

## complaint

Mr F and Mrs H complain that the advice they received from National Westminster Bank Plc ("NatWest") in 2006 to invest £15,000 in a Guaranteed Capital Bond ("GCB") and £15,000 in a Protected Bond ("PB") was, for a number of reasons, unsuitable.

Mr F and Mrs H are represented in their complaint by a third party ("CMC").

## background

In 2006, on the advice of NatWest, Mr F and Mrs H invested £15,000 in a GCB and £15,000 in a PB. The GCB matured in 2010 (returning £15,000) and the PB matured in 2012 (returning £15,000).

The CMC complained to NatWest in early 2017 about the advice Mr F and Mrs H received in 2006. NatWest responded to say that in its view Mr F and Mrs H had complained too late. However, it paid Mr F and Mrs H £50 for its delayed response.

Unhappy with NatWest's response the CMC referred the complaint to our service.

This complaint was considered by one of our investigators. She initially concluded that the complaint had indeed been made too late, before concluding that it hadn't.

On concluding that the complaint hadn't been made too late the investigator then went on to consider whether it should be upheld. She concluded that it shouldn't because in her view the advice Mr F and Mrs H received was suitable.

The CMC didn't agree, reiterating in the main its earlier submissions to NatWest and our service. In summary these were:

- Mr F and Mrs H were "*completely novice investors who had never held risk investments before*".
- They were both retired and had taken the decision to retire because of ill health.
- Their only asset (other than their current home) was funds released from downsizing their previous home.
- They "*downsized*" their previous home as they couldn't afford the mortgage payments on it.
- They had a limited net monthly income and weren't "*in a position to take risks with their capital*".
- NatWest failed to advise Mr F and Mrs H of the option of, and the advantages to, placing their funds on deposit, for example in a fixed rate bond.
- By placing funds on deposit Mr F and Mrs H would have enjoyed a guaranteed return rather than a possible return. This guaranteed return would have also been tax free.
- There was no realistic prospect of Mr F and Mrs H earning a return on their two bonds in excess of what they could have earned on deposit given what was required of the FTSE over the time periods in question. And at best the most Mr F and Mrs H could have achieved by way of a return on their bonds was only marginally better than that they could have got, with no risk, on deposit.

The investigator considered the CMC's response to her view but wasn't persuaded to change her mind. Therefore the matter was passed to me for review and decision.

I issued a provisional decision in September 2017. In summary I said:

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

It's clear the CMC has very strong feelings about this complaint. It has provided detailed submissions in support of its view which I can confirm I've read and considered in their entirety. However, I trust that it (and Mr F and Mrs H) will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

The CMC says NatWest shouldn't have recommended the two bonds that it did and referred to another case considered by our service in support of its view in this respect. I'm aware of the case the CMC has referred to, as well as a number of other cases considered by our service. But as I'm sure the CMC is aware, the outcome of one complaint doesn't automatically influence another. For the avoidance of doubt I've considered this case on its own facts and merits.

I accept that Mr F and Mrs H were inexperienced investors. But I'm satisfied that they would have understood, from the explanatory documentation NatWest says was provided, that a positive return on their bonds depended on the performance of the FTSE 100 share index over a period of time. And that they would have understood, in basic terms at least, what the FTSE was required to do for the bonds to 'make' a return and that the maximum return on each bond was capped at 23% and 41% respectively.

I also think Mr F and Mrs H would have understood what returns they might reasonably be able to make by investing their funds, over the same periods, on cash deposit, instead of investing them in the two bonds that they did.

However I accept that provision of documentation doesn't, in itself, make unsuitable advice suitable. So I've gone on to consider whether the two bonds were suitable for Mr F and Mrs H based on their circumstances, objectives and attitude to risk in 2006.

As I say above I accept that Mr F and Mrs H were inexperienced investors. But that doesn't in itself make the two recommended bonds unsuitable. I can also see that Mr F and Mrs H's inexperience was noted and recorded by NatWest as part of the fact finding process.

The CMC has suggested that the advice was unsuitable because in 2006 Mr F and Mrs H were retired, had little by way of assets and had a limited net monthly income. It's not in dispute that in 2006 Mr F and Mrs H had retired, this fact having been recorded by NatWest. But I can't see that this in itself (particularly given Mr F and Mrs H's ages in 2006) made the two recommended bonds unsuitable. As to the CMC's two other points (few assets and limited income) I note that it's recorded, the accuracy of which the CMC hasn't disputed, that in 2006 Mr F and Mrs H:

- Had no debt (including mortgage)
- Were homeowners
- Had a surplus income of £460 per month
- Had £105,000 on deposit earning approximately 3%

Therefore I don't think the two recommended bonds were unsuitable on the grounds of the assets held by Mr F and Mrs H, or unsuitable on the grounds of their net monthly income.

