

complaint

Mr and Mrs N's complaint, in summary, is that they were recommended an Aviva Portfolio Bond and two Barclays FTSE Super Tracker Plans by Barclays Bank Plc ("Barclays") which were unsuitable for them.

background

In April 2011 Mr and Mrs N's representative wrote to Barclays to complain that the advice Mr and Mrs N had received in 2007 to invest in an Aviva Portfolio Bond and two Barclays FTSE Super Tracker Plans was not suitable given their circumstances and objectives at the time and that they should have been advised to repay their mortgage.

Barclays responded in June 2011 to say that it was *"in agreement with the third party claims company in this instance, your needs at the time of the advice were not assessed correctly and the repayment of your mortgage was your financial priority."* It offered redress based on a comparison of the performance of all three investments to a return equivalent to the Bank of England base rate.

The representative did not accept Barclays' offer of redress and referred the matter to us. In doing so it said that Barclays should:

- Have advised Mr and Mrs N to surrender their mortgage endowment and use the proceeds (and cash on deposit) to repay their mortgage.
- Have advised Mr and Mrs N to invest any surplus funds available, after their mortgage had been repaid, into pension plans (with the added benefit of tax relief), before purchasing annuities. In this respect the representative says Mr N would have benefited from an enhanced annuity rate given his health at the time.
- Make a contribution to its costs in representing Mr and Mrs N.
- Pay Mr and Mrs N for the distress and inconvenience caused and a contribution to their travel costs in coming to London to lobby their MP.

The complaint was considered by one of our adjudicators who concluded that it should be partly upheld. In summary he said:

- Given Barclays had accepted that Mr and Mrs N's objective at the time was to repay their mortgage then any redress should reflect this.
- In the absence of any evidence to demonstrate the existence of an endowment policy, he could not recommend Barclays pay anything to reflect the fact that Mr and Mrs N were not advised to surrender it. But if Mr and Mrs N did have an endowment policy, and assuming the remaining term matched that of the mortgage, recommending that it be surrendered might not have been good advice in any event.
- He was not persuaded that it would have been good advice for Mr and Mrs N to use any remaining funds, after their mortgage had been repaid, to invest in pension plans.
- As our service is free to consumers it would not be appropriate to ask Barclays to meet any of the costs incurred by the representative.

- Barclays had dealt with the complaint in a reasonable manner and so did not feel it appropriate to ask Barclays to pay anything in respect of distress and inconvenience.

The representative responded providing evidence that Mr and Mrs N had an endowment policy.

Barclays responded to say, in summary:

- It had no mortgage statements or details of interest rates to assist it in calculating redress on the basis proposed by the adjudicator. But in any event it had doubts about whether or not Mr and Mrs N would have repaid their mortgage even if it had recommended they did so. This is because Mr and Mrs N re-mortgaged in 2008 despite having cash available from the surrender of the two FTSE Super Tracker Plans in 2007 to repay their existing mortgage (in part at least).
- Mr and Mrs N's failure to redeem their mortgage when they had funds available to do so (in part at least) indicates that more likely than not they would have remained invested in cash had unsuitable advice not been given. Therefore its offer to compensate Mr and Mrs N, based on the Bank of England base rate, was not inappropriate.

In response to the adjudicator's findings and Barclays' letter rejecting them, Mr and Mrs N's representative made the following points:

- Mr and Mrs N had three endowments and consequential loss should be calculated by reference to the costs they incurred by not paying off their mortgage and not surrendering their endowments in 2007.
- Mr and Mrs N's failure to clear their mortgage when they had funds available in late 2007 was because the funds were needed for urgent structural repairs on their home.
- Mr and Mrs N later received advice to surrender their endowment policies and repay their mortgage and they accepted this advice.
- An award for distress and inconvenience should be made and based on similar cases £200 each would not be inappropriate.

As an informal resolution could not be agreed, the matter was referred to me for review and decision.

