DRN-3915834

## The complaint

Mrs B has complained that she was given unsuitable advice by Lloyds Bank PLC ('Lloyds') in October 2000. Mrs B believes she has been disadvantaged financially as a result of receiving the advice.

Mrs B is represented by a third party but for ease of reference in this decision I shall refer to 'Mrs B'.

## What happened

After the death of Mrs B's mother, she inherited her mother's house and £5,000. She was advised to invest £5,000 into a stocks and shares ISA split equally between the Scottish Widows UK Growth Fund and the Worldwide Growth Fund. Mrs B says she was advised to invest the money at the wrong time in her life, only six months after her mother's death. She should have been given more time to overcome her grief.

Mrs B said the investments recommended to her were too high risk for a financially naïve investor such as herself. Mrs B had wanted to keep her investments in place for at least five years but her personal circumstances changed, and she had to sell her investments in 2004. Mrs B complained to Lloyds who responded. It didn't agree the complaint should be upheld. It said;

- Mrs B had gone to the bank on more than one occasion with her husband and her personal and financial circumstances were recorded. And any recommendation would have taken into consideration any recent changes to Mrs B's circumstances.
- Mrs B was looking for a longer-term investment for the potential for capital growth with a medium attitude to risk.
- Mrs B had been provided with all the relevant information and had signed to confirm it had been explained and she understood the risks and characteristics of the investments. She received the Scottish Widows funds guide and personal key features document, so she was able to make an informed decision.
- Considering the origin of the funds, the level of risk was appropriate for Mrs B's circumstances.

Our investigator who considered Mrs B's complaint didn't think it should be upheld. She said;

- She thought six months after her mother's death was a reasonable amount of time to give Mrs B to consider what she wanted to do with her money.
- She detailed Mrs B's financial circumstances at the time and concluded that £5,000 was invested and this left Mrs B with £10,792 in cash which she thought was enough for unplanned expenditure and emergencies.
- Mrs B was prepared to invest for five years and the investigator thought the investment was suitable and didn't conflict with any planned future spend.
- Just because Mrs B didn't have any investment experience didn't preclude her from

taking some risk.

- Mrs B was prepared to take a medium risk for the potential of capital growth.
- If Mrs B had left her funds intact for the intended five years, she would have potentially obtained better returns. Just because the investment didn't perform well doesn't indicate the investment wasn't appropriate for her.

In response Mrs B explained the complaint was not about performance but the advice she had been given. She accepted that the UK Growth Fund could have been suitable, but the Worldwide Growth fund contained global equities with the risk level increased with further exposure to exchange risk. She asked for her complaint to be reconsidered or passed to an ombudsman for a decision.

I issued my provisional decision concluding that the complaint should be upheld 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;

> "<u>Mrs B's circumstances</u>
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> Lloyds has given us a copy of the 'Financial Interview – Personal' completed at the time of the sale in 2000. It does include details about Mrs B's husband's circumstances but as the investment was in the sole name of Mrs B, it's her circumstances alone I will be taking into account.
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> At the time of the advice Mrs B was 33 years of age, was married and owned her own home – the house she inherited from her mother – with her husband financed via a mortgage with £14,000 outstanding at a monthly cost of £88.24. She had been with her current employer for over 13 years and her planned retirement age was 60 years. She had a defined benefit employee pension.
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> At the time Mrs B had £10,792 in her current account with savings of £103. Its recorded she wanted to invest £5,000 over the medium term for growth. She had an outstanding liability of £5,664 which she was repaying at £190 per month.
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> I asked for more information about Mrs B's outstanding liability and whether she thought about paying that off with her funds rather than investing half of it. Mrs B told us she had accumulated some debts following a change in her personal circumstances. Those credit card debts were costly so were consolidated into the loan with 'an affordable repayment of £190. She was happy to continue with the loan rather than pay it off as the arrangement was working well.'
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> In the investigator's view letter, she concluded that Mrs B had a net disposable income per month of £412.76 but I don't think this is correct. This only took account of the monthly mortgage repayments and monthly repayment of £190 per month for her loan. We checked further with Mrs B who said she also had the usual utility outgoings, phone, life insurance, food, clothing, and car expenses etc. Her recollection was that after her monthly expenses she had 'a couple of hundred pounds at most'. So, I have borne this in mind when considering this complaint and the overall affordability.
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> It was recommended that Mrs B commit £5,000 into a unit trust ISA which offered the opportunity of capital growth over the medium to long term. It was recorded that the fund choice/product agreed with Mrs B's attitude to risk. It was recommended two lump sum investments of £2,500 each into the Scottish Widows UK Growth Fund and Worldwide Growth Fund.

