

complaint

Mr and Mrs I complain AXA Wealth Services Limited wrongly advised them to invest £40,000 in a guaranteed bond in 2007, set up in Mrs I's name. They say the advisor should've suggested putting this money in a fixed-term bond with guaranteed interest.

background

The background and circumstances of this complaint are set out within my provisional decision of 4 October 2016. A copy of this is attached and forms part of this decision.

AXA disagreed, and said:

- My decision is not consistent with similar decisions issued by us concerning this product
- Mrs I wanted the possibility of a better return than a deposit account and fully understood that her capital was safe but there was no guaranteed interest.
- The adviser was not in a position to recommend a five year fixed interest rate product so my proposed compensation rate is not a fair one
- Even using the rates I specified, this would give a maximum rate of return of 32.5% over 5 years while this investment offered the chance of 45% return over this period
- While it's unfortunate this didn't happen, this is what this product potentially offered
- Mrs I did have some investment experience – of a guaranteed equity bond and fixed interest rate deposits
- While Mrs I had a low income, her husband met most of the household bills so she could therefore afford to take a risk in line with this product.

my findings

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

Firstly, I accept Mrs I had previously put money in accounts where her capital and a certain level of interest was guaranteed. But she had not, from the evidence I've seen, put any money in risk-based investments. Given her overall circumstances I am still not persuaded she should've been advised to put a substantial portion of her inheritance in this risk-based product.

AXA says Mrs I wanted and needed her capital to be guaranteed but was happy to take a risk that she'd earn no interest on this money. However, in October 2007 interest rates were running at more than 5% a year, so if this persisted and she got no return on this money, Mrs I faced the risk of losing between a quarter and a third of the real value of her capital after five years i.e. this product did pose a significant risk to the real value of Mrs I's money.

I am not persuaded the advisor fully explained this risk, or that this was a risk he should've recommended she take, particularly given that she had no realistic means of replacing any loss in the value of her capital, taking account of her age and circumstances.

As I explained in my provisional decision, the advisor's own report concluded Mrs I preferred to invest in wholly cash assets. He then categorised her as a very cautious investor, and justifies this recommendation on that basis. There's no evidence as to how he reached the conclusion that she wanted to take some risk with her money and whether she fully understood, and agreed with, his conclusion that she wanted a very low risk investment as opposed to a no-risk one.

I accept AXA didn't offer a five year bond at the time but the advisor did conclude Mrs I was prepared to lock away this money for this period of time, and indeed she did not cash in the bond early. So while she may have not put money in medium-term fixed rate products previously, I am satisfied she was now happy to commit this portion of her inheritance for this period of time.

So, if properly advised, I think she is most likely to have chosen to do this, albeit via a different building society or high street bank where such products were easily available.

I'm therefore satisfied that this is a fair and reasonable basis for compensation. As I explained in my provisional decision, I believe Mrs I could've easily secured a rate of 5.8% interest guaranteed for five years, and that this should be the basis for compensation.

So AXA should calculate how much interest Mrs I would've earned if she had put her £40,000 into such a five year bond instead of this investment. AXA should then add 8% simple interest per annum to this figure from the date of maturity of this investment to the date of settlement of this complaint.

my final decision

I uphold this complaint and instruct AXA Wealth Services Limited to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs I to accept or reject my decision before 28 November 2016.

Tony Moss
ombudsman

provisional decision

complaint

Mr and Mrs I complain AXA Wealth Services Limited wrongly advised them to invest £40,000, in Mrs I's name, in a guaranteed bond in 2007. They say the advisor should've suggested putting this money in a fixed-term bond offering guaranteed annual interest.

background

Mr and Mrs I met the advisor in October 2007 shortly after she'd received around £90,000 through a family inheritance. She also had around £25,000 in cash-based bonds and ISAs.

Mr and Mrs I were retired, and in their mid-Sixties. Her annual income was £3,800 and she had no previous investment experience.

The advisor recommended she put £40,000 in a five year bond where her capital was secure but any return was linked to the FTSE Index.

An adjudicator at this service didn't feel the complaint should be upheld.

He felt she had sufficient capital to take some risk with this portion of her money, and the risk itself was modest given the capital guarantee. While other options (such as a fixed term bond) might have been suitable, he didn't believe this automatically made this recommendation unsuitable.

Mr and Mrs I's representative disagreed, and said:

- This advice wasn't suitable for Mrs I's circumstances – she didn't need to take any risk with her inheritance money, especially given her age
- Just because a client holds considerable sums on deposit doesn't justify an advisor recommending they take a risk with some of their money
- The advisor should've produced a comparison with the guaranteed returns on offer via fixed rate bonds and offered an assessment of the likelihood of this product delivering something better

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

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.

Firstly, I'm not persuaded Mrs I wanted to take any risk with her money, including the very real risk that her money could fall in real terms compared to inflation if this investment did not 'succeed'.

The advisor records Mrs I's attitude to risk as 'very cautious'. I've seen no evidence as to how he reached this conclusion or what different risk categories he discussed with her. But, on the face of it, 'very cautious' suggests Mrs I didn't want to take any risk with her money.

This assumption is supported by the advisor's summary:

'You are not willing to accept any risk to your investment in the short-term and wish typically to invest in wholly cash assets. You understand that the potential for growth is small and that over the long term, inflation will reduce the buying power of cash assets. As you typically wish to invest wholly in cash

assets an investment product in unlikely to be suitable for you as investments in such products will fluctuate in value..'

Despite this summary, he then recommends a risk-based product in which any return was based on investment performance.

As I've seen no persuasive evidence Mrs I wanted to take such a risk, I don't believe this was a suitable recommendation.

The advisor should, at least, have offered a fair comparison with the return available via a five year fixed-rate bond so Mrs I could decide if she wanted to risk such a return for the uncertain possibility of a higher return via this product.

That said, Mrs I had no investment experience so I doubt she'd have been comfortable assessing the likely direction of the FTSE over the following five years, let alone its average in the final 12 months of this period.

So if the advisor had offered this comparison, I'm satisfied Mrs I would've chosen to invest this £40,000 in the safe option of a fixed-term bond. Given she had a very cautious attitude to risk I don't believe she'd have taken the risk of getting no return if aware she could get a guarantee of well over 5% a year via a fixed-rate bond.

I'm therefore satisfied AXA should pay compensation by comparing the return Mrs I received on its bond with the return she could've received if advised to put the same amount of money in a five year fixed-rate bond.

In October 2007 there were a number of high street banks and building societies offering five year bonds with returns ranging from 5.2% to 6.5% - with a number of the major players offering 5.80%. So I intend to instruct AXA to use this figure of 5.8%.

It should also 8% simple interest per annum to Mrs I's 'loss', as shown by this comparison, from the date the bond matured to the date of completion of this complaint.

my provisional decision

I currently intend to uphold this complaint and instruct AXA to pay compensation as outlined above.

Tony Moss
ombudsman