

## **The complaint**

Ms M complains that Goji Financial Services Limited (“Goji”) mis-sold her investment in the Blackmore Bond Innovative Finance Individual Savings Account (“the Blackmore Bond”).

Ms M is being represented in this complaint by a claims management company (“CMC”). However, for ease of reference, my decision will refer to Ms M only.

## **What happened**

### *The Blackmore Bond*

In November 2018, Ms M invested around £20,000 into the Blackmore Bond, issued by Blackmore Bond Plc (“Blackmore”).

Ms M was introduced to the opportunity to invest by a third party.

Goji provided a platform through which companies could appoint it to facilitate the administration of the investments and payments. Goji provided its platform services to Blackmore with respect to the Blackmore Bond offering.

Goji was responsible for arranging for investors to receive the financial promotional material prepared by Blackmore and approved by NCM Fund Services (“NCM”), and for making an investment into the Blackmore Bond.

As described in the Information Memorandum, Goji entered into an agreement with bondholders under which it undertook to perform the following functions:

- to treat investors in bonds as its clients
- on their behalf to receive payments in respect of the Blackmore Bonds
- to make payments, when due, in respect of the Blackmore Bonds to the investor
- to facilitate the exercise of their security rights over the assets of Blackmore

The Blackmore Bond was non-readily realisable and therefore there were rules restricting who it could be promoted to and on how to test whether the investment was appropriate for the potential investor. Goji’s online application process took steps to meet the obligations created by these rules. I have set out details of the application process below and will set out and consider the relevant rules in my findings.

In October 2019, Blackmore stopped making payments to bondholders and in April 2020 it went into administration.

### *Ms M’s investment in the Blackmore Bond*

Ms M says she was introduced to the investment by a third party. She says she was told this third party was an agent of Blackmore’s. She said the third party talked her through the application process which she completed online application on 23 October 2018.

Ms M says she had only previously invested in cash deposits, including a cash ISA. She says she was attracted to the Blackmore Bond due to its high interest rate and understood the insurance in place meant her money was secure.

### The application process

I have seen screen prints of each stage of the application process. These show the application journey that Ms M underwent.

### Certification

Ms M completed a self-certification process, which involved her making a declaration that she was a "Restricted Investor".

### The appropriateness test

Having completed the certification, Ms M was required to complete an appropriateness test. This test set out the following multiple-choice questions:

*"What is a bond?"*

*A savings account that pays interest once a year*

*An investment where I lend money to a company and earn a return for doing so*

*If you invest in a Blackmore Bond ISA, is your capital at risk?*

*No – the Financial Services Compensation Scheme guarantees my investment*

*Yes – this is an investment which is not covered by the FSCS and my capital is at Risk*

*Are interest payments guaranteed?*

*Yes – Blackmore will guarantee my interest payments*

*No – The insurance that Blackmore has in place only covers capital repayment and not interest repayment so interest repayments can not be guaranteed*

*Are you able to withdraw your money early?*

*Yes – I can withdraw my money at any time*

*No – I am committed for the length of the investment term I selected*

*Should you put all of your investment money into a Blackmore ISA?*

*Yes – I should put all the money I have available to invest into a Blackmore ISA*

*No – I should spread my money across a number of investments to diversify risk and not put a large amount of my capital in any single investment*

*Is Blackmore guaranteeing your investment?*

*Yes – Blackmore will underwrite any losses I suffer*

*No – Blackmore will not guarantee that I will get my money back, although Blackmore has put a security scheme in place to provide an element of protection"*

Having answered these questions, Goji says investors were provided with an Information Memorandum which contained several risk warnings regarding the Blackmore Bond.

### Ms M's complaint

Ms M complained to Goji in November 2021. She said that Goji had failed to ensure the financial promotion issued in January 2018, was still *fair, clear and not misleading* in October 2018 when it was presented to her. She said Goji had failed to ensure that it reviewed up-to-date financial information that was publicly available in order to verify that the confirmation provided by NCM continued to be valid. She also says she was provided with the Information Memorandum before making the application for the bond.

