

## **The complaint**

Mrs S complained that Barclays Bank UK PLC gave her unsuitable investment advice in 1993 which caused her financial loss.

Mrs S brought her complaint through a representative but to help keep things simpler, I'll just refer in my decision to Mrs S as the complainant.

## **What happened**

Acting on Barclays' recommendation, on 1 December 1993, Mrs S paid £10,000 into each of the following funds:

- The Scottish Widows with-profits endowment – matured on 26 November 2013 – value was £36,143.39.
- Eagle Star Unit-Linked Rainbow Bond – surrendered 9 November 2009 – value was £23,843.67.

In February 2020, Mrs S complained to Barclays that when it had advised her and made its investment recommendations, it was the wrong time for her to invest, she was advised to invest too much of her available funds and she was advised to take too much risk.

In its final response letter, dated 1 April 2021, Barclays said that although she had only complained about the Scottish Widows plan, its investigation into her complaint had revealed she was also recommended for the Eagle Star Bond at the same time. So it had looked into both investments. Barclays upheld her complaint because, due to the lack of paperwork from the time, it had been unable to confirm that these investments were suitable for her. Barclays explained that it couldn't be certain the recommendations to invest in risk based products were suitable or that the amounts invested were appropriate so it had concluded that she should have retained all of her savings in cash.

To put things right, Barclays calculated interest from the commencement date of the investments up until the end date using the prevailing Bank of England base rate (BoE) to establish a benchmark figure for interest – which it compared against actual interest Mrs S had earned. Barclays explained that it had attempted to put Mrs S in the position she would otherwise have been in had she not invested in these funds and instead kept her money in a savings account.

Taking this approach, Barclays found that Mrs S had made a comparative loss on the Scottish Widows plan as it had paid her £169.33 below the benchmark. It said that 8% simple interest on £169.33 (worked out from the date of surrender to the date of its final response letter) amounted to £100.61.

Barclays said it would deduct £20.12 from this redress to reflect basic rate tax owing to HMRC from the overall total as it was required to do.

Barclays said the Eagle Star Bond had paid out £1,931.60 above the benchmark so Mrs S was better off because she had invested – and so no further compensation was due.

This led to Barclays offering to pay Mrs S £249.82 in settlement of her complaint about unsuitable advice.

Barclays also offered to pay Mrs S a further £200 compensation by way of an apology to say sorry for how long the investigation had taken.

Mrs S didn't feel Barclays' response went far enough to put things right and so she brought her complaint to us in June 2021. She thought that the benchmark used by Barclays to calculate redress was incorrect as it didn't match the current redress guidelines she thought the Financial Ombudsman Service would apply after 1 February 1996. Barclays had compared the full investment to the Bank of England (BoE) rates. Mrs S felt that Barclays should have used a combination of rates to calculate fair redress - BoE base rate up to 1 February 1996 and from that date onwards, BoE average return from Fixed Rate Bonds with 12-17 months maturity.

One of our investigators considered Mrs S' complaint. He first considered whether the complaint was in our jurisdiction and was satisfied, as Barclays had given its consent to us investigating Mrs S' complaint, this was a complaint he could look at.

Our investigator said he didn't need to look into the merits of Mrs S' complaint as Barclays had already upheld it – he would concentrate on whether its redress proposals were fair and reasonable.

He felt that Barclays had correctly applied the BoE rate to calculate redress from December 1993 – but that it should have used the FRB rates from the date they came into use in February 1996. He explained how he had come to his view and set out what he thought Barclays needed to do to put things right.

Barclays disagreed with our investigator's view. In brief summary, it disputed the approach our investigator was recommending. In support of its position it relied on another decision where the investment had started prior to FRB rates and closed in 2018 - a scenario it compared this case to – and said BoE was used all the way through.

The complaint came to me to decide. I issued a provisional decision.

### **What I said in my provisional decision**

Here are some of the main things I said.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs S' complaint concerns investments she was advised to take out almost thirty years ago and unsurprisingly, there is only limited documentary evidence now available. So I've based my decision on the available information from both parties. Having done so, I am upholding the complaint but I disagree with the approach to redress taken by our investigator. So I think it's fairer for me to set out what I think in a provisional decision so the parties have a final opportunity to comment further if they would like to before I issue a final decision.

