

REVIEW



Court Reiterates Onerous IFA Duties



[back](#) [home](#) [forward](#)



[contact us](#)

August 2017

Court Reiterates Onerous IFA Duties

A recently decided English case again highlights the dangers of investing in traded life policies and reiterates the duties of the adviser to revisit suitability regularly.

The case of *Jackson v Tenetconnect Ltd & Otrs* (unreported) revolved around advice given by an independent financial adviser (“IFA”) to a client to invest in certain traded life policies namely, the Utopia TLP Fund and the Keydata Secure Capital SLS Fund. Traded life policies (“TLP’s”) generally invest in life assurance policies. They purchase policies from individuals and therefore are responsible for payment of premiums from that time. The fund benefits on the death of the life assured but because that is generally the only income the funds generate they are highly illiquid. The funds appeared to offer guarantees but in fact did not.

TLP’s are generally classified (and were in this case) as experienced investor funds (EIF’s). Broadly speaking, EIF’s are not usually suitable for retail investors. The nature of EIF’s means that they are generally unregulated, usually highly illiquid, offer no guarantees and are considered very high risk. A person investing in an EIF must be an experienced investor, a term which is defined both in English and Manx regulatory codes and as to which an investor must certify in writing (and even if they have done so the *Jackson* case suggests that they must be found to be experienced investors as a matter of fact). Even though the investor in *Jackson* had received a suitability letter which outlined what an experienced (sophisticated) investor was, and asserted that the investor

had agreed and/or signed a declaration to that effect, it was not sufficient to meet the appropriate certification requirement.

In *Jackson* the investor had completed a fact find indicating that he was of medium risk. There was very little diversity with the majority of the investment having been placed in the two funds referred to above. The court found that the funds were not suitable for the investor’s risk profile, save perhaps if they represented a very small percentage of the overall value of the portfolio. EIF’s will only be suitable for those requiring very high risk investments and then again only if, per the above, the investors are experienced (as certified and in fact).

The *Jackson* case also highlighted that investment advisers have a duty to reconsider the suitability of previous advice on each occasion they are requested to review investments by the investor. In *Jackson* that request for a review was the investor asking the adviser how he could use his investments to supplement his income. He did not specifically ask the adviser to look at the suitability of the existing investments but the nature of his enquiry was sufficient to place a duty upon the adviser to undertake that task and the adviser should have realised his previous advice was not appropriate.

Many EIF’s, especially those which are traded life funds, appear to offer guarantees but in fact do not. For that reason they are also often sold to individuals who are low to medium risk (for whom guaranteed products in the true

Court Reiterates Onerous IFA Duties

sense of the word might well be appropriate (subject to advice)). Only those who will accept very high risk investments (i.e. are willing to accept that they could lose their investment) should invest in EIF's and then only if they are experienced investors as defined in local regulatory codes and of course only after they have taken financial advice. *Jackson* illustrates that those who have lost money by investing in EIF's and who have not been classified themselves as a high risk investor may have a claim against an adviser for negligent investment advice. Each instance depends on its merits and specific advice should always be taken.

Advocate Damian Molyneux is a former IFA with niche experience in negligent financial advice claims; dpm@mplegal.im

M&P Legal is an established Manx law firm with highly experienced Advocates and Solicitors who regularly feature as recommended in the Legal 500 and Chambers & Partners legal directories. The practice deals with Isle of Man litigation such as debt recovery, personal injury, employment, contract, injunctions, enforcement of UK judgments, professional negligence; private client matters such as probate and wills, conveyancing; and corporate/commercial, banking, trusts and insolvency.

Please contact the practice manager Honor Beard - hkb@mplegal.im with any questions.




LEGAL

REVIEW



[back](#) [home](#) [forward](#)

 [contact us](#)

Profiles

Click on a profile to be taken to our web site for full details



Christopher J Murphy
Joint Managing Director
cjm@mplegal.im



John T Aycock
Joint Managing Director
jta@mplegal.im



Christopher M Brooks
Counsel
cmb@mplegal.im



Damian P Molyneux
Counsel
dpm@mplegal.im



Nadine V Roberts
Associate
nvr@mplegal.im



Amelia J Quinn
Trainee Advocate
ajq@mplegal.im



Carol A Young
Conveyancing Manager
cay@mplegal.im



Niall M Prentice
Paralegal Assistant
nmp@mplegal.im