DRN-3354090

The complaint

Mrs S says she received unsuitable advice to invest in shares in a private company. She says the advice was given by Amyma Ltd (Amyma), an appointed representative of Equity For Growth (Securities) Limited (EFG). So Mrs S thinks EFG should pay her compensation.

What happened

Mrs S received emails from Amyma in 2018-2019 about investment opportunities. After receiving one such email, Mrs S made a £5,000 investment in shares in a company called Green Life Buildings (GLB) in June 2019 having earlier made another investment in a bond in similar circumstances.

Mrs S says that during this process, she received advice from Amyma. She now thinks that advice was unsuitable.

EFG did not uphold Mrs S's complaint. EFG said that Amyma was only an introducing agent and had not given Mrs S any advice. It also said that Mrs S had signed a declaration that she was a high net worth investor and had made her own investment decisions.

One of our investigators looked at the complaint and said it should be upheld. His findings were (in summary):

- There was no evidence that Amyma had given any advice.
- However, Amyma had made arrangements for the investment in GLB by sending the information memorandum, giving instructions about how to make the payment and reconciling funds. Making these arrangements was a regulated activity.
- The agreement between Amyma and EFG authorised Amyma to make arrangements for investments. So EFG was responsible for the acts undertaken by Amyma under section 39 (3) of the Financial Services and Markets Act 2000 (FSMA).
- Amyma (and consequently EFG) had breached the Code of Business Sourcebook (COBS) by promoting and arranging the investment in GLB when it was not appropriate to do so. The investigator highlighted that this was a requirement in COBS 10.
- So, EFG should compensate Mrs S on the basis that she would not have invested in GLB but would have instead invested differently. He said EFG should use an investment benchmark that matched Mrs S's risk profile.

The investigator dealt with Mrs S's bond investment separately. He said that EFG was not responsible for that complaint as the acts took place when Amyma was not an appointed representative of EFG. That matter has now closed as both parties accepted the investigator's findings.

EFG disagreed with the investigator on this complaint about GLB. It says there's no evidence that Mrs S actually referred a complaint to us about the GLB investment rather than the bond investment complaint that had been dealt with separately. It also says that Amyma only provided a link to the GLB information memorandum and this didn't constitute a direct offer financial promotion or regulated activity and exclusions applied under the legislation.

EFG also says that Amyma's acts did not constitute a direct offer financial promotion. So the provisions of COBS 10 requiring businesses involved in making arrangements to ensure that they are appropriate for their customers do not apply.

I've now been asked to make a final decision on this matter. Having considered matters carefully, my findings are the same as the investigators and essentially for the same reasons. I'll explain this below.

Jurisdiction

We can't consider all complaints brought to this service. Before we can consider something, we need to check, by reference to the Financial Conduct Authority's DISP Rules and the legislation from which those rules are derived, whether the complaint is one we have the power to look at. This should be based on the relevant facts of the complaint. And if those facts are in dispute, I must decide on the balance of probability what happened.

There are a number of jurisdiction tests that must be met in relation to all complaints referred to us. In respect of this complaint where EFG says it is not subject to our jurisdiction, the following are relevant considerations.

We can consider a complaint under our compulsory jurisdiction if it relates to an act or omission by a firm in the carrying on of one or more listed activities, (including regulated activities), or any ancillary activities carried on by the firm in connection with those activities, (DISP2.3.1R).

Complaints about acts or omissions by a firm include complaints about acts or omissions in respect of activities for which the firm is responsible (including the business of any appointed representative for which the firm has accepted responsibility) (DISP2.3.3G).

To carry out regulated activities a business needs to be an *authorised person* (s.19 FSMA). We can deal with certain complaints against EFG, as it is an authorised person. That may include complaints about the acts or omissions of its appointed representatives, such as Amyma. That is why this complaint is against EFG, rather than Amyma.

s.39 FSMA says:

> *39. Exemption of appointed representatives.*
>
> *(1) If a person (other than an authorised person)—*
>
> *(a) is a party to a contract with an authorised person ("his principal") which—*
>
> *(i) permits or requires him to carry on business of a prescribed description, and*
>
> *(ii) complies with such requirements as may be prescribed, and*
>
> *(b) is someone for whose activities in carrying on the whole or part of that*

business his principal has accepted responsibility in writing,

he is exempt from the general prohibition in relation to any regulated activity comprised in the carrying on of that business for which his principal has accepted responsibility. (my emphasis)

…

(3) *The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility."*

So, under s.39, the principal is required to accept responsibly for the business being conducted by the appointed representative. And recent case law makes it clear that the words *"part of"* in s.39 allow a principal firm to accept responsibility for only *part of* the "business" conducted by an appointed representative. The recent court cases illustrate some instances of what this means in practice and I've considered matters with these developments in mind.

