

The complaint

Mrs D complains that an appointed representative (AR) of EGR Wealth Limited (EGR) misled her into making an investment into a highly speculative mini bond. She says the AR gave her advice, even though she now knows it was not approved to do so, and EGR should be held responsible for this. She also says that, had EGR taken an appropriate level of care, it would quickly have realised that she had no business investing in mini bond, and that arranging the investment in it on an execution only basis was entirely unsuitable.

What happened

Mrs D says she was approached by a director of the AR, whom she had received advice from before (whilst he was working at a different business) in 2017, and was given advice to invest in a mini bond issued by a business called Blueprint, which would pay interest at 7.5% p.a.

Mrs D applied for an ISA with EGR on 16 March 2017 and subsequently transferred the cash value of her existing investment ISA to the EGR ISA.

On 2 June 2017 Mrs D gave a written instruction to EGR to invest around £13,600 (the majority of the ISA's value) in the mini bond. EGR issued a contract note on 6 June 2017, confirming it had executed the investment as instructed.

The mini bond did make some payments of interest, but these stopped after a while and none of the investment capital was returned to Mrs D. Blueprint subsequently went into liquidation. This prompted Mrs D's complaint to EGR.

EGR did not uphold the complaint. It said, in summary:

- No-one at the AR was qualified or approved to provide investment advice to clients and, as such, the AR only ever introduced 'Execution Only' business to EGR.
- The paperwork that Mrs D signed for the investment and it holds on file is consistent with this having been the case for the mini bond investment.
- EGR did not offer any advice, nor undertake any of the processes associated with providing advice.

Dissatisfied with this response, Mrs D referred her complaint to us. One of our investigators considered the complaint, and concluded that it should be upheld. She said, in summary:

- The bond Mrs D applied for was subject to rules restricting who it could be promoted to. The relevant rules are set out in the Financial Conduct Authority's Conduct of Business Sourcebook (COBS).
- The relevant rules required that, in order to receive a promotion for the bond, Mrs D be in one of the defined categories of investor set out and complete an appropriateness test.

- It was not clear that Mrs D fell into any of the defined categories. And, if an appropriateness test had been carried out by EGR, it ought to have realised the mini bond would not be an appropriate investment for Mrs D.
- In her view, if the appropriateness test had been carried out, the investment would not have proceeded.
- In the circumstances, she thought it was fair to ask EGR to compensate Mrs D for the loss she had suffered.

Mrs D accepted the view. EGR did not. It said, in summary:

- The investigator's view fundamentally misunderstands the role of EGR. EGR did not operate as Mrs D's financial adviser. It gave no advice or recommendation as to Mrs D's proposed investment into the bonds and nor was it required to.
- EGR provided Mrs D with an Information Memorandum relating to the proposed issue. This comprised a Direct Offer Financial Promotion ("DOFP") and the obligations on EGR were therefore limited to complying with the rules on DOFP's, as set out in COBS 4.7.
- Thereafter, EGR provided an execution only service via its broking platform. Mrs D deposited funds and instructed EGR as to how they wanted to invest these funds.
- Mrs D fully understood that EGR was not advising on or recommending an investment into the bonds but was only ever acting on an execution only basis in accordance with her instructions. That much is evident not only from the fact that no advice or recommendation was given, but from the contemporaneous documents.
- The primary requirement of COBS 4.7 is that a firm must ensure that a DOFP receivable by a retail client contains information sufficient for the client to understand the nature and risks of the relevant business (COBS 4.7.1).
- EGR ensured compliance with COBS 4.7.1 as the Information Memorandum contains significant information about the nature and risks of the investment.
- COBS 4.7.7 permits a DOFP to be communicated to a "Restricted Investor", namely an investor who signs a statement confirming that they have not invested more than 10% of their net assets in non-readily realisable assets in the 12 months prior to the statement date and undertakes not to do so in the subsequent 12 months.
- COBS 10 references the expectations that an investor should be asked to provide information about his/her knowledge and experience in the non-readily realisable securities investment field. The investigator states that the bond would not be appropriate, yet her letter provides no explanation as to why this is or what was Mrs D's knowledge and experience.
- EGR did request information relating to Mrs D's knowledge and experience and her understanding of the risks of such an investment. This included declarations that:
 - She understood that the high-risk investment might offer the prospect of a higher return, but this was not guaranteed, and she appreciated they might not get back the sum invested.

