DRN-3748751

The complaint

Mr and Mrs K complain about advice they received from Lloyds Bank PLC (Lloyds) to invest £70,000 into ISAs and a joint Unit Trust in 2000 . They also complain about advice they received to invest £12,000 into a guaranteed stock market bond (GSMB) in 2001.

What happened

In 2000 Mr and Mrs K met with an adviser from Lloyds and they each were recommended to invest in a Mini and Maxi stocks and shares ISA. They were also advised to invest £50,000 in a joint Unit Trust with the money being spread over three funds.

In 2001 Mr and Mrs K again met with an adviser from Lloyds and were advised to invest about £12,000 in a guaranteed stock market bond with a term of six years.

In 2020 a claims management company (CMC) acting on their behalf complained to Lloyds. It said that they had been advised to invest too much of their capital in investments and those investments posed too much risk for them. The CMC also complained about PEP investments taken out in 1996 and 1997.

Lloyds didn't uphold their complaint about the investments Mr and Mrs K had taken out in 2000 and 2001. In respect of the 2000 investments, it said they had been prepared to invest for five years or more, the ISAs were tax efficient and the investments met their objective of potentially better returns then on deposit.

Lloyds also said it considered Mr and Mrs K were left with adequate cash on deposit, which it said they had confirmed at the time, was sufficient for their needs as they had no planned expenditure. It said an assessment of Mr and Mrs K's attitude to risk had taken place and as a result, they were assessed as prepared to accept medium to medium high investment risk. Lloyds said the risk posed by the recommended investments was in line with their attitude to risk.

Lloyds said the GSMB taken out in 2001 provided capital security provided it was held to the end of the term. It said it was a low risk investment in line with Mr and Mrs K's attitude to risk at the time and suitable for their objective to reinvest the capital from a bond that was maturing.

However, it said that the PEPs recommended to Mrs K in 1996 and 1997 posed too much risk for her, given the risk level of the fund they were invested in and her inexperience as an investor at that time and it paid compensation to Mrs K on that basis.

The CMC disagreed with Lloyds in relation to the investments taken out in 2000 and 2001 and referred Mr and Mrs K's complaint to our service. It said they had received a lump sum following a sale connected to their business and their future plans weren't settled. The CMC said it was a period of uncertainty for Mr and Mrs K and it didn't feel this had been taken into account by the adviser. The CMC also said Mr and Mrs K felt pressurised into taking financial advice and they were wholly reliant on the advice they received.

The CMC said that the investments recommended to Mr and Mrs K didn't match their attitude to risk as the funds posed too much risk for inexperienced investors.

Our investigator considered the complaint but didn't think it should be upheld. In summary, he considered the fact find and suitability letter from 2000 and noted Mr and Mrs K's recorded objectives and attitude to risk. He took into account the amount invested and was satisfied that Mr and Mrs W were willing to expose that proportion of their capital to some risk to achieve their objective.

The investigator felt the advisor's recommendation was suitable for them based on their previous investment history and experience. He also noted the funds were diversified across several different investment types to allow some degree of protection against fluctuations in the market.

The investigator considered Mr and Mrs K's circumstances and objectives in 2001 and noted Mrs K's new employment and income. He considered the GSMB offered Mr and Mrs K capital protection and the potential to make a return. So, he didn't think the recommendation to re-invest the proceeds of their maturing bond into the GSMB was unsuitable for Mr and Mrs K.

The CMC representing Mr and Mrs K didn't agree with the investigator's conclusions. In summary it said that they held a lump sum on deposit in 2000 as a result of a recent business transaction. It pointed out that the £70,000 invested in 2000 represented 85% of the monies they held on deposit.

The CMC said Mr and Mrs K had been advised to invest a significant proportion of the money they had recently acquired. It said they hadn't been left with sufficient money on deposit to fall back on if required. The CMC said it was fortuitous that they hadn't required this money for approximately seven years. It reiterated that their future plans at that time were unclear.

It also said that as Lloyds had accepted the 1996 and 1997 investments were unsuitable, that indicated that Mr and Mrs K weren't experienced investors. The CMC said that the fund selection in 2000 wasn't appropriate for them.

As no agreement could be reached the complaint was referred to me for review.

I considered Mr and Mrs K's complaint and issued a provisional decision where I upheld their complaint in part. I concluded the recommendation to invest £10,000 in the American Fund within the Unit Trust, was unsuitable for them and compensation should be calculated based on a comparison with the average rate for fixed rate bonds.

