

complaint

Mr V's complaint, in summary, is that he was recommended the Barclays Adventurous Growth Portfolio ("adventurous fund") and the Barclays Growth Portfolio Trust ("balanced fund") by Barclays Bank Plc ("Barclays") which were unsuitable for him.

background

In January 2012 Barclays informed Mr V that it had reviewed the advice he had been given in 2007 to invest in the adventurous fund. It concluded that its recommendation was not appropriate, given Mr V's circumstances at the time, and offered redress.

Mr V did not accept Barclays offer of compensation and appointed a third party to represent him. Mr V's representative wrote to Barclays and questioned the redress offered in respect of the adventurous fund and why no offer had been made in respect of the balanced fund. Barclays responded to say that it believed its offer of redress in respect of the adventurous fund was appropriate and that the advice Mr V received to invest in the balanced fund was not unsuitable.

Dissatisfied with Barclays' response the representative referred the matter to us. In doing so it asked that the complaint be considered on a consequential loss basis because in its view Barclays should not have recommended the two investments whilst Mr V had an outstanding mortgage liability. It also asked us to consider whether it was appropriate for Barclays to make a distress and inconvenience payment to Mr V.

One of our adjudicators considered the complaint and concluded that neither recommendation was suitable. He said compensation should be calculated by comparing the performance of the investments to a return equivalent to the APCIMS Growth Total Return Index over the relevant period. However he concluded that given the fact-find recorded the option of repaying the mortgage had been discussed and discounted, it was not appropriate to consider the complaint on a consequential loss basis. He also concluded that in the particular circumstances of the case it was not appropriate to ask Barclays to make a distress and inconvenience payment.

Barclays did not accept the adjudicator's view and, in summary, made the following points:

- It had reviewed the sale of the adventurous fund and wrote to Mr V with an offer of redress when it was re-categorised as a speculative. This redress was in line with that ultimately recommended by the adjudicator.
- It did not agree that redress should be paid to Mr V in respect of the balanced fund. The balanced fund carried a lower risk than Mr V was categorised as having ("adventurous") so was not unsuitable.

The representative also did not accept the adjudicator's view and, in summary, reiterated the reasons why it believed any redress should take into account consequential loss.

Further correspondence was exchanged between the representative and this service. The representative continued to argue why it felt it was important that this service speak directly with Mr V and what would constitute appropriate redress in all the circumstances. The representative pointed out in this exchange that it had now come to light that Mr V was

planning, at the time of the advice, to move home in the short to medium term when an appropriate property came to the market.

Another adjudicator considered the further submissions made by the representative and came to the same overall conclusions at the first adjudicator, except to say that redress (in respect of both investments) should be calculated by comparing the performance to a return equivalent to the FTSE WMA (formerly APCIMS) Stock Market Income Total Return Index ('WMA income index') over the relevant period rather than the WMA Growth Total Return Index.

Barclays acknowledged the change in redress proposed by the adjudicator. The representative responded to again reiterate what it felt constituted appropriate redress in the circumstances and the importance of this service talking directly to Mr V.

Before the complaint was passed to me for review and decision, Barclays wrote to say that, having reconsidered the matter further, it was prepared to offer redress on both funds based on a comparison of the performance of Mr V's investment with the return illustrated by the FTSE WMA Stock Market Balanced Total Return Index ('WMA balanced index') over the same period of time. It said that the use of this index was appropriate in the circumstances of this case given that it still held the view that Mr V had been correctly categorised as having an 'adventurous' attitude to risk at the time of the advice.

Barclays' offer was put to Mr V's representative for consideration. The offer was rejected and the representative asked for confirmation that Barclays had been informed that it had come to light that Mr V was planning, at the time of the advice, to move home in the short to medium term when an appropriate property came to the market. An adjudicator confirmed to the representative that it had.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same overall conclusions as the adjudicators and for broadly the same reasons.

Barclays has offered redress on both funds, but argues that the use of the WMA balanced index as a benchmark is more appropriate than the use of the WMA income index, given its belief that Mr V was correctly categorised as having an 'adventurous' attitude to risk at the time of the advice.

The fact-find records that Mr V was looking to invest an inheritance with a view of using the invested funds to support him in early retirement. However given the age at which Mr V was looking to retire and the probable period over which his invested funds, together with his other assets, would be needed to support him, I am not persuaded that Mr V could reasonably be viewed as having an 'adventurous' attitude to risk.