- She appreciated that any proposed income payments were in no way guaranteed.
 - EGR was not providing her with any investment advice, and she would not have any FSCS protection.
 - “I have read and understood the nature and risk of the product(s) that I intend to invest in”.
 - That she had made a similar type of investment in the past.
- As per COBS 10.2.4, a firm is entitled to rely on information received from an investor, absent clear evidence of inaccuracy or incompleteness. EGR was fully entitled to rely on information from Mrs D confirming she had the necessary experience and knowledge to understand and make the investment into the bonds. This also fitted in with Mrs D’s choice not to take any advice on her proposed investment, despite clear statements in the IM that she should do so if in any doubt about suitability.

We recently asked Mrs D for more detail about her investment knowledge and experience at the time of the events subject to complaint. She and her husband (who has made a similar complaint, which I am also considering) sent a joint response. The response confirmed the ISAs transferred to EGR were all their savings at the time and their only other asset was their home. They also said they did not have a lot of investment experience and knowledge.

When asked for their recollection of any forms they had completed they said they had limited recollection of the specific documents signed at the time but have copies of the forms they completed (these were the ISA application forms which had already been submitted by EFG).

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.

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.

Mrs D’s complaint encompasses a number of points. Its main focus is on misleading advice she says she was given by EGR’s AR. But she also refers to EGR not taking sufficient care when arranging her investment in the bond.

It does not appear to be disputed that EGR promoted the bond to Mrs D and arranged her investments (the initial investment plus any later reinvestment of income) in it. And I am satisfied that EGR did promote the bond to Mrs D and arranged her investments in it.

I note Mrs D’s recollections of her interactions with EGR’s AR, which she says gave her advice. However, like the investigator, I am going to focus on the activities of EGR itself; as I do not think it is necessary in this case to consider the activities of the AR, to decide what is fair and reasonable in the circumstances.

Having made the finding of fact that EGR did promote the bond to Mrs D and arranged her investments in it, I have considered what the relevant considerations are to the complaint about that promotion and arrangement.

It does not appear to be disputed that the bond was a non-readily realisable investment. And

I am satisfied it was. There were therefore rules restricting who it could be promoted to and how to test whether the investment was appropriate for the potential investor; and those rules would have applied here.

The rules were set out in COBS 4.7 and COBS 10. I have set out below what I consider to be the relevant parts, in the form they existed at the time.

COBS 4.7 - Direct offer financial promotions

COBS 4.7.7R:

(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 4.7.10R

"A certified restricted investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:

RESTRICTED INVESTOR STATEMENT

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:

- (a) 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*
- (b) 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.*

Net assets for these purposes do not include:

- (a) the property which is my primary residence or any money raised through a loan secured on that property;*
- (b) any rights of mine under a qualifying contract of insurance; or*

(c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled; or

(d) any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

I accept that the investments to which the promotions will relate may expose me to a 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."

COBS 10 – Appropriateness (for non-advised services)

COBS 10.1.2R

"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, 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"

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.

