

The complaint

Mr J complains, jointly in his name and as representative of the estate of his wife, Mrs J, about the suitability of investment advice received from Barclays Bank UK PLC.

Mr J and the estate are represented by a claims management company ("CMC").

What happened

In May 2000 Mr and Mrs J were advised to invest in a Barclays Personal Investment Management portfolio ("BPIM").

The adviser recorded in the fact find document completed as part of the advice process that Mr J had received a *"substantial lump sum as a result of an industrial injury"* and that he and Mrs J wanted *"to invest for both income and growth over the longer term"*.

The couple had a total of £360,000 available. £53,000 of this was earmarked for immediate expenditure, including paying off their mortgage, and it was noted they wanted £37,000 as an emergency fund, leaving the balance of £270,000 to invest in the BPIM. At the time of the advice, as a result of his injury, Mr J was not working and was in receipt of benefits. Mrs J was working, and they had a monthly disposable income of £270.

Their attitude to risk was categorised as 'medium' in both the fact find and the application for the BPIM and a portfolio consistent with this level of risk was duly set up for them.

Over the next few years several lump sum withdrawals, totalling £28,000, were taken from the investment, and it was surrendered completely for just over £185,000 in November 2007.

A complaint about the suitability of the advice was made in 2019. Barclays said the concerns had been raised too late and the matter was referred to this service. An ombudsman decided the complaint had in fact been referred in time, so an investigator looked into the merits.

She concluded the advice to invest at a medium level of risk had been unsuitable given Mr and Mrs J's personal and financial circumstances. But Barclays didn't accept this. It maintained its view that the complaint had been made too late and, in respect of the merits, said that investing for the long term for income and growth had been suitable in the circumstances, the amount invested was reasonable, and Mr and Mrs J had agreed to take a medium level of risk. As such, it would've been unsuitable for them to have been put into a cautious portfolio as the investigator had suggested should've been the case.

As no agreement could be reached, the matter's been referred to me to review.

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 noted, Barclays remains of the view that the complaint has been referred too late and is outside our jurisdiction. My colleague has previously decided this service *does* have

jurisdiction to consider the merits of the complaint. So, while I've noted Barclays' additional comments, as no new evidence has become available that in my view changes that position, I'll won't offer any further comment in respect of jurisdiction and will instead go on to consider the merits of the complaint.

There's no dispute that Mr and Mrs J were in a position to make some sort of investment. They had a substantial amount of money available once all immediate needs had been addressed and a healthy sum put aside for emergencies. And it seems reasonable, particularly given the source of the monies, that they would want to invest for a mix of growth and income.

The crux of the matter is therefore whether they should've been advised to make that investment into a *medium risk* portfolio. Was that level of risk suitable for their objectives, needs and circumstances?

That categorisation was clearly selected on the fact find and the application form. So, it seems likely some discussion took place concerning risk. But, despite there being ample opportunity for this selection to have been explained within notes in the documentation, the only reference to it is a comment "*Clients should invest a lump sum in line with their objectives/risk attitude*", where Mr and Mrs J's objective, noted elsewhere in the fact find, was "*to invest for both income and growth over the longer term*".

Barclays have noted the medium risk level to be Mr and Mrs J's "*own risk tolerance*", which suggests it was something they determined for themselves. But ultimately it was for the adviser to determine what would be a suitable level of risk. Mr and Mrs J may have insisted they were 'medium', although this seems unlikely. But even if they did, the adviser should've considered whether taking a medium risk with such a large amount of money was suitable.

And given Mr and Mrs J's circumstances, I can't see how on a scale of 'risk averse – cautious risk – medium risk – high risk', it's likely medium risk was suitable for them. Mr and Mrs J had no investment experience. The money came from compensation for Mr J's work-related injury. His future working capability was uncertain, and he was in receipt of benefits as a result.

Mr and Mrs J already had a monthly disposable income of £270 (and it's not clear whether this took account mortgage payments that were about cease). Even if Mr J's monthly benefits of £670 had reduced as a result of receiving the large lump sum, the couple would've still been able to obtain a reasonable return from the money even at a cautious level of risk. And in such circumstances, it would've been even more important that the lump sum on which they were reliant upon wasn't subject to the risk of a significant loss.

So, on balance, I'm not persuaded it was suitable advice for Mr and Mrs J to invest in the BPIM at a medium level risk. I'm satisfied the compensation suggested by the investigator – based on a cautious level of risk being suitable – represents fair and reasonable compensation in all the circumstances.

Putting things right

Fair compensation

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

I take the view Mr and Mrs J would have invested differently. It is not possible to say

precisely what he and Mrs J would have done differently. But I am satisfied what I have set out below is fair and reasonable given Mr and Mrs J's circumstances and objectives when they invested.

What must Barclays do?

To compensate Mr J and the estate fairly, Barclays must:

- Compare the performance of Mr and Mrs J'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 add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
BPIM	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.

Any withdrawal from the Barclays 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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs J wanted Income with some 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 J's risk profile was in between, in the sense they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr J into that position. It does not mean Mr and Mrs J 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 J could have obtained from investments suited to their objective and risk attitude.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct Barclays Bank UK PLC to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and the estate of Mrs J to accept or reject my decision before 11 July 2023.

James Harris
Ombudsman