

The complaint

Mr B complains that Independently East Ltd (“IEL”) did not do what it should have done in relation to the bond it said it was going to invest his money into.

What happened

Mr B met with the adviser for IEL at the end of 2019 and beginning of 2020 as he wanted to invest £50,000. From the limited information available he was advised to invest this money in a bond and a further small amount of £2,000 in a stocks and shares ISA. He provided the money for the investments to IEL for it to invest on his behalf. He later provided IEL with a further £20,000 for payment into the bond.

Mr B was provided with no suitability letter in relation to the advice to invest but the money he provided to the adviser for investment in the ISA was invested as intended and Mr B subsequently surrendered this and raises no complaint in relation to it.

However, despite continued requests to IEL for information about the investment in the bond Mr B received no documentation showing this investment. He also didn't receive the interest payments he had been told would be paid on the investment.

This led to him referring the matter to us. Mr B continued to correspond with the adviser after he had referred his complaint seeking information about his investment and the payment of interest. He then asked for the return of his money and was told that there was a one-year notice period for the surrender of the investment.

We also sought information from IEL as to the investment in the bond, but despite repeated requests it has never provided any documentation or even confirmed the name of the investment provider it says the money was invested with.

One of our investigators then provided his opinion on the complaint upholding it. IEL didn't respond and the matter was referred to me for review. I asked Mr B to provide some further information about what happened given the lack of any documentation in relation to the investment in the bond. He informed me that he had previously invested £50,000 in a two-year fixed rate bond in 2017. He said he was disappointed with the return he achieved on the bond maturing in 2019 and that is why he thought he should get advice from an adviser and IEL came up as the nearest adviser on a search.

Mr B said that the adviser recommended investment in a bond which would start paying interest at 4.25% which would be paid monthly after the first year of investment. Mr B said that the adviser told him this was the interest rate for investments of at least £50,000 with a lower interest rate below this.

Mr B said that he had been provided with documentation at the time he met with the adviser but wasn't provided with anything to take away and wasn't sent anything afterwards. This is why he ended up making a subject access request. He explained that he simply assumed that the way the adviser dealt with matters was normal for someone regulated by the FCA.

Mr B did say he wondered why he couldn't find anything offering 4.25% online but put this down to the fact that IEL could access investments he could not.

I then issued a provisional decision upholding the complaint. The findings from which are set out below.

"This is an unusual case in that IEL have failed to provide any information in relation to the investment in the bond the evidence indicates was discussed with Mr B by the adviser and which it was going to arrange on his behalf.

There is no good reason for IEL not to provide the documentation and failing to do so is both a breach of its obligations to Mr B as its client as well as its obligation to co-operate with our service.

Given the lack of information from IEL I have in large part relied on what Mr B says happened in making my findings. Having said that the limited correspondence from IEL I think provides some support for what he says happened.

In short, based on the limited available evidence I think it is more likely than not the adviser recommended that Mr B invest in some sort of property bond that would provide interest of 4.25% per annum after the first year of investment and that the adviser was meant to arrange the investment on receipt of the money from Mr B.

The failure by IEL to provide documentation and refusal to provide the name of the provider of the bond I think makes it more likely than not it has not invested the money at all or if it has it has invested in something other than what it recommended to Mr B. Either way I think this complaint should be upheld because it didn't do what it should have done.

In addition to IEL's failure to provide documents it should have provided there is further evidence that supports the view that IEL has not arranged the investment it should have done.

Mr B was informed he would be paid interest monthly after the first year, which would mean he should have started receiving interest in the first couple of months of 2021. He didn't receive any such interest and when he queried this with the adviser he was told the payments were meant to be quarterly.

I think the first point to note about this is that the adviser did not suggest interest at 4.25% was not payable, only that this would be paid quarterly. I think this supports what Mr B says he was told by the adviser about the features of the bond. The second point to note is that, whilst Mr B did receive some money from the adviser this doesn't tie in with the interest he should have received. In the circumstances it seems unlikely to me that what has been paid is interest on money invested in the bond recommended to Mr B.

Furthermore, when Mr B indicated he wanted his money back the adviser then told him there was a one-year notice period for the bond. It seems to me very unlikely that an investment bond would have such a long notice period and I think this again points towards the money provided to IEL by Mr B not being invested at all or being invested in something other than an investment bond. In addition IEL indicated to Mr B that it had given the required notice over a year ago and on that basis Mr B should have had his money back by now, but hasn't.

