DRN-3926022

The complaint

Mr and Mrs S are represented by a claims management company (‘*CMC*’) in bringing their complaint. The CMC says they were given unsuitable advice by National Westminster Bank Plc to invest into two bonds in June 2006.

What happened

Mr and Mrs S made an investment of £80,000 which was split equally between two bonds, a guaranteed capital bond (‘*GCB*’) and a Norwich Union Portfolio Bond (‘*PB*’).

The GCB was for a term of three and a half years and - subject to some conditions including being held for the full term - included a guarantee that the capital would be returned upon maturity. Any growth was linked to the FTSE 100 index. The PB included a guarantee that the capital would be returned with at least some growth linked to its with profits guaranteed fund (and without extra charges) providing it was held for a minimum of five years.

The GCB matured in January 2010 and returned the sum invested of £40,000. The PB ended in September 2010 for £41,862.48, with a £422.85 penalty for early surrender.

The CMC first complained to NatWest in January 2022. It said that too much of Mr and Mr S’s savings were placed into just one type of investment, with the possibility that their funds could provide no return and be devalued by inflation. The CMC said the GCB was unsuitable for NatWest’s adviser to have recommended because:

- it merely represented a bet on the level of the FTSE 100 42 months after the bond’s start date, meaning that if it fell or had a limited rise then investors would only receive their capital back, devalued by 42 months of inflation;
- if the FTSE 100 had a strong return, investors would not get the benefit of the full rise as the return was approximately 4.48% per year, net of tax;
- as a result, investors only receive the return promised if there are very favourable investment conditions;
- only Mr S was a taxpayer at the time of the advice, Mrs S was not;
- they could have received 4.88% interest in NatWest’s own five-year fixed bond anyhow;
- so, the decision to invest for meagre possible returns made the proposal illogical and contrary to their investment objectives;
- the charges on the investment (meaning a return could only be made on 95% to 97% of it) made the investment inherently unsuitable.

The CMC also said the PB was unsuitable, as it would have had to perform exceptionally and notably beyond the rates used for projected possible returns as determined by the Financial Services Authority (‘*FSA*’), now the Financial Conduct Authority (‘*FCA*’).

On 29 March 2022, NatWest rejected the complaint. It said whilst it recognised that Mr and Mrs S were not left with a significant joint net disposable income, the adviser had confirmed and recorded with Mr and Mrs S that it was suitable for their needs and outgoings. Furthermore, with the £110,000 held in joint assets, Mr and Mrs S had previously invested in similar investment products.

NatWest further explained that it appreciated Mr and Mrs S would require investments with some element of capital protection, given they had both retired – but they were also recorded as seeking greater potential growth than what was being offered through deposit-based accounts. Mr and Mrs S had no foreseeable expenditure which would require access to their invested money in the next 3.5 years. NatWest maintained that though the bonds did not achieve the returns other fixed rate accounts achieved, it did not mean they were unsuitable to recommend at the time in 2006. It felt the CMC's assessment had been made with the benefit of hindsight.

The CMC said Mr and Mrs S disagreed, and lodged the complaint with this service. One of our investigators reviewed the complaint, but did not believe it ought to succeed. He said his view was that Mr and Mrs S were aware that their investments may not achieve projected returns, but they were documented as being willing to take a low risk with their capital to achieve greater returns. He felt the recommendation made by the adviser for the two bonds was in line with Mr and Mrs S's risk profile and didn't represent too much of their available capital; instead he believed their emergency fund was suitable in the circumstances.

NatWest agreed with the outcome reached by our investigator. However, the CMC said Mr and Mrs S did not accept his view on the complaint. They asked for it to be referred to an ombudsman, noting:

- the investigator had said that Mr and Mrs S had previous investment experience – however, they had only one involvement with investing after they had retired before state pension age;
- having held one investment before does not make them experienced investors;
- it remains of the view that Mr and Mrs S should not have been advised to place a large percentage of their assets into just one type of investment;
- Mr and Mrs S did not have any understanding of how the performance of the FTSE 100 could affect the GCB or how it might beat the rates offered by alternative guaranteed products;
- this investment was not a like for like comparison to their previous investment which had relied on the performance of an income fund;
- it took the view that the adviser should not have recommended the GCB based on a best-case performance scenario, but rather, on what the underlying fund could likely have achieved;
- it believes the adviser knew, or ought to have known that the product was likely to underperform compared to fixed rate bonds – which is what eventually happened;
- Mr and Mrs S – as retired investors – were not in a position to speculate on a product which might likely see them receive a nil-rate return;
- it remains of the view that NatWest's adviser's recommendation to invest 72% of their available savings into one type of product should be automatically deemed a mis-sale;
- Mr and Mrs S could not afford to be so dependent on the return of a single type of investment without any diversification.

