DRN-5241819

The complaint

Miss W complains EGR WEALTH LIMITED (EGR) is responsible for mis-selling her an investment into a bond. She says there were failings in the way the investment was sold, and she has suffered a loss as a result.

What happened

In January 2020, Miss W invested around £29,000 in a bond after transferring funds from an existing ISA, with the bond to be held in a new ISA. She was due to receive interest at a rate of 8.1% per annum, with payments due to be paid twice a year in March and September. The investment was due to mature in December 2022.

Miss W completed the required application EGR provided – this included a suitability and appropriateness test. As part of the application, she signed a declaration to indicate she was a restricted investor.

Miss W received around £3,500 in interest payments from the investment, which were paid out to her nominated bank account.

In 2022, problems emerged with the investment as there were delays in payment of interest. In May 2022, EGR sent investors an update from the bond issuer, which apologised for the lack of communication regarding interest payments and explaining further issues with the performance of the investment. Then in September 2022, EGR sent Miss W notification that the bond issuer had been placed into administration as of 1 August 2022.

In February 2023, Miss W raised a complaint with EGR about the mis-selling of her investment. EGR responded but didn't uphold the complaint. In summary it said:

- EGR did not advise Miss W, it only provided an "Execution Only" service, so there was no requirement to assess suitability.
- Based on the information that EGR received at the time about her circumstances, Miss W appeared appropriate for the product. EGR carried out the necessary due diligence by providing her with the required risk disclosures and questionnaire on knowledge, understanding risks and classification certification.
- Miss W signed a declaration to say she accepts that the investments which were being promoted may expose her to a significant risk of losing all of the money invested, and she was made aware of the risks of the bond through the product information provided.

As Miss W remained unhappy with the response, she referred the complaint to this service for an independent review.

One of our investigators issued an initial assessment upholding the complaint. In summary she said:

- There was insufficient evidence to say EGR advised, Miss W to invest, but it did still have obligations when arranging the investment.

- Miss W completed an investor declaration, suggesting she did meet one of the categories of investor who could be promoted this type of investment. But this only covered part of the obligations on EGR when arranging investments of this type.
- EGR failed to meet its obligations to ensure the investment was appropriate for Miss W. The appropriateness test completed by EGR failed to adequately establish whether she was knowledgeable and experienced in this type of investment and the risks it involved. And had it met its obligations, that likely would have led EGR to the reasonable conclusion that this bond wasn't appropriate for Miss W.
- Taking that into account, along with the information that EGR ought reasonably to have known about Miss W and its duty to act in her best interest, it shouldn't have allowed the application to go ahead. So, the investigator recommended EGR compensates Miss W due to its failings.

EGR didn't accept the investigator's opinion and asked for an ombudsman to reach a decision. In summary it said:

- It disputes the investigator's interpretation of its obligations under COBS 10 in relation to client knowledge and experience. It is concerned the investigator's view has been coloured by subsequent changes made by the FCA to COBS 10 and the appropriateness test, which were only introduced with effect from December 2022 / February 2023.
- EGR gathered sufficient information to be satisfied that Miss W had the experience and knowledge to be able to understand the risks involved and whether the investment was appropriate. She confirmed in her application she had held similar investments to the bond. The risks were clearly set out and explained in the Information Memorandum ("IM"). Miss W can have been in no doubt as to the nature of the business into which she was considering investing and the market for the relevant loan products.
- EGR gathered information that established Miss W was a potential investor who confirmed she had relevant investment experience, was prepared to take a greater degree of investment risk in relation to an investment that would comprise less than 10% of her portfolio, and that she understood the risks involved. It doesn't accept it was required to "probe" into Miss W's experience – the rules did not require that.
- Even if Miss W was given a warning about the appropriateness of the investment, on balance, it would have made no difference to the outcome as the issues around the high risk illiquid and unprotected nature of the investment had already been highlighted and had no impact on her, and Miss W would have proceeded regardless of any warning.

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.

What role did EGR play in the sale of the investment?

I've firstly considered EGR's involvement in the arrangement of Miss W's investment. It says it provided an execution only service and it didn't make a personal recommendation or assessment of suitability. I've considered the submissions EGR make on this point. I accept there isn't evidence of regulated advice being provided by EGR.

I've looked at the evidence available to show what EGR's involvement was. I've seen details of the application process. There is evidence of an application form provided by EGR that consisted of two stages, designed to meet the rules restricting who the bond could be

promoted to and on how to test whether the investments were appropriate for the potential investor. The application form Miss W completed in January 2020 indicates she was categorised as a 'Restricted Investor'. There was also an appropriateness test which asked questions about her knowledge and experience.

It's clear that EGR played an active and significant role in the arrangements of Miss W's investment. I am satisfied Miss W's complaint relates to a regulated activity. The bond was a security or contractually based investment specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO"). At the time Miss W made her investment, the RAO said regulated activities include arranging deals in investments. I am satisfied the application process involved making arrangements for Miss W to invest and had the direct effect of bringing about the transaction.

