complaint

Mr W complains that The Royal Bank of Scotland plc (RBS) gave him unsuitable investment advice.

As a result of this advice, Mr W says he has lost out financially.

background

I issued my provisional decision on this complaint on 21 March 2017, a copy of which is attached to this final decision. In my provisional decision I set out why I considered that Mr W's complaint should be upheld and how I considered the matter should be fairly settled. I invited both parties to let me have any further information or evidence, if they wished, before I finally determined this complaint.

RBS did not accept my provisional decision. It provided a detailed response and asked me to reconsider the view I reached in my provisional decision. In summary it said:

- Mr W was an experienced investor with substantial assets.
- In April 2008 (when Mr W invested in the fund he has complained about) it said: '*there were 2 options for the PIF - the PIF 3 UK Growth or the PIF 4 China Growth. Both these products met Mr W's objectives of capital protection with the potential for a greater return than a deposit based account. We believe it reasonable to assume that Mr W would have been given the option to take out either of these investments.*
- It felt it was clear that Mr W had expressed a preference to invest in the China Growth fund and that he had accepted he might only receive his capital back.
- If the information in the suitability letter didn't reflect Mr W's understanding of what was discussed it would have expected him to raise this at the time.
- It felt it had made the risks associated with the investment clear, including inflation risk. It said it felt '*it was evident from the letter of recommendation that there was a possibility of no return and therefore an inflation risk.*' It also said that given Mr W's assets and experience it felt he would have understood the risk of inflation.
- The £200,000 Mr W invested in the bond represented around 17% of his total wealth. It said it felt this was an acceptable level of exposure, given that his capital was protected and he had investments in other asset classes, which carried higher risk. It also noted that Mr W had retained a '*significant sum'* in cash based deposit accounts.
- Mr W said in his letter of complaint that he was looking for capital protection and would have invested in the Chinese market and other indices.
- In September 2008, it said Mr W invested in another 'Protected Investment Fund', linked to a commodities index. It said this investment provided a return of over £6,000. It noted that Mr W '…*has not expressed any concern about this investment, despite the fact that it carried the same risk of a nil return and was linked to a specific Index'*.
- In view of this it said it felt '…*the primary driver for Mr W's complaint about the earlier PIF is performance related.'*
- It said it felt the suitability letter *'…clearly shows that Mr W was attracted to the Chinese stock market. As the basket index performance data which appeared in the product brochure provided to Mr W at the time of advice confirmed, the market had grown substantially from 2003 to 2007. The expectation was that the PIF would provide a better return than a deposit based account over the term of the investment. Due to a change in market conditions in China which could not have*

been predicted at the time of the sale, regrettably the expectation was not met. We do not consider however, that this meant that the PIF was unsuitable or miss-sold, particularly as he failed to complain about the same product which did provide a return.'

- RBS also said that it noted I had proposed that it should pay Mr W £150 for the trouble and upset this matter had caused him. It said that it was not evident that this matter had caused Mr W any distress. It said that as the investment matured in 2014 and Mr W did not raise any concerns until late 2016, it did not feel he had suffered any upset.

- It also said *'…Mr W by his own admission confirmed that he would have invested at least half of the investment in the Chinese market. Given this statement, if you remain of the view that the complaint should be upheld the redress should reflect this i.e. based on 50% of his investment £100,000.'*

Mr W also responded, having had sight of RBS's response to my provisional decision.

He said RBS had referred to him as an 'experienced investor'. Mr W said he didn't agree that he was. He said that the portfolios he held with RBS are *'standard portfolios recommended by them and totally managed by them or their agents, not by me.'* He also said he was not experienced in financial or investment matters and virtually all his assets had come from the sale of his business, not from investing.

He also said that he disagreed with RBS's claim that he was '*attracted to the Chinese stock markets'*. Mr W said he felt the suitability letter *'…reflects more the enthusiasm of the RBS manager for me to invest a considerable amount of my savings into a single product linked to the Chinese stock markets, markets I knew nothing about …'*

Mr W also reiterated that he was not given the option to invest in the UK Growth structured product. He said he felt the suitability letter would have recorded that the adviser had discussed or recommended another fund, if this had been the case.

