DRN-4414950

The complaint

Ms B's complaint is about the advice Chamberlain De Broe Limited ("CDBL") provided to her. As the precise nature of Ms B's complaint is key to the findings which follow later in this decision, I will quote the full complaint, and some of the background, from Ms B's original 13 March 2020 letter of complaint verbatim:

"***1 Background***

… When my husband and I divorced in 2003, I received a large financial settlement plus our family home... The settlement monies had to last me the rest of my life…. provided me with a clean break, which would allow me to live comfortably and to provide a home for my son.

At the time, I was only 40 years of age and I did not want to take any risks which could jeopardise the settlement monies. …..

When we met in October 2003, I was keen to invest the settlement monies, I did not want them sitting in a bank account. I was looking to receive a small amount of income, but I relayed that I could not afford to take any risks. My priority was to always keep my money safe…... You seemed to understand my position and concerns and reassured me that you would sensibly invest the settlement monies to ensure my objectives were met. Following the meeting, Chamberlain advised me to invest:

- *£250,000 into a Canada Life off shore bond which was allocated across the following funds: Swordfish, Wave C, and AM; and*

- *£150,000 into four commercial properties managed by Thompson Taraz Limited and one commercial property managed by Marrick Capital.*

Chamberlain continued to manage my financial affairs until 2019. It was at this time, that I became aware that a number of my investments had sustained substantial losses. I was very distressed and concerned to receive this news and decided to instruct alternative financial advisers.

2 Complaint

My new financial advisers inform me that firms like Chamberlain have regulatory obligations under the Conduct of Business Sourcebook rules to ensure (amongst other things), the advice provided was suitable for the client, advise on any potential risks and to provide a clear update with regards to the current position of the investment.

I strongly believe that the above obligations were not met by Chamberlain when it advised me to invest the settlement monies. Chamberlain was fully aware that I was cautious investor and could not afford to take risks with my money. You always advised me that the funds within the Canada Life off shore bond were "safe" and "low risk" and that losses were only sustained as a result of the "crash of 08/09 - something (they tell us) should be a once in a lifetime event". You said "You didn't have very high risk investments but the world did teeter on the brink of a financial Armageddon". As a result I understood that this was a freak

occurrence and that there had never been any flaw in Chamberlain's advice. I have asked you a number of times to explain the funds within the Canada Life bond. Given the losses sustained, I am of the view that they are high risk investments, usually only suitable for the 'aggressive investor' willing to risk the majority (if not all) of their invested capital to receive large gains. Kindly provide an explanation of the funds (including whether my understanding is correct) and the reasons why Chamberlain invested £250,000 of my settlement monies in this way.

Chamberlain also advised me that commercial property investments were safe and secure as "commercial properties are always in demand". No further explanation was provided and I never received a suitability letter reaffirming Chamberlain's advice and highlighting the potential risks. I trusted the advice which Chamberlain provided to me and agreed the monies should be invested.

Again, I now believe these were high risk, unsuitable for a cautious investor like me. Kindly confirm that my understanding is correct.

When I voiced my concerns with regards to my investments you always reassured me that everything was fine. Specifically, when I raised the possibility of selling the commercial property investments in September 2014 I was alarmed when I was told that a number of the properties were worth nothing. Following the meeting, you advised me that "I think they're now good long-term investments, the market crash in 2008/2009 hit this sort of investment but they are recovering now". This led me to believe that the investments would recover and that the zero valuations were as a result of the 2008/2009 financial crash. The commercial property investments I believed, in reality remained valuable and that I should not be concerned. I never received any documentation / valuations showing the commercial property investments as zero, so I trusted Chamberlain advice. I now know Chamberlain's explanation was incorrect and, at this time, my investment had already sustained substantial losses.

It was only last year that you again reassured me again that the commercial property investments were fine. I had my reservations and decided to contact Thompson Taraz Limited directly, who confirmed three out of the four properties were current valued at zero, and that this had been the case for sometime. Chamberlain was fully aware of the current position of the property investments, but led me to believe that everything was fine. It is estimated that I have lost around £100,000 from the £150,000 initially invested.

My new financial advisers have reviewed my file and have asserted that the above investments were unsuitable for a cautious investor, looking to protect their capital. Had Chamberlain taken my objectives into account, substantial losses would not have been sustained. I therefore seek compensation in this regard."

Background

When Ms B divorced in 2003, she received a lump sum financial settlement (which came partly as cash and partly as a share of existing investments she had held with her husband), plus the family home. Ms B says she was keen to invest the settlement cash - she did not want it sitting in a bank account – and she was looking to receive an amount of income. She decided to continue to use the services of CDBL which had, from 1997, acted as financial advisors to her and her husband.

Ms B met with CDBL to discuss making investments with the settlement cash in October 2003. I have seen a note from that meeting. I have also seen copies of two fact find documents – one dated August 2003, the other dated July 2005.

CDBL set out some of its initial advice to Ms B in a letter dated 12 January 2004. I have seen a copy of that letter. It sets out that £590,000 was to be invested for growth, with a £50,000 emergency fund to be retained and a £170,000 “sinking fund” to provide income.

The investments recommended in this letter were £250,000 in an offshore bond, to be invested in three hedge funds – Advanced Asset Allocation Fund, Swordfish Fund, Wave Fund. And two further investments of £45,000 in investment trusts (investing in UK and international equities) and of £7,000 in an ISA (investing in a UK equity income fund).

Various property syndicate or partnership investments were also made by Ms B, on CDBL’s advice:

- JLL Bridgewater Place – December 2003 £50,000
- MP34 (Fulham) – November 2004 £25,000
- MP51 (German Property Portfolio) – December 2005 £25,000
- JLL Euro Industrial – October 2004 £34,500
- MP60 (Cottbus) – November 2006 £25,000

JLL (Jones Lang LaSalle) and MP (Merchants Place) refer to the operators of these schemes.

I have seen the following advice letters from CDBL to Ms B relating to these investments:

25 November 2003 – JLL Bridgewater

9 September 2004 – JLL Euro Industrial

18 October 2006 – MP60 Cottbus

1 December 2005 – MP51 German Property Portfolio

Alongside these investments, further investments were made in unit trusts/OEICs and investment trusts. And these were held alongside the existing investments transferred to Ms B as part of her divorce settlement.

The Wave fund and the property investments (with the exception of MP34, which returned a profit) have been highlighted by Ms B as being ones she specifically feels were unsuitable for her. These investments have performed poorly.

