DRN-5010542

The complaint

Mr A complains that he was mis-sold an investment by Equity for Growth (Securities) Limited (EforG). He says he was given misleading information about the security of the investment.

What happened

In June 2019, Mr A invested £100,000 into MIXG Ltd loan notes. The loan notes were issued by an investment company incorporated within the Magna Group as a special purpose vehicle (SPV) that was to invest funds into various property projects. Accrued interest and capital was due to be repaid at the end of the term. Mr A first heard about the investment opportunity through a company called Hunter Jones (HJ), who were an appointed representative (AR) of EforG.

In January 2021, Mr A and the other loan note holders were informed that the Magna Group had run into problems. In its role as security trustee for the loan notes, EforG sent correspondence to investors telling them Magna had no apparent assets that could be acquired in order to repay investors.

In March 2021, Mr A started raising concerns with EforG about his investment and he claimed it was responsible for his losses. He said he had retired in 2019 and his savings for his retirement funds were invested into Magna through HJ. He said he was told EforG was regulated and his money will be protected if anything goes wrong. He recalls having two one-to-one meetings with HJ and was reassured that the investment was equivalent to buying a property, and that money cannot be lost as the property cannot disappear. When EforG's responses didn't satisfy Mr A's concerns, it was treated as a formal complaint.

EforG responded to the complaint and didn't uphold it. In summary it said:

- In relation to approving an Information Memorandum (IM), it denied that it had approved a promotion for the MIXG Ltd loan note. It says it had approved previous IMs for the Magna group but not this investment.

- In its role as security trustee for the MIXG loan notes, it was not responsible for returning his investment.

Following this Mr A asked this service to investigate and complete an independent review of his complaint. In summary, he said HJ told him the investment was secure and protected. He holds EforG responsible for his losses as the regulated firm involved in his investment.

I issued a Provisional Decision in July 2024.

Regarding our jurisdiction, I said that I found the complaint to be one we could consider. In summary I found:

- There was evidence that HJ was carrying out a regulated activity – that being arranging deals in investments.

- I didn't accept EforG's view that HJ merely acted as an introducer, but rather it made a direct offer financial promotion, and this was ancillary to the arranging of Mr A's investment.

- I was satisfied that the activities carried on by HJ were ones for which EforG accepted responsibility as part of the AR agreement in place.

I went on to consider the merits of the complaint. In summary I found that EforG failed to meet its regulatory obligations and this led to Mr A taking out an investment he wouldn't have otherwise, so I thought it should pay him compensation.

EforG responded to the provisional decision and provided further submissions for me to consider. EforG said it didn't agree the regulated activity of "arranging" has taken place, so the complaint is not within our jurisdiction. And also, the complaint should be rejected in any event, because HJ either did not have to comply with the rules referred to; or complied with the rules in any event. It provided further arguments. In summary it said:

- Although HJ was its AR at the time, it was able to, regardless of any contractual arrangement it had entered into with EforG, introduce investors to investment opportunities in a capacity of unregulated introducing agent, by benefitting from exemptions to the financial promotion restriction by only introducing investment opportunities to self-certified high net worth individuals and self-certified sophisticated investors, pursuant to Article 48 and 50A of the Financial Services and Markets Act 2000 (Financial Promotion) Order (the "FPO").

- As an exempt High Net Worth (HNW) individual under s.50A, Mr A made his own investment decision to invest in MIXG, and the amount of his investment was his personal choice. He was an experienced HNW individual who was proactively searching for investment opportunities and, at his own initiative, registered with HJ before it was an AR to receive information on potential investment opportunities with a view to invest.

- The Provisional Decision is based on the ombudsman's conclusion that HJ's actions amounted to a regulated activity of arranging, which is denied, and as a result it had to comply with the rules in COBS 4.7 and COBS 10 on the grounds that MIXG loan note was a "non-readily realisable security" ("NRRS") and that HJ made a direct offer financial promotion to Mr A.

- Although MIXG loan note was a NRRS, there is no evidence that HJ made a "direct offer" financial promotion of MIXG to Mr A, and any communication to him would have been an "excluded communication". As a result COBS 4.7 and COBS 10 did not apply to HJ.

- There is no evidence that HJ did communicate a financial promotion to Mr A, let alone a direct offer financial promotion. Even if it was, the MIXG IM was not a "direct offer" financial promotion. It does not consider that any other documents which HJ might have sent to Mr A would constitute a direct offer financial promotion. It disagrees that the act of sending any information to Mr A was a regulated activity of "arranging".

- Even if HJ did in fact communicate a financial promotion to Mr A, if that communication is an "excluded communication" COBS 4.7 does not apply. The definition of an "excluded communication" as written in the FCA Handbook is:

"the following types of financial promotion (a firm may rely on more than one of the paragraphs in relation to the same financial promotion):

a financial promotion that would benefit from an exemption in the Financial Promotion Order if it were communicated by an unauthorised person, or which originates outside the United Kingdom and is not capable of having an effect in the United Kingdom (within the meaning of s.21(3) of the Act)"

- The words "would" and "if it were" used in the definition are of a high importance in interpreting the definition of an "excluded communication". A communication that "would" benefit from an exemption in the FPO "if it were" communicated by an unauthorised person. If HJ was not its AR at the time, it would have been able to communicate with Mr A about MIXG loan notes the same way as it did, without the need to comply with any of the COBS rules.