So, I think there are three important points to consider when looking at our jurisdiction to consider this complaint:

- What are the acts about which Mrs S has complained?
- Were these acts done in the carrying on of a regulated activity or an ancillary activity carried on in connection with a regulated activity (DISP 2.3.1)?
- Were those acts ones for which EFG accepted responsibility?

What are the acts about which Mrs S has complained?

Mrs S has said Amyma advised her to invest in investments, including this one in GLB – which she thinks lacks the regulatory protection of investments that would have been appropriate for her.

EFG says that Mrs S hasn't actually complained to our service about the GLB investment and that, in any event, her only complaint is about advice from Amyma – not any promotion or arrangements it might have been involved in.

I'm satisfied that Mrs S has expressed dissatisfaction about Amyma's involvement with GLB – that is why she mentioned the GLB investment in her complaint letter to EFG:

"I am also concerned regarding another product GREEN LIFE BUILDINGS. it would appear that FCA approval for Amyma was only applied for from Jul 2018 until Sept 2 2019, within that time period all products purchased through or signed of by Equity for growth under s21 have failed.

I demand an explanation or an opportunity to as to the due diligence made by Equity for growth before sign off ?
and what compensation they have in place for the failed recommendation."

EFG included GLB in its final response letter:

"In regards to Green Life Buildings. We believe the company is performing on its business plan and is not in financial difficulties".

Mrs S referred her complaint to us by phone in January 2020 after receiving the final response letter. I don't have access to the call recording. EFG has argued that the note of the call (which we've sent them) refers only to bond investments not a share investment like GLB. But, I think that the words in the note are likely to have been a very brief summary of what the call handler was told and so didn't specifically note the shares in GLB. Or alternatively, that it was an error in language on the part of Mrs S when describing what she was complaining about. Furthermore, even if Mrs S did not specifically mention GLB when making the referral, the purpose of the call was to make a referral not particularise the complaint. It is the complaint she had already made to EFG which she was referring which does include GLB.

So, I don't think the note means that Mrs S was happy with EFG's response on GLB and didn't want us to review Amyma's role in that investment. I think it's more likely that she asked us to investigate her concerns about all matters that Amyma was involved in with respect to her investments and about which she'd already complained to EFG.

Furthermore, as explained by the investigator, we are not restricted to the precise words used by Mrs S. Mrs S's complaint to EFG about GLB was broad. We have an inquisitorial remit and can look at wider issues. In this case I think Mrs S's complaint encompasses all Amyma's acts in connection with the GLB investment and includes any arrangements it made.

Were the acts about which Mrs S complained done in the carrying on of a regulated activity or an ancillary activity carried on in connection with a regulated activity?

Regulated activities are specified in Part II of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) and include:

- Advising on the merits of buying or selling a particular investment which is a security or a relevant investment (article 53 RAO) and

- Making arrangements for another person to buy or sell or subscribe for a security or relevant investment (article 25 RAO).

There's insufficient evidence that Amyma gave Mrs S advice. So, the crucial issue for me to determine is whether Amyma conducted any other regulated activities, such as arrangements, or activities ancillary to regulated activities.

Simply introducing someone to an investment may not involve making arrangements or any other regulated activities under the RAO.

But, what does the evidence show that Amyma did?