CDBL sent us a number of the portfolio valuations it provided throughout the lifespan of the portfolio and, in some instances, the commentary it provided alongside these. The valuations show the performance of each investment, and the overall exposure of the portfolio to that investment.

CDBL also provided some copies of notes of meetings between Ms B and CDBL, where her portfolio of investments was discussed and copies of email exchanges and call notes detailing further discussions about the portfolio.

I understand Ms B appointed a new advisor in January 2019 and, by August 2019, the transition to that new advisor (which I understand involved the sale of all the liquid investments held by Ms B and the reinvestment in the new advisor’s model portfolio) had

been completed.

CDBL's position

Ms B made her complaint to CDBL on 13 March 2020. CDBL concluded that the complaint was time-barred under the relevant sections of the Financial Conduct Authority (FCA) Handbook. CDBL wrote to Ms B on 27 April 2020 to explain its conclusion.

CDBL's position, in summary, is that Ms B was aware of losses to her portfolio and the awareness of those losses meant she was aware of cause for complaint. And she reached that point of awareness outside the relevant time limits set out in the rules set out in DISP 2.8 of the FCA Handbook, which (in summary – I will set out the full detail below) require a complaint to be made within six years of the event complained of or, if later, within three years of when the complainant was aware, or ought reasonably to have been aware, of cause to complain.

CDBL has sent a lot of evidence which it says supports its position. For example:

- A letter to Ms B from CDBL dated 20 February 2009.
- A letter to Ms B from the offshore bond provider dated 14 January 2010.
- A Valuation and Transaction Statement to Ms B from the offshore bond provider dated 31 March 2010.
- A Valuation and Transaction Statement to Ms B from the offshore bond provider dated 30 June 2010.
- A letter from an investment provider dated 28 August 2009.
- Ms B's email to CDBL of 9 August 2011.

These each show losses to investments or (in the case of the latter), Ms B discussing losses to her investments. CDBL says this shows Ms B was aware of significant losses at the relevant times, and it says Ms B's awareness of her cause for complaint can only have arisen from her knowledge of the losses her investments suffered.

This is not an exhaustive list of all the evidence CDBL has referred to – just some examples. I confirm I have considered all CDBL has sent.

Our investigator's view

Our investigator concluded Ms B's complaint had been made in time, and that it should be upheld. He said, in summary:

On time limits:

- In making her complaint, Ms B has, at times, focused in on a few specific investments CDBL recommended as part of her portfolio. But, more broadly than this, she is questioning whether CDBL's advice to her over the years has been suitable, mindful of the level of risk she was prepared to take. CDBL's arrangement with Ms B was that it would be advising her and managing her investments on an ongoing basis. So we should consider the complaint as being about advice given to Ms B on an ongoing basis, following her divorce in 2003.

- This means the event complained of is an ongoing advisory service provided by CDBL. This means that we will always be able to consider the service she received between the date she made her complaint to CDBL and six years immediately prior to this. A complaint about any acts or omissions which took place during this period cannot be said to be out of time.

- However, the events the complaint relates to go back further than this. So he had considered whether the complaint – insofar as it relates to those events – had been made in time.

- Anything Ms B became aware of which caused her to question the suitability of CDBL's advice ought reasonably to have given her cause to complain about that advice.

- Concerns about the performance of an investment wouldn't automatically give rise to a complaint about the advice to purchase and retain it.

- Overall, while there was evidence to show Ms B was aware of losses, he felt the evidence also showed Ms B was given lots of reassurance by CDBL and led to believe the losses she suffered were due to general market conditions. And he was satisfied Ms B relied on what CDBL said.

- So he was satisfied Ms B did not develop awareness of a cause to complain whilst she remained its client. He thought it likely that, as she has said, she didn't develop any such awareness until she spoke with her new advisor, which suggested that CDBL's advice might not have always been suitable for her. These discussions took place in 2019. So her complaint dated 13 March 2020 has been made within three years of when she ought to have known she had cause to complain.

- He was therefore satisfied Ms B's complaint has been made in time.

On the suitability of the advice given to Ms B by CDBL:

- He had considered Ms B's circumstances, and her stated aims and objectives. He had also considered what had been agreed with CDBL about Ms B's attitude to investment risk.

- He did not think some of the investments CDBL made for Ms B were consistent with this. There were a number of investments, in investments such as offshore Unregulated Collective Investment Schemes (UCIS) and partnerships based on properties, which were higher risk. Given the significant amount invested in these investments – more than a third of Ms B's overall portfolio - they were not suitable for her.

- He therefore considered CDBL should pay compensation to Ms B for these unsuitable investments, by comparing their performance to a suitable benchmark.

CDBL's response to the investigator's view

CDBL did not accept the investigator's view. It said, in summary:

- The finding that only the move to a new adviser led to Ms B becoming aware of cause for complaint ignores clear evidence to the contrary.

- Ms B had other professional advisers, for example her accountants to whom it

regularly reported, and her boyfriend, a City professional, who was present during meetings when the investments in question were effected. Furthermore, throughout the period in question, she was in touch with her ex-husband and her two brothers in law, experienced investors of many years, who discussed matters with her.

- Ms B only complained when told to do so by her new advisers, after those advisers insisted that she sell her entire portfolio to reinvest the proceeds into their model portfolio. This triggered a sizeable tax bill, and it is important to note the complaint began only when the tax bill arose in 2020.

- It is not reasonable to suggest that a well-travelled and experienced businesswoman would not have been aware of cause to complain over the two decades in question, or would not have at least raised the matter with her partner, her accountant, her brother-in-law or her lawyer. The fact is she did not complain because she chose not to.

- The view that, due to the ongoing nature of CDBL's advisory relationship with Ms B, no complaint from her would ever be time-barred, flies in the face of logic and of the FCA rules.

- The "event complained of" cannot, by definition, be "ongoing", especially in the context of rules referring to time limits.

- The investigator has applied standards which did not exist at the time to events. He refers to "capacity for loss", which did not feature in the rules at the time.

- The investigator says that, by relying on CDBL, Ms B was bound to see no cause for complaint. This means that no client of any professional firm would ever be able to form any expression of dissatisfaction unless (and until) they changed advisers.

- DISP 2.8.2R requires consideration of three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint. It is unreasonable to say that a rational and sophisticated person like Ms B could not develop any awareness until she was told to complain.

- The investigator lists investments, in which Ms B made substantial gains, as ones it ought to compensate her for. He lists another, which is still a going concern, as if it no longer existed. The view is also influenced by hindsight, without any reference to the difficult realities of the time.

