DRN-3835387

The complaint

Mr and Mrs F complain that Barclays Bank UK PLC provided unsuitable investment advice in 2000 when it recommended they each invest £7,000 via ISA accounts. At the time, Mrs F was also advised to invest £10,000 into a third investment fund (that I will call fund C). Mr and Mrs F feel that had they been advised to invest the full amount of their joint investment pot (£24,000) into fund C, they would have been considerably better off by 2009 when they surrendered their ISA investments at a loss.

The investment advice was provided by a different financial business but as Barclays is now responsible for the actions of that business, to keep things simpler, I will refer to Barclays throughout.

What happened

During the course of meetings held in May and July 2000, Mr and Mrs F met with Barclays' financial adviser. They were looking to reinvest the proceeds of a policy that had matured. Following discussions with the adviser, Mr and Mrs F were advised to invest a total of £24,000 in medium risk products which offered the opportunity of capital growth over the medium to long term.

Acting on the adviser's recommendations, Mr and Mrs F invested as follows:

- Mr F invested £7,000 via an ISA into the Invesco GT European Growth Fund.
- Mrs F invested £7,000 via an ISA into the Fidelity International Managed Fund and £10,000 in fund C.

In October 2009, Mr F surrendered the Invesco GT European Growth Fund and received back £4,794.03 and Mrs F surrendered the Fidelity International Managed Fund and received back £5,481.98.

The main thrust of Mr and Mrs F's complaint to Barclays was that they were sold high risk ISAs that resulted in them losing their savings.

In response, Barclays said its adviser had carried out a detailed fact find when he gathered information about Mr and Mrs F's circumstances and he had recommended three investments that were suitable for their needs.

In brief summary, Barclays said Mr and Mrs F had previous exposure to investment risk having already held various investments and that the ISAs recommended (along with fund C) were medium risk funds that were suitable for investors with Mr and Mrs F's investment experience.

Barclays said the adviser would've discussed Mr and Mrs F's attitude to investment risk and taken into account their financial situation and investment objectives. It said the adviser would have supplied them with a copy of the Key Fund Documents for each product which would have set out the associated risk with each investment.

In support of its view that the adviser had properly taken into account Mr and Mrs F's needs and objectives, Barclays pointed to the fact that they had kept these investments for nine years before fully surrendering them.

Barclays acknowledged that Mr and Mrs F had experienced a long delay before receiving its response and offered to pay Mr and Mrs F £150 to address any distress or inconvenience caused.

Mr and Mrs F weren't happy with this response so they brought their complaint to us.

Our investigator first considered whether the complaint was in our jurisdiction and was satisfied, as Barclays had given its consent to us investigating Mr F's complaint, this was a complaint he could look at.

After considering the complaint, based on all the information he had seen, the investigator didn't feel this was a complaint he could recommend upholding. He thought that the investment advice provided by Barclays wasn't unsuitable based on Mr and Mrs F's circumstances at the time. His view was that Mr and Mrs F had capacity to invest £7,000 each in a risk based asset to achieve their investment objectives and all three recommended funds met their desired risk appetite.

Mr and Mrs F didn't agree with the investigator. I've set out below some of the main things they said in response to the investigator's view to give an overview of their concerns.

- The way the investigator presented the case misrepresents our actions and sets the scene for unwarranted conclusions – the view includes some 'downright lies' and information new to us and is unsupported by evidence.
- The two ISAs flopped early on, well before the financial recession in 2007 and then gradually and only partially recovered. This recession was irrelevant for the purposes of this complaint.
- It was only in 2020, as a result of widespread advertising, we learned that people who had suffered a loss could be entitled to compensation from Barclays.
- We did not go to seek advice on how best to invest £24,000 so there was no question in our minds of seeing our investments as a 'portfolio'. We went to Barclays to get two ISAs. So looking "*at all three funds together as a portfolio*" to reach a fair conclusion, suggests unsound reasoning on the part of the investigator. Having settled the ISAs I mentioned that I had another £10,000 looking for an investment – Barclays suggested fund C.
- We thought they would advise us on how best to invest across the whole market. Only as a result of pursuing this complaint did we become aware that they were simply selling a limited range of investments. This last point was never explained to us.
- There are factual errors in the investigator's view – including figures quoted in respect of pensions and savings. The investigator has not accurately set out our personal and financial circumstances at the time.
- The medium risk description isn't justified - funds such as the ISAs with a narrow spread are higher risk. At the time our attitude to risk was that we didn't want to be exposed to anything other than low risk.
- The notion that we were experienced investors is crediting us with knowledge which we just did not have. We had been investing for some years through Barclays exclusively buying tax free investments as and when we could.
- The only shares we have ever owned are those in a former building society which we received when it ceased to be a mutual.

