

## **The complaint**

Mr and Mrs S's complaint against Skipton Building Society is about investments they were advised to make in 2006.

## **What happened**

Mr and Mrs S met a Skipton adviser three times in 2006. Mr and Mrs S wanted to discuss how to invest a compensation award Mr S had received after he was involved in an accident.

Following the adviser's recommendation, Mr and Mrs S invested a total of £106,000 in four distribution bonds and £7,000 in each of two maxi ISAs.

Mr and Mrs S complain that they were given unsuitable advice. They say they were advised to invest too high a proportion of their available funds and that the products recommended carried too high a risk for inexperienced investors. They also said the adviser should have discussed paying off their mortgage.

Our investigator looked into Mr and Mrs S's complaint. He thought Mr and Mrs S had been advised to invest too much and explained what Skipton should do to put things right. Skipton disagree and have asked for an ombudsman to make a final decision.

### *my provisional decision*

I gave my provisional decision in February 2021.

I said that before making their recommendations, Skipton should have considered Mr and Mrs S's financial situation, their knowledge and experience of investing, and their objectives. They should have taken account of Mr and Mrs S's attitude to risk, their purpose in investing, and how long they wanted to invest for.

At the time of the advice Mr S was working part time and Mrs S full time. They had both been with their employers for at least 10 years. They had three dependent children and expected that to remain the case for another five years. Mr S was planning to retire in about 10 years' time and Mrs S in about 15 years' time. They said they had no medical conditions.

Mr and Mrs S's annual income from employment was around £20,000. They had £145,204 in an account with Skipton following the compensation payment to Mr S. They held £10,000 each in premium savings bonds, and investments in an equity plan and shares totalling about £5,000.

Mr and Mrs S told the adviser their priority was to invest the lump sum they'd received. They wanted to achieve capital growth at a higher rate than in a deposit account, with the flexibility to draw income in the future if they needed to.

Mr and Mrs S complained that the adviser didn't discuss repaying their mortgage. But according to the paperwork the adviser recommended that Mr and Mrs S repay their loans. Their outstanding mortgage was about £5,000 and there was a note suggesting it was agreed to reduce it to a minimal balance. So I thought Mr and Mrs S were given suitable

advice on that point.

The adviser recorded Mr and Mrs S's attitude to risk as "medium (low) risk", which was the third lowest of seven risk categories. The description of that risk rating said:

*"Investments that provide no capital guarantee and therefore capital loss could occur. However, these investments attempt to reduce risk to capital, for example by investing in different asset classes or by employing a safety net mechanism. The probability of a moderate loss of capital is medium and the probability of a significant loss of capital is very low to low."*

The adviser said that was an increase in Mr and Mrs S's risk tolerance. He noted that they did have some experience of investing – their equity plan and shares, and a previous endowment policy. And he explained the investments would be spread across a mix of asset classes to reduce risk.

The adviser recommended that Mr and Mrs S invest £120,000 across different products that were medium (low) risk. They invested a total of £14,000 in two ISAs and £26,500 in each of four different distribution bonds.

The funds and bonds were made up of a mix of equities, fixed interest securities, property and cash. Although Skipton had been unable to provide detailed information on the asset mix of all Mr and Mrs S's investments, about 60% of the ISAs was held in equities. Based on what I'd seen I thought the other parts of the portfolio would have offered a similar level of investment in equities.

The adviser recommended that Mr and Mrs S retain an 'emergency fund' of about £46,000 on short term deposit. That included the £20,000 they held in premium savings bonds and the remaining £25,000 from the compensation award. Mr and Mrs S told the adviser they had no lump sum expenditure plans. So, I thought they had sufficient funds accessible for any unexpected expenditure.

Mr and Mrs S wanted to achieve a higher rate of growth than they would in a deposit account. The adviser noted that Mr and Mrs S were "willing to take the increased risk of investing in non-deposit areas which are not guaranteed and will fluctuate over 5 years and longer."

But the investments recommended also carried the risk of capital loss. Mr and Mrs S were investing £120,000, which was more than 80% of the compensation payment. Taking account of their existing savings and investments, the adviser's recommendations meant that more than 70% of Mr and Mrs S's available funds would be at risk of capital losses.

Based on their circumstances at the time, I thought Mr and Mrs S would have had little capacity to recoup any losses from their investments. And I thought the adviser should have given greater weight to that in recommending to Mr and Mrs S how much they should invest at the level of risk they did.

Overall, I thought too much of Mr and Mrs S's money was exposed to the risk of capital losses that they'd be unable to replace. I thought they were given unsuitable advice and so I said I was planning to uphold their complaint.

In deciding what Skipton should do to put things right, my provisional findings were different to those of our investigator. I thought Mr and Mrs S were given unsuitable advice because their money was exposed to more risk than it should have been. So, I thought Skipton should calculate compensation by comparing the performance of the whole investment

against the benchmark I set out.

### *responses to my provisional decision*

Mr and Mrs S did not offer any comments on my provisional decision. Skipton submitted again some comments they provided in response to our investigator's view, which I've considered below.

### **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 response to my provisional decision, Skipton have said the amount Mr and Mrs S invested was in line with their guidelines at the time. As Mr and Mrs S had some experience of investing, it was fair to recommend that more than 50% of their funds be held in equities. And as Mr and Mrs S had received a large lump sum, they would continue to have more cash on deposit than they were used to.

I've considered again the points made by Skipton. As I said in my provisional decision, I'm satisfied that Skipton's advice left Mr and Mrs S with sufficient funds accessible for any unexpected expenditure that might arise. But the adviser's recommendations meant that more than 70% of Mr and Mrs S's available funds would be at risk of capital losses.

Based on their circumstances at the time, I think Mr and Mrs S would have had little capacity to recoup any losses from their investments. And I think the adviser should have given greater weight to that in recommending how much Mr and Mrs S should invest at the level of risk they did.

My findings therefore remain the same as in my provisional decision. Overall, I think too much of Mr and Mrs S's money was exposed to the risk of capital losses that they'd be unable to replace. I think they were given unsuitable advice and so I've decided to uphold their complaint. Skipton should calculate compensation in the way set out below, as described in my provisional decision.

### **Putting things right**

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

I think Mr and Mrs S would have invested differently. It is not possible to say *precisely* what they would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs S's circumstances and objectives when they invested.

### *What should Skipton do?*

To compensate Mr and Mrs S fairly, Skipton must:

- Compare the performance of Mr and Mrs S'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.

Skipton should also pay interest as set out below. Income tax may be payable on any

interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Whole portfolio - 2 ISAs and 4 distribution bonds	surrendered	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 surrendered	8% simple per year on any loss from the end date to the date of settlement

#### *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, Skipton 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 that Mr and Mrs S paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal, income or other payment out of the investment 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 are a large number of regular payments, to keep calculations simpler, I will accept if Skipton totals all those payments and deducts that figure at the end instead of deducting periodically.

#### *Why is this remedy suitable?*

I have chosen this method of compensation because:

- Mr and Mrs S wanted capital growth with a small risk to their 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 their 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 Mr and Mrs S's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs S into that position. It does not mean that Mr and Mrs S would have invested 50% of their 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 Mr and Mrs S could have obtained from investments suited to their objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold Mr and Mrs S's complaint against Skipton Building Society.

Skipton Building Society should put things right in the way I've set out above. They should provide details of their calculation to Mr and Mrs S in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 7 April 2021.

Matthew Young  
**Ombudsman**