Goji responded to Ms M's complaint but didn't think it had acted unfairly. In summary, Goji said the primary source of information regarding the Blackmore Bond was the Information Memorandum and Goji was not responsible for verifying the contents of this. It said it hadn't provided any investment advice and is not liable for any losses incurred by Ms M. Goji said Ms M had completed an appropriateness assessment and answered all the questions correctly before it provided her with the Information Memorandum. If Ms M had access to information about the investment from other sources Goji said it cannot fairly be blamed for this as it had no direct contact with her prior to the submission of her application. Consequently, it didn't consider that it had failed in its duty of care to Ms M.

### Our investigator's view

One of our investigators considered Ms M's complaint and concluded it should be upheld. In summary, they said:

- Although Ms M has complained primarily about the Goji's lack of verification of the contents of the Information Memorandum, they explained that this service has an inquisitorial remit, and as such, she focused on more significant obligations which applied to Goji when arranging her investment in the bond.
- The investment wasn't a straightforward product. There were risk factors which would need to be considered for Ms M to understand it, including the inherent risks of property developments (delays, budget overruns etc) and the track record of Blackmore.
- Looking at the appropriateness test Ms M was directed to complete during the application, they'd not seen that Goji asked for an appropriate amount of information about her knowledge and experience.
- The appropriateness test didn't adequately test whether Ms M had the knowledge to understand the specific risks associated with the Blackmore Bond – particularly when there were limited options for answers and repeated efforts were allowed.
- It wasn't sufficient to just test that Ms M understood she could lose money – but how and why that may be likely to happen.
- Had Goji's process met what was required under the rules, and sufficiently asked Ms M about her knowledge and experience, then they considered Goji ought to have reasonably concluded Ms M did not have the necessary knowledge and experience to invest in the Blackmore Bond.
- Ms M had only ever invested in cash deposits, including a cash ISA and the investigator had seen no evidence to show she'd experienced investing in this type of product previously.
- As the bond wasn't appropriate for Ms M, Goji was required to present a warning to Ms M and should she have wanted to continue anyway, then Goji ought to have considered whether in the circumstances, she should be allowed to go ahead despite the warning.

- In the test Ms M completed, had an incorrect answer been selected then she was prompted to read the risk statement and he could take the test again. This doesn't meet what is required under the rules which require a warning to be given that the bond wasn't appropriate.
- Allowing Ms M to silence the warning by changing an answer reduces the impact this warning was intended to provide. This approach also meant there wasn't an opportunity for Goji to consider whether Ms M ought to go ahead investing in the bond in the circumstances.
- If Goji had given itself the opportunity to consider in the circumstances whether to allow Ms M to proceed, having asked for appropriate information about her knowledge and experience, it would have been fair and reasonable for Goji to conclude it should not have allowed her to proceed.
- If she had been asked for appropriate information about her knowledge and experience this would have shown she may not have been able to fully understand the risk associated with the bond, as she had no prior experience with investing.
- Having considered whether Goji tested and assessed the appropriateness of the bond for Ms M, the investigator didn't think Goji had treated her fairly or acted in her best interests. Had Goji acted fairly and reasonably in meeting its regulatory obligations around appropriateness, Ms M wouldn't have got beyond this stage and so wouldn't have made the investment.
- The Information Memorandum for the bond would only be available to Ms M once she had properly progressed through the categorisation and appropriateness parts of the application. And so, any information within that can't now reasonably be relied on to show she was aware of the risks associated with the Blackmore Bond.
- Whilst they said there is some suggestion that Ms M read and had access to the Information Memorandum prior to investing, they weren't satisfied Ms M had the capacity to understand the Information Memorandum given her limited knowledge and experience.

