The complaint

Mr H complained that Lloyds Bank PLC provided unsuitable investment advice in 2012 when it recommended Mr H to invest money from a lump sum rather than pay it towards reducing his outstanding mortgage balance.

What happened

Mr H had recently retired and taken a six figure pension lump sum when he met with Lloyds's adviser. During the course of two meetings in August 2012, Lloyds advised him to invest £11,280.00 into a Scottish Widows stocks and shares ISA and £30,720.00 into a Personal Investment Plan.

Following a mortgage review, Mr H complained to Lloyds in September 2021 that he was badly advised in 2012 not to repay his mortgage. He said he had been wrongly told that the bank would not look to repayment of the mortgage until after his death and that he could continue to pay on an interest only basis.

In response, Lloyds said Mr H had left it too late to bring this complaint. It did also say that in June 2007 he had borrowed £105,000 on an interest only basis and £38,500 on a repayment basis over a 25 year term, due to end in 2032, and that the bank wasn't able to offer an open ended mortgage, without a repayment date, in 2012.

Mr H remained unhappy that the adviser gave him advice in 2012 *" which was in essence to do nothing about my mortgage"* so he brought his complaint to us. He said that if he had known in 2012 that the bank would not allow him to keep making interest only payments on his mortgage for life, as he thought he'd been told, he would have paid the mortgage in full at that time and that he hadn't even considered not doing this until it was suggested by the bank's adviser.

Based on all the information he had seen, the investigator didn't feel this was a complaint he could recommend upholding. He mainly said he didn't doubt Mr H's version of events and agreed the best advice would've been to use his lump sum in 2012 to repay at least the interest only part of his mortgage. But he said Mr H wasn't under any obligation to accept any recommendations given and the records showed everything was discussed. Our investigator felt that "*whether the advice was wrong or right*" it had been Mr H's choice not to repay the mortgage but to either spend or invest the funds from the lump sum.

Mr H didn't agree with the investigator. He felt that his complaint hadn't been properly understood and, with assistance from his current financial adviser, asked for an ombudsman to review his complaint. 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.

'Lloyds has now consented to us looking into Mr H's complaint about what happened in 2012 when it provided investment advice, I am satisfied that I can consider the complaint.

I must base my decision on the balance of probabilities – in other words, what I consider is most likely in the light of available evidence and the wider circumstances. Where facts aren't agreed by the parties I must make reasonable assumptions where necessary.

I'm sorry that Mr H feels our investigator didn't properly grasp his complaint. Just to be clear, it's my understanding that Mr H is saying that had Lloyds not told him he could continue to pay the mortgage until death, he would simply have put this lump sum towards paying the mortgage rather than investing any of it. Mr H has recently said that although the adviser looked at his ability to pay the mortgage, whilst he had the means to pay the monthly mortgage instalments, the adviser did not address his ability to pay back the capital at the end of the term for the interest only part of the mortgage. He also said his *".. mindset at the time the investments were made was that the mortgage was dealt with.*"

I am approaching this complaint on the basis that Mr H was entitled to expect Lloyds' adviser to provide him with suitable investment advice taking into account his overall circumstances and financial situation and keeping in mind his identified needs and objectives.

I've looked carefully at the 'Customer Information' document prepared by the adviser during discussions with Mr H (the 'fact find'). Although it's not signed by Mr H, as this was completed at the point of sale I consider it's reasonable for me to rely on the information recorded to give me a useful insight into Mr H's circumstances and what was discussed at the time. Mr H's overall financial situation in August 2012 was recorded as follows:

- monthly income £1,587.00
- committed monthly spending £1,357.00
- disposable income £116.80 per month (this allows for a 10% increase in fixed expenditure (subject to a minimum of £50)
- Mr H was a homeowner – his house was valued at £140,000 and his outstanding mortgage, taken out in 2007, was around £139,000.
- £5,000.00 in deposit based savings account
- £4,500.00 invested in with-profits bonds
- £107,456.00 (including £100,000 pension lump sum) in a bank account
- within five years he planned to spend £20,000.00 on home improvements.

Given what I know about Mr H's circumstances and financial situation, I've thought carefully about whether Mr H was in a strong enough financial situation to be able to invest further – and I don't consider that he was.

I say this because Mr H had recently retired from paid work. Although it would be another 15 years or so before he reached state pensionable age, he mentioned that he was receiving treatment for his mental health at the time. So I think the adviser was right to concentrate on Mr H's actual financial situation and make no assumptions about any potential future earnings.

As things stand, my main concern is that the adviser seems not to have thought carefully enough about Mr H's mortgage, especially the interest only part (around £105,000) which he would need to repay at the end of the term, and how this impacted on his overall financial situation. I'll explain why I say this.

Paying for his home was Mr H's most significant financial commitment. The fact find recorded him as 'retired' and his total net income was his pension. He had almost no equity in the property, only limited savings and investments, no particular expectation of any further lump sum and concerns about his health – so there were no obvious ways for Mr H to boost his income or savings. As Lloyds itself has highlighted, the mortgage had a redemption date in 2032. Mr H therefore needed to consider how he was going to repay the interest only part of his mortgage by that date. And Lloyds' adviser needed to provide advice with that future objective in mind.

