

complaint

Mr and Mrs D complain Lloyds Bank PLC (Lloyds) mis-sold them two Scottish Widows Capital Protected Funds (SWCP).

background

The background and circumstances of this complaint are set out within my provisional decision of 2 December 2015. A copy of this is attached and forms part of this decision. In this I explained why I felt Mr and Mrs D's complaint should be upheld as they had no real appetite for risk and so should have been recommended to leave their money in a deposit account.

Mr and Mrs D's representative agreed with my provisional decision.

Lloyds didn't agree. They said:

- Mr and Mrs D's representative didn't say they weren't prepared to take any risk
- Mr and Mrs D were in their early fifties and both in full-time employment. They expected to continue working, and earning, until age 60 or 65 and potentially had some 30 years ahead of them
- Mr and Mrs D's attitude to risk was assessed by another adviser some six months later. Their subsequent answers to this adviser's questions make it very difficult to accept they wouldn't have wanted to take a modest amount of risk with an affordable proportion of their capital
- Mr and Mrs D had more than £1000 a month surplus disposable income and while losses were unlikely, it wouldn't have taken long to replace a modest loss

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have also carefully considered the business's new arguments, and would like to address these.

I acknowledge a number of the points raised by Lloyds concerning Mr and Mrs D's financial position at the time, and the potential suitability of this investment given their circumstances.

However, I never questioned that this was, in theory, a reasonable recommendation for people in Mr and Mrs D's position. Instead, I thought the evidence strongly suggested Mr and Mrs D did not want to take any risk with their money, and therefore this was the wrong advice for them. In this context, it's irrelevant whether they could afford to take a risk with some of their capital.

I also cannot agree that a different Fact Find undertaken by a different business six months later should be taken into account when considering whether Lloyds' advice was suitable at the time.

I remain satisfied that the evidence available from the meeting with the Lloyds' advisor clearly indicates Mr and Mrs D did not want to risk their capital, and therefore these investments were mis-sold.

my final decision

For the reasons outlined in my provisional decision, I instruct Lloyds Bank PLC to pay Mr and Mrs D the following compensation.

compensation

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

I'm satisfied that what I have set out below is fair and reasonable given Mr and Mrs D's circumstances and objectives when they invested.

what it should do

To compensate Mr and Mrs D fairly Lloyds should:

- Compare the performance of their £30,000 investment in the SWCP 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.
- Pay interest as set out below.
- Provide details of the loss assessment calculation to Mr and Mrs D in a clear, simple format.

Income tax may be payable on any interest awarded.

investment name	status	Benchmark	from ("start date")	to ("end")	additional interest
SWCP	matured	average rate from fixed rate bonds	date of investment	date of maturity	8% simple per year on any loss from the end date to the date of settlement

actual value

This means the actual amount paid 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, Lloyds 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.

why this is remedy suitable

I have chosen this method of compensation because:

- The average rate for fixed rate bonds would be a fair measure given Mr and Mrs D's circumstances and objectives. It does not mean that Mr and Mrs D 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.
- The additional interest is for being deprived of the use of any compensation money since the end date.

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'

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 5 February 2016.

Tony Moss
ombudsman

Provisional decision

complaint

Mr and Mrs D complain that Lloyds Bank PLC mis-sold them two Scottish Widows Capital Protected Funds (SWCP).

background

An adjudicator at this service didn't recommend their complaint should be upheld. He felt the investments had been suitable for Mr and Mrs D, and they had not been misled about their nature.

Mr and Mrs D's did not agree. Their representatives said they were not experienced investors and the recommendation to invest 35% of their funds (£15,000 each) into this structured product was not suitable, particularly given their attitude to risk.

They also said:

- Lloyds was reviewing whether it ought to recommend structured products to inexperienced investors, those who had recently enjoyed a windfall and people nearing retirement age – and whether it was appropriate to recommend putting a large percentage of a consumer's money into one such product
- If the fund's counterparty failed, this would have endangered Mr and Mrs D's money – this was never fully explained
- The advisor didn't set out a fair comparison between keeping their money in a savings account and this investment, showing the guaranteed interest they'd be foregoing

The adjudicator noted Lloyds regularly reviewed its products, their risk rating and suitability, and this didn't mean such products were actually flawed. Also, Mr and Mrs D were not nearing retirement, and this was not an unexpected 'windfall' but the proceeds of a flat sale which had been planned for some time

He felt the documentation had provided Mr and Mrs D with sufficient information to make an informed decision as to whether to go ahead with this investment, and that they had been given an appropriate cooling-off period to think things through.

He also felt the counterparty risk had been adequately explained.

Because agreement has not been reached, the matter has been referred 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.

I am satisfied the documentation provided Mr and Mrs D with a fair and accurate description of the investment, and that they were given a suitable cooling-off period.

However, from what I've read, Mr and Mrs D had no previous investment experience, and were heavily reliant on the advisor accurately identifying their attitude to risk, and making an appropriate recommendation based on that.

Firstly, I do think this fund was a suitable recommendation for a cautious investor – someone wanting to take a modest risk to try and achieve a better return than that typically available via a savings deposit account.

I also don't believe it was wrong, in principle, to recommend Mr and Mrs D put around a third of their money in this fund if they wanted to take the modest risk I've described.

But from the evidence I've seen, and taking account of their background and circumstances, I am not persuaded they were looking to take any investment risk, however modest, with this money.

In my view, the Fact Find strongly suggests they were very concerned about any investment with exposure to the stock market, and should most fairly have been recorded as no-risk investors.

I recognise the limitations and danger in cherry-picking from risk assessment questionnaires, and I accept advisors need to take a holistic view when deciding on a recommendation. But in this case I think Mr and Mrs D's responses to a number of key questions clearly indicate their reluctance to take any risk. For example:

"The stability of my money is more important to me than the growth I may receive – Strongly Agree"

"I am nervous about the stock market falling in the short term - Strongly Agree"

"I am concerned about the impact of inflation on my money over the medium to long term and am prepared to take a risk to compensate for this - Strongly Disagree"

"Keeping my money intact is more important to me than the impact of inflation on it – Strongly Agree"

"I want the best opportunity for growth even if this means significant ups and downs in its value during the investment - Strongly Disagree"

"My first priority is to maximise return on my money so I am prepared to accept the risk that its value may fall – Strongly Disagree"

"Maintaining the money I have is more important to me than making it grow - Agree"

Overall, I feel Mr and Mrs D had no real appetite for risk, and that the most appropriate recommendation would have been for them to leave their money in their deposit account.

My proposed compensation reflects this.

my provisional decision

I currently intend to uphold this complaint, and I intend to instruct Lloyds Bank PLC to compensate Mr and Mrs D accordingly.

compensation

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

I'm satisfied that what I have set out below is fair and reasonable given Mr and Mrs D's circumstances and objectives when they invested.

what it should do

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