The CMC says that Mr F and Mrs H had retired due to ill health. And although I don't doubt this, I can see that the fact find records Mr F and Mrs H as both being in good health.

The CMC also says that Mr F and Mrs H had experienced financial difficulties and this was the reason for them downsizing. But I can't see that this would have been apparent to NatWest in 2006. I say this because of what was recorded, at the time of the advice, of their financial circumstances. I would also add that it's not unusual for people of Mr F and Mrs H's age and employment status to have downsized.

The CMC says that NatWest failed to advise Mr F and Mrs H of the option of, and the advantages to, placing their funds on deposit, for example in a fixed rate bond. As I say above I'm satisfied that Mr F and Mrs H would have, even as inexperienced investors, an understanding of what they might reasonably earn by way of a return in investing in this manner, particularly given that they were already doing so. And that they would have understood that investing in the two bonds that they did, carried a risk of no return.

But in the particular circumstances of this case I'm satisfied that on the balance of probabilities some discussion around placing funds on deposit took place. I say this because I note that the Suitability letter states:

*"You want to have the potential for greater returns than those offered by lower risk deposit based accounts or deposit based bonds even though as a non taxpayer both of you would be able to obtain a 'tax-free' return on such accounts. As explained to you, any tax suffered within the recommended bond[s] cannot be reclaimed by a non taxpayer."*

The CMC also says that by investing in the manner that they did Mr F and Mrs H were deprived of a return on their funds at the start and deprived of a return towards the end as a result of FTSE closing price averaging.

I accept the CMC's first point but note that this fact was detailed in the suitability letter which stated:

*"It is important that you read again the Key Features document provided to you [in August 2006]. This will ensure that you fully understand the investment including:*

- ...
- ...
- *that there may be some time between receiving your investment[s] and when the link to the stock market index and fixed term of the bond commences, during which time you will not receive any interest;*
- ...
- ..."

I also understand the CMC's second point. That is with a rising FTSE (in the last six or twelve months of the bonds) a consumer, as a result of averaging, won't get the benefit of 100% of that rise. But equally with a falling FTSE (in the last six or twelve months of the bonds) a consumer wouldn't have to bear 100% of that fall.

Finally I would add that I'm aware that only 97% of Mr F and Mrs H's £15,000 invested in the GCB was linked to the performance of the FTSE, meaning that the FTSE would have to grow by more than 3% over three and half years before a return would be payable. But despite this being something that in my view Mr F and Mrs H would have understood from the documentation they were provided, I don't think this in itself would have had a material bearing on whether Mr F and Mrs H would have invested in the GCB.

The recommended bonds offered the opportunity for a return if the value of the FTSE 100 index rose during the terms, but also offered a guaranteed return of capital if it fell. The main risk was that if the index fell, Mr F and Mrs H would miss out on any interest they could have otherwise earned, and this is what ultimately happened. But taking everything into account I think NatWest's advice was broadly suitable, and Mr F and Mrs H were provided with sufficient information to be able to make an informed choice as whether to accept that advice.

It was therefore my provisional decision that Mr F and Mrs H's complaint shouldn't be upheld.

NatWest responded to say it had nothing further to add except to say that it was surprised I had issued a provisional decision given I had come to the same outcome as the investigator and for the same reasons.

The CMC didn't agree with my provisional decision and said, in summary:

- It was taking legal advice on the matter and suggested I might want to delay issuing a final decision until that advice had been received by it and shared with me.
- Although it accepts that the outcome of the case it made reference to as part of its initial submissions to our service doesn't set a "*precedent*", it does set a "*bench-mark*".

