

complaint

Mrs B has complained that advice she received in 2006 by Barclays Bank Plc to invest approximately 35% of her total capital savings in the Guaranteed Fund of an investment bond for income was unsuitable. She is represented in her complaint by a third party adviser.

Specifically, her representative has said that:

- She already held a significant capital sum in an investment bond with another provider from which she was taking a regular income;
- No risk warnings were given of the effect of regular withdrawals on her original capital investment;
- In any event, Mrs B had no apparent need for additional income as she already had a healthy disposable income before the advice was given;
- She was not made fully aware that the guarantee provided by this fund only applied on the fifth anniversary and that the sum guaranteed excluded capital withdrawals;
- Mrs B received no advice to maximise tax efficiency by utilising her annual allowances.

background

Mrs B's complaint was investigated by one of our adjudicators, who concluded that it should not be upheld because she considered that Mrs B was correctly categorised as a 'cautious' investor. The bond offered tax-deferred withdrawals for the additional income she required, while offering protection for her original capital investment, less withdrawals.

The adjudicator noted that Mrs B was provided all the relevant risk warnings at the point of sale in the suitability letter, as well as in the product literature, that the guarantee provided by the fund applied at the fifth anniversary of the investment.

While the adjudicator did note that, following the advice, Mrs B invested approximately 75% of her total available capital in suitable risk-based products, she was still left with a substantial capital sum on deposit for unforeseen contingencies.

In response, Mrs B's representative disagreed with the adjudicator's assessment and said that:

- tax efficient products should have been the primary consideration as Mrs B did not hold any of these products at the time;
- she was not informed that any fund growth within the bond would be taxed at 20%, whereas, within an ISA, tax could be reclaimed, and it is not recorded why Mrs B would wish to forgo this invaluable benefit;
- Mrs B did not seek advice; she was referred to an adviser by counter-staff at the bank;
- her existing bond paid 'natural income', and it does not follow that Mrs B had investment experience that was relevant to the advice she received as her existing investment did not cause capital erosion;
- the terms relating to the application of the guarantee at the fifth anniversary were not adequately explained to Mrs B at the point of sale. It was not sufficient simply to refer her to the product literature;
- the recommendation placed 75% of her total available capital at risk. This was unnecessary, as she already had net disposable income of £300 per month. There was no suggestion from the adviser for Mrs B to consider increasing her withdrawals

from the existing bond. Neither is there any reference to the amount of interest lost by switching the funds from her deposit account to investment;

- the advice to invest such a large capital sum was excessive and unnecessary, as the maximum income available from the bond was recommended when it was clearly not needed;
- Mrs B's tax position has been made worse, and it is apparent that the bond has been sold as a form of deposit account.

As no agreement has been reached in this complaint, it has been referred to me for review.

findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I find that I agree with the conclusions reached by the adjudicator, and for essentially the same reasons.

I would emphasise that this decision considers the material issues raised by this complaint. It does not serve to respond in turn to each and every point raised by Mrs B's representative to decide whether, on balance, the advice she received was appropriate.

Of course, there may be a case for deciding that an alternative product would also have been suitable without concluding that the advice Mrs B actually received was unsuitable.

My understanding is that, although Mrs B was married, she received advice based on her personal and financial circumstances. While the total income she disclosed at the time included income she was already taking from her existing investment, it would appear that this additional income was 'double-counted' when her disposable income was calculated later in the factfind.

Also, it is recorded that Mrs B already held an investment which gave her a 'natural income'; that is, it paid her a periodic sum according to the ongoing return 'earned' by this investment. However, while the documentation completed at the point of sale records this "income" as a fixed sum per month, by its nature, it would be variable and could, on occasions, be nil or less than the amount quoted.

For these reasons, I am persuaded that Mrs B did require the additional income from capital she held on deposit of around £200 per month for a specifically identified need because this could not be found from her existing disposable income. I, therefore, do not accept her representative's contention that these withdrawals were not necessary.

On the other hand, his suggestion that she could have been advised to take income from her existing investment in addition to the 'natural income' it provided would have increased the risk of capital erosion, which appears to be the reason for Mrs B's complaint.

It is also evident that the adviser did make Mrs B aware of the alternative products that could utilise her annual tax-free allowances in the suitability letter, which also explained that the guarantee offered by the fund was available at the fifth anniversary of the investment. The adviser did not, as her representative has suggested, merely refer Mrs B to the product literature and advised to "work-it-out-for-herself".

In my view, it was also made abundantly clear to Mrs B at the time that the "income" she proposed to take from the bond was treated as withdrawals of capital and that her original

investment could be eroded if the return shown by the investment did not at least match the value of the withdrawals she took. I am not sure how an adviser can retrospectively show how risk warnings associated with the recommended product were given to investors other than through the suitability letter issued to the investor at the point of sale.

With regard to the merits of the advice, I am satisfied that Mrs B was appropriately recorded as having a 'cautious' attitude to investment risk. She requested an investment that could achieve a return in excess of rates of interest she was currently receiving gross from her deposit-based savings, and so provide her an additional "income".

While the advice did place approximately 75% of her total capital in risk-based investments, as her representative has confirmed, almost 40% of these capital savings was already invested in a product that gave her an "income" only if the return on this investment enabled it to do so. The advice she received also placed the remaining 35% of her total capital in a product that offered a guaranteed return of her capital (less withdrawals) after five years.

Notwithstanding all this, the remaining 25% of her total capital she held in deposit-based savings accounts still represented a substantial sum, sufficient for unforeseen contingencies. She was also married and still earned an income from employment, which gave her capacity to recover any investment losses she might incur.

I appreciate that Mrs B could also have considered utilising her annual tax-free allowances and the adviser does appear to have reminded her of this option. However, investment in an ISA, for example, was restricted to £7,000 in each tax year at the time and could not have satisfied her immediate "income" requirement without taking substantial withdrawals from the account.

On balance, I am satisfied that the investment Mrs B was advised to effect to realise her objective of generating additional "income" was not unsuitable and that the nature and terms of the product were fully explained to her at the time.

decision

My final decision is that I do not uphold Mrs B's complaint.

Kim Davenport
ombudsman