Both parties were given an opportunity to respond to my provisional decision with any further representations they may wish to make.

Lloyds acknowledged and accepted my provisional decision.

The representative for Mr and Mrs K acknowledged my provisional decision and made a number of points in response. In summary the CMC said:

- My provisional decision had raised some further questions that required greater clarification or further investigation.

- It pointed out that the PEPs taken out by Mr and Mrs K in 1996 and 1997 were all invested in the Worldwide Growth Fund. So, it said Lloyds had agreed that they were advised to take too much risk with that investment as they were inexperienced investors.

- It said in isolation, it agreed that the £20,000 placed in ISAs invested in the UK Growth Fund was appropriate, although it said the full ISA allowances hadn't been used. However, it said it had concerns about the recommendation as a whole, including the investment into the Unit Trust.

- It said I had acknowledged that Mr and Mrs K's capacity for risk was somewhat limited and with this in mind, it was concerned about the fund selection and the lack of diversification.

- It said £40,000 (57%) of the £70,000 invested in 2000 was invested in the UK Growth Fund and it questioned whether this provided Mr and Mrs K with any real diversification. It said this was of particular concern given Mr and Mrs K's limited capacity for risk, and the lack of clear evidence that the capital could be replaced if those investments made significant losses.

- It said taking the investments made in 1996 and 1997, and combining those with the 2000 investments, meant that £44,000 (47%) of £94,000 was invested in the Worldwide Growth Fund.

- It noted that Lloyds had deemed the Worldwide Growth Fund too risky for inexperienced investors, such as Mr and Mrs K, and questioned whether a further investment of £20,000 was appropriate. Particularly, it said, because that fund had some of the same issues of concern as the American Fund, as it was made up of international equities.

- It agreed with the provisional decision on the Guaranteed Stock Market Bond taken out in 2001.

- In summary, it said the £50,000 invested in the Unit Trust was of most concern and said the whole of that £50,000 should be compared against the average rate from fixed rate bonds benchmark.

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.

I have carefully considered the points raised by Mr and Mrs K's representative in response to my provisional decision and I still remain of the same view, set out in that decision, an insert of which is attached, and forms part of this decision.

I will address the points raised and provide further explanation of why I don't think the remaining parts of the recommendation made in 2000, were unsuitable.

<u>Diversification</u>

The representative acting on Mr and Mrs K's behalf argues that the investment of £40,000 in one fund - the UK Growth Fund - resulted in a lack of diversification of Mr and Mrs K's investments. He points out that the investment in this single fund represented 57% of the £70,000 that was invested in the ISAs and the Unit Trust.

I note the proportion of the £70,000 invested, but I think it is right to look at Mr and Mrs K's whole financial picture following the recommendation. And, I think I should also take into account the position as it would be, following the conclusion in my provisional decision in relation to £10,000 of the capital invested.

In addition, I note Lloyds has already agreed that the recommendation in respect of Mrs K's PEPs was unsuitable and her capital should have been invested at low risk instead and awarded compensation on that basis. (I note that the redress calculation provided by Lloyds appears to only relate to Mrs K's PEPs). In any event, I take into account what Lloyds has said in its final response and the redress it offered, when assessing their situation following the recommendation.

I have provisionally concluded that £10,000 of the capital invested in the American Fund within the Unit Trust, shouldn't have been invested and should instead have been held with no risk of capital loss. That would leave £60,000 still invested in the ISAs and the Unit Trust.

So, assuming £60,000 was invested in 2000, according to the fact finds from that time, Mr and Mrs K would also have had £22,000 (including the £10,000 I have concluded was unsuitable) on deposit, about £15,600 in mini cash ISAs and TESSAs, £13,000 in a growth bond (capital protected), £10,000 in a savings plan; £24,000 in PEPs (some compensation has been paid on the basis of those investments being instead placed at low risk), £40,000 in the UK Growth Fund (medium risk) and £20,000 in the Worldwide Growth Fund (medium risk).

I consider this would've left Mr and Mrs K with a spread of investments, some with no risk to capital and also some at low and medium risk. Mr and Mrs K would've had £60,000 invested at medium risk, of which two thirds was invested in the lower risk of the two funds -the UK Growth Fund. So, I consider there would've been some diversification as there was more than one fund and there was a range of investments.

I don't consider therefore, on balance, that the investments recommended by Lloyds in the ISAs and Unit Trust were unsuitable on the basis that there was a lack of diversification.

