

Ombudsman determination

CIFO Reference Number: 16-000328

Complainant: [The complainant]

Respondent: [Bank W]

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

The complaint relates to disappointment with an investment return following the maturity of a 4.5-year investment.

Background

In 2011 [the complainant] made a £100,000 investment into the [Fund W] following advice received from [Bank W].

The product matured in 2015, and [the complainant] received £100,033.98. Disappointed with the return of £33.98, [the complainant] contacted [Bank W] with the following complaints:

1. That [Bank W] had guaranteed a 'modest return' over the course of his investment;
2. That the [Fund W] did not keep up with inflation; and
3. That [Bank W] had 'bet against' [Fund W] and used his investment to make additional profits for the bank.

[Bank W] declined [the complainant's] complaint, and the matter was referred to CIFO for further review.

The CIFO case handler assigned to the case did not consider that it should be upheld. He reviewed the financial advice which [Bank W] provided to [the complainant] and concluded that it had accurately reflected [the complainant's] stated requirements.

The case handler could not find any evidence that [Bank W] had guaranteed a return. He noted that [Bank W] had outlined two possible scenarios upon maturity depending on [Fund W's] performance: a return of the original deposit plus growth, or a return of the original deposit only.

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

The case handler also found that [Bank W] had disclosed the risk posed by inflation and warned [the complainant] that the purchasing power of his original deposit may be reduced upon maturity.

The case handler therefore did not recommend that [the complainant's] complaint should be upheld. [The complainant] disagreed with this assessment, and the case was subsequently escalated to me for a final decision.

Findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have taken note of further representations made by each party following the case handler's initial conclusions.

I find that I agree with the conclusions of the case handler, and largely for the same reasons. I am unable to see any evidence which suggests that [Fund W] was an unsuitable investment for [the complainant].

Although I appreciate that [the complainant's] profit of £33.98 would have been disappointing, investment performance can never be guaranteed and so it would not be fair and reasonable for me to assess the suitability of a product solely on this basis.

The financial review conducted by [Bank W] notes that [the complainant] required a low risk Sterling investment with capital protection. [Fund W] appears to have met all of these requirements.

As noted by the case handler, the financial review document discloses the two possible outcomes upon maturity, which are as follows:

- ***'Your money back plus a return. If at maturity the final [Fund W] Level has increased from its initial level, you will receive 100% of the growth in addition to the return of your original deposit.'***; or
- ***'Your money back with no additional return. If at maturity, the final [Fund W] level is less than or equal to its initial level, you will only receive your original deposit back.'***

On this basis, I consider that the only return which was guaranteed by [Bank W] was the original deposit, which would be paid irrespective of [Fund W's] final performance by virtue of the capital protection offered by this product.

Additional returns would be dependent on any growth [Fund W] had managed to achieve upon maturity. In [the complainant's] case, this growth amounted to £33.98. I therefore cannot support the view that [the complainant] was guaranteed, or should be compensated with, a 'modest' return.

Because [Fund W] was indexed against the markets, rather than invested into them, [the complainant] has raised concerns that [Bank W] made superior returns for the bank by

investing his £100,000 and 'betting' against the performance of [Fund W]. [Bank W] had previously declined to disclose details of any of the investments made to [the complainant], claiming that it was commercially sensitive information.

Whether such information is commercially sensitive or not, I do not consider it to be relevant to this complaint. Any investments made by [Bank W] for its own account would be unrelated to the performance of [Fund W], which was capital protected.

Decision

My final decision is that I do not uphold this complaint.

Next steps for the complainant, [redacted for anonymisation purposes]

You must confirm whether you accept this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **17th August 2017**. The determination will become binding on you and [Bank W] if it is accepted by this date. If we do not receive your email or letter by the deadline, the determination is not binding. At this point you would be free to pursue your legal rights through other means.

If there are any particular circumstances which prevent you confirming your acceptance before the deadline of 5th August 2017, please contact me with details. I may be able to take these into account, after inviting views from [Bank W], and in these circumstances the determination may become binding after the deadline. I will advise you and [Bank W] of the status of the determination once the deadline has passed.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 17th July 2017