- In line with article 48 of the FPO, Mr A was an exempt HNW individual and signed a statement in line with Part II of the Schedule 5 of the FPO, which means that an unauthorised person was able to communicate a financial promotion to him. Consequently, HJ was able to benefit from the article 48 of FPO exemption and communicate a financial promotion of MIXG to him without breaching s.21 FSMA and without the need of being an AR or authorised and regulated by the FCA. HJ's business model involved benefitting from exemptions to the financial promotion restrictions.

- HJ was not required to comply with COBS 4.7.7 in any event. COBS 4.7.7 does not apply to all financial promotions of NRRS, but to a firm which approves or communicates a "direct offer financial promotion" of NRRS to retail clients. Although MIXG loan notes were NRRS, the financial promotion of MIXG loan notes itself was not a "direct offer" financial promotion.

- There is no evidence Mr A received the MIXG IM. However, even if he did, the MIXG IM did not contain any direct invitation to take a step to invest. So, the MIXG IM was merely a financial promotion and not a direct offer financial promotion.

- PERG 8.4.5G explains when a financial promotion is an invitation, i.e. a direct offer financial promotion:

  "An invitation is something which directly invites a person to take a step which will result in her engaging in investment activity or engaging in claims management activity. It follows that the invitation must cause the engaging in investment activity or engaging in claims management activity. Examples of an invitation include:
    - *direct offer financial promotions;*
    - *a prospectus with application forms; and*
    - *Internet promotions by brokers where the response by the recipient will initiate the activity (such as 'register with us now and begin dealing online')."*

- PERG 8.4.6G states:

  "Merely asking a person if they wish to enter into an agreement with no element of persuasion or incitement will not, in the FCA's view, be an invitation under section 21. For example, the FCA does not consider an invitation to have been made where: […]
    - *a person is asked to sign an agreement on terms which he has already accepted or to give effect to something which he has already agreed to do."*

- PERG 8.4.19 provides an example of when an agreement itself is, or includes an invitation or inducement:

  "For example, an advertisement that contains the terms and conditions and the means to enter into it as a binding contract, a direct offer financial promotion or a prospectus with an application form included."

- The MIXG IM was not classed as a direct offer financial promotion because it did not contain the terms and conditions or provide the means to invest. Also, HJ did not provide prospective investors with an ability to access the information about MIXG and invest online or otherwise.

- Not every financial promotion is a direct offer financial promotion. The ombudsman quotes the FCA's definition of a "direct offer financial promotion" and essentially concludes that since MIXG loan notes were a "controlled agreement" (and NRRS), HJ communicated a "direct offer financial promotion". However, the ombudsman omits the last part of the "direct offer financial promotion" definition, which states "and which specifies the manner of response or includes a form by which any response may be made." The ombudsman did not consider in his Provisional Decision, whether or not this part of the definition has any bearing in establishing whether or not Mr A was in fact in receipt of a direct offer financial promotion. We therefore consider that the reasoning provided in the Provisional Decision omits important facts from the FCA regulation and handbook.

- HJ did not have to comply with COBS 4.7.7, and as a result, it did not have to comply with COBS 4.7.9. Instead, it complied with the FPO. Mr A signed a HNW statement in the form prescribed in Part II of Schedule 5 of the FPO. The Government has previously set out that for the purposes of a firm complying with the FPO exemption, reasonable belief "pertains merely to the existence of a signed statement" of self-certification.

- Self-certified HNW individuals (such as Mr A) and self-certified sophisticated investors pursuant to Article 48 and 50A of the FPO, as a matter of legislation and government policy, are wholly distinct from ordinary retail investors. As explained in an HM Treasury consultation on Financial Promotion Exemptions dated December 20211, in 2005, the purpose of the Article 48 exemption and the Article 50A exemption was to place a greater degree of responsibility on investors to correctly certify when categorising themselves. The consultation also adds that: "*these investors are better placed than ordinary retail investors to manage without the regulatory protections afforded by the financial promotion regime and to absorb any losses resulting from their investments."* It follows that having signed this certificate, Mr A should have understood the role HJ held in these circumstances.

- HJ had no reason to doubt Mr A was a HNW individual. As per HJ's activity history, it was aware Mr A made multiple similar investments before, such as Empire. The ombudsman relies on Mr A's testimonies after the event and with the benefit of hindsight in circumstances where the investment has not been successful. Allegedly HJ told him to *"complete either sophisticated or high-net worth statement and it didn't matter which one as 'no one cares about that'"*. There is no evidence to support this, but in any event, it was Mr A's decision to self-certify, which he did.

- The ombudsman considers that HJ had to comply with COBS 10 on the grounds that "a direct offer financial promotion was made to the Complainant". It disagrees. COBS

10 applies to "a firm which arranges or deals in relation to a non-readily realisable security… with or for a retail client…, and the firm is aware, or ought reasonably to be aware, that the application … is in response to a direct offer financial promotion". Although it accepted the MIXG loan notes were NRRS, as already explained Mr A's investment was not in response to a direct offer financial promotion, to which COBS 10 applies. Therefore, HJ did not have to comply with COBS 10.

Finally, EforG asks, if the ombudsman disagrees with any of its points, that he shares his views prior to issuing his Final Decision. As there is a substantial difference in interpreting the regulation (for example, what constitutes a direct offer financial promotion or exempt communication), it says it is only fair that it can provide a further response.

Mr A accepted the provisional conclusion and didn't provide any further submissions for me to consider.

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.

But I've first reconsidered all the available evidence and arguments to decide whether this complaint is one I can look at. And I have not been persuaded to depart from my provisional findings on this.