### ***Suitability of advice***

Whilst I am able to consider the suitability of the initial advice to open these investment accounts, in this case, the suitability of the advice Barclays gave Mrs S isn't any longer in dispute.

In its final response letter Barclays upheld Mrs S' complaint and said:

*"Due to having very limited paperwork, I cannot be certain the recommendations to invest in risk based products were suitable or that the amounts you invested were appropriate. I can only therefore conclude that you should have retained all of your savings in cash."*

In these circumstances, I don't need to consider suitability further and I have concentrated on looking at the approach Barclays has taken to put things right for Mrs S.

#### *Fair compensation*

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

Barclays' approach is based on Mrs S having not invested at all as initial documents detailing suitability are not available. Its view is that the return Mrs S should've received should be in line with Bank of England (BoE) base rate.

Mrs S feels a different benchmark would be appropriate for working out redress from February 1996 (which would increase the redress amount).

I think Mrs S would have invested differently. It is not possible to say *precisely* what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Mrs S' circumstances and objectives when she invested.

To put things right, the usual Ombudsman approach would be that Barclays should compare the return of Mrs S' investment to the benchmark we recommend for no-risk based investments dating back to this period – and for this purpose, we look to the rates published by the Bank of England showing the average return from one-year fixed rate bonds. This doesn't mean I think that Mrs S should have invested into a fixed interest deposit account – instead, this is the sort of return she would have got with little or no risk to her money. So I think that's a fair benchmark to use here.

If this comparison shows a loss, Barclays would need to pay this loss and add 8% simple interest per year to this figure from the date Mrs S closed her investments to the date of settlement.

And, in line with the way we would expect a financial business to put things right in these circumstances, this benchmark should apply to the whole period that Mrs S was unsuitably invested in the Scottish Widows policy and Eagle Star Bond. The data for fixed rate bonds published by the BoE only begins from January 1996. So if the investment was taken out prior to January 1996, then the Ombudsman approach is that the benchmark to use should be the BoE base rate plus 1% interest.

Barclays also agreed to pay £200 to compensate Mrs S for the delay in dealing with her complaint. This is in addition to any amount calculated for her investment loss. This seems fair to me and in line with what this service would have awarded."

## What the parties said in response to my provisional decision

Mrs S and Barclays have both confirmed they prefer their own views on what redress is appropriate and I have engaged in further correspondence with the parties about this.

The deadline for responses has now passed so I think it's reasonable for me to proceed with my review of this complaint.

## 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.

We've set out our approach to dealing with complaints on our website and I've kept this in mind while deciding this complaint.

I'd like to thank both parties for all the information that has been provided about this matter.

I've taken carefully into account everything that's been said in response to my provisional decision. I'd like to assure both parties that I've thought carefully about everything again before coming to my final decision and taken into account everything they have asked me to reconsider.

I appreciate that the parties each take a different view but, for the reasons I explained more fully in my provisional decision I still think it's fair to uphold this complaint.

## Putting things right

Barclays should do the following:

- compare the performance of Mrs S's investments with the benchmarks 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
- carry out a separate calculation for each investment.
- also pay interest as set out below
- pay £200 compensation to Mrs S as Barclays as offered (if that hasn't already happened)
- provide details of its redress calculation to Mrs S set out in a clear, understandable format.

Note that Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
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Scottish Widows with-profits endowment	No longer exists	Average BoE base rate+1% interest	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement
Eagle Star Unit-linked Rainbow Bond	No longer exists	As above	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 or payable 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 Mrs S paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there is a large number of regular payments, to keep calculations simpler, I'll accept if Barclays totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

The additional interest is for being deprived of the use of any compensation money since the end date.

### **My final decision**

I uphold this complaint and direct Barclays Bank UK PLC to take the steps I've set out above to put things right for Mrs S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 28 October 2022.

Susan Webb  
**Ombudsman**