complaint

Mr and Mrs H have complained through a claims management company ('CMC') about advice they received from Lloyds Bank PLC to invest £7,000 each in a Capital Protected Fund 2 ('CPF2').

background

I issued a provisional decision on this complaint in February 2016 in which I thought the advice given to Mr H was unsuitable and that the advice Mrs H received was appropriate for her. I, therefore, proposed that Lloyds should pay Mr H redress on the basis I set out in that provisional view.

A copy of my provisional decision is attached and forms part of this final decision. I invited both Mr and Mrs H's CMC and Lloyds to respond to my view that the complaint should be partly upheld.

developments

In response, Mr and Mrs H's CMC acknowledged receipt of my provisional decision and confirmed that it had nothing further to add.

Lloyds replied to disagree with my provisional view, and said that:

- the nature of the CPF2 was fully explained to Mr H such that he was able to make an informed decision;
- a capital protected investment was not an unreasonable recommendation for him;
- the product offered diversification from deposit based savings during a period when interest rates have since reduced considerably;
- both Mr and Mrs H wanted to invest the funds and understood how the stock market worked.

my findings

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

While I appreciate the comments made by Lloyds in response to my provisional decision, I'm not convinced they change my view of the complaint.

Mr H received a redundancy lump sum of £29,000 on taking early retirement and they were advised to invest £14,000 of their total savings in an investment that guaranteed their capital but not a return.

Mrs H already held a stocks and shares ISA and wanted to invest *her* £7,000 for capital security and a potential return, whereas Mr H required an investment whose value would not reduce in real terms. Also, he was a non-taxpayer.

In my view, I don't think it was advisable in any event for them to invest almost 50% of their total savings in this product which was less suitable for Mr H as it didn't offer him the same tax advantages as it did for Mrs H and presented a risk that his capital could reduce in real terms.

Given I think it was suitable for Mr and Mrs H to commit around 25% of their savings to the CPF2, I'm satisfied it was appropriate for £7,000 to be invested in the CPF2 on Mrs H's behalf for the benefits it offered her. The investment was much less beneficial to Mr H.

Therefore, my view remains that Mr H would have been better advised to invest *his* £7,000 in an interest-yielding fixed rate bond over a shorter term which could pay him a return without deduction of income tax.

fair compensation

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

I think Mr H would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr H's circumstances and objectives when he invested.

what should Lloyds do?

To compensate Mr H fairly, Lloyds must:

- Compare the performance of Mr H's investment 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. Lloyds should also pay interest as set out below.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
£7,000 Capital Protected Fund 2 (CPF2)	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. Those rates should be applied to the investment on an annually compounded basis.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr H wanted to achieve a reasonable return without risking any of his capital.
- The average rate for the fixed rate bonds would be a fair measure given Mr H's circumstances and objectives. It does not mean that Mr H 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.

decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 11 April 2016.

Kim Davenport
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr and Mrs H have complained through a claims management company ('CMC') about advice they received from Lloyds Bank PLC to invest £7,000 each in a Capital Protected Fund 2 ('CPF2').

background

In 2007, Mr H was almost aged 60 and had taken early retirement which gave him a modest pension and a redundancy lump sum of around £29,000 which he held in a deposit account. He also held approximately £1,000 an instant access account.

Mrs H was in her mid-50s and had worked full-time for the same employer for approximately 18 years earning around £14,000 per annum. She held a maxi-ISA since 2003, which was worth around £8,500, and approximately £1,100 in a deposit account for emergencies.

They owned their home outright and kept separate bank accounts which gave them a combined disposable income of approximately £500 per month. They approached Lloyds to see if they could invest some of Mr H's available savings of around £30,000 which would leave their capital secure and give them a worthwhile return. Lloyds assessed Mr and Mrs H as having a cautious attitude to risk and were looking for investments that were tax-efficient.

The advisor recommended Mr and Mrs H to fully utilise their ISA allowance for the year by investing £7,000 each in the CPF 2 held in an ISA 'wrapper'.

The CPF2 guaranteed to preserve their capital and provide a return equal to 100% of any growth in the FTSE 100 Share Index after five-and-a-half years. As the average FTSE 100 Index reading over the last 12 months to maturity was less than the Index reading taken at the start date, Mr and Mrs both received back their original capital sum plus initial interest of approximately £54.