Is the complaint one I can look at?

We can't consider all complaints brought to this service. Before we can consider something, we need to check, by reference to the Financial Conduct Authority's DISP Rules and the legislation from which those rules are derived, whether the complaint is one we have the power to look at. This should be based on the relevant facts of the complaint. And if those facts are in dispute, I must decide on the balance of probability what happened.

There are a number of jurisdiction tests that must be met in relation to all complaints referred to us. In respect of this complaint where EforG says it is not subject to our jurisdiction, the following are relevant considerations.

We can consider a complaint under our compulsory jurisdiction if it relates to an act or omission by a firm in the carrying on of one or more listed activities.

Rule DISP 2.3.1R says we can:

"*consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on…regulated activities…or any ancillary activities, including advice, carried on by the firm in connection with them*".

And the guidance at DISP 2.3.3G says:

"*complaints about acts or omissions include those in respect of activities for which the firm…is responsible (including business of any appointed representative or agent for which the firm…has accepted responsibility)*".

To carry out regulated activities a business needs to be an authorised person (s.19 FSMA). We can deal with certain complaints against EforG, as it is an authorised person. That may include complaints about the acts or omissions of its appointed representatives, such as HJ. That is why this complaint is against EforG, rather than HJ.

s.39 FSMA says:
"(3) The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility."

So I've had to consider:

- What are the acts about which Mr A has complained?

- Were these acts done in the carrying on of a regulated activity or an ancillary activity carried on in connection with a regulated activity (DISP 2.3.1)?

- Were those acts ones for which EforG accepted responsibility?

What are the acts about which Mr A has complained?

Mr A says HJ persuaded him to invest in Magna after contacting him many times and arranging meetings. He says he was assured and re-assured that it was a very safe loan note as the funds are used to buy and build properties and property is the safest investment and cannot disappear. He was told the funds invested are protected. He relied on the IM document that was provided to him by HJ. He holds EforG responsible for his losses as the principal firm of HJ.

I'm satisfied that Mr A has expressed dissatisfaction about HJ's involvement with his taking out of this investment.

I note the comments made by EforG about the scope of Mr A's complaint and our interpretation of what should be considered as part of it. We are not restricted to the precise words used by Mr A. We have an inquisitorial remit and can look at wider issues. In this case I think Mr A's complaint encompasses all of HJ's acts in connection with the Magna investment and includes any arrangements it made.

Were the acts about which Mr A complained done in the carrying on of a regulated activity or an ancillary activity carried on in connection with a regulated activity?

Regulated activities are specified in Part II of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and include:

- Advising on the merits of buying or selling a particular investment which is a security or a relevant investment (article 53 RAO) and
- Making arrangements for another person to buy or sell or subscribe for a security or relevant investment (article 25 RAO).

There's insufficient evidence that HJ gave Mr A advice. So, the crucial issue for me to determine is whether HJ conducted any other regulated activities, such as making arrangements, and if so, whether it carried out activities ancillary to them.

Simply introducing someone to an investment may not involve making arrangements or any other regulated activities under the RAO.

But, what does the evidence show that HJ did?

I'm satisfied from the evidence available:

- HJ made a direct offer financial promotion to Mr A.

- The Magna loan notes were an investment under the relevant rules.

- HJ's activities amounted to carrying out the regulated activity of arranging deals in investments under Article 25 of the RAO.

- The direct offer promotion was ancillary to the arranging of the investment.

I will set out my reasons for reaching these findings.

The FCA Handbook defines a financial promotion as:

"(1) an invitation or inducement to engage in investment activity or to engage in claims management activity that is communicated in the course of business;"

I find the MIXG Ltd IM is a financial promotion. There is a dispute about whether EforG approved the IM. Mr A has provided a copy of the IM (dated March 2019) he received prior to investing. This document has a section in the IM which says: "Equity for Growth (Securities) Limited ("EFORGS") which is Authorised and Regulated by the Financial Conduct Authority, with registration number 475953 has approved the issue of this Document as a financial promotion in accordance with the provisions of section 21 of FSMA."

EforG disagrees that it provided approval and has referred to another version of an IM which doesn't state it provided approval. This version is dated September 2019, which was after Mr A invested, so can't be the IM Mr A relied on to invest. Based on the evidence I've seen, I think it most likely Mr A received the March 2019 IM and this was what he relied on to invest. This document indicates it was approved by EforG and was provided to Mr A by HJ. Whether this document was approved by EforG or not is unclear to me. If HJ was acting incorrectly by providing misleading information about the approval, this is not something that Mr A could have understood. I find that EforG are responsible for the actions of HJ under the AR agreement, so it follows if HJ misled Mr A about the approval EforG is responsible for this.

The FCA Handbook defines a direct offer financial promotion as a financial promotion that contains:

"(a) an offer by the firm or another person to enter into a controlled agreement with any person who responds to the communication; or

(b) an invitation to any person who responds to the communication to make an offer to the firm or another person to enter into a controlled agreement;

and which specifies the manner of response or includes a form by which any response may be made."

A controlled agreement is defined as "an agreement the making or performance of which by either party constitutes a controlled activity" - which includes investment activity with securities such as Magna loan notes.

Mr A has given his recollections of how he came to take out this investment. He has explained he was already a client of HJ's having discussed investment opportunities

previously. He said his HJ investment manager introduced the MIXG promotion to him as he had another investment that was due to mature. He says he attended an event organised by HJ to explain and promote the Magna opportunity. He said he also held several face-to-face meetings with an investment manager from HJ about the Magna loan notes. He was persuaded and reassured that it was a safe and protected investment.

