DRN-5291117

The complaint

Mr Q complains EGR WEALTH LIMITED (EGR) mis-sold him an investment bond. He says it failed to carry out adequate due diligence about him and the investment, leading to an unsuitable high-risk investment being recommended.

What happened

In January 2020, Mr Q invested around £10,000 in a bond to be held in an ISA managed by EGR. He was due to receive interest at a rate of 8.1% per annum, with payments due to be paid twice a year in June and December. The investment was due to mature in December 2022.

Mr Q applied for the bond following EGR's application. He completed the required application paperwork it provided – this included a suitability and appropriateness test. As part of the application, he signed a declaration in December 2019 to indicate he was a restricted investor.

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 Mr Q notification that the bond issuer had been placed into administration as of 1 August 2022.

In February 2023, Mr Q's representatives raised a complaint with EGR on his behalf about the sale of the bond.

EGR responded to the complaint. It didn't uphold it. In summary it said:

- EGR did not advise Mr Q, it provided an "Execution Only" service and the documentation is clear that was the basis of the transaction. So, there was no requirement upon EGR to assess Mr Q for his suitability for the product.
- Based on the information that EGR received at the time about his circumstances, Mr Q appeared appropriate for the product. EGR carried out the necessary due diligence by providing Mr Q with the required risk disclosures and questionnaire on knowledge, understanding risks and classification certification.
- In the "Understanding Risks" section of the account opening form, Mr Q has ticked "Yes" to the statement that he understands high risk investments may also carry the risk that there is no guarantee of receiving the indicated returns.

As Mr Q remained unhappy with the response he'd received from EGR, he 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 gave advice, but it did still have obligations to ensure Mr Q is someone who these bonds can be promoted to and that

it was an appropriate investment for him.

- Mr Q completed a restricted investor declaration, suggesting he 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 with regards to ensuring the investment was appropriate for Mr Q. The appropriateness test completed by EGR failed to adequately establish whether Mr Q was knowledgeable and experienced in this type of investment and the risks it involved. And had it made basic enquiries around his circumstances, that ought to have led EGR to the reasonable conclusion that this bond wasn't appropriate for Mr Q.
- Taking that into account, along with the information that EGR ought reasonably to have known about Mr Q and its duty to act in his best interest, it shouldn't have allowed the application to go ahead. So, the investigator recommended EGR compensated Mr Q 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:

- At the time of sale, COBS 10 required a firm to ask the client to provide information regarding their knowledge and experience in the relevant investment field, so that the firm could assess if the client could understand the risks involved in the relevant product and whether it may be appropriate for them. This could include (COBS 10.2.2R) information as to the type of investment with which the client was familiar, their transactions in relevant investments and their level of education.
- COBS 10 was not prescriptive as to the questions to be asked of the client and/or the nature of the firm's decision making on the question of appropriateness. COBS 10.2.4 provided that a firm could rely on the information provided by the client, unless, for example, it was aware that the information was inaccurate.
- The investigator's opinion is coloured by subsequent changes made by the FCA to COBS 10 and the appropriateness test that were introduced in December 2022 / February 2023. The considerations must be restricted to the rules and regulatory expectations in place in 2020.
- The key issue is whether it was reasonable for EGR to take the view that Mr Q would have been able to understand the risks involved in the proposed investment and if the investment may be appropriate. This would involve considering the information he provided as to his knowledge and experience, but also the extent to which the nature and risks of the investment were clearly set out.
- The risks arising from such an investment were repeatedly and clearly highlighted in the IM and Mr Q was urged at various points to take financial advice if any of these were not understood – which he chose not to do.
- EGR's Execution Only Application Form explained "..regulations deem corporate debt instruments as complex instruments. These instruments often contain complex structures or imbedded features that investors should ensure they have taken appropriate steps to understand." The answers Mr Q gave in the application indicate he was aware of the risks.
- It has serious concerns at the information provided by Mr Q about his circumstances. The application form says his source of wealth came from "Savings from main income and growth from other investment." He also confirmed he would not be investing more than 10%of his realisable assets in the investment and wished to achieve a high rate of return and understood and accepted that he would have to take more risk to do so. It does not accept it was required to "probe" further into Mr Q's experience.
- It doesn't agree the bond was very complex. It was underpinned by the business making loans to third parties (non-mainstream lending). The basic risk therefore is

clearly that a borrower cannot repay and that risk is higher than with standard commercial bank lending. It is not correct that, because Mr Q had not invested directly in this particular type of product before, he would not have been able to understand these basic risks.

