complaint

Mr and Mrs G say they accepted a redress offer from Barclays Bank Plc but it then sent her a higher offer which it later withdrew. They don't believe the first offer can be correct as it ignores some of the factors taken into account in the later one. They want Barclays to pay the higher offer - and to both of them. They also say Barclays failed to address their concerns about its redress calculations.

background

The background and circumstances of this complaint are set out within my provisional decision of 5 June 2017. A copy of this is attached and forms part of this decision.

Mr and Mrs G had no further comments to make. Barclays responded, saying:

- It agreed to pay Mr and Mrs G any extra redress due on their OIP investments based on using a cautious risk formula (referred to in the provisional decision as 50/50) rather than a no-risk one. It said this came to £429.79 and £944.22 respectively
- It also agreed to pay Mr and Mrs G compensation for the potential loss of ISA benefits, and said this came to £153.40 and £97.06 respectively
- And it agreed to pay a total of £500 to cover distress and inconvenience – as previously offered. As it had already paid £200 it would pay an additional £300
- Mr and Mrs G began withdrawing large lump sums from the MetLife bond within two years of its start date (to fund daily expenses), so it didn't believe they should've been advised to put all this £57,000 at risk – as my proposed compensation implied
- It agreed to use the cautious risk formula for £30,000 of this but felt a no-risk calculator should be used for the other £27,000. This redress came to £2,739.10
- Its advisor had used a risk-based questionnaire and it enclosed a copy of this

I explained the broad outline of Barclays' response to Mr and Mrs G, particularly its point about their steady withdrawals after two years.

Mr G said:

- They had taken out other risk-based investments via other providers, and when these investments fell in value, they needed to take out money to meet daily expenses
- The large withdrawals Barclays refers to started more than two years after the investment began - and not within two years
- Barclays' new argument is based on 'moving the goalposts' - saying what it thinks would have been good advice in 2010 based on what happened after 2012
- How can something which occurred in 2013 affect what advice they should have been given in 2010?

my findings

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

As I explained in my provisional decision, I am satisfied Mr and Mrs G wanted, and could afford to take a modest risk with around three-quarters of their available capital. Barclays' advisor's risk questionnaire, though limited in scope and import, supports this.

My proposed recommendation means, in practice, that less than 75% of their money would be at risk. This is because in a typically cautious or low-risk investment around half of that money is kept in secure places, with only half at real risk of falling in value. So I am satisfied my proposed compensation is fair and reasonable.

Barclays' recent proposal would mean half of their money kept on deposit or in other-risk free products, while a further quarter is effectively also secure given the likely asset mix of a cautious product. In other words, Barclays' redress assumes Mr and Mrs G should've only put a quarter of their money at risk. I think this is overly cautious, and doesn't reflect their circumstances, objectives or the limited evidence on offer via the advisor's report.

The key issue is what would've been suitable advice back in 2010 – not one made with hindsight. To that extent I agree with Mr and Mrs G that their subsequent action in surrendering chunks of one of these investments after two or three years is of limited relevance.

I also believe that Mr and Mrs G's explanation as to why they made these withdrawals reinforces my view that my original compensation formula was fair and reasonable.

I am therefore satisfied Barclays should pay compensation as follows:

- It should calculate the return Mr and Mrs G got on their MetLife bond with what they would've got if they'd invested the same sum in a cautious risk product. To do this it should use this service's cautious risk formula involving a 50/50 combination of the returns on offer via the Bank of England's fixed rate bonds of 12 to 17 months' maturity and the returns available via the FTSE UK Private Investor Income Index over the period in question

- It should then pay the difference between the return Mr and Mrs G received and the return they would have received via this fair comparator. It should also add 8% simple interest per annum to this figure from the date they surrendered the MetLife bond to the date of settlement of this complaint

- It should then compare the returns Mr and Mrs G received on their OIP products with what they would have got if this money had been invested in suitably cautious investments using the same '50/50' formula. It should then add 8% simple interest per annum to this figure to reach an initial 'loss' figure. It should then deduct the compensation it paid in January 2016 (using the no-risk calculator). It should then pay the resultant sum

- It should pay Mr and Mrs G the so-called 'ISA loss' as previously agreed

- And it should pay the outstanding £300 compensation it has previously offered for poor service
- Provide the details of the calculation to Mr G in a clear, simple format
- Income tax may be payable on any interest awarded
- If Barclays considers that it is legally required to deduct income tax from the interest, it must send a tax deduction certificate with payment. Mr and Mrs G can reclaim the tax from HM Revenue and Customs if appropriate.

my final decision

I uphold this complaint and instruct Barclays Bank Plc to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 11 August 2017.

