Financial Ombudsman Service

complaint

Mrs W complains that Barclays Bank PLC gave her unsuitable investment advice. Mrs W is represented by a third party.

background

Mrs W came into a lump sum of over £50,000. Shortly afterwards, in early 2008, Mrs W had a meeting with a financial adviser from Barclays. The adviser initially recommended that Mrs W should invest in a capital 'guaranteed' tracker ISA. Mrs W did not go ahead with this recommendation. The adviser instead arranged for Mrs W to invest £10,000 into a three year 'defined return' plan. The product provided 100% capital protection at maturity.

When Mrs W received a statement for the plan in mid 2009 it showed it was worth less than she had invested. Mrs W cashed in the plan and suffered a loss of around £365.

In early 2014 Mrs W's representative complained to Barclays on her behalf. Mrs W's representative said the investment was not suitable for her. In particular it said the adviser had not explained that Mrs W could lose money if she cashed the plan in before the end of the three year term.

Barclays did not uphold Mrs W's complaint. It said it felt the advice was suitable and there was nothing to suggest the adviser had not explained how the product worked. It also noted that the product information, given to Mrs W at the time, set out how it worked.

Mrs W's representative was not satisfied with Barclays' response and referred the complaint to this service.

Our adjudicator recommended that the complaint should be upheld. He said he did not think Mrs W had wanted to take any risk with her money. As this was the case he felt the investment was not suitable for her.

Barclays did not accept the adjudicator's view. It reiterated that the plan guaranteed that Mrs W would have got her money back on maturity. It also said the point of sale information given to Mrs W explained the risk that she could lose money if she cashed in the plan early.

Barclay's also noted that the fact find showed that 80% of Mrs W's money was readily accessible and she had only tied up a small part of her lump sum.

my findings

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

I have taken in to account all the points that Barclays had made. I have also taken into account that Mrs W told our adjudicator that she gifted and spent most of the money she came into, shortly after she received it. I accept Mrs W may still have had most of the lump sum when the advice was given, but the adviser does not appear to have noted any planned expenditure.

As Mrs W did not have any savings prior to coming into the lump sum it seems likely that she would have had plans to spend at least some of the money. I would have expected the adviser to have discussed this with Mrs W and to have taken this into account when giving any advice. I don't think it was reasonable for the adviser to have assumed Mrs W would keep most of the money as an emergency fund.

I also note that Mrs W was rated as a cautious investor. There was not a 'no risk' rating and Mrs W appears to have selected the lowest risk option available to her. The answers she provided to the questions to determine her attitude to risk do not show that she was willing to take risks with her money - they suggest a desire for safety.

I must also take into account that Mrs W did not have a history of investing and her responses to the risk tolerance questionnaire do not suggest that she wanted to take any investment risk with her lump sum. Mrs W has said that she was a 'no risk' investor and in all the circumstances I think this was likely to have been the case.

It is not in dispute that the plan Mrs W took out guaranteed to return 100% of her money if it was held to maturity. However, there was the risk that there would not be any return at the end of the term. There was also the risk that Mrs W would not get back what she had invested if she cashed in the plan before its maturity date.

So whilst the plan was suitable for someone who was willing to accept some risk, it was not suitable for someone who did not want to take any risk with their money. Having considered Mrs W's comments, as well as those made by Barclays I don't agree that Mrs W wanted to take any risk with the money she invested.

I accept that the adviser gave Mrs W written information about how the plan worked. But I think that as Mrs W did not have any investing experience she would have been reliant on the explanation the adviser gave her about how the plan worked.

Having very carefully considered this matter I don't think Mrs W understood that her investment would fluctuate in value and that if she cashed in the plan early she might lose money. Nor do I think that the adviser did enough to determine whether Mrs W was in a position to tie up £10,000 for three years. As this is the case I don't agree that the plan was suitable for Mrs W.

fair compensation

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

I take the view that Mrs W would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I set out below is fair and reasonable given Mrs W's circumstances and objectives when she invested.

what should Barclays do?

To compensate Mrs W fairly, Barclays must compare the performance of Mrs W's investment with that of the benchmark shown below.

The compensation payable to Mrs W is the difference between the *fair value* and the *actual value* of Mrs W's investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

Barclays should also pay Mrs W any interest, as set out below. Income tax may be payable on the interest awarded.

investment name	Status	benchmark	from ("start date")	to ("end date")	additional interest
Defined Returns Plan	Surrendered	average rate from fixed rate bonds	date of investment	date surrendered	8% simple pa 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 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 decided on this method of compensation because Mrs W wanted to achieve a reasonable return without risking any of her capital.

The average rate for the fixed rate bonds would be a fair measure given Mrs W's circumstances and objectives. It does not mean that Mrs W 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 final decision

My final decision is that I uphold the complaint. In order to resolve this complaint Barclays Bank PLC should use the method set out above to calculate the compensation payable to Mrs W.

Suzannah Stuart
ombudsman