

## **The complaint**

Mr F and Ms B complain that EIS Financial Services Ltd (EIS) provided them with incorrect information when they wished to top up an investment. Mr F and Ms B also complain that they paid for ongoing servicing on their account which they did not receive.

Mr F and Ms B say they suffered a financial loss when their adviser recommended another investment and want compensation.

Mr F and Ms B say that the complaint has caused them material distress and would like compensation for the trouble and upset caused.

## **What happened**

In January 2011, Mr F and Ms B invested directly into a Scottish Widows bond.

Following Mr F's retirement in 2013, Mr F and Ms B contacted EIS for advice on investing a lump sum. Mr F and Ms B say that they wished to top up their existing bond but were informed that the bond was closed, and it wasn't possible to top up their investment.

The adviser took Mr F and Ms B through a fact find exercise and a suitability letter containing recommendations was sent on 22 July 2013. The adviser recommended that Mr F and Ms B invest into ISAs and a joint Skandia Collective Investment Account which would purchase a managed fund. The suitability letter did not mention the Scottish Widows bond. Mr F and Ms B went ahead with the recommendations made by EIS.

Mr F and Ms B complained to EIS in August 2020. They said that:

- they had paid an ongoing service charge but had not received an annual review of their investments
- they had concerns about the performance of their investments and had raised this with their adviser on more than one occasion. They said that no alternative investment recommendation was offered until February 2020.
- they were told that they could not top up their Scottish Widows bond and this was inaccurate information

EIS investigated the complaint and responded on 7 October 2020. EIS upheld a part of Mr F and Ms B's complaint but rejected other parts of the complaint.

EIS said that they had not been offered annual financial reviews and agreed to refund fees to the value of £5,761.38. EIS did not uphold the other parts of the complaint saying that they thought the initial advice was suitable. They also said that although incorrect information on the bond was given by the adviser, they would not have recommended that savings be invested into a small concentrated number of funds.

Unhappy with EIS' final response, Mr F and Ms B forwarded their complaint to the service and one of our investigators reviewed the complaint.

The investigator didn't think that EIS had acted fairly and upheld the complaint. The investigator asked EIS to compensate Mr F and Ms B on the following basis:

- compare the performance of the recommended investment against the Scottish Widows bond that Mr F and Ms B wanted to top up. Deduct 3% fees that would have been charged. Compensate any difference if the Scottish Widows bond had a value higher than the recommended investment.
- pay Mr F and Ms B £200 for the trouble and upset caused
- repay the adviser fees associated with the recommended investment plus any ongoing service fees. Pay simple interest of 8% on this amount from date fees were paid to date of the settlement.

EIS did not agree with the investigator's view and responded with several challenges. Mr F and Ms B replied with some clarification on the fees that they had paid and said that EIS had calculated these incorrectly in the final response that they sent. They also questioned the dates which would be used for the redress calculation and that they would not have been charged a 3% initial fee on purchasing the Scottish Widows bond.

Mr F and Ms B also felt that the award for trouble and upset was too low and asked that they be awarded £2,500 each for the non-financial loss that they suffered.

As both EIS and Mr F and Ms B did not agree with the investigator's view, they have asked for an ombudsman to look at the complaint.

I issued my provisional decision on this complaint on 30 November 2021. In my provisional decision I explained the reasons why I thought the complaint should succeed. I asked both parties to send me more evidence or information they wanted me to look at by 28 December 2021.

Both parties replied. EIS said that they would not dispute my provisional decision and had calculated redress in line with how I thought they should put things right.

Mr F replied with some further points of information and challenged my award for the trouble and upset caused. Mr F again questioned if the redress calculation would run to February 2020 and asked for confirmation that the simple interest award was a per annum figure. He also confirmed his understanding that they would not have paid the initial 3% advice fee if they had topped up the Scottish Widows bond in 2013.

I issued a second provisional decision on 4 February 2021. In my provisional decision I explained the reasons why I thought the complaint should succeed and gave more detail on how I thought EIS should compensate Mr F and Ms B. I asked both parties to send me more evidence or information they wanted me to look at by 28 February 2022.