Mrs B's attitude to risk

In the Financial Review Lloyds recorded that Mrs B was prepared to take a medium risk with her investment and she was looking for capital growth over the medium term. At that time Mrs B didn't hold any investments or have any investment experience.

It's not evident from the Financial Review or other point of sale documents how Lloyds came to the conclusion that Mrs B was a medium risk investor. I would expect to see some sort of evidence that the risk rating was explained to Mrs B taking into account her ability to understand investment risk and clarification of her experience or knowledge to understand the risk involved.

Clearly Mrs B was seeking advice because she 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 Mrs B's circumstances, understanding and knowledge after ascertaining her attitude to risk or that it was discussed whether Mrs B had the necessary experience and knowledge in order to understand the risk involved.

We asked Lloyds about this. It told us of how its advisers would have gone about a risk assessment – it said a process that had to be strictly employed and which was checked by the adviser's line manager. It told us the adviser would have introduced the funds guide at an initial interview and that the risks and rewards of stock market investment would have been explained as well as the different levels of risk and the importance of keeping enough capital back to cover short-term requirements.

The adviser would have explained Lloyds' view on the stock markets and introduced the various unit trusts that could be invested into plus the risks and characteristics of each fund and which fund(s) would have met the customer's attitude to risk. There would then be a second appointment where any further questions could have been asked and the choice of investment could have been amended or otherwise. The fund(s) chosen will have been agreed or not and recorded in the suitability letter sent to the customer.

I've borne in mind that without any investment experience Mrs B would have totally reliant upon the advice given to her. Its recorded that her investment objective was for capital growth. And it might have been the case that Mrs B did want to explore the opportunity to make her money grow more than it would have done in savings.

But I haven't seen sufficient documentary evidence about how Lloyds came to the conclusion that Mrs B was a medium risk investor. And I've further borne in mind that because of the source of the funds these were relatively new to Mrs B – as a result of the inheritance from her late mother – and what she had done so far with the money by keeping it in a risk-free environment in the bank.

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

The advice

Lloyds has given us a copy of the Scottish Widows Funds Guide from around the time of the sale. In that 20-page document it does have a section on risk ratings, and it categorised six from no risk to high risk. Mrs B was assessed to be prepared to accept a medium risk which was recorded as 'Investments primarily in UK stocks and shares, with some fixed interest securities and overseas investments.' The UK Growth Fund and the Worldwide Growth Fund were chosen as suitable investments for Mrs B.

Mrs B has accepted that the UK Growth Fund wasn't necessarily unsuitable for her, but she doesn't accept that the Worldwide Growth Fund could be categorised as medium risk because of its overseas exposure and implicit currency risk.

However, I'm currently of the opinion that a medium attitude to risk wasn't right for Mrs B at all. I'm not sure the investments were affordable for her or that she had the capacity to accept a medium level of risk. I'll explain why.

In the investigator's view letter, she concluded that after the investment of £5,000 was made this left Mrs B with £10,792 in cash which she thought was enough to meet any unplanned for expenditure or emergences. However, I don't think this was correct. And Mrs B has confirmed to us she had a total sum of £10,792 and £5,000 of that was invested. So, this left her with a financial cushion of £5,792 for any unexpected costs or emergencies.

And in this particular case I note there was also the outstanding liability of £5,664 and I have considered what could have happened if Mrs B's circumstances had unforeseeably changed, such as her being made redundant as an example. In that case Mrs B would lose her income and I can't see she had any spare capacity other than the £5,792 with which to make her monthly loan repayments and other essential outgoings such as her mortgage and household costs etc.

There's nothing to show that it was suggested to Mrs B that she repay her loan rather than investing that sum. And even though Mrs B has told us the repayment of the loan was working well, there could have been the potential that it was recalled and in particular if Mrs B struggled with making the monthly repayments for whatever reason, in which case Mrs B would need to use the only cash savings she had to repay it. And which would have left her without any capital for other outgoings or emergency purposes she could have fallen back on other than the ISA investments which were exposed to medium risk stock market investments and the potential fluctuations in value in that level or risk.

I don't think the advice recommended was suitable for Mrs B. Because of her financial circumstances, I don't think Mrs B had the capacity to absorb any potential losses she could have incurred, and which were implicit in a medium risk investment.

Overall, and taking into account Mrs B's circumstances and objectives at the time, I think the advice given meant her money was exposed to risks I'm not persuaded she was willing or able to take if she had been properly advised. I haven't seen sufficient evidence that the liability Mrs B had – and which was the same amount as exposed to medium risk investment – was sufficiently considered when giving Mrs B the advice to invest. I don't think Mrs B was left with sufficient contingency funds if something had unexpectedly changed in her circumstances. I am satisfied that the advice Mrs B was given in 2000 wasn't suitable for her taking account of her 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 Mrs B as I don't her financial position warranted as high an attitude to risk as medium risk."