The investigator then told CDBL the complaint would be referred to an ombudsman, as it did not accept the view. In response to this CDBL said, in summary:

- It does not agree that it is now appropriate to have the matter referred to an ombudsman. The investigator has ignored evidence and does not appear to have returned to the file to verify any of the points raised. Before proceeding the investigator should address its evidence-backed points.

- The investigator acknowledges there is no dispute that Ms B knew some elements of her portfolio had performed poorly and her knowledge of this was clearly a concern. But he also says he is not persuaded her concerns show awareness of cause for complaint. These are contradictory views which are irreconcilable. Either she was aware of losses and concerned or she was not.

- The investigator suggests Ms B's awareness of cause to complain only arose when

her new advisers had sight of her portfolio, ignoring that they were advising her and managing her portfolio for two years before her complaint.

- Ms B was fully aware of losses throughout, fully aware of the option to complain and also, having lived through the events, fully aware of the impact of the global financial crisis on her investments.

- Ms B has made a number of false representations in her complaint. Given that nearly two decades have passed, she may be forgiven for lapses of memory. However, it cannot accept these when there is evidence to the contrary. The investigator has ignored evidence which does not support his view.

CDBL also repeated some of the points made in its initial response to the investigator.

Further information requested

Following an initial consideration of the file I asked CDBL to provide:

- Copies of *all* valuations and covering letters it sent to Ms B from 2014 until the end of Ms B's relationship with it.

- Any documents it has which set out the service it agreed to provide to Ms B (for example a client agreement, terms of business etc).

CDBL provided bundles of documents recording its ongoing communications with Ms B from 2014, and a copy of its Terms of Business.

We also asked the administrator of the MP property investments it if it could provide copies of all the updates on the investments it sent directly to Ms B. In response the administrator provided copies of the updates on and valuations of MP60 and MP51 which were sent directly to Ms B from 2011/2012 to 2019. MP34 was surrendered or matured in 2006 so there was no further information now available about this.

My provisional decision

I recently issued a provisional decision. As I revisit my findings in detail below I will only provide a brief summary of my provisional findings here:

- Ms B's complaint, in my view, encompasses – insofar as it relates to regulated activities carried out by CDBL - the initial advice given to her by CDBL in relation to the offshore bond and property investments, further advice given in relation to the investments, and in particular the property investments in September 2014, and information given to her by CDBL in relation to the property investments.

- Because part of her complaint was made out of time, I am not able to consider Ms B's complaint insofar as it is about advice on the property investments which predates 13 March 2014 and any advice given in relation to the offshore bond investments.

- It would not be fair and reasonable to uphold that part of Ms B's complaint that was made in time, insofar as it relates to advice not to sell the property investments in September 2014 and the information provided to her at the time – and, if it does relate to a regulated activity, the information provided on the property investments a year before Ms B made her complaint involved.

Ms B's response to my provisional decision

Ms B did not accept my decision. She said, in summary:

- In her view my provisional decision is based on misleading and incorrect information.
- She has always relied, to her detriment, on the advice of CDBL and accepted its position that its advice was not negligent – that the losses she incurred did not flow from its inappropriate and negligent advice and she therefore effectively had no cause for complaint.
- She was aware of her losses but was repeatedly advised by CDBL that this was due to the market, not the advice it had given. It was only when her new advisors looked at her investments that she was made aware she had cause for complaint.
- Her complaints are not limited to what I set out in my provisional decision. The broader picture needs to be considered.
- That she thinks or becomes aware her advisors have given her inappropriate advice is not enough – she also needs to know that she can make a complaint to someone with legal authority. To have "cause" she needed to know there was an issue and someone to complain to about this issue.
- She made her complaint within three years of becoming aware there was cause for complaint and that she could complain to the ombudsman – and the test is whether she was aware of cause for complaint *and* been made aware she could complain.
- If CDBL deliberately misled her then it is inconceivable she would have been aware her losses were the result of CDBL's action or lack of actions.
- CDBL presented a highly misleading picture of the causes of the losses. It blamed the economy and not the assets it had invested in. Had CDBL invested in line with her risk attitude she would not have suffered the losses she did, but she was not in a position to know this until she took alternative advice.
- I note in my decision that CDBL may have presented an optimistic picture and downplayed the risk, when making communications. It needs to be asked what the purpose of CDBL doing this was, if not preventing a complaint. It is unreasonable to conclude CDBL did not mislead her by doing this.
- To the ordinary individual a "book" loss is not seen as being any different to a real loss – and she thinks CDBL took steps to lead her to believe there was no "book" loss on her property investments in order to placate her.
- CDBL was not just being misleading – it was deliberately manipulating her understanding of matters by taking advantage of her inexperience in financial matters. CDBL failed to warn her of the true nature of the property investments – that they were highly leveraged schemes.
- She is a cautious, prudent investor – and this was made clear to CDBL by her telling it repeatedly about her concerns. She believes that when CDBL heard these concerns it deliberately painted an optimistic picture, to avoid scrutiny of its advice.
- My decision does not take into account any financial benefit to CDBL from her investment in the property schemes, by way of commission etc.

- CDBL's 11 September 2014 email blames everything on the wider economy – the question of the suitability of the original investments is not addressed. Again, this was to distract her from considering the appropriateness of the investments. It was a deliberate and calculated effort by CDBL to protect it from a complaint.

- The valuations she received from CDBL were the only way in which she should gauge the value of the property investments. She understood the value shown to be the current value, and that the investments could be sold. She thinks CDBL deliberately misrepresented the property investment values on the statements it sent to her – again, to prevent a complaint arising.

- Despite voicing her concerns to CDBL she was at no point told that she had the right to make a complaint to the ombudsman. This was only highlighted to her by her new advisors.

- She used CDBL as a party trained, experienced and regulated to provider her with advice and thought she was being advised properly by a professional firm. She had no reason to suppose otherwise. I suggest in my decision that she was knowledgeable enough to know something was wrong – which is the equivalent of saying she was knowledgeable enough to make the investments herself, without the benefit of professional advice.

- It is not reasonable to assume she had sufficient knowledge. There should be evidence to show that, despite her being inexperienced and reliant on CDBLs' advice, she should have known she had cause for complaint. My decision does not provide this evidence.

- My decision does not offer sufficient basis to depart from what she considers were clear findings of fact made by the investigator.

