

The complaint

Mr and Mrs M complain about HSBC UK Bank plc's advice (HSBC) to invest in a capital-guaranteed bond in 2005.

What happened

The plan started on 15 December 2005 where £42,000 was invested. The Capital Guaranteed Account was essentially two parts, the income part (Income Fifty) and capital growth part (Capital Growth Fifty). Each part had £21,000 invested into it. The Income Fifty was designed to provide regular income and the Capital Growth Fifty was aiming to achieve capital growth.

The plan ended on 13 January 2012. Mr and Mrs M received £45,844.82 (This was made up of £42,070 surrender value and £3,744.82 income withdrawals). Overall, this is a gain of 9.1% over the six-year term.

Mr & Mrs M's representative complained:

- They were approached by the bank to discuss saving and investment options
- They were advised to invest at the wrong time; too soon after going through a significant change in their personal circumstances. Mrs M had only recently changed jobs and they were still coming to terms with their new financial situation
- They should have been allowed more time to become accustomed to these changes
- They were advised to invest too much money with too much of their capital exposed to risk

An investigator at this service felt their complaint should be upheld.

He initially felt Mr and Mrs M were looking for capital growth rather than capital protection and thought the Guaranteed Capital Account wasn't right for them because there was a very real chance of minimal or nil return after six years.

Having reconsidered, he now accepted that capital protection was important to them as they had lost money in the past and didn't want this repeated. However, he still didn't think this product was right as the adviser had discounted suitable alternatives, notably HSBC's three-year bonds offering 4.55% at the time of advice.

He felt a fixed-rate bond would have been more suitable as it would pay more than cash deposits and counter the effect of inflation. Crucially, it offered a guaranteed return unlike the recommended product. As Mr and Mrs M were only entitled to 50% of any growth in the FTSE100, there was a good chance the Capital Fifty element wouldn't achieve a return.

He felt HSBC's three-year bond, which paid interest at 4.55%, would've met Mr and Mrs M's objectives of earning a return higher than inflation and higher than a deposit account.

So, he thought the appropriate benchmark would be to compare the Capital Fifty element against the HSBC fixed-rate bond for half the term (the longest product HSBC offered at the time) and the average rate from BoE fixed-rate bonds for the remaining three years. HSBC should then add interest at 8% simple to any resultant loss figure.

HSBC did not agree, and said:

- Mr and Mrs M, according to an advisor's report, agreed to forego guaranteed interest in the hope of gaining a higher return via a similar investment in 2012; this suggests they had agreed to the same proposition in 2005
- The recommended product had no cap on potential returns
- The Income Fifty portion of their investment gave them interest equal to BoE plus 1%, 5.50% at the time
- Mr and Mrs M agreed to take some risk with their money; fixed-rate bonds posed no risk
- This was not new money, but had previously been invested, so Mr and Mrs M's representative cannot reasonably argue they were advised to invest too much money
- Part of the investment offered a greater return than fixed-rate bonds and allowed for some withdrawals, which a fixed-rate bond would not

The investigator did not alter his view, adding:

- Yes, it was possible to earn a higher return via this product, but it didn't, and nor would it have earned a high rate for previous terms. This is because there were significant falls in the stock market between 2000 and the beginning of 2003
- So, there was a very real possibility that this product wouldn't meet Mr and Mrs M's objectives - where a fixed rate bond would have
- Overall, he didn't think they were put in an informed position as there's no evidence that fixed-rate bonds were discussed and discounted

HSBC did not agree, and said:

- While a fixed-rate bond may have produced a better return with the benefit of hindsight, this does not render the original recommendation unsuitable
- The Guaranteed Capital Account included a fixed-rate bond type arrangement through the Income Fifty part. So, in effect, Mr and Mrs M had 50% of the available investment funds in such an environment
- The fact find confirmed Mr and Mrs were low risk investors willing to take some risk to achieve a higher return than via cash deposits
- On the balance or probabilities, this would indicate that cash deposits were discussed, but also confirms they were willing to look at other option for greater potential growth
- The product provided a competitive rate of return on the Income Fifty part so there was no risk of a nil return

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 this case I agree with the investigator and for broadly the same reasons. In particular, I agree with his recent view that Mr and Mrs M's objective was capital growth. As such, I will not repeat all his arguments.