Did EGR meet its obligations to Miss W in the arrangement of the investment?

Miss W's complaint concerns what she considers to be a mis-sale of the investment. I'm satisfied that this includes EGR applying relevant tests regarding investor categorisation and appropriateness. Therefore, I will first set out the relevant considerations when looking at the application process EGR conducted before allowing Miss W 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 EGR met its regulatory obligations when it carried out the acts the complaint is about. I consider the following regulatory obligations to be of particular relevance here.

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

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

I'm satisfied the investment Miss W applied for was a non-readily realisable security (NRRS) and therefore there were rules restricting who this type of product 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 Miss W invested.

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 a P2P agreement or a P2P portfolio 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; or
(d) certified as a 'restricted investor' in accordance with COBS 4.7.10 R.

(3) The second condition is that the firm itself or:
(a) the person who will arrange or deal in relation to the non-readily realisable security; or
(b) the person who will facilitate the retail client becoming a lender under a P2P agreement or a P2P portfolio,

will comply with the rules on appropriateness (see COBS 10 and COBS 10A) or equivalent requirements for any application or order that the firm or 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, other than in the course of MiFID or equivalent third country business, or facilitates a retail client becoming a lender under a P2P agreement 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 EGR has said, I'm satisfied the complaint should be upheld. I'll explain my findings below.

COBS 4.7 says that a firm must not communicate a direct or approve a direct offer financial promotion relating to a NRRS 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 Miss W certified as a Restricted Investor – in that she signed a declaration in this respect.

The application gave a definition of a Restricted Investor in a statement – this says:

"I make this statement so that I can receive promotional communications relating to non-readily realisable securities as a restricted investor. I declare that I qualify as a restricted investor because:

- *In the twelve months preceding the date below, I have not invested more than 10% of my net assets in non-readily realisable securities, and*

- *I undertake that in the twelve months following the date below, I will not invest more than 10% of my net assets in non-readily realisable securities.*

I accept that the investment to which the promotions will relate may expose me to significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities."

There is only limited information recorded about her assets at the time, so it is unclear from this whether her declaration as a restricted investor is accurate and she only had, or would only be, investing 10% of her assets in NRRSs. Although the information she has provided

as part of her complaint about her assets, does tend to support the investment she made into the bond wasn't significant when compared to her total assets.

But in any case, it seems Miss W may have met one of the other criteria that would allow NRRSs to be promoted to her, as she has provided evidence that she held assets over £250,000. This would mean she could be certified as a High Net Worth (HNW) investor.

Whilst not completely clear, it does seem possible that Miss W did meet at least one of the categories under COBS 4.7.7R. So it seems still possible the promotion could have been made to Miss W if she indeed did meet the criteria. But if she did, this would only satisfy the first condition of COBS 4.7.7. I think EGR failed to satisfy the second condition – compliance with the rules relating to appropriateness under COBS 10.

The second condition set out in COBS 4.7.7R required EGR to comply with the rules on appropriateness, set out in COBS 10 and quoted earlier in my findings. The rules at the time (COBS 10.2.1R) required EGR to ask Miss W to provide information regarding her knowledge and experience – and for this information to be relevant to the product offered (the first limb of the rule). The rules required that information to then be assessed, to determine whether Miss W 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 10.2.2R required EGR, when considering what information to ask for, to consider the nature of the service provided and the type of product (including its complexity and risks). It needed to think about asking questions on:

- the types of service, transaction and designated investment with which the client is familiar;
- the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;
- the level of education, profession or relevant former profession of the client.

Having reviewed the appropriateness test Miss W was directed to complete during her initial application in January 2020, I'm not persuaded EGR, asked for an appropriate amount of information about her knowledge and experience, as required by COBS 10.2.1R and COBS 10.2.2 R.

The questions asked were limited and, in my view the answers given by Miss W do not demonstrate the necessary experience and knowledge in order to understand the risks. Whilst I accept that, depending on the circumstances, a firm may be satisfied that the client's knowledge alone is sufficient for them to understand the risks involved in a product or service (COBS 10.2.6G), I'm not persuaded Miss W had the sufficient knowledge here.

I note Miss W positively answered a question about whether she had made a similar investment in the past, but no detail is given about what this was. It is also recorded she hadn't invested in this type of investment instrument within the last 12 months. In her submissions to this service, Miss W says she doesn't recall having other investments of this type before. She confirmed she had invested in shares before and she has provided statements from the investment accounts she held. These confirm she held an investment ISA, a general investment account and a SIPP. The statements provided show these were all invested in managed funds under a conservative portfolio. So while, I note EGR's comments about the potential for SIPP's to be invested in an extremely broad range of investments, including those that are more complex and riskier, the evidence provided by Miss W indicates that her existing investments weren't held in speculative high-risk products but rather more conservative managed funds.

