DRN-3600320

The complaint

Mrs A complains that Barclays Bank UK PLC provided unsuitable advice to open a Stakeholder pension plan. As Mrs A is represented by a third party, I'll refer to all submissions as made by Mrs A for ease of reading.

What happened

On 6 December 2012, I issued a provisional decision on this complaint. In it, I set out the background to this complaint as follows:

> "Mrs A met with one of Barclays' Independent Financial Advisers in 2002. At the time, she was 48 years old, earning around £27,490 and employed as a teacher. Mrs A had been a member of the Teachers Pension Scheme (TPS) since 1987. Mrs A had also contributed to a Free Standing Additional Voluntary Contribution (FSAVC) plan since 1996 – she was advised to take out her FSAVC by another firm. In 2002, Mrs A expected to work until 2014, when she would turn 60.
>
> Barclays' IFA recommended Mrs A take out a stakeholder pension plan, contributing £234 a month – taking her annual contribution to the maximum allowed £3,600 after tax-relief. At the time, Mrs A also contributed £155.93 per month to a FSAVC held with another provider since 1996.
>
> Mrs A retired in September 2012 and in 2013, she took her tax-free cash from her stakeholder plan and purchased an annuity (through another provider) with the remaining funds.
>
> Mrs A met a friend in 2019, who she says made her aware she may have been better off by buying added years in the TPS or contributing to the TPS' Additional Voluntary Contribution scheme (AVC) instead of contributing to her FSAVC and stakeholder pensions. Mrs A, through her representative, complained to her FSAVC provider, who upheld her complaint that she wasn't given enough information about the in-house options available to her. The FSAVC provider offered Mrs A compensation on the basis that if she'd been given suitable information and advice, she would have likely bought added years in the TPS. Mrs A also complained to Barclays that its IFA mis-sold her stakeholder pension because it didn't make her aware of the in-house options available to her through the TPS.
>
> One of Barclays' representatives called Mrs A in April 2021. Here is a short passage from a transcript of the call, which was prepared by Mrs A's representative:
>
>> *"Barclays: […] Erm. I just wanted to clarify something. When did you first become aware of the situation - erm - your - erm - stakeholder plan - the [name of the pension provider] stakeholder-when were you aware of - erm - there was other options that you could have taken...*
>>
>> *Mrs A: [cuts in and speaks over Barclays' representative] Probably not until I actually retired and saw how little it was really.*

> *Barclays: Okay. And that's going back to 2012 - 2013?*
>
> *Mrs A: 12"*

> Based on this call, Barclays concluded Mrs A should have been aware she had reasonable cause to complain about her stakeholder pension in 2012 and had made her complaint too late. Unhappy with Barclays' final response, Mrs A referred her complaint to our service. One of our investigators reviewed Mrs A's complaint, but thought it was referred to us outside of our relevant time limits. Mrs A disagreed, so it has been referred to me to decide whether this is a complaint we can consider."

I then went on to provisionally decide whether this is a complaint I can consider, setting out my provisional findings as follows:

> "If Barclays doesn't consent, we can't consider a complaint if it was brought to us:
>
> - more than six years after the event they're complaining about;
> - or if the six years have passed, more than three years from the date on which the consumer became aware, or ought reasonably to have become aware, that they had cause for complaint.
>
> Mrs A is complaining about the advice she received from Barclays' IFA in 2012, which is more than six years ago. But I don't agree with Barclays, or our investigator, that Mrs A ought reasonably to have been aware she had cause for complaint in 2012. I'll explain why.
>
> I've listened to Barclays' call with Mrs A, which is recorded in the transcript above. Mrs A did say she was aware of a "situation", as Barclays put it, when she saw her fund value in 2012. But I don't think Mrs A meant she was aware of other in-house pension options available to her in 2012 - and there's no discussion of what those have might been in the call. I think Mrs A was clear she was disappointed with her pension fund once she retired. Mrs A has been consistent in her testimony that she was disappointed with the value of her pension fund in 2012, but had no reason to suspect her stakeholder pension had been mis-sold. I don't think it follows that Mrs A's disappointment in her fund value, or annuity, should have made her aware she had reasonable cause to complain her pension was mis-sold to her because her IFA failed to make her aware of the in-house options available through the TPS. I note that after Barclays asked its question noted above, it went on to try asking Mrs A further questions. She explained she'd been advised not to speak to anyone about the complaint, yet Barclays persisted in trying to ask her questions. From the call, I don't think Mrs A fully understood or was comfortable with the questions put to her.
>
> Barclays said it believes that after noticing how 'little' she was getting, Mrs A was prompted to "see that there were other options for her that she was not made aware of and thus she would have been made aware that the adviser did not provide the advice she was looking for." But Barclays has offered no evidence whatsoever to support its belief that Mrs A was prompted to see if there were any other options she was not made aware of. Mrs A's testimony is she that she first became aware of the in-house options available to her in 2019, after speaking with a friend. This prompted Mrs A's complaint. I think it's likely this is when Mrs A became aware she had cause to complain, and she then made her complaint within three years. So I don't think Mrs A's complaint was brought to us too late."

