

complaint

Mr and Mrs V have complained that advice they received from Barclays Bank Plc ("Barclays") in 2005 to invest £14,000 in a 'medium' risk fund of an investment bond was unsuitable. They are represented in their complaint by a third party adviser, which has said that:

- the adviser did not accurately establish Mr and Mrs V's attitude to risk;
- other tax-efficient alternatives to the investment bond appear not to have been considered or documented;
- disclosure of product risks, diversification, charges and other important factors were not made clear at the point of sale;
- the business failed to discuss tax efficient products, encashment penalties or MVRs, switching fees and exit charges.
- while Mr V was recorded as having a 'balanced' attitude to risk, Mrs V was more cautious and the investment was recommended to suit Mr V's risk attitude. However, Mr V had little previous experience to justify being categorised as a 'balanced' risk investor.

background

Mr and Mrs V's complaint was investigated by one of our adjudicators, who concluded that it should not be upheld because they had been provided sufficient information explaining how the investment operated to understand the product they had bought. She also felt that they could afford to make the investment as the capital sum of £14,000 represented around 17% of their total wealth and they were still left with over £43,000 on deposit for unforeseen contingencies.

The adjudicator also believed that risk profile of the investment was consistent with Mr V's attitude to risk and was satisfied that *his* approach to investment should determine the type of product recommended as most of their capital appeared to be held in his name.

In response, Mr and Mrs V's representative stated that:

- Mr and Mrs V were not fully aware of the nature of the product they had been recommended;
- the adviser had noted that they did not wish to incur a market value adjustment (MVA) factor but this only applies to a with-profit investment, which was not recommended. (Mr V subsequently confirmed that the term "*market value adjuster*" meant nothing to him);
- with-profit investments are generally considered to be 'cautious' in nature and an investor who wishes not to be exposed to a MVA that was associated only with cautious funds would not knowingly accept a higher risk and volatile balanced product as a suitable alternative;
- it is apparent that the adviser steered our clients to a balanced product solely to avoid an MVA; Mrs V was recorded as having a 'cautious' attitude to risk and should not have been placed into a 'balanced' risk product;
- the adviser cannot justify a higher risk rated fund based on Mr V holding two personal equity plans (PEPs) and windfall shares. There are 'risk-averse' and 'cautious' funds available within a PEP, and an assumption cannot be made that Mr V was a 'balanced' investor based on the products he held without considering the fund type.

Mr and Mrs V's representative later provided details of a complaint Mr V made about one of his PEP which invested in a 'medium' risk-rated fund. It submitted that the product provider upheld this complaint because the fund did not match his risk appetite as evidence that he could not be considered a 'balanced' risk investor.

The other PEP he held invested in a 'low-to-medium' risk-rated fund, which supports its view that Mr and Mrs V did not want either the small risk associated with an MVA or an increased risk of the 'balanced' fund the business recommended.

As no agreement has been reached in this complaint, it has been referred to me for review.

my findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I find that I agree with the conclusions reached by the adjudicator, and for essentially the same reasons.

My understanding of Mr and Mrs V's personal and financial circumstances in August 2005 is that they both receiving income from employment which gave them a comfortable monthly disposable income. They were more than five years from their intended retirement age and held around 29% of their total capital in risk-based products.

In recommending that Mr and Mrs V should invest £14,000 in a 'medium' risk-rated fund of an investment bond for capital growth, they were being asked to commit approximately another 17% of their total capital to this investment. This meant that they still held more than £43,000 on deposit for unforeseen contingencies.

The issues for me to consider is whether it was reasonable to record Mr V as having a 'balanced' approach to investment and whether or not it was appropriate, given Mrs V was categorised as a 'cautious' investor, for the advice to be based exclusively on Mr V's appetite for risk.

With this in mind, I have first considered the complaint made by Mr V about the PEP he effected with another provider. The provider did uphold this complaint, but it did so not because the investment fund did not match Mr V's attitude to risk; it upheld his complaint because it could not be evidenced what his attitude to risk was.

Also, Mr V effected this PEP in 1996, nine years before the advice under review was given, and it appeared to have made a reasonable return over 16 years until he made his complaint.

Accordingly, the possibility exists that his attitude to risk had previously been 'medium' or 'balanced', except that it was not recorded as such until 2005. The adviser established in 2005 that Mr V held investments in two PEPS and company shares. There was no indication that Mr V was dissatisfied with these risk-based investments until he complained about one of the PEPs (but apparently not the other) in November 2012. As such, it was reasonable for the adviser to believe in August 2005 that Mr and Mrs V were prepared to adopt a similar approach to investment for another 17% of their total capital, which still left them with more than £43,000 in capital-secure accounts

The evidence suggests that the adviser would not have considered Mrs V a 'balanced' risk investor if she had been advised separately. However, given the capital appeared to come from accounts held in Mr V's name, I am satisfied that it was reasonable for Mr and Mrs V to invest in a product with a risk profile that more closely resembled Mr V's attitude to risk.

While their representative submits that other alternative investments were not considered, it is evident that personal pension policies were discussed with Mr and Mrs V, which were rejected as they prevented access to capital, and they were also recommended to make use of their annual allowance through ISAs, which they agreed to consider at a later date.

I cannot account for the comment that Mr and Mrs V decided against a product that could incur a market value adjustment (MVA), given they did not appear to hold any with-profit investments, other than to conclude that this issue was discussed at the time. I do not accept the view that, in rejecting with-profit investments for this reason, Mr and Mrs V would not knowingly accept a higher risk product as a suitable alternative. It is entirely possible that they rejected with profit investments because they wanted to receive the ongoing fund value of their investment, without deductions, when they came to surrender it.

On balance, therefore, I am inclined to believe that the advice Mr and Mrs V received was not unsuitable.

my final decision

My final decision is that I do not uphold Mr and Mrs V's complaint.

**Kim Davenport
ombudsman**