

## **The complaint**

Mr S complains that Lloyds Bank PLC (“Lloyds”) gave unsuitable investment advice, which caused him to sustain losses.

## **What happened**

In April 2001, Mr S was advised by Lloyds to transfer funds from a PEP and shares into an Asset Management Service (AMS), a managed portfolio. A further recommendation was made to transfer additional funds of £100,000 into the same portfolio several years later. This decision focuses on the 2001 advice. Those acting on Mr S’s behalf say that Mr S was exposed to more risk than he wanted to take, insufficient cash reserves were left, his circumstances ought to have been considered separately to Mrs S and it was not appropriate to have placed weight upon income from Mr S’s business as this was speculative.

It’s common ground that the complaint has been raised outside the time-limits, but Lloyds have given consent for our service to consider the merits of the complaint.

Lloyds rely upon the paperwork from the time and maintain that the recommendation in 2001 met Mr S’s needs. Mr S had selected the level of risk he was prepared to take, looking at his wider circumstances he had capacity for loss and the recommendation met the objective of capital growth. Lloyds highlight that Mr S merged his portfolio with his wife’s in 2013 and they continued to hold a joint product with a like risk profile until December 2020, when it was transferred to a new platform.

Our investigator considered the complaint. She reviewed the fact find, which detailed Mr S’s circumstances and risk appetite at the time. Our investigator noted that Mr S was looking for capital growth, had no outstanding liabilities and had a surplus of income. Mr S had investment experience and further risk questionnaires completed in 2006 and 2008 showed that Mr S had consistently said he was prepared to take more risk to achieve capital growth over the longer term. Our investigator also thought there was nothing to show that the recommendation exposed Mr S to higher risks that he’d previously been prepared to take but even if it had, the recommendation overall was in line with Mr S’s objectives and risk appetite at the time.

Further, as to cash reserves, Mr S did hold cash reserves and it was expressly recorded that these would increase after receipt of his share of company profits. Mr S and his wife also held their joint wealth in cash under Mrs S’s name, which was supported by a later transfer of £100,000 to Mr S’s investment. Overall, our investigator thought the recommendation was suitable and so did not uphold the complaint.

Those acting for Mr S say that as at 2001, £19,240 of the holdings held by Mr S were switched into higher risk companies and it was misleading to say 80% of the portfolio stayed the same as there was constant activity over the years, this being a managed portfolio. Further those acting for Mr S say that a £100,000 top-up in 2008 was almost completely placed in very high-risk assets. They stated that it was not appropriate to increase risk levels as Mr S planned to retire by aged 45 years. Overall, they maintained that Mr S had a modest

salary and a volatile portfolio was the “antithesis” of his investment objective of earning a stable income to fund early retirement.

Our investigator wasn’t persuaded to change her view and highlighted that the complaint brought to our service was about the 2001 recommendation only.

The matter has now come to me for a final 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.

In reaching my decision, I’ve considered the information provided by both parties to decide what is more likely than not to have happened. I’ve considered the contemporaneous documents and have placed more weight upon them given the lengthy passage of time since the 2001 recommendation was made, over twenty years ago.

I’ve considered Mr S’s circumstances as at 2001. Mr S ran his own business, which he was intending to sell and then to retire in around eight years’ time. He had £9,000 in a TESSA, £17,865 in shares, just under £13,000 in ISAs and £95,247 in a managed PEP held with Lloyds. In addition, Mr S jointly owned his home with his wife and had no outstanding liabilities. Mr S also owned the freehold premises in which his business was situated. He held a further £150,000 in joint assets with Mrs S. Mr S’s income of £35,000 was recorded as being in excess of joint annual outgoings of £20,000 and he received a further £535 from investment income.

The contemporaneous fact find records that Mr S didn’t have time to manage his investments due to running his business, so was looking for professional management of his funds. He was looking to invest the funds from the PEP and shares for capital growth over the longer term and had a higher attitude towards risk. The application form signed by Mr S had the following section selected:

*“My paramount objective is capital growth achieved though mainly equity and/or equity-related investments. As this could involve periods of a high degree of fluctuation in the value of the portfolio I accept that this will need a commitment to an investment period in excess of five years.”*

Whilst the focus of this decision is on Mr S’s risk appetite and objectives as at 2001, in my view, Mr S’s ongoing pattern of investment was consistent with that recommended in 2001. For example, I’ve seen a client review from 2002, signed by Mr S, confirming that his objective was capital growth to be achieved by the medium of equity or equity related investments, which could involve periods of high fluctuation in the value of the portfolio and a commitment to an investment period in excess of five years.

In response to risk assessment questions in February 2006, Lloyds assessed Mr S as having a specialist appetite for risk, the highest level and Mr S self-selected adventurous, risk level below. Described as:

*“These investments carry a relatively higher risk of capital loss but with the potential for higher capital growth over the medium to long term. They may be subject to a considerable level of fluctuation in capital value. They do not offer any guarantees.”*

Mr S also signed an acceptance form in October 2006 confirming he was content with the objectives and details of a Dynamic Equity Investment profile, which again was aimed at a

high return with a relatively high risk of capital loss in the short to medium term. The same risk appetite was recorded at review in 2009.

When the recommendation was implemented around 80% of existing investments were transferred with the remaining investments being re-invested into different companies. Looking at the asset split overall, I'm not persuaded this took Mr S outside his higher risk appetite. The majority of funds were in equities in line with the recommendation.

Mr S met first with an adviser and then twice with his Private Banking Manager to consider the recommendation. I am of the view that it is more likely than not that Mr S was actively involved in the decision-making process and his consistency in pursuing capital growth, supports my view that this was his key objective as at 2001.

As to capacity for loss, I've noted that Mr S had access to a joint cash reserve of £23,489 including his TESSA and it was expressly recorded that Mr S was due to receive additional company profits shortly. Further, in this particular case, I don't think it was unreasonable to have regard to the cash funds held by his wife (£259,200), which were said to be joint funds held in her name for tax reasons. That Mr S went on to later transfer around £100,000 into his investment is consistent with the notes from the time and goes to support that Mrs S funds were also available for his use. Considering Mr S's particular circumstances addressed above, I find that it is more likely than not that he had capacity to withstand losses.

So, considering the recommendation in the round, I'm satisfied that the recommendation stood to meet Mr S' objectives and did not expose him to more risk than he was willing to take. On balance, I find that the recommendation was suitable for his needs and so I won't be asking Lloyds to do anything more.

### **My final decision**

I'm sorry to disappoint Mr S, but for the reasons given, I won't be upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 August 2023.

Sarah Tozzi  
**Ombudsman**