

complaint

Mr and Mrs M's complaint, in summary, is that Barclays Bank Plc has offered inadequate compensation in respect of the Aviva (Morley) Global Cautious Income fund ("Morley fund").

background

Mr and Mrs M invested about £180,000 in the Morley fund in late 2007 / early 2008. In August 2008, following Barclays' advice they surrendered part of the Morley fund and reinvested the proceeds into two Regular Income bonds.

In 2011 Barclays wrote to Mr and Mrs M that following a review, it has concluded that its recommendation to Mr and Mrs M to invest in the Morley fund was unsuitable. It offered to pay about £850 to the consumers as compensation.

The consumers complained to Barclays about the level of offer through their representative in November 2011 and in the absence of response from Barclays they brought their complaint to this service in January 2012.

Barclays wrote to us in March 2012 reiterating its offer. It added that it took the opportunity to review the advice it gave to invest in the Regular Income bonds and concluded that it was not suitable. However, it said that the consumers did not suffer a financial loss as a result of that advice.

Mr and Mrs M's complaint was investigated by one of our adjudicators. He considered that the complaint should be upheld and set out how Barclays should arrive at fair compensation. In summary, his view was that the recommended investments exceeded the level of risk Mr and Mrs M were prepared to take. He proposed that the compensation be calculated by comparing the performance of the investments to a return equivalent to 1% above the Bank of England base rate over the relevant period.

The adjudicator also considered that the redress should be calculated on an overall basis which meant that any gains on the regular income bonds would be offset against any losses on the cautious income bond and vice versa. He agreed with Mr and Mrs M's representative that this matter had caused avoidable distress and inconvenience and recommended that Barclays pay £200.

Initially, Barclays did not agree with the adjudicator's proposal to use a benchmark of the Bank of England base rate plus 1% though it agreed to pay £200 towards distress and inconvenience. However, having reviewed its position, Barclays subsequently confirmed it would accept the adjudicator's proposals.

Mr and Mrs M's representative did not accept the adjudicator's proposal for calculating redress. The representative said that it was not fair to offset probable gains on the regular income bonds against losses on the Morley fund. He also considered that a payment of £200 towards distress and inconvenience was inadequate.

The case was reviewed by another adjudicator who agreed with Mr and Mrs M's representative that the gains from the regular income bonds could not be used to offset any loss incurred in respect of the Morley fund. He discussed the matter with Barclays. He pointed out that this was not the usual approach taken by it in similar cases and that its

original offer dealt with each product individually. As such he asked Barclays to reconsider the position.

Barclays responded to agree with the adjudicator that each product would be considered separately in this instance. It also agreed to increase the payment for distress and inconvenience to a total of £300.

The adjudicator forwarded the details of Barclays' revised offer to Mr and Mrs M's representative with recommendation that the offer be accepted. As we did not hear from Mr and Mrs M or their representative within the relevant timeframe, the complaint has been referred to me for a review and decision.

my findings

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

I note that Barclays has now accepted the adjudicator's proposal. I am satisfied that its latest offer is fair and reasonable in all the circumstances of the complaint. There is no compelling evidence about how the capital would otherwise have been invested. So I consider it fairest to assume that with reasonable advice, Mr and Mrs M would have had the original capital invested intact plus a reasonable rate of return and that rate of return would have been equivalent to 1% more than Bank of England base rate from time to time compounded yearly.

Although the comparison may not be an exact one, I consider that it is sufficiently close to assist me in putting the consumers into the position they would have been in had they not received inappropriate advice from the firm.

my final decision

My final decision is that the complaint should be upheld. In full and final settlement of the complaint, Barclays Bank Plc should pay the consumer compensation of D + E where:

- A = the capital invested, less any amounts paid out by way of withdrawals, distributions of capital or before-tax income;
- B = a return on 'A' using a rate equivalent to 1% above Bank of England base rate, compounded yearly from the date of investment to the date of encashment;
- C = the encashment value of the actual investment;
- D = A + B – C, if positive, representing the investment loss to the date of encashment;
- E = Interest on the investment loss as calculated in 'D'. Interest should be added to 'D' at 8% pa simple from the date of encashment to the date of payment.

The calculation should be done separately for each investment.

For clarification, A and B above should work as follows: Any sum paid into the investment should be added to the calculation from the point in time when it was actually paid in so it accrues the "reasonable rate of return" within the calculation from that point on.

Any reduction to the investment amount should be deducted from the calculation at the point in time when it was actually deducted so it ceases to accrue the “reasonable rate of return” within the calculation from that point on.

In addition, Barclays Bank Plc should pay Mr and Mrs M a total of £300 for the distress and inconvenience this matter has caused.

Barclays should also provide the details of its calculations to the consumer and to me in a form which should be understandable to a lay person.

Raj Varadarajan
ombudsman