My finding is that Amyma made a direct offer financial promotion of and arranged the GLB investment to Mrs S. I say this for the following reasons:

The FCA Handbook defines (for the avoidance of doubt, all references to the Handbook are as they were in the Handbook at the relevant time in May 2019) a financial promotion as:

> *"(1) an invitation or inducement to engage in investment activity or to engage in claims management activity that is communicated in the course of business;*

The GLB information memorandum is undoubtedly a financial promotion. This isn't in dispute. Indeed EFG approved it as such as evidenced by a section in the information memorandum which says:

> "*Equity for Growth (Securities) Limited ("EFGS") which is Authorised and Regulated by the Financial Conduct Authority, with registration number 475953 has approved the issue of this Document as a financial promotion in accordance with the provisions of section 21 of FSMA."*

The FCA Handbook defines a direct offer financial promotion as a financial promotion that contains:

> *(a) an offer by the firm or another person to enter into a controlled agreement with any person who responds to the communication; or*
>
> *(b) an invitation to any person who responds to the communication to make an offer to the firm or another person to enter into a controlled agreement;*
>
> *and which specifies the manner of response or includes a form by which any response may be made.*

A controlled agreement is defined as *"an agreement the making or performance of which by either party constitutes a controlled activity"* - which includes investment activity with securities such as GLB.

With this in mind, I think the key email is dated 23 May 2019 from Amyma to Mrs S which says:

> *"I have great pleasure introducing you to Green Life Buildings Limited (GLB), an investment opportunity with substantial growth potential, that has received EIS advanced assurance from HMRC."*
>
> *…*
> *"Please click the link below for full details of the investment* ***and how to apply****."* (my emphasis)

Below this is a hyperlink displaying the text "Green Life IM". EFG says that the hyperlink took Mrs S only to the information memorandum. But I think it's likely to have also directed Mrs S to GLB application material or specified how to respond. After all, the email said the link would take Mrs S to full details of the investment **and** how to apply.

This conclusion is also supported by an email that followed between Amyma and Mrs S on 6 June 2019:

> *"Dear Mrs [S],*
>
> *I hope you are well.*
>
> *I am pleased to confirm receipt of your signed application with Green Life Buildings for £5000.04"*

So, I think the original email dated 23 May 2019 likely contained both a link to the information memorandum, which is a financial promotion of the GLB investment, and provided an application form and/or specified how and who to return applications to. As such, my view is that the email was *an invitation to any person who responds to the*

communication to make an offer to the firm or another person to enter into a controlled agreement; and which specifies the manner of response or includes a form by which any response may be made.

While promoting investments in this way isn't specifically listed in the RAO as a regulated activity, I'm satisfied it was essentially part of and/or ancillary to the activities of *arrangements* that Amyma was also involved in for Mrs S's GLB investment.

Article 25 (Arranging deals in investments) of the RAO says:

> *"(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—*
>
> *(a)a security,*
> *…*
>
> *is a specified kind of activity.*
>
> *(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity."*

The GLB shares are *'a security'*. Amyma's involvement with Mrs S investment in GLB wasn't limited to just the promotion or the direct offer promotion.

The FCA's perimeter guidance at PERG 2.7.7B says of Article 25(1):

> *"The activity of arranging (bringing about) deals in investments is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, arrangements that bring it about)."*

Amyma gave instructions to Mrs S about where to make the payment (payment was directed to Amyma) and it was involved in reconciling the funds. It also likely provided the application paperwork and/or gave instructions for that to be returned to it. I think these acts were likely done in conjunction with EFG itself as EFG issued the placing letter and the "welcome" letter from GLB to Mrs S said:

> *"the data we have used to register the certificates was taken from Equity for Growth forms supplied."*

I'm satisfied that this amounted to arrangements under Article 25(1) of the RAO as Amyma's involvement had the direct effect of bringing about the investment in GLB.

Articles 25(1) and (2) are not mutually exclusive. Some activities can fall under both limbs. My finding is that Amyma also made arrangements under Article 25(2) as it made arrangements *with a view* to transactions in investments as the email from 23 May 2019 is evidence that Amyma's promotion had the *purpose* of making Mrs S invest.