EIS replied with one challenge to my provisional decision. They said when Mr F and Ms B invested into the Skandia accounts in 2013, they used a £100,000 lump sum plus consolidated existing ISA investments worth £69,013. EIS commented that the Scottish Widows bond did not include an option for some funds to be held within it under an ISA wrapper, and consequently funds transferred into it from ISAs would have lost their tax efficient status. As a result, they suggested that the loss calculation in this case should be based upon an investment in 2013 of £100,000, rather than £169,013. EIS's view was that the ISA funds would have been consolidated into a new ISA (which was what EIS arranged at this time), rather than being invested in the Scottish Widows bond. I will cover this off in my decision.

Mr F and Ms B replied with comments in relation to:

- The initial provisional decision issued in November 2021
- Clarification of ISA timescales
- Comments on my second provisional decision relating to the date to which redress should be calculated, the amount of compensation for the trouble and upset caused and refund of the initial service fee.

I will consider Mr F and Ms B's comments in my final decision.

### **What I've decided – and why**

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

Having reviewed the information carefully, I am of the view that this complaint should succeed. I'll set out a summary of my conclusions below.

I would like to thank both parties for the submissions that they have made which have allowed me to reach this decision. I am sorry for the length of time that it has taken to reach this point and I thank both parties for their patience.

I will look at each part of the complaint in turn.

#### Inaccurate information on whether Mr F and Ms B could top up their bond

In their submission to the service, Mr F and Ms B say that it was always their intention to top up their Scottish Widows bond as they were happy with its performance. They said that they were disappointed when the adviser said that the bond was closed.

In EIS' final response to Mr F and Ms B's complaint, they said that the adviser provided the information that he was given at the time and understood to be correct. EIS now say that that they understand that the bond was open at the time.

EIS went on to say that whilst the bond was open, they would not ever recommend investing an entire pot of savings into a small concentrated number of funds.

In EIS' submission to the service, they have said that they have now been able to contact the adviser (who had left EIS' employment). EIS say that the adviser's recollections were as follows:

*"Mr F had an existing investment bond and an additional sum to invest. We discussed the possibility of adding this to his existing investment, however after discussion, decided that using their tax allowances through ISAs, with the additional monies to an investment account with a view to feeding this into ISAs over the coming years could be more tax efficient for them.*

*At no point were the clients told that their existing investment was closed as this was not the case. Rather a discussion was held, and a more tax efficient method of investment agreed upon."*

When reviewing this complaint, I have looked at the available information from both parties. As this would have been an important part of the conversation during the fact-find, I would have expected it to be covered within the Suitability Letter that was sent out with the recommendations.

On this point, there is little evidence on file for me to comfortably conclude what has happened. As I wasn't at the meeting, I don't know what was said so I have therefore considered what is likely to have happened based on the balance of probability.

On one hand, EIS have said that the adviser didn't say that the bond was closed and that an alternative recommendation was agreed as it was more tax efficient. On the other hand, Mr F and Ms B say that it was always their intention to top-up their bond.

Mr F and Ms B have given detailed recollections about the meeting they had with the adviser in 2013. They are clear that they said to the adviser that they wanted to put further money into the Scottish Widows bond. On balance I am more persuaded by Mr F and Ms B's submission that they wished to top up their investment and I think that this was their intention. As they were provided with information that it was not possible, they agreed to the alternative recommendation.

I have also taken note that EIS said in their submission to the service that the bond was open and incorrect information was provided by the adviser.

EIS have said that they have looked at the 2013 recommendations and believe that the advice was appropriate. I have considered this, but I think that on the balance of probability, the adviser gave information that turned out to be incorrect and therefore the subsequent recommendations were not consistent with what was important to Mr F and Ms B.

As full information was not available to Mr F and Ms B, I don't think that they were able to make an informed decision. If they had been informed correctly that they could add to the Scottish Widows bond, based on the weight of evidence, on balance my view is that Mr F and Ms B would have invested in that bond in 2013, rather than investing in the Skandia accounts. I will return to how I think EIS should put this right.

Following my second provisional decision, EIS highlighted that of the sum invested in 2013, £69,013 was in relation to transfers of existing ISAs. They said that it was not their practice to remove funds from tax-efficient investments to put them elsewhere so their recommendation would have been to consolidate these within an equivalent tax wrapper.

In terms of what Mr F and Ms B wanted to do when they approached EIS in 2013, throughout their complaint, they have referred to wanting to top up the Scottish Widows bond with Mr F's retirement funds of around £160,000.