Firstly, I should say that I agree with HSBC that an advisor is not required to outline all the possible suitable products available; so, the advisor's apparent failure to explain that fixed-rate bonds would deliver a guaranteed return higher than a standard savings account isn't sufficient to uphold this complaint.

However, I do think – from the evidence available – that he failed to clearly and fairly set out the risks and downsides of the proposed investment, meaning Mr and Mrs M were not in a fully informed position to decide whether to go ahead with his recommendation.

The brief fact find/recommendations document does not suggest that the advisor took steps to ascertain what Mr and Mrs M meant by the term 'lower risk', including how much of their capital and previously guaranteed return they were prepared to put at risk. In this sense I think one can set little store by his general statements about what they were or weren't looking for risk-wise.

For example, he did not spell out how much the real value of 50% of their invested money could fall by if they failed to receive any return via the FTSE-linked formula. With interest rates around 5% at the time of the advice, this could easily have meant they could see the real value of this money fall by as much as 30% by the end of the six-year term. Clearly, this poses a significant risk to Mr and Mrs M's spending power, and I believe the advisor had a duty to point this out.

He also did not offer a comparison between the guaranteed interest they were current getting or could get and the returns as illustrated in the brochure. Given the impact of the fees and the fact that they would only be eligible for 50% in the rise of the FTSE, such a comparison would, in my view, have made them question the appeal of risking a guaranteed return for what appeared to be very modest returns – according to the illustrations.

Finally, I have seen no evidence that Mr and Mrs M were experienced investors and, in my view, were unlikely to have a detailed knowledge of the FTSE's recent track record. In fact, as the investigator said, it had suffered significant falls in the previous six years such that anyone investing in a product like this in 1999 would have received no return on their money.

This, also, in my view, is something the advisor should have pointed out so that Mr and Mrs M were in a fully informed position to decide whether to take the risk of getting no return on half their invested money.

Overall, if the advisor had offered such a full and fair picture, I don't believe Mr and Mrs M would have gone ahead. I also don't believe they wanted or needed an investment which offered regular income withdrawals. Given their surplus monthly income and other savings, I think it is more likely than not that they would have been happy with a product which did not offer this facility. So, HSBC must take account of their entire initial invested sum but, of course, factor in any withdrawals from the dates these occurred.

Finally, Mr and Mrs M could not have enjoyed the 'high' interest they secured on half of their

investment without committing to the FTSE-related element of the product, therefore calculation of loss will need to be based on their overall return on the £42,000 invested.

Given this, I agree with the investigator that redress should be based on HSBC's three-year fixed-rate bonds offering 4.55% per annum (with BoE after this date). This is because I am satisfied that their objective was to find a product with higher returns than a standard savings account and were happy to lock away this portion of their capital for at least three years (in practice, six years).

I therefore believe that if properly advised, this is what they would have done.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs M as close to the position they would probably now be in if they had not been given unsuitable advice.

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

What HSBC should do

To compensate Mr and Mrs M fairly it should:

- Compare the performance of Mr and Mrs M'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.

It should also pay interest as set out below.

- It should take account of any withdrawals from the dates they occurred.
- Provide the details of the calculation to Mr and Mrs M in a clear, simple format.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Guaranteed Capital Account	matured	three-year fixed rate bond at 4.55%	date of investment	third anniversary	8% simple per year on any loss from the end date to the date of settlement
		BoE average rate from fixed rate bonds of 12 months' maturity	third anniversary	date of maturity	

Actual value

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

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, it should use the monthly average rate for 12 months' 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. Apply those rates to the investment on an annually compounded basis.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs M wanted to achieve a reasonable return without risking any of their capital.
- The average rate for the fixed rate bonds would be a fair measure given Mr and Mrs M's circumstances and objectives. It does not mean that Mr and Mrs M 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.
- The additional interest is for being deprived of the use of any compensation money since the end date.

Further information

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address www.bankofengland.co.uk/boeapps/database, clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by following this link:

<https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints>.

My final decision

I uphold this complaint and instruct HSBC UK Bank Plc to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 29 March 2021.

Tony Moss
Ombudsman