

The complaint

Mr and Mrs T complained that Bank of Scotland plc trading as Halifax has failed to pay appropriate redress after it admitted it should have given them better investment advice when they invested in a plan that was too risky for them.

Mr and Mrs T are represented by a claims management company (CMC).

What happened

In August 2003, on the recommendation of a Halifax adviser, Mr and Mrs T invested £10,357 into a Joint Personal Investment Plan ('PIP') with a 'cautious/medium' level of risk. The plan was made up of a portfolio of investments as follows:

- 20% UK FTSE All Share Index Tracking
- 15% Pelican
- 15% High Income
- 50% Gilt and Fixed Interest.

I don't know for certain whether the plan is still active. The CMC said the plan was surrendered in February 2020 although that isn't reflected in the business redress calculation. But this makes no overall difference to my decision.

In August 2021, Mr and Mrs T complained to Halifax that as the PIP was split 50/50 between equities and fixed interest securities this meant the overall level of risk was too high given Mr and Mrs T's circumstances and financial situation. Mr and Mrs T said they should have been advised to reduce their overall level of risk and the appropriate recommendation would have been to place their funds into a genuinely cautious fund.

Halifax said it was sorry it didn't give better advice when Mr and Mrs T originally took out the plan. It carried out a calculation comparing the plan's performance with that of a no-risk benchmark and concluded, after taking into account the current plan value, that Mr and Mrs T are better off having taken the plan when compared to the return they might reasonably have expected if they had left the money in cash and not invested. So Halifax said no payment is due to Mr and Mrs T as they haven't made a loss overall.

Mr and Mrs T weren't happy with the way Halifax assessed redress and so they brought their complaint to us. Our investigator concluded the same as Halifax. He felt the benchmark used for comparing performance and calculating redress was fair.

Mr and Mrs T didn't agree with the investigator. On Mr and Mrs T's behalf, the CMC said, in short, that they should have been recommended to invest in a product with a 'cautious' rating and so the appropriate benchmark used to calculate redress should reflect this and it isn't fair and reasonable to assess redress based on an assumption that no investment at all was suitable for Mr and Mrs T.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

“Although the Financial Ombudsman Service doesn’t always have power to investigate complaints about events that happened more than six years ago, Halifax has said it consents to us looking at this complaint. So I am able to consider Mr and Mrs T’s complaint and decide whether its redress proposal is fair.

My role here is to look at the approach taken to put Mr and Mrs T back in the position they would have been in had they not been given the unsuitable advice in 2003 and to ensure that this is fair.

Halifax based its approach on Mr and Mrs T having not invested at all. In order to decide whether the redress benchmark Halifax has chosen to put things right for Mr and Mrs T is fair and reasonable, I need to consider what I think would have been a suitable investment recommendation for Mr and Mrs T had they not been given the advice Halifax has agreed was unsuitable.

In agreeing with Mr and Mrs T’s complaint, Halifax said that increasing the amount of their overall portfolio of investments may not have been prudent and “...*it would have been better to withhold the money in savings and not place it at risk, particularly as you mentioned you did not want any risk to your money.*”

But I don’t agree with this assessment, given what I know about Mr and Mrs T’s circumstances based on the point of sale paperwork I have seen.

When Mr and Mrs T met the adviser in August 2003, they were both in their seventies and retired from work with a joint monthly income of around £785, made up mostly of pensions and including £178 or so interest income from existing investments. With monthly expenditure of around £535, they had a net disposable monthly income of £250.

Together they had £65,840 in cash deposits and £51,741 in unit linked investments and Personal Equity Plans (PEPs). The fact find indicates this money had come from accumulated savings or a lump sum.

This meant that they had around 44% of their potential investment money already tied up in asset backed investments – so at some risk. And whilst I agree with Halifax that investing another £10,357 in the recommended plan was unsuitable, given the level of exposure to volatile equities, it doesn’t follow that no investment at all was suitable.

After Mr and Mrs T invested £10,357 on Halifax’s recommendation, this meant they now had just over half of their money – around 53% - invested and the rest still in cash. For people in Mr and Mrs T’s circumstances and financial situation, I don’t think this was too high a proportion of their wealth to have tied up and at some limited risk.

I say this because although their income was relatively low, Mr and Mrs T seemed to enjoy a modest lifestyle and they told the adviser they had ample for their day to day needs.

I’ve taken into account that a proportion of Mr and Mrs T’s monthly income included investment income of £178, so this was potentially variable and couldn’t be entirely depended on. But even without this investment income, they still had pensions amounting to £607 per month and access to cash savings of more than £50,000 even after investing another £10,357. If their investments didn’t perform as they hoped, Mr and Mrs T wouldn’t

necessarily have needed to break into their cash reserves as lost investment income could have been absorbed on a monthly basis given they had a £250 net surplus.