The Principles for Businesses

I also think 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) are a relevant consideration. And I think Principle 6 is particularly relevant here:

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

Summary of my findings

Having considered all the available evidence and arguments I have reached similar overall conclusions to the investigator, for similar reasons. In summary:

- Mrs D had to fall under one of the investor categories set out in COBS 4.7.7R in order to be eligible to receive a direct offer promotion of the bond. And, although EGR has referred to one of those categories – Restricted Investor – in its response to the investigator, I have seen no evidence to show EGR followed the process set out in the rules to categorise Mrs D in such a way. Or to categorise Mrs D in any of the other categories set out in the rules.
- I have also not seen any evidence to show Mrs D could have been put into any of the categories – her circumstances were not consistent with the criteria which had to be met for any of the categories.
- In any event, Mrs D had to complete an appropriateness test which was consistent with the relevant rules, and EGR had to consider whether to proceed, in the light of the outcome of that test.
- EGR has referred to Mrs D having declared understanding of various risks associated with investment in the bond, and experience of similar investments, but has provided no supporting evidence of this. I have not seen any document where Mrs D gives the declarations EGR has set out – and Mrs D cannot have given all the declarations, in any event, as they applied to different categories of investor.
- Even if Mrs D did give some of these declarations, they do not, in my view, amount to an appropriateness test which meets the requirements of the rules. Had such a test been carried out, it would have been apparent the bond was not an appropriate investment for Mrs D; and EGR should have concluded it should not promote the investment to Mrs D.
- So, EGR should have concluded it should not promote the bond to Mrs D because the required steps had not been completed. Or it should have ensured that the required steps were taken, which would have meant the investment would not have

proceeded.

- It is therefore fair and reasonable to require EGR to compensate Mrs D for the loss she suffered through the investments in the bond.

I have set my findings out in more detail below.

Mrs D was a retail client. As I have set out, EGR made a direct offer promotion of the bond to Mrs D and, in order to make such a promotion, it ought to have checked to see if she fell into one of the categories set out in COBS 4.7.9R and, if she did, follow the process applicable to the relevant category. And EGR ought to have completed an appropriateness test which was consistent with the relevant rules, set out in COBS10.

To confirm, I have seen the following contemporaneous evidence relating to the promotion of the bond and execution of Mrs D's initial investment in it:

- The EGR ISA application form, completed by Mrs D on 16 March 2017.
- An ISA Investment Instruction, signed by Mrs D on 2 June 2017.
- A contract note for the initial investment in the bond, showing the investment was executed by EGR on 6 June 2017.
- A copy of the Information Memorandum for the bond, including a blank application form.

The Information Memorandum contained an application form, which did contain sections which sought to deal with the categorisation requirements set out in COBS 4.7.9R, but not an appropriateness test. I have seen no evidence to show this form was completed by Mrs D. When asked for a copy of this form, EGR resubmitted the ISA application and instruction referred to above. And Mrs D only recalls completing those forms (which she has also submitted copies of).

In terms of categorisation, the available evidence suggests Mrs D was not high net worth or sophisticated, and would not have met the definition of a Restricted Investor. So, she could not have been put into one of the relevant categories.

Setting that aside, Mrs D would have had to complete an appropriateness test, in any event. And I have seen no evidence to show a test, as required by the rules, was completed here. I have also not seen insufficient evidence to show that Mrs D would have successfully completed such a test, had she been subject to it.

EGR has referred to declarations made by Mrs D. I assume this refers to the application form included in the Information Memorandum, referred to above, which includes High Net Worth Investor, self-certified sophisticated investor, and Restricted Investor statements. Some of these statements contain some of the declarations mentioned by EGR. But, even if Mrs D did complete the form (and I have seen no evidence to show she did), she was only required to make one statement and therefore cannot have given *all* the declarations EGR mentions.

The declarations did not, in any event, amount to an appropriateness test as required by the rules at COBS 10.2.1R. And the form did not contain such a test. The appropriateness test is a distinct test which must be applied as set out in the rules. Those rules required EFG to ask Mrs D to provide information regarding her knowledge and experience in the investment field relevant to the specific type of product or service offered so as to enable EFG to assess whether the bond was appropriate for Mrs D. The form did not ask for sufficient information about Mrs D's knowledge and experience to enable EFG to make an assessment of appropriateness. It did not ask for any detail of Mrs D's experience of investing or about any

knowledge she may have which would give her capacity to fully understand the risks involved in specialist investment of this type, which were complex and multi-factorial.

