaded that this is the case. As I said earlier the financial downgrade of Lehman's was relatively minor. I have noted the research Mr K provided but there was also positive comment about the business at the time. It was by no means a foregone conclusion that Lehman's would become insolvent at this time.

Lehman's still had a strong credit rating and PWM have said that it would not have affected the recommendation it made. I think this information would have added little to the perceived risks of the plan, that the consumers were aware of at the time, and so would not have affected their decision to invest. In reaching a judgment on this point I inevitably must reach a decision based on the balance of probabilities based on what I have here. That must include what Mr K did in fact do after he did know about the downgrade in question.

I appreciate that Mr and Mrs K may not have complained sooner as they wanted to see how the situation with Lehman Brothers developed. I understand that Mr K was in effect, put into a difficult situation by the advice given by PWM. He was required as a result of that advice to make a decision he would not otherwise have to make. It is impossible to know with certainty whether Mr K's actions would have been different had he known the full position from outset.

Having said that however, whatever the difficulties I have to make a decision. Overall I am still not persuaded that Mr and Mrs K would have changed their decision to invest in the plan had they been given further information about the financial standing of Lehmans.

**my final decision**

I do not uphold this complaint and I do not make any award.

Mike Boyall  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

The complaint is about the advice given to Mr and Mrs K to invest in a Meteor Prima Plus Plan 2 by Professional Wealth Management Ltd ("PWM"). Mr and Mrs K have said that:

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- They were not made aware that they could lose all of their capital with this investment or that it was a 'warrant'.
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- They say they would have cancelled the plan if they had been given that information.

### **events leading up to the complaint**

In early to mid 2008 Mr and Mrs K were in contact with a representative of PWM. A record of their circumstances at the time was made and communicated to the consumers on 14 March 2008. This was to enable the business to make appropriate recommendations to the consumers to meet their requirements.

During the course of May and June 2008, PWM wrote to Mr and Mrs K about investing some of their money in a Meteor Prima Plus Plan 2. The product was introduced to the consumers on 15 May 2008 by email. This communication disclosed broadly how the plan worked and the name of the counterparty.

PWM wrote to Mr and Mrs K on 26 June 2008 enclosing a personal financial report outlining its recommendations based upon the needs, aims and objectives it considered the consumers had. This recommendation said that the business that backed the plan was Lehman Brothers (Lehmans) and that it had a current financial rating of A+.

PWM's recommendation was that Mr and Mrs K should invest £20,000 into the Meteor Prima Plus Plan 2.

Mr and Mrs K proceeded with the recommendations made by PWM. They applied to invest in the product on 10 June 2008, but, due to the structure of the plans, the funds were not invested until a short time afterwards on 18 June 2008. Mr and Mrs K had the usual "cooling off" period following the investment.

On Monday 15 September 2008 Lehmans, the business that backed the Meteor plans, filed for Chapter 11 bankruptcy protection. After some correspondence Mr and Mrs K were informed that their investments were suspended pending bankruptcy proceedings. I understand the consumers may subsequently have received a proportion of their investment back.

### **the complaint and businesses response**

Mr and Mrs K raised their complaint with PWM as above on 24 March 2009. The business responded and did not uphold the complaint and Mr and Mrs K brought their concerns to this service.

It was initially considered by an adjudicator who recommended that the complaint be rejected. He found that the plan was suitable for the consumers and met their risk profile. He also concluded that Mr and Mrs K were fully informed about the risk and nature of the plan and were given information about the business that backed it, Lehmans.

Mr K responded to say that his employment as a “transactional lawyer”, acting within the financial sector, did not lead to him having specialist knowledge of banking products or financial institutions. He said he was not fully informed about the counterparty risk and the risk that Lehman's posed to him. He said he was misled about its financial rating after it had been downgraded.

I issued a provisional decision on 12 August 2011. In that provisional decision I indicated that I was minded to uphold the complaint. I considered that the plan was suitable to recommend to the consumers. However, I believed that they were (inadvertently) misled after the point of sale about the financial standing of the counterparty. I said this information was, in my view, material. I was of the provisional view that given Mr K's employment he may have been in a position to understand the implications of this information and he would not have proceeded with the plan had he known the true position.

PWM responded, and did not agree with, my provisional decision. It said that the financial rating of Lehman's was correct at the time the advice was given and the business submitted. It accepted the rating given to Lehman Brothers was inaccurate in the literature but the responsibility for this rested with the product provider. However, it said that if Mr and Mrs K had been made fully aware of the downgrade they would still have proceeded with the plan. This is because it was suitable to recommend to them and the downgrade of Lehman's was a relatively minor aspect of it.

Mr and Mrs K responded and agreed with my provisional decision. Essentially I think the combination of the downgrade being relatively minor and the business would not have changed its position on the advice, then I do not consider their actions would have changed. If Mr K was not in a position to understand the change in Lehman's ratings, as he now says, then it is not reasonable to assume that the plan would have been cancelled from inception.