However, I am equally satisfied that Mr V was prepared to take some risk with his investment and had the capacity to do so. I say this because Mr V had some experience of holding risky investments, had the equivalent of 18 months' gross income on deposit after investing and had a declared disposable income in the region of £900 per month.

Therefore I find that the use of the WMA income index as a benchmark is appropriate in the particular circumstances of this case.

I will now turn to the four points made by Mr V's representative;

The representative says the complaint should be considered on a consequential loss basis because Barclays was negligent to recommend the two investments whilst Mr V had an outstanding mortgage liability.

I have considered the representative's substantive submissions in this respect very carefully. However the evidence that has been provided by Barclays indicates that reducing Mr V's existing mortgage liability was discussed with him. For example the financial planning report states:

"You have outstanding mortgage borrowing of £17000. We have discussed this debt and in principle my advice is that I recommend that you repay this outstanding amount from the investment funds that are available to you.

However, you decided not to address your debt at this time because you like to keep your mortgage and investments separate."

And the fact-find states;

"We have discussed clearing this debit and I have recommended that you consider this, however you like to treat your investment and mortgage as separate, and you will continue to pay your mortgage – you only consider this to be a minor debt and you will to invest your inheritance separately."

Where there are existing liabilities, each case must be considered on its own merits. Clearly I cannot say with any degree of certainty what was discussed with Mr V. However, the above two contemporaneous documents indicate to me that reducing the mortgage liability was discussed with Mr V and he elected not to do so, preferring instead to invest the funds he had available. So in respect of this point I do not consider it fair and reasonable to award redress on a different basis to that already recommended by the latest adjudicator.

The representative says as Mr V was planning to move home in the short to medium term he should have been advised to keep his funds, net of the sum required to repay his existing mortgage, out of investments designed to be held for the medium to long term and any redress awarded should reflect this.

I accept that Mr V moved two to three years after Barclays advised him to invest. But had Mr V made his intentions in this respect known to Barclays, I see no reason why it would not have been documented. Given that it was not, I am not persuaded I can reasonably conclude that Barclays should have recommended Mr V keep his funds out of medium to long term investments and instead keep them, say, on deposit. So in respect of this point I see no reason for awarding redress on a different basis to that already recommended by the latest adjudicator.

The representative says it is crucial to a fair outcome that this service speaks directly with Mr V.

I have reviewed everything submitted by Mr V and his representative and I am satisfied that they stated their case on paper clearly. Therefore it was not necessary for this service to speak with Mr V directly.

The representative says consideration should be given to making an award for the distress and inconvenience this matter has caused Mr V.

Whilst I have concluded that the advice to invest in both funds was not suitable, it is my view that there were no material delays on the part of Barclays in investigating and addressing Mr V's concerns such that an award for distress and inconvenience should be made.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr V as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr V would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I set out below is fair and reasonable given his circumstances and objectives when he invested.

To compensate Mr V fairly, Barclays must, in respect of each investment;

compare

- the performance of Mr V's investment;

with

- the return illustrated by the FTSE WMA Stock Market Income Total Return Index ('WMA income index') over the same period of time.

If there is a loss, Barclays should pay this to Mr V and pay interest on this loss from the date the investment was surrendered to the date of settlement.

I have decided on this method of compensation because Mr V wanted growth with income and was prepared to accept some investment risk.

The WMA income index is a combination of diversified indices of different asset classes, mainly UK equities and government bonds. I consider it to be a fair measure for a consumer who was prepared to take some risk to get a higher return. Although the comparison may not be an exact one, I consider that it is sufficiently close to assist me in putting Mr V into the position he would have been in had he not received inappropriate advice from the firm.

how to calculate the compensation?

The compensation payable to Mr V is the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

The *actual value* is the amount Mr V received at the date surrendered.

To arrive at the *fair value*, Barclays should work out what the original investment would have been worth, if it had performed in line with the WMA income index from the date of investment to the date surrendered.

Any additional sum that Mr V paid into the investment should be added to the *fair value* calculation from the point it was actually paid in.

Any withdrawal or income payment that Mr V received from the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if the business totals all such payments and deducts that figure at the end instead of periodically deducting them.

If there is compensation to pay, simple interest should be added to the compensation amount at 8% each year from the date surrendered to the date of settlement. Income tax may be payable on this interest.

my final decision

I uphold the complaint. My decision is that Barclays Bank Plc should pay Mr V the amount calculated as set out above.

Peter Cook
ombudsman