

5 Ways To Win Your Mis-sold Mini-bond Claim





1

Know what is and isn't a 'mini-bond'

A mini-bond doesn't have an official definition in the Financial Conduct Authority ("FCA") handbook. It is best explained as a type of loan. Typically, a mini-bond is issued by a small business to raise funds. The business then either reinvests the funds in itself, in property or lends them to a third party.

In the historically low interest rate environment of the past decade, the appeal of a mini-bond investment for a prospective investor was attractive with a fixed rate of interest, paid over a set investment term. The investor is typically promised regular interest payments and, at the end of the term, the repayment of their loaned capital.

Flashy brochures and bold claims made such investments sound like a win-win situation for the investor, but the promotion and sale of speculative mini-bond investments to almost all consumers were banned by the FCA in January 2020.

Despite this, many investors have been mis-sold mini-bonds and suffered substantial losses. Mini-bonds are often appealing to investors because of the higher interest rates than deposit accounts on offer, but they are usually illiquid and not transferable. Unfortunately, the investment is entirely dependent on the success and proper running of the issuer's business and in the past 4-5 years there have been a number of high-profile collapses and scandals.



2

Pick the right party to claim against (the Defendant)

Broadly speaking, any business can seek to raise funds by issuing mini-bonds and it is not unlawful to do so.

That said, whilst the business that issued the mini-bonds may seem like the most natural defendant if something later goes wrong, it is not always the case.

Given the FCA does not regulate the issuing of mini-bonds, unless the issuing business is itself regulated by the FCA, it is difficult to cite breaches of any FCA rules in any subsequent claim to recover losses.

For this reason, it is important to fully investigate ALL of the parties involved in the promotion, sale and management of the mini-bond investment, in order to pinpoint the best defendant to a claim. Some examples of the types of regulated firms that are sometimes involved in mis-sold mini-bond claims include Independent Financial Advisers, Innovative Finance ISA ("IFISA") managers and FCA regulated firms which approve the glossy investment brochures to be sent to prospective investors to encourage them to invest.



3

Identify a regulated activity

Even if a regulated firm is involved in the sale and management of a mini-bond investment, problems can still arise with claims.

Regulated firms are only required to be authorised by the FCA if they undertake certain regulated activities. A comprehensive list of regulated activities is found within the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the “RAO”).

The most common types of regulated activities found in mis-sold mini-bond claims will typically be providing investment advice, arranging a mini-bond investment or approving a financial promotion for a mini-bond.

If a regulated firm offers investment advice about mini-bonds, it must make sure its advice is suitable. Similarly, if a regulated online investment platform firm manages a mini-bond, they must comply with the FCA’s rules. If a regulated firm signs off a mini-bond advert, it must assess whether the promotion is fair, clear and not misleading.



4

Select the correct forum for your claim

Claims for mis-sold mini-bonds can be brought in the Courts, at the Financial Ombudsman Service (“FOS”) or at the Financial Services Compensation Scheme (“FSCS”).

The Courts can consider mini-bond claims brought by most claimants, but the correct rule breaches must be cited, and legal tests met in order for a claim to succeed.

Furthermore, the RAO is updated from time to time and decisions made by the Courts mean that the definitions of certain types of regulated activities are constantly evolving. Consequently, it is important to be aware of the most recent case law and ensure that your claim is framed correctly.

The FOS is a forum that consumers can access for free and will generally decide claims to the same standard as the Court, as well as considering the FCA’s general Principles. However, the FOS can tend to have stricter rules surrounding who is an eligible complainant and must be satisfied that the claimant was a customer of the firm claimed against.

The FSCS is a fund of last resort that will sometimes compensate investors if a regulated firm is unable to pay claims made against it. In general, the issuing of mini-bonds is not protected by FSCS, so if the mini-bond issuer goes bust the FSCS will not usually respond.

However, the FSCS does protect investment services provided by firms in relation to mini-bonds. For this reason, it is vital you can refer to a regulated activity by a regulated firm in your claim.



5

Employ a specialist adviser

As we have shown, whilst mis-sold mini-bond claims might appear straightforward at the outset, they are often more complicated than they appear at first blush.

In a more complicated claim, it might be necessary for you to employ an expert with specialist knowledge in order to properly present your claim.

Wixted & Co. Solicitors have acted for claimants in many mis-sold mini-bond claims. Please contact us today to enquire whether we may be able to offer you our 'no-win, no fee' agreement to pursue your claim.



ABOUT THE AUTHOR

Tim Hampson is Head of the Professional Negligence at Wixted & Co and a Partner in the Firm. He has litigated on behalf of clients in the County Court, the High Court and the Court of Appeal, including recent success in the ground-breaking 'SIPP mis-selling' case of Russell Adams –v– Options UK Personal Pensions LLP (formerly Options SIPP UK LLP and Carey Pensions UK LLP) [2021] EWCA Civ 474, the first reported case dealing with the operation of sections 27 and 28 of the Financial Services and Markets Act 2000.

On behalf of clients, Tim has brought claims via the Financial Ombudsman Service and the Financial Services Compensation Scheme. He acted for a company and its individual directors in a claim against a financial adviser that had been rejected by the Financial Ombudsman Service, which resulted in a negotiated financial settlement for each of the individual directors at a mediation.

Tim also has considerable experience working within a team of lawyers and third parties on behalf of clients, including successfully obtaining a Group Litigation Order on behalf of more than 170 claimants in a claim brought by multiple investors: Arif & Ors v Berkeley Burke SIPP Administration Ltd [2017] EWHC 3108 (Comm). He is always happy to provide advice and considers all options for clients to achieve their desired outcome.

If you would like to discuss your potential matter on the telephone, please contact on **0808 164 6696** or send an email to **thampson@wixtedandco.co.uk**

