Financial Ombudsman Service

complaint

Mr J complains National Westminster Bank Plc wrongly advised him to invest in an unsuitable product. He said he wasn't given enough time to read the documentation, his money wasn't protected against inflation and he wasn't warned it could reduce the income from his savings.

background

In 2009 Mr J was aged 60, retired and had over £600,000 in various savings accounts as a result of selling his business. Nat West recommended he invest £50,000 in a structured product. This 'deal' offered the bonus of being able to invest a further £50,000 in a linked savings account with a preferential interest rate of 3% above base rate for six months.

The product literature explained that any capital growth was capped at 24% (6.34% a year compounded) and dependent on the performance of four market indices. If a single index was lower at the end of the investment term he'd get no return on his money.

The advisor recorded that Mr J had invested in the past but wanted to be treated as an inexperienced investor for the purpose of this advice.

In 2016 Mr J complained he wasn't provided with any "value for money assessment" to indicate whether this product was likely to outperform deposit accounts. As such, he wasn't able to make an informed decision as to whether the potential return sufficiently justified the risk of getting no return on his money.

An adjudicator at this service felt the complaint should be upheld, saying:

- The advisor should've done a comparison between the potential return on offer via the recommended product and the 4.2% guaranteed return available on its two year savings bond

- In the absence of such a comparison he didn't think Mr J wasn't able to take an informed decision about the potential merits of this investment

- He accepted Mr J only put 8% of his savings into this product and was prepared to take some risk with his money but he wasn't persuaded he would've agreed to this investment if the adviser had pointed out this only offered the potential of 2% a year more than a guaranteed rate

Nat West disagreed, and said:

- Mr J previously held investments and was aware of the relationship between risk and reward

- He understood how the product worked including the potential of getting no return, and didn't raise a complaint in 2009 – this indicated he accepted this risk

- He wanted his capital protected but was prepared to take a risk with the potential return (on 8% of his capital) to try and get a better return than that on offer via deposit accounts

- It believed Mr J would've still gone ahead with this investment even if the adviser had provided a fixed rate bond comparison given the potential return was over 2% a year more than that its two year bond's fixed rate

- A two year bond would've left Mr J needing to reinvest this money in a further fixed rate bond for the rest of the term - by then he could've only got 3.2% a year interest

- One of the features of the investment was the facility to place the same sum in a special interest-bearing account earning 3% above the Bank of England base rate for six months - this suggests Mr J was financially astute

- Mr J was already aware of the interest rates on offer via various savings accounts so the advisor didn't need to discuss these

- Mr J had sufficient savings so wasn't reliant on the money invested in this bond

Mr J's representative responded:

- Mr J admitted he was drawn to the higher rate of interest on offer via the linked account; the FCA's structured product review of March 2012 said care should be taken where a special deposit account rate was dependent on taking out a structured product

- Mr J sensibly moved his money into a new account after six months when the special rate expired – and this shows he was more interested in obtaining the highest savings rate than taking unnecessary risks

As no agreement has been reached, this complaint has been brought 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 generally agree with the adjudicator and for broadly the same reasons.

Firstly, from what I've read, Mr J didn't seek investment advice but was approached by a Nat West advisor who suggested he could get a better return on his savings. I've also seen no persuasive Mr J was an experienced or knowledgeable investor.

In this context I think Mr J was reliant on the advisor to accurately assess his circumstances and objectives, and fully explain any recommendations. Crucially, he needed to ensure Mr J was able to take a fully informed decision as to whether he wanted to take the significant risk to the real value of his savings posed by this structured product. I'm not convinced he did these things.

Also, I've seen no evidence Mr J would've been able to make a considered assessment of the likely performance of these four indices or that the advisor explained the nature of these indices in any detail. I doubt, for example, whether Mr J would've been able to assess whether he'd be comfortable with his investment return being based on the performance of companies listed on the Hang Seng Index.

Overall, I don't believe he was in a position to reasonably decide whether he wanted to take the risk to his savings posed by this product.

I also share the adjudicator's view that the advisor should've offered a fair comparison between this product's possible returns and the guaranteed returns on offer via various fixed-rate bonds at the time. If he'd spelt out the significant risk of getting no return on his money, given the many indicators involved, I think it's highly unlikely Mr J would've gone ahead with this investment.

I've considered Nat West's comments about its fixed-rate bond interest rate and accept this was less than the return that would've been possible if all four indicators remained positive. But I don't believe its advisor set out this comparison sufficiently to allow Mr J to make an informed decision about this investment.

I've also seen no evidence Mr J was only prepared to commit to a three and half year period; this was simply the term of this product. He may well have been willing to lock away this modest portion of his money for five years, meaning he could've secured annual interest of 5% or more via longer term fixed rate bonds - from a number of high street banks and building societies.

But as I can't safely say where Mr J would've invested this money, if properly advised, I'm not proposing Nat West pay compensation based on a particular bond rate.

Turning to the issue of the linked account, I recognise Mr J couldn't have put a further £50,000 into the preferential account for six months without taking up this investment. But, for various reasons, I don't intend to factor this into the compensation.

I'm satisfied Mr J could've secured a very decent rate of interest on this sum via a six month bond, somewhere between 2.% and 2.75%, albeit lower than the preferential rate. But, from what I've read, Mr J was able and willing to lock this small part of his savings away for much longer than six months. So if properly advised, he may well have invested this sum in a 12 month or longer bond offering a rate close to the preferential rate. The extra period would also have meant a higher return for a longer period.

As my proposed compensation differs from the formula proposed by the adjudicator, I gave Nat West an opportunity to comment on this.

It reiterated that it felt the recommendation had been sound for the reasons previously outlined.

It also disagreed with my proposed compensation, saying Mr J would not have been able to secure the special 3.5% six month rate on his additional £50,000 without committing to this investment.

I've considered these points but I'm satisfied my overall compensation formula is fair and reasonable. As I've explained above, I accept Mr J couldn't have got 3.5% interest on his additional £50,000 without buying into the structured product, but I think he could've earned a similar amount of interest albeit over a longer period of time.

Mr J admits the preferential rate was part of the appeal of the structure product, and so if properly advised he may well have invested the entire £100,000 in a medium term fixed rate bond.

I therefore instruct Nat West to pay compensation by calculating the return Mr J would've got if he'd invested £50,000 in a no-risk product and over the same time period as this investment - using this service's recommended comparator for no-risk investment returns i.e. the Bank of England's monthly average for fixed rate bonds of 12 to 17 months maturity.

It should then add 8% simple interest per annum to this sum from the date the bond matured to the date of settlement of this complaint.

my final decision

I uphold this complaint and instruct National Westminster Bank Plc to pay Mr J compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 November 2016.

Tony Moss
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