

The complaint

Mrs C complains that Barclays Bank UK PLC gave her unsuitable advice to invest in a Barclays Personal Investment Management (BPIM) portfolio.

What happened

Following receipt of part of the amount due to Mrs C from a personal injury claim she had made, she sought advice from Barclays as to what she should invest her money in. She was advised to invest £60,000 in its 'capital with safety' BPIM portfolio on the basis that she was a medium risk investor who wanted capital growth.

Mrs C surrendered her investment in 2002, within 12 months of making the investment. She also complained at the time because she thought she should have been advised to invest for income rather than capital growth. Barclays didn't uphold that complaint but Mrs C didn't refer that complaint to us and it isn't part of this complaint.

Mrs C complained through her representatives in 2023 on the basis that she had been advised to invest at the wrong time and with too much risk. Barclays didn't uphold the complaint. In short it made the following points:

- The investment matched Mrs C's attitude to investment risk as discussed with the adviser.
- Although she hadn't invested before there was a robust discussion on risk and reward and she was aware she could lose capital and accepted the value could rise and fall.
- She had no plans for the capital and wanted professional fund management across a range of asset classes.
- The investment was affordable and didn't impinge on lifestyle.
- A medium risk investment was appropriate taking account of her age, lack of financial commitments, investment horizon and understanding of risk and reward.
- Her income was steady with a monthly surplus of £216 although subject to change but it had been explained the BPIM portfolio could be switched to produce income in the future if required.
- There was £18,000 retained in cash although a month after the advice this was £42,000 which was to be boosted by the final payment in her injury claim.
- It seems the decision to surrender the investment followed advice from another firm of financial advisers with further investments then being made.
- A complaint was made in 2002 about the performance of the investment with a suggestion that an income was required but this complaint was refuted by it.

Barclays offered Mrs C £100 for the delay in responding to the complaint.

Mrs C referred her complaint to our service and it was considered by one of our investigators who thought it should be upheld. Barclays didn't agree with the investigator so the matter was referred to me for review and decision. I came to a different conclusion to the investigator, as I wasn't satisfied the complaint should be upheld. The findings from my provisional decision are set out below.

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

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

Having considered everything I have come to a different conclusion to the investigator as I don't think the complaint should be upheld. I appreciate that this will be disappointing for Mrs C but I am not satisfied that the advice given to her was unsuitable for the reasons I explain below.

It isn't in dispute that Mrs C was a first time investor in 2001 nor that she was not in work at the time and was in receipt of state benefits, as recorded in the fact find, but this doesn't of itself mean that advising her to invest in a medium risk portfolio was necessarily unsuitable. Put another way, just because someone is in receipt of state benefits and not working doesn't of itself mean they cannot take a risk with their capital.

In the case of Mrs C the fact find recorded not only that she wasn't working but that she didn't expect this to change in the near future. In the circumstances it is arguable that there was a need for her to invest some of the money awarded to her for the purposes of capital growth rather than invest in a low risk investment or leave it uninvested.

In deciding whether the advice to invest £60,000 was suitable it is necessary to look at all the information available to the adviser at the time of advice.

I have already referred to the fact find recording that Mrs C was on state benefits and not intending to return to work in the near future. The adviser noted that her total income from benefits amounted to £119.63 each week made up of income support, severe disablement allowance and child support. He also noted that her income support may reduce as a result of her compensation award. I am aware that the other two benefits identified were non means tested which is presumably why he only referred to her income support reducing.

So, it is clear there was discussion about her income from state benefits and it was identified that her income support could be affected and as such her income reduce. However, the adviser noted that she would keep enough capital in reserve to allow for the shortfall and it is

important to keep in mind that the loss of income support was something that was going to impact Mrs C regardless of whether she invested or not.

Put another way, if she didn't invest she would still have been in the same position regarding her income and if anything it is arguable that as she was going to lose some of her income this was a reason for her to invest rather than not.

The adviser was also aware that whilst Mrs C's capital at the time of advice was only £84,000 with planned expenditure of £6,000, she was due to receive a further £200,000 to £250,000 as a result of the award of damages made to her by the court. So, he was aware that the £60,000 was going to be only around 20% of the overall capital that was going to be available to her.

I am not persuaded that the advice to invest was premature just because Mrs C hadn't at the time of advice received the full amount awarded to her. There seems no good reason that the adviser needed to wait before advising when he knew at the time of advice that she was due to receive at least a further £200,000 in a couple of months – as noted in the fact find – and was aware this was likely to impact her receipt of income support. In the circumstances I am not satisfied that the adviser didn't have the information he needed to advise Mrs C to invest when he did.

Turning to the risk of the recommended BPIM portfolio the fact find records that Mrs C wanted to invest for five years or longer and the investment objective ticked is 'capital growth with safety' with her risk appetite being identified as 'medium'. I have nothing to show what discussions took place as to her objectives, save that a note in the fact find records that her 'main concern is to her monies working for her'. It seems to me that investing for capital growth fits with Mrs C wanting her money to 'work for her'.

I also don't have any way of knowing what discussions took place around her risk appetite and the basis on which it was determined she was a medium risk investor. The fact that she was only 22 years old and a novice investor on state benefits at the time doesn't mean she couldn't be a medium risk investor. In the circumstances I can't say it is more likely than not she didn't have a medium risk appetite. I would also make the point again that given her circumstances – not working and unlikely to work in the near future - she potentially needed her capital to last for a considerable time. It seems to me that investing in a medium risk portfolio for capital growth wasn't on the face of it unsuitable given this.

She had the capacity to take a risk with £60,000 out of a total of no less than £278,000 – including the minimum of £200,000 she was due to receive in a couple of months."

I gave both parties the opportunity of responding and providing any further information or arguments before I issued my final decision. Mrs C's representative acknowledged receipt but simply stated they would await the final decision. Barclays provided no response.

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.

As neither party has provided any further information or argument in response to my provisional decision, the findings I set out in that decision stand and for the avoidance of doubt form part of the findings in this final decision.

In summary, I am not upholding this complaint for the following reasons.

- It isn't in dispute Mrs C was a first time investor in 2001 and in receipt of state benefits but that didn't of itself mean advising her to invest in a medium risk portfolio was unsuitable.
- It is arguable that there was need for her to invest some of the money awarded to her given she wasn't working and this wasn't going to change in the near future.
- There was a discussion about her state benefits and identified that her income support could be affected and her income reduced as a result of what she had received.
- The fact she could lose some of her income and this was a reason to invest rather than not.
- The adviser was aware that the investment he recommended was only going to be around 20% of her overall capital.
- The advice to invest was in accordance with her identifying she wanted her capital to work for her.
- I can't say it is more likely than not she didn't have a medium risk appetite as recoded by the adviser.
- She had the capacity to take a risk with £60,000 of her capital.

My final decision

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 2 August 2024.

Philip Gibbons
Ombudsman