- Even it could be said the investment wasn't appropriate for Mr Q (which is not
- accepted), it is clear that this would have made no difference to him. As the risks were clearly set out and he confirmed he understood and accepted this. Had EGR warned him the investment is likely to be inappropriate for him. It is more likely that he would have gone ahead, despite any further warning – in the same way that he was content to proceed despite the numerous other warnings given to him.
- It is not reasonable to say EGR should have refused to allow Mr Q to proceed. Under COBS 10.3.3 a firm has discretion whether or not to continue to facilitate a (non-advised) investment. If it was the case that a firm should decline to allow the investment, just because it considered it unsuitable, the rules would have said that.

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 Mr Q'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 Mr Q completed in December 2019 indicates he was categorised as a 'Restricted Investor'. There was also an appropriateness test which asked questions about his knowledge and experience.

It's clear that EGR played an active and significant role in the arrangements of Mr Q's investment. I am satisfied his 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 Mr Q made his investment, the RAO said regulated activities include arranging deals in investments. I am satisfied the application process involved making arrangements for Mr Q to invest and had the direct effect of bringing about the transaction.

Did EGR meet its obligations to Mr Q in the arrangement of the investment?

Mr Q's complaint concerns what he 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 Mr Q 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 Mr Q 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 note EGR have questioned whether the rules being applied in the investigator's findings were in relation to subsequent updates made by the FCA to the rules more recently. For clarity I have set out below what I consider to be the relevant rules, in the form they existed at the time Mr Q 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 Mr Q certified as a Restricted Investor – in that he 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."

From the limited information I've seen from the sale, it does seem possible that Mr Q did meet one of the categories under COBS 4.7.7R – that being a restricted investor. I've not seen anything to suggest he had previously invested in NRRS's and the size of the investment he was making doesn't obviously suggest he might be investing more than 10% of his net assets. But the application form didn't set out the declaration in the precise way the rules state. The section relating to what constitutes a net asset has been removed from the restricted investor declaration and moved into an earlier section. So, this may have led Mr Q to misunderstand what counts as an asset for the purpose of the declaration.

While I do have some reservations on this, I appreciate the information was available in the application albeit not in the right format. So, I accept Mr Q could have understood what was being asked, and it's possible the promotion could have been made to Mr Q if he indeed did meet the criteria. But even if I accept Mr Q met the criteria, 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 Mr Q to provide information regarding his knowledge and experience – and for this information to be relevant to the product offered (the first limb of the rule). The rules required that information to then be assessed, to determine whether Mr Q did have the necessary experience and knowledge in order to understand the risks involved (the second limb of the rule).

As set out above, COBS 10.2.2 R required 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 Mr Q was directed to complete during his initial application in December 2019, I'm not persuaded EGR, asked for an appropriate amount of information about his 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 Mr Q 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 Mr Q had the sufficient knowledge here. I've not been provided with any information to support he had existing knowledge and experience.

The questions asked in the application that aimed to establish Mr Q's knowledge and experience gathered the following information, from which EGR had to make a fair determination of the appropriateness of the bond for him:

- He was investing £10,000 from savings from his main income and growth from other investments.
- He hadn't worked in a position that would give him the necessary experience.
- He didn't hold this type of investment or anything similar.
- He hadn't held an investment of this type in the last 12 months.
- He ticked a box to say he had the necessary experience and knowledge to understand the risks.
- He indicated by ticking the relevant boxes that he understood the risks and might get back less than he invested, and that the interest returns weren't guaranteed.

As part of our investigation Mr Q confirmed his existing investments were in premium bonds. From the point-of-sale documents and the information gathered in our investigation, I haven't seen any evidence that Mr Q held investments of the type he invested in through EGR prior to this, or any relevant experience of this type of investment.

From the information EGR gathered about Mr Q in the application process, I don't think it would have been able to say it was appropriate for him. It obtained very limited information about his investment experience, the sorts of transactions he'd been involved with, and how often he'd traded those products. I don't find the tick boxes on the application form support he had the necessary knowledge and understood the risks or gave EGR the assurance it needed Mr Q actually understood the type of product he was investing in, and the risks involved. It seems more likely; Mr Q didn't understand the extent of the knowledge he was required to possess. The evidence all points to Mr Q having limited knowledge, let alone anything about investing in NRRS.