I haven't been provided with recordings of any telephone calls between Mr A and HJ, but there is some cotemporaneous evidence of the interactions he had with HJ about this investment during the period it was taken out.

Mr A has provided copies of the documents HJ provided him with before he decided to invest – this includes the IM and security trustee agreement.

I've also reviewed the contact notes EforG sent from HJ's records. These indicate Mr A had an existing relationship with HJ and had discussed investment opportunities with him in 2017 (before it was an AR of EforG). HJ first sent information on Magna to Mr A around October 2018, but it doesn't appear anything proceeded from this. Then in January 2019 it started regular telephone contact with Mr A, leading to him being invited to a Magna open day HJ had organised with the developer in March 2019 (after HJ was an AR of EforG). The records show that HJ contacted Mr A every week for the next few months to facilitate the arrangement of his Magna loan notes. The contact notes left support Mr A's recollections that he was being persuaded to invest, for example one note says "Thinking about Magna. Still needs further convincing". The notes also support Mr A's recollection that he met face-to-face with HJ on several occasions in the lead up to making his investment.

There is also evidence from a contact note made on 3 May 2019 that says HJ were "striking up a deal with Magna to make it worthwhile for him". Mr A has provided a copy of an email his investment manager at HJ sent him on 8 May 2019 which says "I have discussed with [HJ founder] about the option of differing all income payments to the end of the 3 years and attached is a proposal on what both options (income and growth) will be able to yield for you". Mr A has provided a copy of the 'Client Proposal' his investment manager HJ sent him. This details a yearly income schedule and growth over three years. It also references a cashback payment (of 2% / £5,000) at the start of the investment. Mr A has provided a copy of his bank statement to show he did receive a payment from HJ equivalent to the cashback detailed shortly after he made his investment. This evidence supports that HJ played a crucial role in ensuring that the transaction was completed and negotiated on Mr A's behalf to find a proposal that was acceptable for him.

At the end of May 2019, the contact between Mr A and HJ became very frequent as the completion of the investment came closer. And Mr A received daily contact from HJ at the start of June. The contact note records show a meeting was arranged and paperwork was signed with ID sent. They also say Mr A was given payment instructions and a compliance call was held. Mr A says he was provided with documentation when he met with HJ and by email. These contact notes, in my view, further indicate an active role played by HJ in arranging the investment and ensuring the transaction was completed.

I've also seen the Acceptance Form Mr A signed (on 4 June 2019) to invest in the loan notes. This says, "I can confirm I have read and understand Information Memorandum dated 14 March 2019 and in particular the Risk Warnings contained therein." It also instructs for the form to be returned to HJ. This further supports that Mr A was provided with the IM before he invested. And on balance the evidence supports that it was HJ who provided this information to him. The available evidence also aligns with Mr A's recollections of how he came to take out the investment.

There is further evidence of HJ's interactions with Mr A in the form of a HNW investor declaration he completed. This document was provided by HJ and is dated in May 2019, before Mr A made this investment. He says he was told by HJ he had to complete either a sophisticated or high-net worth statement and it didn't matter which one as 'no one cares about that'. Again, this evidence supports his recollections that HJ were integral to him making the application. I think it indicates the type of role HJ played in arranging investment opportunities for Mr A and the relationship it had with him.

In response to the provisional decision, EforG has disputed that HJ made a direct offer promotion to Mr A. I've considered the points it makes, but I've not been persuaded to change my finding on this point.

EforG state there is no evidence that HJ did communicate a financial promotion to Mr A, let alone a direct offer financial promotion. It has also made reference to the FCA guidance in PERG in respect of whether Mr A received an invitation, specifically a direct offer financial promotion. It also argues the definition in the rules for a direct offer financial promotion hasn't been fully considered. It also says the IM (which it disputes was provided) doesn't include the terms and conditions and an application form.

I can confirm the relevant rules and guidance were considered in reaching my provisional conclusions. The arguments made by EforG do not persuade me to reach a different conclusion. The FCA guidance it refers to suggests an element of persuasion or incitement is required to be seen as an invitation. The evidence I've seen is clear that HJ was actively seeking to persuade and encourage Mr A to invest. EforG says not every financial promotion is a direct offer financial promotion. In respect of EforG's point that the definition of a "direct offer financial promotion" hasn't been fully considered - specifically the part which states "and which specifies the manner of response or includes a form by which any response may be made." I can confirm the full definition was quoted, and considered, within the provisional decision.

As set out earlier in this decision, I have identified evidence of the steps HJ took that I'm satisfied amounted to a direct offer financial promotion. This includes:

- The IM Mr A provided that he says he received from HJ detailing the investment opportunity.

- The contact notes, which show HJ was seeking to convince Mr A to engage in investment activity – including the note that says HJ were striking a deal which was "worthwhile" for Mr A.

- The personalised client proposal HJ negotiated with Magna for Mr A.

- The cashback incentive that was agreed and paid to Mr A by HJ as part of the inducement for him to invest.

- The contact note that shows a meeting was arranged and application paperwork was signed with ID sent.

- The Acceptance Form Mr A signed to invest instructs for the form to be returned to HJ.

So I'm satisfied that Mr A did receive an invitation to engage in investment activity, which sought to induce and persuade him to respond, and provided him with the directions to complete the transaction.

While promoting investments in this way isn't specifically listed in the RAO as a regulated activity, I'm satisfied it was ancillary to the activities of arrangements that HJ was also involved in for Mr A's Magna investment.