- Barclays asserts that these ISAs were medium risk but surely to qualify for that description they should have had a wider spread - you do not deal with this point at all.

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’d like to reassure Mr and Mrs F that I’ve considered everything both sides have provided. It’s part of my role to identify and focus on what I think is relevant and explain how I have reached my conclusions. This means I will not necessarily address every one of Mr and Mrs F’s concerns on a point by point basis. The ombudsman approach is to decide what is fair and reasonable overall. If I don’t comment on everything, this is because I don’t feel there is anything more I can usefully add to what has been said elsewhere already or it doesn’t make any material difference overall. In this decision, I will deal with all the main points that have an impact on the outcome of 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’m sorry Mr and Mrs F feel our investigator hasn’t investigated the complaint fairly. I’ve looked at the complaint afresh and I’ve independently reached the same conclusions as our investigator. I’ll explain my reasons.

When thinking about whether Barclays gave Mr and Mrs F suitable investment advice on this occasion, keeping in mind that all investment carries some degree of financial risk, I’ve thought about the following key questions:

- Were Mr and Mrs F in a strong enough financial position to be able to invest?
- If so, thinking in particular about the amount invested and the investment risk, was the investment advice Barclays provided suitable?
- Did the investment reflect Mr and Mrs F’s investment objectives?

With this approach in mind, I’ve thought about Mr and Mrs F’s financial situation when Barclays provided investment advice and made these ISA recommendations.

There’s only limited point of sale information available from 2000 – that’s unsurprising after so long. I’ve looked carefully at the point of sale paperwork that Barclays has provided, including the ‘Personal Information Questionnaire’ completed by Barclays’ financial adviser at the time (the ‘fact find’). Mr and Mrs F both signed this document so I think it’s reasonable for me to rely on this generally as the most accurate source of information about their circumstances at the time.

There’s no detailed expenditure information. However, there’s nothing to suggest that Mr and Mrs F’s living costs and other financial needs and requirements weren’t amply covered out of income leaving them with a monthly surplus.

Together, Mr and Mrs F owned their own home (free from any mortgage) valued at £1,000,000 and other properties with a value of £150,000.

They were both in their fifties, in good health with two dependents.

Mr F was retired and in receipt of a pension. Mrs F was still earning and also in receipt of a pension. They both also had income from their investments giving them a total combined monthly income of £5,600.

Their total cash savings were noted as £19,000 (£15,000 National Savings and around £4,000 cash). They had existing investments as follows:

- A TESSA each with a combined value of around £15,500
- approximately £27,000 in ISAs/PEPS
- £26,000 in investment bonds
- around £5,597 in shares

Looking at the size of the assets they held, I think it's fair to say that Mr and Mrs F had sufficient financial resources to be able to absorb some element of loss in pursuit of capital growth. In other words, they were able to take some element of risk when investing. I also consider that, from what I've seen, Mr and Mrs F were willing to each invest £7,000 as part of their joint overall investment plans as this reflected their investment objectives at the time.

Mr and Mrs F told the adviser they were looking for capital growth in a tax efficient manner to ensure the spending power of their money was preserved. From the point of sale paperwork Barclays has provided, it looks like Mr and Mrs F described having a medium risk appetite.

I've thought carefully about this as Mr and Mrs F's attitude to risk is central to their complaint.