- There is no evidence she took advice from any other source that CDBL, before she appointed her new advisors, and she can confirm she did not take any such advice. She relied on and trusted CDBL.

- I make the finding that she may not have been able to sell her property investments, even if advised to do so. But the administrator of the investments told her in 2019 that she could have sold them.

- Correspondence from the administrator of the investments was not received by her and she was not in touch with the administrator until 2019, as CDBL failed to inform it and update her address. Correspondence was sent directly to CDBL and she had no direct contact with the administrators.

- The property investments were clearly unsuitable for her and she can see historical cases on our website where consumers advised to make such investments have been compensated for their losses. It is not clear why her case should be different.

CDBL's response to my provisional decision

CDBL accepted my provisional decision, and did not make any further representations.

My findings

I have first carefully reconsidered all of the evidence and arguments in order to decide whether I am able to consider this complaint. On this the point the relevant question in this

case remains whether the complaint was referred to us in time.

As a starting point I will address what Ms B has said in her response to my provisional decision about the test which should be applied. Ms B says the test for whether her complaint was made in time is whether she was aware of cause for complaint *and* had been made aware she could complain.

When considering whether a complaint is within our jurisdiction I am required to apply the relevant rules. The rules setting out which complaints this service can and can't consider are found in the Dispute Resolution (DISP) section of the FCA Handbook. DISP 2.8 sets out the general time limits and whether a complaint is referred to the Ombudsman Service in time. DISP 2.8.2 R is relevant here, and sets out the following:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received.

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; or

(4) the Ombudsman is required to do so by the Ombudsman Transitional Order; or

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R or DISP 2.8.7 R have expired (but this does not apply to a "relevant complaint" within the meaning of section 404B(3) of the Act).

To be clear, these rules are the test I have applied in this case, when considering whether Ms B has made her complaint in time. I have begun by reconsidering what complaint Ms B has made. And, in doing so, I have taken account of what she has said in her response to my provisional decision about the scope of her complaint.

What is the complaint?

As noted, I have quoted Ms B's original 13 March 2020 letter of complaint verbatim above. And I have considered this carefully, alongside all the other relevant evidence I have seen. Having done so, I remain of the view set out in my provisional decision – so I have set that out again here.

Ms B's complaint is about the initial advice to make investments in the offshore bond (the focus is on one fund in particular but I think it encompasses all the investments made in that

bond) and the property investments (with the exception of MP34). This was made clear by Ms B in her original letter of complaint, the key parts of which I have quoted above.

The complaint is also about information and advice subsequently provided by CDBL – mostly, it seems, in relation to the property investments. In her original complaint letter, in the "Complaint" section, Ms B refers specifically to advice given on the property investments following a September 2014 meeting, information provided at that time, and information provided on these investments a year before she made her complaint. She makes further reference to these in her 30 April 2020 follow up email to CDBL and in her 23 September 2020 and 10 January 2021 emails to us, which clarify or reiterate the basis of her complaint.

Some of Ms B's references to her ongoing interaction with CDBL seem to encompass the offshore bond investments too. For example, she says:

You always advised me that the funds within the Canada Life off shore bond were "safe" and "low risk" and that losses were only sustained as a result of the "crash of 08/09 - something (they tell us) should be a once in a lifetime event". You said "You didn't have very high risk investments but the world did teeter on the brink of a financial Armageddon". As a result I understood that this was a freak occurrence and that there had never been any flaw in Chamberlain's advice.

In her emails to us mentioned above Ms B specifically says she thinks she was deliberately misled by CDBL in communications, so the true extent of her losses – and the reasons she has sustained them – was not made clear.

So I remain satisfied Ms B's complaint is about the initial advice given to her by CDBL to make the property partnership investments (with the exception of MP34), the initial advice given in relation to the offshore bond (with particular focus on the Wave Fund investment), and ongoing communications from CDBL relating to these investments.

What service did CDBL provide to Ms B?

Neither party has made any comment on the findings I made on this point in my provisional decision, so I have not been persuaded to depart from those findings.

CDBL did not only provide the initial advice to make the investments subject to the complaint. I am satisfied CDBL was providing an ongoing service that included regular valuation reports, which were issued alongside reviews/commentary, and I can see that this was contemplated by the Terms of Business agreed between CDBL and Ms B:

"We provide a range of ongoing services to ensure that your personal recommendation is reviewed frequently and remains relevant to your changing circumstances."

CDBL was not providing investment valuations passively. It was providing commentary on the markets generally, and the investments Ms B held specifically – and it was considering whether any changes were required to Ms B's portfolio. It is also clear from the meeting notes and email exchanges I have seen that CDBL was, in at least one instance, providing further advice on the investments on ad hoc occasions when it interacted with Ms B.

In order for me to be able to consider Ms B's complaints, I not only need to determine whether they were referred in time - I also need to be satisfied that they relate to acts or omissions by CDBL in carrying on regulated activities or any activities ancillary to those regulated activities (DISP2.3.1R). 'Regulated activities' are those specified in the FSMA 2000 (Regulated Activities) Order 2001 and include advising on investments (art 53(1)). Clearly, the original advice CDBL gave to Ms B in connection with her investments would fall

within that regulated activity. But I have also had regard to whether any of the further discussions and information giving by CDBL which comprise part of Ms B's complaint might also amount to the regulated activity of advising on investments and in turn fall within the requirements of DISP2.3.1R.

In this regard, on at least one occasion – the September 2014 exchanges with CDBL Ms B refers to in her complaint – I am satisfied regulated advice was given, and that information was provided ancillary to that. In the September 2014 exchanges CDBL effectively gives Ms B advice not to sell the property investments (describing them as "*good long-term investments"*). It is not clear, based on the evidence currently available, whether the information provided on the property investments a year before Ms B made her complaint involved – or was ancillary to – a regulated activity. But, for the reasons I set out below in the merits section, I do not think this ultimately changes things, if it did involve a regulated activity.

What does this mean for our time limits in this case?

I know this will disappoint Ms B, but I have not been persuaded to depart from my provisional findings. I have largely repeated my provisional findings below, whilst addressing some of the points Ms B made following my provisional decision.

Ms B made her complaint to CDBL on 13 March 2020. DISP 2.8.2R says that we cannot consider a complaint made more than six years after the event complained of or (if later) more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint. So, in this case, any complaint about an event which took place after 13 March 2014 will be in time.

As noted above, Ms B, in her complaint, refers specifically to advice given on the property investments following a September 2014 meeting, information provided at that time, and information provided on these investments a year before she made her complaint.

