DRN-4321662

The complaint

Mr E complains that Sapia Partners LLP ("Sapia") mis-sold him his investment in the Blackmore Bond Innovative Finance Individual Savings Account ("the Blackmore Bond").

Mr E is being represented in this complaint by a claims management company ("CMC"). However, for ease of reference, my decision will refer to Mr E only.

What happened

The Blackmore Bond

In September 2018, Mr E invested £17,000 into the Blackmore Bond, issued by Blackmore Bond Plc ("Blackmore").

Goji Financial Services Limited ("Goji"), an appointed representative of Sapia from 24 November 2016 until 19 October 2018, 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. As such, Sapia is responsible for a complaint about Goji which is about the acts and omissions which took place during this time, for which Sapia accepted responsibility.

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 acting for Sapia, entered into an agreement with bondholders under which Sapia 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.

Mr E's investment in the Blackmore Bond

Mr E completed the online application form on 18 September 2018.

Mr E says the only other experience he had with investing in non-mainstream investments was in 2013, when he was advised to move his three personal pensions into a SIPP and invest in unregulated investments. He says he subsequently complained about the advice given in respect to these investments.

Mr E says he understood the Blackmore Bond would provide a better return than a savings account and he believed it to be a safe investment due to the level of security included.

The application process

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

Certification

Mr E completed a self-certification process, which involved him making a declaration that he was a "Restricted Investor".

The appropriateness test

Having completed the certification, Mr E 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, Mr E was provided with an Information Memorandum which contained several risk warnings regarding the Blackmore Bond.

Mr E's complaint and Sapia's response

Mr E complained to Sapia in November 2021. He said that Sapia had negligently promoted and arranged his investment into the Blackmore Bond. He said Sapia had failed to ensure the Information Memorandum was clear, fair and not misleading when it was presented to him. He also said Sapia put its interests ahead of his, failed to treat him fairly and failed to take steps to ensure the bond was appropriate for him.

Sapia responded to Mr E's complaint but didn't think Goji, on its behalf, had acted unfairly. In summary, it said Mr E had declared himself as a Restricted Investor, completed an appropriateness assessment and received the Information Memorandum associated with the investment - clearly setting out the risks of the investment. Consequently, it didn't consider that it had failed in its duty of care to Mr E.

Sapia also says Mr E had invested in an Innovative Finance ISA (IFISA) as it had noted he had used the funds from this investment to invest in the Blackmore Bond. Sapia says this evidences that Mr E had previous experience in investing in alternative investments and so the Blackmore Bond was appropriate for him.

Our investigator's view

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

- The investment wasn't a straightforward product. There were risk factors which would need to be considered for Mr E 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 Mr E was directed to complete during the application, they'd not seen that Goji asked for an appropriate amount of information about his knowledge and experience.
- The appropriateness test didn't adequately test whether Mr E 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 Mr E understood he 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 Mr E about his knowledge and experience, then they considered Goji ought to have reasonably concluded Mr E did not have the necessary knowledge and experience to invest in the Blackmore Bond.
- They acknowledged that Mr E had previously invested in an IFISA but didn't think this meant he had sufficient experience. They said the particular IFISA was launched in late-March 2018 and So Mr E can't have been invested in this for any more than six months before transferring to the Blackmore bond.
- They also didn't think Mr E's experience in other investments meant he had sufficient experience to invest in the Blackmore bond. They said these investments were of a different type to the Blackmore bond and Mr E's reaction to the losses he suffered on these further evidences that he wasn't comfortable with taking the kinds of risks associated more generally with higher risk unregulated investments.

- As the bond wasn't appropriate for Mr E, Goji was required to present a warning to Mr E and should he have wanted to continue anyway, then Goji ought to have considered whether in the circumstances, he should be allowed to go ahead despite the warning.
- In the test Mr E completed, had an incorrect answer been selected then he 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 Mr E 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 Mr E 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 Mr E to proceed, having asked for appropriate information about his knowledge and experience, it would have been fair and reasonable for Goji to conclude it should not have allowed him to proceed.
- If he had been asked for appropriate information about his knowledge and experience this would have shown he may not have been able to fully understand the risk associated with the bond, as he had no prior experience with investing.
- Having considered whether Goji tested and assessed the appropriateness of the bond for Mr E, the investigator didn't think Goji had treated him fairly or acted in his best interests. Had Goji acted fairly and reasonably in meeting its regulatory obligations around appropriateness, Mr E 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 Mr E once he 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 he was aware of the risks associated with the Blackmore Bond.

Mr E's response to the view

Mr E accepted the investigator's findings and was happy with the proposed resolution.

