DRN-4446661

The complaint

The estate of Mrs V represented by Mr V, has complained about Lloyds Bank Plc. Mr V said it gave unsuitable advice when it recommended an investment to his late mother. He thinks the estate has suffered investment losses because of the unsuitable advice given and would like the estate to be compensated for this.

Mr V on behalf of the estate of Mrs V has been represented by a claims management company throughout the complaint.

What happened

Mrs V took out an investment on Lloyds' advice in May 2010. She invested £60,000 in a protected capital solutions fund. Mrs V passed away around a year later and the investment was encashed. The estate made a loss on the investment. This is because Mrs V hadn't held the investment for long enough for the capital to be protected.

Mr V on behalf of the estate said Mrs V was given unsuitable advice from Lloyds. Mr V's representatives said his mother did not want her funds exposed to risk and the adviser did not follow her instructions. The fund invested in was not free from risk and was unsuitable for someone who did not want to take any risk. They also said Mrs V was suffering from significant health issues at the time she received advice from Lloyds. It doesn't think Lloyds should have been advising Mrs V to take out medium to long term investments, when there was uncertainty with her health issues.

Lloyds said in response that the estate of Mrs V's complaint was not one that it was going to look at, as the complaint happened too long ago. Mr V was not happy with Lloyds' response and referred his complaint to our service.

I issued a provisional decision on this complaint in October 2023. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

"I've looked at the complaint afresh and I'm currently considering upholding the estate of Mrs V's complaint.

I've had the benefit of seeing some of the paperwork completed by the parties in the meeting. This includes information recorded by the advisor in the 'financial report' (the 'fact find'). I think it is reasonable for me to rely on the information in this report and other sales documentation such as the key features document, to give me an idea as to what was discussed in the meeting. The fact find also gives me some idea as to Mrs V's risk approach was at the time along with her financial and personal circumstances.

The following information is recorded in the fact find:

- Mrs V was 83 years old and retired. She was accompanied in the meeting by her son Mr V. Lloyds asked for Mrs V to be accompanied with a representative due to her age at that time, so that they could observe what was being discussed.

- There were no significant household or other liabilities recorded down. The advisor recorded that Mrs V lived comfortably within her means and had accumulated significant savings. It is also recorded in the fact find that Mrs V did not wish to spend most of her savings over the short term.
- Mrs V had access to savings of more than £71,400 in cash-based funds or deposit accounts. Mrs V also had a bond that was maturing within a months' time that held a value of at least £75,600.
- It is recorded in the fact find that Mrs V wanted to keep cash reserves of £11,419 as emergency funds.

There is no expenditure information recorded but as I have mentioned, Lloyds recorded down that Mrs V lived comfortably within her means, and she had built up significant savings with a surplus each month. These surplus funds had been used by Mrs V up to the date of this meeting, for cash savings and investments.

Looked at overall, when I consider on balance, Mrs V was comfortably living within her means and had enough each month to add to her significant amount of savings, I think she had financial capacity at the time to absorb any investment losses. I am satisfied Mrs V was in a strong enough financial situation to be able to invest.

But Mr V through his representatives has told our service that Mrs V was suffering from significant health issues leading up to and during the meetings with Lloyds. Mr V said Mrs V had been diagnosed with cancer in 2008 and then had suffered a stroke in 2009, shortly after this she then received a diagnosis of dementia. So, when Mrs V met with the advisor from Lloyds, based on what Mr V has said, there would have been some significant uncertainty around her health.

I have read through the fact find document and can't see that the advisor from Lloyds asked Mrs V about her health or recorded anything down about it. On balance, based on what I've looked through, it doesn't look like the advisor discussed Mrs V's health issues with her. If it had asked her about her health issues, I don't think it would have recommended investments that were designed to be held for the medium to long term. Not whilst there was so much uncertainty around Mrs V's health.

I think if Lloyds had discussed Mrs V's health issues with her, it would have advised her to keep her savings and not commit to anything long term. So, it stands, that I am currently minded to conclude Lloyds' advice was unsuitable.

In line with the ombudsman approach to putting things right, where a complaint is upheld, I consider it fair and reasonable for Lloyds to pay compensation to reflect the financial consequences of its unsuitable investment recommendation in 2010*."*

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision. Lloyds replied on 6 November 2023 and said it agrees that if its advisor had been aware of Mrs V's health issues then its advice would have been different. It accepts my findings and proposed redress. Mr V's representatives responded on 9 November 2023 and said my decision was acceptable.

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.

Neither party has anything further to add that I feel I need to comment on or that will change the outcome of this complaint. So, because of this, I don't see any reason to depart from my findings within my provisional decision. So, I uphold the estate of Mrs V's complaint and Lloyds now needs to put things right.

Putting things right

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

I take the view Mrs V would not have invested her money but for Lloyds' recommendation and would have kept it in a savings account. It's not possible to say precisely what would have been done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs V's circumstances when she invested.

To compensate the estate of Mrs V fairly, Lloyds must:

- Compare the performance of Mrs V'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 that 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
Lloyds protected capital solutions fund	Unknown	Average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year of any loss from the end date to the date of settlement*

*Income tax may be payable on any interest awarded. HM Revenue and Customs requires Lloyds to take off tax from the interest part of that award. Lloyds must give the estate of Mrs V a certificate showing how much tax is taken off, if Mr V asks for one.

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. Any additional sum that Mrs V paid into the investment should be added to the fair value calculation at the part it was actually paid in.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs V was assessed as having a cautious attitude to investment risk. But, had the adviser discussed her health, I think it's more likely than not that Mrs V would have put her existing savings in a savings account, where she would have had ready access to her money without risking the capital.

- The average rate for the fixed rate bonds would be a fair measure given Mrs V's circumstances and objectives. It does not mean that she would have invested only in a fixed rate bond. It is the sort of investment return they could have obtained with little risk to her capital.

My final decision

My final decision is that I uphold the estate of Mrs V's complaint about Lloyds Bank Plc. I direct Lloyds Bank Plc to put things right as I have described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs V to accept or reject my decision before 7 December 2023.

Mark Richardson
Ombudsman