It is my opinion that Mr F and Ms B wanted to use the full amount of £169,013 to top up their Scottish Widows bond. I acknowledge that EIS have said that their practice was not to recommend that £69,013 be taken from tax-efficient wrappers and in a different situation I would agree. But in this case, Mr F and Ms B had clear intentions to use their available funds to top up their Scottish Widows bond. From what they have said, on balance I consider they were willing to include existing ISA funds to do this, even if it meant that those funds were coming out of tax-efficient wrappers.

The only reason that Mr F and Ms B didn't top up the Scottish Widows bond was because they were told that it was closed. Had they been provided with the correct information, I believe they would have chosen to invest the full amount of £169,013 into the Scottish Widows bond, even if EIS had highlighted the loss of the ISA wrapper for some of their funds.

In their submission following the second provisional decision, Mr F and Ms B have confirmed that the actual amount invested was in excess of £160,000 and I am going to continue to use the £169,013 as the amount for the redress calculation.

### The initial fee charged by EIS in 2013

In their submission to the service, Mr F and Ms B have said that they were charged £5,070.39 in relation to the advice to invest in the Skandia accounts. They said that this wouldn't have been charged if they'd invested in the Scottish Widows bond because that was simply a top up investment. They said that they had received information from the business that they could have done this direct with Scottish Widows.

I have reviewed this information and I have to conclude that had Mr F and Ms B received correct information about the Scottish Widows bond, they would have topped up their investment direct with Scottish Widows and this amount would not have been charged. I can see that EIS emailed Mr F in September 2020 and stated that he could top up the Scottish Widows bond with a further investment if he didn't want advice. It seems to me more likely than not that Mr B and Ms F would not have required advice for this transaction. Because the £5,070.39 charge related to advice, I agree with Mr B and Ms F that the redress calculations should assume that if they had topped up the Scottish Widows bond, they would not have incurred this charge.

In terms of how to compensate for this £5,070.39 initial fee, Mr B and Ms F are concerned that my proposal in my recent provisional decision does not fairly do this. To clarify, the £5,070.39 fee was deducted from the money paid into the Skandia accounts in 2013 before units were purchased. This means that the total value of the Skandia accounts, and the value of these investments when subsequently changed from February 2020, is lower than if the £5,070.39 had not been deducted in 2013.

In my redress award, I am directing EIS to calculate the value of the 2013 investment if it had been made into the Scottish Widows bond, *without the deduction of the £5,070.39 initial fee*. That means that the redress calculation assumes that the full £169,013 would have been invested into the Scottish Widows bond. In contrast, the Skandia accounts had £169,013 minus £5,070.39 invested into them. When the Scottish Widow bond value (which is referred to as the 'fair value' below) is compared to the 'actual value' of the investment that went into the Skandia accounts, the difference between the two reflects the fact that the actual value is lower as a result of the £5,070.39 fee deduction having been applied to the investment amount at outset. For this reason, I consider the redress fairly compensates Mr B and Ms F for the £5,070.39 fee that was applied to the monies invested in the Skandia accounts. It reflects the fact that investing in the Scottish Widows bond wouldn't have incurred this fee.

### Mr F and Ms B paid for an ongoing service but had not received an annual review of their investments

In their submission, Mr F and Ms B say that they had paid for ongoing servicing of their investments and did not receive annual reviews. They have also said that had they topped up their Scottish Widows bond directly, they would not have signed up for ongoing servicing.

EIS upheld this part of the complaint in the final response that it sent to Mr F and Ms B.

In their submission to the service, EIS have said that they were in touch with Mr F and Ms B on multiple occasions during the period of their investments and issued valuations and undertook instructions. EIS said that the adviser visited them at home in 2017 and telephoned them on several occasions.

EIS have asked why the investigator attached “penalty” interest of 8% simple per annum to the amount that was taken in fees and they are unclear why this rate should apply. EIS have said that a more appropriate rate of Bank of England base + 1% should apply.

EIS have asked me to consider my opinion in light of what they said they have said in their submission. I’m unclear what part of the above EIS wish me to reconsider but I will answer both parts.

If a consumer has been deprived of funds, then the service will generally ask a business to pay simple interest at 8% per annum. In this case, Mr F and Ms B have paid for a service that they didn’t get and have been deprived of the use of those funds.