So Ms B's complaint, insofar as it relates to these events, has therefore been made within our time limits. Although, as I note above, it is not clear, based on the evidence currently available, whether the information provided on the property investments a year before Ms B made her complaint involved – or was ancillary to – a regulated activity.

Ms B's complaint otherwise is about events which predate 13 March 2014 i.e. events which took place more than six years before she made her complaint to CDBL. Ms B's complaint otherwise refers specifically to the initial advice she was given to enter into the offshore bond and property investments, and all of this advice was given before 13 March 2014. It also refers to ongoing advice given in relation to the offshore investment bond, which was surrendered in 2012 – and so any such advice was also provided before 13 March 2014. And it seems to encompass ongoing exchanges relating to the property investments which predate 13 March 2014.

So, the question is whether Ms B made her complaint, insofar as it relates to these events, within three years of the date on which she became aware, or ought reasonably to have become aware, that she had cause to complain about those events. That is the test set by the rules I have quoted above. And, in this case that means I need to consider whether Ms B became aware, or ought reasonably to have become aware, that she had cause to complain before 13 March 2017 (i.e. three years before she referred her complaint) – unless she had made a complaint at an earlier date (something I will consider in connection with Ms B's September 2014 exchanges with CDBL below).

I should make it clear that the rules on time limits, and the definition of 'complaint' in the FCA

handbook, do not require me to consider whether Ms B was aware, or should have been aware, she could refer a complaint to the Ombudsman Service. Indeed, in order to stop the three and six-year clocks, the rules do not require that a complaint is made to the Ombudsman Service at all. It is sufficient, under DISP2.8, that the complaint is referred to the respondent business *or* to the Ombudsman within that relevant period and that the complainant has a written acknowledgement, or some other record of the complaint having been received.

So whilst I have taken note of what Ms B says about needing to know about the complaint process in order to have awareness of her cause to complain (and in turn to start the three year clock ticking), I don't agree with her that that is the case. In my view, in order to trigger the three-year clock, awareness (whether actual or constructive) should comprise three things:

1. Awareness, broadly, that a loss has been or may be suffered,

2. That this is a result of some act or omission, and

3. On whom responsibility for that act or omission rests.

The available evidence shows Ms B was aware of losses to her investments before 13 March 2017. The offshore bond investments had been surrendered – and significant losses (I understand around £141,000) crystallised – before that date. Furthermore, although Ms B's complaint mentions valuations of the property investments which she thinks were misleading, it also mentions advice on the prospects of recovery (suggesting awareness of loss) and, in her 30 April 2020 email to CDBL, following its response to her complaint, she says:

"When I discovered in 2014 they (i.e property investments) were worth nothing I was devastated."

This is consistent with Ms B's original complaint letter, quoted above, which says:

"when I raised the possibility of selling the commercial property investments in September 2014 I was alarmed when I was told that a number of the properties were worth nothing"

CDBL has also referred to an earlier email from Ms B, on 9 August 2011, with the title "*panic in the streets*". That email includes the following:

Can you just tell me I'm not going to lose anywhere near as much as I did last time. I think if I start heading to 650ish we need to take action as I do not feel I am in a position to lose another £250 [£250k] *like the last blip.*

This correspondence is all evidence Ms B was aware of losses – or potential losses – in relation to both the offshore bond and property investments.

The valuations of MP60 and MP51 which were sent to Ms B by the administrator also show she was made aware of losses to these investments. For example, the 5 April 2015 valuations (which were sent separately) value MP51 at £4,075 and MP60 at £0. And the valuations at other times before 13 March 2017 consistently value these investments at amounts which suggest a significant loss has been suffered. And a 20 November 2015 letter about MP60 letter began as follows:

"*Further to our letter of 18 June 2015 in connection with the above partnership, you will recall that this investment had a nil value due to the negative equity position (£1,326 of net*

liabilities for each original £1,000 invested)."

I note Ms B says correspondence from the administrator of the investments was not received by her, as CDBL failed to update her address. She also says correspondence was sent directly to CDBL. However, while I appreciate Ms B may not now recall the letters, the available evidence suggests it is more likely than not she saw them.

The copy letters the administrator has provided to us were all sent direct to Ms B, and copied to CDBL – they were not sent solely to CDBL. Some of the letters also required responses from Ms B (for example votes on proposed action) and it seems Ms B did respond to these letters. The administrator has also confirmed it corresponded with Ms B by email.

In terms of changes to Ms B's postal address CDBL says Ms B lived at the UK address it used for correspondence until 2013, at which point she rented that property out and moved overseas, but asked that it correspond with her by email and keep her UK address for postal correspondence. This is supported by contemporaneous evidence. CDBL has provided a copy of an email sent to it by Ms B on 1 July 2016. That email says:

"*Sorry…please can you stop all mail going to* [UK address]. *I have new tenants who are receiving all my statements.*"

And on 3 July 2016 Ms B wrote to CDBL as follows:

"*Please can you forward all mail correspondence to the above address* [her address overseas]. *I am no longer living at my previous address* [details of UK address] *and would like all mail redirected to my new address, upon receipt of this letter*"

This suggests that until July 2016, at least, Ms B was receiving post sent to her UK address (albeit perhaps forwarded on latterly by tenants).

So I remain satisfied it is reasonable to rely on these letters when making my findings. In any event, as noted above, these letters are not the only evidence of Ms B being aware of a loss, or potential loss, on the property investments.

I therefore remain satisfied Ms B was aware of losses to both the offshore bond and the property investments before 13 March 2017. But a general awareness of loss does not of itself mean Ms B became aware (or ought reasonably to have become aware) that she had cause for complaint about the suitability of advice given to her by CDBL. To have become aware, or be in a position where she ought reasonably to have become aware, of cause for complaint, Ms B would need to be aware of a loss *and* that the loss might be the result of something CDBL had done or failed to do.

So was Ms B aware, or should she have reasonably been aware, that her losses came about as a result of CDBL's investment advice? Or did she not become aware that her losses may have been caused by CDBL's investment advice until she spoke to another advisor in 2019?

Pausing there, I note Ms B, in her response to my provisional decision, has made points about the extent of the knowledge and expertise she needed in order to have the requisite awareness for the three-year clock to start to tick. Her point, essentially, is that she needed to have a degree of expertise in order to understand that she might have cause for complaint, which in turn would have meant she had no need for a professional advisor in the first place. I do not agree. As I say, I think Ms B only needed to be aware, generally, that she had suffered or might suffer loss as a result of something CDBL did or failed to do.

