

## **The complaint**

Ms H and Mr H have complained about Lloyds Bank Plc. They said it gave them unsuitable advice when it recommended investments to them. They think they have suffered investment losses because of the unsuitable advice they were given and would like to be compensated for this.

Ms H and Mr H have been represented by a claims management company throughout their complaint. Their representatives have made several comments, but for ease of reading this decision and because they are the complainants, I have referred to Ms H and Mr H as having made these comments throughout.

## **What happened**

Ms H and Mr H opened stocks and shares ISAs with Lloyds in September 2000. They invested £6,000 each. Ms H invested in a UK growth fund and Mr H a worldwide growth fund. They cashed in these investments in January 2002, and both made a loss.

Ms H and Mr H said they were given unsuitable advice from Lloyds. They said they were long standing customers and approached the bank to discuss savings and investment options after Mr H had received a lump sum when he left his employment.

Ms H and Mr H said they were advised to invest in the stock market at the wrong time and too soon after going through significant changes to their personal circumstances. They said they had no prior knowledge or experience of investing but were recommended investments that exposed them to too much risk. They said they were first time, naive and inexperienced investors. They said they made investment losses because of the unsuitable advice given by Lloyds and would like to be compensated for this.

Lloyds said in response that Ms H and Mr H's complaint was not one that it was going to look at, as the complaint happened too long ago. Ms H and Mr H were not happy with Business's response and referred their complaint to our service.

I issued a provisional decision on this complaint in October 2023. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

"Lloyds has consented to us looking into Ms H and Mr H's complaint about what happened in 2000 when it gave investment advice, so I am satisfied that I can consider the complaint. I've looked at the complaint afresh and I am currently minded to uphold it. I'll explain my reasons.

I think it's reasonable for me to rely substantially on the sales documentation that Lloyds has provided to give me an insight into Ms H and Mrs H's circumstances and financial situation at the time and in understanding of their wishes and intentions.

Ms H and Mr H's aim was to invest a lump sum. The fact find document stated they wished

to invest for capital growth. They didn't have any investment experience. Their total savings amounted to £17,000 in a savings account. They also held around £7,000 in their current account. They had a £89,000 mortgage and an outstanding £9,000 loan. There's no mention in the fact find of Ms H and Mr H's expenditure or disposable income. The fact find does state Mr H's income as £2480 and Ms H as £175. But there is no detailed breakdown of expenditure at all.

I also can't see that having a sum set aside to cover emergency spending needs or large unplanned expenses were discussed or recommended. Mr H had only just left his long-term employment and had been retired on medical grounds. This had happened only 2 months before the first meeting with the advisor from Lloyds. Mr H said he had started his self-employment, his own motorcycle training business. When they met with Lloyds Mr H had been doing this for 1 month. Mr H was the sole wage earner.

I think it would have been important for Ms H and Mr H to have a reasonable amount of readily accessible savings put aside before they committed to a longer-term lump sum investment, especially bearing in mind the reliance they held on to Mr H's new self-employment. Their total savings after the proposed investment amounted to around 4 months' worth of their joint monthly income. And Lloyds did not record down either Ms H and Mr H's disposable income or how reliable Mr H's new self-employment income was either. It had checked Mr H's monthly income but would also have seen he'd been self-employed for only 1 month.

Without having some money set aside in a savings account which Ms H and Mr H could access without notice and without penalty, I don't find they had capacity to risk loss on their investments, especially considering what I have just concluded.

Whilst the ISAs could have been surrendered at any time, their value wasn't guaranteed, especially in the short to medium term. They were intended to be held over the medium to long term, and whilst this matched Ms H and Mr H's investment objective, it risked them getting back less than they invested if they needed to surrender their ISAs early. I think it's fair to say Ms H and Mr H's investment experience was limited. So, I think it was likely to have been more difficult for them to understand the risk they were taking by having such a significant proportion of their savings tied up in investments that were effectively designed to be locked away for the long term. This at a precarious time in the short to medium term for them, as Mr H, the sole wage earner, was only a month into embarking on a new business. This, with apparently no guarantee of income, at least none that was recorded down by Lloyds within the meeting.

In coming to my provisional decision, I've considered that it seems Lloyds were not aware how much Ms H and Mr H had in disposable income each month or how significant the impact would be on any loss of earnings from Mr H's new business. But in any case, based on what Lloyds did have in front of it, I think Ms H and Mr H should have been advised to keep their savings in case of emergency spending needed and establish Mr H's business before they committed any of their money to long term investment. I don't think Ms H and Mr H were in a strong enough position to invest the amount they did over the medium or long term. So, it stands, that I am currently minded to conclude Lloyds' advice was unsuitable.

In line with the ombudsman approach to putting things right, where a complaint is upheld, I consider it fair and reasonable for Lloyds to pay compensation to reflect the financial consequences of its unsuitable investment recommendation in 2000."

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision. Lloyds responded on 19 October 2023 and agreed with the findings. Ms H and Mr H responded on 23 October 2023 and said my findings were acceptable.

### 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.

Neither party has anything further to add that I feel I need to comment on or that will change the outcome of this complaint. So, because of this, I don't see any reason to depart from my findings within my provisional decision. Lloyds now needs to put things right.

### Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Ms H and Mr H as close to the position they would probably now be in if they had not given unsuitable advice.

I take the view Ms H and Mr H would have invested differently. It's not possible to say precisely what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given their needs and circumstances when they invested.

To compensate Ms H and Mr H fairly, Lloyds must:

- Compare the performance of Ms H and Mr H's investments with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. If the actual value is greater than the fair value, no compensation is payable.
- Lloyds should also pay interest as set out below.

Portfolio name	Status	Benchmark	From ("start date)	To ("end date)	Additional interest
Lloyds UK Growth Fund (Ms H)	Unknown	Average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year of any loss from the end date to the date of settlement*
Lloyds Worldwide Growth Fund (Mr H)					

\*Income tax may be payable on any interest awarded. HM Revenue and Customs requires Lloyds to take off tax from the interest part of that award. Lloyds must give Ms H and Mr H a certificate showing how much tax is taken off, if they ask for one.

*Actual value*

This means the actual amount paid from the investment at the end date.

#### *Fair value*

This is what the investment would have been worth at the end date had it produced a return using the benchmark. Any additional sum that Ms H and Mr H paid into the investment should be added to the fair value calculation at the part it was actually paid in.

#### *Why is this remedy suitable?*

I have chosen this method of compensation because:

- Ms H and Mr H were assessed as having a medium attitude to investment risk. But, had the adviser discussed their need for having money to cover emergency or in planned spending, I think it's more likely than not that they would have put their existing savings in a savings account, where they would have had ready access to their money without risking their capital.
- The average rate for the fixed rate bonds would be a fair measure given Ms H and Mr H's circumstances and objectives. It does not mean that they would have invested only in a fixed rate bond. It is the sort of investment return they could have obtained with little risk to their capital.

#### **My final decision**

I uphold Ms H and Mr H's complaint about Lloyds Bank UK Plc and it now needs to put things right as I have described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H and Mr H to accept or reject my decision before 21 November 2023.

Mark Richardson  
**Ombudsman**