Mr W acknowledged that, when he first complained about the China Growth fund, he had said he would, most likely only have invested 50% of the amount he invested the China Growth Fund if a different product had been offered as well.

However, Mr W also said:
'…when I made this statement I was under the impression that there was only one other product available that met my requirement for a safer investment to protect my capital and diversify the risk. I now know differently…I think it would be unfair to limit any redress to 50% of the £200,000 investment as suggested by RBS, should my complaint be upheld.'

And,
'Finally, if RBS think this matter has not caused me any distress they are very much mistaken.'

As RBS did not accept my provisional decision I have reconsidered this complaint in light of the points it has raised.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I am not minded to depart from the view I set out in my provisional decision. I'll explain why.

Mr W's investment expertise

RBS says it feels Mr W was an experienced investor, who understood the risks involved in the structured product he has complained about. It says it feels it is clear, from the suitability letter that Mr W had a preference to invest in the China Growth fund and that he had accepted he might only receive his capital back. It also says Mr W should have queried the content of the suitability letter if he didn't think it properly reflected what he had discussed with the adviser.

I don't agree with RBS's position. This was an advised sale and the onus was on RBS to make sure that the product recommended was suitable for Mr W's personal and financial circumstances. If RBS was simply acting on Mr W's instruction to invest £200,000 of his money in the China Growth Fund this should have been clearly set out, in writing, to Mr W.

RBS has said that because Mr W held other investments he must have understood the inflation risk he was taking. I don't agree. There is nothing in the suitability letter that explains inflation risk and I remain of the view I set out in my provisional decision that the risks involved in this fund weren't explained to Mr W.

The product information he was given focussed on the large gains Mr W could make if the indices the fund was linked to grew by 30% or more. But it didn't explain the risk that inflation could erode the value of the capital he had invested if the indices had not increased at the end of the six year term. Nor was Mr W provided with anything explaining the volatility of the indices the fund was linked to.

Other investment options offered to Mr W

RBS has said that in April 2008 (when Mr W invested in the fund he has complained about) "*…there were 2 options for the PIF - the PIF 3 UK Growth or the PIF 4 China Growth. Both these products met Mr W's objectives of capital protection with the potential for a greater return than a deposit based account. We believe it reasonable to assume that Mr W would have been given the option to take out either of these investments."*

Mr W has repeatedly said that the adviser did not discuss other capital protected products offered by RBS, or other investment strategies that could also have met his objective to protect his capital.

RBS is required to keep adequate records. As RBS has not been able to show that other options were discussed with Mr W I can't safely concluded that he was made aware of other products that would have met his investment objectives.

As I set out in my provisional decision, the suitability letter does not refer to other capital protected funds RBS offered at that time. Nor does it appear that other ways of meeting Mr W's investment objective to protect his capital were considered.

Based on the information available, there is nothing to show that Mr W turned down other investment products in order to invest the full £200,000 in the China Growth Fund.

Mr W's preference for a product linked to the Chinese stock market

RBS has said that the suitability letter *'…clearly shows that Mr W was attracted to the Chinese stock market.*

I remain unpersuaded that Mr W had a clear preference for a product linked to the Chinese stock market. There was nothing in the suitability letter to explain why Mr W wanted to invest £200,000 of his savings in a product linked to the Chinese stock market.

I note that RBS hasn't explained why the adviser felt that '…*being able to link the performance of your investment to the Chinese market, as well as being able to provide capital protection if held for the full term was something your found particularly attractive."*

As RBS has still not been able to provide anything to explain why Mr W had apparently wanted to invest £200,000 of his savings in its China Growth Fund, I remain of the view that this investment was driven by its adviser, rather than Mr W's preference.

If the adviser felt that investing in the China Growth Fund was not suitable for Mr W this should have been clearly explained, in writing, to Mr W.