EIS has said that they were in contact with Mr F and Ms B on multiple occasions during their investments. If I assume that EIS think that this was what Mr F and Ms B paid for via their ongoing service charge, then I disagree.

EIS issued Mr F and Ms B with a brochure describing their services. Under the section ‘Ongoing Service’, it says:

- *We can review your plan and recommend any changes*
- *We will contact you at least annually to confirm ongoing suitability where appropriate*
- *We will provide regular updates and offer detailed reviews to take account of changes to your circumstances*
- *We will revise and update your plans accordingly*

I can see from the file that EIS wrote to Mr F and Ms B in 2015, 2017 and again in 2020. The only letter that is titled annual review is the 2020 letter. I’m not convinced that the 2015 and 2017 letters were the results of a full annual review.

From what I have seen, Mr F and Ms B paid for a service that they didn’t receive, and I think that EIS have acted unfairly. I am going to ask EIS to compensate Mr F and Ms B for these errors.

Mr F has pointed out in his submission that he believes EIS have mis-calculated the fees due in their offer of redress. Mr F believes that the amount of £5,761.38 is incorrect as it doesn’t include periods where charges were levied. In particular having looked at the statements, Mr F has said that EIS did not include in its offer the fees that were charged from July 2013 to April 2014, and most of January/February 2020 (after this point, Mr F says he was satisfied with the regular advice received). He has also said that EIS has failed to provide an explanation for how it arrived at the figure that it did, despite being asked to do so.

Mr F has suggested that the amount is around £6,700, and he can provide a detailed breakdown to evidence this figure. Overall, balancing the parties’ submissions on this subject, my conclusion is that it is reasonable to conclude that Mr F’s calculations are accurate, and so EIS should be paying Mr F and Ms B a sum of around £6,700 plus interest in respect of the ongoing service fees. This should cover the period from July 2013 to February 2020.

In its response to my second provisional decision, EIS have stated that this amount, including interest, is £10,400.19. As I explain at the end of this decision, EIS should include details of its calculations, including this one, in a clear and simple format when making payment to Mr F and Ms B.

### Mr F and Ms B had concerns about the performance of their investments

This part of Mr F and Ms B's complaint is linked to the fact that they were provided with an alternative recommendation which has not performed as well as the bond that they wished to top up and invest.

In Mr F and Ms B's submission, they have said that they were concerned at the performance of their investments and made EIS aware. Mr F says that he contacted EIS on a number of occasions between 2014 and 2015 and again in 2020.

Performance on its own is not something that the service will look at but as I believe that Mr F and Ms B were provided with incorrect information, I think this affected where they invested their money in 2013, and this is something that the service can look at.

Mr F and Ms B were provided with recommendations that were based on the adviser believing that the bond was not open. This resulted in the adviser providing recommendations on alternative investments. If Mr F and Ms B had been given correct information about the Scottish Widows bond, my view is that they would have invested in that in 2013, rather than in the Skandia accounts. I believe that Mr F and Ms B may have been financially disadvantaged by this and I am going to ask EIS to calculate the performance of the recommended investments against the bond that Mr F and Ms B wanted to invest in.

In terms of the dates that EIS should use for these calculations, Mr F has suggested up to February 2020 as they were happy with what has happened since they switched to the Vanguard fund at this point and only want to compare the Scottish Widows bond against this.

I disagreed on this point – I didn't think that this represented fair compensation to Mr F and Ms B. They only invested in the Vanguard fund as they received incorrect information from the adviser about their ability to top up the Scottish Widows bond.

Mr F and Ms B reiterated the points that they made in relation to the switched investments in February 2020 and were happy with the end date for comparison being February 2020.

I have considered Mr F and Ms B's comments. When the service looks at redress calculations, the fundamental principle is to put the consumer back in the position they would have been in if the business had not been at fault.

In this case, if EIS had given accurate information in 2013, Mr F and Ms B would have invested in the Scottish Widows bond. The consequence of EIS giving incorrect info in 2013 is that Mr F and Ms B invested into the Creation ISAs.

