

complaint

Mr E complains that Barclays Bank Plc failed to carry out his instructions to transfer money from two Individual Savings Accounts ("ISAs"). This caused him to miss out on an opportunity to invest the money elsewhere.

background

Mr E had two ISAs with Barclays. In December 2013 he decided to invest his money in an early redemption plan, or "kick-out" plan, with a third party. So he told Barclays to close his ISAs and transfer the closing balances to the third party. The total was £11,380.58. Barclays closed the ISAs and sent cheques for the balances to the third party (because the third party would not accept electronic transfers). But the cheques never arrived. Barclays was told this, but took no action, and so in January 2014 Mr E missed the deadline to invest in the plan he'd wanted. Meanwhile his money was held in an internal Barclays account, and not returned to him.

In October 2014 Mr E asked Barclays what had happened to his money. Barclays only told him in January 2015, after he had asked three times, and after he had complained to our service. Barclays paid him £80 compensation for the delay in answering him.

Our adjudicator upheld this complaint. He suggested that Barclays should pay Mr E another £200 for his inconvenience, as well as the amount of money he would have made if the error had not occurred. Barclays and Mr E accepted that decision in principle. But the parties were unable to agree on how to calculate how much money Mr E should receive. So I have looked into this complaint.

my provisional findings

I wrote a provisional decision along the following lines.

In June 2015 Barclays returned Mr E's money by putting it back into ISAs again. So our adjudicator suggested that Barclays should calculate how much Mr E would have made if he had invested in the plan he'd wanted, minus the interest he has received on the reinstated ISAs. But it's not possible to know what Mr E would have made on the plan without waiting until January 2020 to find out. He might even have *lost* money.

The plan Mr E wanted to invest in was a six-year plan linked to the FTSE 100. If at the end of each year the FTSE 100 was higher than it was when the plan started, then the plan would mature with a return of 10.25 per cent per year (not compounded). Otherwise the plan would continue for another year, up to a maximum of six years. But if the FTSE 100 fell by more than 50 per cent of the starting level at any time during the plan, and finished lower than the starting level, then investors would lose money. That has not yet happened. In January 2015 the plan did not mature, and it's now in its second year.

Barclays offered compensation based on how much money Mr E would have received if he had invested in the kick-out plan and then withdrawn his money early in June 2015 (assuming he wouldn't have been charged fees for leaving the plan early). After checking Barclays's calculations with the third party, this came to £591.18. Mr E rejected that offer. In August our adjudicator updated that figure, which based on information provided by the third party now came to £951.93. Barclays agreed to that, and our adjudicator thought that was fair. But Mr E rejected that too, largely because he says he would not have withdrawn from

the plan early. I have no reason not to believe him. I also note that that figure does not include the £200 which our adjudicator had earlier said was fair compensation for the delay in reuniting Mr E with his money. I agree that £200 is fair, and so it should be included in the compensation.

Mr E has proposed that a fair calculation would be to take the minimum and maximum returns he could have made on that investment, and to split the difference between them. So given that we know the plan didn't mature after the first year, I should calculate what he would have got if it matures (1) after two years and (2) after six years, and then work out the mid-way point between those figures. By my calculation, that comes to £4,666.04.

I think that is a logical approach, but it doesn't take into account the risk that the FTSE 100 might still drop below 50 per cent of the starting level between now and 2020, in which event Mr E could actually have lost money. It also doesn't take into account the fact that when Barclays put his money back into ISAs Mr E left it in the ISAs, instead of reinvesting it in a similar plan. Our service expects people who have lost money due to a banking error to "mitigate their loss," which means that they should take steps to try to reduce the impact on their finances, so far as reasonably possible. By investing in a similar plan in 2015 (instead of ISAs), Mr E would have been closer to the position he would have been in if Barclays hadn't made a mistake. The £4,666 represents money Mr E might have gained as a reward for investing and risking his capital, so I don't think he should necessarily get the same amount now that his capital is not similarly invested and not at risk.