<u>Suitability of Worldwide Growth Fund</u>

Mr and Mrs K's representative has also pointed out, that Lloyds has said that the PEPs invested in the Worldwide Growth Fund in 1996 and 1997 were unsuitable and should instead have been placed in low risk funds.

I acknowledge that compensation has been paid on the basis that recommendations in 1996 and 1997 were unsuitable. However, I take into account that those investments were made, respectively, four and three years before the recommended investments in ISAs and a Unit Trust in 2000. And some years after those earlier investments were made, Mr and Mrs K had acquired a capital sum from a business-related sale. I consider they were looking to make a return on that capital. And, as I have said in my provisional decision, I think they were looking to achieve a return, that was better than they were achieving on deposit and so I think they were willing to take some risk over the medium to long term.

As I have also said, I think Mr and Mrs K had some limited investment experience by then, as they had held several investment products.

While I appreciate their capacity for risk was limited, this investment was being made on the basis that it would be held over the medium to long term. This enabled them to ride out any short-term fluctuations thereby reducing the risk of capital loss overall.

In addition, I note that if the £10,000 hadn't been invested in the America Fund, then that left Mr and Mrs K with £22,000 on deposit, which represented more than a year's drawings.

Mr and Mrs K's representative has also said that this fund had similar risk factors to the American Fund, which I deemed to be too risky for them. Firstly, I would highlight that I considered <u>that</u> part of Lloyds' recommendation, in the light of the *whole* amount being invested and specifically *also* taking into account the risk posed by the *other* recommended investments.

I note that while the assets in the Worldwide Growth Fund were made up of international equities, at least half of those were European. Whereas the American Fund could be comprised of investments from any countries on the American continents. So, I think there was less limitation in the American Fund on the assets that could be included. I also note that the Worldwide Growth Fund was placed at a medium level of risk within Lloyds' fund risk classification, whereas the American Fund, which I have concluded was unsuitable, was described as medium high risk. So, ultimately it was considered to represent a higher risk than the Worldwide Growth Fund.

Overall, I consider on balance, that in 2000, Mr and Mrs K were willing and able to take the level of risk posed by this fund, over the medium to long term with £20,000 of their capital.

Investment in Unit Trust

As I have outlined, I consider that Mr and Mrs K were willing to take some risk with some of their capital over the medium to long term in order to try to achieve a better return. So, I don't think that investing £40,000 in the Unit Trust, together with £20,000 in the ISAs, was unsuitable to achieve that objective.

Use of ISA allowance

Mr and Mrs K's representative has noted in its response that more capital from the Unit Trust could've been invested in the ISAs instead, to use up the full ISA allowance. I think this is a new point because Mr and Mrs K's complaint has been focused throughout around the risk posed by the investments recommended and the amount invested.

I can see that Mr and Mrs K were advised by Lloyds to invest £3,000 each into an equity ISA in the 1999/00 tax year and then £7,000 each into a Maxi ISA in the 2000/2001 year.

Mr and Mrs K had already invested £3,000 in a mini cash ISA in the 1999/2000 year, so they didn't have a full allowance left, as the total allowance at that time was £7,000. But it appears they could've invested a further £1,000 each in the equity ISA.

It isn't clear why Mr and Mrs K didn't invest the full allowance for 1999/2000. Because of the time that has passed since the ISAs were taken out, there is limited information available. It may be that because Mr and Mrs K met with Lloyds towards the end of *that* financial year, there was limited time to make the decision about how much to commit to an ISA.

In any event, it isn't clear that there was any financial loss as a result. If Mr and Mrs K had wanted to utilise all of their ISA allowance for 1999/2000, I think they could have rectified this in April 2001, by using some of that year's allowance. In addition, their Unit Trust had reduced in value in the first year, so I think it is unlikely on balance that they would have incurred anything more than a minimal amount of tax on any return from that proportion of the investment over that period.

Overall, I don't consider on balance that they were given unsuitable advice in respect of investing in ISAs.

Summary

I remain of the view that the recommendation to invest £10,000 in the American Fund within the Unit Trust was the only unsuitable part of the advice, for the reasons outlined in my provisional decision, set out below.

What I've provisionally 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.*

Mr and Mrs K met with an adviser in 2000. A fact find was completed which recorded their circumstances and financial objectives. It was recorded that they were self-employed farmers and owned their own home with no mortgage.