Having carefully reconsidered the available evidence I remain of the view that Ms B was aware, or ought reasonably to have been aware, of her cause for complaint by September 2014, at the latest. I think by this point she was aware that she had suffered losses and/or may suffer further losses to her investments. And I consider that she was of the view that such losses were linked with the possibility that the investments she held were inconsistent with her attitude to risk and objectives – and also that such losses might be the consequence of the actions of her advisor, CDBL.

Much of my view is based on Ms B's email to CDBL of 11 September 2014, following a meeting with one of its advisors. Her email included the following, which related to the property investments held in her portfolio with CDBL:

"I have to say I am very disappointed with the thought that I may have lost another large amount from my portfolio. I always emphasised the need for caution and saw myself as a 'vulnerable client' and I needed to ensure the risks to my investments were minimal, I really must stress I do not want to be in this precarious position again. I am fully aware there is no 'crystal ball' and markets change, and to discover I may have lost money in the property investments was quite a shock.

Please can you email me clarifying the future plans we discussed."

Pausing again there, I should say I have again considered two things in connection with this email – whether it might indicate that Ms B did, at this point, have actual awareness of cause for complaint against CDBL. And also whether it might amount to a letter of complaint and therefore was a referral for the purposes of the time limits set out in our rules.

If the email constituted the referral of a complaint to CDBL, it would have stopped the time bar clock ticking against Ms B at the time it was received by CDBL. I have again given this issue very careful thought. And I remain of the view the email does not constitute a referral of Ms B's complaint.

In reaching this view, I have taken account of the definition of 'complaint' that applied at the time of the email in the FCA handbook glossary:

any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service or a redress determination, which:

> *(a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and*
>
> *(b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the Financial Ombudsman Service.*

When the email is considered in the context of the chain of emails in which it was sent, I do not think it can be reasonably concluded it was a 'complaint' as defined above. In my view, it does not have the force of a complaint because the context in which it is made suggests Ms B was not referring a complaint as such, but was asking CDBL to clarify the next steps in order to make sure she was not put in the position of being exposed to significant losses again. As a result, I don't think her email was a referral of her complaint, sufficient to stop the three-year clock from ticking.

Returning to the question of Ms B's awareness of cause for complaint, the question is, if the

email is not a referral of her complaint, is it nonetheless evidence that she was aware of her cause to complain about CDBL's advice? In my view, the email is evidence that Ms B was aware not only of the losses she had or may have suffered but that there was a link between those losses and the risk profile of the investments she had made on CDBL's advice. To my mind, this is evidenced by the fact that straight after referring to her portfolio losing large amounts, she says: "*I always emphasised the need for caution and saw myself as a 'vulnerable client' and I needed to ensure the risks to my investments were minimal, I really must stress I do not want to be in this precarious position again."* This suggests to me that at this point she was aware that she had cause to complain about CDBL's advice to put her money in investments that she thought were too risky for her. So, in my view, the email is evidence that Ms B had become aware, or ought reasonably to have become aware, that she had cause for complaint before 13 March 2017 i.e. more than three years before she made her complaint.

So Ms B's complaint – insofar as it is about advice and information on the property investments which predates 13 March 2014 and any advice given in relation to the offshore bond investments - was made outside both the six and three-year time limits in DISP 2.8.2 R. I cannot therefore consider Ms B's complaint - insofar as it is about the initial advice to invest in the property investments, information provided before 13 March 2014 and any advice given in relation to the offshore bond investments - unless the failure to comply with the time limits was as a result of exceptional circumstances.

Exceptional circumstances

I remain of the view that, in this case, the only basis on which exceptional circumstances might apply would be if CDBL did something, when communicating with Ms B, which reasonably led to her failure not to make a complaint when she would otherwise have done so. And I note Ms B is firmly of the view that that is the case. I have carefully reconsidered this point, with all she has said in mind.

I remain of the view that CDBL may have, on occasion, presented an optimistic picture and downplayed the risk associated with the property investments. But this needs to be considered in the context of CDBL's overall communications with Ms B. And in my view, when the available evidence is considered in the round, CDBL's actions did not ultimately lead to Ms B's failure to make her complaint on time when she would otherwise have done so. I do not therefore think exceptional circumstances apply.

In reaching this view, I have again given careful thought to the contemporaneous evidence as to what was said by CDBL about the losses Ms B had suffered or may suffer – in particular, the value of the property investments. I have also considered the available evidence as to Ms B's understanding of what CDBL was telling her.

I note that CDBL's advisor replied to Ms B's 11 September 2014 email on 12 September 2014. His reply included the following (with my emphasis):

*"I am sorry that you've been caused so much concern by your portfolio but I really need to clarify the position a little more because **it isn't correct to say that you've lost another large amount from your portfolio**, I'm so sorry if I gave that impression because it absolutely isn't the case...*

*Property:as we discussed, these have been through the mire but whilst they might now require a longer 'hold'…**You haven't lost money on these** and while no one knows the future, they're recovering now and there's every chance they'll continue to do so*

The losses you're talking about were really the historic ones suffered in the crash of '08'09-

something (they tell us) should be a once-in-lifetime event. ***You didn't have very high risk investments*** *but the world did teeter on the brink of financial Armageddon ….*

the worlds' biggest banks having to be bailed out: that wasn't just a mild correction but rather than was all pretty cataclysmic so inevitably some investments (even ones designed to be safe) suffered badly. As noted above, no one can say it won't happen again, but ***your investments are all broadly spread and not high risk***

... could see some stock market wobbles again - not on the scale of the big crash ... but it's the sort of thing your portfolio is designed to 'ride out' and it'd be wrong to jump out of the market now. Let's take the cash you need - I'll market [sic] *sure it's profit and not capital - and then to assure your future, once we're sure you don't need it, we'll reinvest it (safely)."*

Ms B came back to this email with questions on 17 September 2014:

"I was of the understanding that the properties, may or may not be worth anything in the future? Am I correct in thinking this is a possibility? I am really not clear about this situation, it's almost like I have this money showing in my portfolio that doesn't actually exist at the moment. Could you explain to me how, when and if this money will become accessible and equally if/when we can get out of it and release the funds"

To which CDBL replied as follows, on the same day (again, my emphasis):

