

The complaint

Mr and Mrs A complain that Bank of Scotland plc, trading as Halifax, gave them unsuitable investment advice. They say they were inexperienced investors who were about to retire, and that Halifax recommended an investment which was too high risk for their circumstances.

The complaint is brought on their behalf by a claims management company. For ease, I'll refer to everything as if it's been said by Mr and Mrs A.

What happened

Mr and Mrs A sought investment advice from Halifax in October 2007. They planned to retire within the next two to three years but wanted to invest a lump sum to achieve capital growth. Halifax recommended they invested £80,000 in a Personal Investment Plan ("PIP").

Following their complaint, Halifax decided it had recommended too much was invested in the PIP. It thought it would have been suitable for Mr and Mrs A to only have invested £40,000 in the PIP, given their circumstances. It paid them £6,015.84 compensation which it calculated by comparing the investment to the Bank of England bond rate.

Mr and Mrs A referred their complaint to this service. They didn't think they should have invested in the PIP at all and wanted compensation paid on the entire investment.

Our investigator recommended that the complaint should be upheld. She didn't think the PIP was suitable for Mr and Mrs A and she thought redress should be calculated on the £80,000 they were advised to invest, using the average rate from fixed rate bonds as the comparison benchmark.

Halifax didn't agree. It said, in summary, that:

- Just because one aspect of the advice wasn't unsuitable, it doesn't mean that *all* the advice given wasn't suitable. The ombudsman service should be able to conclude how much was suitable for Mr and Mrs A to invest.
- Mr and Mrs A invested further in the future, and after the 2008 stock market crash, which doesn't suggest it was suitable for the entire £80,000 to have remained in deposit-based savings. And there is no evidence that Mr and Mrs A couldn't afford the investment.
- Mr and Mrs A's net disposable income wasn't going to reduce on retirement because their outgoings were reducing by more than the drop in income.

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.

Firstly, Mr and Mrs A are only complaining about the advice to invest £80,000 in a PIP in October 2007. Halifax also recommended a regular savings investment, and it gave other investment advice before and after the October 2007 meeting. Mr and Mrs A have not brought a complaint about the other investment recommendations Halifax made, and I have not considered these in arriving at my conclusion.

Halifax accepts it advised Mr and Mrs A to invest too much of their available capital into the PIP. I agree. Mr and Mrs A intended to retire in the next two to three years. Halifax recommended investment in the PIP for a period of at least five years. This meant Halifax knew that Mr and Mrs A's circumstances were going to change during the recommended term for holding the PIP. And, whilst their retirement was discussed and Mr and Mrs A were confident that their disposable income wouldn't change, I can't see that this was discussed in any detail. The PIP included investment in equities, including overseas equities, which carry a higher level of risk. I would have expected Halifax to have recorded in detail how Mr and Mrs A would have been able to make up any losses in the few years they had before their planned retirement.

Mr and Mrs A were assessed as having a "medium" attitude to risk. But, had a detailed discussion about their planned retirement taken place, including how they would make up any losses, I think it more likely than not that Mr and Mrs A wouldn't have wanted to take much, or any, risk to their capital.

Following their complaint, Halifax suggested that it "*may have been suitable for you to only have invested half of this amount*". I accept this would have given Mr and Mrs A an additional £40,000 in cash deposits. But I can't say with any certainty this is what they would have done. If Halifax had discussed their planned retirement with them in greater detail, as it should have done, its advice may have been different.

For these reasons, I agree with our investigator – the advice to invest £80,000 in the PIP was unsuitable.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs A 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 A would have invested differently. It is not possible to say *precisely* what they would have done differently and for that reason I don't think Halifax's redress, based on a £40,000 investment, is fair. I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs A's circumstances and objectives when they invested.

What must Halifax do?

To compensate Mr and Mrs A fairly, Halifax must:

- Compare the performance of Mr and Mrs A's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Halifax should also add any interest set out below to the compensation payable.

Halifax should deduct the compensation amount it has already paid to Mr and Mrs A.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
PIP	No longer in force	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, Halifax 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 paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Halifax 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 Halifax totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs A wanted to achieve a reasonable return without risking any of their capital, because of their impending retirement.
- The average rate for the fixed rate bonds would be a fair measure given Mr and Mrs A's circumstances and objectives. It does not mean that Mr and Mrs A 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.

My final decision

I uphold the complaint. My decision is that Bank of Scotland plc, trading as Halifax, should pay the amount calculated as set out above.

Bank of Scotland plc, trading as Halifax, should provide details of its calculation to Mr and Mrs A in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 23 May 2023.

Elizabeth Dawes
Ombudsman