RBS has referred to another structured product Mr W took out in September 2008, linked to a commodities index. It says Mr W '…*has not expressed any concern about this investment, despite the fact that it carried the same risk of a nil return and was linked to a specific Index'*.

It said it felt the fact Mr W had not complained about this investment, as it had provided a return of around £6,000 on a £30,000 investment showed '…*the primary driver for Mr W's complaint about the earlier PIF is performance related.'*

I appreciate RBS's point, but even if Mr W felt the structured product he took out in September 2008 wasn't suitable it appears he does not feel he was financially disadvantaged by the advice to invest in it. It is Mr W's prerogative not to complain about an investment.

I don't find that the fact the poor performance on the China Growth Fund prompted Mr W to complain means that his complaint is not valid. It is not in dispute that the £200,000 Mr W invested in the China Growth Fund only achieved growth of around £500 at the end of the six year term.

When considering whether Mr W's complaint should be upheld I have looked at whether I felt the advice to invest £200,000 in the China Growth Fund was suitable for Mr W's personal and financial circumstances. As the unsuitable advice has caused Mr W to lose out financially I set out in my provisional decision how I thought this matter should be fairly settled. Had Mr W not made a loss on this investment (when compared to a suitable benchmark) it would not mean that the investment was suitable – only that he would not be due any redress, as he had not lost out as a result of the poor advice.

Redress calculation should reflect that Mr W would have invested £100,000 in China Growth fund

I have carefully considered RBS's comments on this point. It is not in dispute that when Mr W first complained he said:
'I was led to believe that the China Growth fund was the only fund offering protection of capital. If there had been other funds offering capital protection at that time or in the near future I would have split the investment made in accordance with my interest in investing in a wide range of assets to minimise risks.'

But this service doesn't determine complaints based on what a customer says they may, or may not have done. I have determined this complaint by assessing whether I think the advice Mr W received to invest in the China Growth fund was suitable for his personal and financial circumstances.

I remain of the view that the China Growth Fund was not suitable for Mr W. I am not satisfied that he understood how volatile the indices the fund was linked to were. And I am also not satisfied that Mr W understood the inflation risk he was taking with around 20% of his investment portfolio.

I don't agree that just because Mr W said he may have invested up to £100,000 in the China Growth fund, when he first complained, this means if he had been advised to invest £100,000 in the fund this would have been suitable advice.

I therefore don't agree that the redress due to Mr W should be based on 50% of the investment he made into the fund.

Award for the trouble and upset this matter has caused Mr W

RBS said it doesn't think that Mr W should receive a payment to compensate him for the trouble and upset this matter has caused him. It said it wasn't evident that this matter had caused Mr W any distress. It said the investment had matured in 2014 but Mr W did not raise any concerns until late 2016, so it did not feel he had suffered any distress.

I don't agree with RBS's view on this. I am satisfied from Mr W's submissions to this service that this matter has caused him some worry. I am not persuaded that the fact Mr W didn't complain sooner means he hasn't found this matter troubling. I think it merely reflects that Mr W wasn't aware he had grounds for complaint sooner. I remain of the view that RBS should pay Mr W some modest compensation for the upset this matter has caused him. I am satisfied that the £150 in my provisional decision is fair and reasonable in the circumstances of this complaint.

fair compensation

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

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

what should RBS do?

To compensate Mr W fairly, RBS must:

- Compare the performance of Mr 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.

  RBS should also pay interest as set out below.

- Pay to Mr W £150 for the trouble and upset this matter has caused him.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Protected Investment Fund 4 (China Growth)	matured	average rate from fixed rate bonds	date of investment	date of maturity	8% simple per year on any loss from the end date to the date of settlement

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, RBS 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. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if RBS totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have decided on this method of compensation because:

- Mr W wanted to achieve a reasonable return without risking any of his capital.

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

my final decision

I uphold the complaint. My decision is that The Royal Bank of Scotland plc should pay the amount calculated as set out above.

The Royal Bank of Scotland plc should provide details of its calculation to Mr W in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W either to accept or reject my decision before 30 June 2017.

