

## **complaint**

Mr and Mrs M complain Bank of Scotland plc misled them into investing £35,000 in a product which didn't protect their capital or necessarily result in any guaranteed return.

## **background**

In 2009 Mr and Mrs M were retired and spent most of their monthly income on daily living costs. They had £77,000 in savings and a BoS advisor recommended they invest just under half of this for a minimum five year period.

They told the advisor that they needed their capital guaranteed, and would want access to this money during the period in question.

He recommended a Guaranteed Investment Plan (GIP) which guaranteed the return of their capital at the end of five years, with any return based on 80% of the highest value the fund achieved at any point during the term. There was a cost to these guarantees.

In 2004 at the end of the initial five year term BoS told Mr and Mrs M their investment was now worth £39, 571. They assumed their capital had earned £4,571 interest and sought to withdraw this sum to pay for replacement windows.

They went in their local branch to do this but say staff were unable to help and couldn't them the correct number to call. They also say staff didn't understand the product but still encouraged them to keep their money invested for another five years.

They eventually made this request via a withdrawal form and were surprised to receive a cheque for the lower sum of £4,445.00. They assumed an admin fee accounted for this difference. In fact, this withdrawal had a led to 'chargeable event' and BoS had deducted tax from the sum.

In May 2016 they received a statement showing their investment was now worth just over £32,500. They were shocked to discover the value of their money had fallen, and assumed this was either a mistake or there'd been some hidden charges of which they were unaware.

Mr and Mrs M complained that the money guarantee hadn't been explained and that they'd been told their capital was guaranteed along with, in effect, a certain level of interest. They were also told they could simply ask for the interest to be paid at any time after five years.

Mrs M said she spent two to three hours trying to find out what had happened to their money, but didn't get a clear or satisfactory response.

BoS accepted this and paid Mr and Mrs M £100 for this poor service.

It did not accept the rest of their complaint, saying it was satisfied this product was a suitably cautious investment and that its features had been fully explained. They also said that it had sent Mr and Mrs M annual statements.

## adjudicator's view

An adjudicator at this service felt this complaint should be upheld.

She noted Mr and Mrs M had no previous investment experience, and didn't believe their circumstances warranted to taking any risk with their money. She also didn't feel their responses to various risk-based questions justified the conclusion that they were 'cautious/medium' risk investors.

She said their answers placed a heavy emphasis on ensuring their money was safe even if it meant lower returns.

She said the advisor's report had only been completed a day before Mr and Mrs M agreed to the investment, and she didn't think this had given them sufficient time to consider read all the paperwork and check any understanding of the terms and conditions.

Based on Mr and Mrs M's comments about withdrawing "the interest" after five years, she didn't think they had understood the nature of the GIP. In fact, she said, any withdrawal came from the capital.

Overall, she felt that if Mr and Mrs M had been fully informed about the GIP and how it worked, they would instead have chosen to put their money in some form of fixed-rate deposit account. This would have allowed them take periodic withdrawals, knowing how much interest they were earning and planning any withdrawals accordingly.

She also thought BoS should pay them £300 in compensation for the time they'd spent trying to find out how to withdraw money from their investment.

BoS did not agree, and said:

- The Key Features document fully explained the terms and conditions
- The advisor would've discussed his Suitability Report with them, and they signed this document
- It was Mr and Mrs M's decision to proceed so quickly, and they had a 30 day cooling-off period during which they could've cancelled the investment
- The investment is still in place, indicating it has been affordable and sustainable
- Its evidence shows Mr and Mrs M had more than one meeting with an advisor
- It took a business decision to withdraw branch-based advisors so this explains why no-one in the branch was able to help them with their enquiries, but they would've received notification of this along with a contact number for future reference

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

### **my findings**

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

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

Firstly, I recognise there is considerable disagreement about a number of issues. These include which advisor Mr and Mrs M met, how many meetings took place, whether BoS sent annual statements and what they were told in their local branch when they sought to take money out of their investment.

