

## The complaint

Mr S complains through his representative, a claims management company (CMC), about investment advice he received from Clydesdale Bank Plc.

## What happened

The background of this complaint is well known to both parties, so I won't go over it in great detail, but the key facts are as follows:

- Mr S invested £65,000 into a Scottish Mutual With-Profit Investment Bond after receiving advice from Clydesdale in 1999.
- It was set up to provide regular withdrawals, and up to March 2003 he took a total of around £11,000 from the investment.
- In November 2005, Mr S surrendered the bond for around £57,000.
- In April 2020, the CMC complained to Clydesdale on Mr S' behalf and said the advice he'd received was unsuitable. They said over 80% of his capital had been tied up in the bond, he'd had a market value reduction (MVR) upon surrender and he wasn't able to keep the funds invested for ten years or more given he was due to retire before that period.
- Clydesdale didn't uphold the complaint as they thought the complaint had been made outside of the time limits applying to this service.
- The CMC brought the complaint to this service where it was considered by one of our investigators. The investigator thought the complaint had been made in time and an ombudsman eventually made the decision that the complaint had been made in time.
- The investigator then considered the merits of the complaint but didn't think the complaint should be upheld.
- He thought that the investment advice and choice of a With-Profits Bond (WPB) was suitable for Mr S' investment requirements and was appropriate for his chosen 'low to medium' attitude to risk profile definition.
- He thought that the documentation from the time of the sale showed that Mr S didn't want to invest in a cash deposit and was prepared to take some risks with his capital to achieve better returns. And it also showed that he didn't want a pure equity investment with greater risks. Therefore, the recommended investment matched that need.
- He noted that Mr S' clear investment objective was to maximise his income. And while the investment represented 80% of his overall existing capital, he still had around £13,000 in savings for emergencies. The fact-find from the time also showed that his income was greater than his monthly expenditure. In addition, he had no outstanding mortgage or other debts, no liabilities and no financial dependents.
- He also thought Mr S was made aware of the costs and investment risks and signed to agree that he had read and understood all the advice documentation. And noted that Mr S held the investment for six years without the need to make any withdrawals other than income taken between 1999 and 2003. And he stopped taking income in 2003 so he clearly had sufficient income to meet his needs, and no need to make any cash withdrawals before he decided to encash the investment in 2005.

- He said that Mr S' bank statements clearly showed that he had plenty of cash in his current account and a large external £49,000 credit was received to his bank current account in 2004. So, he couldn't agree that Mr S had insufficient funds or was under any financial strain when he decided to encash the investment early and incur a Market Value Reduction (MVR) in 2005.
- The CMC didn't accept his findings. They thought that whilst the investment funds were derived from existing products, these were a combination of lower risk savings accounts, an equal risk WPB which had the option of 5.5% income withdrawals, and a small amount in a tax-efficient PEP. The existing WPB Mr S held had early surrender penalties that would be incurred which was justified by the purported higher income that was available from this new product. However, there was no guarantee that the income from the new investment would be any greater than the existing WPB.
- They also noted that income was set to be paid immediately from the recommended investment. And given the nature of the product, this was inappropriate and there was no reasonable prospect that bonuses would be declared within the first 12 months sufficient to cover the cost of the income taken from the fund within the first year. So, Mr S was effectively being advised to invest and then withdraw his own capital (after the loss of initial charges). Whilst this was offset slightly by the investment's 'Guaranteed Bonus' of 2.5% in the first year, the income being taken was far higher than this and the heavily promoted 6.25% anticipated bonus rates that were promoted as the reason for the switch from the previous WPB were not guaranteed and would not be declared until after the first several months of income had already been withdrawn.

The investigator wasn't minded to change his opinion, so the complaint has been passed to me to make a decision.

### **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.

Having carefully considered all the available evidence, I don't think this complaint should be upheld, and for largely the same reasons as the investigator.

I've firstly considered the suitability of the advice, and having done so, I believe Mr S was in the position to make the recommended investment. The fact find assessment of his attitude to risk was 3 on a scale of 1-10 where 10 was the riskiest. It was noted that he was 59 years old and was due to retire in six weeks' time. His recorded aim was to maximise his income as a result of his circumstances changing and deciding to take early retirement.

He owned his own house with no mortgage, had no dependents and no liabilities. He had around £21,000 in cash-based investments and savings and around £57,000 in other investments. His income was noted as being £100 per week, he had a surplus of income over expenditure and he'd held investments for a number of years. Taking into account his circumstances, I don't think the assessment of his ATR was inappropriate.

I've reviewed the recommended WPB, and having done so, I'm satisfied that it met Mr S' requirements at the time. Despite the fact he'd surrendered a few other investments and reinvested the funds in the WPB, it offered diversification and fell within the type of investments that would reasonably achieve Mr S' recorded aims. I appreciate the points the CMC has made about having to pay early surrender penalties, but I can see that this was only around £200.

Taking everything into account, I don't think I can fairly say that combining Mr S' existing investments – the majority of which were maturing – into a new WPB offering a higher income return, was unsuitable. The recommended WPB provided him with longer term capital growth potential with only a moderate risk to his capital.

I also haven't seen any clear evidence that would lead me to think the amount invested was inappropriate, Mr S had around £13,000 left on deposit and was due to receive the state pension after he turned 60 which would further increase his income. Also, the fact that he kept the investment for six years and stopped taking income after four years demonstrates that it was affordable. I also think the documentation Mr S was provided with at the time set out in clear terms the risks associated with the WPB and he accepted those risks.

So, having considered all the available evidence, I think Mr S had a stated desire to use his capital to supplement his retirement income. His circumstances at the time were such that he could afford to invest the amount that was recommended by the adviser. And the recommended WPB provided the opportunity to generate returns allowing him to achieve his income needs over time, while limiting the amount of risk he was exposed to. From everything I've seen, I don't consider the advice Clydesdale gave him to have been unsuitable. It follows that I don't uphold this complaint.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 January 2022.

Marc Purnell  
**Ombudsman**