

complaint

Mr P's complaint is represented by CLAIMS. It is about his investment of £100,000 in a portfolio bond – wholly invested in a Legal and General Distribution Fund ("LGDF"), within the bond. Barclays Bank Plc recommended this investment to him in 2006. He says the investment mismatched his cautious risk profile.

background

Mr P's present complaint features about a fraction (around a third) of the bond, but it also relates to the completion of redress for the bond as a whole. This is because both parties have agreed on redress offered by Barclays for around two thirds of the bond. Barclays concluded that Mr P should have been advised to retain £30,000 in cash and to invest £35,000 in a different fund, compliant with his cautious profile, for the purpose of diversification. As such it offered the following:

- Compensation to redress the £30,000 that should have been held in cash – using the Bank of England Average Fixed Rate Bond Returns as the benchmark.
- Compensation to redress the £35,000 that should have been invested in a different cautious fund – using a 50/50 mix of the Bank of England Average Fixed Rate Bond Returns and the FTSE WMA Stock Market Income Total Return Index as the benchmark.

CLAIMS agreed, on Mr P's behalf, to this offer. Barclays offered Mr P £100 for the distress and inconvenience he had been caused.

However, Barclays also concluded that the remaining £35,000 in Mr P's £100,000 bond would have suitably been invested in the LGDF and that, as such, no redress is due in this respect. CLAIMS rejected this conclusion.

Barclays cited the following reasons:

- It was satisfied with its assessment of Mr P's profile. In 2006 he was a married retiree without dependents. He had almost £140,000 to invest, resulting from his pension lump sum and savings. He needed to supplement his retirement income. He confirmed he wanted to take a cautious approach to risk whereby he would accept some risk in order to achieve higher returns than available from a cash deposit.
- Mr P was advised to invest only £100,000 out of almost £140,000 [this left him almost £40,000 in cash reserves outside the bond].
- Following its concessions about the £30,000 that should have been held in cash and the £35,000 that should have been in a different cautious fund, it was satisfied that the LGDF was suitable. It was designed for capital growth and income generation so it met Mr P's objective.

CLAIMS argued that the content of the LGDF did not depict a cautious fund so it should be subject to redress as a whole. The matter was referred to this service. CLAIMS said there were risky elements within the fund which went beyond Mr P's cautious profile and that Barclays' conclusion was inconsistent with its treatment of a comparable complaint, about investment in the same fund roughly around the same time, where it upheld the complaint and concluded that the LGDF carried a higher risk than was appropriate for the cautious complainants.

One of our adjudicators considered the complaint and concluded that it should not be upheld. He said allocation of £35,000 for the LGDF was suitable for Mr P's cautious profile in the context of it being a third of his overall bond and in the context of Barclays' acceptance that roughly another third (£30,000) should have been held in cash, a comparatively *near zero risk* position, and that half of the final third should have also been in a comparatively near zero risk position (this being reflected by the Bank of England Average Fixed Rate Bond Returns benchmark used for half of the remaining £35,000).

CLAIMS disagreed. In the main, it said the adjudicator was wrong to use money outside the LGDF as a basis to assess its suitability. It also said that if the bond were to be taken as a whole, the impact of the LGDF within the context of Barclays' redress offer is that around 25% of the bond is exposed to medium risks and 10% is exposed to high risks. It did not accept that a bond with 35% exposure to medium and high risks was suitable for a cautious investor.

The adjudicator was not convinced to revise his view and the matter was referred to an ombudsman.

my findings

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

I note CLAIMS' reference to a comparable complaint that was upheld by Barclays and in which it concluded that the LGDF was not suitable for the complainants' cautious profile. CLAIMS also referred to a previous decision within this service that echoes a similar stance in relation to an investment, recommended by Barclays, in the same fund around the same time as Mr P's.

I have not seen evidence of the details of the comparable complaint or of the context in which Barclays reached the conclusion that CLAIMS quoted. As such, I do not have a sufficient basis to properly consider CLAIMS' point about inconsistency. Primarily, I am obliged to consider Mr P's case on its own facts. Whilst I do not suggest that reference to a comparable complaint should be discounted, it is worth commenting that any factual differences that might exist could be enough to distinguish it from Mr P's complaint and enough to negate the idea of inconsistency.

I have considered the previous decision from this service that CLAIMS referred to. My comment about the effect of factual differences is illustrated in this respect. The complainant in the case appears to have expressly instructed Barclays to avoid exposure or over exposure to equity. Due to the equity content in the LGDF, the ombudsman's conclusion was made partly in the context of this instruction – not solely in the context of the complainant having a cautious profile. No such instruction exists in Mr P's case, so I am not persuaded that the cases are as comparable as CLAIMS asserts.

There might be more common ground between the parties than CLAIMS might have appreciated. However, I consider that because each party's position on the LGDF differs in context, perhaps this is the reason why the matter remains in dispute.

Both parties agree that Mr P was correctly assessed as having a cautious profile. CLAIMS' argument is that the LGDF, in isolation, was unsuitable for his profile and that consideration of its suitability should discount content outside the fund. In contrast, Barclays' overall argument, from its final response and to date, appears to be that the LGDF was suitable as part of what I will refer to as the *reconstituted bond* – the bond as it looks after application of Barclays' redress for two thirds of it, where 30% of the bond is in cash, 35% is in a cautious position and 35% is in the LGDF.

Even if I were to take the literal meaning of what Barclays said in its final response – that the LGDF was “*... a suitable fund for cautious investors ...*” – as an indication that it also considers (or considered) the fund to be suitable in isolation that does not necessarily conflict with what I consider to be its overall argument, as stated directly above. It is arguable that a cautious investor might want a cautious profile wholly reflected in one fund/position or reflected overall across a number of funds/positions. I accept that some of the contents of the LGDF (for example, around 40% in UK Equity) could mismatch a cautious profile. However, other contents of the fund (for example, around 30% in corporate bonds) would not necessarily do the same. As such, suitability of the LGDF for a cautious investor could have depended on the particular type of cautious investor, on his/her circumstances, on his/her objective and on whether the cautious profile was to be reflected only in one fund or in a number of funds.

In Mr P's case, his complaint is about completing redress for the bond as a whole so this defeats CLAIMS' argument that the LGDF should be considered in isolation. As a whole, I consider that the reconstituted bond is broadly split into the following profiles:

- 30% in a comparatively no risk profile – defined by Barclays' use of the Bank of England Average Fixed Rate Bond Returns benchmark to redress what should have been the cash element.
- A further 17.5% in a comparatively no risk profile – defined by Barclays' use of the Bank of England Average Fixed Rate Bond Returns benchmark to redress half of what should have been the different cautious fund.
- 17.5% in a balanced risk profile – defined by Barclays' use of the FTSE WMA Stock Market Income Total Return Index benchmark to redress the other half of what should have been the different cautious fund.
- 35% in what could be either a cautious or cautious to balanced profile – the LGDF.

CLAIMS says the LGDF accounts for a 35% medium (or balanced) to high profile within the bond. I am not quite convinced by this, especially the high profile reference, but even if this was the case it still leaves the reconstituted bond with a 37.5% comparatively no risk content and a 27.5% cautious content. Overall and on balance, I am satisfied that such a bond would not have been unsuitable for a cautious investor in Mr P's circumstances. It would have given him sufficient safety in the cash reserve and a reasonable balance between the other elements of the bond to aid the chance of achieving the growth and income he sought without taking the bond outside his cautious profile.

my final decision

For the reasons given above, I do not uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 February 2018.

Roy Kuku
ombudsman