I issued a provisional decision in February 2014. I upheld the complaint and said in summary:

- Barclays agreed in its letter to Mr and Mrs N, dated June 2011, that their financial priority in 2007 was the repayment of their mortgage. Having considered both parties' submissions I agreed and found that had Mr and Mrs N not been given unsuitable advice that is what they would have most likely done. Therefore, I said it was appropriate for fair compensation to be based upon the financial position that Mr and Mrs N would have been in if they had been advised to repay their mortgage.

- I also considered what else Mr and Mrs N might have done differently had they not been given unsuitable advice. I concluded that they may have done, by way of example, one of the following;
 - Repaid their mortgage from the liquid funds they had available and nothing else.
 - Surrendered their mortgage endowment and repaid their mortgage from the surrendered endowment proceeds and the liquid funds they had available and nothing else.
 - Repaid their mortgage from the liquid funds they had available and invested any balance, rather than leaving it on deposit.
 - Surrendered their mortgage endowment and repaid their mortgage from the surrendered endowment proceeds and the liquid funds they had available and invested any balance, rather than leaving it on deposit.
- I was persuaded that had it not been for the unsuitable advice, Mr and Mrs N would have repaid their mortgage from the liquid funds they had available and invested any balance, rather than leaving it on deposit.
- I noted that Mr and Mrs N had an endowment policy at the time and I accepted the representatives point that it was '*not on target*' at the time of the advice. But given the policy only had about five years to run, Mr and Mrs N had elected not to surrender it previously (electing instead to vary their mortgage to part repayment) and Mr and Mrs N had the means to continue funding it, I was not persuaded, on the balance of probabilities, that they would have elected to surrender it at that point in time.
- I needed to consider what Mr and Mrs N might reasonably have done with the balance of their funds. Barclays suggested that Mr and Mrs N would have kept these funds on deposit, whereas the representative suggested they should have been advised to invest the funds in to pension plans.
- Having considered both parties' arguments I was satisfied that Mr and Mrs N would have found the idea of investing any balance remaining on deposit attractive, given the level of return these funds would have been earning at the time. However, I was not persuaded that Mr and Mrs N had either the appetite, or the capacity, to take any risk with their capital. I said this because at the time of the advice Mr and Mrs N were both retired and although they had surplus income, this was not substantial. Secondly, Mr and Mrs N seemed to have had very little experience of risk based investments, having previously only invested in a mortgage endowment policy and their respective pension plans.

But equally I was not persuaded they would have invested any balance remaining on deposit into pension plans. I noted that the fact find recorded that this option was considered and discounted by Mr and Mrs N. But in any event I, like the adjudicator, found that the balance that would have been available for investing in such a manner would have been insufficiently large to make it an attractive proposition, even with the tax benefits that might have been available to Mr and Mrs N. I also noted, at the time of advice, that Mr and Mrs N were already retired and drawing income from their respective pension plans. Therefore such a recommendation would have required new plans to be set up, rather than them investing, say, into existing plans.

So on balance I was persuaded that had it not been for the unsuitable advice, Mr and Mrs N would have chosen to invest any balance remaining on deposit in a manner that would have exposed their capital to no risk and outside of a pension plan. I concluded that this return should be calculated with reference to the average return from fixed rate bonds with 12 to 17 months maturity as published by the Bank of England from the date the first investment started to the date the last investment was surrendered.

- I noted that the representative had asked for its costs (at least in part) and other related costs to be covered by Barclays. But I explained that as our service is free to consumers, it is not necessary for them to be represented. If consumers choose to be represented then I thought it not unreasonable that these costs should be borne by them, something that I understood Mr and Mrs N and their representative would have been aware of from the outset.
- I considered that the matter had caused Mr and Mrs N both distress and inconvenience. It was clear that Barclays accepted, in June 2011, that Mr and Mrs N's main priority in 2007 was to repay their mortgage, yet it made an offer that in my view did not take into account the financial consequences of not doing so. Therefore in the particular circumstances of this case I thought Barclays should pay Mr and Mrs N £150 each for distress and inconvenience this, amongst other things, had caused them.