Mr and Mrs K held £82,000 in a bank account. They had recently taken out mini cash ISAs and held a growth bond with Lloyds, valued at about £13,000, which they had taken out in 1996. It was recorded that Mr K also held about £6,000 in a PEP with Lloyds. However, the fact find completed in 2001 shows that Mr K also held another PEP and that Mrs K held two PEPs taken out in 1996 and 1997. So, in fact Mr and Mrs K each held about £12,600 in PEPs in 2000. It also appears from that later fact find completed in 2001 that they held money in TESSAs and in a savings plan.

The notes section of the fact find recorded that they had taken drawings for that year of around £20,000 which they considered were sufficient for their needs and that they were both contributing to pension schemes. It was also recorded that Mr and Mrs K had some additional income of about £100 per month.

The fact find indicated they were looking for medium to long-term investments with the potential for higher rates of return than they were currently receiving on deposit. It also indicated that they each were prepared to take a medium level of risk with £30,000 and a medium high risk with £5,000, making a total of £70,000 to be invested.

Although I can see that Mr and Mrs K didn't have a mortgage at that time, little is recorded about their expenses other than their personal expenditure. There would, of course, also have been the normal bills and living costs to add to that figure. So, I don't think it would be right to say that the £20,000 for that year, minus their personal expenditure, was disposable income. I think that figure was likely on balance to have been much lower.

<u>ISAs</u>

Mr and Mrs K were advised to invest £10,000 each in a mini and maxi Unit Trust ISA invested in the UK Growth Fund. Those investments were to span two tax years.
I don't consider that a tax efficient product, such as a stocks and shares ISA, was unsuitable for them in principle.

The UK Growth Fund is described in the product documentation provided by Lloyds as a medium risk fund and its investment aims are described as follows:

Aims to provide long-term capital growth through a wide range of UK ordinary shares.

So, I have to consider whether Mr and Mrs K were willing to take the risk posed by that fund over the medium to long-term with that sum of money. I consider on balance that they were willing to do so because they were looking for returns that were potentially higher than they were achieving on deposit and there was the added advantage that any return would be tax efficient.

I consider Mr and Mrs K had some limited investment experience in that they had taken out a savings plan in 1992, a guaranteed stock market bond in 1996 and PEPs in 1996 and 1997 respectively. Albeit, I note that the guaranteed bond protected their capital, and Lloyds has accepted that the funds invested in Mrs K's PEPs were too risky for her. So, while I consider they had some experience of taking risk with their investments, I do think it was limited.

However, the amount invested in the ISAs was a relatively modest proportion of the money they held on deposit. So, overall I don't think taking that level of risk with that sum over the medium to long-term was unsuitable, taking into account their circumstances and objectives.

Unit Trust

The adviser recommended Mr and Mrs K jointly invest £50,000 into a Unit Trust. I consider this was a significant proportion of the £82,000 they had available and this would be in addition to the £20,000 that was to be invested in their ISAs.

I note Mr and Mrs K had recently acquired this lump sum following a business-related sale. So, I don't think it was unreasonable for them to invest some of it, with a risk to their capital, in order to try to achieve a better return than they were receiving on deposit.

However, I note their drawings for that year were £20,000 and there had been some fluctuation in turnover in the preceding years. In addition, there was no certainty as to what they would earn in the following year. And when they met with an adviser in 2001 it was recorded that their business hadn't yet made any profit for that tax year. Their representative has also said that Mrs K started new employment in 2001 to supplement their income because the business wasn't doing well. So, I think they had to proceed with some caution in respect of how much they kept back for unplanned expenditure, or in the event they couldn't take the same level of drawings in the following years.

I appreciate that Mr and Mrs K didn't have a mortgage, but as I have said, they still would've had the normal living expenses. And I note that the amount remaining on deposit after the investments were made was less than a year's drawings. I also note that by 2001 that amount had reduced further from £12,000 to around £9,000. So, it appears they weren't able to keep their savings at that level.

I note Mr and Mrs K also held cash in cash ISAs and TESSAs, but I'm not persuaded that they would've wanted to take money out of those investments, particularly as they had only recently taken out the cash ISAs.

As I have said, I also think that Mr and Mrs K had limited investment experience. So, while I consider they probably understood that certain investments placed their capital at risk, I don't think they would have understood the levels of risks posed by the different funds they were advised to invest in.

Their Unit Trust was invested in three funds with £20,000 placed both in the UK Growth Fund (the same fund as recommended for the ISAs detailed above) and the Worldwide Growth Fund and the remaining £10,000 in the American Fund.

