DRN-3737481

The complaint

Mr S has complained about the advice he received from Lloyds Bank PLC ('Lloyds') to invest into an ISA. He says the advice to invest was unsuitable for him.

Mr S has brought his complaint via a third party, but for ease of reference I shall refer to 'Mr S' in this decision rather than his representative.

What happened

In 2001 Mr S had recently moved home and after other expenses had a total of £14,000 in savings. He was 66 years of age and self-employed. As a result of a meeting with a Lloyds' adviser Mr S invested £4,000 into the Scottish Widows Environmental Investor Fund within an ISA.

Mr S sold his investment in July 2011 and suffered a loss of £825.90. He didn't complain initially as he had been made aware at the point of sale that he could incur a loss.

Later Mr S realised he may have had cause for complaint and complained to Lloyds. He said:

- He had been advised to invest at the wrong time having only recently retired, partly because of ill-health and was due to have an operation in 2003.
- He was advised to invest too much of his money. £4,000 represented most of his available capital being exposed to risk. He was a retired pensioner reliant on a small pension.
- He was advised to take too much risk with his money. He had no previous knowledge or understanding of stock market linked investment. The Environmental Investor Fund was too high risk for a first-time investor.

Lloyds initially said that Mr S had brought his complaint too late under the rules that apply but after binging his complaint to this service it agreed we could consider the complaint.

The adjudicator who considered the complaint didn't think it should be upheld. Briefly, she said:

- The details about Mr S's circumstances recorded at the time of sale showed that Mr S was working and earning a monthly income of £1,500, intended to retire at 70 years of age and was in good health.
- Mr S had said he was aware that if he invested for five or more years, he could potentially earn greater returns than cash. So, it seemed likely the adviser discussed the risk of investment with him and he was prepared to invest over the medium term – between five and ten years.
- Mr S held £8,000 on deposit and had £6,000 in his current account and while he didn't have any investment experience, this didn't necessarily mean he shouldn't

expose some of savings to the risk of loss.

- The investment was a fit with Mr S's recorded attitude to risk of medium to high.

- The investment appeared affordable for Mr S.

Mr S didn't agree. It wasn't suitable advice for a first-time investor and even if he had indicated his willingness to take a medium to high level of risk the adviser should have advised him against that.

As the complaint couldn't be resolved, it was passed to me for a decision. I issued my provisional decision explaining that I intended on upholding the complaint, but I asked both parties to give me anything further they wanted me to consider before I issued my final decision. Here's what I said;

"When the evidence I have for a complaint is incomplete or contradictory, I have to make my decision on the balance of probabilities – which, in other words, means I base my decision on what I think is most likely to have happened given the available evidence and the wider circumstances.

<u>Mr S's circumstances</u>

I've been given conflicting information about Mr S's circumstances from the time of the sale.

Mr S has told us that he had retired a couple of years before the advice was given, partly due to ill health. He said he had been unwell for quite a while and was booked to undergo an operation in 2003. The money was a result of him moving house and the investment represented the majority of his available capital and he was reliant on a small pension.

I've also considered what Lloyds has told us about Mr S's circumstances as recorded at the time of the sale. It has given us a copy of the Personal Factfind completed on 6 February 2001. Its recorded that Mr S was 66 years of age, in good health, owned his home outright and planned to retire at 70. He was self-employed and had been for nearly ten years with an annual income of £24,000. He had £6,000 in his current account and £8,000 in a savings account.

While I accept Mr S's recollections from the time of the sale may be different – which I don't find surprising as it took place over 20 years ago and memories can and do fade – I think what was recorded at the time of the sale is more likely to be a fairer reflection of Mr S's circumstances. And I think it is more likely to be an accurate contemporaneous record of his circumstances as told to the adviser. It follows that I don't think it unreasonable for Lloyds to have relied upon the information Mr S gave.

<u>Mr S's attitude to risk</u>

In the Factfind its recorded that Mr S had been assessed to be a medium/high risk investor. It said he was looking for capital growth over the medium term. He didn't hold any investments.

It's not evident from the Factfind or other point of sale documents how Lloyds came to the conclusion that Mr S was a medium/high risk investor. I would expect to see some sort of evidence that the risk of investing was explained to Mr S, taking into account his ability to understand investment risk and clarification of his experience or knowledge to understand the risk involved.

Clearly Mr S was seeking advice because he didn't have the knowledge or experience to make an investment decision unaided. Lloyds needs to be able to demonstrate that it gave suitable advice taking into account Mr S's circumstances, understanding and knowledge after ascertaining his attitude to risk. As indicated above, I don't think the information recorded in the fact find constitutes enough to show that Mr S's investment objectives and attitude to risk were established or that it was discussed whether Mr S had the necessary experience and knowledge in order to understand the risk involved.

