DRN-4082968

The complaint

Mrs M complains, through a claims management company (CMC), that Lloyds Bank PLC provided unsuitable investment advice when it recommended her to invest in a fund that was too risky for her as an inexperienced investor.

To put things right, she would like financial compensation to put her into the position she would be in had she been given suitable investment advice.

What happened

In 2000, Mrs M paid £7,000 into a stocks and shares Individual Savings Account ('ISA') invested in the medium risk 'UK Growth Fund'.

Lloyds said it was satisfied this risk level had been appropriate for her and didn't uphold Mrs M's complaint that its investment recommendation had been unsuitable. Based on the information it had available in its records, Lloyds said:

- its advisor carried out an assessment of Mrs M's financial and personal circumstances prior to making the recommendation
- this assessment would have taken into account Mrs M's savings and investments at the time along with her monthly disposable income
- it would have included Mrs M's investment objectives
- the medium risk fund aimed to provide a diversified portfolio offering a wide spread of investments with the potential for long term growth
- Mrs M would have been provided with Key Features Documents at the time which highlighted the aims and risks of the plan and a Financial Report during the meeting with the advisor
- she would also have then received further paperwork and a cancellation notice giving her sufficient time to read through the recommendations and the option not to proceed if not happy to do so
- Mrs M had made no withdrawals from the plan and it was (then) still live, which Lloyds said demonstrated that the recommended plan was affordable and sustainable for her.

Mrs M wasn't happy with this response so she brought her complaint to us.

Where complaints concern something that happened more than six years ago, the Financial Ombudsman Service can't always look into what happened. In this instance, Lloyds gave consent to us investigating Mrs M's complaint and our investigator looked into the circumstances of this sale.

After considering the complaint at length, ultimately the investigator didn't feel this was a complaint he could recommend upholding. He mainly thought that although Mrs M had limited investment experience, this didn't mean that only products with a smaller investment risk should've been advised. Mrs M had wanted greater returns on her savings and the UK Growth Fund, invested mainly in a mix of UK equities, aimed to increase the value of the investment over the medium to long term, in line with her wishes. Mrs M had been in a strong financial situation with sufficient cash reserves to withstand losses. After discussion with the advisor, she had declined the option of putting her money into a lower risk fund which would have generated income that she could have invested elsewhere to achieve her goal of growing her money over the longer term. This led the investigator to conclude that the recommendation was suitable and he didn't recommend that Lloyds should take any further action.

Mrs M didn't agree with the investigator. On her behalf, the CMC said, in brief summary:

- the point of sale documentation reflected the advisor's language rather than Mrs M's own words
- Mrs M was an inexperienced investor
- it wasn't clear how Lloyds assessed Mrs M as a medium risk investor and it would have suited Lloyds to classify her in this way as it then made the UK Growth Fund suitable for her
- there was no other product offering capital growth that was suitable for a 'low' risk or cautious investor and it is unclear why, if Mrs M was genuinely assessed to be a medium risk investor, a low risk product was discussed with her in the first place.

As the complaint hasn't been resolved, it comes to me to decide.

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.

I've looked at the complaint afresh and I've independently reached the same conclusions as our investigator. I'll explain my reasons.

I've had the benefit of seeing some of the point of sale paperwork including the information prepared by the advisor in the record of the 'Financial Interview' (the 'fact find'). Mrs M signed the 'Summary and Recommendations', which was based on the fact find from the first meeting with the advisor, to confirm that the information recorded was accurate and that the risks and characteristics of the recommended investment had been explained to her. So, I think it is reasonable for me to rely on the information the point of sale paperwork shows about Mrs M's risk approach at the time.

The following information is recorded in the fact find:

- Mrs M was in paid employment and intending to work for many more years before planned retirement
- she lived in a property subject to an endowment mortgage with an outstanding term of more than 15 years and she had no concerns about repaying the mortgage balance at the end of the term
- there were no other significant household liabilities recorded
- she held finances jointly with the other adult householder giving her access to:
    - £18,000 savings for general household expenditure
    - £10,000 shared cash savings

  - £10,000 in premium bonds
  - £5,000 worth of shares
- she was looking to invest over the medium to long term
- she wanted to keep a joint cash reserve of £10,000 as emergency funds.

There is no expenditure information recorded but the above information suggests that all the household outgoings were amply covered out of the joint monthly household income, leaving any surplus funds to supplement cash savings and cash reserves available for investment purposes.

Looked at overall, I find that Mrs M had capacity to absorb investment loss and she was in a strong enough financial situation to be able to invest.

Mrs M said she wanted to get a better return than her existing bank and building society accounts offered. As far as I can see, her monthly financial needs appeared to be comfortably covered by her existing income, with readily accessible cash savings available to draw upon if needed. I am not aware of any unaddressed spending requirements. So she didn't require any income from the investment. Mrs M's circumstances and financial situation show that she was in a position to be able to invest for the medium to long term. I am supported in saying this by the fact that she has been able to keep this investment for many years without ever needing to draw upon the capital.

Lloyds doesn't have a record of any detailed discussion about the risk Mrs M was prepared to take with her investment. But this isn't enough of a reason for me to conclude that a medium risk investment was not suitable for her. I think it's likely risk would've been discussed as this was part of the advisor's normal process and information recorded in the fact find suggests that consideration was given to the question of Mrs M's attitude to risk. There are handwritten amendments making clear that Mrs M was most comfortable with a medium level of risk (as opposed to 'Medium/High' which the advisor had originally recorded and Mrs M changed, initialling the alteration). I've been provided with no evidence to suggest that Mrs M raised objection about the way the advisor finally recorded her risk approach at the time, which I'd have expected Mrs M to have done if she disagreed with it.

I accept that Mrs M's existing shareholding didn't suggest that she was an active trader or a particularly experienced investor. But I don't agree that a medium risk investment couldn't ever be suitable for an inexperienced investor. This would effectively deprive Mrs M of the opportunity to make bigger investment gains than she could otherwise achieve, which seems unfair to me as Mrs M needed to take some investment risk in pursuit of the capital growth she said she wanted.

Whilst I've been mindful not to make an assessment with the benefit of hindsight, overall, having considered everything, I don't find that Mrs M was exposed to more risk than she wanted to take.

In coming to my decision, I've taken carefully into account everything Mrs M has said, including comments the CMC mentioned in response to the investigator's opinion. But, for all the reasons I have explained more fully above, this doesn't change my overall view. In particular, I don't consider the fact that Lloyds also discussed a low risk investment option with Mrs M is a good enough reason for me to find that Mrs M wasn't properly assessed as a medium risk investor or that she was unwilling or unable to tolerate the risk level of this particular fund. I have noted, in addition, that Lloyds has mentioned that when the value of Mrs M's investment in the UK Growth Fund dropped substantially in 2001 and 2008, she raised no issues about this, which I might reasonably have expected if Mrs M hadn't been comfortable being exposed to this degree of risk.

In order to uphold this complaint I have to fairly be able to say that Lloyds did something wrong or acted in a way that wasn't fair and reasonable. For the reasons I have set out above, I haven't seen enough to show that the recommended investment was too risky for Mrs M or otherwise unsuitable. Based on all the information I've seen and been told, so far as I can see, the advice broadly met Mrs M's needs and investment objectives and was suitable.

I appreciate that what I've said here will come as a disappointment to Mrs M but I hope that setting things out as I've done helps explain why I've come to this overall conclusion.

My final decision

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 25 August 2023.

Susan Webb
Ombudsman