DRN-3875116

The complaint

Mr and Mrs S complained that Barclays Bank UK PLC provided unsuitable investment advice in 1996 when it recommended them to invest £20,000 in a portfolio that was too risky for them.

Mr and Mrs S are represented in this matter by a claims management company.

What happened

On 1 March 1996, acting on Barclays' recommendation, Mr and Mrs S invested in a Barclays Unicorn Portfolio made as follows:

500 Fund	£4,000 20% (Mr)
Capital Fund	£8,000 40% (Mr & Mrs £4,000 each)
Worldwide Fund	£4,000 20% (Mr)
Gilt & Fixed Interest Fund	£4,000 20% (Mr & Mrs £2,000 each)

During the time they held their portfolio it produced a total income of £3,252.79 which was paid to Mr and Mrs S's bank account. When they encashed their investment, on 5 September 2002, they got back £20,294.72.

Mr and Mrs S were mainly unhappy that, as they were first time investors in 1996, the medium risk portfolio, which included the Worldwide Fund, was unsuitable for them.

In response to their complaint, Barclays said Mr and Mrs S were both of working age with many years of working life ahead before reaching state retirement age. It was satisfied that Mr and Mrs S would have been able to take a medium attitude to risk at that stage in their lives. And it said the amount they invested was affordable given that Barclays was aware that 3 years after taking out the investment, Mr and Mrs S had around £42,000 on deposit in their savings account. So Barclays didn't uphold the complaint.

Mr and Mrs S weren't happy with this response so they brought their complaint to us. They didn't feel that the fact they had held their investment for 6 years meant it had been suitable for them – they said they were complaining about the initial advice and not whether it became suitable with hindsight.

After considering the information available, the investigator recommended upholding Mr and Mrs S's complaint. He thought that because Mr and Mrs S had made a further investment in 2010 when they demonstrated a more cautious approach, even though they had more savings at that time plus the experience of having surrendered their 1996 investment in profit, this suggested it was unlikely that they would have had a more adventurous approach to risk in 1996. He thought it more likely that they would always have had a more cautious attitude to risk and so the investment Barclays recommended to them in 1996 had been unsuitable. He went on to recommend that Barclays should pay redress based on the sort of investment return Mr and Mrs S could have obtained with little risk to their capital.

Barclays didn't agree with the investigator. It said it was entirely reasonable for someone to have had a medium risk approach in 1996 and, after surrendering that investment in 2002,a cautious attitude to risk when investing eight years later in 2010. It said it disagreed with the argument that, essentially, a customer can only ever invest at the same level, or higher than all previous investments and if they didn't do that, it must mean the previous investments were unsuitable. Barclays also said that, in 2010, Mr and Mrs S were a lot older and approaching retirement so their objectives would have been completely different, regardless of their financial circumstances. Barclays said it makes sense to take a higher risk earlier in life and lower risk in later life.

Barclays also questioned the redress formula the investigator had proposed as it felt this was based on an incorrect benchmark and didn't reflect the investigator's conclusion that a cautious/low risk investment would have been suitable for Mr and Mrs S.

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.

"Although the Financial Ombudsman Service doesn't always have power to investigate complaints about events that happened more than six years ago, Barclays has said it consents to us looking at this complaint. So I've proceeded to consider everything that has been said about the merits 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.

Barclays is unable to supply any of the point of sale paperwork from 1996. Where the 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 in the light of available evidence and the wider circumstances. I must make reasonable assumptions where necessary.

I've approached this complaint by thinking carefully about what a suitable investment would have been for Mr and Mrs S in 1996.

Barclays has said that Mr S was working overseas for several months of the year and that Mr and Mrs S had built up significant savings out of income over the years. It appears Barclays made an approach to Mr and Mrs S in 1996 with the offer of advice on where to hold their funds.

This is a very limited picture of Mr and Mrs S's overall financial situation – I know nothing about their day to day expenses or usual monthly outgoings at the time they took out this investment. I don't know if they had any planned big items of expenditure and made allowance for this or if they had kept aside some cash for emergency spending or unforeseen expenses. But I'm mindful that they haven't suggested the investment was unaffordable for them – merely that it was too risky. And I think the fact that it seems they had built up substantial savings over the years, and they had a further £42,000 on deposit in addition to this investment just a few years later, all suggests to me it's safe to conclude that

Mr and Mrs S were in a strong enough financial situation to be able to invest £20,000 in 1996.

So I've next thought about how likely it is that the recommended investment fitted Mr and Mrs S's attitude to risk, given that there is no documentary evidence available from then to show what this was.

My starting point is that Mr and Mrs S needed to be comfortable that the level of risk associated with the recommended investment reflected their attitude to risk, bearing in mind that the crux of their complaint is that the fund was too risky for them.