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 Mr Q did have the knowledge and experience required. I haven't seen EGR attempted to do anything further to satisfy itself of his knowledge and understanding. The relevant obligations are placed upon EGR, not Mr Q.

EGR makes significant comment about the sales paperwork supporting that Mr Q understood the risks involved and that the investment was appropriate for him. 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 Mr Q had the knowledge to understand the risk associated with this type of complex investment. The risks of the bond were complex and multifactorial. It was not, for example, a question of whether Mr Q simply understood money could be lost – but whether he was able to understand how likely that might be and what factors might lead to it happening.

As the first limb of COBS 10.2.1R was not met 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 Mr Q 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 Mr Q's appropriateness test answers in isolation would suggest he knew his 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 he could lose his 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 Mr Q 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 Mr Q's knowledge and experience, and had it adequately tested this, EGR would have come to the conclusion that the bond wasn't appropriate for him in the first place.

A clear, emphatic statement would have left Mr Q in no doubt the bond was not an appropriate investment for him. And he ought to have been privy to such a warning, had his appropriateness been tested in line with the requirements of the rules. Even if Mr Q still said he 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 Mr Q's knowledge and experience. In these circumstances, I think it would have been fair and reasonable for EGR to conclude it should not allow Mr Q to proceed. Had he been asked for appropriate information about his knowledge and experience this would have shown he may not have the capacity to fully understand the risks associated with the bond. I've seen no evidence to show Mr Q 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 Mr Q wanted to, despite a warning (which, as noted, was not in any event given).

I acknowledge EGR doesn't agree that even if a warning is given and Mr Q still decided to proceed with the investment, it should have refused to allow this. It doesn't accept the regulations say just because an investment was deemed inappropriate, it could not be allowed to proceed. But the point I've made here is that if appropriateness hadn't been established, EGR would have realised it wouldn't be right to allow Mr Q to proceed. So rather than a rule preventing him for proceeding, a fair and reasonable assessment on the

situation would have meant EGR decided not to allow the application to proceed as it wasn't in Mr Q's best interests.

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 Mr Q fairly or acting in his best interests. If it had acted fairly and reasonably to meet the relevant regulatory obligations when assessing appropriateness, Mr Q would not have got beyond this stage.

I have noted EGR has made significant submissions 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 Mr Q shouldn't have received the IM at all. And so, any information within that cannot now reasonably be relied on to show he was aware of the risks associated with the bond. I've also not seen sufficient evidence to show Mr Q 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, Mr Q 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 Mr Q's losses but, notwithstanding that, I'm satisfied it is fair to ask EGR to compensate him as the appropriateness test was a critical stage, for which it was responsible for.

Secondly, for the reasons I have already given, I am not in any event persuaded Mr Q did proceed with a full understanding of the risks associated with the bond. I am not persuaded he looked at the full detail of the acknowledgements he gave in the application, given what Mr Q has said about his understanding of the bond and investment experience. The questions in the application are fairly generic and don't highlight the specific risks involved with NRRS, but rather cover things like eligibility for the Financial Services Compensation Scheme, the possibility of getting less back than invested and returns not being guaranteed. I am not persuaded Mr Q had the capacity to fully understand the risks associated with the bond – and he 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 Mr Q for the losses he claims.

Putting things right

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

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

What must EGR do?

To compensate Mr Q fairly, EGR must:

- Compare the performance of Mr Q'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.

- EGR should also add any interest set out below to the compensation payable.
- Pay Mr Q £200 for the worry caused by the total loss of his 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 Plc Bond	Still exists but illiquid	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 Mr Q agrees to EGR taking ownership of the illiquid assets, if it wishes to. If it is not possible for it to take ownership, then it may request an undertaking from Mr Q that he repays to EGR 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, 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 payment received 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:

- Mr Q wanted to achieve a reasonable return without risking any of his capital.
- The average rate for the fixed rate bonds would be a fair measure given Mr Q's

circumstances and objectives. It does not mean that Mr Q would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

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 Mr Q in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 12 May 2025.

Daniel Little
Ombudsman