### **my provisional findings**

I have included only a brief summary of the complaint (above), but I have read and considered all the evidence and arguments available to me from the outset (including but not limited to the responses and events relating to my earlier decision), in order to decide what is fair and reasonable in all the circumstances of this complaint.

Firstly I must offer my unreserved apologies for the delays in concluding this matter. Although my conclusions on suitability have not changed I am setting out below my detailed explanations for arriving at those conclusions. I then explain where I now differ from my earlier conclusions.

To uphold a complaint I must be satisfied that it is fair and reasonable to do so; that but for the business' error(s) a different course of action would, most likely, have been taken by the consumers and that the alternative course of action would have put them in a better financial position than they are in now.

### **relevant considerations**

At the relevant time, amongst other things, the Financial Services Authority's (now Financial Conduct Authority's) Principles for Businesses set out that a business must:

- Pay due regard to the interest of its customers and treat them fairly; and
- Pay due regard to the information needs of its clients and communicate information to them in a way which is clear fair and not misleading; and
- Take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.

The rules that applied were set out in the Conduct of Business Sourcebook. COBS 9.2.1R, 9.2.2 R and 9.3 give detailed requirements on how suitability should be assessed. COBS 9.4.7R details what the business must provide in a suitability report.

There is no dispute that this was an advised sale of an investment product where PWM assessed the suitability of the product for Mr and Mrs K.

When considering what is fair and reasonable I am required to take into account relevant: law and regulations; regulator's rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I am also mindful of the general legal position including: the law relating to negligence, misrepresentation and contract (including the express or implied duty on professional advisers to give advice with reasonable skill, care and diligence); and the law relating to causation and foreseeability.

It seems to me that the overarching question I need to consider in this case is whether the recommendation to invest in the Meteor plan was a suitable recommendation for Mr and Mrs K in their individual circumstances.

In deciding this, I need to take into account the nature and complexity of the investment and the consumers' financial circumstances, needs and objectives; understanding and relevant investment experience; and tolerance to investment risk.

#### **about the product**

The plan is what is commonly referred to as a structured capital at risk product (SCARP). It provides a fixed income or growth over the ten year term of the plan. However, the return of capital is not guaranteed and is linked to two stockmarket indices.

Similar to most SCARPs, this plan contained an element of risk that the full capital invested would not be returned to Mr and Mrs K at the end of the term. This risk would arise either because of counterparty failure, or because either of the two relevant stock market indices fell below a certain level.

As we now know, the counterparty in this case was Lehman Brothers. This was disclosed to the consumers in the email above of May 2008. According to the "Other questions I should know the answers to" section of the brochure, in response to the question, "What are the risks involved with investing?" The answer is provided as follows:

*'The securities you purchase will be issued by a major financial institution, which has a credit rating from Standard or Poor's, or a similar rating agency, of at least of 'A+', which denotes high financial strength...'*

A similar description was included in the personal financial report which said:

*'This investment is underwritten by a financial institution with a current rating of A+; we understand this to be Lehman Brothers. Should this financial institution not honour the security you may not receive back the expected returns of the investment plan. It is our understanding that the likely hood of this arising is very low'.*

So it is clear that the plans put Mr and Mrs K's capital at significant risk. In particular they faced the risk of capital loss if the counterparty failed or if the markets performed very poorly. It is therefore necessary for me to consider whether PWM's recommendation to invest in this plan was suitable for Mr and Mrs K.

#### **was the recommendation suitable?**

Mr and Mrs K's circumstances have been well documented. But for completeness I will provide a brief outline here.

At the time of advice Mr K was employed in a law firm in the Banking and Recovery Sector. I understand that Mrs K looked after their dependent child. Mr K's latest share of the partnership profits was £320,000 in 2007. Mr and Mrs K had made equity based investments in the past. They had also invested in a Film Partnership Scheme and had borrowed to invest in the law firm that Mr K was a partner in. They had purchased overseas property for investment purposes.

A detailed risk analysis was undertaken for both Mr and Mrs K. Mr K's risk was recorded as being 4 out of 6 and Mr K's was recorded as being 2 out of 6. I understand that following further discussion, the risk the consumers wanted to take for this investments was 3 to 4 out of 6 which was defined as being 'balanced to adventurous'.

Whilst risk profiles such as these can provide a helpful indication of the risks a consumer is prepared to take, this must also be supported their circumstances. However here given their previous investment history it is reasonable to say that Mr and Mrs K were prepared to start investments that had a significant risk and had done so in the past. It must be noted that at £20,000 this represented a small part of their overall financial assets or income.

So, as before, I do not consider that the plan was unsuitable to recommend to the consumers. In my view it did not have more risk than they wanted to take at the time with this money.

#### **were the consumers misled at the time of sale?**

Mr and Mrs K say, in effect, they were misled about the financial standing of the counterparty to the plan; Lehman's.

By way of some background on this issue Meteor was the product provider for the plan. On 10 April 2008, Meteor agreed with Lehman Brothers Holdings Inc that Lehman's would be the counterparty that would issue securities for the plan. The securities were the underlying qualifying investments of the plan.