*"The property schemes do have a value and although no one knows the future, I think they're now good long-term investments. The market crash in 2008/9 hit this sort of investment but they are recovering now...****When these were bought, back in the early to mid-2000's, property - and commercial property in particular - was seen as pretty safe (actually commercial property was seen as dull)****. The schemes were nevertheless attractive for investors...What interrupted this trend was the crash in 2008/9. Commercial properties fell in value along with world stock markets and for a short time...people were even worried that our global financial system might break down. However, there have been crashes before - maybe not this big - but sooner or later things recover ...Will it all be ok in two or three years? The truth is we can't know for certain because, as noted at outset, no one knows the future. If things will keep recovering as they are, the values are climbing - sometimes quite sharply ...and hopefully you will see a profit and an exit in due course. I can't promise exactly when though it depends upon how fast the recovery in the UK and Europe is"*

I think the first three points I have emphasised in CDBL's 12 September 2014 email perhaps present an optimistic picture. But they are not misleading, in my view. It was correct to say Ms B had not lost money at that point as no loss had been crystallised – the investments were a going concern. Nor was it unreasonable to say Ms B did not have investments which were "very high risk". I think it was however misleading to say Ms B's investments were "not high risk" and, in the 17 September 2014 email, to say they had once been considered "pretty safe". The property investments were high risk. They used a high level of borrowing (around 70%), were illiquid, and had no or limited diversification. Some were also based on overseas property, introducing additional risks. The use of borrowing meant a complete or substantial loss of capital was possible.

However, CDBL is clear there is no guarantee the investments will recover, and I have not seen sufficient evidence to show Ms B did not understand that to be the case. Her 17 September 2014 reply to CDBL shows that she understood the investments were not liquid i.e. could not, at that time, be sold.

So in my view, when the emails are considered in the round, it appears that Ms B clearly had

concerns about the drop in value of her investment portfolio and that she had further concerns that those losses were connected to CDBL's investment advice. I agree that CDBL had made a misleading statement when it said the investments were 'not high risk', but despite this statement, it seems to me that Ms B remained concerned about the investments, as she understood they were illiquid and remained worried about when she might be able to get out of the funds. In my view, the context suggests she had at this point actual awareness of her cause for complaint.

I also note the portfolio valuations sent to Ms B by CDBL valued the property investments at book cost. Ms B says this was a deliberate misrepresentation, to prevent a complaint arising. I do not think that view is supported by the available evidence. CDBL highlighted to Ms B that a valuation at book cost might not reflect the true position. The 24 March 2016 email from CDBL to Ms B, which set out a review of the attached portfolio valuation, said:

"The property investments - £134,000 – aren't moving and are still going through the horrible uncertainty we spoke of when we last met - and I do regret that this will drag on. Properties, as you know aren't liquid, so values – particularly while new tenancy leases etc. are being negotiated - are likely to be misleading (and for that reason we're just showing those at book cost). I'll write separately about these once I've completed a few meetings I've scheduled to get a better picture of what you'll get out of these and when. At this stage, it looks to me as though the larger two schemes, Bridgewater Place and the Euro Industrial, will ultimately deliver a decent return but the ones from 2005, German Property and Cottbus, are going through a re-structuring and those seem likely to drag on for several years (I've attached a recent report on the Cottbus scheme)."

This suggests the book cost was being used as there was no reliable valuation available. This is not an uncommon practice, and I do not think this was an unreasonable thing for CDBL to do in the circumstances, where the above explanation was given. I do not think there is sufficient evidence to say this was a deliberate attempt to hide losses from Ms B – losses which, as I have set out above – Ms B should reasonably have been aware of, in any event.

I note Ms B says she was not made aware of the nature of the property investments – that CDBL did not tell her they were highly leveraged and that she was at the back of the queue for repayment on the sale of the property, as an investor. However, this is not supported by the available evidence.

The 25 November 2003 letter detailing advice to invest in Bridgewater Place included the following:

"*At our last meeting we ran through the mechanics of such scheme (whereby the Partnership will purchase a property with some equity injection from the partners and a commercial loan)*."

"*The borrowing is 74% and the aim is to distribute 10% net dividend per annum to the partners over the 5 years, after which the property is to be sold*."

CDBL's 1 December 2005 letter to Ms B detailing advice to invest in MP51 included the following:

"*As is generally the case with such funds, the structure is that investors will contribute around 25% of the fund and a leading bank will lend the remaining 75%*."

"*I know you are by now familiar with the caveats but I'll trot them out anyway*."

"*What makes these funds work, is debt*."

"*….if instead of appreciating in price (even modestly) the buildings were to fall in price, then the loan stays fixed and the fall in value hits your equity…..A modest fall in the building value might not seem terrible, but it the building has to be sold at a point whether that has taken place it will be very bad news. For example, if the building falls by 12 1/2% and you've put up 25% of the equity, your investment could be halved. A 25% fall could wipe out your investment altogether*."

CDBL's 18 October 2006 letter to Ms B detailing advice to invest in MP60 included the following:

"*The schemes work on the usual lines of using a high level of bank finance or "gearing" to boost returns. Typically, investors will contribute around 20% of the capital required to finance the building acquisition and a bank will lend the balance*."

"*….property values can fluctuate and although the "gearing" effect works well on the way up, it can cut the other way if property values fall. A fall in the building value of, say, 10% might not seem terrible, but if the building has to be sold at a point where that has taken place, you should note that any loss in value hits the investors – not the bank. if the building falls by 12 1/2% and you've put up 25% of the equity, your investment could be halved. A 20% fall could wipe out your investment altogether*."

I appreciate that, given the passage of time, Ms B may not be able to recall these letters (I note she says in her complaint that she did not receive any such letters) but they were all correctly addressed, and refer to preceding discussions about the investments. So I think it more likely than not they were seen by Ms B at the time. I am therefore satisfied Ms B was made aware of the nature of these investments – specifically their use of borrowing or "gearing".

I must also consider what Ms B said when making her complaint. In her complaint letter Ms B mentions *"wanting to keep the money safe"* and "*not wanting to take any risks*". Given what I have set out above I do not think CDBL's emails can have led Ms B to not making a complaint on that basis. There is nothing in CDBL's communications which suggests it led Ms B to believe her investments did not involve any risk.

So I am satisfied exceptional circumstances do not apply.

In summary I am not able to consider Ms B's complaint insofar as it is about advice and information on the property investments which predates 13 March 2014 and any advice given in relation to the offshore bond investments. I am only able to consider her complaint insofar as it relates to the advice and information given in September 2014. I am also able to consider - if it did involve a regulated activity - the information provided on the property investments a year before Ms B made her complaint. I have set out below my view on this, to illustrate the point that the question of whether this did involve a regulated activity does not alter the overall outcome.