EFG has said that an exclusion applies under Article 27 RAO. This says that:

> *A person does not carry on an activity of the kind specified by article 25(2) merely by providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties.*

This of course would only be an exclusion to the activity under Article 25(2) not the Article 25(1) activity that I think was also carried out. But I do not think the exclusion applies here in any event. PERG 8.32.5 says of this exclusion:

> *"The Regulated Activities Order contains an exclusion (article 27: Enabling parties to communicate) to bring a degree of certainty to this area. This applies to arrangements which might otherwise fall within article 25(2) merely because they provide the means by which one party to a transaction (or potential transaction) is able to communicate with other parties.*
>
> *In the FCA's view, the crucial element of the exclusion is the inclusion of the word 'merely'. So that, where a publisher, broadcaster or Internet website operator goes beyond what is necessary for him to provide his service of publishing, broadcasting or otherwise facilitating the issue of promotions, he may well bring himself within the scope of article 25(2)."*
>
> PERG 8.32.6
> *"For example, in the FCA's view a publisher or broadcaster would be likely to be making arrangements within the meaning of article 25(2) and be unable to make use of the exclusion in article 27 if:*
> *(1) he enters into an agreement with a provider of investment services such as a broker or*
> *product provider for the purpose of carrying their financial promotion; and*
> *(2) as part of the arrangements, the publisher or broadcaster does one or more of the following:*
>
> > *(a)brands the investment service or product in his name or joint name with the broker or product provider;*
> > *(b)endorses the service, or otherwise encourages readers or viewers to respond to the promotion;*
> > *(c) negotiates special rates for his readers or viewers if they take up the offer;*
> > *(d) holds out the service as something he has arranged for the benefit of his readers or viewers."*

Like the investigator, I think Amyma's email was intended to and did persuade, and so encouraged Mrs S to respond to the promotion. It was not *merely to provide the means by which one party to a transaction (or potential transaction) is able to communicate with other parties.* So, I don't think Amyma can rely on the exclusion provided by article 27.

So, this complaint involves a regulated activity (arrangements) and an activity that is ancillary to a regulated activity (the direct offer financial promotion).

Were those acts ones for which EFG accepted responsibility*?*

As set out above s.39 (3) FSMA says:

> *"The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility."*

So, for us to be able to look at the merits (the rights and wrongs) of the complaint we have to be satisfied that the activities carried on by Amyma were ones for which EFG accepted responsibility. To determine this, I've looked at the appointed representative agreement between EFG and Amyma.

The agreement says:

"[EFG] appoints [Amyma] as its Appointed Representative pursuant to section 39 of the Act to carry out the UK Business under Regulation 2 of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001, and to that end:

3.1.1 the activity which [Amyma] is permitted to carry out pursuant to this Agreement is limited to arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments …"

So, EFG authorised Amyma to make arrangements for investments. That is what happened in this case. I think the direct offer financial promotion was also authorised as part of any arrangements undertaken by Amyma. And if it wasn't, my view is that the direct offer financial promotion was intrinsically linked to Amyma's authority to make arrangements.

So, my conclusion on jurisdiction is that this is a matter that we can look at as it involves a regulated activity and/or an activity that is ancillary to a regulated activity. EFG authorised Amyma to carry on these acts. As such, it is responsible for the complaint.

What I've decided – and why

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

In my view the key consideration as to what is fair and reasonable in this case is whether EFG met its regulatory obligations when Amyma, acting on its behalf, carried out the acts the complaint is about. I consider the following regulatory obligations to be of particular relevance here.

The Principles for Businesses

The Principles for Businesses, which are set out in the FCA's Handbook "*are a general statement of the fundamental obligations of firms under the regulatory system"* (PRIN 1.1.2G). I think Principles 6 and 7 are relevant here. They provide:

Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 7 - *Communications with clients - A firm must 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"*

COBS 4 – Communicating with clients, including financial promotions

Principle 7 overlaps with COBS 4.2 - Fair, clear and not misleading communications, which I also consider to be relevant here:

COBS 4.2.1R:

(1) A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

There are also rules restricting who "non-readily realisable securities" can be promoted to and how to test whether the investment was appropriate for the potential investor. These rules are set out in COBS 4.7 and COBS 10. These rules are relevant in this case as the

shares in GLB were, in my view, non-readily realisable securities. The FCA Handbook definition of a 'non-readily realisable security' is:

> *"a security which is not any of the following:*
> *(a) a readily realisable security;*
> *(b) a packaged product;*
> *(c) a non-mainstream pooled investment;*
> *(d) a mutual society share;*
> *(e) a deferred share issued by a credit union; or*
> *(f) credit union subordinated debt;*

The GLB shares are a security that is not readily realisable and none of the other exclusions apply. So the GLB shares are a "non readily realisable security".

