DRN-4636397

The complaint

The estate of X (the estate) complains about the investment advice provided to her by Bank of Scotland plc trading as Halifax.

What happened

In December 2005, Mrs C was advised to invest £40,000 in a Personal Investment Plan (PIP), in the Managed Income Fund. At the time she was in her mid-seventies, and retired. She held a little over £100,000 in deposit-based accounts and a further £20,000 in a unit linked bond. Her primary objective was to increase her income with a guaranteed return of her capital. Mrs C remained invested until her passing in 2021. Following this, the investment was surrendered and in August 2021, paid to the estate.

In October 2021 the estate made a complaint to Halifax about the suitability of the advice. Halifax investigated the PIP. It concluded that it would have been better for Mrs C to have kept her money in deposit-based investments and that she'd been advised to invest too significant a portion of her savings. Based on the level of risk it thought Mrs C ought to have been recommended, it assessed that the most appropriate benchmark was the Bank of England bond rate. Its calculations showed that had the correct product been advised, Mrs C's investment of £40,000 would have yielded a gain of around £13,000 but as the investment had risen to £61,000 over its lifetime, there was no financial loss to pay.

The estate didn't accept this, so it referred the complaint to this service. Our investigator agreed with Halifax; he too thought the financial advice was unsuitable but found that Halifax had applied the correct benchmark when carrying out a review of any potential loss. Where there was none, he concluded Halifax's offer was fair given there was no financial loss.

The estate disagreed with the benchmark used, so the matter's been referred to me to review.

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.

Both parties agree the advice provided to Mrs C in respect of her PIP was unsuitable. So, I'm only considering what represents fair compensation.

Looking at Mrs C's circumstances at the time of the advice, although she had minimal investment experience – primarily deposit-based accounts with one £20,000 investment in a unit linked bond– she had a reasonable sum available so an investment of £40,000 from £120,000 doesn't appear to me to be inappropriate, providing it was at a level of risk that correctly reflected her likely attitude to risk and circumstances.

There's limited information in the fact find that explains how Mrs C's attitude to risk was determined and why it was recorded as 'cautious/medium'. It's possible that it may have been because of Mrs C's experience, albeit limited, in the unit linked bond or perhaps because she was looking to receive a better return than cash deposits could provide. But, whilst Mrs C did want to invest her money rather than leave it in her deposit account over a medium term - to produce capital growth and an income, the fact find does record, “Risk to Capital - lower risk” and then further along “Is the guarantee of a return of capital in the event of death important to the customer? Yes”. Based on that information, I don’t think it can be safely concluded the recommendation of the Managed Income Fund – composed of approximately 50% equities and 20% property – was consistent with Mrs C’s attitude and circumstances.

Where an investment is found to be mis-sold because it was unsuitable, the aim of this Service is to put the consumer back into the position they would have been had the error not occurred. The way we do this is to compare the value of the funds in the unsuitable investment against a more suitable investment based on the consumer’s circumstances at the time of the sale. But it may not be possible to establish exactly what the consumer would’ve otherwise done with their money had the error not occurred. So, the value of the unsuitable investment is instead compared against a hypothetical one – in other words we make a reasonable assumption about the type of return they would receive if we’re satisfied, they were willing to take a certain level of risk or no risk at all. This level of risk should then determine the benchmark and the return based on this which we think would be the most appropriate to compare the fund against.

Here, although I disagree the investment of £40,000 was too high a proportion of Mrs C’s overall savings, I am in agreement this service would have carried out the same calculation as Halifax using the Bank of England fixed rate bond benchmark and also would have found that, despite the wrong advice, the estate has actually benefitted financially from being in an unsuitable investment.

In light of the above I don’t think that Halifax needs to amend its method of calculating the redress due to the estate.

My final decision

For the reasons given, my decision is that the complaint shouldn’t be upheld.

Under the rules of the Financial Ombudsman Service, I’m required to ask the estate of X to accept or reject my decision before 24 March 2024.

Farzana Miah
Ombudsman