DRN-3179995

The complaint

Mr and Mrs C have complained that they were given unsuitable advice by Barclays Bank UK PLC to invest in stocks and shares ISAs.

What happened

In 2000, Mr and Mrs C were advised to invest a total of £10,000 in the Barclays Managed Growth fund, with £7,000 held in a maxi ISA in Mr C's name and £3,000 in a mini ISA in Mrs C's name. They surrendered the investments in 2006 and received slightly less than they originally invested. In 2020 they complained via a claims management company (CMC) that the ISAs had been mis-sold. The CMC said that as inexperienced investors, they were advised to take too much risk and were advised to invest too much of their available money.

Barclays didn't uphold the complaint, because the fund and wrappers matched Mr and Mrs C's attitude to risk and objective of investing in a tax efficient manner. They said Mr and Mrs C were left with a sufficient cash reserve and had a disposable income, so overall they felt the advice was suitable. The CMC, on behalf of Mr and Mrs C, disagreed and so brought the complaint to our service.

An investigator at our service looked into the complaint and found it should be upheld. She said that Mr and Mrs C were in their 50's and it was noted that they had insufficient pension provisions, so she wasn't convinced they had the capacity to take as much risk as they did here. Mr and Mrs C's attitude to risk had been recorded as medium, but the investigator wasn't satisfied that Mr and Mrs C would have understood what that meant. She found the fund was predominantly invested in equities and she wasn't convinced that Mr and Mrs C understood the level of risk that entailed. She recommended that Barclays calculate the return Mr and Mrs C would have achieved had they invested 50% of their money in fixed rate bonds, and 50% in the FTSE UK Private Investors Income Total Return Index.

Barclays disagreed, as they felt the equities within the fund were blue chip companies and not highly speculative shares. Even though Mrs C had no pension provision, if she were to make no money, Mr and Mrs C would still have a small amount of disposable income, so they felt the investment was affordable. Barclays said that the adviser would have explained the different risk levels and Mr and Mrs C would have had time to decide what was best. They also felt that Mr C's job as a director of a business would have given him some knowledge to understand the risks involved. As no agreement could be reached, the complaint has been passed to me for a decision.

What I've decided – and why

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

Having done so I've reached the same conclusions as the investigator, for the same reasons.

At the time of the advice Mr and Mrs C were 55 and 54 respectively. Mr C was the director of a company and Mrs C worked part time, their joint income was £1,220 per month after tax, with £400 disposable income and no recorded debts. Mrs C had no private pension provision and was planning on retiring at 60. Mr C was planning on retiring at 65 and had a pension – but the adviser noted that he ought to fund it at a higher level to ensure it provided enough in retirement. They had a total of £27,000 in deposit-based savings, £3,000 of which was in a cash ISA in Mrs C's name.

Though the source of Mr and Mrs C's lump sum savings wasn't confirmed in the point of sale documents, the CMC has said it was from savings accumulated over time. It's agreed that the £27,000 was all their available money. They had no other savings plans, protection policies, or pensions – other than state pensions and Mr C's pension.

Mr C was ten years from retiring at the time of the advice, and it's not clear how insufficient the adviser felt his pension would be. Nor is it clear whether he'd have time or the spare money to save enough additional money to have a sufficient pension. In five years-time, Mrs C was planning on retiring. Though they would have been able to cover their basic expenditure without her income, this would have meant a change to their circumstances that they'd need to adjust to, as they'd have less freedom with their finances and would need to be more budget conscious. I think the adviser ought to have recognised that it was likely they would need to rely on the £27,000 in order to maintain their standard of living in retirement.

I can't see any warnings from the adviser about the impact on their lifestyle which could be caused by the types of losses that can be involved in the type of investment that Barclays recommended. I don't think it was suitable for Mr and Mrs C to invest almost 40% of their life savings in a fund that involved the level of risk that the Managed Growth fund included, given their likely need to rely on this money later in life, and I'll explain why.

The Managed Growth fund is a fund that invests in other funds and at the time of the advice, it consisted of 72.95% in UK funds, 26.69% in overseas funds, and 0.36% in cash/cash equivalents. There is evidence that some of the underlying funds involved fixed interest investments – but from my understanding, most seem to invest primarily in equities.

Barclays has said that the fund invested in mostly 'blue chip' companies, not speculative shares. However, from the description of the investment strategy, and the titles of some of the underlying funds I don't agree that the fund only, or even predominantly, invested in blue chip companies. For instance, titles like the Smaller Companies Fund, and the b2 Market Track 350 Fund suggest investment in non-blue chip companies. There's no mention in the fund manager's strategy of blue chip specifically, or descriptions of similar, more traditionally stable, types of investment. Also, there's still significant risk of capital loss even with blue chip companies – they follow the market in times of wider market downturns.