The documentation provided by Lloyds gives the following description in respect of the two relevant levels of risk posed by the funds invested:

Medium risk	*Investments primarily in UK stocks and shares, with some fixed interest securities and overseas investments.*
Medium to high risk	*Investments in more specialist UK and overseas stock markets, concentrating on specific continents rather than countries. As these funds can invest substantially in overseas assets, they can also be affected by currency fluctuations.*

The Worldwide Growth Fund is described as medium risk and its investment aims are as follows:

Aims to provide long-term capital growth from a broad spread of international securities. At least half the fund will be invested in Europe.

The American Fund is described as medium high risk and its aims are as follows:

Aims to provide long-term capital growth through selected investments mainly in the USA, but also in Canada and other countries on the American continents.

I note the American Fund appears to have been largely made up of international equities and I take into account that overseas equities tend to be regarded as riskier than UK equities. As there is an additional risk because changes in foreign exchange rates can have a negative effect on the investment.

I 'm not persuaded on balance that Mr and Mrs K were prepared to take the risk associated with the American Fund, which has been described in the product documentation as a medium- high risk fund. I also take into account that their capacity for risk was somewhat limited because their capital came from a one-off business-related sale and it wasn't clear, if their investment made significant losses, that they would have the capacity to replace that capital. And I also note the remaining investments within the Unit Trust also placed their capital at risk.

Overall, I consider that the American Fund posed more risk than Mr and Mrs K wished to take with their capital. In addition, given their financial circumstances, I consider that investing £50,000, together with £20,000 in ISAs, didn't leave them with much in the way of cash to fall back on should they need it. And these investments would have been intended for at least the medium term, so it wouldn't have been advisable for them to make withdrawals from them in the event they needed to.

So overall, I don't think that the advice to invest £10,000 in the American Fund within the Unit Trust was suitable for Mr and Mrs K taking into account their circumstances and objectives. And I don't think that sum should have been placed at risk taking into account their circumstances including the risk posed by the other recommended investments. So, I have set out how compensation should be calculated later on in this decision.

<u>Guaranteed Stock Market Bond</u>.

I note at the time of the advice Mr and Mrs K held a similar bond which had been taken out in 1996 and was due to mature in October 2001.

The fact find completed in 2001 recorded that they were looking to re-invest the money from that bond which was valued at about £12,000.

So, I think Mr and Mrs K had some understanding of how this type of bond worked as they had held a similar bond for about five years. I also note that their capital was protected provided they could retain the money in the bond for the term of six years. And it was recorded that Mr and Mrs K were looking to achieve a return on their capital over the medium term.

I note that this investment provided a return of either the original amount invested or 70% of any FTSE 100 growth added to 94% of the amount invested, whichever was the largest. In addition, the FTSE 100 growth was averaged over the last 12 months of the term to smooth any fluctuations.

I think Mr and Mrs K understood that they had to retain their capital in this investment for the *full term in order to secure the capital protection and I think this was made clear in the suitability letter. I note they held the bond for the full term.*

I consider the investment met their financial objective of trying to achieve capital growth. In addition, as they were re-investing the value of their maturing bond, this investment wouldn't really change the risk profile of their portfolio.

So, overall I don't consider that the GSMB was unsuitable for Mr and Mrs K taking into account their circumstances and objectives.

Putting things right

Fair compensation

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

I think Mr and Mrs K 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 K's circumstances and objectives when they invested.

What should Lloyds do?

To compensate Mr and Mrs K fairly, Lloyds must:

- *Compare the performance of Mr and Mrs K'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*
American Fund within Unit Trust (£10,000 investment)	*No longer exists*	*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.*

Any additional sum that Mr and Mrs K 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 distributions paid out of the investments 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 is a large number of regular payments, to keep calculations simpler, I'll accept if Lloyds totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- *For this £10,000 amount of their capital, I consider Mr and Mrs K wanted to achieve a reasonable return without risking any of the capital.*
- *The average rate for the fixed rate bonds would be a fair measure given Mr and Mrs K's circumstances and objectives. It does not mean that Mr and Mrs K 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.*

Putting things right

A comparison should be carried out, as set out above, in the extract from my provisional decision.

My final decision

My final decision is that Mr and Mrs K's complaint against Lloyds Bank PLC is upheld in part and it should pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 12 December 2022.

Julia Chittenden
Ombudsman