

complaint

Mrs F's complaint, in summary, is that she was recommended the Morley Global Balanced Income Fund ("the fund") by Barclays Bank Plc ("Barclays") which was unsuitable for her.

background

In September 2011 Barclays informed Mrs F that it had reviewed the advice she had been given in 2007 to invest in the fund. It concluded that its recommendation was not appropriate, given Mrs F's circumstances at the time, and offered redress.

Mrs F did not accept Barclays' offer of compensation and appointed a third party to represent her. Following this appointment Barclays wrote further with an amended (and increased) offer of redress.

Dissatisfied with Barclays' further response and amended offer of redress 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 investment whilst Mrs F 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

Mrs F.

The complaint was considered by one of our adjudicators who concluded that it should be upheld. In summary it was his view that Mrs F was prepared to take only a cautious risk with her investment. Because of this the adjudicator considered that the fund was unsuitable for her. He proposed that compensation be calculated by comparing the performance of the investment to a return equivalent to 1% above the Bank of England base rate over the relevant period (not on a consequential loss basis as proposed by the representative) and that Barclays should pay a further £100 for the distress and inconvenience caused.

Barclays responded to say that it did not agree with the redress proposed or that a payment in respect of distress and inconvenience was warranted.

The representative responded to say that it did not agree with the redress proposed and provided further submissions as to why, in its view, the complaint should have been considered on a consequential loss basis.

The adjudicator considered both parties' responses to his view. Having done so, he was persuaded by the representative's argument that the complaint should be considered on a consequential loss basis. So he proposed that compensation should take into account the interest cost to Mrs F of paying her mortgage each month that, in his revised view, she should have been advised to repay.

Barclays responded to the adjudicator's second view to say that it did not agree with the revised redress proposed but that it was prepared to settle the complaint in line with the first view on the matter, ie pay compensation based on a comparison of the performance of the investment to a return equivalent to 1% above the Bank of England base rate over the relevant period. However, it did not confirm whether it was prepared to pay Mrs F £100 for the distress and inconvenience caused.

The adjudicator put this revised offer to the representative for its consideration. However the representative rejected it and again argued why the complaint should be considered on a consequential loss basis. It added that this service should also have regard to not just Mrs F's outstanding mortgage liability when considering consequential loss but other debts she had at the time. It said that Barclays was fully aware of them at the time advice was given as they formed part of

its discussion with Mrs F. It further submitted that even if no conversation took place about Mrs F's debts, a simple inspection of her Barclays current account activity would have highlighted their existence.

Further substantial submissions were provided by both parties, but as a resolution could not be found the matter was referred to me for review and decision.

I issued a provisional decision in December 2013. I upheld the complaint and said, in summary:

- Barclays acknowledged that the fund was not suitable for Mrs F and given her particular circumstances, I agreed.
- I considered it fairest to assume that with reasonable advice, Mrs F would have had the original capital invested intact plus a reasonable rate of return, and that rate of return would have been equivalent to 1% more than Bank of England base rate from time to time compounded yearly.
- I was aware that the representative had referred to a decision made by an ombudsman on another case it believed to be similar to this one. However as each case is considered on its individual merits I concluded that the outcome of one complaint did not automatically influence another.
- I did not dispute that Mrs F had debts at the time of the advice, including a mortgage secured on a buy to let property. So what I had to decide was whether Mrs F should have been advised to repay these debts in preference to investing.
- I reviewed the fact-find completed at the time and noted that it did not show that Mrs F had any debts. I also noted that there was no record of the buy to let property being recorded as an asset, or any rent being recorded as income - although I appreciated that Mrs F might not have been in receipt of any rental income at the time of the advice if, for example, the property was not then let.
- I also reviewed the financial report that Barclays says would have been sent to Mrs F and noted that it recorded a total expenditure sum that matched precisely that recorded in the fact-find, a figure which as far as I could see included no expenditure in respect of the debts. Also the covering letter under which Barclays said the financial report would have been sent stated that a copy of the fact-find (as well as the financial report) was enclosed and that these documents should be read to ensure they were a true representation of what was discussed.
- Mrs F had said that Barclays was fully aware of her debts at the time because they were discussed. However if they were discussed I saw no reason why the advisor would not have recorded them on the fact-find, particularly given that Mrs F would be asked later to check the fact-find (and the financial report) to ensure they were a true representation of what was discussed. I noted that the representative had said that Mrs F did not receive a copy of the fact-find, or the financial report, to be able to question their accuracy. Although I could not say with any degree of certainty what documents Mrs F was provided with, having considered both parties' submissions very carefully, I was satisfied that on the balance of probabilities it was more likely than not that Mrs F was provided with both. For example the covering letter, under which Barclays said both documents were sent, was correctly addressed and I saw no reason why it would not have been despatched, or that it would not have been received.