Tony Moss
ombudsman

copy of provisional decision

complaint

Mr and Mrs G complain Barclays Bank Plc sent them an initial redress offer but then sent her a different offer which it later withdrew. They do not believe the first offer can be correct as it ignores some of the factors taken into account in the subsequent one. They want Barclays to pay the higher offer- and to both of them. They also say Barclays has failed to address their concerns about its redress calculations.

background

In 2010 a Barclays' advisor concluded Mr and Mrs G were happy to take a 'balanced' risk with £95,000 of their £138,000 capital, and recommended they invest £19,000 each in Barclays' Open Invest Plan (OIP) and £57,000 between them in a Met bond. This left them with just under a third of their money in cash-based funds.

Mr and Mrs G's respective £19,000 were both split between four funds in the OIP. He withdrew his money in three tranches, the last of which was in June 2012. She withdrew her money in three tranches, the last of which was on February 2016. All the funds lost money.

In November 2015 Barclays contacted Mr and Mrs G to review their investment advice. In January 2016 it wrote saying it was satisfied the advice to invest £57,000 in the Met bond had been suitable as this was a cautious investment which offered capital protection, and represented a modest portion of their capital.

But it now didn't believe it should've recommended they invest £19,000 each in the OIPs as these were 'speculative investments' which posed a greater risk than their risk profile of 'balanced'. In fact, it now felt it shouldn't have advised them to take any risk with this money.

It had therefore used a cautious risk comparator to assess their potential losses. It didn't, however, use the standard cautious risk comparator, known as 50/50, but the accepted no-risk comparator (the Bank of England's fixed-rate bonds).

This showed Mr and Mrs G were entitled to just over £4,300 and £3,120 compensation respectively - after the deduction of 20% tax. This included 8% interest on the loss of use of this money since the respective surrender dates. It also offered them £100 each for its poor service.

Mr and Mrs G accepted this offer.

In June 2016 Barclays wrote to Mrs G again, saying it had reviewed its recommendation that she invest £19,000 in the OIP and concluded this represented too high a risk as this wasn't a balanced risk product but a speculative one (high risk). It said it had used the benchmark appropriate for a balanced risk investor, the WMA Index (This is generally accepted as a fair comparator for a balanced/medium risk investor).

After deducting 20% tax, it said Mrs G was entitled to £4,587. It said this figure included a calculation of her likely loss of valuable tax benefits of £150 as a result of its poor advice.

Mrs G then contacted Barclays to seek clarification about this second offer, asking why it was so different from the offer she'd previously accepted. She didn't receive a response. Instead Barclays sent her an automated letter saying she had not responded to its offer.

Mrs G then rang Barclays to find out what was happening, and raised a complaint about its lack of response. She subsequently received two letters saying that as she'd not responded its compensation offer it would not be paying anything unless she made contact.

In September 2016 Barclays replied to her complaint, saying its second redress offer was wrong and had failed to take account of the £910 withdrawal (from JPM Emerging Markets) that she'd made in January 2012. It said this offer also included interest on her loss up to June 2016 whereas she'd accepted its earlier offer which only included interest up to January.

It said Mrs G wasn't entitled to the higher compensation figure but offered her an additional £100 for its recent poor service.

Mrs G rang and said she was not satisfied with this response.

Barclays wrote back, saying the June review should not have taken place. It reiterated why it felt the second offer had been incorrect, but agreed to increase its payment for trouble and upset to £300.

After Mrs G wrote again, Barclays reiterated why it felt fixed-rate bonds were an appropriate comparator but it didn't explain why the first offer failed to include any compensation for loss of potential tax-free gains (ISA loss).

In a separate letter it said it hadn't been able to complete its investigation into her complaint within eight weeks so she was now entitled to bring this straight to this service.

Mr and Mrs G complained to this service jointly. After Barclays objected to us considering a complaint on Mr G's behalf, we split their complaint into two separate ones.

In its submission to this service Barclays said it believed that exposing £38,000 of their funds to 'significant risk' could have affected Mr and Mrs G's future financial stability and retirement plans as they were not able to make up any losses. This was why it had used a risk-free calculator in its first redress offer, and felt this was fair. It said its second offer, based on a balanced risk calculator, was not appropriate.

An investigator at this service did not feel Mrs G's complaint should be upheld.

He said he was satisfied Barclays original offer had been fair in concluding she should not take any risk with her money, and he saw nothing wrong with the advice to invest in the Met bond. Overall, he thought its offer of £300 compensation was appropriate in the circumstances.