### Goji's response to the view

Goji didn't accept the investigator's view. It said, in summary:

- The investigator didn't consider that under the Financial Conduct Authority's ("FCA") rules there are circumstances in which a firm may be satisfied that the client's knowledge alone is sufficient for her to understand the risks involved in a product and so it felt it hadn't breached any rules requiring it to assess Ms M's prior investment experience.
- It provided a letter from the UK Crowdfunding Association to Goji's legal advisors which it said evidences guidance provided by the FCA in 2014 which confirms it wouldn't be necessary for firms to obtain information about investors' prior investment experience or education where the firm had gathered information to demonstrate that the investor had knowledge of the key risks of the investment.
- Its appropriateness test was devised in consultation with legal advisers specialising in the alternative assets sector, who confirmed they are unaware of any firms assessing knowledge on such a granular level suggested by the investigator.
- The FCA has brought in new rules relating to the format of appropriateness testing, however, these standards should not be applied retrospectively.
- It is not clear how much weight has been attached to the complainant's assertion that she was talked through the process by a third party and it is necessary to consider whether the third party answered the appropriateness questions without the complainant understanding the answers that were being provided.

- Goji prepared the website as a Direct-to-Consumer website, was not involved in any arrangements with the third party and had no knowledge of its alleged involvement in completing the assessment.
- The appropriateness assessment required investors to expressly acknowledge the increased risks that are associated with the attractive rates of return and to acknowledge the limitations to the insurance coverage. Ms M allowed another party to complete that test on her behalf and now contests that she was unaware of the matters that were confirmed as part of her application.

As no agreement could be reached, the complaint has been passed to me to decide.

### **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.

Ms M's complaint concerns what she considers to be a mis-sale of the bond by Goji as it failed to verify the contents of the Information Memorandum. Whilst I don't agree that Goji was responsible for this, as the investigator explained, this service has an inquisitorial remit, which allows me to consider the subject matter of a complaint as a whole. We are not restricted to just the specific points raised by a complainant, or those addressed by a business in reply to a complaint. Therefore, my decision will focus on the obligations Goji had to adhere to when arranging Ms M's investment in the bond. This includes looking at the relevant tests Goji ought to have applied regarding investor categorisation and appropriateness.

I will first set out the relevant considerations when looking at the application process Goji conducted before allowing Ms M to invest.

#### Relevant considerations

I have carefully taken account of the relevant considerations to decide what is fair and reasonable in the circumstances of this complaint. 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.

In my view the key consideration as to what is fair and reasonable in this case is whether Goji met its regulatory obligations when it 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 said:

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

As mentioned, the bond was non-readily realisable and therefore there were rules restricting who it 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. I have set out below what I consider to be the relevant rules, in the form they existed at the time.

#### COBS 4.7 - Direct offer financial promotions

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 4.7.9R;*
- (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

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 said:

*“(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 10.2.2R said:

*“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”*

COBS 10.2.6G said:

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

COBS 10.3.1R said:

*“(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 said:

*“(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 said:

*“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.”*

Having taken careful account of these relevant considerations, to decide what is fair and reasonable in the circumstances, and given careful consideration to all Goji has said, I'm satisfied the complaint should be upheld. I'll explain my findings below.

### The online application process

The starting point is for me to consider the act(s) Goji carried out and decide whether it's fair and reasonable to find it did something wrong.

There were a number of regulatory obligations which applied to the sale of the Blackmore Bond. The bond was non-readily realisable and therefore there were rules restricting who it could be promoted to and on how to test whether the investment was appropriate for Ms M. These are the two conditions set out in COBS 4.7.7R which must be satisfied before a

business such as Goji could communicate or approve a direct-offer financial promotion relating to a non-readily realisable security, such as the bonds issued by Blackmore.

The online application took steps toward meeting the rules which set out how a business must satisfy the conditions, which I have set out above. I will consider the steps taken by Goji, focusing on the appropriateness test in conducted.

At the outset I think it is again important to emphasise the bond Ms M invested in was not a straightforward product. Risk factors associated with the bond included those which the investigator explained – the inherent risks of property developments (delays, budget overruns etc), as well as the track record of Blackmore. All of these points (and this is not an exhaustive list) would need to be considered in order to understand the investment. It's important to give these specific risks for context, as it demonstrates that the bond was complex, risky and specialist. I don't think it was the investigator's intention to say the appropriateness test needed to include, necessarily, these specific questions, and neither is it my intention, as I will provide my findings on the appropriateness test in more detail below. However, I think it's important to note that the rules required Goji to consider "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" and so the complexity of the bonds and the risks associated with them was relevant considerations when appropriateness was being tested.