- I also considered the representative's point that even had Mrs F's debts not been discussed, and I noted that the representative argued that they were, that Barclays could and should have discovered for itself that Mrs F had debts by checking her Barclays current account activity. I accepted that the advisor could have checked Mrs F's account activity if that was possible. However, I considered that the advisor was entitled to rely on the discussion he had with Mrs F and the information provided to him by her.
- Clearly I could not know for certain what was discussed. But what was clear was that the objective of the meeting was to work out Mrs F's income shortfall following her loss of income due to redundancy and her plans for the future. The fact-find showed that the advisor had gone into a lot of detail about Mrs F's income and expenditure and worked out precisely the shortfall. So I felt in all probabilities questions were asked about her debts.
- Mrs F said she provided the relevant information. If that was the case then I considered it reasonable that she would have queried it when she got the financial report (and fact-find) – which on balance I considered she received. If she did not receive the financial report (and fact-find) I considered, given her financial services background, that she was knowledgeable enough to have queried on what basis the recommendation was made to fulfil her income shortfall.
- I found, on the balance of evidence provided, that I was unable to safely conclude Mrs F's explanations were more likely than those of Barclays. I saw insufficient evidence to persuade me the advisor was aware when he gave Mrs F advice that she had outstanding debts. Therefore, and in the particular circumstances of this case, I did not believe it to be appropriate to award redress on the basis of consequential loss.
- However, I was not persuaded that the adjudicator's initial recommendation that Barclays pay Mrs F £100 for the distress and inconvenience caused was sufficient. I noted that in addition to the unsuitable advice, further distress was caused when Barclays issued a revised (and increased) offer without, in my view, an adequate explanation as to why. This revised offer also failed to take into account that the investment had been surrendered a month earlier, a point only picked up when the representative got involved. So I considered that a total payment of £250 was fair and reasonable in this instance.

Barclays accepted my provisional findings and confirmed it had nothing further to add.

The representative did not accept my provisional findings and sent a number of documents for my further consideration, including:

- Copies of Mrs F's current account statements for an eighteen month period.
- Confirmation from Mrs F of her buy-to-let mortgage balance, and interest rate.
- A statement from an ex-Barclays employee.
- A Statement from Barclays.
- A Statement from Mrs F's new advisor.
- An extract from another decision issued by this service.

The representative then said, in summary:

- Mrs F has confirmed to it that at the time of talking with the advisor he had her current account statements in front of him.

- The copy current account statements provided to this service clearly demonstrate that Mrs F had outstanding debts at the time of the advice including a mortgage, a car loan and credit cards and that she also went overdrawn for periods after she invested.
- Mrs F did not receive any rental income in respect of her buy to let property.
- Barclays has accepted that its advisors had access to bank records and a cursory glance of Mrs F's current account activity would have highlighted she had outstanding debts.
- On the balance of probabilities the advisor would have checked Mrs F's current account activity and been aware she had outstanding debts.
- Mrs F's new advisor recommended that she surrender the investment in 2011 and repay her buy to let mortgage and car loan, a fact that I attached no importance to.
- A previous decision issued by this service was quoted because the facts of that case were very similar to Mrs F's complaint under consideration here.
- There is no reason why Mrs F would have not disclosed her debts to the advisor, particularly given that this information was readily available to the advisor.
- On the balance of probabilities the advisor was aware of Mrs F's debts but elected not to record them on the fact-find.
- On the balance of probabilities the advisor did not send Mrs F a copy of the fact-find and financial report.
- Mrs F's financial services background simply meant that she trusted Barclays, not that she had a particular level of financial knowledge.
- Mrs F is upset that Barclays has suggested that she might have chosen, for whatever reason, not to disclose the debts she had at the time of the advice.
- Compensation should be calculated on the basis that Mrs F should have been advised to repay all of her outstanding debt and nothing else. Allowance should also be made for any overdraft charges Mrs F incurred as a result of investing funds that would have otherwise been available to maintain her current account in credit. The distress and inconvenience award of £250 should be increased and the cost of obtaining copy current account statements refunded.

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 not been persuaded to depart from my provisional decision.

I am fully aware of the ombudsman's decision referred to by the representative. However I would again emphasise that each case is considered on its individual merits so the outcome of one complaint does not automatically influence another. In the case referred to by the representative the advisor, for example, specifically recorded that the consumer had no liabilities at all in the relevant section of the fact-finds.