Mrs G did not accept the investigator's view, saying that he, like Barclays, had ignored many of her points, including:

- Barclays' responses, and lack of responses, didn't justify the investigator's conclusion that it had reached a fair conclusion in January 2016

- The original review was conducted by the Complaints Team, and it was this team which made the January 2016 offer while the Past Business Review Team were simultaneously conducting their own review which led to the second offer. This didn't make sense and seemed suspicious

- If she and her husband hadn't complained in November 2015 she would never have received the first offer, but simply received the higher second offer in June 2016

- Barclays has never explained, or justified, why the first review ignored the ISA loss issue while the second one offered £150 for this loss. Why did the investigator ignore this issue?

- How did one review take account of, and another ignore, the £910 withdrawal?

- If the advice to invest in the OIP was bad, how can its advice to invest in the Met bond be correct? Barclays has never explained or justified this recommendation; nor did the investigator deal with this issue

- She will never know what ‘Good Advice’ should’ve been offered or how their £96,000 should’ve been invested

- Why did Barclays recommend the Met bond? What other bonds were considered? And what types of funds would’ve been more suitable?

As no agreement has been reached, this complaint has been passed to me for review.

my provisional findings

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

Firstly, it’s clear that Barclays made a series of mistakes both in terms of its original advice and its two reviews and subsequent communications with Mrs G. In my view, it also repeatedly failed to respond to Mrs G’s queries either promptly or helpfully.

If this complaint was primarily about the way Barclays dealt with Mrs G’s queries, then I would consider and assess every piece of communication including the various delays in responding to her.

However, given the compensation it has already offered, I think it is sufficient in this case to consider five issues:

- How much risk, if any, were Mr and Mrs G prepared to take with their money?

- If the OIPs were too risky for them then what should they have been advised to do with this tranche of their money? How does this match up to Barclays’ two compensation offers?

- Why did the first offer take account of a withdrawal while the later offer ignored this? And why did the first offer not consider her potential loss of tax-free savings?

- Was the Met bond a suitable recommendation, and for nearly 40% of their money?

- Has Barclays’ offered appropriate/sufficient compensation for the various delays and poor service Mr and Mrs G have suffered?

That said, I also realise Mr and Mrs G still don’t know why Barclays made two completely different offers to her, and are understandably suspicious of how this came about, particularly given its’ failure to fully explain this.

From what I’ve read, this seems to me the most likely explanation. If I am wrong, I would like Barclays to correct this.

It looks as if Barclays initially reviewed certain customers’ investments - including Mr and Mrs G’s - to check whether they’d been given the correct advice. As a result it decided they shouldn’t have been recommended the OIPs. It didn’t speak to Mr and Mrs G about what their attitude to risk had been at the time but decided, on the basis of the original paperwork, that they shouldn’t have taken any risk with this money. This resulted in the first offer.

A different department subsequently reviewed the OIP product itself and concluded it hadn’t been a medium risk investment, as described, but a speculative one i.e. more risky. It wrote to everyone who’d invested in this product offering them compensation.

It didn’t reassess each customer’s attitude to risk but simply offered compensation based on its conclusion that the OIP was a higher risk than a balanced/medium risk investor would’ve wanted. It therefore offered all investors compensation based on its medium risk formula. In calculating Mrs G’s compensation entitlement it failed to take account of her £910 withdrawal i.e. this was a mistake.

I recognise Mrs G has other concerns about this whole review process and believes Barclays should stick by its second improved offer but my role is to decide, independently of any previous offers, what would be a fair and reasonable resolution of this complaint.

<u>my assessment</u>

a) In 2010, at the time of advice, Mr and Mrs G were 50 and 47 respectively, employed and planning to retire around 60. Together, they had around £138,000 in savings, much of which came from a lump sum pension payment Mr G had taken (even though he continued to work).

   From what I've read, it looks as if Mr and Mrs G's income was more than enough to cover their regular outgoings and that they did not need to draw on their savings.

   The advisor recorded they were happy to invest this sum for up to nine years i.e. till Mr G retired. She said they thought it was pointless leaving the money on deposit given that savings rates were so poor, and were keen to invest the money to build up a lump sum for their future financial security.

   She said they want to protect some of their capital but wanted to take a more 'speculative' approach with the rest. She concluded this made them 'balanced' investors and said they happy with this classification.

b) Firstly, Barclays recommended they keep £43,000, just under a third of their money, in cash. This seems to me a reasonable and sensible recommendation.

c) I agree that the advisor should not have categorised Mr and Mrs G as balanced risk investors. I'm not satisfied she took sufficient steps to safely assess their real attitude to risk: how much of their capital they were happy to invest, with what degree of risk or whether they fully understood what a risk classification of 'balanced' meant in practice. Given they had no investment experience, I think she should've done far more to assess these issues including, for example, asking them to fill out a risk-based questionnaire to come to a considered assessment.