Article 25 (Arranging deals in investments) of the RAO says:

"(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—

(a) a security, …

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity."

The Magna loan notes are 'a security'. HJ's involvement with Mr A's investment was significant and in my view more than acting as an unregulated introducer as EforG has suggested.

The FCA's perimeter guidance at PERG 2.7.7B says of Article 25(1): "The activity of arranging (bringing about) deals in investments is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, arrangements that bring it about)."

EforG says there's been a misunderstanding of HJ's role and says it had a passive and very limited role in the transaction. So it did not arrange deals in investments pursuant to either Article 25(1) or 25(2) of the RAO. EforG has also referred to the case of Watershed Ltd v Dacosta [2009] EWHC 1299. It says this supports that the activity of introducing does not itself constitute a regulated activity for the purposes of Article 25 – and restates its opinion that this was all HJ was doing in this transaction. I agree that introducing on its own wouldn't likely constitute a regulated activity being carried out. But I've set out above the evidence of the role HJ carried out, which went beyond a mere introduction and amounted to arranging. Watershed Ltd v Dacosta is also clear that it's not necessary for the actions taken to "*involve or facilitate the execution of each step necessary for entering into and completing the transaction*". So, while there isn't evidence of every step of the transaction, I think the evidence we do have of HJ's involvement is sufficient to reach a finding that it was carrying out the regulated activity of arranging.

EforG says Article 26 of the RAO exclusion applies to this transaction. Article 26 has an exclusion from Article 25 if the arrangements 'do not or would not bring about the transaction to which the arrangements relate'. EforG argue that Mr A was actively pursuing investment opportunities – and even if HJ wasn't involved it is probable he would have invested in Magna.

EforG has referred to the case of Adams v Options UK Personal Pensions LLP and what the court said in that case about Article 26 "Arrangements not causing a deal", implying 'causal potency' in the acts bringing about transactions. Having considered the case, I am not persuaded that it provides any support for EforG's argument that Article 26 applies in this case. The contact notes described above are clear that HJ was responsible for making Mr A aware of this opportunity, initially in 2018 before contacting him on numerous occasions from May 2019 to promote it. I find it played a critical role in facilitating the transaction, in that it

did cause the deal. It follows I'm satisfied that those acts by HJ were carried on by it under Article 25(1) and they are not excluded by virtue of Article 26.

Even if I am wrong, and Article 26 does apply, it only exempts arrangements under Article 25(1) - and I am satisfied that HJ did make arrangements that come within Article 25(2). As the guidance at PERG 8.32.2G states, Article 25(2) is potentially much wider (than Article 25(1)) "as it does not require that the arrangements would bring about particular transactions".

I've considered EforG's comments about HJ only acting as an introducer. It says despite the contractual arrangements within the AR agreement the acts carried out by HJ were acts of an introducing agent only. And it says HJ didn't use the authorisations available, instead it acted as an unauthorised firm, communicating financial promotions without approval by complying with the conditions of an exemption contained in Article 27 of the RAO. This says that:

"A person does not carry on an activity of the kind specified by article 25(2) merely by providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties."

This of course would only be an exclusion to the activity under Article 25(2) not the Article 25(1) activity that I think was also carried out. But I do not think the exclusion applies here in any event. PERG 8.32.5 says of this exclusion:

"The Regulated Activities Order contains an exclusion (article 27: Enabling parties to communicate) to bring a degree of certainty to this area. This applies to arrangements which might otherwise fall within article 25(2) merely because they provide the means by which one party to a transaction (or potential transaction) is able to communicate with other parties.

In the FCA's view, the crucial element of the exclusion is the inclusion of the word 'merely'. So that, where a publisher, broadcaster or Internet website operator goes beyond what is necessary for him to provide his service of publishing, broadcasting or otherwise facilitating the issue of promotions, he may well bring himself within the scope of article 25(2)."

PERG 8.32.6

"For example, in the FCA's view a publisher or broadcaster would be likely to be making arrangements within the meaning of article 25(2) and be unable to make use of the exclusion in article 27 if:
(1) he enters into an agreement with a provider of investment services such as a broker or product provider for the purpose of carrying their financial promotion; and
(2) as part of the arrangements, the publisher or broadcaster does one or more of the following:
(a)brands the investment service or product in his name or joint name with the broker or product provider;
(b)endorses the service, or otherwise encourages readers or viewers to respond to the promotion;
(c) negotiates special rates for his readers or viewers if they take up the offer;
(d) holds out the service as something he has arranged for the benefit of his readers or viewers."

In the circumstances of how this investment was taken out, and as mentioned previously, I think HJ's email, telephone calls and face-to-face meetings with Mr A were intended to and

did persuade, and so encouraged him to respond to the promotion. It also indicates HJ was sending and receiving paperwork and arranging payments. The evidence also supports HJ was negotiating on Mr A's behalf with Magna to find a product that would suit him. There is also evidence that Mr A received a cashback offer from HJ as a result of his investment. HJ's role was therefore not merely to provide the means by which one party to a transaction (or potential transaction) is able to communicate with other parties.

In my view, the available evidence supports the testimony of Mr A in that HJ were actively pushing the investment opportunity. The numerous contacts made and the nature of the contact doesn't indicate that HJ played a passive role. EforG suggest HJ was merely simply putting an experienced investor seeking to make an investment in touch with a company seeking finance. But the evidence doesn't support this assessment of the situation. Rather, it indicates that HJ were active in arranging the investment for Mr A and sought to make it happen by continuing to chase and send information to him to complete the transaction. So, having considered this point, it remains I don't find the exclusion provided by Article 27 can be relied upon in this circumstance.