Suzannah Stuart
ombudsman

Provisional decision

complaint

Mr W's complains that The Royal Bank of Scotland plc (RBS) gave him unsuitable advice. As a result of this advice Mr W says he has lost out financially.

background

In March 2008 Mr W met an RBS adviser to discuss investing some of his cash savings. Fact find information, recorded by RBS at the time, shows that Mr R was retired and did not need to use his savings to supplement his income.

The fact find also set out that Mr W had total wealth of over £1million. This was made up of existing holdings in an investment portfolio held with RBS and around £700,000 in deposit based savings.

The information recorded by RBS noted that Mr W wanted the potential for a better rate of return than was available on deposit for some of his money. The adviser also recorded that Mr W did not want to risk his capital.

RBS advised Mr W to invest £200,000.00 in a Protected Investment Fund. The fund recommended to Mr W was the Protected Investment Fund 4 (China Growth).

The fund guaranteed to return the original investment - at the end of the fixed term. Any return in addition to the return of capital was dependent on the performance of the index the fund was linked to – in this case the index was the 'China Growth' index.

RBS has explained that the China Growth index was an 'in house' index. This index was a composite index, made up of the Hang Seng China composite index, made up of the Hang Seng China Enterprises Index (HSCEI) and the Hang Seng Index (HSI). These indices are two of the main indices on the Chinese stock market. The China Growth index applied equal weighting to both these underlying indices.

The information provided to Mr W at the time he took out the investment explained that if the basket index was lower, or at the same level, at the end of the fixed term than it was at the beginning Mr W's initial investment would be returned to him – but he would not receive any return on his investment.

However, if the basket index was higher, his investment would be returned plus growth in line with the rise in the index. The information also set out that there was the potential for the fund to mature early if the index increased significantly.

It explained, in summary, if the basket index increased by 30% or more by the third anniversary, the bond would mature early paying a 30% return. If the basket index had increased by 40% or more by the fourth anniversary Mr W would receive a 40% return; and if the index increased 50% or more by the fifth anniversary Mr W would receive a 50% return.

However, if the bond did not achieve these benchmarks, Mr W would receive a return in line with the growth of the index over the full six year term. And if the basket index fell, Mr W's capital was protected provided he did not withdraw his money before the end of the fixed term.

Mr W's fund matured in 2014. The net gain on Mr W's £200,000 investment over the six year term of the fund was around £500.

In 2016 Mr W complained to RBS. He said he was led to believe the fund recommended to him was the only RBS fund offering capital protection. Mr W said he would have split his investment between funds, if he'd known there were other funds offering capital protection.

RBS did not uphold Mr W's complaint. It said, in summary, that it was satisfied the advice Mr W had received in 2008 to invest £200,000 in its China Growth Protected Investment fund was suitable for his personal and financial circumstances.

Mr W was not satisfied with RBS's response and brought his complaint to this service.

Our adjudicator did not recommend that Mr W's complaint should be upheld. She said she was satisfied that the fund was suitable for Mr W. She noted the fund offered a guaranteed return of capital. She said this met Mr W's objective to protect his money, while also offering the potential for greater returns than would have been available through cash deposit accounts at that time.

As this was the case, she said that although she appreciated Mr W was disappointed with the level of growth the fund had achieved, she felt the fund had met Mr W's stated objectives and was suitable for him.

Mr W says did not accept our adjudicator's view. He said:

In RBS's suitability letter it states, "Ideally when investing you should aim to spread your money across different investment types to avoid becoming over reliant on the fortunes of a particular investment". Yet I was advised to invest the total amount - two hundred thousand pounds - in an investment that relied solely on the overall performance of two Chinese stock market indices. The RBS advisor must have known, or ought to have known, that RBS had other funds available at that time that gave capital protection, met my objectives and better met with my attitude towards risk (in allowing me to spread the amount I had to invest) in accordance with the above RBS statement and their definition of my attitude towards investment risk contained in their correspondence.

