

The complaint

Mrs H complains Bank of Scotland plc trading as Halifax ('Halifax') gave her unsuitable advice when making an investment recommendation to her.

What happened

Mrs H first met Halifax in November 2008 following an invite to discuss her financial needs. In that meeting Halifax recorded information about her and initially recommended she invest £15,000 in its Guaranteed Investment Plan ('GIP'). Mrs H afterwards decided to opt for a lower amount of £10,000, which Halifax also advised on and recommended as being suitable for her.

Recently in 2023 following what she felt was poor returns for an investment she held for 14 years, Mrs H thought that this investment may have been mis-sold to her. She complained to Halifax saying:

- Her investment returned £279 over 14 years, which is far below what she says she would've received from Cash ISAs
- The adviser convinced her the GIP would outperform a Cash ISA.
- It wasn't disclosed to her the adviser would receive commission.
- The cooling off period related to the advice, not the actual investment which took place several months afterwards.
- She felt pressured where the adviser told her the investment opportunity wouldn't be available for long.
- The information recorded about the mortgage and her employment status was recorded incorrectly.
- Too much of her money was invested in the GIP.
- Her disposable income was too low to effectively replace this money if it fell in value.
- The advice was based in incorrect information the adviser recorded about her.

Halifax considered Mrs H's complaint and upheld it in part. While it felt the advice it gave was suitable, it said it should've more clearly explained changes which were made to the GIP in June 2021. To compensate her for this, it sent her a payment of £296.80.

Mrs H and Halifax engaged further about the complaint, but it didn't change the offer it made. As Mrs H remained of the opinion the advice was unsuitable, she referred her complaint to our service.

One of our Investigators considered Mrs H's complaint but didn't uphold it. He thought the advice was suitable and that the offer made for the changes in 2021 were fair.

Mrs H didn't agree and provided a detailed response to our Investigator. In summary she said:

- Halifax hadn't provided all the documentation relating to the advice.
- We hadn't properly considered her recollections of what was said to her during the

advice.

- Mrs H was told the growth illustrations were a realistic expectation and led to believe that these were effectively savings rates.
- She wasn't made aware of the difference between different asset classes.
- She had no interest in stock market based investments.
- There was too much risk her investment wouldn't grow.
- The affordability of the recommendation wasn't fairly assessed.
- Warnings, from what looked like a quality review, recorded on the fact-find hadn't been addressed.

Our Investigator considered those further submissions but remained of the opinion the complaint shouldn't be upheld.

As an agreement wasn't reached, the complaint was 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.

When Halifax advised Mrs H, it needed to ensure the investment recommendation it was making to her was suitable. In doing so, COBS 9.2 required that Halifax obtained sufficient information about Mrs H's investment knowledge and experience, her financial situation and objectives, including risk. And with that information recommend a course of investing which would be suitable for her. It's important to mention here Halifax wasn't required to recommend the *most* suitable course of action, only that what was recommended was suitable itself against the above requirements.

Mrs H met Halifax three times over the course of this advice from 26 November 2008 to 17 March 2009. During those meetings it completed and updated a 'fact-find' with her. This document records the questions asked and the answers given during those meetings. The key information recorded during those discussions were:

- She was 60, retired, married and in good health,
- Was looking to invest a lump sum from her pension arrangements to achieve greater returns over the medium to long term,
- Wanted to do this by growing her capital in a way that could provide a full or limited protection to falls in value, as well as provide a guaranteed return of capital should she pass during the investment.
- She received income from a pension and after expenses and contingencies had around £66 a month in disposable income.
- She held £26,410 in cash savings and held no other investments.
- She was an inexperienced investor.

Halifax also completed a risk assessment with Mrs H to establish the level of risk she was willing to take to meet her investment objectives. This took place through eight questions assessing Mrs H's opinion and reaction to various questions about risk. The answers given in Halifax's opinion meant she was someone with a 'cautious/medium' attitude to risk. When thinking about risk, it's important not to concentrate on the label given but how the firm describes it. At the time Halifax described this category as:

"This means that you would be likely to accept some risk with your longer term investments for growth or income if this would give you the potential for higher returns. You would probably feel comfortable with an investment that includes a

combination of stock market linked investments and fixed interest securities, to reduce the potential amount and frequency by which the value of the investment may go up and down. You understand and accept that by reducing the potential risks you also reduce the potential gains and accept on final encashment you could get back less than you have invested."

In my opinion the above fairly reflects the sort of investor Mrs H was given the way she answered the risk questions aligned with that description. From all the other information about her at the time, I've not seen anything within that suggested Mrs H was uncomfortable taking this level of risk in order to meet her objectives of growth above savings rates.