In response to my provisional findings Mr and Mrs N's representative provided evidence that Mr and Mrs N were funding three endowment policies at the time of the advice, rather than the one policy I had referred to in my provisional decision. It also added, in summary:

- If Mr and Mrs N should have been advised to repay their mortgage it follows that they should have also been advised to surrender their three endowments given that there would have been no need to maintain them for mortgage repayment purposes (or life protection purposes) and given that they were "*bad value*".
- Redress should reflect the above by taking into account the cost to Mr and Mrs N of continuing to fund their three endowments as well as the cost of continuing to 'service' their mortgage.
- Redress should also reflect the cost to Mr and Mrs N of remortgaging in 2008, which they did to secure a 'better deal', and any other costs and charges they incurred over and above the cost of their monthly mortgage payments.
- Redress should be based on the date that Mr and Mrs N would have been in a position to repay their mortgage rather than the date the first investment started.
- Mr and Mrs N should have been advised to invest funds available to them after the surrender of their three endowments and the repayment of their mortgage into a pension that was then immediately vested.
- The recorded statement that Mr and Mrs N "*did not wish to make a contribution into a pension as [they] wanted to keep control over [their] capital*" should not be relied upon as Mr and Mrs N recall no discussion around pensions having taken place.
- There are a number of inaccuracies on the fact find that would suggest that little weight should be given to it. In particular, the mortgage redemption penalty was substantially overstated and Mr and Mrs N were not in good health.

- Mr and Mrs N did not receive a copy of the fact find and financial report and had they done they would have questioned the inaccuracies identified above.

Barclays responded to say, in summary:

- That it disagreed with the redress I had proposed and believed that its original offer to compensate Mr and Mrs N, based on a comparison of the performance of all three investments to a return equivalent to the Bank of England base rate, was not inappropriate.
- It did not think Mr and Mrs N would have paid off their mortgage given that they used the proceeds of their two encashed Barclays FTSE Super Tracker Plans to fund repairs to their property, rather than repaying (in part at least) their mortgage.
- Notwithstanding the above, had Mr and Mrs N paid off the mortgage at the relevant time they would have incurred a significant redemption penalty and this should be factored into any redress awarded.

my findings

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

Although Barclays accepted in its letter dated June 2011 that it was Mr and Mrs N's priority in 2007 to repay their mortgage, it has suggested in its most recent submissions to this service that it believes they would not have actually done so, citing the fact that Mr and Mrs N did not do so (at least in part) from the proceeds of their two encashed Barclays FTSE Super Tracker Plans. But I am not persuaded that just because Mr and Mrs N opted not to repay (at least in part) their mortgage in late 2007 that they would not have done so in early 2007, particularly given that in late 2007 Mr and Mrs N say there was a need to carry out repairs to their property which required funding.

So I remain satisfied that redress should reflect the cost to Mr and Mrs N of not repaying their mortgage in 2007.

I will now turn to the comments made by the representative in response to my provisional decision.

I have noted the points raised by the representative about the possible inaccuracies in the fact find (and financial report) and that Mr and Mrs N do not recall ever receiving copies. However, I do not need to make any finding on these two points because my decision does not turn on them as can be seen from what I say below.

I do not agree that simply because I have concluded that, had it not been for the unsuitable advice, Mr and Mrs N would have repaid their mortgage that it follows that they would have surrendered their endowments also.

Although all three endowments were not on target in 2007 the terms to maturity at that point in time were relatively short. Mr and Mrs N had also opted not to surrender them earlier, for example in 2004 when they elected to switch their mortgage to part repayment, and they had the means to continue funding them.

So although I understand the arguments made by the representative I am not persuaded that Mr and Mrs N would have elected to surrender their endowments in 2007 even had the possibility of doing so been discussed. In other words I am satisfied that they would have seen value in continuing to hold the three endowments, albeit as investments with built in life cover rather than as a means of repaying their mortgage.