In the market for corporate bonds listed on the main exchanges, institutions – ratings agencies – carry out analysis work to assess the risk associated with a bond and express a view (a "rating"), and investment managers often carry out further credit analysis before deciding to invest in a bond. Here there were no such aids to a consumer's understanding of the product. There was also a liquidity risk. The bond was not listed on a recognised exchange, and so could not be readily sold.

As the bond was complex, risky and specialist, the bond fell into a category of investment on which the FCA puts restrictions as to who it could be promoted. The purpose of the rules is consumer protection – to ensure risky investments are not promoted to those who may not fully understand their risks. The importance of Goji fully meeting its regulatory obligations here was therefore high. Its responsibility was significant. And the steps it took to meet its regulatory obligations need to be considered with that in mind.

#### Appropriateness test

The second condition set out in COBS 4.7.7R required BG Ltd to comply with the rules on appropriateness, set out in COBS 10 and quoted in the relevant considerations section above.

The rules at the time (COBS 10.2.1R) required Goji, to ask Ms M to provide information regarding her knowledge and experience – and for this information to be relevant to the product offered (the first limb of the rule). The rules required that information to then be assessed, to determine whether Ms M did have the necessary experience and knowledge in order to understand the risks involved (the second limb of the rule).

As set out above, COBS 10.2.2 R required Goji, when considering what information to ask for, to consider the nature of the service provided, the type of product (including its complexity and risks) and for it to include, to the extent appropriate to the nature of the client:

- (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

Having reviewed the appropriateness test Ms M was directed to complete during the application, I'm not persuaded Goji asked for an appropriate amount of information about Ms M's knowledge and experience, as required by COBS 10.2.1R and COBS 10.2.2 R.

The appropriateness test, as set out above, asked seven questions which tested Ms M's knowledge. However, nothing was asked about Ms M's experience, despite it being required by the rules (COBS 10.2.1R).

Goji refers to COBS 10.2.6G which says there may be circumstances in which a firm may be satisfied that the client's knowledge alone is sufficient for him to understand the risks involved in a product or service.

I do not think these were such circumstances – not least because Goji did not ask for an appropriate amount of information about Ms M's knowledge. Ms M's answers only suggest that she understood what a bond was, that her capital was at risk, interest payments weren't guaranteed and that she was unable to withdraw her investment early.

The guidance in any event does not supplant the rules and in my view it is clearly meant to apply where the client has been asked about both knowledge and experience, as the rules require, and the information obtained shows knowledge is high and experience is low. It does not say a business can ask only about knowledge when conducting an appropriateness test.

Goji also refers to a letter from the UK Crowdfunding Association, setting out recollections of verbal guidance provided by the FCA at meetings in 2014. Goji says the letter confirms that the understanding, following that guidance given by the FCA, was that, *"Where investors are required to expressly acknowledge the key risks and features of investing through an appropriateness test and a 100% pass rate was required under that test, it was understood that those would be circumstances in which clients would be put in possession of sufficient knowledge to understand those risks without having to show prior investment experience."*

However, no changes to the rules were made and the FCA's Policy Statement PS14/04 was clear the existing rules would apply. I note, for example, the statement confirms, at 4.24, that firms are required to assess whether the client has the necessary experience and knowledge to understand the risk involved. In relation to the crowdfunding coming under its regulation the FCA's proposal (which was adopted), summarised at 4.6, was:

*"where no advice was provided, that all firms (MiFID and non-MiFID) must check that clients have the knowledge and experience needed to understand the risks involved before being invited to respond to an offer"*

I have therefore seen insufficient evidence to show Goji could reasonably have concluded it did not have to follow the rules or that the test it used was consistent with the rules. In any event – and notwithstanding what I say above about COBS 10.2.1R and 10.2.6G - as Goji did not ask for sufficient information about Ms M's knowledge it was not in a position to assess whether her knowledge alone was sufficient and therefore proceed on that basis.

