DRN-3812135

The complaint

Mrs S complained, through a claims management company (CMC), that Barclays Bank UK PLC provided unsuitable advice in 1998 when it recommended her to invest in a fund that she feels was too risky for her. To put things right, Mrs S wants financial compensation.

The investment advice was provided by a financial business trading under a different name. But, to keep things simpler, as Barclays is responsible for dealing with the complaint I will refer to it as the financial business that provided the advice and sold the investment complained about.

What happened

In June 1998, Mrs S was advised by Barclays to invest £25.00 per month into the Woolwich UK Stockmarket fund via a Personal Equity Plan (PEP) - which she did. Mrs S continued to make the regular monthly payments for more than six years until September 2004. The initial PEP had migrated in April 1999 to a Maxi ISA (Individual Savings Account). In total, Mrs S paid £1,925.00 into the PEP/ISA and she got back £1,844.43.

Mrs S was mainly unhappy that the PEP/ISA was almost entirely invested in equities and so wasn't suitable for her as a novice investor on a very modest income.

In response to this complaint Barclays said, in brief summary, that £25.00 was an affordable investment amount for Mrs S for an extended period and the medium-risk rated fund was suitable for people investing for the first time, especially if they were making regular contributions. It said the adviser would have discussed risk and reward at the time and provided Mrs S with relevant product documents. Barclays said it had found no evidence that this risk approach was incorrect. So it didn't uphold the complaint.

Mrs S wasn't happy with this response so she brought her complaint to us.

After considering the complaint, based on the limited information available, the investigator recommended upholding the complaint. He mainly thought that although the monthly investment amount had been affordable for Mrs S, he couldn't safely say what level of risk she was prepared to take in 1998. And he didn't feel that Barclays had provided compelling evidence that Mrs S had a need or desire to invest in the level of risk she did. So he set out the steps he felt Barclays needed to take to put things right.

Whilst Mrs S appears to be happy with this proposed outcome, Barclays didn't agree with the investigator.

It believed that investing £25.00 per month was, despite the fund risk rating, essentially a low risk investment and very affordable for Mrs S. It said investing £25.00 per month into a cautious/lower risk fund would have provided Mrs S with no real benefits and "*the affordability and the pound cost averaging make clear that this was not unsuitable advice as the risk she was taking was minimal*". Barclays said Mrs S clearly had the capacity and tolerance to make these payments as they continued for several years and had no impact on her standard of living. It also questioned the investigator's suggested redress approach and said a more suitable redress approach would have been to use the '50/50' cautious comparator.

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

What I said in my provisional decision

Here are some of the main things I said.

"Barclays has consented to us looking into Mrs S's complaint about what happened in 1998 when it sold this investment, so I am satisfied that I can consider the 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've looked at the complaint afresh and I've independently reached the same conclusions as our investigator about upholding the complaint. But I think that using a different redress formula is a fairer way to put things right. I'll explain my reasons.

Barclays is unable to supply any of the point of sale paperwork from 1998. This isn't the reason I'm upholding the complaint. I wouldn't reasonably expect Barclays or Mrs S to have kept full financial records dating back 24 years. Where the information is incomplete (as some of it is here) or facts aren't agreed by the parties involved, I must base my decision on the balance of probabilities – in other words, what I consider is most likely in the light of available evidence and the wider circumstances. I must make reasonable assumptions where necessary.

Mrs S needed to be able to afford the recommended investment so I've looked at what I know about her overall financial situation at the time.

The CMC has told us that, in 1998, Mrs S was self-employed and she had a very modest income, below the tax threshold for paying income tax. It seems likely that she may have had some savings – certainly, by 2007 she had around £37,000.00 in savings accumulated over her lifetime. Barclays believed that in 1998, Mrs S still had one dependant living at home, she was married and her husband was the main earner and the person who paid all the main household expenses. From what I've seen, she may have already owned her own home free from mortgage at that stage. In any event, just seven years later in 2007, Mrs S told Barclays this was her situation. So that doesn't suggest to me that taking out the investment was unaffordable for her or that it impacted adversely on her overall financial situation.

Barclays has also said that a review of Mrs S's joint current account from 1998 shows evidence of substantial income being received with no evidence of outgoings being higher than incomings. It also said Mrs S was paying the monthly investment premiums from a different account over the six years or so she paid into the PEP/ISA. So it's evident that she had access to other money elsewhere as well.

Based on this limited information, I see no reason why Mrs S wouldn't have been in a strong enough financial situation to be able to invest £25.00 each month. This was the conclusion our investigator reached also and as Mrs S hasn't disagreed with what he said, I don't think I need to say more about this.

