complaint

Mrs Q has complained that advice she received from Clydesdale Bank Plc ("Clydesdale") in December 2007 to invest £7,000 and £23,000 in a stocks and shares ISA and an OEIC respectively was unsuitable for her.

She is represented in her complaint by a third party adviser, who has said that:

- The adviser failed properly to establish her financial circumstances at the time;
- She was pressured into receiving advice having deposited the proceeds of a house sale into her bank account;
- She was in poor health at the time and the adviser recorded that her health was good;
- The adviser failed correctly to establish her attitude to investment risk. She was recorded as being "moderately aggressive" whereas she was not prepared to risk her capital. As it was, she was not informed that her capital was at risk;
- The complexity of the product was not suitable for an inexperienced investor and the adviser did not discuss other, more suitable products;
- The product charges were not explained to her and she was required to make a decision at one meeting without any additional time to consider the advice;
- Mrs Q was advised to invest for growth whereas she required income;
- The realisation that she lost a significant amount of her capital in the short term has caused Mrs Q a great deal of stress.

background

Mrs Q's complaint was investigated by one of our adjudicators, who concluded that Mrs Q was in a financial position to invest with some degree of risk to achieve greater returns than she might obtain from deposit-based accounts.

However, the adjudicator was not satisfied that Mrs Q was prepared to take a "moderately aggressive" approach to investment given she was retired, had no previous investment experience, had acquired her capital from a house sale and her answers to the "risk profile" questions. Mrs Q should have been treated as an investor who was prepared to take a small degree of risk with some of her capital.

In particular, it was not appropriate for Mrs Q to have placed £30,000 in a fund that invested significantly in UK and overseas equities which carried the additional risk of currency fluctuations.

Accordingly, the adjudicator upheld her complaint and recommended that Clydesdale should pay her redress, if any, on the basis that Mrs Q had invested in products or funds that offered a 'cautious' degree of risk.

In response, Clydesdale disagreed with the adjudicator's assessment and said that;

- the advice was carried out according to the business's established sales process, with all documentation completed at the time;
- Mrs Q did not raise any concerns about the advice at the time it was given or when she decided to surrender the two investments after approximately one year;
- Mrs Q's response to the attitude to risk questionnaire generated a recorded attitude to risk as *"moderately aggressive".* She signed a declaration confirming the information in the fact find was correct. In signing the declaration, she also confirmed she understood

the advice given was based on the limited information provided by her and that it may not be the most suitable option;
- the fact sheet for the fund in which Mrs Q invested shows that, although 34% of the fund was invested within global equities, only 15% was invested within unhedged global equities. 19% was invested in hedged global equities with currency exposure removed;
- based on approximately 60% of the fund being invested in equities, her total capital exposure to equities was £18,000. As her total capital savings was £108,000, only 17% was invested in equities. The remainder of her funds were exposed to a far lower degree or no degree of investment risk;
- the adviser could not have foreseen the wider factors that ultimately affected the performance of the investment. Mrs Q was recommended to hold the investments for at least five years and she surrendered them early at a capital loss;
- the amount invested represented a small proportion of the total monies held by the consumer. The consumer had the capacity to invest at the time advice was provided and the product sold was in line with her recorded circumstances.

The consumer representative agreed with the adjudication and also provided its comments:

- the adviser recorded the consumer's health as *"good"* but this was not the case. This demonstrates the adviser's inability to complete the fact find correctly;
- Mrs Q would not have been aware of the sales process and how her information would have been recorded. It is the adviser's responsibility to adhere to the sales process;
- at the time, the consumer disagreed with the attitude to risk question that asked if she *"welcomed risk and saw it as an opportunity to generate higher returns";*
- in surrendering the investments early, Mrs Q was showing her lack of understanding of the product sold;
- Mrs Q did not want to invest in risk-based equities and should not have been advised to do so.

my findings

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

I would emphasise that this decision addresses the material issues raised by Mrs Q's complaint; namely whether the advice was suitable for her in December 2007 and the nature and terms of the investment were full explained.

My understanding of Mrs Q's financial circumstances at the point of sale is that she was retired on a modest income, which gave her a small monthly disposable income. She had recently sold a property which realised £78,000 and held a guaranteed growth bond worth approximately £30,000 which was due to mature at the end of December 2007.

The adviser recorded that Mrs Q wished to invest £30,000 over at least five years to achieve a return that could exceed the interest she would receive by retaining her capital on deposit. This necessarily required her to adopt some degree of risk and the adviser established through her answers to a number of risk profile questions that she wished to take a "moderately aggressive'" approach to investing this capital sum.

I am satisfied from the evidence available from the point of sale that the nature and terms of these investments, including the risks, were fully explained to Mrs Q at the time.

However, I am not persuaded how the adviser concluded that Mrs Q was prepared to adopt a “moderately aggressive” based on her answers to the “risk profile’ questionnaire and her lack of any previous experience of risk-based investments.

Specifically, she answered: “Disagree” to three questions:

“I have experience of investing and consider myself knowledgeable about investment markets”

“I welcome risk and see it as an opportunity to generate higher returns.”

“I am happy if part of my investment is exposed to more speculative investments in the pursuit of higher returns and/or income.”

I appreciate that Mrs Q also “disagreed” with the requirement for her capital to be protected as she wished to achieve returns in excess of those available from deposit-based savings.

In my view, these answers collectively indicate that she was prepared to invest part of her capital other than in deposit-based accounts that involved some degree of risk.

However, I am not inclined to believe that, at her age and with her modest income, Mrs Q would have been prepared to switch her approach investment approach from one that gave her no previous experience or knowledge of risk-based investments to one where she was prepared to adopt a “moderately aggressive” approach that justified her investing £21,000 (or almost 20% of her total capital savings) in UK and overseas equity and property funds.

I am prepared to accept that it was appropriate for Mrs Q to invest this proportion of her savings in ‘cautious’ risk-based funds to achieve her objective but not in funds that were inherently volatile.

Indeed, it is indicative of her actual approach to risk that she surrendered the two investments within one year as soon as she saw their capital value significantly eroded. This is not the action of an investor who wished to take a “moderately aggressive’ approach to investment over the medium to long term.

fair compensation

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

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

what should Clydesdale do?

To compensate Mrs Q fairly, Clydesdale must compare the performance of Mrs Q's investments with that of the benchmark shown below.

The compensation payable to Mrs Q is the difference between the *fair value* and the *actual value* of Mrs Q's investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

A separate calculation should be carried out for each investment. Clydesdale should also pay Mrs Q any interest, as set out below. Income tax may be payable on the interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
stocks and shares ISA	surrendered	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date surrendered	8% simple p.a. on any loss from the end date to the date of settlement
OEIC	surrendered	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date surrendered	8% simple p.a. on any loss from the end date to the date of settlement

for each investment:

actual value

This means the actual amount paid or 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, Clydesdale 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.

why is this remedy suitable?

I have decided on this method of compensation because Mrs Q wanted income with some growth with a small risk to her capital.

The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.

The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

I consider that Mrs Q's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs Q into that position. It does not mean that Mrs Q would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs Q could have obtained from investments suited to her objective and risk attitude.

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 Clydesdale Bank Plc should pay the amount calculated as set out above. Clydesdale Bank Plc should provide details of its calculation to Mrs Q in a clear, simple format.

Kim Davenport
ombudsman