EforG has previously raised an argument that the carrying out of the activity cannot be properly considered as ancillary to a regulated activity in circumstances where a "bright line" can be drawn between the regulated and unregulated activities based on the facts as set out by Judge Ouseley on the application of Tenetconnect Services Ltd v FOS. It doesn't think the introduction and/or promotion of the investment can be considered as inextricably linked to the alleged arranging of the investment in both substance and timing.

I don't agree this has relevance, in light of the circumstances of how Mr A came to take out his investment. I've already acknowledged promoting investments isn't specifically listed in the RAO as a regulated activity, but my finding is that it was ancillary to the activities of arrangements that HJ was also involved in. The facts previously set out, in my view, clearly show that HJ went beyond a mere promotion and this was bound together with the arrangement of the investment. The contact notes show a continuous dialogue following the initial promotion leading to the completion of the transaction. So I don't think the evidence supports that there was clear separation between the activities of HJ. It follows that I don't find there was a bright line between the introduction and arranging of the investment as EforG suggest.

On balance, it seems that HJ's interaction with Mr A amounted to arrangements under Article 25(1) of the RAO as HJ's involvement had the direct effect of bringing about the investment in the loan note. Articles 25(1) and (2) are not mutually exclusive. Some activities can fall under both limbs. So even if I'm wrong on this point, I also make a finding that HJ also made arrangements under Article 25(2) as it made arrangements with a view to transactions in investments as the evidence supports that HJ's promotion had the purpose of making Mr A invest.

Were those acts ones for which EforG accepted responsibility?

For us to be able to look at the merits (the rights and wrongs) of the complaint we have to be satisfied that the activities carried on by HJ were ones for which EforG accepted responsibility. To determine this, I've looked at the appointed representative agreement between EforG and HJ. The agreement says:

"The appointer [EforG] appoints the company [HJ] as its Appointed Representative pursuant to section 39 of the Act to carry out the UK Business under Regulation 2 of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001, and to that end:

3.1.1 the activity which [HJ] is permitted to carry out pursuant to this Agreement is limited to arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments under article 25 of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 …"

This indicates EforG did authorise HJ through the AR agreement to arrange deals at the time Mr A invested.

I note further points have been raised by EforG in relation to HJ acting in its own right in a capacity of an unregulated introducing agent only, and not using the permissions it gained through the AR agreement. EforG suggests there has been a misunderstanding with respect to HJ's role and the actions it took, which were fundamentally different to the authorisations it had the ability (but not the requirement or obligation) to use under the AR agreement.

I refer back to the AR agreement again. I note the pre-amble that says HJ was specialising in promoting specific investments in the fixed income and alternative property sector to self-certified investors and providing suitable information. It confirms HJ does not offer any form of financial advice. This is in line with the section of the agreement that confirms the permissions granted (which didn't include advice). This section is clear that it is limited to arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments under Article 25 of the ROA.

The email correspondence I've seen between HJ and Mr A during the period the Magna investment was promoted to him until it was completed contains a footer below the signature that confirms it was an *"Appointed Representative (FRN808287) of Equity for Growth (Securities) Limited (475953) which is Authorised and Regulated by the Financial Conduct Authority".* This further demonstrates at the relevant time HJ was acting in the capacity of an AR of EforG.

EforG seeks to argue while HJ had permissions to carry out the regulated activities through the AR agreement entered into, it didn't use these permissions in this transaction. In other words, it says HJ was not acting as its AR here. But I've already concluded that the extent of HJ's involvement with the arrangement of Mr A's investment into Magna meant it was arranging. The more plausible explanation is that it was acting as EforG's AR and therefore arranging an investment using the permissions it was granted through the AR agreement. I'm also conscious, without an AR agreement in place, carrying on a regulated activity would be in breach of the general prohibition and therefore acting unlawfully. So there is good reason why an AR agreement was in place due to the nature of the business HJ was likely to be carrying out.

So, EforG authorised HJ to make arrangements for investments. It is my finding that this is what happened in this case. I can consider the direct offer financial promotion as it was ancillary to the arranging and that connection means EforG is responsible for anything done or omitted by HJ in carrying on the business for which it has accepted responsibility. And in any case, my view is that the direct offer financial promotion was intrinsically linked to HJ's authority to make arrangements. So, my conclusion on jurisdiction is that this is a matter that we can look at as it involves a regulated activity and/or an activity that is ancillary to a regulated activity. EforG authorised HJ to carry on these acts. As such, it is responsible for the complaint.

As I am satisfied Mr A's complaint is one I can look at I will now consider all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Merits of the complaint

I have carefully taken account of the relevant considerations to decide what is fair and reasonable in the circumstances of this complaint. In doing so, 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 EforG met its regulatory obligations when HJ, 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:

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

There are also rules restricting who "non-readily realisable securities" can be promoted to and how to test whether the investment was appropriate for the potential investor. These rules are set out in COBS 4.7 and COBS 10. These rules are relevant in this case as the Magna loan notes were, in my view, non-readily realisable securities.

The FCA Handbook definition of a 'non-readily realisable security' is:

"a security which is not any of the following:
(a) a readily realisable security;
(b) a packaged product;
(c) a non-mainstream pooled investment;
(d) a mutual society share;
(e) a deferred share issued by a credit union; or
(f) credit union subordinated debt;"

The Magna loan notes are a security that is not readily realisable and none of the other exclusions apply. So Mr A's investment was a "non readily realisable security".