The mortgage application completed in 2007 included a loan assessment form in which Lloyds confirmed that Mr H held an endowment policy and would receive a pension lump sum. It stated that the interest only element of the mortgage would be repaid from these sums on retirement, leaving only the repayment part of the loan, which Lloyds described as affordable on Mr H's pension. Mr H told us he went to see the adviser in 2012 with the expectation that he would use his pension lump sum to pay his mortgage. That is clearly in line with what Lloyds had agreed with Mr H that he would do when arranging the mortgage in 2007. But that doesn't seem to be reflected in the adviser's comments made in 2012.

Mr H's recollection of his discussions with the adviser regarding his mortgage is disputed in part by Lloyds – it effectively said lifetime mortgages weren't something it could offer in 2012 so the adviser wouldn't have suggested this. But it isn't reasonable to expect Mr H to be able to recall word for word what was said about his mortgage during discussions with the adviser so long ago. So I'm mostly relying on what the point of sale paperwork shows.

The adviser had a responsibility to provide suitable advice to Mr H taking into account his particular circumstances. The adviser suggested he be accompanied by a family member during the discussions. But I don't think that alone was sufficient to discharge the adviser's professional obligation to look after Mr H's interests. The adviser had rated Mr H as '*doubly vulnerable'* suggesting to me that the adviser potentially had grounds for concern about Mr H being able to properly understand the advice and make an informed investment decision.

So I don't think it was good enough for the adviser to simply say in the Financial Report: "We discussed using your funds to help repay your outstanding mortgage. We agreed that you do not want to pay off any lump sums off your mortgage at this time and you are comfortable with your current repayments". And that contradicted Lloyds' previous understanding from 2007 about when Mr H would repay his interest only loan.

Possibly, Mr H may not have fully understood or perhaps he misinterpreted some things the adviser said about future options for paying his mortgage. But to my mind, this doesn't affect my overall view. I'll explain in more detail why I say this.

The adviser identified Mr H had a cautious attitude to risk and recommended investments accordingly. But, as I see things, the adviser should only have provided the investment advice:

- after first ensuring that Mr H had been made fully aware of the risk he was taking in choosing not to prioritise his mortgage debt (and not just focusing on the risk levels of the particular recommended funds, especially when advising Mr H to invest money it looks like he had always planned, and would need, to use to pay his mortgage), and also,
- taking steps to ensure Mr H understood that the investment advice provided did not include different recommendations the adviser might otherwise have made since it reflected only what the adviser understood Mr H was interested in discussing.

In the fact find the adviser has noted:

" Mortgage runs into retirement, (Mr H) has weighed up his options and has decided that he can happily afford his mortgage into retirement and would rather keep the money on deposit as savings and investments"

In the 'Financial Report' containing the adviser's recommendations, the adviser said:

"*Your mortgage will continue into retirement and we have discussed the possibility of reducing the mortgage term so that it ends before this date. You confirmed that you are confident you will be able to meet the cost of your mortgage repayments in retirement because you have a good level of disposable income left over each month and would prefer to keep your lump sum as savings.."*

And later in the Financial Report:

"Protection For Your Borrowings
No recommendations have been made for you when looking at protecting your borrowings as, when assessing your initial need from the information you provided, you were not interested in this given you have savings which could be used to repay a substantial portion of your mortgage should the need arise, and you can comfortably afford the mortgage repayments on your pension income which will become index linked upon attaining age 55."

With a limited monthly disposable income and no obvious means of being able to repay his projected mortgage balance at the end of the mortgage term save for relying on his lump sum payment, the adviser had an obligation to make it clear to Mr H when making investment recommendations how this could impact on Mr H being able to repay his mortgage. The fact find and the adviser's Financial Report mainly focus on investing a proportion of Mr H's lump sum. I haven't seen enough to make me think that the adviser made sufficiently clear the risk that Mr H was taking when he said he was "*not interested"* in discussing his mortgage.

And even if the adviser thought Mr H preferred to keep his lump sum *"..on deposit as savings and investments",* risking his capital by recommending a cautious level of investment for around 40% of his lump sum put Mr H in jeopardy of not being able to rely on the pension lump sum as he had told the bank he planned to do, in order to repay his mortgage. The £58,000 he kept back wasn't enough on its own to cover the interest only part of Mr H's mortgage – he would also most likely need the £42,000 Lloyds recommended him to invest (plus a small extra amount that potentially I think Mr H could realistically have expected to make up out of other savings).

I can't see that this was specifically considered or spelled out to Mr H in a way that was clearly understandable for Mr H. The adviser seems mainly to have thought about affordability during the mortgage term rather than repaying the outstanding mortgage balance at the end of the term (when Mr H would be in his seventies).

I don't consider the £116 surplus cash that the adviser calculated to be " *a good level of disposable income left over each month"* was enough to enable Mr H to make up the amount he would need to repay his mortgage and I don't find he had capacity to bear investment loss.