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 Mrs D 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 any information it obtained through the form.

Had the process been consistent with what the rules required - had Mrs D been asked for appropriate information about her knowledge and experience - the only reasonable conclusion EGR could have reached, having assessed this, was that Mrs D did not have the necessary experience and knowledge to understand the risks involved with the bond.

As set out in the background section above, Mrs D had limited investment experience, and I have seen no evidence to show she had anything other than a basic knowledge of investments. Her only investment experience was through her ISA, into which she had saved monthly, and the ISA was invested in vanilla authorised collective investment funds with a large well-established investment provider. She had no experience of investments like the bond, or knowledge which would allow her to fully understand the risks associated with such an investment.

If EGR assessed that the bond was not appropriate, COBS 10.3.1 R 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.

Here, as the test was inadequate, a conclusion the bond was not appropriate was not drawn and therefore no warning was given. It follows EGR did not have the opportunity to consider whether in the circumstances to go ahead with the transaction if Mrs D wished to proceed, despite the warning.

In my view a warning which told Mrs D clearly an investment in the bond was not appropriate for her would likely have put Mrs D off proceeding further. That is a clear, emphatic statement which would have left Mrs D in no doubt the bond was not an appropriate investment for her. And she ought to have been privy to such a warning, had an appropriateness test consistent with the requirements of the rules been conducted.

Furthermore, had EGR given itself the opportunity to consider in the circumstances whether to go ahead with the transaction if Mrs D wished to proceed, having asked for appropriate information about Mrs D's knowledge and experience, it would have been fair and reasonable for EGR to conclude it should not allow Mrs D to proceed. Had Mrs D 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.

In these circumstances, it would not have been fair and reasonable for EGR to conclude it should proceed if Mrs D wanted to, despite a warning.

All in all, I am satisfied EGR, did not act fairly and reasonably when assessing appropriateness. By failing to assess appropriateness it was not treating Mrs D fairly or acting in her best interests. If EGR had acted fairly and reasonably to meet the relevant regulatory obligations when assessing appropriateness, Mrs D would not have got beyond this stage. And I think it would be fair and reasonable to uphold Mrs D's complaint on this basis.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs D as close to the position she would probably now be in if she had not made the investment.

Mrs D may have retained her existing ISA investments, but it is also possible she would have changed them. So, 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 Mrs D's circumstances and objectives when she invested.

What must EGR do?

To compensate Mrs D fairly, EGR must:

- Compare the performance of Mrs D'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 Mrs D £200 compensation for the distress caused by the loss of the amount invested.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
ISA	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.

Blueprint is in liquidation, I understand. So, *actual value* should be assumed to be zero. This is provided Mrs D agrees to EGR taking ownership of the illiquid assets, if it wishes to. If it is not possible for EGR to take ownership, then it may request an undertaking from Mrs D that she repays to EGR any amount she may receive from the bond 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 additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any interest from the EGR ISA 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.

If the ISA remains open then it only exists because of illiquid assets. In order for the ISA to be closed and further fees that are charged to be prevented, those assets need to be removed. I have set out above how this might be achieved by EGR taking over the illiquid assets.

If EGR is unable to purchase the illiquid assets, and the ISA cannot be closed, to provide certainty to all parties I think it's fair that it pays Mrs D an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the ISA to be closed.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs D's ISA had always been invested with some exposure to risk, across a mixture of funds; so, I think she wanted income with some growth 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 Mrs D'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 Mrs D into that position. It does not mean that Mrs D 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 Mrs D could have obtained from investments suited to her objective and risk attitude.

My final decision

For the reasons given, I uphold the complaint. EGR Wealth Limited should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 19 August 2025.

John Pattinson
Ombudsman