DRN-5520709

The complaint

Mr M complains that Barclays Bank Plc sent him an inappropriate warning e-mail saying that his trading activity looked like it could be Market Timing or Short-Term Dealing. Mr M says he found the message too strong, and he didn't understand the terms used. Mr M says when he complained about the matter Barclays failed to confirm what rules he'd broken. And ultimately, he had no choice but to move his pension and ISA accounts away from Barclays. Mr M considers he has been discriminated against.

What happened

Mr M's complaint was considered by one of our investigators. He issued his assessment of it to Mr M and Barclays on 3 March 2025. The background and circumstances to the complaint were set out in that assessment and are known to both parties, so I won't repeat them all again here. But to recap, Mr M had a pension and ISA with Barclays. Mr M received an e-mail from Barclays on 27 March 2024 which was headed 'Your recent Smart Investor funds dealing activity.' The message said that Barclays had written to Mr M previously about his dealing activity. And it had highlighted that it had identified a number of fund transactions on his account which fell within what it said 'may' be considered potential Market Timing or Short-Term Dealing. It said it had requested that all future fund dealing was appropriate to the product. But its ongoing monitoring had identified further instances of unacceptable dealing activity on Mr M's account.

The e-mail went onto explain that the funds were designed for medium to long-term investment. It said there may be exceptional circumstances where an investor would need to sell an investment only a short time after it has been purchased. However the product should normally be held in-line with the expected investment period - normally a period of years, rather than days or weeks. And that fund administrators reserved the right to refuse or cancel investment instructions from investors where they believed dealing activity wasn't consistent with the management of the fund. It finished:

'What you must do

You must not place any further purchase and sale instructions for the same fund investment within a short time period. All funds you purchase must be held in-line with the expected investment timescales.

If your future fund dealing does not fall within our parameters of acceptable timing we will have to take action to restrict your account. This may mean preventing any future purchases or entirely closing your account.'

The investigator said he understood that Mr M found the message overpowering and he didn't understand the terms used, finding them jargony. He said Mr M had tried to find definitions on Barclays' website and what the timescales were but couldn't find anything. He also couldn't find any definitions in the documentation previously sent to him by Barclays.

In responding to Mr M's complaint Barclays had said there were rules set by the Financial Conduct Authority (FCA) which impacted how long funds should be held for. It said trading

more frequently than expected could adversely affect the cost of running a fund which could lead to a reduction of the fund value, impacting everyone still invested. It said this behaviour was known as Market Timing or Short-Term Dealing.

Barclays explained the steps a Fund Manager could take where this kind of behaviour was encountered, but said before matters got to that stage Barclays would always contact a client who seemed unaware of the rules. Barclays said having reviewed the e-mail it had sent it agreed it had been too strong a warning. It said it should have sent a "yellow card" before a "red card". It sent Mr M £50 in compensation in recognition of this.

Mr M didn't accept the £50. He tried to obtain further clarity about the matter from Barclays, and when he didn't get a response he referred his complaint to us.

Our investigator said it wasn't in dispute that Barclays had sent Mr M too strong a warning. And he said he agreed that the warning didn't necessarily provide Mr M with the information he'd need to fully understand what Market Timing and Short-Term Dealing was in itself.

However the investigator said he thought in its letter of 21 June 2024 Barclays had provided further clarification. It had explained that Smart Investor offered a wide range of products. Where it was the distributor of the products, it did this in line with the requirements of the suppliers or Fund Managers and this was done to comply with Financial Conduct Authority (FCA) rules regarding the managing of these sorts of investments. Barclays had said these rules could be found in the Collective Investment Sourcebook (COLL), which set out rules for Fund Managers. It said some fund documentation noted funds were designed to be held as medium to long-term investments. Some were more explicit, stating they were intended for an investment of three to five years.

The investigator noted Barclays had said that frequent trading could adversely affect the running costs of a fund, which in turn could lead to a reduction in the value of the fund. And this behaviour was what they meant when they referred to Market Timing or Short-Term Dealing. The investigator said Barclays had provided information showing examples where there were many transactions being made for the same asset within a short period of time.

Barclays had said that guidance could also be found in each of the fund's Key Information Investor Documents (KIIDs). Barclays had provided prospectuses for some of the investments Mr M had made. The investigator said within these documents it was explained that the funds and investments were supposed to be held for a medium to long term. They also defined what Market Timing was, and explained that the Fund Manager had a duty of care to prevent Market Timing practices.