So I am satisfied that Mr and Mrs T had enough spare money to invest another £10,357 and some capacity to absorb loss. In thinking about what level of risk, if any, was suitable for Mr and Mrs T, I've kept in mind their investment objectives.

Halifax recorded that Mr and Mrs T wanted greater potential medium to long term growth than could be achieved by leaving their £10,357 on deposit in their Halifax Saver Reward account as they were concerned the money wasn't growing with inflation. They had no plans to spend those funds within the next 5 years. Given their ages and lifestyle, with no outstanding debts (including no mortgage), in the absence of any dependents and no wishes to provide a lump sum to anyone else in the event of their deaths, it seems reasonable to me that Mr and Mrs T would have wanted to do something with some of their available investment pot to improve upon deposit returns.

I've also carefully listened to the call recording of the discussion when Halifax rang Mr T to discuss his complaint. Even though this is some years after the initial investment, I think it gives a useful insight into Mr and Mrs T's likely wishes at the time. Mr T told Halifax that as he was dealing with a building society he "*.. thought it was a safe plan*". To my mind, that suggests Mr T had always understood he was making an investment (as opposed to simply leaving the £10,357 on deposit) and this was in line with his stated needs and objectives and his preferred course of action.

In terms of risk, I think a more cautious investment strategy would've been suitable for Mr and Mrs T. I think it's fair to say Mr and Mrs T had some limited investment experience and it wasn't unreasonable for the CMC to have suggested that an investment of this percentage of their available investment pot would not have been unsuitable, especially if it was spread over products at a cautious level of risk.

I don't think there was anything else about Mr and Mrs T's financial situation or circumstances which meant investing £10,357 into cautious products which met their investment needs and objectives was unsuitable when they would still have been left with a cash reserve which could sustain many years of their total outgoings.

So this leads me to conclude that the redress calculations Halifax provided are based on the wrong formula. Halifax compared what happened with the investment against what would've happened had Mr and Mrs T not invested at all.

I think the appropriate benchmark here is to compare what Mr and Mrs T actually earned with what they would have earned had they invested the £10,357 in funds where there was a small element of investment risk.

So, I uphold the complaint."

What the parties said in response to my provisional decision

Mr and Mrs T had nothing further to add.

Halifax reiterated the following points for reconsideration:

- Mr and Mrs T had some limited investment experience ie. PEP for 6K each and a Bond taken out in 1993. The CMC commented the customers circumstances had dramatically changed over the period, they were deep into retirement and on a very low income.

- Withdrawals in 2009 were to buy a car and 'capital' purchase – which indicates that they had been left with insufficient funds on deposit to fund their lifestyle.
- We concluded the customers already had a reasonable amount of their assets at risk (44%) and it was unnecessary to advise them to increase this any further given their personal and financial circumstances. Additionally Mr T told our Complaint manager on the telephone that he thought his money would be safe and didn't read any small print about risk.
- In 2003 the fund category was noted as cautious-medium – the Financial Ombudsman Service has always stated 'it is not for your service to risk rate funds'.
- the CMC first contacted Halifax in 2018 for information about Mr and Mrs T's investments – which it provided. The CMC raised further queries in 2020 and complained in 2021 – it is questionable why they waited this length of time to do so.

As both parties have now commented, I think it's reasonable for me to proceed with my review of this complaint.

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've taken carefully into account everything that's been said in response to my provisional decision.

I'd like to assure Halifax that I've thought carefully about everything again before coming to my final decision.

Halifax previously provided its consent for us to look at this complaint and I am satisfied that the complaint is within jurisdiction. I don't consider that the withdrawals made in 2009, some six years after Mr and Mrs T invested in the PIP, are sufficient to show that *any* investment in 2003 was unsuitable for them. For all the reasons set out more fully in my provisional decision, I still think Mr and Mrs T were in a position to be able to invest £10,357, but a more cautious investment strategy than investing in a fund rated by Halifax as 'cautious-medium' would have been suitable for Mr and Mrs T. This leads me to conclude that the fairest benchmark here is to compare what Mr and Mrs T actually earned with what they would have earned had they invested the £10,357 in funds where there was a small element of investment risk.

I appreciate that Halifax takes a different view to me but Halifax hasn't provided me with any new information that changes what I think about this case. I still think it's fair to uphold this complaint for the reasons I explained more fully in my provisional decision.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs T 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 T would have invested differently. It is not possible to say *precisely* what they would have done differently.

But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs T's circumstances and objectives when they invested.

To compensate Mr and Mrs T fairly, Halifax must:

- Compare the performance of Mr and Mrs T'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 pay interest as set out below.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Personal Investment Plan	Not known	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

Income tax may be payable on any interest awarded.

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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs T 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 T'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 T into that position. It does not mean that Mr and Mrs T 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 T could have obtained from investments suited to their objective and risk attitude.

My final decision

I uphold this complaint and Bank of Scotland plc trading as Halifax should pay compensation to Mr and Mrs T as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 28 November 2022.

Susan Webb
Ombudsman