DRN-3607802

The complaint

Mr and Mrs E complain they were given unsuitable advice by Barclays Bank UK PLC to invest in the Barclays Managed Growth fund.

What happened

I issued a provisional decision in Mr and Mrs E's complaint and set out the background to the complaint and my provisional findings as follows:

"In 2001 Mr and Mrs E were advised to invest a total of £17,000 in the Barclays Managed Growth fund. They surrendered the investment in 2003 and received around £14,000 back. In 2020 they spoke to a claims management company (CMC) who raised a complaint on their behalf. The CMC said that Mr and Mrs E were first time investors who were advised to invest too much of their available money and take too much risk.

Barclays said they felt the advice was suitable. They said that Mr and Mrs E were left with a cash reserve of £27,000 after investing and had £600 disposable income each month, so hadn't been advised to invest too much. The fund matched Mr and Mrs E's attitude to risk of medium, so the level of risk was suitable too. However, Barclays did pay Mr and Mrs E £100 for delays in dealing with their complaint.

Mr and Mrs E still felt the advice was unsuitable and so the complaint was brought to our service. The CMC said that although they may have felt their attitude to risk was medium, the adviser had a duty to make sure the recommendation was suitable.

An investigator at our service looked into the complaint and felt it should be upheld. She felt that as first-time investors, Mr and Mrs E wouldn't have understood the amount of risk they were taking, based on the paperwork from the sale. The adviser had only recorded total savings of £34,000 (£17,000 after investing) in the paperwork and so that was the figure they were advising about – she felt the additional savings may not have been disclosed as they were being used for other purposes. The fund they were advised to invest in involved mostly equity investments, and the investigator felt this was too much risk for the adviser to recommend they take with half their savings. The investigator recommended that Barclays calculate the return Mr and Mrs E would have achieved using the FTSE UK Private Investors Income Total Return Index.

Barclays disagreed, saying that the fund involved around 73% equities and the rest would have been invested in fixed interest or cash. They said the other undisclosed savings meant they were left with enough in cash after investing. Barclays felt that the benchmark the investigator recommended was not sufficiently different from the fund Mr and Mrs E had been advised to invest in, as the equity content was around 55% in the benchmark. As no agreement could be reached, the complaint has been passed to me for a decision.

What I've provisionally 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.

At the time of the advice Mr and Mrs E were both 44 years old. They were self-employed farmers who rented the farm on which they lived and worked. They were both planning on retiring at 65 and Mrs E had no private pension provision. The adviser noted that Mr E had a private pension – but failed to record any details about it, other than to note "We have discussed the importance of considering pension contributions as soon as convenient in the new tax year".

Their joint income was estimated at £18,000 per year before tax, £1,400 per month after tax. Their normal monthly expenditure was noted as £800 with an estimated £600 disposable income per month. The adviser didn't complete an income and expenditure form with them, so there's no detail about the type of expenditure that this included – or how reliable the estimates were. There were no debts recorded and the adviser noted they had total savings of £34,000, of which they wished to invest £17,000. Barclays have provided bank statements that show Mr and Mrs E had around £27,000 in cash after investing, so they do seem to have had more savings than the adviser noted. They had no protection policies in place and had never invested previously.

Having considered the fact find carefully, I don't think the adviser gathered enough information to allow them to give suitable advice. The adviser had an obligation to ensure they took reasonable steps to understand Mr and Mrs E's circumstances – including their financial situation, investment experience and objectives. They don't appear to have done that here – they haven't recorded any detail about Mr and Mrs E's pension provisions, and I don't think they asked enough questions to accurately ascertain their expenditure. I think it's fair to say that without getting this information, the adviser didn't do enough to make reasonably sure that they understood Mr and Mrs E's circumstances.

I don't know what Mr E's private pension was worth in 2001. I do know that Mrs E didn't have one, so would have been entirely reliant on state pension at retirement. In my opinion this makes the fact the adviser didn't ask about Mr E's pension provision even less reasonable, as that's all they'd have been relying on in retirement, other than state pension. At the time of the advice, state pension was less than £80 per week – so at retirement Mrs E at least would be facing a substantial change in income. This would have been coupled with the fact that they were renting the farm on which they lived – at retirement they would have likely had to move which would have involved another change in finances.

I don't think it was reasonable for the adviser to give advice without understanding what their provisions were for retirement, given the considerable change in circumstances that would be taking place. Mrs E especially would likely have needed to rely on their savings in retirement, because of those changes.

Barclays has said they'd have been able to make up for losses incurred on this investment due to the amount of time left before they were planning on retiring. Although I appreciate retirement was 20 years away, I not convinced there's enough evidence they had enough time to both put a suitable amount of money aside for retirement and make up for losses that might be incurred in this investment. Though the adviser noted that Mr and Mrs E only wanted to discuss lump sum investments and not pensions, there's no evidence of the adviser explaining the ramifications of advising them without the information about their finances. The adviser had a duty to take this into account to give suitable advice on how to invest so it's not enough that Mr and Mrs E didn't want to discuss this and I'll explain why.

If a customer insists on going ahead without disclosing information, or refuses certain pieces of advice, at the very least I'd expect warnings to be given about the impact this would have on the suitability of that advice. This is to ensure that the customer has clear, fair and not misleading information about what the adviser thought was suitable, so that they could make *a fully informed decision about whether to invest. No warnings were given here – including any warnings from the adviser about the impact on their lifestyle which could be caused by the types of losses that can be involved in the type of investment that Barclays recommended.*

The adviser did note a couple of times that the amount to be invested was Mr and Mrs E's own choice – but again this isn't good enough. An adviser's role is to recommend something that in their opinion is suitable for the investor. So, where an investor proposes an amount to invest, it's still for the adviser to satisfy themselves that investing that amount was suitable for that investor, and to account for why they think that. They certainly should do more than just accept what the investor wishes to do, otherwise it defeats the object of the adviser's involvement in the transaction.

