complaint

Mr S complains about the suitability of the Defined Return Plan (DRP) that Barclays Bank Plc provided to him in 2007.

background

I issued a provisional decision on 3 December 2015. A copy is attached and forms part of this final decision.

In my provisional decision I set out that I was minded to uphold the complaint due to Mr S being advised to invest too much of his money in this product.

Mr S's representative has not provided any further comment.

In its response to the provisional decision Barclays says that it considers the recommended investment to have been suitable as:

- Mr S had total monies of £55,500 at the point of sale. £25,500 of this was immediately accessible and £30,000 of these would be accessible after a year. In total an amount of just over 36% of his savings were placed into the plan.

- He had a healthy disposable income of about £12,000 per annum from which he would have been able to recoup the amount invested within 24 months.

my findings

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

I did discuss in the provisional decision the amount Mr S was recommended to invest, both in terms of the free money he had available then and in terms of the total savings he had. In either case I thought the amount he invested was too great. Given his overall savings and circumstances I do not believe that committing so much of his money to an investment that could give him a nil return was suitable. I am not of the view his level of disposable income affects that.

I would also mention that this resulted in the majority of his savings being committed to products where he could not have access to his money without penalty.

my final decision

I uphold this complaint and order Barclays Bank Plc to calculate and pay redress as set out in the attached provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 February 2016.

David Bird
ombudsman

copy provisional decision

complaint

Mr S complains about the suitability of the Defined Return Plan (DRP) that Barclays Bank Plc provided to him in 2007.

background

In October 2007 Mr S met with Barclays Bank's adviser who recorded his circumstances in a document called a 'fact find'. It was recorded that Mr S was an inexperienced investor, had no personal debt, had available savings of £25,500 and a deposit based bond of £30,000.

Mr S was advised to invest £20,000 for medium to long term investment in a capital protected investment. The potential growth of the investment was dependent on the level of the FTSE 100 index being at least equal or higher at the maturity date than at the starting date of the investment.

Mr S agreed to proceed with the investment, however, he unintentionally returned the cancellation notice Barclays Bank had sent to him. Following another meeting with the adviser in November 2007, Mr S agreed to proceed with the advice.

In 2012 Barclays returned Mr S' capital as the FTSE 100 Index had ended lower at maturity than at the start date.

Mr S representative raised a complaint about the suitability of the investment and claimed that information about his borrowings and job security had not been recorded correctly at outset. The result of this, it said, was that Barclays should have advised Mr S to use his savings to reduce his mortgage.

Barclays explained that Mr S had not disclosed any concerns about his employment to its adviser and no personal debt was recorded on the fact find. It added that its records did not indicate that Mr S had a mortgage until 2008. Barclays considered the investment suitable for the needs Mr S provided to it in 2007.

Our adjudicator did not consider that the complaint should be upheld. He concluded that the investment Barclays provided to Mr S was suitable for his circumstances as it matched his attitude to risk and provided the capital protection he desired.

Mr S' representative did not agree and provided evidence that Mr S had a mortgage with West Bromwich Building Society at the time the advice to invest had been given.

The adjudicator was not persuaded that Mr S had difficulty affording his mortgage as he had a substantial amount of disposable income after his monthly commitments had been paid, which could have been used to reduce his mortgage balance.

As agreement has not been reached on the matter, it has been referred to me for review.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

As to the type of investment, I do not believe this was unsuitable for Mr S. It provided a guarantee that he would receive at least his money back at maturity with a good return possible should the stockmarket be higher than at outset. This provided a return potentially liable to capital gains tax (CGT) – and so would likely fall with Mr S's annual exemptions.

Mr S had a good income and there was no record of worries about his occupation. It's unclear whether he became unemployed but in any event I cannot say there is persuasive evidence of any employment concerns or these were made clear to the adviser.

There may have been only one advice meeting but the recommendation is clear and I think on balance that Mr S would have understood it.

It is disputed whether the adviser was told that Mr S had a mortgage. But whether or not he did have a mortgage would not affect my view of this complaint. A great many individuals have a mortgage but also choose to invest; it is not automatically unsuitable to invest rather than repay debt; that is a personal choice.

In this case I believe it likely that, if Mr S did have a mortgage, then he would have known that and that he could pay money from his mortgage if he wished to. That was a decision for him to make. I am not persuaded he would have necessarily done that instead if that option had been highlighted by the adviser.

Having said that, I do have concerns about the amount the adviser recommended he invest. About 80% of Mr S's available savings was invested in this one product, which after 5 years could yield a zero return. This placed, in my view, too much of Mr S's savings in one product with one investment approach – he was not adequately diversified.

I appreciate that he had another £30,000 in another investment but that does not alter the fact that the greater part of his free savings was placed in this one product. Even taking into account that investment, about 35% of all his money was placed in this one type of investment with its very particular characteristics.

I currently intend to uphold the complaint on this basis.

It is difficult to arrive at an exact figure as to what an appropriate amount to invest was – but I believe a fair and pragmatic approach would be to assume 50% of the amount invested.

fair compensation

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

I think Mr S would have invested 50% of his money differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr S' circumstances and objectives when he invested.

what should Barclays do?

To compensate Mr S fairly, Barclays must:

- Compare the performance of 50% of Mr 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
Defined Returns Plan	matured	average rate from fixed rate bonds	date of investment	date of maturity	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 50% of 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 the fixed rate bonds with 12 to 17 months maturity 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 chosen this method of compensation because:

- Mr S wanted to achieve a reasonable return without risking any of his capital.
- The average rate for the fixed rate bonds would be a fair measure given Mr S' circumstances and objectives. It does not mean that Mr S would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.
- The additional interest is for being deprived of the use of any compensation money since the end date.

my provisional decision

I uphold the complaint in part. My provisional decision is that Barclays Bank Plc should pay the amount calculated as set out above.

David Bird
ombudsman