COBS 4.7 - Direct offer financial promotions

At the time COBS 4.7.7R said:

(1) Unless permitted by COBS 4.7.8 R, a firm must not communicate or approve a direct-offer financial promotion relating to a non-readily realisable security to or for communication to a retail client without the conditions in (2) and (3) being satisfied.

(2) The first condition is that the retail client recipient of the direct-offer financial promotion is one of the following:

> *(a) certified as a 'high net worth investor' in accordance with COBS 4.7.9 R;*
> *(b) certified as a 'sophisticated investor' in accordance with COBS 4.7.9 R;*
> *(c) self-certified as a 'sophisticated investor' in accordance with COBS 4.7.9 R;*
> *(d) certified as a 'restricted investor' in accordance with COBS 4.7.10 R.*

(3) The second condition is that firm itself or the person who will arrange or deal in relation to the non-readily realisable security will comply with the rules on appropriateness (see COBS 10) or equivalent requirements for any application or order that the person is aware, or ought reasonably to be aware, is in response to the direct offer financial promotion.

COBS 10 – Appropriateness (for non-advised services)

At the time COBS 10.1.2 R said:

"This chapter applies to a firm which arranges or deals in relation to a non-readily realisable security, derivative or a warrant with or for a retail client and the firm is aware, or ought reasonably to be aware, that the application or order is in response to a direct offer financial promotion."

COBS 10.2.1R:

"(1) When providing a service to which this chapter applies, a firm must ask the client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the firm to assess whether the service or product envisaged is appropriate for the client.

(2) When assessing appropriateness, a firm must determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded."

COBS 10.2.2 R:

"The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

> *(1) the types of service, transaction and designated investment with which the client is familiar;*
> *(2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;*
> *(3) the level of education, profession or relevant former profession of the client"*

10.2.6G – Knowledge and experience:

"Depending on the circumstances, a firm may be satisfied that the client's knowledge alone is sufficient for her to understand the risks involved in a product or service. Where reasonable, a firm may infer knowledge from experience."

COBS 10.3 Warning the client

COBS 10.3.1R

(1) If a firm considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the client, the firm must warn the client.

COBS 10.3.2R

(1) If the client elects not to provide the information to enable the firm to assess appropriateness, or if he provides insufficient information regarding his knowledge and experience, the firm must warn the client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for him.

COBS 10.3.3G

If a client asks a firm to go ahead with a transaction, despite being given a warning by the firm, it is for the firm to consider whether to do so having regard to the circumstances.

Did EFG comply with these regulatory requirements?

COBS 4.7 says that a firm must not communicate a direct or approve a direct offer financial promotion relating to a non-readily realisable security unless two conditions are satisfied. The first condition is the client has been certified or has self certified as one of the categories listed.

EFG has said in its response to Mrs S's complaint:

> *"Our records show that you have self-certified that you are exempt High Net Worth Investor and signed the exempt investor declaration"*

It appears Mrs S did sign a declaration saying that she was a high net worth individual. But even so, we know from what she's told us about her circumstances that she had very

modest savings and no investment experience at the time. So, my finding is that she was not in fact a high net worth investor.

COBS 4.12.9 (1)G says:

> *(1) A firm which wishes to rely on any of the certified high net worth investor exemptions (see Part I of the Schedule to the Promotion of Collective Investment Schemes Order, Part I of Schedule 5 to the Financial Promotions Order and COBS 4.12.6 R) should have regard to its duties under the Principles and the client's best interests rule. In particular, the firm should take reasonable steps to ascertain that the retail client does, in fact, meet the income and net assets criteria set out in the relevant statement for certified high net worth investors.*

I've seen no evidence that Amyma took reasonable steps to ascertain whether Mrs S was a high net worth investor. I think it's likely that any such reasonable steps would have revealed Mrs S did not meet the criteria. So, my finding is that Amyma breached the first condition required under COBS 4.7.7 by making the direct offer promotion to Mrs S when she was not or should not have been certified as a high net worth investor.