COBS 4.7 - Direct offer financial promotions

At the time 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 (for non-advised services)

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:

“(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 10.2.2 R:

“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”

10.2.6G – Knowledge and experience:

“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 Warning the client

COBS 10.3.1R

“(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

(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

“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.”

In response to the provisional decision, EforG has continued to argue that the regulatory obligations under COBS 4.7 and COBS 10 don’t apply.

Essentially it says HJ didn’t communicate a financial promotion – including a direct offer financial promotion - and because of this the regulatory obligations set out above don’t apply. It denies HJ sent Mr A an IM for the opportunity and says the information it did send was not an invitation or inducement to engage in investment activity.

I’ve considered the points EforG makes. I again reiterate my earlier finding that I’m satisfied a direct offer financial promotion was made by HJ to Mr A – so it follows that it did need to meet the requirements set out above.

So, I’ve considered whether EforG complied with its regulatory requirements.

COBS 4.7 says that a firm must not communicate a direct or approve a direct offer financial promotion relating to a non-readily realisable security unless two conditions are satisfied.

The first condition is the client has been certified or has self-certified as one of the categories listed.

There is evidence that Mr A self-certified as a HNW individual – in that he signed a declaration in this respect. As previously mentioned, he has suggested HJ told him he needed to complete a certification but it didn’t matter which one.

The wording used for the HNW category in the declaration signed by Mr A contains some of the wording set out at 4.12.6R – specifically elements that require to confirm the level of income and/or net assets held. But there are differences in the statements. For example, the statement Mr A signed doesn’t warn there is a significant risk of losing all of your money.

This does downplay the risk associated with the type of investment that was to be promoted to him as a result of signing the declaration.

Mr A has told us his income was well below £100,000 per year at the time. But he did hold a number of assets. There is some evidence of him having £200,000 in an Empire investment. He said he made this investment in 2017 and funded it through selling his main residence. He says he also held two investment properties, which were mortgaged but with some equity. When he sold his main residence in 2016, he moved to live in one of the investment properties (meaning it would not be included as part of the calculations of his assets). Taking this information into account it seems possible Mr A did hold assets above £250,000.

I acknowledge EforG has raised arguments to say HJ wasn't required to comply with the rules highlighted, as it considers the promotion to be an "Excluded Communication". It also says HJ's business model benefits from exemptions when communicating with self-certified investors. It refers to the FPO to support this point and says HJ was acting as an unauthorised person and was therefore able to communicate a financial promotion to Mr A under an exemption.

In response to the provisional decision, EforG has restated its argument in respect of HJ only needing to comply with the FPO as Mr A signed a HNW statement. It says regardless of any contractual arrangement HJ had entered into with EforG, it was able to introduce investors to investment opportunities in a capacity of an unregulated introducing agent, by benefitting from exemptions under Article 48 and 50A of the FPO. And as it views Mr A as an exempt HNW individual under s.50A his position is different compared to ordinary retail investors. It has referenced a December 2011 HM Treasury consultation to support its argument there was a responsibility on Mr A to correctly certify when categorising himself and the existence of a signed statement is sufficient to satisfy the FPO requirements. It also refers to the definition of an excluded communication – stating this indicates a communication "would" benefit from an exemption in the FPO if it were communicated by an unauthorised person.

In response to the above points, I reiterate comments I've previously made. At the relevant time HJ was an AR of EforG and as part of this agreement HJ had permission to carry out certain specified regulated activities – crucially including the ability to arrange deals in investments. I've already explained why I'm satisfied a regulated activity was being carried out in the circumstances. In this situation, the logical conclusion to reach is HJ was using the permissions it gained through the AR agreement when arranging an investment for Mr A. And I am satisfied HJ was acting as EforG's AR here, and therefore using its permissions.

By arguing HJ "was not using permissions" EforG is effectively saying HJ was not acting as its AR – this is a point I have already dealt with earlier in my decision. But to reconfirm my earlier conclusion, EforG authorised HJ to make arrangements for investments and it is my finding that this is what happened in this case. This means that I remain of the view the regulatory obligations I set out do apply to the sale of Mr A's investment in Magna.

EforG has also restated its arguments about HJ not being required to comply with COBS 4.7.7 (or COBS 10, which I deal with later in this decision) by returning to its view that the financial promotion of Magna loan notes itself was not a "direct offer" financial promotion. I've already explained why I'm satisfied that Mr A was provided with a direct offer financial promotion and why the nature of contacts HJ had with Mr A were an invitation and/or inducement to make the investment into the Magna loan notes. So, EforG's points don't lead me to say a direct offer promotion wasn't made to Mr A. It follows the regulatory obligations are relevant.

I do have concerns about EforG's stance that HJ can blindly rely on the HNW statement and avoiding compliance with FCA rules and guidance. Although it also says HJ had no reason to doubt Mr A was a HNW individual based on the information contained in the records kept of his activity history. But in my provisional decision, I accepted based on the available information, including that provided by Mr A about the assets he held at the time, it did seem likely he may have met one of the categories under COBS 4.7.7R - that being certified as a HNW investor. So, despite my disagreement with some of the points made by EforG, it was still possible the promotion could have been made to Mr A if he indeed did meet the criteria. But even if Mr A met the HNW criteria, this would only satisfy the first condition of COBS 4.7.7. I think EforG failed to satisfy the second condition – compliance with the rules relating to appropriateness under COBS 10.