Although Mr F has said they only wanted low risk investment, it seems likely to me that Mr and Mrs F's attitude to risk was explored as there are annotations on the fact find which suggest this was discussed. Mr and Mrs F would have been able to see a diagram showing risk levels ranging from 'High Risk' through 'Medium Risk' to 'Low Risk' and, at the lowest level, 'Very Low Risk'. A brief description of each risk level is set out.

'Medium Risk' is described as follows:
"*Invest tor longer term. Investment value will fluctuate with changing market conditions, with some risk to capital*."

In the 'Medium Risk' part of the diagram, the adviser has recorded *"£24,000*" and noted "*Happy with this concept*".

And next to where it says on the fact find '*Preferred level of risk'* the adviser has noted down "*Happy to consider medium risk as previously invested in ISAs/PEPs*".

Where information is incomplete 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. I must make reasonable assumptions where necessary.

Given the evidence of the attitude to risk Mr and Mrs F demonstrated to the adviser, I think it was reasonable for Barclays to recommend a risk-based investment to Mr and Mrs F. So I've next given careful consideration to whether the ISAs recommended were too risky for Mr and Mrs F.

I agree that a client's experience of managing money is something that an adviser should consider when advising on investments. And I agree that Mr and Mrs F's investment experience didn't appear to be extensive at the time. But the fact alone that someone might be a relatively inexperienced investor doesn't automatically mean that they should only ever be advised to invest in 'low risk' or 'no risk' investments. That could unfairly deprive a person of investment potential and the opportunity to choose to risk more for the chance of a higher gain. The most important consideration is whether Mr and Mrs F were comfortable that the risk level of the investment fairly balanced their stated investment objectives against the risk they were willing to take with their money.

The financial report the adviser sent them setting out his investment advice said:

"I have recommended the Invesco GT European Growth fund for your unit trust investment. The fund aims to provide above average growth through a portfolio of investments in European companies, excluding the UK. This fund is a more speculative investment and as such, the performance is likely to be of a volatile nature."

"I have recommended Fidelity Managed International Fund for your unit trust investment. The fund aims to achieve long term capital growth from a diversified portfolio of predominantly equities spread world-wide. The portfolio is arranged broadly in relation to the relative size and attractiveness of the various world equity markets. This fund is a more speculative investment and as such, the performance is likely to be of a volatile nature."

Although Barclays seems to be saying now that these two funds were medium risk, in the absence of more detailed information about the composition of the funds, based on the adviser's use of the words 'speculative' and 'volatile' at the point of sale, those words suggest to me that they were higher risk than that. So I need to consider whether the recommendation to invest in them was suitable.

Barclays said:
"*You said that you wished to invest £24,000 in medium risk investment and £7,758 in very low risk investments. The following recommendations take your ideas into account* …"

I think that Mr and Mrs F were seeking investments which did not exceed a medium risk. So Barclays should only have recommended medium risk investments to Mr and Mrs F. To my mind, 'speculative' and 'volatile' funds were greater risk than that. So I am planning on upholding Mr and Mrs F's complaint and telling Barclays to take the following steps to put things right."

What the parties said in response to my provisional decision

Mr and Mrs F said they would await my final decision.

I have heard nothing further from Barclays and the deadline for responses has now passed so 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.

As no further comments have been received in response to my provisional decision and nothing has happened to change what I think about this case, I still think it's fair to uphold this complaint for the reasons I explained 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 Mr and Mrs F 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 F 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 F's circumstances and objectives when they invested.

What should Barclays do?

To compensate Mr and Mrs F fairly, Barclays must:

- Compare the performance of Mr and Mrs F's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. 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.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Invesco GT European Growth Fund Fidelity Managed International Fund	Surrendered Surrendered	FTSE UK Private Investors Income Total Return Index	date of investment	date of surrender	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mr and Mrs F agree to Barclays taking ownership of the investment, if it wishes to. If it is not possible for Barclays to take ownership, then it may request an undertaking from Mr and Mrs F that they repay to Barclays any amount they may receive from the investment in future.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs F wanted capital growth and were willing to accept some investment risk.
- 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr and Mrs F's circumstances and risk attitude.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 5 January 2023.

Susan Webb
Ombudsman