Barclays has also said that investments of this type "*were part of a government backed initiative at the time to encourage regular investors to enter the markets".* This is largely irrelevant – simply because the government was encouraging people to invest, or providing tax incentives to encourage people, doesn't mean that investing in shares was suitable for everyone. So, I don't agree that the investment was as 'safe' as Barclays is making it out to be in their submissions to our service. It's a fund that appears to have invested in a range of investments which collectively had the potential to expose a large proportion of Mr and Mrs C's money to a significant risk of loss. Overall, I'm not convinced that Mr and Mrs C had the capacity to invest this much of their life savings in a fund that involved this level of risk.

In addition to this, I'm not satisfied that Mr and Mrs C would have understood the amount of risk involved here either. Their attitude to risk was noted as medium, but I've not been provided with a suitability letter and there's nothing in the fact find to indicate what discussion was had around their attitude towards risk. Barclays has said that the adviser would have explained the definitions of the four available risk levels – risk averse, low risk, medium risk and high risk. In my opinion the definition of 'risk averse' clearly states that it involves some guarantee and a wish to avoid any loss. As Mr and Mrs C didn't pick that category, I think they were willing to take some amount of risk. The definitions of low and medium risk were:

Low Risk – You are a reasonably cautious investor. You require a significant proportion of your savings to be in cash form. For the remainder of your investment, you are prepared to accept fluctuations in capital values to achieve your longer term investment objective.

Medium Risk – You are a more typical investor, requiring a proportion of your savings to be in cash form, but less than that of the low risk investor. Again, you are prepared for fluctuations in the value of the remainder of your investment, to obtain the prospect of higher long term returns to match your investment goals.

In my opinion it would have been tricky for first-time investors to grasp the difference between those two risk levels – other than the amount of money the investor is willing to hold in cash. '*Typical investor*' and '*significant*' are subjective terms and could easily sway a consumer to one risk level over the other, without really ensuring they understand what the different levels of risk entail. Because of this I think the risk levels are not very clear and would be quite subjective depending on the individual investor's understanding. There's also nothing that sets out the different assets that are likely to be involved in funds at the different risk levels – and the types of return and fluctuations that each asset type could involve. This is especially important here, given that Mr and Mrs C were first time investors, so had no previous experience to inform their understanding.

Barclays has said the adviser would have taken Mr and Mrs C through the product literature, which included risk warnings. I've looked at the warnings in the key features brochures and can see they do include general warnings about how the value will be subject to fluctuations, both due to the prices changing and the currency risk attached to the overseas investments. However, they don't illustrate how drastic the fluctuations could be, nor do they further explain the different levels of risk. I've seen no evidence that the risk of equity investments, compared with the risks involved in other assets like fixed interest or property, were explained to Mr and Mrs C.

Barclays has also noted that the risk definitions were approved by the regulator at the time. Regardless of that fact, the rules and principles that applied at the time meant that the adviser needed to consider the individual client and their needs and circumstances. Further, the adviser needed to ensure Mr and Mrs C understood what they were buying and the risks it involved. I'm not persuaded that there is enough evidence to show on balance, that Mr and Mrs C were made aware of what risks were truly involved in 'medium risk' compared with the other levels. It follows that I'm not convinced they'd have been aware of the risks involved in the particular investment that Barclays recommended.

I don't accept Barclays' argument that Mr C's profession meant that he would have automatically been able to understand the different assets that were likely to be involved at the different risk levels. There's no indication that he had a financial background and while the titles of the risk levels may have obvious meanings, the content of investments at different risk levels is dependent on how each business defines that level of risk. What matters is whether the adviser did enough to ensure that Mr and Mrs C knew what Barclays meant by medium risk. In light of the description we have of medium above, and Mr and Mrs C's lack of experience, I'm not persuaded that Mr and Mrs C truly understood what amount of risk would be involved in a 'medium' investment in general, or this particular fund specifically.

So I'm not convinced Mr and Mrs C were able to make a properly informed decision about whether to accept the advice they were given. Even if it had been explained more clearly, I think its likely Mr and Mrs C would not have chosen to invest in the Managed Growth Fund. This is because I think it's unlikely they'd have wanted to risk quite so much of their savings in such a way, given their proximity to retirement. Also, I think their lack of previous experience of losing money would have made them hesitate, had they been fully aware of the large possible fluctuations in value involved here. As I've set out above, I'm also not satisfied that it was suitable advice based on their circumstances and I've set out below what Barclays should do to put things right.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs C as close to the position they would probably now be in if they had not been given unsuitable advice. I take the view that Mr and Mrs C would have invested differently. It is not possible to say *precisely* what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs C's circumstances and objectives when they invested.

What must Barclays do?

To compensate Mr and Mrs C fairly, Barclays must:

- Compare the performance of Mr and Mrs C's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Barclays should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
ISAs	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year 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 one-year fixed-rate bonds 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:

- Mr and Mrs C wanted Capital growth with a small risk to their capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr and Mrs C's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs C into that position. It does not mean that Mr and Mrs C would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs C could have obtained from investments suited to their objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Barclays Bank UK PLC should pay the amount calculated as set out above. Barclays Bank UK PLC should provide details of its calculation to Mr and Mrs C in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs C and Mr C to accept or reject my decision before 7 June 2022.
Katie Haywood
Ombudsman