Mrs H has objected to the accuracy of the information in the fact-find, citing the mortgage information and her employment status. When weighing up differences in recollections like this I need to decide on the balance of probability what is most likely. In doing so I've considered that the fact-find is evidence from the time of the advice itself, the suitability sent afterwards mirrors its contents and I've not seen evidence Mrs H raised such concerns in response to the suitability letter. It follows then on balance while I've considered Mrs H's recollections about what she was told during the advice, I'm persuaded the fact-find as provided is a fair reflection of what was discussed and recorded during the advice.

I've also considered the 'amber' warnings on the fact-find, which appear to be a result of Halifax's internal checks following the advice. These relate to other needs such protection, not using capital to pay debt, a mortgage running into retirement, risk profile and affordability. It's unclear what, if anything, Halifax did with those, but I have considered the impact of those matters within the considerations I've made in deciding whether the advice was suitable, which I'll explain below.

I'm satisfied from considering the fact-find that Halifax obtained sufficient information from Mrs H for it to be able to make a suitable recommendation as the rules require.

In making a suitable recommendation, Halifax needs to ensure the product it's recommending matches the objectives, needs and risk tolerance and capacity. There may be many options that could be recommended and at the time it's not possible to know which one will work out the best.

Halifax recommended a £10,000 investment into the GIP, revised down from £15,000 when Mrs H's pension entitlements were lower than expected. Her investment started in June 2009 which appears to have been the next available tranche. Halifax has provided the product literature from November 2008, the version during the period Halifax advised her. This document describes the GIP in the following way:

- An investment plan which also provides life cover.
- A guaranteed return amount, a fixed sum after year five, or at least 80% of the highest value the fund reaches while invested in it.
- After a short 'waiting' period in which the money would be invested in 'money market' assets, it would invest across a range of shares and bonds, which would mostly be UK based.
- Generally this proportion would contain 30% to 60% shares, however in times of difficult markets it can hold mostly fixed interest assets – marked as **'Important'**.

I've considered all the available information about Mrs H and the GIP she was recommended to invest in. And in my opinion it was a suitable recommendation for Halifax to make.

I say this because it met her objectives given it had the potential for capital growth, provided life cover and offered capital protection as described above. The way it was invested was in line with her attitude to risk and I think this was a risk she could afford to take. Her disposable monthly income was £66 and so it would take time to replace this money if lost. But I've also considered that the amount she was investing was around 37% of her available cash and the capital protections offered provided significant downside protection. She would after investing still have most of her money in cash deposits, which £3,000 was marked for emergencies, with some invested to aim for higher growth. Together those provide the reasonable potential to meet her objectives and kept her risk exposure in line with her needs.

It's clear Mrs H had no prior investment experience and was only looking at investment opportunities to grow her pension lump sum overtime – which is a common recommendation given the impact inflation has on cash savings in reducing its future value. Her lack of experience wouldn't preclude her from investing but I would expect Halifax to have considered that when making its recommendation, and to have advised a product suitable for a first time investor.

The August 2008 product literature explains the GIP will generally invest in a variable proportion of shares and fixed interest assets, of which 30% to 60% would 'generally' be held in shares. Emphasis is given however that in times of very poor market performance there was a mechanism to replace the shares with fixed interest assets – which would limit the growth potential in that period but allow the capital protection to be provided. The factsheet from 30 June 2009 shows the tranche Mrs H invested in had an initial asset allocation of 10.5% in shares and 89.5% in fixed interest assets – which in later years struck a more even balance.

Fixed interest assets are typically a lower risk way of investing and shares generally increase the risk as the value over time can be more volatile. I'm satisfied the GIP as described and invested would be suitable for Mrs H as a first time investor. It provided her with an initial exposure to the potential growth of investing in the markets in a way which could mitigate the risk of loss through the capital protections offered. In my view then the GIP would be a suitable product to recommend Mrs H. I'm also satisfied how it worked and what the returns would be based on was set out to her in a clear, fair and not misleading manner.

Mrs H has highlighted the initial share proportion she was invested in was lower than the 30% figure Halifax said 'generally' would be invested against. But given the difficult markets following the financial crisis, this proportion in my mind wouldn't have reasonably led Halifax to consider the GIP to be an unsuitable product because of that. It set out clearly such a mechanism existed and that factor in itself wouldn't in my opinion lead to the GIP to not be a suitable product for her.

Mrs H says she had no interest in investing in shares so Halifax shouldn't have advised her to. But given the fact-find shows her concerns about low returns from savings and her overall aims, I think there was willingness to gain exposure to the markets to try to exceed savings rates, which would've been an important consideration given her objectives were to grow the money received from her pension. And the GIP would, as I've explained, be a suitable way to gain that first time exposure which would be diversified across many assets.

Turning now to the points around Mrs H's employment status, the mortgage running into retirement and not using the invested money to repay debt. This advice was given using Mrs H's circumstances only and so didn't include the wider household, which I'm satisfied from at least the fact-find and suitability letter Halifax had made clear.

