

The complaint

Mr and Mrs M's representative complains that Lloyds Bank PLC ('Lloyds') sold them two investment bonds that were unsuitable for them.

Mr and Mrs M would now like Lloyds to recompense them for their losses.

What happened

In April 1995, Mr and Mrs M took out a five year guaranteed investment bond with Scottish Widows. As the plan approached maturity in February 2000, Mr and Mrs M completed an application form to roll-over the monies they held in that bond into a new with-profits investment bond, also with Scottish Widows. The new with-profits bond commenced in April 2000 and at the time, Mr and Mrs M invested £7,200, which represented the maturity proceeds from the previous plan. The with-profits bond was subsequently surrendered in July 2005 and Mr and Mrs M received a total of £7,050.

In October 2018, Mr and Mrs M spoke to a claims management company about a separate issue and during those discussions, Mr and Mrs M explained that they had previously held both a guaranteed and a with-profits investment bond through Lloyds. After considering their circumstances, the claims management company made Mr and Mrs M aware that the investments weren't suitable for them and raised a complaint with Lloyds on their behalf in April 2023.

In summary, Mr and Mrs M's representative said that the with profits investment wasn't suitable because at the time of inception, Mrs M was approaching statutory retirement age (which was 60 at that time) and would likely need to find alternate accommodation because she was living in employer provided housing and as such, it wasn't appropriate for Lloyds to have marketed such a product to her at that point. They also explained that because the with-profit fund only provided a guarantee on the 10th and subsequent 10-year anniversaries, that made it less suitable than the earlier guaranteed bond that Mr and Mrs M's monies had previously been invested in. They went on to say that Mrs M's circumstances also suggest the earlier guaranteed bond wasn't suitable.

After reviewing Mr and Mrs M's complaint, Lloyds concluded that they were satisfied they'd done nothing wrong. They also said, in summary, that the investments that Mr and Mrs M had taken out were done so without any financial advice from them and at no point did Lloyds make a personalised recommendation to invest. Lloyds also went on to explain that because of the time that had elapsed since the bonds were taken out, they didn't hold any paperwork relating to the transactions.

Mr and Mrs M were unhappy with Lloyds's response, so they referred their complaint to this Service. In summary, they repeated the same concerns, principally that the bonds weren't suitable for them.

The complaint was then considered by one of our Investigators. He felt that Lloyds had been presented with firm arguments, albeit with minimal evidence, that the investments were unsuitable for Mr and Mrs M. But those investment were taken on a direct offer basis. He went on to say that when a consumer has been presented with information and then reviews that information, but then makes their own consideration and assessment of suitability, it's reasonable to state that the decision making was the consumers. Therefore, the Investigator didn't feel that Mr and Mrs M had been treated unfairly.

Mr and Mrs M, however, disagreed with our Investigator's findings. In summary, they said that the with-profit application form was pre-filled in for them when their original bond was coming up for maturity and, from what they'd seen, they were provided with very little information about the new bond. Mr and Mrs M went on to say that the paperwork they received contained very little in the way of warnings about what would happen if they didn't hold the bond until its tenth anniversary.

Our Investigator was not persuaded to change his view as he didn't believe that Mr and Mrs M had presented any new arguments that he'd not already considered or responded to. Unhappy with that outcome, Mr and Mrs M then asked the Investigator to pass the case to an Ombudsman to review that outcome, so it has been passed to me to decide.

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 have summarised this complaint in less detail than Mr and Mrs M have done, and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it – I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this, and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether Lloyds sold Mr and Mrs M two investment bonds that weren't suitable for them.

My role is to consider the evidence presented by Mr and Mrs M and Lloyds in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr and Mrs M's complaint – I'll explain why below.

Before I do, I should explain that ordinarily, given the time that's elapsed since the with profits bond was encashed in 2005 and the fact that it appears Mr and Mrs M had awareness of the issue for at least four and half years before complaining to Lloyds, I would need to consider whether this service has the jurisdiction to hear their complaint. That's because the regulator, the Financial Conduct Authority, sets very specific time limits on the window within which consumers must raise their complaint with both the business and this service. However, Lloyds have stated that they don't wish to time bar the complaint and are happy for us to consider the merits of the case.