To put the matter right I provisionally said that Lloyds should compare the performance of her investments with the average rate from fixed rate bonds from the date of investment to the dates they ceased to be held. I said this was suitable as it was the sort of investment return a consumer could have obtained with little risk to their capital.

Lloyds didn't agree with my provisional decision. It said;

- I was wrong to only consider Mrs B's circumstances. It was joint advice and the paperwork was signed by Mrs B and her husband.
- The sale was made 22 years ago so it would be difficult for anybody to recall full details from the time and questioned Mrs B's recollection of having a couple of hundred pounds left each month after expenditure. And the joint income was £1,691 which after the monthly mortgage payment of £180 and the loan repayment of £190 left £1,321 which would suggest they had substantially more net disposable income. They were in the position to build up further savings and cover any losses.
- Mrs B was 'living comfortably' on her salary and had some savings. She inherited her mother's house and £5,000.
- The £5,000 invested wasn't being used for day to day expenses and it wasn't unlikely that Mrs B wanted to 'ring fence' this from her 'own' money. The repayment of the loan was working well, and she might not have wanted to use her inheritance to repay a loan and lose access to the funds she had been left. Mrs B had said she was happy to continue with the loan rather than pay it off with inheritance.
- I had focused on what might have happened but did not happen when I said Mrs B may have lost her job which she had been in for 13 years and it wasn't a fair reflection of the situation or the advice. There was nothing to suggest the investment wasn't affordable and sustainable or that she was unable to repay the loan.
- It was difficult to show how Mrs B's attitude to risk was established because of the time since the sale. It referred to other cases this service had seen where there was limited paperwork, but a medium risk investment was deemed appropriate for a first-time investor.
- Mrs B had accepted the UK Growth Fund may have been suitable for her yet I felt she shouldn't have invested at all which was contradictory and didn't take into account the risk warnings given, the drop in value in 2001 where no issues were raised or Mrs B's recollection of what happened and what she wanted.
- I had said I wasn't sure the investments were affordable for Mrs B, but all evidence indicated that they were.
- For me to conclude that someone in a stable job, aged 33 and with savings wasn't in a position to invest at all seems unusual and inconsistent. It led Lloyds to question the comparison with a no risk option in relation to any redress.
- I had said I wasn't sure if Mrs B was able or willing to invest but Mrs B has said she was, and the documentation shows she was able to. Her complaint letter had said she was aware she could lose money which confirms a willingness to take some risk, which led it to question the redress I had recommended.

Mrs B didn't respond to my provisional 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 disagree with Lloyds' suggestion that I was wrong to only consider Mrs B's circumstances – it said the advice was given to both Mrs B and her husband. I accept that Mrs B's husband was at the meeting as recorded in the 'FINANCIAL INTERVIEW – PERSONAL' and that his details and circumstances were recorded.

But when it came to the investment advice this was given to Mrs B only. Under the attitude to investment risk section only Mrs B was assessed. Its recorded that 'NO RISK ASSESSMENT DETAILS' had been gathered for Mrs B's husband or any '….Customer Needs' were identified for him, only for Mrs B. And in the 'SUMMARY & RECOMMENDATIONS' provided as a result of the meeting it said that for Mrs B '…you have asked for advice on investments' but for her husband it says '…you have not asked for advice on investments at the present time' which is followed by a recommendation for Mrs B only.

I also note that in Lloyds' final response to Mrs B's complaint it states, 'You were looking for advice on longer term investments in your name only…' and only Mrs B signed the Financial Ombudsman complaint form. So, I remain of the view that it is only Mrs B's circumstances I need to consider in my review as the investments and the complaint are hers alone.

I appreciate the point made by Lloyds in that it would difficult for anyone to recall their circumstances from 22 years ago. But I did ask Mrs B for her recollections as under the 'MONTHLY INCOME & EXPENDITURE' section of the fact find only income was recorded and there were 'NO EXPENDITURE DETAILS' which I would have expected to see. So, I don't think it was wrong of me to have asked Mrs B for her recollections and taken them into account as I thought appropriate.

So, bearing in mind that of Mrs B's net salary of £691, £190 was used for her loan repayment and a further £88.24 was needed for her monthly mortgage repayment, this left her with just over £400 per month for all her other outgoings. So, I don't find her recollection of a few hundred pounds of income after expenditure each month to be unreasonable taking into account her other monthly outgoings she told us about. And for the reasons I have explained above, it is only Mrs B's circumstances that I have considered, and I have not taken into account her husband's income.