I have reviewed Mrs F's current account statements and acknowledge that she had outstanding debts at the time of advice that she was repaying on a monthly basis. But this fact is not in dispute. So as outlined in my provisional decision what I have to decide in this case is not whether Mrs F had any debt, but whether the advisor was aware that she did.

I have considered the representative's submissions in this respect very carefully, including the statements from the ex-Barclays employee and Barclays itself. But having done so, I remain of the same view as outlined in my provisional decision. That is although the advisor could have checked Mrs F's current account activity, he was entitled to rely on the discussion he had with Mrs F and the information provided to him by her.

I note the representative holds the view that Mrs F informed the advisor of her debts at the time of the advice. But again, if these debts were discussed I see no reason why the advisor would not have recorded them on the fact-find, particularly given that Mrs F would be asked later to check the fact-find (and the financial report) to ensure they were a true representation of what was discussed.

I note that the representative says that Mrs F did not receive a copy of the fact-find and the financial report and this is supported by her new advisor's statement that neither document was in her very ordered and tidy 'Barclays file' when he visited her.

I do not dispute that Mrs F may not have had either document when she was visited by her new advisor, but that does not mean they were not sent to her. Having considered the representative's submissions on this point I remain satisfied that given the covering letter under which Barclays says both documents were sent is correctly addressed, it is more likely than not that Mrs F was provided with both documents, even if she no longer recalls receiving them, or no longer has them.

I also remain of the view, notwithstanding my finding above and the representative's submissions on this point, that Mrs F's financial services background meant that she was knowledgeable enough to have queried on what basis the recommendation was made to fulfil her income shortfall if she had not received the fact-find and financial report. In this respect I note that the clear objective of the meeting was to work out Mrs F's income shortfall, following her loss of her income due to redundancy and her plans for the future. The fact-find also showed that the advisor had gone into a lot of detail about Mrs F's income and expenditure and worked out precisely the shortfall.

So I find, on the balance of probabilities, that the advisor was not aware when he gave Mrs F advice that she had outstanding debts of a mortgage, a car loan and credit cards. Therefore it follows that it is not appropriate for me to award redress on the basis of consequential loss.

The representative has pointed out that Barclays accepted quite early on that Mrs F should not have been advised to invest as much as she did and that she should, instead, have been advised to leave a larger sum on cash deposit. It says that the redress I proposed in my provisional decision failed to take this admission into account.

The purpose of redress is to place a consumer as close to the position they would probably now be in if they had not been given unsuitable advice. It is not possible to say precisely what Mrs F might have done differently, or what she might have earned had she left more of her funds on cash deposit than she did. But I am satisfied that the redress I proposed in my provisional decision is a reasonable compromise of what Mrs F would have obtained in respect of the entire sum invested, even accepting that she might have kept a proportion of that sum on deposit.

Therefore, and in summary, I remain satisfied that the investment was not suitable for Mrs F and that she should be compensated as outlined below. I also remain of the view that Mrs F should be compensated for the distress and inconvenience caused and that £250 in respect of this is appropriate in all the circumstances.

fair compensation

To compensate Mrs F, Barclays should put her as close to the position she would probably now be in if she had not been given unsuitable advice.

Therefore, Barclays should pay Mrs F compensation of D + E where:

- A. the capital invested, less any amounts paid out by way of withdrawals, distributions of capital or before-tax income;
- B. a return on 'A' using a rate equivalent to 1% above Bank of England base rate, compounded yearly from the date of investment to the date of encashment;
- C. the encashment value of the actual investment;
- D. A + B – C, if positive, representing the investment loss to the date of encashment;
- E. interest on the investment loss as calculated in 'D'. Interest should be added to 'D' at 8% pa simple from the date of final encashment to the date of payment.

For clarification, A and B above should work as follows: Any sum paid into the investment should be added to the calculation from the point in time when it was actually paid in so it accrues the "reasonable rate of return" within the calculation from that point on.

Any reduction to the investment amount should be deducted from the calculation at the point in time when it was actually deducted so it ceases to accrue the "reasonable rate of return" within the calculation from that point on.

In addition, Barclays should pay Mrs F £250 for the distress and inconvenience this matter has caused.

Barclays should also provide the details of its calculations to Mrs F and to me in a form which should be understandable to a lay person.

my final decision

For the reasons I have given, I uphold this complaint and order Barclays Bank Plc to calculate and pay compensation as detailed above.

**Peter Cook
ombudsman**