

## The complaint

Mr and Mrs R, represented by a claims management company (CMC), complain that they were mis-sold investments by Clydesdale Bank Plc.

## What happened

In 2004 Mr and Mrs R were advised by Clydesdale to invest £60,000 to meet their objective of generating income, as they had a monthly income shortfall of around £160. For tax efficiency reasons, they were advised to split the investment and hold it as follows:

- £7,000 in an ISA in Mr R's name, invested in the High Income fund, generating £30 per month income
- £7,000 in an ISA in Mrs R's name, invested in the High Income fund, generating £30 per month income
- £34,000 in an OEIC in Mrs R's name, invested in the High Income fund, generating £116 per month income
- £12,000 in an OEIC in Mrs R's name, invested in the Diversified Bond fund, with no income being taken, to include a growth element to the portfolio

In 2021 Mr and Mrs R made a complaint via the CMC to Clydesdale, saying in summary:

- Their attitude to risk was not fully assessed.
- They were advised to place too much at risk – Mr R had recently sold a business and received £140,000. They already had plans for £80,000 of that total and were advised to invest the whole of the remaining £60,000.
- Their future needs and objectives were not fully considered.

In reply to the complaint, Clydesdale said it had been made too late to be considered, so Mr and Mrs R brought their complaint to our service. An investigator at our service considered the complaint and found it had been brought in time, but that he thought the advice had been suitable, so he didn't uphold it. The CMC disagreed, saying that in particular they were advised to invest too much. The investigator explained there was no expected expenditure listed in the point of sale documents, so he wasn't inclined to change his opinion. So, the CMC asked that the case be passed to an ombudsman for a decision.

## What I've decided – and why

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

Having done so, I've reached the same conclusion as the investigator, for largely the same reasons.

Mr and Mrs R's attitude to risk was recorded as the second of seven available levels – one step up from no risk. It was defined as *"an investor looking to minimise the possibility of negative returns on their portfolio, whilst retaining the potential for real returns over and above inflation"*. The CMC doesn't dispute that the funds chosen were low risk – the main

point in dispute is the amount being placed at risk against the background of their planned expenditure.

The CMC has said £40,000 was required to repay personal guarantees given for Mr R's business, and around the same amount had been earmarked for home improvements. Neither of these is mentioned in the fact find document from 2004, which sets out the adviser's notes of the discussions that took place. Nor are they mentioned in the suitability letter sent to Mr and Mrs R setting out the recommendation.

I consider the documents completed at the time of the sale to be more persuasive than the recollections being put forward now, almost 20 years after the advice. This is because the written documents are contemporaneous to the advice, and in particular, they include specific questions about Mr and Mrs R's debts.

In the fact find the adviser wrote, under the title 'Liabilities' "*There are no joint liabilities*" and in the suitability letter, they said "*You have confirmed that you have no mortgage or loans outstanding*". No other evidence has been provided showing the date or amount of the personal guarantee being fulfilled. The CMC has said that the personal guarantees wouldn't have been called a loan or a mortgage, as it isn't quite the same type of debt – but when asked generally about liabilities, Mr and Mrs R said they had none.

It's possible the personal guarantees had already been paid off at that stage, in which case, Mr and Mrs R had £140,000 left after doing that. Or Mr and Mrs R failed to disclose to the adviser that an amount was still due to be paid, despite being asked directly. I'm satisfied it wouldn't be fair or reasonable for the adviser to have taken the personal guarantees into account if Mr and Mrs R didn't disclose them when asked directly.

Regarding Mr and Mrs R's plans for the remainder of the money – I'm persuaded that there was a conversation of sorts about their plans, as the adviser noted "*ultimately you intend to pass the funds onto your two children as part of their inheritance... you wished to allocate £60,000 towards income and growth generation and you wished to retain the remainder in accessible bank accounts to provide a balance between long term plans and any short term requirements*".

The CMC has said their home improvement plans were at an early stage. To me, that suggests they weren't fully fleshed out or costed – and given there are no notes about home improvements in the documents, I'm satisfied that these weren't specifically discussed with the adviser. I have no evidence – other than the recollections of Mr and Mrs R – to show that they had short-term plans for the £80,000 on deposit after this investment. Based on everything I've seen, I'm persuaded the adviser wasn't made aware of those plans and I'm satisfied it would be unreasonable for the adviser to be expected to take them into account.

Given Mr and Mrs R's income need, it was necessary for them to invest a sufficient amount to generate that income. Overall, I'm satisfied that the amount they invested was not unsuitable as it allowed them to generate the appropriate amount. The total income generated was £176 per month, slightly over their need, but as it was not a guaranteed amount of income, the adviser said this allowed for fluctuations. Having considered it, I agree that it's a fair reason for the amount being slightly in excess of the specific need.

The CMC argues there was no need to take a risk in order for Mr and Mrs R's objectives to be fulfilled and have pointed to deposit based savings interest rates that were available at the time. I accept that there would have been multiple ways for Mr and Mrs R to fulfil their objective – my role is to decide whether the one recommended was unsuitable.

Clydesdale has explained that Mr and Mrs R's attitude to risk would have been established using a questionnaire but unfortunately, we don't have the one Mr and Mrs R completed at the time of the sale. There's no record of Mr and Mrs R investing previously, so I'm not surprised that their attitude to risk was recorded as being at the lower end of the scale. I'm satisfied the risk levels were clearly defined, and so Mr and Mrs R would have been aware of the fact they were taking a small amount of risk with their money.

I've considered their capacity to take that risk – particularly in the knowledge that I've found the adviser reasonably thought Mr and Mrs R would have been left with over £80,000 on deposit after this sale. Also, I note that after two years, Mr R's income was due to increase as he would be entitled to his state pension, so their capacity to make up for losses was going to increase slightly. It's recorded that Mr and Mrs R wished to receive the income from this portfolio despite that, to allow them to fund holidays and other personal expenditure and I don't think that's unreasonable.

Given the £80,000 remaining on deposit, and the diversification within the chosen portfolio (to allow for some growth as well as the income) I'm satisfied that it wasn't unsuitable for Mr and Mrs R to take this level of risk. Overall, I'm persuaded that it wasn't unsuitable for Mr and Mrs R to invest the £60,000 into the chosen funds.

### **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 Mrs R and Mr R to accept or reject my decision before 13 October 2023.

Katie Haywood  
**Ombudsman**