We asked Lloyds for evidence of this and it told us that at the time its advisers had to follow a process for sales. The adviser would introduce Lloyds' funds guide to the customer at the first interview. And using that brochure the adviser would explain risk and rewards, stock market investment and the importance of keeping enough capital back to cover short term requirements. The adviser would have introduced and discussed the funds available and which met the customer's attitude to risk. At a second meeting the adviser would have confirmed the customer wanted to proceed and the fund chosen would have been recorded in the suitability letter.

I've seen a copy of the 20 page 'Your guide to Scottish Widows funds' and I see it does illustrate the risks and rewards of stock market investment and various risk and reward categories. And Mr S has said he didn't initially complain about the advice he received because he was aware he could make a loss. So, I think it's likely there was discussion about this.

I've borne in mind that without any investment experience Mr S would have been totally reliant upon the advice given to him. It's recorded that his investment objective was for capital growth. And it might have been the case that Mr S did want to explore the opportunity to make his money grow more than it had done in savings. But I haven't seen sufficient documentary evidence about how Lloyds came to the conclusion that Mr S was a medium/high risk investor. And I've further borne in mind that these funds were relatively new to Mr S, as a result of moving house and what he had so far done with that money – by keeping it in a risk-free environment in his bank.

I'm not satisfied Lloyds has provided sufficient information or evidence to show how Mr S's attitude to risk was assessed or what his investment objectives were. So, I have to take into account what is known about Mr S's circumstances and consider whether the investment recommended was suitable.

This money was new to Mr S. It was a 'one off' in that the funds came about as a result of a house sale and there's no evidence that Mr S had any previous experience of dealing with similar sums. Mr S was 66 years of age at the time of the investment and it's not clear what other additional funds he'd have for the longer term. He did own his property outright but he was nearing the end of his working life and I note from the fact find that under the pensions section no occupational or personal pension details were recorded and that it said 'Need identified but did not wish to investigate'. So, I haven't seen anything to suggest that Mr S had financially planned for his retirement.

While Mr S may have had surplus income at the time of the sale, he was self-employed which can be an indicator of the potential for a less stable or guaranteed income in the future. And I think bearing in mind Mr S's age, overall, I don't think it's clear what additional funds Mr S would have had for the longer term. So, while the amount invested was just under a third of his capital, and he may have had the ability to replace some losses at the time with his disposable income, I don't think Mr S was in a financial position to take excessive risk with his savings, which as far as I am able to tell, was his only capital.

Taking everything else into consideration I'm persuaded it was more likely that Mr S was *willing to take some risk with his money but not too much and not to the extent that he was advised bearing in mind what I think his capacity for risk was and the limited evidence about how the level of risk he was prepared to take was arrived at.*

<u>The advice</u>

Lloyds had six categories of investor risk profiles – from no risk to high risk – and Mr S was categorised as being willing to take the second highest level or risk – medium/high risk. The unit trust recommended; the Scottish Widows Environmental Investor Fund matched this risk rating being categorised within the highest risk section of the funds that Lloyds offered. But I think this exposed Mr S to an unnecessarily high level of risk in order to achieve his investment objective which was recorded as being for capital growth.

I say this because by Lloyds advising Mr S to invest into the Environmental Investor Fund this was an increase in the level of risk compared to his previous knowledge of investment – holding his funds in bank accounts – recorded as being 'no risk' by Lloyds. I haven't seen sufficient evidence to support why Mr S was willing to take such a significant step up in terms of risk compared to his previous experience of remaining in cash. If this had been the case, I would have expected this to have been established by a more fully detailed fact find.

And while there is some limited evidence that Mr S's attitude to risk was appraised by the adviser – but only as far as it was recorded in the Factfind – there is no evidence of how Mr S's attitude to risk was assessed by the adviser. Overall, and taking into account Mr S's circumstances and objectives at the time, I think this meant his money was exposed to risks I'm not persuaded he was willing or able to take. I am satisfied that the advice Mr S was given in 2001 wasn't suitable for him taking account of his personal and financial circumstances that I've already outlined.

So, in the particular circumstances of this complaint, I am currently intending to uphold it. I think the advice wasn't suitable for Mr S."

I outlined how Lloyds should put the matter right by comparing the performance of the fund with a benchmark split half between the FTSE UK Private Investor Income Total Return Index and half with the average rate from fixed rate bonds.

In response to my provisional decision Mr S agreed with it. And Lloyds said it also agreed with it.

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.

Because Mr S and Lloyds agreed, I see no reason to depart from my provisional decision. So, I confirm those findings and reiterate the compensation that Lloyds should calculate.

Putting things right

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

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

What should Lloyds do?

To compensate Mr S fairly, Lloyds must:

- Compare the performance of Mr 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.

- Lloyds 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
Environ-mental Investor Fund	No longer exists	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 ceased to be held	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, Lloyds 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.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr S wanted Capital growth with a small risk to his 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 his 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 S's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr S into that position. It does not mean that Mr S would have invested 50% of his 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 S could have obtained from investments suited to his 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

I uphold Mr S's complaint and Lloyds Bank PLC should pay compensation as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 November 2022.

Catherine Langley
Ombudsman