

## **The complaint**

Mr and Mrs T complain that Legal & General (Portfolio Management Services) Ltd gave them unsuitable investment advice in 2005. They say that they were low risk investors and should have been sold a fixed rate bond, rather than a structured product which exposed them to too much risk.

The complaint is brought on their behalf by a claims management company. For ease, I'll refer to everything as if it's been said by them.

## **What happened**

Mr T had recently received an inheritance and he and his wife sought advice from Legal & General. They were assessed as having a cautious attitude to risk and their investment objective was capital growth.

Legal & General recommended that Mr and Mrs T each invested £5,000 in a structured deposit held within an ISA wrapper.

During the investment term, one of the firms used for capital protection filed for bankruptcy and the part of the investment secured by it was lost. Due to the growth in the FTSE 100 index, Mr and Mrs T's original investment was recovered, plus a small amount of growth.

Legal & General was satisfied that the investment met Mr and Mrs T's needs. It didn't think the advice it gave was unsuitable.

Our investigator didn't recommend that the complaint should be upheld. She didn't think the investment was unsuitable for Mr and Mrs T, given their agreed objectives and attitude to risk.

Mr and Mrs T didn't agree. They said, in summary, that:

- The return from the structured product was dependent upon the solvency of a handful of firms, one of which collapsed.
- Mr and Mrs T weren't aware of what rates were available for fixed rate bonds. Whilst they may have wanted a better return than a basic current or instant access account, they could've put their money in a longer-term fixed rate bank bond, earning around 5% or higher, which would have been fully FSCS protected in the event of insolvency. This would have been more suitable for them, taking into account their desire for minimal risk, their ages, and the term of the product they were sold.

## **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.

The sale happened around 18 years ago, and limited records are available. In cases like this, where the evidence is incomplete, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Having considered everything carefully, I find I have come to the same conclusion as the investigator for the following reasons:

Mr and Mrs T were inexperienced investors, but I'm satisfied that they wanted to take a small risk with £10,000 of their available capital. Capital security was important to them, but they wanted the opportunity to generate higher growth than a bank or building society account on their £10,000 investment.

They say now that, at the time of the sale, they weren't unhappy with their money remaining in a bank or building society account, just that they wanted a better return. But the notes of the meeting, which were made at the time, clearly say that their aim was *"to achieve growth on £10,000 at potentially higher rates than banks and building societies"*. And that they were *"comfortable investing in equities as long as there is an element of security on their capital"*. So I think it more likely than not that they did want to move their money from a bank account and were willing to take some risk.

The investment represented around 18% of their available capital. They chose to keep £47,000 on deposit for planned spending and emergencies; they had a monthly income surplus of £340; and they did not foresee any change in their circumstances. Based on their circumstances at the time, I think they could afford to take a small risk with £10,000 as it only represented a small percentage of their capital, and any losses wouldn't have had an impact on their lifestyle.

The investment needed to be held for six years. I haven't seen any evidence to suggest they might have needed that money before maturity. They say Mr T was about to retire, but this isn't what he told the advisor at the time. He was self-employed and didn't want to talk about retirement planning. And, even if Mr T did decide to retire within six years, I'm not persuaded he would have needed to access the investment.

The equity bond Legal & General recommended didn't have a capital guarantee. But it did offer capital protection. That protection was provided by five counterparties. This meant the protection of Mr and Mrs T's capital was reliant on those counterparties. Unfortunately one of the counterparties became insolvent during the 2008 financial crisis. So the proportion of the bond protected by that counterparty was lost. But I don't find that what happened made Legal & General's recommendation to invest in the bond unsuitable. I say this because it wasn't reasonably foreseeable that one of the counterparties would fail – they were all major institutions. And the bond's capital protection wasn't reliant on just one counterparty, so the risk of failure was spread. I can't conclude with certainty that the counterparty risk was drawn to Mr and Mrs T's attention because the key facts document they would have been given during the sale is no longer available. But it's more likely than not that the risks would have been set out in the key facts, so I'm satisfied Mr and Mrs T were most likely made aware of them.

Mr and Mrs T say they would have got a better return from a fixed rate bank deposit. But I can't make a decision based on the benefit of hindsight. When the advice was given, I'm satisfied they wanted the potential of a better return than a fixed rate deposit account and the bond provided that potential.

Overall, whilst it's unfortunate the investment didn't provide the anticipated return, I'm satisfied that Legal & General's recommendation was suitable for Mr and Mrs T based on

their circumstances at the time and their agreed investment objective and attitude to risk.

### **My final decision**

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 22 November 2023.

Elizabeth Dawes  
**Ombudsman**