

complaint

The complaint is about an investment in a film partnership investment, which is an unregulated collective investment scheme ('UCIS').

Mr H says he was advised to invest in the partnership by Barclays Bank Plc, and that he was told it was less risky than other film schemes. Mr H says the investment was more risky than he was led to believe, and that the risks outweighed the potential returns. Mr H also says he was advised to borrow money to fund the investment which he considers inappropriate as Barclays has made money on the transaction which proved unsuccessful as an investment.

background

Mr H was part of a successful family business and he had an advisory arrangement with Barclays Private Bank since 2001 when he opened an account.

Barclays wrote to Mr H in 2004 providing him with information about tax shelters in film schemes. The scheme was a relatively small scheme and had been adapted to meet HMRC's then recently announced requirements in relation to film investments.

Mr H invested £500,000. He says Barclays determined that figure based on the needs of the scheme rather than based on his needs. Mr H says he borrowed the funds for this investment from Barclays. Mr H says Barclays likened the investment to a cash investment but it turned out to be much more risky.

The film partnership was supposed to be a tax favoured investment with investors obtaining a tax rebate and this was an important feature of the arrangement. In the event the arrangement was challenged by HMRC and the partnership was eventually wound up. Mr H says this was done on the basis that he made neither a profit nor a loss – except in relation to the substantial borrowing costs he incurred.

Mr H complained to Barclays and sought a refund of the borrowing costs. Barclays did not agree. Its position is that it informed Mr H of the film partnership as he had asked about such investments but that it did not advise him to invest in it. Rather if Mr H was advised, he was advised by a third party independent expert that Mr H had consulted.

One of our adjudicator's considered the complaint. In his view:

- Barclays provided information on the film partnership but this did not amount to a recommendation
- literature made it clear that no guarantees were offered and that the investment was risk based
- there was a possibility that Mr H received advice from a third party.

Overall, the adjudicator was not satisfied that Barclays advised Mr H or that he was unaware of the risks and nature of the investment.

Mr H did not agree. He said that Barclays charged a lot of money for the loan (which he used to fund the investment) and that Barclays sold this as a 'safe' investment with the returns compared to cash. Although aware that these schemes can come with risks, Mr H said Barclays downplayed the risks and failed to explain the implications of borrowing money to invest. He did not agree that he was advised by a third party.

my findings

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

Mr H's case is essentially that he was not a sophisticated investor, that Barclays came to him with the proposal and that it was Barclays who decided what he should invest in and how much he should invest. I do not however accept this version of events.

In one of his letters to this service he said:

They came to me with it [the film partnership], as they do not market these investments. There is no way I would have known about it. I asked them at one time if they did any such schemes, they told me they had done one for another client ... then at a later point in time, they came to me and said they were going to do [the partnership] and advised me to invest into it, and they sold it to me.

Put in other words, Mr H asked Barclays about this type of investment, and when they had a new one available they told him about. Precisely what was told is in dispute but it is important to note that the initial impetus came from Mr H – an initial request for a pretty sophisticated form of investment/tax arrangement.

Another point to note is that Mr H accepts that he was in contact with a third party tax expert about this matter. Again the precise nature of his involvement is in dispute but the important point to note is that Mr H was in contact with a third party who was involved in sophisticated tax planning.

Furthermore a list of Mr H's various investments has been provided and this shows a number of other film or similar investment arrangements at least one of which was taken out shortly before the film partnership in this case.

There is also evidence from before the time of the disputed film investment showing Mr H's business interest in commercial property investing, investment which was to be carried out on a geared basis.

In the same letter as I quoted above Mr H went on to say:

"The key thing is they advised me how much to invest. At no point do I ask to invest £500,000 and at no point do I ask to borrow this money. They advised the figure because it was the amount they needed to make the transaction go ahead and they advised they would lend me the money when I had the cash deposits in the bank so I don't know why they would advise me to borrow, and the amount was totally wrong, way in excess of what it should have been. They at no point showed me a graph or advised the implications of borrowing this money on the investment if the rebate is not returned within a certain amount of time, and the amount of time would have been so short, that the risk reward profile of this investment would not have made sense. They never once warned me of the downside of borrowing money to make this investment, the cost implications, [if] the rebate was delayed or even was not recovered in full..."

I am not however able to accept that Mr H did not ask to borrow the money he invested. I cannot accept that Barclays just lent him money without his completing some form of application/entering into an agreement to repay – which means he asked to borrow the money even if someone else first suggested it. The point is that Mr H had to participate. He was involved. He agreed to borrow a significant sum of money. He knew what borrowing meant, that he had to repay the loan at some point. And he knew the bank would charge him interest while the loan was outstanding.

I cannot accept that a man of Mr H's experience would not have understood the implications of borrowing money to invest in the scheme. He will also have understood the arrangements for repaying the loan, and how he planned to repay the loan. If a tax rebate was involved he will have found about it. He will have learned that HMRC did not give outright approval for such schemes in advance or guarantee payment of income tax rebates in advance, and that things would depend on the final view HMRC took on individual cases. He will also have understood that that was something that was difficult to predict. Even if Barclays did not tell him this, he will have known it from his own knowledge and experience and his dealings with the third party tax expert.

Accordingly while I accept that Mr H may have gained the impression that the film partnership was not one that was thought to be especially risky from a tax point of view, he will still have known that its structure was new and/or evolving. That was made clear in the letters from Barclays before he invested. He will therefore have understood that there were risks.

I agree with the adjudicator that it is not clear that Barclays actually advised Mr H to invest in the scheme – I do however accept that the relationship he had with the bank was such that he may well have thought that the bank was recommending the investment to him.

It is my view that Mr H could reasonably have been categorised as a sophisticated investor and the bank could reasonably have promoted the investment to Mr H. I also consider that he was capable of deciding whether or not he wanted to invest in the scheme and whether or not he wanted to borrow some or all of the funds to do so. That fact that he did so tends to indicate that the investment was considered suitable by Mr H and was indeed suitable for his circumstances.

It is unfortunate that the scheme fairly quickly ran into difficulties with HMRC and that the hoped for tax rebate was not obtained. It is fortunate that Mr H was able to conclude matters in relation to the film partnership without incurring a loss except in relation to the borrowing costs. I do not however consider it fair and reasonable to protect Mr H from the risk that the borrowing involved which in my view he understood and was willing to accept.

my final decision

In all the circumstances I do not uphold Mr H's complaint against Barclays Bank Plc.

Philip Roberts
ombudsman