- It finds it strange that I found (given their circumstances) that it wouldn't have been apparent to NatWest that *"Mr F and Mrs H had experienced financial difficulties"* and they had a vital need to protect their capital.
- It finds my statement *"...although I don't doubt [Mr F and Mrs H retired early due to ill health], I can see that the fact find records [them] as both being in good health"* ambiguous. If I'm of the view Mr F and Mrs H retired early on the grounds of ill health then surely it follows I accept the fact find contains *"false information"* and is therefore *"unreliable"*.
- NatWest *"inaccurately"* recorded on the fact find that Mr F and Mrs H were paying no rent or council tax when it should have been clear that they were.
- Contrary to saying or implying Mr F and Mrs H owned the property they were living in in 2006, having just downsized, this was incorrect. In 2006 Mr F and Mrs H were renting their property at a cost of approximately £400 per month.
- In its view NatWest was either aware of Mr F and Mrs H's ill health in 2006, and decided to *"lie"* on the fact find, or was unaware of their ill health as a result of failing to ask the question or by failing to carry out other checks, for example checks of their bank statements which would have shown the source of their income as being *"state disability allowances"* and Mrs H's *"old age pension"*.
- It should have been obvious to NatWest as to where Mr F and Mrs H's cash on deposit came from, this being a very recent house sale.
- At the time of receiving the advice Mr F and Mrs H had, and for the very first time, just come into a large sum of money which they had no idea what to do with.
- It disagreed with my finding that Mr F and Mrs H *"would have understood what returns they might [have been] reasonably...able to [make] by investing their funds, over the same periods, on cash deposit, instead of investing them in the two bonds that they did."* Mr F and Mrs H had no previous experience of investing in interest bearing deposits.
- It accepts that Mr F and Mrs H would have understood that a positive return on their two bonds was dependant on the FTSE rising and that the return was capped at 23% and 41% respectively. But this wouldn't have been quite enough for them to have been able to make an informed choice.
- It would like me to comment on whether I think that an average consumer would have fully understood the *"nature and value"* of the two bonds Mr F and Mrs H were sold without knowing what returns could be made over the same period by investing on deposit.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. However having done so, I see no reason to depart from my provisional findings.

For the sake of clarity I can confirm that I issued a provisional decision on this case to give both parties one final opportunity to provide comments and evidence for my consideration, something that I explained in the opening paragraph of my provisional decision.

The CMC says it's taking legal advice on the matter, something that I accept it's entitled to do. But I'm satisfied that the CMC has had ample opportunity to provide its comments and evidence for my consideration and I see no reason to delay issuing this final decision.

The CMC says that although it accepts that the outcome of the case it made reference to as part of its initial submissions to our service doesn't set a "*precedent*", it does set a "*bench-mark*". But in my view these terms are interchangeable. In other words if the CMC accepts that previous cases don't set precedent, then in my view it follows it accepts they don't set a benchmark either. But in any event, I'm required to determine a complaint based on what's reasonable in all the circumstances of the case, taking into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the time. As I said in my provisional decision, I've considered this case on its own facts and merits.

The CMC says that it finds it strange that I found (given their circumstances) that it wouldn't have been apparent to NatWest that "*Mr F and Mrs H had experienced financial difficulties*" and they had a vital need to protect their capital. But I can't see, based on the information NatWest obtained from Mr F and Mrs H, why such a fact should have been apparent to it. For example Mr F and Mrs H said, a fact not disputed by the CMC, that they had no debt at the time of the advice and a surplus income (whatever the source of that income). Furthermore the two bonds did protect Mr F and Mrs H's capital as the CMC says was their desire and need.

The CMC says it finds my statement "*...although I don't doubt [Mr F and Mrs H retired early due to ill health], I can see that the fact find records [them] as both being in good health*" ambiguous. But I don't agree. Somebody might be in poor health but say they aren't when asked. So it's quite plausible that somebody can be in one state of health yet have their health recorded in a document (in this case a fact find) differently. There can be a number of reasons why somebody might declare themselves in good health when they aren't, for example because the person declaring their health status as good genuinely holds that view, their health has improved recently (or has been stable for some time), or simply because they don't believe the question to be relevant to the matter in hand.

Further on this point the CMC says that by concluding that I don't dispute Mr F and Mrs H retired early due to health then I must accept that the fact find contains false information and is therefore unreliable. But again, I disagree. A document can be accurate in the sense that it contains precisely the answers given by a third party whilst at the same time being inaccurate in the sense that the answers given by the third party are wrong.

The CMC says as well as incorrectly recording the state of Mr F and Mrs H's health on the fact find, NatWest incorrectly recorded that they had no rent or council tax liabilities. It also added that contrary to saying or implying previously that Mr F and Mrs H owned the property they were living in in 2006 this was incorrect and Mr F and Mrs H were in fact renting a property at a monthly cost of approximately £400.