Barclays told us the portfolio was classed as medium risk and "*…therefore we must assume that the adviser recorded them as medium risk investors. The portfolio was set up to provide long term capital growth*."

Barclays said Mr and Mrs S would have been correctly assessed as having a medium attitude to risk for the following reasons:

- assuming retirement ages of 65, Mr and Mrs S were more than 10 years from retirement and this meant they had a decent period of time to potentially accumulate further savings and assets to replace the value of the investment made.

- They had previously demonstrated a tendency to save and had the ability to accumulate savings with Mr S sending money from abroad.

- The medium risk profile would have been selected in the Fact Find after reference to the brochure on investment risk. So it seems reasonable to assume there was a discussion with the adviser on this area and Mr and Mrs S would have adequately understood the risk they were committing to in order to obtain sufficient capital growth and tax efficiency.

I have no reason to think Barclays' adviser wouldn't have discussed risk with Mr and Mrs S. But I can't be sure about exactly what Mr and Mrs S understood about risk. I am mindful that it seems to be agreed that Mr and Mrs S had no previous investment experience. Barclays said it made an approach to them – I take this to mean that Mr and Mrs S didn't actively seek out investment advice from Barclays. So I haven't seen anything to make me think they necessarily would have had a sufficient understanding of the basic principle that risk was commensurate with growth potential and, in choosing to invest, they needed to balance their investment objectives against the risk they felt comfortable taking with their money.

Even if they had been told the fund was 'medium' risk, and given product literature, I don't know if Mr and Mrs S would have properly appreciated what this meant in terms of exposure to potential losses. Their long-term savings habit doesn't suggest to me that they were likely to have suddenly wanted to be adventurous investors. As far as I am aware, all their money had been hard earned and built up over the years. I don't think it's likely they would have wanted to take even a medium level of risk if they had realised this meant they needed to be comfortable with the prospect of investment loss and the potential to make gains was a more important consideration for them both.

Looking at the make-up of the investment portfolio, it seems clear these particular funds presented significantly more than a low level of risk overall. The medium risk rating mentioned by Barclays reflects that some elements in the fund likely tended towards volatility and so presented a higher risk. I accept it was probably balanced in part by the Gilt & Fixed Interest Fund. But I'm mindful that this comprised just 20% of the portfolio.

The fact that Mr and Mrs S took income from their investment suggests to me that tying up their money for the medium term they likely needed to in order to achieve the capital growth this portfolio was intended to provide tends to suggest it wasn't the right recommendation for them.

I don't agree with Barclays that it follows from the fact that Mr and Mrs S held their investment for six years meant it had been suitable for them when they took it out. For all the reasons I have explained more fully above, I don't feel I've seen enough overall to be able to conclude that the fund reflected Mr and Mrs S's attitude to risk in 1996.

On balance, I think it's likely that Mr and Mrs S were interested in obtaining a better return on some of their capital than they were expecting to achieve on deposit based savings, otherwise they would not have invested at all. And, although there is no way of knowing exactly what Mr and Mrs S understood about risk, I think they probably would have prioritised keeping their money secure, even while taking a chance on getting a better return than they were getting on their savings in the bank. So it's fair to say they were probably prepared to take a low level of risk to achieve their investment objectives.

For these reasons, whilst I think it was reasonable for Barclays to recommend a risk-based investment to Mr and Mrs S, the risk rating of the Barclays Unicorn Portfolio did not fairly reflect Mr and Mrs S's attitude to risk and so it was unsuitable for them. This is why I plan to uphold this complaint and direct Barclays to take steps to put things right."

What the parties said in response to my provisional decision

Mr and Mrs S said that this outcome was acceptable to them and they had nothing further to add.

I have heard nothing further from Barclays and 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.

Having done so, and as no further comments have been received in response to my provisional decision that 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

The appropriate benchmark is to compare what Mr and Mrs S actually earned with what they would have earned had they invested the £20,000 in funds where there was a small element of investment risk.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs S 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 S 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 S's circumstances and objectives when they invested.

To compensate Mr and Mrs S fairly, Barclays must:

- Compare the performance of Mr and 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
Barclays Unicorn Portfolio	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 (if compensation is not paid within 28 days of the business being notified of acceptance)

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 find that the balance of the available evidence shows Mr and Mrs S wanted to grow their money with only a low level of investment risk.

- 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 S'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 S into that position. It does not mean that Mr and Mrs S 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 S could have obtained from investments suited to their objective and risk attitude.

My final decision

I uphold this complaint against Barclays Bank UK PLC and direct it to pay compensation to Mr and Mrs S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 31 January 2023.

Susan Webb
Ombudsman