I understand Goji suggests the FCA has provided guidance on its expectations around appropriateness since Ms M made her investment in 2018, and the regulatory environment has changed since then. To be clear, my findings are based on the rules that existed at the time he invested.

I also understand Goji says Ms M didn't fail to answer any of the questions incorrectly and this demonstrates that she did understand the investment. However, I do not agree. As I've mentioned above, her answers were limited and, in my opinion, the test falls a long way short of adequately testing whether she had the knowledge to understand the risk associated with the bonds – particularly in circumstances where the multiple-choice options were limited to two. The risks, as I set out earlier, were complex and multifactorial. It was not, for example, a question of whether Ms M simply understood money could be lost – but whether she was able to understand how likely that might be and what factors might lead to it happening.

As the first limb of COBS 10.2.1R was not met, Goji was unable to carry out the assessment required under the second limb. Goji should have been confident, from the information it asked for, that it was able to assess if Ms M had the necessary experience and knowledge in order to understand the risks involved with investment in the bond. But it was not in a position to make such an assessment, based on the information it obtained.

I also appreciate Goji says Ms M has told this service that she didn't understand that her capital was at risk, despite declaring that she was aware of this in the appropriateness test. Whilst I accept that taking Ms M's appropriate test answer in isolation would suggest she knew her capital would be at risk, I've also considered, as mentioned above, that the question didn't sufficiently test her understanding of how likely it would be that she could lose her capital and/or what factors might lead to it happening.

I'm persuaded that, had the process been consistent with what the rules required and Ms M had been asked for appropriate information about her knowledge and experience, the only reasonable conclusion Goji could have reached, having assessed this, was that Ms M did not have the necessary experience and knowledge to understand the risks involved with the bond. Ms M's investment experience was limited to investing in cash deposits, including a cash ISA and I have seen no evidence to show she had anything other than a very basic knowledge of investments.

If Goji assessed that the bond was not appropriate, COBS 10.3.1R said a warning must be given and the guidance at COBS 10.3.3G said a business could consider whether, in the circumstances, to go ahead with the transaction if the client wished to proceed, despite the warning. I've explained why the test fell a long way short of adequately testing Ms M's knowledge and experience, and had it adequately tested this, Goji would have come to the conclusion that the bond wasn't appropriate for Ms M.

A clear, emphatic statement would have left Ms M in no doubt the bond was not an appropriate investment for her. And she ought to have been privy to such a warning, had an appropriateness test consistent with the requirements of the rules been conducted. Furthermore, had Goji given itself the opportunity to consider in the circumstances whether to go ahead with the transaction if Ms M wished to proceed, having asked for appropriate information about Ms M's knowledge and experience, it would have been fair and reasonable for Goji to conclude it should not allow her to proceed. Had Ms M been asked for appropriate information about her knowledge and experience this would have shown she may not have the capacity to fully understand the risk associated with the bond. As mentioned, I have seen no evidence to show Ms M had anything other than a very basic knowledge of investments. In these circumstances, it would not have been fair and reasonable for Goji to conclude it should proceed if Ms M wanted to, despite a warning (which, as noted, was not in any event given).

All in all, I'm satisfied Goji did not act fairly and reasonably when assessing appropriateness. By assessing appropriateness in the way it did, it was not treating Ms M fairly or acting in her best interests. If it had acted fairly and reasonably to meet the relevant regulatory obligations

when assessing appropriateness, Ms M would not have got beyond this stage.

As the second condition set out in COBS 4.7.7R could not be met and things could not have proceeded beyond this, Ms M wouldn't have received the Information Memorandum for the bond. And so, any information within that cannot now reasonably be relied on to show she was aware of the risks associated with the bond. In any event I've also not seen sufficient evidence to show Ms M had the capacity to fully understand the Information Memorandum – a lengthy and complex document – given her limited knowledge and experience. As such, Goji can't fairly rely on any possible reading of this as a means to correct the failings set out above.

