DRN-3451065

The complaint

Mrs Z invested around £98,000 in two fixed monthly income bonds with EGR Wealth Limited ("EGR"). She says the bonds were mis-sold by EGR, previously known as EGR Broking, and that she was misled into thinking they were safe. Her complaint has been brought by a representative.

What happened

In November 2019, Mrs Z invested £19,939.88 in a 4 Year Fixed Bond. Two months later, in January 2020, she invested a further £77,843 in a second 4 Year Fixed Bond. Sales of the bonds were dealt with by a third party 'C', a separate business from EGR.

Mrs Z's investment in the bonds

- Mrs Z first became aware of EGR after her husband received a brochure promoting the Access Bonds. Though she recalls never having seen the brochure itself, she says her husband thought it to be a good investment for both to invest in.
- Mrs Z attended C's / Clifford Knight's office to sign the paperwork. As she possessed a limited grasp of English, she says she would have understood basic instructions such as 'sign here' but not any specific terminology about the investment itself.
- Of her prior investment experience, Mrs Z had has invested in ISAs only and believed this to be the case here.

In July 2020, EGR wrote to all investors then holding bonds. The letter referred to EGR's immediate end to manufacture and/ or act as a distributor of listed bonds following discussions with the regulator, The Financial Conduct Authority ('FCA'). This prompted Mrs Z to realise that the investment bore far greater risk than she anticipated so she wrote to EGR to complain.

The application process

Mrs Z says she signed the application form at C's Clifford Knight's office which was then passed to EGR to collect and assess eligibility using the information provided. Following this, EGR issued documentation relating to the bonds.

EGR's response to Mrs Z's complaint

EGR did not uphold Mrs Z's complaint. It said:

- EGR provided an execution only service to Mrs Z so there was no requirement to provide Mrs Z with a suitability letter.
- Mrs Z had been given sufficient information and risk warnings about the investment and had completed a document to say she understood those risks.

Our investigator's view

One of our investigators considered Mrs Z's complaint and concluded it should be upheld.

She said, in summary:

- Mrs Z didn't meet the criteria of a "restricted investor". She'd seen no evidence to show EGR Ltd took appropriate steps to ascertain Mrs Z met the criteria as per the regulatory requirement.
- The assessment of the appropriateness of the bonds for Mrs Z didn't gather sufficient information to comply with the FCA's rules.
- Overall, EGR didn't comply with its regulatory obligations. Had it done so, Mrs Z wouldn't have decided to invest or EGR should have concluded that it shouldn't allow her to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for EGR to put Mrs Z as close to the position she would probably now be in if she had not invested in the product.

EGR's response to the view

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

- EGR was responsible for marketing the bonds but it did not engage in any direct promotion or sales contracts. In this case, Mrs Z's had been introduced to the bonds by her husband following contact with C.
- EGR would have received a completed application form which included the section about categorisation.
- EGR says C had a discussion with Mrs Z at their office regarding her investment experience and knowledge. And it was satisfied through C, that she met the requirements and understood the risks involved.
- Mrs Z completed the additional information document for purposes of providing information regarding her knowledge and experience on whether the investment was suitable for her. As she confirmed that she met the requirements of a restricted investor, it was reasonable to rely on that declaration.
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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 done so, I've reached the same overall conclusion as the investigator.

I have seen copies of the application form. This consisted of two stages, designed to meet the rules restricting who the bonds could be promoted to and on how to test whether the investments were appropriate for the potential investor. The first was certification, where Mrs Z was categorised as a restricted investor. The second was the appropriateness test.

What role did EGR play in the bonds?

EGR has submitted that its activities in relation to the Access Bonds were limited. It makes much of the fact that investment advice was not given by it to Mrs Z. I find that this issue is largely irrelevant to my findings, especially where it is clear EGR was carrying out the following activities prior to July 2020:

- EGR promoted and arranged investments in the Access Bonds;
- It received and collated application forms;
- It was integral to the process of eligibility certification and assessed eligibility using a questionnaire for this purpose;
- It issued documentation in relation to the bonds.

It's clear that EGR played a number of roles. Firstly, in relation to approving the marketing and promotional material relating to the bonds and secondly, in relation to making sure the investment was appropriate. It also was responsible for providing investors with *'extensive factual information about the structures, the risk, and returns'* as outlined in its final response letter. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 lists all the regulated activities. The one that is relevant here is the arranging deals in investments. I've thought about C's involvement- an unregulated 3rd party, but on balance and for the reasons given, I think that EGR (the only regulated party in the transaction) held the responsibility for arranging the investments.

What were EGR's responsibilities?

In considering what is fair and reasonable in all the circumstances of this complaint, I have taken into account relevant law and regulations; regulators rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

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 (Customers' interests) and 7 (Communications with clients) are relevant here.

Principle 7 overlaps with COBS 4.2.1 R (1) (A firm must ensure that a communication or a financial promotion is fair, clear and not misleading), which I also consider to be relevant here.