In July 2015 the third party suggested a similar alternative plan for Mr E. That plan was identical to the one he had wanted, except that it started in September 2015 and the annual interest was ten per cent instead of 10.25 per cent. If Mr E had mitigated his loss by investing in that, then he might have made almost as much money as he would have done on the original plan. The small difference in interest means that if, for example, both plans lasted six years (and the investors didn't lose money) then the alternative plan would pay only £170.70 less than the original. I recognise that the alternative plan could potentially have ended up to 21 months later than the original plan, so Mr E might have had to wait longer to get his money. That wouldn't necessarily have happened, but rather than speculate about what the FTSE 100 might do, I will instead compensate Mr E for having had to wait longer for the chance to invest his money in a kick-out plan, with the attendant risk that he might have had to wait longer to see a return on his investment.

So for the above reasons I intend to calculate the compensation as follows.

Although I accept that Mr E would not have withdrawn from the plan early, our adjudicator's revised calculation of how much his investment would have been worth in August 2015 seems to me to be fair compensation for the opportunity to invest having been delayed until that date. That's £951.93. Although neither of the kick-out plans might last for the full six years, I still think it's fair to award Mr E the difference in value between the two plans calculated on that basis, which is £170.70. And he should also receive another £200 for being inconvenienced by Barclays when he asked about where his money was. I recognise that this is less than Mr E had hoped for, so he may feel disappointed. But it's still more than he appears to have asked Barclays for when he first complained to the bank.

My provisional decision is that I intend to uphold this complaint. I intend to order Barclays Bank Plc to pay Mr E £1,322.63, in addition to the £80 it has already paid him.

responses to my provisional findings

Mr E asked me to make a couple of corrections to my original decision, which I have done in the version above. He did not accept my provisional view. He would prefer to wait until the plan matures to see what he would have got, even if that takes until 2020. Alternatively, he would like to at least wait and see what happens later this month, when the plan finishes its second year.

Mr E says he was not specifically told about the alternative kick-out plan. But before that plan was due to begin he had already decided to keep his money in the ISAs. He has explained why. In his own words at the time (August 2015):

“I have not transferred any monies as by doing so any interest that will be added to the investment will have to be added before any transfer as I will lose any tax free allowance. So all monies remain with Barclays.”

He has since added that if he had started a new kick-out plan with the returned ISA money and then later received further compensation from Barclays – which would not have ISA status – then he would have had to see a financial advisor for a second time and pay him a second fee.

Barclays accepted my provisional findings, but pointed out that it has already paid Mr E the additional £200 for his inconvenience. I will take that into account.

my findings

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

While I understand Mr E's desire to wait and see what would have happened, I have decided not to do that. Our service has a statutory duty to resolve complaints quickly, and I don't think that waiting for four more years would be doing that. And fair compensation can be awarded now.

Although Mr E has provided an explanation for why he decided to leave his money in the ISAs, I still don't think that changes the fact that he did not mitigate his loss as far as he could. I would still expect him to try to re-invest his money in a manner as close as possible to the way he had originally intended. If he had done that, I could have ordered Barclays to compensate him for the second fee he would have paid to his financial advisor, so that he would not be penalised for doing so. As it is, I have reconsidered this complaint, but my opinion on this point remains the same. So even if I waited until later this month, he'd still be unable to recover losses he hadn't taken reasonable steps to mitigate.

However I have changed my decision to the extent that I think Barclays should refund the fee Mr E paid his advisor when he tried to invest his money in 2013. That fee was three per cent of the money he had sought to invest, or £341. Mr E has told me he feels that is not relevant to his complaint, and so he does not want that money. But I disagree. It's money he spent to get an investment which he later failed to get because of Barclays's error. As far as *this* issue is concerned, I don't think it matters that in 2015 he decided to let his money remain in the ISAs, because if it hadn't been for the bank's error then the money would have already been invested in the kick-out plan by then. So I will increase his award by that much,

and if he still doesn't want it then he doesn't have to accept it. But he is free to change his mind until the date below.

my final decision

My final decision is that I uphold this complaint. I order Barclays Bank Plc to pay Mr E £1,463.63, in addition to the £280 it has already paid him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 8 February 2016.

Richard Wood
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