Even if I am wrong, and the adviser did invest the £70,000 in some sort of investment bond, I don't think this was suitable and/or the adviser didn't provide clear, fair, and not misleading information to Mr B about the bond which allowed him to make an informed decision about

investing in it.

I say this for a couple of reasons, firstly Mr B was led to believe the investment would generate a regular income which it has not done. Secondly, he was not made aware of a one-year notice period.

If Mr B had been told he would not get the expected interest and/or that there was a one-year notice period I think it is more likely than not he wouldn't have invested £70,000 through the adviser.

In summary, IEL:

- Didn't arrange the intended investment discussed with Mr B.*
- In the alternative if it did arrange an investment this was not suitable based on the discussions between Mr and the adviser.*
- In the further alternative the adviser failed to give Mr B clear, fair, and not misleading information about the investment and if it had done so Mr B would not have invested.*

What IEL should do to put things right

The investigator awarded Mr B the £70,000 he provided to the adviser for investment together with simple interest on that amount at 8%. This rate is appropriate where we are not able to say what someone would have otherwise done with their money. It takes into account such things as the possibility the money would instead have been used to pay off a credit card debt or some other debt which the complainant was paying significant interest on.

I don't think it is appropriate to use the 8% rate in this case because the evidence shows that Mr B's intention was to invest to obtain a better return than he had achieved with the two-year fixed rate bond he had previously invested in. This points towards redress being based on him having invested in something else if he had not provided the money to IEL for investment in a bond that on the face of it never existed.

Mr B was only likely to be able to achieve the sort of return promised by the adviser of 4.25% if he was willing to take a reasonable amount of risk with his money. However, I am mindful that he thought this was achievable through being invested in the purported bond the adviser recommended which would have been a low risk investment.

I don't know if Mr B was made aware that he could only achieve the sort of return the adviser had referred to by taking an increased risk, whether he would have been willing to invest in a product that had such risk.

I am also mindful that whilst he wanted to do better than his previous investment, he didn't have a figure of 4.25% in mind when he met with the adviser, that is just the figure the adviser came up with. In other words he may well have been happy to accept any investment that could achieve a better return than his previous bond.

Mr B has said he only recovered £400-£600 on his previous two-year fixed rate bond. I have checked in 'Moneyfacts' what rates the provider was offering at the time Mr B took out the bond in 2017 and this was either 0.55% or 0.8%. Given the figures Mr B has referred to it suggests he took out a bond at the lower rate of 0.55%.

I have looked at what rates he might have got if he invested £50,000 in a fixed rate

bond/term account at the start of 2020. The information from Moneyfacts for January and February 2020 shows some providers were offering as much as 1.5% for a bond/term account of two years, and in excess of this for longer periods. I think in the circumstances using a rate of 1.5% as the basis for what he would have got back on his investment is fair and reasonable in the circumstances.

So, what IEL should do is repay Mr B the £70,000 he invested together with interest calculated at 1.5% per annum. I am mindful that Mr B invested two separate amounts so IEL should calculate interest on the £50,000 initially invested by Mr B up to the point he invested a further £20,000 after which it should calculate interest on the total amount of £70,000 up to the date of settlement

I also think IEL should pay Mr B £500 for the distress and inconvenience he has been caused. I think an award above that made by the investigator is appropriate in the circumstances. Not only has Mr B had the distress of not knowing what has happened to his money, he has also spent considerable time and effort trying to find out what has happened both on the telephone and in correspondence.”

I gave both parties the opportunity of responding and providing any further information they wanted me to consider. IEL didn't provide any further information but Mr B set out detailed reasons why he didn't agree with the award of interest I had made and asked me to reconsider this and award the 8% originally awarded by the investigator. I have summarised the main points he has made as follows:

- IEL has failed to provide information about the bond to him, the investigator or to me in breach of its obligations.
- I have found that it either invested in something other than what was discussed or hasn't invested at all and either way what it has done is extremely damaging to him personally.
- He is surprised about my comments about what he would have done if it had not been for IEL and my use of this to determine the interest to be awarded.
- It isn't fair or reasonable to restrict the award to the rate of return on products he was not provided with information on when I was told by IEL he could achieve a higher rate with the same risk profile.
- My award assumes he never approached IEL and was never made aware of a purportedly low risk product with a rate of return of 4.25% but he was made aware of this and would have had no reason to reject it in favour of a product that provide a lower rate of return.
- Given the product described to him does not appear to exist he does not agree that I can say what he would have done if he had been made aware of what was actually available.
- If the product does exist then IEL should have no problem returning the interest to me at 4.25% and awarding interest below this excuses IEL from providing the returns that were promised.
- It leaves open the possibility it could benefit from his investment and that can't be the intention of the redress awarded.
- IEL could have done anything with his money and invested in products that provided

a much greater return which has not been passed on to him.