I then went on to provisionally consider the merits of Mrs A's complaint and what I thought Barclays should do to put things right as follows:

> "I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint.
>
> From the sales documentation, there's no evidence to suggest Barclays carried out any enquiry about the in-house options available to Mrs A. It didn't find out what the charges of a TAVC were, or the cost of buying added years, for example. There was simply no mention that Mrs A had in-house options available to her – and there was no prompt to Mrs A to make her own enquiries. As Barclays noted in its communications to our service, referenced above, it thought Mrs A would only have been prompted to investigate other options available to her in 2012 – there was no reference to the in-house options at the time it sold the stakeholder plan to her. Knowing Mrs A had a FSAVC, Barclays' IFA should arguably have sought information on the in-house options available to her and advised her on whether she should have contributed to in-house options or continued contributing to her FSAVC – but the firm that provided the initial advice to take out a FSAVC has already compensated Mrs A for the mis-sale of the FSAVC and losses caused by that.
>
> In the absence of any information or advice about the in-house options available to Mrs A at the time the stakeholder pension was sold, I've thought about what I think Mrs A would likely have done if she had been given suitable advice. In doing so, I noted the FSVAC provider compensated Mrs A as if she would have bought added years from the TPS, but it's not for me to comment on what that provider chose to do. Having considered the evidence available, I think Mrs A would have likely contributed to her employer's AVC in 2002 if Barclays had given her suitable advice on the in-house options available. The stakeholder pension applied an annual charge of 1% of the pension fund. It's likely the AVC scheme provided by Mrs A's employer had a significantly lower charge. So, at the time the stakeholder was sold, I think it's likely contributing to an AVC would have looked like better value than investing in her stakeholder plan.
>
> I don't think Mrs A would have chosen to buy added years in the TPS scheme. She could have afforded to buy several added years, but it's unlikely she would have been able to buy the maximum possible added years. If Mrs A had bought added years, she would have had to give up a set percentage of her salary until retirement, and her contributions would have increased in line with her salary over the years. And whilst Mrs A chose to contribute the maximum annual contribution allowed to her stakeholder plan, she chose not to increase her contributions to her FSAVC in line with her earnings. I also note Mrs A's attitude to risk was considered to be low, rather than 'very low risk' – so I think an in-house AVC would have been a suitable recommendation for Mrs A - buying added-years would have been considered a very low risk option, which would have likely looked expensive in comparison to the AVC. On balance, I think it's unlikely that in 2002, Mrs A would have chosen to purchase any added years in the TPS and commit to increasing her contributions until retirement. I think Mrs A would likely have contributed to her employer's AVC scheme if Barclays had provided suitable information and advice in 2002.
>
> Putting things right
>
> I've thought about how to put things right for Mrs A. Barclays should undertake a redress calculation in accordance with the regulator's FSAVC review guidance, although I acknowledge that Mrs A plan is a stakeholder. But I think the redress methodology is still appropriate. Barclays should incorporate the amendment below

to take into account that data for the CAPS ‘mixed with property’ index isn’t available for periods after 1 January 2005.