Lloyds has said that Mrs B was living comfortably on her salary and it wasn't unlikely that for the £5,000 she inherited she didn't want to pay off her liability and she was happy with the way those repayments for her loan were going. But I maintain that the conclusion reached in my provisional decision is correct to the extent that Mrs B couldn't take the risk with those funds as it left her with very little in order to cover liabilities.

There is nothing in the fact find to suggest that it was put to Mrs B that she might have been better off and a more prudent approach may have been for her to repay her loan for the credit card debt rather than investing it where it was exposed to the potential for capital losses. Mrs B may have decided not to take that advice if it had been given to her but I've seen nothing to suggest this was discussed or that it was explained to her that by investing the £5,000 would have left her with limited cover for her liabilities So, I don't agree that the investments were affordable or sustainable as there's nothing to suggest that Mrs B was in the position to make up any significant losses to her capital.

I agree with Lloyds' comments that it wasn't necessarily the case that a medium risk approach for a first-time investor wasn't appropriate. But in this particular case I had concluded that Lloyds hadn't been able to evidence how it assessed Mrs B's capacity for risk so I went on to consider the advice she was given in light of what was known about her circumstances at the time and whether that was suitable.

Lloyds has said that for me to conclude that as Mrs B was in a stable job, was 33 years of age, and with savings wasn't in a position to invest was unusual. I accept that Mrs B had been in her role for 13 years which would suggest it was stable and was of a relatively young age.

But the only savings she had – with the exception of her Mother's inheritance – was £103 which suggests to me that she didn't have the financial capacity to save. She had other cash of £10,792 in her current account, £5,000 of which was invested, and which left her with £5,792 for other contingencies. And those contingencies included a liability of £5,664 which would have left Mrs B with little else if she had to pay that off.

And the £5,000 invested was exposed to a medium risk in stock markets with the implicit risk of capital losses. I think by investing the £5,000 – into investments which were exposed to that level of risk – added a layer of risk to Mrs B's financial circumstances which I don't think was necessary to have been taken for the potential for capital growth.

In her complaint letter to Lloyds, Mrs B had said she was aware that she could lose money which it said suggested she was willing to take some risk. It might have been the case that Mrs B was happy to take some risk with her capital. But I can't see that during the advice process her full financial circumstances were taken into account or that she was made aware that she could take a more cautious approach and not expose her funds to a risk that might have meant a loss was incurred. And the only other money she had might have been needed to repay her liability if her circumstances had changed.

In response to our initial assessment Lloyds has said that Mrs B had accepted the UK Growth Fund may have been suitable for her. But that assessment hadn't taken into account that Mrs B would only have been left with just over £5,000 rather than over £10,000 after the investment, the loan liability of just over £5,000, or the full extent of Mrs B's outgoings. So, I think taking those points into account, it changed the background to Mrs B's circumstances and that impacted on the outcome to her complaint.

I remain of the opinion that Mrs B could have earned a reasonable rate of return without taking the risks that she did. This money was important to her and bearing in mind her overall financial circumstances I think the risk she was exposed to was too high. So, in the particular and individual circumstances of this complaint, I uphold it.

Lloyds has referred to other cases that have been brought to the Financial Ombudsman and which haven't been upheld. Every case that is brought to this service is considered on its own merits and in the particular circumstances of that individual complaint. Any particular outcome reached by the Financial Ombudsman on a complaint doesn't set a precedent for the outcomes of other complaints.

**Putting things right**

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

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

**What should Lloyds do?**

To compensate Mrs B fairly, Lloyds must:

- Compare the performance of Mrs B'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.

| Portfolio name | Status | Benchmark | From ("start date") | To ("end date") | Additional interest |
|---|---|---|---|---|---|
| Scottish Widows UK Growth Fund and Worldwide Growth Fund | No longer in force | Average rate from fixed rate bonds | Date of investment | Dates ceased to be held | 8% simple per year on any loss from the end dates to the date of settlement |

***Actual value***

This means the actual amount paid from the investment at the end dates.

***Fair value***

This is what the investment would have been worth at the end dates 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 withdrawals from the Scottish Widows UK Growth Fund and Worldwide Growth Fund 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.

**Why is this remedy suitable?**

I have chosen this method of compensation because:

- Mrs B wanted to achieve a reasonable return without risking any of her capital.

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

For the reasons given, I uphold Mrs B's complaint and Lloyds Bank PLC should pay redress using the method outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 17 February 2023.

Catherine Langley
**Ombudsman**