NatWest thereafter made some final comments, noting in summary:

- just because fixed rate bonds were not recommended, doesn't mean the recommendations made were inherently unsuitable;
- even with limited experience, Mr and Mrs S did have some knowledge of the stock market as well as knowing that their investment could fluctuate;
- it believes an in-depth discussion took place between the adviser and Mr and Mrs S;

- it remains of the view Mr and Mrs S had the capacity to understand the recommendation that was made and they proceeded to invest freely and in line with their limited tolerance for risk.

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 thank the parties for their considerable patience whilst this matter has awaited an ombudsman's decision. Having reviewed everything carefully, I am also of the view that this complaint should not succeed.

That the CMC is assessing the investment advice now by comparison to fixed rate bonds is said with the benefit of hindsight and not an appropriate comparison. Mr and Mrs S agreed to meeting with NatWest and it was not advising on a market-wide range of investments. It was required to look at their circumstances at the time of the sale and make recommendations appropriate to their ascertained needs. I must now measure the same, based on any available evidence from both parties and determine if the proposals made by the adviser were reasonable and appropriate.

I have seen the key features information issued to Mr and Mrs S at the time for both the GCB and the PB; these explained how the investments operated and, the possible returns depending on the performance of the FTSE, the underlying with profits fund or otherwise as guaranteed by return of the original capital. I'm satisfied that NatWest provided clear and relevant information about these investments as a means to achieve Mr and Mrs S's stated aims.

At the time of the advice, Mr and Mrs S had recently received returns from their income-bearing investments taken out for around six years to provide an income in their retirement prior to receipt of the state pension. They held £110,000 in capital, and were seeking to receive greater returns than they could leaving their funds on deposit.

The CMC has centred Mr and Mrs S's complaint by noting that the advice to invest £40,000 into two investments with differing terms put too much of their money at risk. Although Mr and Mrs S's capital was guaranteed if they left it invested for the full 3.5 year term of the GCB and at least five years for the portfolio fund, there was the risk they'd get no return; and if they needed to encash the GCB early they could've suffered a loss. Whilst this didn't happen, Mr and Mrs S did incur a charge by surrendering the PB in year four.

I have therefore thought about the CMC's argument carefully and reflected on it in light of Mr and Mrs S's recorded circumstances at the time of the advice. They were noted as having no financial dependants, no outstanding financial liabilities, both being in good health and both having retired from their jointly owned business. Their different tax situations were noted.

After the investments began, Mr and Mrs S were left with £30,000 in accessible capital. I'm satisfied that was adequate provision to cover any emergencies or unforeseen costs that may have arisen, despite their limited disposable income. This is because they had no other documented liabilities, and had previously had all of their capital tied into an income-based investment. I am sufficiently persuaded that the amount of capital left on deposit was reasonable in the circumstances. So, the main point for me to consider is whether placing two large sums into investments which could've provided no return after three and a half and five or more years was suitable.

The GCB worked by comparing the FTSE 100 index at the start date with the average index over the final 12 months of the investment. If the index was higher. then up to 123% of the investment was returned. If the index was lower, then the fallback protection of 100% of the original investment was returned – and that is what happened in Mr and Mrs S's case. I recognise that the CMC has submitted that other bonds could have achieved greater returns, but this is stated with reflection; it could not be known with certainty at the time of the advice.

Overall, I believe Mr and Mrs S had the capacity to understand the prospect that the investment may not make an additional return, alongside the security of knowing it could not make a loss – and this was in line with their recorded attitude to risk, set out by the adviser within the fact find at the time. That Mr and Mrs S understood they could only receive back their invested capital has also been confirmed by the CMC when it referred the complaint to us. NatWest's adviser recorded that they wished to place their capital in products with short and medium terms, for the potential to achieve greater growth which they may then reinvest.

Though the CMC has said that the two bonds were not sufficiently diversified, the PB was invested within a mix of assets, including fixed interest investments, equities and property in order to provide potential growth. I note that the PB was surrendered slightly early by Mr and Mrs S to access funds for their daughter. However, they reinvested a large proportion of their remaining money across two stocks and shares ISAs and another capital protected investment.

So taking everything into account, I don't feel the advice to invest into the GCB or the PB was unsuitable in the circumstances and I do not believe this complaint should succeed.

As an aside, I note the CMC directed us to published guidance from the (then) FSA from October 2009, which it says infers that the FSA would generally consider an investment of more than 10% of a client's assets (and in Mr and Mrs S's case, 32% each) into a single structured product unsuitable unless there was a further assessment of their circumstances.

However, I do not believe that applies here. Firstly, it post-dates the advice being complained about and therefore was not applicable in June 2006. And secondly, from the information I've seen, NatWest's adviser did undertake an assessment of Mr and Mrs S's particular circumstances, which accounted for the short and medium terms of the two investments – and though they were both capital guaranteed products, they differed materially in their operation.

As I have said above, I have not seen any objective or persuasive evidence that the adviser proposed unsuitable investments in 2006 to Mr or Mrs S. I cannot therefore uphold this complaint.

My final decision

I do not uphold this complaint for the reasons stated.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 14 March 2024.

Jo Storey
Ombudsman