The FSAVC review guidance wasn’t intended to compensate consumers for losses arising solely from poor investment returns in the FSAVC funds, which is why a benchmark index is used to calculate the difference in charges and (if applicable) any loss of employer matching contributions or subsidised benefits.

In our view the FTSE UK Private Investor Growth Total Return Index provides the closest correlation to the CAPS ‘mixed with property’ index. So where the calculation requires ongoing charges in an investment-based FSAVC and AVC to be compared after 1 January 2005, Barclays should use the CAPS ‘mixed with property’ index up to 1 January 2005 and the FTSE UK Private Investor Growth Total Return Index thereafter.

As it isn’t possible to pay any compensation due to Mrs A’s pension, it should be paid directly to Mrs A as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid in retirement. 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

My provisional decision

For the reasons set out above, I provisionally uphold this complaint.”

I invited both parties to respond to my provisional decision. Barclays didn’t respond, but Mrs A did, saying she would have bought added years had her stakeholder plan not been mis-sold to her. She reiterated she could have bought five added years for around £200 per month – taking her to the maximum possible number of added years she was eligible for.

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.

Barclays hasn’t responded to my provisional decision, so there’s nothing that has changed my provisional conclusions that this is a complaint we can consider for the reasons outlined above. And Barclays hasn’t responded to my provisional decision that it mis-sold Mrs A’s stakeholder plan, so I remain of the view this complaint should be upheld. But Mrs A disagreed with my provisional conclusions about what Barclays should do to put things right for her, so I’ve considered this point afresh.

Mrs A is likely right she could have afforded to buy five additional years from the TPS in 2002, which would have cost less than the £300 she was contributing to the stakeholder plan. But as Mrs A was concerned about contributing the maximum possible to her pension provision, I remain of the view contributing to her employer’s in-house scheme would have been a suitable option because it would have allowed Mrs A to contribute the full £300 she chose to invest into the stakeholder plan, whereas buying added years wouldn’t have used the full £300 she had available to save into a pension. And as I said in my provisional decision, Mrs A’s attitude to risk was considered to be low, rather than ‘very low risk’ – so I think an in-house AVC would have been a suitable recommendation for Mrs A. And whilst we now know added years might have been a better option, I can’t use hindsight when making decisions. I think it’s likely that, in 2002, buying added-years would have been considered a very low risk option, which would have likely looked expensive in comparison to the benefits that could be achieved by contributing to the AVC. On balance, I remain of the view it's unlikely that in 2002, Mrs A would have chosen to purchase any added years in the TPS and commit to increasing her contributions until retirement. I think Mrs A would likely have contributed to her employer's AVC scheme if Barclays had provided suitable information and advice in 2002. Because of this, I remain of the view Barclays should put things right as I set out in my provisional decision. For clarity, I'll set this out again below:

Putting things right

Barclays should undertake a redress calculation in accordance with the regulator's FSAVC review guidance. Although Mrs A was sold a stakeholder plan, I think the redress methodology is still appropriate. Barclays should incorporate the amendment below to take into account that data for the CAPS 'mixed with property' index isn't available for periods after 1 January 2005.

The FSAVC review guidance wasn't intended to compensate consumers for losses arising solely from poor investment returns in the FSAVC funds, which is why a benchmark index is used to calculate the difference in charges and (if applicable) any loss of employer matching contributions or subsidised benefits.

In our view the FTSE UK Private Investor Growth Total Return Index provides the closest correlation to the CAPS 'mixed with property' index. So where the calculation requires ongoing charges in an investment-based FSAVC and AVC to be compared after 1 January 2005, Barclays should use the CAPS 'mixed with property' index up to 1 January 2005 and the FTSE UK Private Investor Growth Total Return Index thereafter.

As it isn't possible to pay any compensation due to Mrs A's pension, it should be paid directly to Mrs A as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid in retirement. 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

My final decision

For the reasons explained above, I uphold this complaint and require Barclays Bank UK PLC to do what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 6 February 2023.

Victoria Blackwood
Ombudsman