HJ was obliged, under COBS 10, to "ask the client to provide information regarding his knowledge and experience … to enable the firm to assess whether the service or product envisaged is appropriate for the client" and "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".

EforG does not say that HJ carried out any checks – its position is that it was not obliged to do so given its limited role as introducer. For all the reasons I set out above – I don't agree that it was just an introducer and must therefore conclude that no checks were carried out. I've already explained that I'm satisfied a direct offer financial promotion was made to Mr A, so the relevant rules on appropriateness testing were engaged. Had these rules been followed, I think it would have identified that Mr A had limited investment experience and knowledge.

The loan notes Mr A invested in are not a straightforward product. There were multiple risk factors associated with them – including the inherent risks of property developments (delays, budget overruns etc), as well as the track record of Magna. There was also a liquidity risk. The loan notes weren't easily tradable on a recognised exchange, and so could not be readily sold. 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 investment was complex, risky and specialist. All of this indicates that this wasn't a suitable investment for the majority of retail consumers. EforG knew or ought to have known this.

EforG has raised points in relation to Mr A's existing experience. EforG has pointed to a sales note from HJ's records that mentions that Mr A had made a similar investment before, in Empire. It says this further supports his profile of an active and experienced investor. It disagrees that the fact that Mr A did not suffer losses on his investment in Empire is an indicator of lack of experience, knowledge or understanding of risks. It also said he was an experienced property investor and landlord. And he was proactively searching for investment opportunities and was already signed up with at least one other introducing agent.

I've considered this evidence about Mr A's experience. I've seen evidence that prior to his Magna investment he'd invested £200,000 in loan notes with Empire Property Holdings (in June 2017). It is apparent this repaid in full and he received the capital with interest back in May 2019, and this was used in part to fund is Magna investment. Mr A says he also made another loan note investment around the same time has his Magna investment. While I acknowledge this is evidence that he had some prior investment experience, I don't consider this to demonstrate detailed knowledge or experience. The fact his Empire investment had successfully repaid capital, doesn't support he was aware of the risks of this type of investment from this experience. Also, investing in another opportunity at the same time as his Magna one, doesn't indicate much in the way of experience and knowledge can be gained from this due to the proximity in making these investments.

Mr A says he was heavily persuaded to invest by HJ, as opposed to him seeking out the new opportunity. I think it is relevant his previous Empire investment had worked very well, coupled with the reassurance HJ gave him about the security of the Magna opportunity. This in my view was an influence in his decision to invest. I don't think his previous investment is strong evidence that Mr A had a good understanding of investing in complex high-risk investments. I also don't think it demonstrates he was an experienced investor proactively seeking out investment opportunities.

I note Mr A had experience of making property investments. Mr A says he had two buy-to-let properties he was using to generate income. And by the time he came to invest in Magna, he only had one property in his portfolio. I don't think owning a small number of rental properties is sufficient to say that he had knowledge and expertise in property development of the kind Magna were engaged in. On balance, I don't think this is sufficient to demonstrate he had the required knowledge and experience.

In my view, had HJ carried out the checks it should have, it would have identified that the investment in Magna loan notes was not appropriate for Mr A. He had neither the knowledge nor experience to understand the risks involved in the investment.

COBS 10.3 does provide for situations where firms can proceed with arrangements after giving warnings if the client still wants to proceed. But as set out in COBS 10.3.3G "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." I don't think it would have been fair for HJ to proceed here, even if Mr A did accept a warning, as it ought to have been aware he clearly did not have the capacity to understand all the risks involved with investing in Magna loan notes.

So, my conclusion is HJ was required to follow the relevant rules set out by the regulator. It failed to do this when making the arrangements for the Magna investment. I'm satisfied that, had HJ done everything it should have it would have concluded that it should not make the direct offer promotion to Mr A and he would not have made the investment that was inappropriate for him. As such, EforG, as principle of HJ, should pay Mr A compensation.

EforG's requests

I note EforG has requested that it is given a further opportunity to comment on any responses given to the points it has raised if the ombudsman doesn't accept them. I've considered this request, but don't find that I'm required to provide a further opportunity for EforG to respond. I set out my provisional findings in detail and have considered the further points made by EforG in response. I haven't found that these change my overall thinking or the substantial reasons I've given for upholding the complaint. I've also provided further reasoning and clarification in this decision. Again, I'm satisfied EforG has had significant time to provide everything it wants to be considered, so I don't think delaying the resolution of the complaint is fair overall to all the parties. So, it is appropriate for me to draw the complaint to a conclusion and issue a Final Decision.

For the reasons provided, I uphold this complaint.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr A as close to the position he would probably now be in if he had not taken out this investment.

I think Mr A 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 A's circumstances and objectives when he invested.

What should EforG do?

To compensate Mr A fairly, EforG must:

- Compare the performance of Mr A'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.

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

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
MIXG	Still exists but illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

If at the end date the portfolio 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 A agrees to EforG taking ownership of the portfolio, if it wishes to. If it is not possible for EforG to take ownership, then it may request an undertaking from Mr A that he repays to EforG any amount he may receive from the portfolio 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, EforG should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any interest payments received by Mr A from his investment should be deducted from the fair value calculation at the point they were 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 EforG totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr A wanted income with some growth with a small risk to his capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr A's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr A into that position. It does not mean that Mr A would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr A could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My final decision is that Equity for Growth (Securities) Limited should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 October 2024.

Daniel Little
Ombudsman