As things stand, I find that making '*no recommendations'* about a realistic plan to pay his outstanding mortgage balance means I can't fairly say the adviser provided suitable advice to Mr H. His current financial adviser expressed this as follows: "*Advice is not merely placing funds in accordance with the clients expressed wishes, it is leading them through the consequences of their actions*." I agree. And I haven't been supplied with enough evidence to show that happened in this instance when the adviser made investment recommendations to Mr H in 2012.

It has been suggested that Mr H was free to accept or reject the adviser's recommendations and that it was his choice to choose to invest even if the advice was wrong. But Mr H was entitled to expect the adviser, as the financial expert, to provide suitable advice and it was reasonable for Mr H to believe he was safely able to rely on the adviser's recommendations. The recommendation doesn't make clear that not using the £100,000 lump sum to pay at least a portion of his mortgage debt and instead investing £42,000 in 'cautious' rated funds risked Mr H being able to repay the mortgage by the end of the term. I think it was important that the adviser made this clear to Mr H and Lloyds hasn't shown me that it did.

So I plan to uphold Mr H's complaint and it follows that it's fair and reasonable to expect Lloyds to take steps to put things right.

When considering redress, I have kept in mind that the adviser recommended a level of investment that still left Mr H with the bulk of his lump sum. – around £58,000. So I think it's fair to say that had Mr H wanted to, he could have paid something towards reducing his outstanding mortgage balance in 2012, or soon after that. As far as I am aware, that hasn't yet happened – Mr H's annual mortgage statement dated 31 December 2020 (the most recent I have been provided with) shows he needed £126,759.71 to repay his mortgage on that date. I think it likely Mr H will have been outside the period he would expect to pay any early repayment charge but I'm mindful that he wanted a significant portion of this money to pay for home improvements. So I don't consider the fact that Mr H hasn't chosen to repay any part of his mortgage balance is enough of a reason for me not to uphold his complaint.

Also, I am aware that his lump sum fell short of the amount Mr H would have needed to repay his outstanding mortgage in 2012 - although he could have cleared the interest-only part if he had wanted to, which would have meant he could expect his capital repayments would fully repay the mortgage balance by the end of the term.

With my above comments in mind, on balance my view is that if Mr H had received suitable advice in 2012, he would not have invested in the ISA and Personal Investment Plan, but he also would not have chosen to use that same sum to repay part of his mortgage at that time. So, I am recommending redress is calculated on the basis that suitable advice for Mr H would've been to keep his £100,000 lump sum payment in no risk investments as that is the only way he could be sure it would still be available to apply towards paying the outstanding capital balance on his mortgage.

So I plan to direct Lloyds to take the following steps to put things right.'

What the parties said in response to my provisional decision

Mr H commented on some of the figures I had mentioned and reiterated that it was incorrect to suggest he would not have used his lump to pay off the mortgage in 2012. Mr H put it this way: 'I believed the meeting with the financial adviser that day was to simply implement my agreement with the Bank in 2007 to pay off the interest only part of the mortgage. Any subsequent decisions made regarding this money were made following the advice I had been given and would not have been made at all had the Bank simply requested the money as agreed.'

Lloyds confirmed it agreed with the provisional decision and the proposed redress. It said its Regulated Investments Team will complete any calculations required once Mr H has confirmed acceptance of the Final 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.

I've taken carefully into account everything that's been said in response to my provisional decision. I'd like to thank both parties for all the information that has been provided about this matter..

I appreciate Mr H drawing my attention to some of the figures I had mentioned in my provisional decision – I relied on information recorded by the adviser in the fact find so this makes no difference to my view of this complaint.

And I'm grateful to Lloyds for confirming its position ahead of the deadline for responses, so keeping avoidable delay to a minimum and enabling me to issue a decision sooner.

Given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

Putting things right

To compensate Mr H fairly, Lloyds must:

- Compare the performance of Mr H's investments 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.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Scottish Widows stocks and shares ISA Personal Investment Plan	unknown	Average rate from fixed rate bonds	Date of investment	Date investment ceased to be held or (if investment still held) the date Mr H confirms he accepts my final decision	*8% simple per year on any loss from the end date to the date of settlement(if not settled within 28 days of the business receiving the complainant's acceptance)

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 withdrawal from the investment 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.

Any additional sum that Mr H paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr H was assessed as having a cautious attitude to investment risk. But, had the adviser discussed his need for an account that protected his lump sum against the risk his capital amount would decrease, so as to preserve Mr H's stated intention of using his lump sum to repay his mortgage, I think it's more likely than not that he would have kept the £42,000.00 he invested in the above portfolios in a savings account, without risking any of his capital.

- The average rate for the fixed rate bonds would be a fair measure given Mr H's circumstances and objectives. It does not mean that Mr H 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.

*HM Revenue & Customs requires Lloyds to take off tax from the interest part of this award. Lloyds must give Mr H a certificate showing how much tax it's taken off if he asks for one.

My final decision

I uphold Mr H's complaint and direct Lloyds Bank PLC to take the steps I have set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 February 2023.

Susan Webb
Ombudsman