I've next thought carefully about whether the investment fitted Mrs S's attitude to risk. Mrs S needed to be comfortable that the level of risk associated with the recommended investment reflected her attitude to risk. But there is limited evidence to show how Barclays established that Mrs S wanted to take a medium risk approach. Barclays said that the adviser would have discussed risk and reward and I've no good reason to think that didn't happen. This doesn't however tell me what Mrs S understood about risk.

In the absence of fact find paperwork or a suitability letter, I've considered what else I have been told about Mrs S. The CMC said that Mrs S was a novice investor in 1998 and that the only other equities she had ever held at that stage were free shares she had received on the de-mutualisation of a financial business with whom she held an insurance policy.

That doesn't suggest to me that she had any particular investment experience. And as far as I know, she hadn't speculated with any savings she had built up.

Barclays said, in effect, it didn't matter how much, if any, investment experience Mrs S had by 1998 because, given the small amount invested each month and the likelihood of her wanting to invest over the long term, the risk was not unsuitable. It's view is that "*by investing regularly, rather than with a lump sum, the risk of the investment is 'smoothed' out due to 'pound-cost averaging'. As such we do not consider the fund to be unsuitable even for a first time investor*."

I've thought carefully about what Mrs S's likely investment objectives were in 1998. Although I haven't seen any documentary evidence, it doesn't look like she required any income from her investment. I think it's likely that Mrs S wanted to invest by setting aside a small sum each month to fund regular payments in order to grow her money over time. Given this objective, I think it probably was reasonable to recommend a risk-based investment to Mrs S. This offered Mrs S the possibility of earning a greater return than she might have expected to receive on funds kept in a deposit based savings account.

But I’m not persuaded that I have seen enough to fairly say that the fund medium-risk rating reasonably reflected a level of risk that matched Mrs S’s attitude to risk. Barclays can’t show me how it assessed Mrs S’s attitude to risk or explained risk to her. I have no reason to think that Mrs S understood that investing in equities meant she should be prepared to expect a degree of volatility or that she was comfortable risking her money this way. Barclays hasn’t shown me that it explained that lower risk investments could still have offered Mrs S potential for growth but at less risk to her capital.

In coming to my decision, I've taken into account everything Barclays said in response to the investigator’s view. But I don’t agree that being able to afford to pay a small regular investment amount means a medium risk fund was suitable for Mrs S.

On balance, based on what I've seen and been told, I can’t fairly make a finding that investing in a medium risk fund was a risk Mrs S was willing to take with her money. In terms of risk, taking into account her limited investment experience, I think a more cautious investment strategy would’ve been suitable for Mrs S. So I am not satisfied that the recommendation met Mrs S’s identified needs and investment objectives or was suitable for her. This means Barclays needs to take steps to put things right.

I think the appropriate benchmark here is to compare what Mrs S actually earned with what she would have earned had she invested the £1,925.00 she paid into the PEP/ISA in funds where there was a small element of investment risk.”

What the parties said in response to my provisional decision

Mrs S agrees with what I've said in my provisional decision.

Barclays has reiterated its view that, given the small amount invested each month and the likelihood of Mrs S wanting to invest over the long term, the risk was not unsuitable. It said the fact Mrs S kept the investment for several years also illustrates this. It also said that being a first time investor didn’t make it unreasonable to take this level of risk.

As I have heard from both parties, 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.

I’ve also taken carefully into account everything that’s been said in response to my provisional decision.

I’d like to assure Barclays that I've thought carefully about everything again before coming to my final decision. But I haven’t been provided with any new information that changes what I think about this case. I’d already considered all the main points mentioned above when thinking about my provisional decision. I have addressed in my provisional decision all the points which have a bearing on the outcome.

I appreciate that Barclays takes a different view to me. But I still think it’s fair to uphold this complaint for the reasons I explained more fully in my provisional decision.

Putting things right

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.

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

To compensate Mrs S fairly, Barclays must:

- Compare the performance of Mrs S'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.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
PEP/ISA	Surrendered	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

Income tax may be payable on any interest awarded.

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:

- I have found that Mrs S most likely wanted capital growth with a small risk to her 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 Mrs S's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs S into that position. It does not mean that Mrs S would have invested 50% of her 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 Mrs S could have obtained from investments suited to her objective and risk attitude.

My final decision

I uphold this complaint and direct Barclays Bank UK PLC to put things right for Mrs S as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs S to accept or reject my decision before 16 December 2022.

Susan Webb
Ombudsman