Merits

As I am satisfied I can look at part of Ms B's complaint I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

To be clear, I am only considering Ms B's complaint insofar as it relates to the advice and information given in September 2014 and – if it did involve a regulated activity - the

information provided on the property investments a year before Ms B made her complaint involved.

I know this will disappoint Ms B, but I have not been persuaded to depart from my provisional findings – and I have therefore largely repeated them here.

As set out above, I think the property investments should have been considered high risk. So when it gave advice in September 2014 (or at any point subsequently, if it gave such advice) to Ms B CDBL ought to have considered the ongoing suitability of the property investments.

Considering the available evidence of Ms B's attitude to risk and objectives I do not think she was a high-risk investor.

In terms of contemporaneous evidence, I have seen two fact find documents. The one dated August 2003 says the following about Ms B's attitude to risk and objectives:

"Medium risk investor aiming for a balanced portfolio encompassing all levels of risk. Portfolio is to be restructured along the lines of a generator, with a 'sinking' fund proposed to provide regular income and a growth 'pot' to replenish this after a five year period."

The fact find dated July 2005 says the following about Ms B's attitude to risk and objective:

"Medium risk investor aiming for a balanced portfolio encompassing all levels of risk. Portfolio is structured as a generator, with monthly 'income' drawing of £1,500"

I have also seen a meeting note from an October 2003 meeting. But, in terms of the advice delivered by CDBL, this says only:

"We ran through the proposed investments and [Ms B] *seems quite happy with them"*

I have not seen any other records of Ms B's attitude to risk or any evidence of a formal assessment of her attitude to risk – and she says she does not recall one being carried out.

In her original complaint to CDBL Ms B says:

"At the time, I was only 40 years of age and I did not want to take any risks which could jeopardise the settlement monies. I had always trusted the advice I received from Chamberlain. I therefore continued to instruct Chamberlain to advise me on my financial affairs."

"When we met in October 2003, I was keen to invest the settlement monies, I did not want them sitting in a bank account. I was looking to receive a small amount of income, but I relayed that I could not afford to take any risks."

In her submissions to us Ms B says:

"I was given advice to invest in a range of investments that were high risk, and was a low risk investor"

"Many times I made it clear to them that it was very important that I protected the money I had with my investments and I was only invested with low risk"

"I do not recall ever taking a risk assessment with them, but I can evidence my caution through numerous emails. I was made aware when I moved advisers that it is normal practice to carry out regular risk assessments."

"I think for me the main points are that I unknowingly invested in high risk, illiquid and unregulated investments which were not suitable for me as I am low/medium risk client,

although I don´t think they ever discussed risk assessments. Also that my portfolio valuation was substantially less than the valuations I had received from them."

And, as noted above, in Ms B's 11 September 2014 email she says *"I always emphasised the need for caution".*

Overall, I think CDBL's assessment of Ms B being a medium risk investor was broadly reasonable. Ms B wanted to use her money to provide her with an income, whilst producing some growth (I think, from what I have seen, with the aim of that growth funding the income and increasing her capital). A medium risk approach is not inconsistent with that objective, or her overall circumstances.

The question is therefore whether it was reasonable for CDBL to advise Ms B not to sell the high risk property investments in September 2014. In considering that, I accept that CDBL needed to consider the overall position – both in terms of how much of the portfolio the investments represented at the time, as well as the status (i.e. whether or not they were liquid and could therefore be sold) of the investments.

On the first point, a medium risk portfolio can consist of a range of higher and lower risk investments. It would not be unreasonable for Ms B's portfolio to include some exposure to higher risk investments if that exposure were not too high and there were some counter balancing lower risk investments included in the portfolio.

Based on the available evidence about their likely values, it seems the property investments only represented a relatively small portion of Ms B's overall portfolio after 13 March 2014. So, their inclusion in the portfolio at that point did not necessarily make it unsuitable.

I note Ms B says, in her response to my provisional decision, that she was told by the administrator of the investments in 2019 that she could have sold the investments. I think it likely Ms B could have made a request to withdraw from the investments. But, given their status and nature, I remain of the view there is insufficient evidence to show that a sale of any of the investments would have been possible – that is to say, that any request to withdraw would have been successful. The evidence suggests none of the four investments were liquid – and would likely only pay out when wound up by the operator. That appears to have happened with the Euro Industrial investment in 2017 and the MP60 investment in 2020 (I appreciate the latter only paid out a small sum). And this position is consistent with the content of the update letters sent by the administrator of the investments. So I think it is unlikely Ms B could have sold even if CDBL had advised her to.

For completeness, I should say that in any event, my primary finding is that CDBL's advice was not unsuitable, as the inclusion of the high risk investments in Ms B's portfolio did not make it unsuitable for her, when considered overall.

It follows from this, and in light of the circumstances at the time (specifically, that the property investments were illiquid and could not be sold in any event) that I do not think it would be fair and reasonable to uphold Ms B's complaint about the advice not to sell the investments in September 2014.

I also do not think it would be fair and reasonable to uphold the complaint about the provision of information that was ancillary to the advice either. Or – if it did involve a regulated activity - the information provided on the property investments a year before Ms B made her complaint involved.

In my view there is insufficient evidence to say Ms B was misled by the information CDBL provided, or that it acted unreasonably otherwise. CDBL valued the property investments at book cost but there is no evidence to suggest it held those investments out as having a realisable value of that amount. And, as noted above, CDBL did say that a book cost valuation may be misleading as the outcome of the investments was unknown. In my view it was not unreasonable to take this approach where the actual value was difficult to assess or there was no realisable value. It was also the case, as I have set out, that Ms B was provided with valuations directly by the administrator for at least some of the property investments – and that those valuations made it clear a significant loss was envisaged.

So I do not think it would be fair and reasonable to uphold Ms B's complaint, insofar as it relates to advice or information given in September 2014.

My final decision

For the reasons given my decision, in summary, is as follows:

- I am not able to consider Ms B's complaint insofar as it is about advice on the property investments which predates 13 March 2014 and any advice given in relation to the offshore bond investments. These complaints were referred out of time.

- It would not be fair and reasonable to uphold Ms B's complaint, insofar as it relates to advice not to sell the investments in September 2014 and the information provided to her at the time – and, if it does relate to a regulated activity, the information provided on the property investments a year before Ms B made her complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 21 November 2023.

John Pattinson
Ombudsman