I'm not persuaded her employment status, if different to the fact-find, would've impacted the suitability of the advice. Her objectives were to increase the value of her pension lump sum and she was assessed as being retired. I think the product Halifax advised would be suitable in both circumstances as it would have no worse impact on her aims and objectives if she was in work over being retired. As far as the mortgage and other debts, the suitability letter evidences this was discussed and Mrs H was satisfied there were arrangements in place to pay the mortgage, which was said to have only one year left to run. There were also no other debts recorded against Mrs H. In my view, if there were inaccuracies in the fact-find around those factors, I'm satisfied these aspects were discussed and considered to not require further consideration. The statements read individual specific, and I'm persuaded on balance matters relating to the mortgage were in hand and so didn't require further consideration in Halifax's advice.

It follows then I'm satisfied the GIP was a suitable investment for Halifax to recommend Mrs H where it met her objectives, financial circumstances and her knowledge and experience of investing.

Understandably given the small gain over the 14 years Mrs H was invested, she feels she would've been better advised to invest in fixed rate savings accounts in that time. And while in hindsight perhaps that may have been more beneficial, I have to reach my decision without the benefit of hindsight.

Mrs H has said the adviser told her the illustrative growth rates were a realistic expectation and she understood them to work like savings rates. These illustrative rates are standard and set by the regulator. Rules in place require firms to illustrate returns against a low, medium and high level that the regulator sets. Halifax then were obligated to show the levels as set to the firm by the regulator. I appreciate Mrs H may have received that as the adviser explaining they were realistic, and given it was mandated by the regulator I don't think it would be unfair for Halifax to have referred to the projections. These rates are illustrative and take a long term view, and the GIP made no guarantees about the levels of the return outside of its capital protection features.

Mrs H has said that Halifax should've advised her to invest in a Cash ISA, with the implication it was unreasonable Halifax discounted that option in its advice. I don't agree it was unfair or unsuitable for Halifax to have done so. Interest rates at the time were very low in response to the financial crisis with the Bank of England base rate, which savings interest rates are typically linked to, had been reduced to 0.5%. While I appreciate prior to the financial crisis the base rate was much higher at 5.75%, at the time Mrs H was looking to invest the savings rates on offer likely wouldn't have met her objectives. I don't think it's unreasonable then Halifax didn't recommend fixed term cash savings products. Additionally, those savings accounts wouldn't have provided the life cover that the GIP provided, which was recorded as something Mrs H was interested in when she met with Halifax.

I've also considered the points Mrs H has made around feeling pressured, by comments made to her that there was as limited time to invest. This investment was tranche based and so what Mrs H recollects the adviser said around that wouldn't have been incorrect if that had been said to her. It could've been uncertain what tranches might be available afterwards or when those might take place, as the time between Mrs H's advice and tranche starting demonstrates. I can see why Mrs H may have felt the way she did, but I'm satisfied where the advice took place across three meetings over around four to five months there was sufficient time to think about her decision. That created a barrier through both time and her not having to attend future meetings if she didn't want to. It follows then I've not seen enough evidence to fairly say she was pressured into making this investment.

Lastly Mrs H was concerned commission payments the adviser received led to a conflict of interest in the advice he provided her. I've considered this point and don't think the commission arrangements Mrs H describes would be unfair. The GIP's illustration includes the following:

"For arranging this plan, [original provider] will provide Bank of Scotland plc with services and pay it an amount based on the size of your payment. This will be worth £435.00.

[Original provider] pays these costs out of the charges of the plan".

I'm satisfied what Halifax decides to do with that payment is at its discretion. Based on what Mrs H has said it would appear the adviser was paid around £100 of that for providing the advice. In my opinion that wouldn't give rise to a conflict of interest. I'm satisfied the adviser gave suitable advice and provided Mrs H with enough information about the GIP and opportunity to not go ahead with the investment. And so, I'm satisfied it was sufficiently clear there was commission involved and any commission the adviser may have received hasn't caused Halifax to act unfairly towards Mrs H.

When Halifax considered Mrs H's complaint it said it should've communicated changes it made to her investment, taken in response to market volatility. In response to that Halifax significantly reduced the GIP's exposure to equity investments which it said reduced the growth prospects significantly. While that action itself isn't unfair where the product literature set out such a possibility, I agree Halifax should've communicated it better.

Halifax offer was to compare the value of the GIP when it made this change against the growth that would be achieved against the Bank of England average rate for fixed rate bonds – with maturities of 12 to 17 months. Given this benchmark is what we would direct to be used for someone with a lower attitude to risk and I think Halifax has fairly compensated Mrs H.

I understand and appreciate Mrs H's strength of feeling about what happened, she took out an investment for many years and has been disappointed with the level of growth received. But I have to be fair to both parties when deciding this complaint.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 20 March 2025.

Ken Roberts
Ombudsman