I don't think it was suitable for Mr and Mrs E to invest almost 40% of their life savings in a fund that involved the level of risk that the Managed Growth fund included, given their likely need to rely on this money later in life. The Managed Growth fund is a fund that invests in other funds and at the time of the advice, it consisted of 72.95% in UK funds, 26.69% in overseas funds, and 0.36% in cash/cash equivalents. There is evidence that some of the underlying funds involved fixed interest investments and Barclays has said that the asset mix of the funds at the time of the sale, meant that around 73% was invested in equities. I don't think this level of risk was suitable given their financial circumstances – it's likely they would not have had enough money to maintain their standard of living later in life.

Though this wasn't a reason given by the adviser, I have considered the argument that the best course of action was to take a slightly higher level of risk with the money, when they were still 20 years away from retirement. This would have given them a good chance of getting some growth on this investment over that period, and 20 years is a long enough period to allow the investment to overcome any short-term volatility. I've carefully thought about whether the advice was suitable with that in mind, despite the capacity concerns I have. I still don't think it was suitable, and I'll explain why.

I'm not satisfied that Mr and Mrs E would have understood the amount of risk involved here. Their attitude to risk was noted as medium, but a suitability letter doesn't appear to have been sent and there's nothing in the fact find that shows a discussion around Mr and Mrs E's attitude towards risk. I understand that at the time the normal process that Barclays' advisers followed when assessing attitude to risk, involved the adviser explaining the definitions of the four available risk levels – risk averse, low risk, medium risk and high risk. Then the investors would pick the one that suited them best.

In my opinion the definition of 'risk averse' clearly states that it involves some guarantee and a wish to avoid any loss. As Mr and Mrs E didn't pick that category, I think they were willing to take some amount of risk. The definitions of low and medium risk were:

"Low Risk – You are a reasonably cautious investor. You require a significant proportion of your savings to be in cash form. For the remainder of your investment, you are prepared to accept fluctuations in capital values to achieve your longer term investment objective.

Medium Risk – You are a more typical investor, requiring a proportion of your savings to be in cash form, but less than that of the low risk investor. Again, you are prepared for fluctuations in the value of the remainder of your investment, to obtain the prospect of higher long term returns to match your investment goals."

In my opinion it would have been tricky for first-time investors to grasp the difference between those two risk levels – other than the amount of money the investor is willing to hold in cash. For instance, 'typical investors' and 'significant' are subjective terms and could *easily sway a consumer to one risk level over the other, without really ensuring they understand what the different levels of risk would entail. Because of this I think the risk levels are not very clear and would be dependent on the individual investor's understanding. There's nothing that sets out the different assets that are likely to be involved in funds at the different risk levels – or the types of return and fluctuations that each asset type could involve. This is especially important here, given that Mr and Mrs E were first time investors, so had no previous experience to inform their understanding.*

I've considered what I think is likely to have happened had the adviser given advice on all elements of their circumstances - and done more to ensure that Mr and Mrs E understood what they were being advised to invest in. I don't think Mr and Mrs E would have gone ahead with investing in this fund. This is because I think it's unlikely they'd have wanted to expose quite so much of their savings to the large equity content here, given their seeming lack of retirement provision – especially for Mrs E. Also, I think their lack of previous experience of losing money would have made them hesitate, had they been fully aware of the risk of loss and large possible fluctuations in value involved here. I think it's likely they'd have opted to take less risk overall and I've set out below how Barclays should put things right.

Barclays has also offered £100 for delays in dealing with the complaint. This has already been paid and this issue has not been raised by Mr and Mrs E with our service. So, I will not be making a finding on this element of the complaint, as it's not in dispute."

I then proposed redress based on a comparison of the return Mr and Mrs E received from the investment, and the return available on half their money using the average rates from one-year fixed rate bonds, and half using the FTSE UK Private Investors Income Total Return Index.

Responses to my provisional decision

The CMC replied, on Mr and Mrs E's behalf, to confirm they had nothing further to add. Barclays replied and said that they agreed with the provisional findings.

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.

Having done so, and having reviewed the replies to my provision decision, I see no reason to depart from my provisional findings as set out above. I therefore reach the same conclusions as in my provisional decision, for the same reasons, and make them final.

Putting things right

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

I take the view that Mr and Mrs E would have invested differently. It is 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 Mr and Mrs E's circumstances and objectives when they invested.

What must Barclays do?

To compensate Mr and Mrs E fairly, Barclays must:

- Compare the performance of Mr and Mrs E's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Barclays should also pay interest as set out below.

Income tax may be payable on any interest awarded. If Barclays considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs E how much it's taken off. It should also give Mr and Mrs E a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Barclays Managed Growth fund	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Barclays should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs E wanted capital growth with a small risk to their capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.

- The FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr and Mrs E's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs E into that position. It does not mean that Mr and Mrs E would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs E could have obtained from investments suited to their objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Barclays Bank UK PLC should pay the amount calculated as set out above.

Barclays Bank UK PLC should provide details of its calculation to Mr and Mrs E in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs E to accept or reject my decision before 19 August 2022.

Katie Haywood
Ombudsman