On the point of Mr F and Mrs H's residential status, I said in my provisional decision that the fact find recorded them as being homeowners. For the avoidance of doubt I would like to confirm that the fact find doesn't record Mr F and Mrs H as being homeowners and my saying that it does wasn't material to my provisional decision findings.

I accept that the fact find records Mr F and Mrs H as having no rent and council tax outgoings, at least as a single and identified expenditure. But I'm not persuaded that this fact hasn't been captured. It isn't unusual when completing a fact find for a business to capture all expenditure as a single total, rather than specific individual amounts (even where the fact find allows for this information to be captured as single and individual items). And in my view I think it isn't unreasonable to conclude that's what happened here. In other words it's my view that more likely than not NatWest simply grouped all of Mr F and Mrs H's outgoings, as declared by them, as a single figure of £800. But in any event, I'm not persuaded that even if the fact find understated Mr F and Mrs H's outgoings by £400 that this in itself made the advice Mr F and Mrs H received unsuitable.

I can also see that the CMC suggests that NatWest should have checked Mr F and Mrs H's bank statements which might have indicated their poor state of health and the fact their sources of income were "*state disability allowances*" and Mrs H's "*old age pension*". However, I don't think that NatWest were under any obligation to do this and they were entitled to rely on what Mr F and Mrs H said about their health and their sources of income, which although not recorded specifically as state disability allowance (and old age pension) is recorded as state benefits (and old age pension).

I would also add that I've seen insufficient evidence that Mr F and Mrs H didn't receive NatWest's suitability letter and a copy of the completed fact find. So I might have expected, if anything that was recorded was incorrect, for Mr F and Mrs H to have questioned this at the time. This includes, but isn't restricted to, the status of their health and the extent of their outgoings.

I agree with the CMC that it should have been obvious to NatWest as to where Mr F and Mrs H's cash on deposit came from. But this point isn't in dispute. I say this because the suitability letter clearly states:

*"You have recently sold a property and are left with a large cash sum on account..."*

The CMC says that at the time of receiving the advice Mr F and Mrs H had, and for the very first time, just come into a large sum of money which they had no idea what to do with. First I don't think anybody disputes that Mr F and Mrs H had "*no idea what to do with...*" their money, because if they did then it follows in my view they wouldn't have accepted the offer of advice. As to how recently Mr F and Mrs H came into their money, as I say above the fact find records that Mr F and Mrs H had "*...recently sold a property and [were] left with a large cash sum on account...*" So again I don't think this point is in dispute either.

I can see that the CMC disagrees with my view that Mr F and Mrs H would have understood what return they might have reasonably been able to get by investing on deposit, and that they were given enough information to make an informed choice. But I'm not persuaded to change my mind on this particular point as a result of what the CMC has now submitted.

I don't dispute that Mr F and Mrs H might have had no, or very little, experience of investing on deposit, albeit that it would appear from the suitability letter that they had made use of their cash ISA allowances for 2006/07. But taking all their personal circumstances into account, not just their past investment experience, I'm satisfied that more likely than not they would have understood what sort of return they could have earned, in the broadest sense at least, by investing on deposit. And this knowledge, together with the information they were provided with (including the suitability letter which states in respect of the PB "*You are happy with an investment that does not guarantee you a positive return provided it does give you the potential for a higher return than an investment, which may have guaranteed to you a return in excess of the amount invested*") was sufficient for them to make an informed choice.

I would also add that although the CMC suggests Mr F and Mrs H's house sale proceeds were not placed in interest bearing accounts, reinforcing its view that they had no experience of investing on deposit, the fact find has recorded that this money was earning interest.

The CMC has asked that I comment on whether I think that an average consumer would have fully understood the "*nature and value*" of the two bonds Mr F and Mrs H were sold without knowing what returns could be made over the same period by investing on deposit. But I see no reason to do so. As the CMC is aware, and as I've commented on elsewhere in this decision, my role is to consider Mr F and Mrs H's complaint on its own facts and merits. Furthermore the statement is somewhat irrelevant given I've found that Mr F and Mrs H would have known what returns could be made by investing on deposit.

In summary I see no reason to change the outcome I reached in my provisional decision, which wasn't to uphold Mr F and Mrs H's complaint. So I now confirm that outcome as final and for the reasons given in both this final decision and my earlier provisional decision.

### **my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs H to accept or reject my decision before 18 January 2018.

Peter Cook  
**ombudsman**