Financial Ombudsman Service

**complaint**

Mr and Mrs W complain Bank of Scotland plc (BoS) mis-sold them a Guaranteed Investment Plan (GIP). They're also unhappy they received a final response to their complaint so quickly as they had no opportunity for input.

**background**

In 2009 Mr and Mrs W were looking to invest Mr W's pension pay-out and agreed to the advisor's recommendation to invest £50,000 in a GIP and to fully utilise their joint £14,400 ISA allowance in risk-based products.

In 2015 Mr and Mrs W complained to BoS about the GIP recommendation.

It rejected their complaint saying the plan guaranteed a return of their capital, if retained for five years, plus 80% of the highest value achieved at any point during the term – and it felt this was suitable for their objectives.

It explained the unit price of the plan reflected investment returns on a mix of assets but they did not benefit from the full growth of these, given the trade-off with the underlying guarantees.

An adjudicator at this service felt Mr and Mrs W's complaint should be upheld.

He didn't believe Mr and Mrs W should have been recorded as cautious/medium risk investors particularly as Mr W said he had a 'very cautious attitude to risk when making financial decisions'.

He said Mr and Mrs W were first time investors with no opportunity to make up any investment loss as they were both retired. Their primary concern was to protect their capital while achieving definite, guaranteed gains.

Overall, he felt if it had been made clear they might only get back their capital, Mr and Mrs W would not have invested in the GIP. He thought an account offering a fixed rate of return would have better matched Mr and Mrs W's objectives.

As such, he proposed BoS should pay compensation which assumed Mr and Mrs W wanted a reasonable rate of return without risking any of their capital. An appropriate indicator would therefore be the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England.

BoS did not agree, and said:

- Mr and Mrs W had three face-to-face meetings with the advisor, and so had sufficient time to decide if this investment was right for them
- Mr and Mrs W's risk assessment doesn't indicate they were risk averse
- They took out investment-linked ISAs at the time, also suggesting they weren't risk averse
- This product is suitable for very cautious investors as it provides a capital guarantee

- Mr and Mrs W retained this plan beyond the five years, confirming affordability and sustainability was not an issue
- When they spoke to its complaints' handler it was clear their complaint was about performance and not suitability

As no agreement has been reached, this complaint has been passed to me for review.

**my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In this case I agree with the adjudicator and for the same reasons.

Firstly, it's not surprising Mr and Mrs W were disappointed by the returns on this investment but this is not, in general, something this service considers as a potential reason to uphold a complaint.

But they also say they became increasingly disturbed by the original advice to invest in this product, and it is the suitability of this advice which the adjudicator and I have considered.

I recognise Mr and Mrs W gave a mixture of replies to the risk-based questions but they had no significant investment experience including answering questions like these, so their responses need to be considered alongside their broader circumstances and objectives. In particular, I don't think it wasn't safe to classify Mrs W as a medium risk investor.

Both said they preferred small certain gains to higher but uncertain ones, and I think this indicates their underlying wish for their capital and a certain level of return to be guaranteed.

I note BoS's argument about their ISA investments, but I do not agree with the conclusion it draws.

Mr and Mrs W were recommended to invest a large percentage of their capital in the GIP along with the two investment ISAs. From what I've read, I don't believe Mr and Mrs W would have wanted to take a risk with more than very small amount of this sum.

So while the recommendation to put £7,200 each in investment ISAs may have been acceptable, this cannot be a justification for the advice to expose a further £50,000 of their savings to a risk-based investment.

Overall, I do not believe the advisor was justified in recommending they place £50,000 in this risk-based investment, and I don't believe this matched their financial objectives.

**fair compensation**

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

I take the view that Mr and Mrs W would have invested differently. It is not possible to say *precisely* what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs W's circumstances and objectives when they invested.

**what BoE should do?**

To compensate Mr and Mrs W fairly BoS should:

- Compare the performance of Mr and Mrs W'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.
- BoE should also pay interest as set out below.

- Provide the details of the calculation to Mr and Mrs W in a clear, simple format.

Income tax may be payable on any interest awarded.

***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, BoS should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

**why is this remedy suitable?**

I have chosen this method of compensation because:

- Mr and Mrs W wanted to achieve a reasonable return without risking any of their capital.

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

- The additional interest is for being deprived of the use of any compensation money since the end date.

**further information**

The information about the average rate can be found in the 'Statistics' section of the Bank of England website under 'Interest and Exchange Rates Data' / 'Quoted household interest rates' / 'Deposit rates' / 'Fixed rate bonds' / '1 Year'.

Some examples of how the calculation should be carried out are available on our website under ‘Publications’ / ‘Online Technical Resource’.

**my final decision**

For these reasons I uphold this complaint, and instruct Bank of Scotland plc to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs W to accept or reject my decision before 11 April 2016.

Tony Moss
**ombudsman**