There is evidence that the funds Miss W was using to make her investment in the bond came from a transfer of a cash ISA she held with a friendly society. Her ISA application confirms the transfer of the previous ISA in cash. Miss W says at the time she invested she was looking diversify and was attracted to the 8% interest rate available with the bond. The point-of-sale evidence support Miss W was making a reinvestment of funds from a cash-based ISA. This adds weight to Miss W's submission that she was looking for something paying a good interest rate to replace her existing ISA, rather than someone seeking out a more complex high-risk instrument.

I haven't seen any other evidence that she held investments of the type she invested in through EGR prior to this. All of this leads me to question the information recorded. The limited questions and lack of detail provided means I don't find EGR could have made the assessment it was obliged to about appropriateness to support Miss W did have the knowledge and experience required. I haven't seen EGR attempted to do anything further to satisfy itself of her knowledge and understanding. The relevant obligations are placed upon EGR, not Miss W.

EGR says the sales paperwork shows that Miss W understood the risks involved and that the investment was appropriate for her. I don't agree this is sufficient to say it fulfilled its obligations under COBS 10. While EGR doesn't think it needed to probe or gain any additional information than what is recorded when assessing appropriateness, I disagree, the assessment completed doesn't, in my view, gather sufficient evidence for it to reach a decision to assess appropriateness. This is based on the requirements at the time, and not the more recent regulatory updates EGR refer to.

Taking all of the evidence into account, I'm not persuade EGR did adequately test whether Miss W had the knowledge to understand the risk associated with this type of complex investment. The evidence available doesn't support that she was experienced in investing in NRRSs and rather her level of knowledge was limited. The risks of the bond were complex and multifactorial. It was not, for example, a question of whether Miss W simply understood money could be lost – but whether she was able to understand how likely that might be and what factors might lead to it happening.

As the first limb of COBS 10.2.1R was not met EGR was unable to carry out the assessment required under the second limb. EGR should have been confident, from the information it asked for, that it was able to assess if Miss W 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 accept that taking Miss W's appropriateness test answers in isolation would suggest she knew her capital would be at risk, But as mentioned, I've not seen that this would demonstrate an understanding of how likely it would be that she could lose her capital and/or what factors might lead to it happening.

Had EGR followed its obligations, I think the most likely conclusion it would have reached, was that Miss W did not have the necessary experience and knowledge to understand the risks involved with the bond.

If EGR 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 my concerns about the testing of Miss W's knowledge and experience, and had it adequately tested this, EGR would have come to the conclusion that the bond wasn't appropriate for her in the first place.

A clear, emphatic statement would have left Miss W in no doubt the bond was not an

appropriate investment for her. And she ought to have been privy to such a warning, had her appropriateness been tested in line with the requirements of the rules. Even if Miss W still said she wanted to proceed after being given a warning, I still think there is more EGR needed to do if it had asked for appropriate information about Miss W's knowledge and experience. In these circumstances, I think it would have been fair and reasonable for EGR to conclude it should not allow Miss W to proceed. Had Miss W been asked for appropriate information about her knowledge and experience this would have shown she may not have the capacity to fully understand the risk associated with the bond. I've seen no evidence to show Miss W had anything other than a basic knowledge of investments. So, it would not have been fair and reasonable for EGR, to conclude it should proceed if Miss W wanted to, despite a warning (which, as noted, was not in any event given).

In summary, I'm satisfied EGR did not act fairly and reasonably when assessing appropriateness. By assessing appropriateness in the way it did, it was not treating Miss W fairly or acting in her best interests. If it had acted fairly and reasonably to meet the relevant regulatory obligations when assessing appropriateness, Miss W would not have got beyond this stage.

I have noted the comments EGR make about the risk warnings contained in the IM. As the second condition set out in COBS 4.7.7R could not be met and things could not have proceeded beyond this; this means Miss W shouldn't have received the IM at all. And so, any information within that cannot now reasonably be relied on to show she was aware of the risks associated with the bond. I've also not seen sufficient evidence to show Miss W had the capacity to fully understand the IM – a lengthy and complex document – given this limited knowledge and experience. As such, EGR can't fairly rely on any possible reading of this as a means to correct the failings set out above.

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

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

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Miss W as close to the position she would probably now be in if she had not invested in the bond.

I take the view that Miss W would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Miss W's circumstances and objectives when she invested.

What must EGR do?

To compensate Miss W fairly, EGR must:

- Compare the performance of Miss W's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- EGR should also add any interest set out below to the compensation payable.
- Pay to Miss W £200 for the distress caused by the total loss of the investment.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Access Commercial Investors 4 Bond	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 any asset 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 Miss W agrees to EGR taking ownership of the illiquid assets, if it wishes to. If it is not possible for Yes to take ownership, then it may request an undertaking from Miss W that she repays to EGR any amount she 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, EGR should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any interest distribution paid from the bond should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if EGR totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Miss W wanted a high interest rate with a small risk to her 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 her 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 Miss W's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Miss W into that position. It does not mean that Miss W would have invested 50% of her 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 Miss W could have obtained from investments suited to her objective and risk attitude.

My final decision

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

EGR WEALTH LIMITED should provide details of its calculation to Miss W in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 11 July 2025.

Daniel Little
Ombudsman