Lloyds have explained that because of the passage of time that's elapsed since both transactions, the records that they hold are very limited. However, I don't find this surprising as businesses aren't required to hold paperwork indefinitely, so I don't find that any inferences can be drawn from that. However, despite the first investment commencing nearly 30 years ago, Lloyds has been able to confirm that both investments were set up without the consumer having received any financial advice from their staff members. Lloyds went on to say that the decision on whether the product was suitable or otherwise rested purely with the consumer and they had no responsibility to explain the features of the investments to them. Taking into account what Lloyds has set out, I've reviewed all of the information I do have and Mr and Mrs M's testimony to consider whether what it has said is most likely what happened. And, from what I've looked at, I've seen nothing to persuade me that Lloyds gave Mr and Mrs M any advice about whether they should invest in the bonds or not.

As we have no fact-find documentation from the time, the limited information we do know has been provided by Mr and Mrs M's representative, who explained that in 2000, Mrs M was about to reach state retirement age (of 60) and would likely have to move out of the accommodation that she was provided with by her employer. Therefore, they say, Lloyds shouldn't have marketed the with-profits bond to her.

However, I don't think it's as simple as that because when designing their mailing, it is common practice for businesses, such as Lloyds, to send marketing mailings to consumers who have previously held similar investments. Because of the limited information I do have, and what I know of direct mailings and how this investment came about, I think it's more likely than not the case here. I'll expand further.

As Lloyds hadn't previously collected details of Mr and Mrs M's circumstances in 1995 – when they took their previous investment – and no advice was provided by Lloyds either then or in 2000, Lloyds wouldn't have known what Mrs M's financial plans were at that time; albeit, Mrs M would. But, in any event, it seems that as Mrs M retained the original guaranteed investment bond for the full term and then held on to the with-profits policy for the next five years thereafter, she didn't appear to have an immediate need for those funds despite the fact that she was about to retire. And, had she needed those monies for her retirement in 2000, I think it's more likely than not that she wouldn't have decided to commit to an investment with at least a ten-year investment horizon, which I'm satisfied that Mrs M understood was required.

I say that because in their letter of complaint, Mr and Mrs M's representative stated: "*Our client was aware that the products she held only provided limited guarantees if they were held to term*". They also went on to state: "*After withdrawing from the with profits bond in 2005, she was aware of the reasons for the loss*". So, it seems to me that Mr and Mrs M understood the main features of the with-profits product that Mrs M had entered into, which was that her original investment was only guaranteed on the 10th anniversary and that should she take her monies out at any other point, she could get back less than she invested.

Despite Lloyds explaining that they didn't have any records from the two interactions, Mr and Mrs M's representative did share a copy of the with-profit application form that was completed in 2000. That confirmed that Mr and Mrs M understood that the investment wasn't guaranteed. In addition, the post-sale illustration that was also provided to Mr and Mrs M clearly reflects the single point in time that the guarantee applied (which was 3 April 2010).

Having looked closely at the limited information that's available, I'm not persuaded that there is evidence to suggest that the marketing literature provided to Mr and Mrs M was

inappropriately sent to them. And, whilst Mr and Mrs M's representative has stated that the application form didn't cover in any detail the risks involved with the plan, I think it's more likely than not that at the point the guaranteed investment bond matured, Lloyds would have sent supporting information about the maturing bond, explaining what Mr and Mrs M's options were, rather than just an application form for the with-profits bond.

Mr and Mrs M's representative hasn't set out any arguments why the guaranteed investment bond (taken out in 1995) was unsuitable for them. However, as with the with-profit bond, it was Mr and Mrs M who decided that both investments were suitable for them rather than an adviser at Lloyds. So, at no point did Lloyds assess Mr and Mrs M's circumstances and direct them to take a particular course of action; the decision to invest on both occasions was theirs based on information that Lloyds had provided.

So, as I've not seen anything to suggest that Lloyds treated Mr and Mrs M unfairly, I'm not upholding the complaint.

My final decision

I'm not upholding the complaint and as such, I won't be instructing Lloyds Bank PLC to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 26 March 2024.

Simon Fox
Ombudsman