Specifically, their CMC has said that:

- Mr and Mrs H were given insufficient time to understand and agree to the advice as there was only one meeting at which everything was completed;
- the product literature was too complex for them to understand;
- they were not left with a sufficient emergency fund;
- Mr and Mrs H were led to expect a greater return from the CPF2 than they were receiving from their existing savings accounts;
- if they had been told that their capital was secure but they may not get a return, they would not have invested in the CPF2.

Mr and Mrs H's complaint was investigated by one of our adjudicators, who felt that it should be partly upheld.

While she accepted that the advice to invest in the CPF2 was suitable in principle, it was inappropriate for them to invest almost 50% of Mr H's savings with no guarantee of a return after five-and-a-half years. She thought that Mr and Mrs H should have been recommended to invest no more than £3,500 each in the CPF2.

In response, Lloyds disagreed with the adjudicator's view, and said that:

- in 2007, Mr and Mrs H were in good health and wanted an investment where their capital was guaranteed which offered the potential for a greater return than they were receiving from their deposit-based accounts;

- they were not sophisticated investors; they were treated as 'cautious' and the CPF2 gave them the tax-efficiency of an ISA with a capital guarantee;
- Mrs H worked for an employer that would have given her an insight as to how risk-based investments worked. She had a stocks and shares ISA which she had taken out while working with this employer;
- the total amount invested of £14,000 equated to 35% of their total capital, which was acceptable for an investment that guaranteed their capital. Only Mrs H's ISA was exposed to equities;
- Mr and Mrs H wanted to invest a reasonable part of their savings while Mrs H would continue to work until her retirement in five years' time. The advice left them more than £25,000 on deposit that was immediately accessible, plus a disposable income of almost £500 per month.

As no agreement has been reached, the complaint 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.

With regard to certain elements of the complaint made by Mr and Mrs H's CMC, it appears that the advice they received was given over two meetings in June 2007 and I'm satisfied, therefore, that they had a reasonable amount of time to consider the adviser's recommendations.

Also, I'm not persuaded that the product itself is especially complex or that the documentation Mr and Mrs H would have received made it appear complex.

The total amount of £14,000 they were recommended to invest still left them with approximately £16,000 for emergencies, in addition to the sum of £1,100 also held by Mrs H for the same purpose.

It is evident that Mr H's pension income in 2007 made him a 'non-taxpayer'. He had retired early and received a lump sum of around £29,000 which accounted for almost 97% of his total savings.

Mrs H had her own bank account, two savings accounts with approximately £1,100 for emergencies and a maxi-ISA worth £8,500. She appears to be a basic rate taxpayer.

Both Mr and Mrs H were recorded as wishing to adopt a 'cautious' attitude to investment risk as they answered the 'risk profile questionnaire' almost identically.

However, in answer to the question: "*Keeping my money intact is more important to me than the impact of inflation on it*", Mr H said: "*Tend to disagree*" and Mrs H said: "*Tend to agree*".

In other words, Mr H didn't want his £7,000 eroded by inflation and Mrs H wanted capital security for the other £7,000 invested on her behalf.

While all the capital available for investment belonged to Mr H, I appreciate that they were recommended each to invest £7,000 to a CPF2 to fully utilise their individual ISA allowances.

However, as Mr H was a 'non-taxpayer' and didn't want the risk of his savings being eroded by inflation, I'm not convinced that the CPF2 gave him tax advantages or was fundamentally suitable. He would have been better advised to invest £7,000 in a high interest-yielding fixed rate bond over five years from which he could receive interest gross.

On the other hand, Mrs H wanted the £7,000 invested on her behalf in a product that did guarantee her capital above the need to retain its value in real terms. Otherwise, I might have questioned why she didn't add to her existing maxi-ISA which invested in a 'cautious' risk-rated fund and appeared to have given her an average return by 2007 of approximately 5% per annum, tax-free.

I’m, therefore, inclined to believe that the CPF2 was more appropriate for Mrs H, as it did guarantee her capital and could provide tax-free returns greater than deposit rates with the risk that it might give no return.

fair compensation

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

I think Mr H would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr H's circumstances and objectives when he invested.

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- The additional interest is for being deprived of the use of any compensation money since the end date.

provisional decision

My provisional decision is that I uphold the complaint about the investment made by Mr H.

I require Lloyds Bank PLC to pay Mr and Mrs H him the amount calculated as set out above.

Kim Davenport
ombudsman