I understand Goji has some concerns regarding Ms M being walked through the application process by a third party. It says we can't fairly say the appropriateness test was inadequate on the basis that it had been completed by someone other than Ms M. To be clear, my finding that Goji did not complete an adequate appropriateness test is not based on Ms M's submission that she was walked through the application by the third party. It is based on my assessment of the test against what the rules require. I accept that if there had been an adequate test that test might not be reliable if it had been completed by a third party rather than Ms M herself. But, here, there was not an adequate test. I have not, in any event, seen sufficient evidence to conclude that the test which was in place was answered by someone other than Ms M; but that is a secondary point as, for all the reasons I have given, the test in my view was not an adequate one.

#### *Is it fair to ask Goji to compensate Ms M?*

Goji says Ms M expressly acknowledged on numerous occasions that by proceeding with the investment she was at risk of losing the capital she invested and suggest this means Ms M would have proceeded to invest in the bond regardless of what it did. However, I do not think it would be fair to say Ms M should not be compensated on this basis.

Firstly, she should not have been able to proceed, had Goji acted fairly and reasonably to meet its regulatory obligations. I acknowledge that other parties may have caused or contributed to Ms M's eventual loss but, notwithstanding that, I'm satisfied it is fair to ask Goji to compensate Ms M as the appropriateness test was a critical stage, for which Goji was responsible for.

Secondly, for the reasons I have given, I am not in any event persuaded Ms M did proceed with a full understanding of the risks associated with the bond. I am not persuaded Ms M looked at the full detail of the acknowledgements she gave, given what Ms M has said about her understanding of the bond and her lack of investment experience. I am not persuaded Ms M had the capacity to fully understand the risks associated with the bond – and she was in this position because Goji did not act fairly and reasonably to meet its regulatory obligations at the outset. I'm therefore satisfied it is fair to ask Goji to compensate Ms M for the loss she has suffered.

#### **Putting things right**

##### *Fair compensation*

In assessing what would be fair compensation, I consider that my aim should be to put Ms M as close to the position she would probably now be in if she had not invested in the bond. I think Ms M would have invested differently. It is not possible to say precisely what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Ms M's circumstances and objectives when she invested.

### What should Goji do?

To compensate Ms M fairly, Goji must:

- Compare the performance of Ms M's investment with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. If the actual value is greater than the fair value, no compensation is payable.
- Pay interest as set out below
- Provide the details of the calculation to Ms M in a clear and simple format.

Income tax may be payable on any interest awarded.

| Investment name | Status                    | Benchmark                          | From ("start date") | To ("end date")           | Additional interest  |
|-----------------|---------------------------|------------------------------------|---------------------|---------------------------|--|
| Blackmore Bond  | Still exists but illiquid | Average rate from fixed rate bonds | Date of investment  | Date of my final decision | Goji Financial Services Limited must pay the compensation within 28 days of the date on which we tell it Ms M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple. |

### Actual value

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

If at the end date the 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 Ms M agrees to Goji taking ownership of the investment, if it wishes to. If it is not possible for Goji to take ownership, then it may request an undertaking from Ms M that she repays to Goji any amount she may receive from the investment in future.

### 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, Goji 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. Apply those rates to the investment on an annually compounded basis. Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

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 Goji 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.

I'm unaware if Goji charge fees for operating the IFISA account. However, the wrapper only exists because of illiquid investments. In order for the wrapper to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by Goji taking over the investment.

Third parties are involved and we don't have the power to tell them what to do. If Goji are unable to purchase the investment, to provide certainty to all parties I think it's fair that Goji pay Ms M an upfront lump sum equivalent to five years' worth of wrapper fees but illiquid from fixed rate bonds investment settlement applicable (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the wrapper to be closed.

#### Why is this remedy suitable?

I have chosen this method of compensation because:

- Ms M 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 Ms M's circumstances and objectives. It does not mean that Ms M 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.

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address [www.bankofengland.co.uk/boeapps/database](http://www.bankofengland.co.uk/boeapps/database), clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints>. Alternatively, just type 'compensation for investment complaints' into the search bar on our website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

#### **My final decision**

I uphold the complaint. My decision is that Goji Financial Services Limited should pay Ms M the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or

reject my decision before 14 July 2023.

Ben Waites  
**Ombudsman**