Under the structure of the plan, Meteor invested the funds and purchased the Lehman's securities on 18 June 2008.

There are a number of credit ratings agencies, and the four main ones are: Standard & Poor (**S&P**), Moody's, Fitch and Dominion Bond Rating Service. In the table below, I set out when those four agencies adjusted their credit ratings for Lehman's.

Date(s)	10.04.08 to 02.06.08	02.06.08	09.06.08	13.06.08	17.07.08
S&P	A+	A	A	A	A
Moody's	A1	A1	A1	A1 (but announced a review)	A2
Fitch	AA-	AA-	A+	A+	A+
DBRS	AAL	AAL	AAL	AAL	AAL

As above, the information provided by Meteor itself, which was provided to the consumers, concentrated on the S&P rating. It did not name the counterparty itself. Lehman's was disclosed to the consumers separately by the business.

However, as above, on 2 June 2008, S&P downgraded its rating of Lehman Brothers to A. Fitch similarly downgraded its rating to A+ on 9 June 2008. Moody's maintained at a similar rating to Standard and Poor's A+ although on 13 June 2008 it said that this was under review in line with a possible downgrading.

However, all of the Meteor literature says that Lehman Brothers had a current rating of 'A+'. The Meteor brochure says this rating was by Standard and Poor's (or equivalent in some places) which was no longer correct after this time. The suitability letter of 26 June 2008 said Lehman's had a financial rating of A+. This was still the case in some cases but S&P had downgraded its rating to below this. This letter did not name the ratings agency.

So given this, I still find that it could be argued that Mr and Mrs K were not in possession of all the facts when they started the plan. This is because they were informed that the financial backer of the plans would have a certain credit rating but when they actually proceeded, on 10 June 2008, the financial rating of Lehmans was lower (by at least one agency) than they had been informed it would be.

I consider this was a material fact that, arguably, should have been disclosed to them, particularly in the suitability letter. Furthermore, it could also be argued that PWM's failure to do so meant that it did not treat Mr and Mrs K fairly. I am of view it would have been helpful had PWM disclosed the downgrade although I accept the situation is not clear cut as some agencies were of a different view regarding the counterparty.

**what would the consumers had done if they had been given the correct information?**

I must next consider whether Mr and Mrs K would have done anything differently they had been informed of the S&P downgrade on 2 June 2008. This is where my present view of the fair outcome differs from my earlier view.

Having reviewed the contemporaneous evidence in detail, I find that Mr and Mrs K would still have gone ahead with their investment even if they had understood at an early stage what the position was with the counterparty concerned. This is because:

- there is no dispute that Mr and Mrs K were aware of the nature of counterparty risk as a concept, and that, if the counterparty failed, their capital could be lost;
- even though the counterparty was downgraded by S&P from A+ to A, that credit rating still represented a low risk that the counterparty might fail (that view is supported by S&P, which described A as *'strong capacity to meet financial commitments'*);
- at the time of the S&P downgrading, the other three credit agencies still rated the counterparty at A+ or above. Fitch's downgrade (on 9 June 2008) was from AA- (very high credit quality) to A+ (high credit quality), which still represented a low risk that
- the counterparty might fail. Moody's announced a review on 13 June 2008, but maintained its A1 (low credit risk rating) throughout; and DBRS did not reduce its AAL (superior credit quality) at all.
- if PWM had informed Mr and Mrs K of the S&P downgrading, I think it more likely than not that it would have accompanied that information with the point that the counterparty had a very low risk of failure. The risk warnings in the suitability letter above would likely to have remained unchanged.
- the identity of the counterparty was eventually known to the consumers. However
- Mr and Mrs K failed to promptly surrender his investment and did not complain about that issue to PWM until 24 March 2009.

Much of the consideration and comment about this complaint so far has centred on Mr K's employment within the legal and financial sector and I have reconsidered this in the light of the above.

Having further considered the matter my present view is that if I assume that Mr K was a sophisticated investor and knowledgeable about financial matters then I must also note that the counterparty was disclosed to him. I think compared to many Mr K was indeed such an investor.



On the evidence I do not think I can say Mr K's conduct would have been different had he known what he says he should have known at the time of the investment. I note that when the information did become available he does not appear to have immediately complained or withdrawn from the investment.

In fact it was some time before any concerns were raised with the business. That being the case it is difficult for me to conclude that, had Mr K known the full facts he would have taken an alternative course of action. To put it another way I take the view that once Mr and Mrs K knew the true position they did not take the action they say they would have taken had they known the true position from outset. Therefore I cannot say what Mr and Mrs K would have done "but for" the business' bad advice which would have put them in a better position than they are now in. That is an essential point before I can uphold a complaint and award redress.

**my provisional decision**

I am not presently minded to uphold this complaint and I do not intend to make an award.

I now invite both parties to let me have in writing any further submissions they may wish to make to this provisional decision within one month, after which time I will issue my final decision.

Mike Boyall  
**ombudsman**