While I accept the importance of some of these disputed issues, I am satisfied I have seen sufficient evidence to safely reach a conclusion about what I believe to be the three central questions concerning this complaint. Did Mr and Mrs M fully understand the nature of this investment? Did the advisor properly spell out and explain its key features such that they were able to take a fully informed decision as to whether they wanted to go ahead with it? And was this a suitable recommendation given Mr and Mrs M's circumstances and likely objectives?

Firstly, I think it's clear that Mr and Mrs M did not understand the nature of this investment. They refer to it as a 'guaranteed saver plan', something which invariably delivers a set and guaranteed rate of interest or return; whereas in fact it's an investment product with their money put at some risk via various stock market-linked equities.

Also, their decision to withdraw £4,571, the exact amount by which their original investment sum had risen by, strongly supports their argument that they thought this was the 'interest' accrued. While their shock at the investment's subsequent fall in value confirms they didn't understand the risks their money was exposed to.

Having considered both the Fact Find and the Suitability Report, I do believe the advisor is, on balance, largely responsible for this misunderstanding.

Mr and Mrs M's responses to the various investment risk questions raise serious doubts as to whether they wanted to take any risk with this money. Crucially, they say they strongly agree with the statement, "I want my investment money to be safe even if it means lower returns".

Overall I can see little justification for the advisor's conclusion, in his Suitability Report that they felt comfortable investing in stocks and shares. Overall, I don't believe there was sufficient evidence for him to safely conclude that Mr and Mrs M were cautious/medium risk investors, prepared to risk getting no return on their money.

I also think his report fails to fully take account of their circumstances. In particular that they were retired, living on a modest income (almost all of which they spent each month) and had no means of replacing any loss in the real value of their money (taking inflation into account) if this product delivered no return after five years.

In this context, I believe he should've gone much further in spelling out this risk when he proposed investing in the GIP, and he should've offered a fair comparison with the potential benefits and limitations of something like a five year fixed-rate bond. Such a product would've offered Mr and Mrs M a better rate than that typically available via a normal savings account, but with this level of return guaranteed.

I recognise Mr and Mrs M said they might need access to their money during the five year period, so this may not have been a suitable recommendation, but the GIP suffered from the same drawback.

If the advisor had spelt out these issues and offered a fair comparison with the guaranteed returns on offer via traditional accounts, I am satisfied Mr and Mrs M would not have gone ahead with this investment.

I am also satisfied that Mr and Mrs M have suffered significant trouble and upset as a result of this poor advice and that BoS should pay £300 compensation – in addition to the £100 it has already paid. This sum includes compensation for the time and effort spent trying to find out how to make a withdrawal from their investment.

**fair compensation**

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

I think Mr and Mrs M would have invested differently, but it’s not possible to say *precisely* what they would have done differently.

I am satisfied what I have set out below is fair and reasonable, given their circumstances and objectives when investing.

**what it should do**

To compensate Mr and Mrs M fairly it should:

- Compare the performance of Mr and Mrs M’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.
- It should also pay interest as set out below if applicable.
- Pay £300 for the general trouble and inconvenience caused including the time Mrs M spent on the telephone to Halifax (2-3 hours).
- Provide the details of the calculation in a clear, simple format. Income tax may be payable on any interest awarded.

investment name	status	benchmark	from (“start date”)	to (“end date”)	additional interest
Halifax Guaranteed Investment Plan (GIP)	still exists	average rate from fixed rate bonds	date of investment	date of settlement	not applicable

**actual value**

This means the actual amount payable 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, it 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.

Any withdrawal income or other payment out of the investments 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 it totals all those payments and deducts that figure at the end instead of deducting periodically.

### **why this remedy is suitable**

I have chosen this method of compensation because:

- Mr and Mrs M 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 their circumstances and objectives
- It does not mean that Mr and Mrs M 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

### **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' / 'Investment' / 'Calculating compensation in investment complaints'.

### **my final decision**

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 M to accept or reject my decision before 30 January 2017.

Tony Moss  
**ombudsman**