Given I have found that Mr and Mrs N would not have surrendered their three endowments it means that Mr and Mrs N would have been left with a relatively small sum of money to invest after paying off their mortgage. So although I accept that there might have been benefits in paying this sum into a pension, that was then immediately vested, I am satisfied that given their circumstances at the time Mr and Mrs N would have rather retained a degree of control over this sum that would not have been available to them had it been converted into an income stream.

So in summary I find that had it not been for the unsuitable advice Mr and Mrs N would have repaid their mortgage, continued to fund their three endowments and invested the small surplus that would have been available after the mortgage had been repaid in a manner that would not have exposed that sum to any risk, but not in a pension arrangement.

Finally I note that both Barclays and the representative have commented on the redress that I proposed in my provisional decision. I have considered both parties submissions in this respect very carefully but I am satisfied that the redress I proposed in my provisional decision represents a fair approximation of Mr and Mrs N's loss as a result of the shortcomings I have identified. However I have amended the wording in respect of (B) and (C) slightly so as to avoid any confusion on the part of either party.

Barclays said that had Mr and Mrs N paid off the mortgage at the relevant time they would have incurred a significant redemption penalty and this should be factored into any redress awarded. It is not clear from the papers that have been submitted precisely what redemption costs would have been incurred by Mr and Mrs N had they redeemed their mortgage on the date the first investment started but for the avoidance of doubt this cost should be taken into account when calculating (C) below.

The representative has said that redress should be based on the date that Mr and Mrs N would have been in a position to repay their mortgage rather than the date the first investment started. However, given that the date of the first investment was about two weeks after Mr and Mrs N first met with Barclays (and the fact find was completed) and that there would have been some delay in obtaining a precise redemption figure and repayment of the mortgage being made I am satisfied that the date the first investment started is a reasonable approximation of the date Mr and Mrs N would have repaid their mortgage.

The representative has said that redress should also reflect the cost to Mr and Mrs N of remortgaging in 2008. I accept that there might have been some costs incurred by Mr and Mrs N in this respect. But equally I note that in remortgaging Mr and Mrs N also received a small sum representing funds in excess of what was required to redeem the first mortgage.

Having considered the representative's point in this respect very carefully, and having seen no evidence to the contrary, I find that it is more likely than not that the cost to Mr and Mrs N of remortgaging was equal to, or less than, the small additional sum they received on completion of their remortgage. Therefore I am satisfied that ignoring both these sums in the redress calculation below results in an appropriate approximation of Mr and Mrs N's loss in all the circumstances.

fair compensation

To compensate Mr and Mrs N, Barclays should put them as close to the position they would probably now be in if they had not been given unsuitable advice.

Therefore, Barclays should pay Mr and Mrs N compensation of I + J where:

- A. each monthly mortgage payment made from the date the first investment started;
- B. the final mortgage payment made to redeem the mortgage with the second lender;
- C. the difference between the sum invested and what would have been available for investment had the mortgage with the first lender been repaid on the date the first investment started, taking into account any redemption costs that would have been payable;
- D. a return on 'C' above, matching the average return from fixed rate bonds with 12 to 17 months maturity as published by the Bank of England on its website from the date the first investment started to the date the last investment was surrendered;
- E. A + B + C + D;
- F. the sum of all withdrawals made from the three investments;
- G. the surrender value of all three investments;
- H. F + G;
- I. E – H, if positive, representing the investment loss to the date of surrender of the last investment;
- J. interest on the investment loss calculated in 'I'. Interest should be added to 'I' at 8% pa simple from the date of surrender of the final investment to the date of payment.

In addition, Barclays should pay Mr and Mrs N £150 each for the distress and inconvenience this matter has caused. Barclays should also provide the details of its calculations to Mr and Mrs N and to me in a form which should be understandable to a lay person.

my final decision

For the reasons I have given, I uphold this complaint and order Barclays Bank Plc to calculate and pay compensation as detailed above.

Peter Cook
ombudsman