I know that Mr F and Ms B were unhappy with the performance of the Creation investments, and in Feb 2020 they received advice to switch to Vanguard and have been happy with how Vanguard has performed since then. But, to determine fair redress here, I need to consider whether, if Mr F and Ms B had not been given incorrect information in 2013, and had therefore invested in the Scottish Widows bond, would they have moved that money in February 2020 to Vanguard?

I think that's unlikely and I need to look at this on the balance of probabilities. It seems to me that the only reason Mr F and Ms B were exploring switching their money out of Creation in 2020 was because they were unhappy with its performance.

If they were invested in the Scottish Widows bond from 2013, I don't see persuasive evidence that in Feb 2020, they would have chosen to move that money to Vanguard. Within their latest submissions, Mr F and Ms B have suggested that they would have moved their funds to Vanguard in 2020, even if those funds were within the Scottish Widows bond. But my own view is that that is unlikely. I think they only became aware of Vanguard because of the poor performance of Creation. I suspect that the conversations they had about poor performance in 2020 with the adviser would not have happened if they'd been in the Scottish Widows bond at that time. In that scenario, more likely I think they'd still be invested in the Scottish Widows bond now.

In the redress calculation at the end of the decision, I am asking EIS to use the date of settlement as the end date.

#### Trouble and Upset compensation amount

The investigator awarded £200 for the trouble and upset that the complaint had caused. This was also suggested by EIS in their submission to the service.

Mr F and Ms B say that this does not constitute fair compensation and believe that the service should award compensation in line with published guidance. Mr F and Ms B believe that an award within the "severe" category would be more appropriate.

I have considered this carefully and I have no doubt that the complaint has caused Mr F and Ms B considerable stress. Mr F has provided information to me on how this has affected him, and I sympathise with what he has said. I have found his testimony persuasive.

Having considered the information available to me, I think a total award of £750 is appropriate in the circumstances and I ask that EIS pay this to Mr F and Ms B.

I know that Mr F and Ms B continue to be disappointed with this amount and have said that the examples on our website strongly suggest a significantly greater amount of compensation is justified. I have considered this and the service looks at all complaints on its own merits. I feel that a total amount of £750 is fair in light of the circumstances of the complaint.

#### **Putting things right**

In assessing what would be fair compensation, I consider that my aim should be to put Mr F and Ms B as close to the position they would now be in if EIS had provided them with accurate information in 2013.

I consider that if Mr F and Ms B had been given accurate information then they would have increased their investment in the Scottish Widows bond in 2013. They would have invested £169,013 into that bond, instead of investing this sum split between the Skandia accounts (the Collective Investment Account, two new ISAs, and an ISA transfer). The Scottish Widows Bond is therefore the benchmark which I require to be used in the redress outlined below.

#### **What must EIS do?**

To compensate Mr F and Ms B fairly, EIS must:

- Compare the performance of the Skandia investments (and any subsequent investments that this money was switched into) with that of the benchmark shown



below (£169,013 into the Scottish Widows bond) and pay Mr F and Ms B 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.

- Pay Mr F and Ms B £750 for unnecessary distress caused to them.
- Repay the regular adviser's fees that Mr F and Ms B have calculated to be around £6,700, covering the period from July 2013 to February 2020. To these should be added simple interest at 8% a year, from the date the fees were paid to the date of the settlement.

I am not requiring EIS to directly repay Mr F and Ms B the £5,070.39 initial advice fee because the *fair value* should be calculated assuming that the full £169,013 was invested into the Scottish Widows bond. That is, it assumes that the initial advice fee would not have been deducted from the £169,013 amount before it purchased units in the Scottish Widows bond. When the *fair value* is compared to the *actual value*, this will then take into account that the *actual value* includes the effect of the payment of the £5,070.39 fee when the Skandia investments occurred.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Skandia accounts	Still exists	Scottish Widows bond	Date of investment in Skandia accounts	Date of settlement	Not applicable (because the calculation end date is the date of settlement)

### ***Actual value***

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

### ***Fair value***

This is what the investment of £169,013 (without any deduction for an advice fee) would have been worth at the end date had it produced a return using the Scottish Widows bond as a benchmark.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if EIS totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically

### **My final decision**

I uphold the complaint. My decision is that EIS Financial Services Ltd should pay the amount calculated as set out above.

EIS should provide details of its calculation to Mr F and Ms B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr F to accept or reject my decision before 7 April 2022.

Brian Gray  
**Ombudsman**