The bonds were non-readily realisable and therefore there were rules restricting who they could be promoted to and how to test whether the investment was appropriate for the potential investor. These rules were set out in COBS 4. 7 and COBS 10.1, 10.2 and 10.3. I have considered the relevant rules in full.

Certification

The first condition set out in COBS 4.7.7R required a retail client, such as Mrs Z, to be certified as being in one of four categories of investor in order to receive promotional communications relating to the bonds. In this case, Mrs Z was certified as a "restricted investor". The detail of this category and the process by which an investor can certify themselves as belonging to it is set out in COBS 4.7.10R

4.7.10R requires the prospective investor to agree to all of the following:

- In the twelve months preceding the certification date, not to have invested more than 10% of their net assets in non-readily realisable securities.
- To undertake that in the twelve months following the certification date, they will not invest more than 10% of my net assets in non-readily realisable securities.
- To accept that the investments may expose them to a significant risk of losing all of the money invested.
- To be aware that it is open to them to seek advice from an authorised person who specialises in advising on non-readily realisable securities.

EGR has pointed to Mrs Z's husband's assets which it considered to be jointly held. It's also made reference to Mrs Z's husband knowledge and experience, but I haven't seen evidence to show Mrs Z's investment fell below the 10% threshold or that she had any significant

knowledge or experience about investments. If anything, Mrs Z testifies that she was investing almost 60% of her net assets so I'm not persuaded she qualified as a restricted investor. For the avoidance of doubt evidence doesn't support she met any of other categories either -assume she isn't HNW or sophisticated.

It follows then that had EGR acted fairly and reasonably to meet its regulatory obligations, Mrs Z could not have gone passed this stage. However, for completeness, I will now consider the appropriateness test.

Appropriateness

EGR was also required to take reasonable steps to satisfy itself that Mrs Z had the requisite experience, knowledge or expertise to understand the risks of the bonds in line with COBS 4.12.11.

The appropriateness test carried out by EGR did not meet the requirements of the rules. Had the process been consistent with what the rules required – had Mrs Z been asked for appropriate information about her knowledge and experience – the only reasonable conclusion EGR could have reached, having assessed this, was that she did not have the necessary experience and knowledge to understand the risks involved with the bonds.

I say this because Mrs Z had limited investment experience, and that relating to ISAs only. I've seen no evidence to show she had anything other than a basic knowledge of investments. She hadn't made investments in similar products previously let alone in the last 12 months, and she had very limited means of making up potential losses.

I note EGR's view is that Mrs Z nonetheless signed the declaration and further completed the *'additional information form'* to support she met the requirements of a restricted investor, so it was reasonable for EGR to rely on them. But I disagree. Parts of the application form was blank, and the only information contained within the *'additional information document'* in was a tick agreeing to a statement but no further detail. So, whilst I acknowledge the form's wording mirrored what is set out in 4.7.10R and Mrs Z did confirm and declare something which was not correct, I'm not persuaded that she proceeded to complete it having understood it in full. I say this because the vague nature of the form supports that I think it was unlikely, she was aware of the bonds had significant risk associated with them. As such, it would not be sufficient for EGR to conclude the bonds were appropriate for Mrs Z on that basis. In these circumstances, a warning must be given. A business could then consider whether to go ahead with the transaction if the client wished to proceed, despite the warning.

Taking into account everything, I'm not persuaded Mrs Z would have proceeded had she understood. So, it follows that I haven't found that BG Ltd met its obligations here.

For these reasons – individually and cumulatively – my conclusion is that Mrs Z's complaint should be upheld. I am also satisfied Mrs Z would either not have proceeded to make the investments or would not have been able to proceed, had EGR acted fairly and reasonably to meet its regulatory obligations. I am therefore, satisfied it is fair to ask EGR to put Mrs Z back into the position she should be in had she not invested in the Access Bonds.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs Z as close to the position she would probably now be in if she had EGR not failed in its obligations.

I take the view that Mrs Z would have invested differently. 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 Z's circumstances and objectives when she invested.

What must EGR do regarding both bonds?

To compensate Mrs Z fairly, EGR must:

- Compare the performance of Mrs Z's investments 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.

- EGR should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Access Commercial Investors 4 Plc bonds	Still exists and liquid	Average rate from fixed rate bonds	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.

Fair value

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

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, EGR should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other distributions paid out of the investments 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 is a large number of regular payments, to keep calculations simpler, I'll accept if EGR totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs Z wanted to achieve a reasonable return without risking any of her capital.

- The average rate for the fixed rate bonds would be a fair measure given Mrs Z's circumstances and objectives. It does not mean that Mrs Z would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

My final decision

I uphold the complaint. My decision is that EGR Wealth Limited should pay the amount calculated as set out above.

EGR Wealth Limited should provide details of its calculation to Mrs Z in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Z to accept or reject my decision before 19 June 2023.

Farzana Miah
Ombudsman