Sapia's response to the view

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

- It considers that it has limited responsibility for the set of events that have subsequently occurred with respect to the Blackmore Bond and there is not a causal link between any action or inaction by Sapia and any loss suffered by Mr E.
- The Financial Conduct Authority ("FCA") has brought in new rules relating to the format of appropriateness testing which would render the Blackmore test non-compliant. However, the fact that new rules were required to implement this higher standard strongly indicates that there was no prior requirement for firms to apply limits on the number of answers or the number of failures that should be applied.
- Mr E was responsible for correctly completing the self-certification process and the appropriateness test and for ultimately making the investment.
- It's entirely legitimate to argue that the number of tests and answers are irrelevant, provided that at the end of the process, Mr E has clearly acknowledged the pertinent risks of the investment.
- Even if Mr E had answered a question incorrectly, but was required to re-take the test, that would not have resulted in him investing without the requisite knowledge.

- It is the responsibility of Mr E as an experienced investor to consider his own risk appetite. Mr E had a high-risk appetite at the time of investing in the Blackmore Bond based on his previous investment experience.
- The argument that testing knowledge that capital was at a risk was insufficient is not only without foundation in the rules, but also ignores that the fundamental reason behind Mr E's complaint is that he didn't understand that his capital was at risk, despite declaring that he was aware of this in the appropriateness test.
- Mr E was provided with an Information Memorandum which contained extensive risk warnings.

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.

Mr E's complaint concerns what he considers to be a mis-sale of the bond by Goji, on Sapia's behalf. I'm satisfied that this includes Goji, acting on Sapia's behalf, applying relevant tests regarding investor categorisation and appropriateness. Therefore, I will first set out the relevant considerations when looking at the application process Goji, on Sapia's behalf, conducted before allowing Mr E 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 Sapia met its regulatory obligations when Goji, acting on its behalf, carried out the acts the complaint is about. I consider the following regulatory obligations to be of particular relevance here.

The Principles for Businesses

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

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

Principle 7 - Communications with clients - A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 4 – Communicating with clients, including financial promotions

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

COBS 4.2.1R 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 4.7.9 R;*
> *(d) certified as a 'restricted investor' in accordance with COBS 4.7.10 R.*
>
> *(3) The second condition is that firm itself or the person who will arrange or deal in relation to the non-readily realisable security will comply with the rules on appropriateness (see COBS 10) or equivalent requirements for any application or order that the person is aware, or ought reasonably to be aware, is in response to the direct offer financial promotion."*

COBS 10 – Appropriateness

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 Sapia has said, I'm satisfied the complaint should be upheld. I'll explain my findings below.

The online application process

I acknowledge that Sapia says there were a number of parties involved in the Blackmore Bonds, but nonetheless, Goji, on behalf of Sapia, played an integral part in Mr E's investment. As such, the starting point is for me to consider the act(s) Goji, on Sapia's behalf, 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 Mr E.

These are the two conditions set out in COBS 4.7.7R which must be satisfied before a business such as Goji (here acting on Sapia's behalf) 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 busines must satisfy the conditions, which I have set out above. I will consider the steps taken by Goji, on behalf of Sapia, focusing on the appropriateness test in conducted.

At the outset I think it is again important to emphasise the bond Mr E 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, acting on Sapia's behalf, 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, on behalf of Sapia, 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, acting on behalf of Sapia, to ask Mr E to provide information regarding his 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 Mr E 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, acting on behalf of Sapia, 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 Mr E was directed to complete during the application, I'm not persuaded Goji, on behalf of Sapia, asked for an appropriate amount of information about Mr E'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 Mr E's knowledge. However, nothing was asked about Mr E's experience, despite it being required by the rules (COBS 10.2.1R).

Whilst I accept that, 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 (COBS 10.2.6G), I'm not persuaded Mr E had the sufficient knowledge here. I say this as Mr E's answers only suggest that he understood what a bond was, that his capital was at risk, interest payments weren't guaranteed and that he was unable to withdraw his investment early. In my opinion, this falls a long way short of adequately testing whether Mr E 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 Mr E simply understood money could be lost – but whether he 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, acting on behalf of Sapia, was unable to carry out the assessment required under the second limb. Goji, acting on behalf of Sapia, should have been confident, from the information it asked for, that it was able to assess if Mr E 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 acknowledge Sapia's point about the argument the investigator made about the insufficient testing of knowledge of capital being at risk. Sapia says the fundamental reason behind Mr E's complaint is that he didn't understand that his capital was at risk, despite declaring that he was aware of this in the appropriateness test. Whilst I accept that taking Mr E's appropriate test answer in isolation would suggest he knew his capital would be at risk, I've also considered, as mentioned above, that the question didn't sufficiently test his understanding of how likely it would be that he could lose his capital and/or what factors might lead to it happening.