   If this had been done I'm fairly sure they would not have come out as balanced risk investors, let alone ones with an appetite for speculative investments. So I agree that Barclays' second compensation offer, sent solely to Mrs G, was not appropriate.

d) However, taking account of Mr and Mrs G's ages, ongoing employment, healthy finances and, crucially, their clearly-stated desire to invest their money rather than keep it in a deposit account, I am satisfied they were prepared to take some risk with their capital. I believe that Mr and Mrs G should reasonably have been considered cautious/low-risk investors. In this respect I don't accept Barclays' view that Mr G's lump sum pension pay-out was crucial to their retirement planning and that they couldn't take any risk with this money. Both were due to keep working for nearly another decade and could afford to make up any modest potential losses.

e) I therefore don't accept Barclays used a fair comparator in in its initial offer to Mr and Mrs G concerning their OIPs. From what I've read, I'm satisfied they were happy to take a modest risk with the £38,000 they invested in these products, and so Barclays should have used a cautious/low risk formula when assessing their potential loss. So I want Barclays to recalculate their potential loss on the OIPs using the so-called 50/50 formula. If this shows they are entitled to greater compensation than that produced by a non-risk formula I will instruct it to pay this difference - plus 8% simple interest to the date of settlement of this complaint.

f) This leaves the issue of the Met bond – and what level of risk it posed. This product guaranteed the return of Mr and Mrs G's initial capital but any interest/return was dependent on the performance of the underlying investment. As a seven year commitment a consumer could discover the real value of their money had fallen substantially depending on the rate of inflation over its seven year commitment. Also, the capital guarantee came at a significant price in terms of the product's fees and limits on possible returns/growth.

   Crucially, however, Mr and Mrs G clearly indicated they were happy to take a risk with, and invest a significant portion of their money. As the advisor stated, they were looking to try and achieve a greater return than the interest available via guaranteed deposit-type accounts.

   I don't think this product was suitable for this objective as the illustrations didn't indicate that outperforming the sort of guaranteed returns available was necessarily very likely.

   The literature showed returns based on three possible growth forecasts of 2%, 4% and 6%. After the deduction of charges the middle of these produced a return of just 2.7% a year. Yet many banks and building societies were offering a guaranteed annual return of between 3% and 4% per year (and some more than this) via five fixed-rate bonds.

   I accept the Met bond could potentially have outperformed these figures, given the lower returns indicated in the illustrations, but I think the advisor should've pointed this comparison out to ensure Mr and Mrs G were in a fully informed position to choose whether to go ahead with this product, particularly as they had no previous investment experience. I've seen no evidence this comparison was discussed.

   If presented with the option of a guaranteed return of up to 4% a year over five years compared with the possibility of receiving no return via the Met bond, I think it is more likely than not that Mr and Mrs G wouldn't have gone ahead with this investment given their stated desire for a product that outperformed such returns. I do not believe this was an appropriate recommendation given Mr and Mrs G's declare objectives.

g) It's also important to note that this recommendation, alongside the advice to keep nearly a third of their money in cash, resulted in more than three-quarters of their money sitting in capital-protected funds. I don't believe the advisor's report, or their circumstances, warranted such a cautious use of their assets.

   If presented with an appropriate range of suitable choices, I believe they would have been willing to invest this money in a mix of low/cautious investments to try and beat the 'low' returns typically on offer at the time. I therefore intend to instruct Barclays to compare the return they received via this Met bond with the money they would've got using the same cautious risk calculator referred to above. I will set out this formula in detail in my final decision (assuming subsequent responses do not change my view about this).

h) I asked Barclays why its first offer didn't include compensation to reflect the potential loss arising from a failure to put an ISA wrapping around these investments (while the second offer did). It said this was not part of the initial compensation process but was prepared to compensate Mrs C for this potential loss. I agree it should do this for both Mr and Mrs G's investments where appropriate.

i) In my view Barclays made a series of mistakes both in its original recommendations, its reviews - and in the way it has dealt with Mrs G's various queries. In particular, I think it failed to fully explain the basis of each compensation offer or the reasons why it felt each offer was right. It did, however, offer to pay Mr and Mrs G £100 each initially, and then give Mrs G a further £300 for its poor service. I think this compensation of £500 between them is a fair and reasonable offer. If this has not yet been paid I will instruct Barclays to do so in my final decision.

Finally, I should explain that I have not calculated how much, if anything, Mr and Mrs G are entitled to as a result of my proposed compensation calculations. So while I am satisfied that Barclays should not have recommended either the OIPs or the Met Bond, and that it should calculate how much Mr and Mrs G's money would now be worth if invested more suitably, this does not mean they have necessarily suffered a loss on all these unsuitable investments.

my provisional decision

I currently intend to uphold this complaint and instruct Barclays to pay compensation as outlined above.

Tony Moss
ombudsman