The investigator referred to the relevant rules in COLL - COLL 6.6A.2R which included:

An authorised fund manager of a UCITS scheme must (amongst other requirements)

- Ensure that the unitholders of any such scheme it manages are treated fairly;
- Refrain from placing the interests of any group of unitholders above the interests of any other group of unitholders.
- (3) Apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market;
- Ensure that fair, correct and transparent pricing models and valuation systems are used for each scheme it manages, in order to comply with the duty to act in the best interests of the unitholders; and
- (5) Act in such a way as to prevent undue costs being charged to any such scheme it manages and its unitholders; and

- In carrying out its functions act:

a. Honestly, fairly, professionally and independently; and
b. Solely in the interests of the UCITS scheme and its unitholders.

And COLL 6.6A.3G which said:

1. Examples of malpractices for the purposes of COLL 6.6A2R (3) would include market timing and late trading, which may have detrimental effects on unitholders and may undermine the functioning of the market.

2. Examples of undue costs for the purposes of COLL 6.6A.2R (5) would include unreasonable charges and excessive trading, taking into account the scheme's investment objectives and policy.

So in summary, the investigator said he thought Barclays had acted fairly and in line with the relevant regulations in sending Mr M a warning. Although he accepted the warning was too strong and didn't contain sufficient explanation itself, he thought Barclays had subsequently provided Mr M with an appropriate explanation when it responded to his complaint. The investigator said whilst he appreciated Mr M felt that he couldn't carry on doing business with Barclays, he didn't think Barclays' actions had forced Mr M to transfer away, as that had been his decision to do so. And he hadn't seen any evidence to suggest that Barclays had discriminated against Mr M or otherwise acted unfairly or unreasonably, other than incorrectly sending too strong a warning.

Mr M didn't agree with the investigator's findings, and his complaint was passed to me to decide.

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 come to the same overall conclusions as the investigator, and largely for the same reasons.

The rules which the Financial Ombudsman Service is bound by are known as the Dispute Resolution Rules (DISP), which are set out in the Financial Conduct Authority's handbook. DISP 3.6.1 provides that:

The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

And DISP 3.6.4 provides that in deciding what is fair and reasonable the ombudsman takes into account, amongst other things, relevant regulator's rules, guidance and standards.

Like the investigator, I think COLL 6.6A.2R and COLL 6.6A.3G are relevant here. The former is a rule, the latter guidance, but as I say, it's appropriate for me to take both into account. I also think it's appropriate for Barclays to take them into account, and that it was reasonable for it to send an initial e-mail to Mr M if it thought there might be activity that was inconsistent with the FCA's rules or guidance.

I agree, however, that the e-mail was overly strong. The e-mail referred to a previous e-mail, and my understanding is the e-mail was intended to be sent as a follow up e-mail after an initial e-mail about the matter was sent to a client. However in this case Barclays hadn't sent

the first e-mail. So I think the tone of the e-mail was inappropriate in these circumstances, and recognise it would have had more of an impact on Mr M.

I also think Barclays could have provided more detail about the relevant rules when Mr M tried to obtain more clarity about what the problem was and what particular rules Barclays thought he might be in breach of. Barclays did refer to the Collective Investment Sourcebook (COLL) in its letter dated 21 June 2024. However COLL covers a large subject area, and the rules are complex, so I think it would have been difficult for Mr M to find the relevant rules/guidance that Barclays was relying on.

However having said that, Mr M didn't agree with the investigator's assessment of the complaint which had referred to the specific rules. So I think it's unlikely it would have been the end of the matter if Barclays had referred to the specific rules when initially responding to Mr M's concerns.

As I've said, I don't think it was unreasonable for Barclays to send an e-mail to Mr M raising the issue. Whilst it didn't go into detail about the relevant rules, I think it was sufficient to alert Mr M to the type of activity Barclays didn't think was consistent with the nature of the accounts that Mr M had. So even if Mr M wasn't aware of the specific rules and guidance, I think it was for Mr M to decide, in that context, if he wanted to maintain the accounts or transfer away from them before clarity was provided on the exact rules. Like the investigator, I don't think it follows that any failings by Barclays meant Mr M had no other choice but to transfer his accounts.

So overall, whilst I accept that the matter may have caused a degree of distress and inconvenience to Mr M I think it was likely limited. And taking all the above into account I think the offer made by Barclays was fair and reasonable in the particular circumstances.

My final decision

Barclays Bank Plc has made an offer to Mr M of £50. I consider that is fair and reasonable in the particular circumstances. My final decision is that Barclays Bank Plc should pay Mr M £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 July 2025.

David Ashley
Ombudsman