In withholding this information from me I consider I was misled and therefore mis-sold this investment. As stated previously, following the meeting with the RBS advisor I was led to believe that this was the only investment that RBS had available at the time that gave me capital protection and met with my objectives and attitude towards risk, which from recent correspondence I now believe was not the case.

As Mr W did not accept the adjudicator's view his complaint has been passed to me to determine.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, my provisional view is that, subject to any further comments or evidence either party might provide, I am minded to uphold Mr W's complaint. I'll explain why.
In order to uphold Mr W's complaint I would need to be satisfied that the advice to invest £200,000 of his savings in the Protected Investment Fund (China Growth) was not suitable for his personal and financial circumstances. Having reviewed the information available I don't think the advice to invest in this fund was suitable.

In the suitability report dated March 2008 the adviser set out:
You are comfortable with an investment which may just give you your money back on maturity provided it gives you the potential for a higher return than one that offers a much higher chance of a positive return being received.

You are looking for some exposure to the potential performance of China related stock market indices together with some protection.

The adviser went on to say:
We discussed the Bank's recommendation that no more than 15% of your total overall financial assets be invested into this type of product. However, you were happy to exceed this figure as you feel that being able to link the performance of your investment to the Chinese market, as well as being able to provide capital protection if held for the full term was something your found particularly attractive.

It is not in dispute that Mr W did not want to risk his capital and wanted to have the potential to earn a higher return than was available on deposit based accounts.

Mr W has said that RBS should have told him about other capital protected products it offered. He says its failure to do so means he was mis-sold the fund, linked to the Chinese market that he invested in.

In particular, Mr W has said if he had been given the option he would have split his investment with half going into the China Growth Fund and half into a FTSE 100 tracker fund.

The suitability letter does not refer to other capital protected funds RBS offered at that time. Nor does it appear that other ways of meeting Mr W's investment objective to protect his capital were considered.

It is not clear to me why the adviser didn't discuss other products that might also have met Mr W's requirement for capital protection. Nor is it clear why the adviser felt Mr W was so keen to invest in a product linked to the Chinese stock market. There is nothing to explain why Mr W wanted to invest £200,000 of his savings in a product linked to the Chinese stock market. I note that Mr W was apparently willing to invest more than '*15% of your total overall financial assets be invested into this type of product'.*

The adviser didn't explain why Mr W felt '…*being able to link the performance of your investment to the Chinese market, as well as being able to provide capital protection if held for the full term was something your found particularly attractive.'*

As Mr W had apparently chosen to exceed RBS's investment guidelines by investing around 20% of his savings in this fund I think the adviser should have set out in more detail why Mr W wanted to do so.

Mr W says the adviser misled him by failing to discuss other funds with him. I am sympathetic to Mr W's position. There is nothing to show that the adviser discussed other capital protected products offered by RBS, or other investment strategies that might also have met Mr W's objective to protect his capital.

I note that Mr W has said he would have invested in a FTSE 100 tracker fund if he had been given the option. RBS has said it did not offer a capital protected FTSE 100 tracker. I accept it may not have offered such a fund when Mr W invested in its China fund. But the fact remains that there in nothing to show other funds were considered which would have allowed Mr W to diversify his investment and given him less exposure to the Chinese stock market.

I accept that RBS did not guarantee that a higher rate of return that Mr W could expect from a deposit account would be achieved. But I don't think it explained the risks involved in this fund to Mr W. The product information he was provided with focussed on the large gains Mr W could make if the indices the fund was linked to grew by 30% or more. But it didn't explain the risk that inflation could erode the value of the capital he had invested if the indices had not increased at the end of the six year term. Nor was Mr W provided with anything explaining the volatility of the indices the fund was linked to.

Having carefully considered this matter, my provisional decision is that I uphold this complaint. I am not persuaded that the downside risks of this investment were adequately explained to Mr W. Nor am I satisfied that he had any particular reason or wanting to tie up so much of his cash in a product linked to the Chinese stock market.

fair compensation

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

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