- The obligation has entirely fallen on him to provide relevant documents and IEL has shown a complete disregard for their obligations.
- He finds it remarkable IEL's failure to respond to us resulted in an award of interest at 8% and yet its continued silence in a reduction to this.

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.

I acknowledge the various points Mr B has made, which revolve around my changing the interest awarded from the 8% awarded by the investigator to 1.5%. I appreciate he will be disappointed in the interest I have awarded given the investigator awarded a higher rate, but I think it is fair and reasonable in the circumstances.

I note his reference to IEL's breach of its obligations and that what it has done has damaged him personally. It is important to make clear that the purpose of the redress I award is not to punish IEL but is, as far as possible, to put Mr B back in the position he would have been in but for what IEL did wrong.

So, whilst I acknowledge IEL's failure to provide information in relation to this complaint, this has no bearing on the amount of the redress I award. In terms of the damage to Mr B personally, I increased the award for distress and inconvenience to a level I think is fair and reasonable in the circumstances for this.

Mr B has said that he is surprised that I have commented on what I think he would have done if IEL had not done anything wrong, but it is quite normal for us to do so when determining what redress to award. I must make findings based on what I think, more likely than not, would have happened if IEL had done nothing wrong.

Mr B has argued that he should get the 8% originally awarded by the investigator, or at least the 4.25% he was told he would get by IEL, but I am not satisfied that there is any reasonable basis for awarding either rate.

As I explained in my provisional decision, an award of interest at 8% is appropriate where we don't know what the complainant would have otherwise done with their money and covers various possibilities, such as the money being used to pay off debts that are accruing high interest. I have seen no persuasive evidence that Mr B was going to use this money for anything other than investing. He might have kept the money in savings instead but given the interest he would have been entitled to would have been less than if he invested I think this is unlikely. In the circumstances it is clear in my view that a rate of 8% is not appropriate in this case.

Regarding the rate of 4.25%, having looked at Moneyfacts at the time Mr B provided the money to IEL for investment, no provider was offering a product that provided a fixed rate of return at that rate. In short, there is no evidence that suggests there was ever a bond or fixed rate account offering that interest rate. This is consistent with what Mr B has said about not being able to find any provider at the time offering that kind of rate and his assumption that the adviser could access products he could not.

Mr B has said that my award assumes he never approached IEL but he says that he did and he would have had no reason to reject the 4.25% the adviser referred to in favour of a

product that offered a lower rate of return. But my award does not assume he didn't approach IEL, it assumes that he was given suitable advice about products that were available on the market. His argument would only make sense if the bond the adviser discussed existed in the first place, such that it was available for him to choose over a product providing a lower return. I have found it is more likely than not the bond didn't exist, so it wasn't something he could have decided to take out instead of a product offering a lower return.

Mr B has referred to IEL possibly investing in a product providing much higher returns, referring to Bitcoin as an example. It is possible that IEL did use his money and invest in something that provided high returns but there is no evidence to that effect - I would comment that if that is what IEL had done there would be no reason for it not to have returned Mr B's money with the agreed rate of interest. In any event I cannot make an award based on what IEL could have hypothetically done with his money.

I have based my redress on the limited evidence available. This shows that Mr B had previously invested in a fixed rate bond on a non-advised basis and on getting advice from IEL after the bond had expired he chose to invest in another fixed rate bond, albeit at a much higher interest rate.

The available evidence does not support a finding that Mr B would have chosen to invest in anything with significant risk and I think it is fair and reasonable to award interest on the basis he would have invested in something like a fixed rate bond if given suitable advice. My redress is accordingly based on the rates Moneyfacts shows were available at the time for such products.

Putting things right

IEL must pay to Mr B the £70,000 he provided to it for investment together with interest at 1.5% on this amount with this being payable on the £50,000 initially provided and then £70,000 as from the date Mr B paid the further sum of £20,000 to IEL for investment. In addition IEL must pay Mr B £500 for the distress and inconvenience caused by what it has done wrong.

My final decision

I uphold this complaint for the reasons I have set out above and in my provisional decision. Independently East Ltd must pay Mr B £70,000 plus interest at 1.5% calculated as I have set out above together with £500 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 October 2022.

Philip Gibbons
Ombudsman