I understand Sapia suggests the FCA has provided guidance on its expectations around appropriateness since Mr E made his 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'm persuaded that, had the process been consistent with what the rules required and Mr E had been asked for appropriate information about his knowledge and experience, the only reasonable conclusion Goji, acting on behalf of Sapia, could have reached, having assessed this, was that Mr E did not have the necessary experience and knowledge to understand the

risks involved with the bond. I note Sapia, in its response to the view, mentions Mr E had invested in a similar investment and therefore did have experience of investments such as the Blackmore bond. However, I do not think the fact Mr E invested in an IFISA within a year of taking out the bond in question, if considered by Sapia (and I have seen no evidence it was), was a reasonable basis to conclude Mr E had experience of investments of this type. As previously mentioned, COBS 10.2.2 R required Goji, acting on behalf of Sapia, to consider the "nature, volume, frequency of the client's transactions in designated investments" and I don't think one previous investment in an IFISA is sufficient for it to have determined Mr E had the required knowledge and experience.

If Goji, acting on behalf of Sapia, 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 Mr E's knowledge and experience, and had it adequately tested this, Goji, acting on behalf of Sapia, would have come to the conclusion that the bond wasn't appropriate for Mr E.

A clear, emphatic statement would have left Mr E in no doubt the bond was not an appropriate investment for him. And he 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, acting on behalf of Sapia, given itself the opportunity to consider in the circumstances whether to go ahead with the transaction if Mr E wished to proceed, having asked for appropriate information about Mr E's knowledge and experience, it would have been fair and reasonable for Goji, acting on behalf of Sapia, to conclude it should not allow Mr E to proceed. Had Mr E been asked for appropriate information about his knowledge and experience this would have shown he may not have the capacity to fully understand the risk associated with the bond. As mentioned, I have seen no evidence to show Mr E had anything other than a basic knowledge of investments. In these circumstances, it would not have been fair and reasonable for Goji, acting on behalf of Sapia, to conclude it should proceed if Mr E wanted to, despite a warning (which, as noted, was not in any event given).

All in all, I'm satisfied Goji, acting on behalf of Sapia, did not act fairly and reasonably when assessing appropriateness. By assessing appropriateness in the way it did, it was not treating Mr E fairly or acting in his best interests. If it had acted fairly and reasonably to meet the relevant regulatory obligations when assessing appropriateness, Mr E 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, Mr E wouldn't have received the Information Memorandum for the bond. And so, any information within that cannot now reasonably be relied on to show he was aware of the risks associated with the bond. In any event I've also not seen sufficient evidence to show Mr E had the capacity to fully understand the Information Memorandum – a lengthy and complex document – given his limited knowledge and experience. As such, Sapia can't fairly rely on any possible reading of this as a means to correct the failings set out above.

Is it fair to ask Sapia to compensate Mr E?

Sapia says Mr E expressly acknowledged on numerous occasions that by proceeding with the investment he was at risk of losing the capital he invested, and this is evidence Mr E would have proceeded to invest in the bond regardless of what it did. However, I do not think it would be fair to say Mr E should not be compensated on this basis.

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

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

Putting things right

Fair compensation

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

What should Sapia do?

To compensate Mr E fairly, Sapia must:

- Compare the performance of Mr E'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 Mr E 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
The Blackmore Bond Innovative Finance Individual Savings Account	Still exists but illiquid	Average rate from fixed rate bonds	Date of investment	Date of my final decision	Sapia Partners LLP must pay the compensation within 28 days of the date on which we tell it Mr E 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%

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 Mr E agrees to Sapia taking ownership of the investment, if it wishes to. If it is not possible for Sapia to take ownership, then it may request an undertaking from Mr E that he repays to Sapia any amount he 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, Sapia 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 Sapia 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 Sapia 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 Sapia taking over the investment.

Third parties are involved and we don't have the power to tell them what to do. If Sapia are unable to purchase the investment, to provide certainty to all parties I think it's fair that Sapia pay Mr E 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:

- Mr E wanted to achieve a reasonable return without risking any of his capital.

- The average rate for the fixed rate bonds would be a fair measure given Mr E's circumstances and objectives. It does not mean that Mr E 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, 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.

My final decision

I uphold the complaint. My decision is that Sapia Partners LLP should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 20 October 2023.

Ben Waites
Ombudsman