In any event, even if Mrs S had certified herself as a high net worth investor, that would only satisfy the first condition of COBS 4.7.7. For the reasons already explained by the investigator, I think EFG failed to satisfy the second condition too – compliance with the rules relating to appropriateness under COBS 10.

Amyma was obliged, under COBS 10, to "*ask the client to provide information regarding his knowledge and experience … to enable the firm to assess whether the service or product envisaged is appropriate for the client*" and "*determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded".*

EFG does not say that Amyma carried out any checks – its position is that it was not obliged to do so given its limited role as introducer. For all the reasons I set out above – I don't agree that it was just an introducer and must therefore conclude that no checks were carried out. Had Amyma carried out checks, I think it would have identified that Mrs S had no little or no investment experience and knowledge.

The GLB investment took the form of shares in a limited company which specialises in producing prefabricated panels for use in the construction industry. As an unlisted, unregulated investment with no trading history it was a high risk investment. As such, it was not a suitable investment for the majority of retail consumers. EFG knew or ought to have known this.

So had Amyma carried out the checks it should have, it would have identified that the investment in GLB shares was not appropriate for Mrs S. She had neither the knowledge nor experience to understand the risks involved in the investment. I'm aware that Mrs S had made an investment in one other investment introduced to her by Amyma shortly before GLB (not the subject of this decision), but it would not have been reasonable for Amyma to take account of that investment given that no checks were carried out for that investment either.

COBS 10.3 does provide for situations where firms can proceed with arrangements after giving warnings if the client still wants to proceed. But as set out in COBS 10.3.3G "*If a client asks a firm to go ahead with a transaction, despite being given a warning by the firm, it is for the firm to consider whether to do so having regard to the*

circumstances." I don't think it would have been fair for Amyma to proceed here, even if Mrs S did accept a warning, as it ought to have been aware she clearly did not have the capacity to understand all the risks involved with investing in GLB.

So, my conclusion is Amyma was required to follow the relevant rules set out by the regulator. It failed to do this when making the direct offer promotion to Mrs S and making the arrangements for the GLB investment. I'm satisfied that, had Amyma done everything it should have it would have concluded that it should not make the direct offer promotion to Mrs S and she would not have made the investment that was inappropriate for her. As such, EFG, as principle of Amyma, should pay Mrs S compensation.

Putting things right

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

On 2 November 2020, GLB contacted Mrs S by email to offer a rights issue which led to Mrs S purchasing an additional 1,316 shares direct from GLB and the payment was made to their account by bank transfer for around £800. I've not seen any evidence that Amyma or EFG was involved in this transaction and Mrs S said she made the further investment to protect her initial investment from the impact of the Covid pandemic. But this was after Mrs S had already complained to EFG and our service about the initial advice.

In the circumstances, I don't think it would be reasonable to ask EFG to compensate Mrs S for this purchase latter purchase.

I take the view that Mrs S would have invested differently in June 2019 when making the initial investment. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs S' circumstances and objectives when she invested.

What must EFG do?

To compensate Mrs S fairly, EFG must:

- Compare the performance of Mrs S' investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- EFG should also pay interest as set out below.

- Pay to Mrs S £150 for the trouble and upset caused to her by the arrangement of the inappropriate investment. It's clearly caused her a lot of worry.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
GLB – initial investment in June 2019	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

If, as is likely to be the case, at the end date the GLB investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mrs S agrees to EFG taking ownership of the illiquid assets, if it wishes to. If it is not possible for EFG to take ownership, then it may request an undertaking from Mrs S that she repays to EFG any amount she may receive from the portfolio in future.

If EFG does take ownership of the GLB investment, then EFG should provide an undertaking to compensate Mrs S for any tax liabilities she incurs as a result of transferring the ownership of the GLB shares. EFG will need to meet any costs in drawing up the undertaking.

Fair value

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

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs S wanted capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs S' circumstances and risk attitude.

My final decision

I uphold Mrs S's complaint. Equity For Growth (Securities) Limited must pay the fair compensation I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 27 October 2022.

Abdul Hafez
Ombudsman