

## **The complaint**

Mr D complains that Barclays Bank Plc mis-sold an investment to him as it failed to provide full and accurate details regarding the fees and its term.

## **What happened**

In 2011 Barclays recommended Mr D invest in the 'Paladin Reality Brazil Investors III Fund' (Paladin), a Brazilian property-based private equity investment via a Luxembourg corporate vehicle.

He says he'd expected to pay only a 3% placement fee and 2% ongoing management fees. But by January 2021 his statements indicated he'd incurred additional ongoing fees taking the total amount charged to more than this – equating to around 4%. He also felt the investment's maximum term had been misrepresented. The information provided by Barclays at the outset had indicated a seven-year term with the possibility of two one-year extensions. However, by the time of Mr D raising his concerns with Barclays in 2021, he'd been invested, at least in part, for more than ten years.

Barclays didn't uphold Mr D's complaint. It said that its original marketing material for the investment had disclosures explaining that it represented only a summary of the terms and had referred clients on to the 'Private Placement Memorandum' for further information, which had its own set of disclosures. Barclays felt Paladin's documentation took precedence in terms of fee disclosure, and this was outside of Barclays' control.

In respect of the investment term, Barclays acknowledged that it would've been disappointing the fund hadn't yet been wound up. But it noted that Paladin was in the process of the liquidation of the remaining assets. In summary, Barclays didn't consider there was any evidence it had made an error or acted unfairly.

The complaint was referred to this service and reviewed by an investigator, who reached broadly the same overall conclusion as Barclays.

The investigator firstly considered Mr D's general eligibility to receive the advice to invest in Paladin and concluded that given his financial circumstances, attitude to risk, experience (he'd previously invested in a similar non-mainstream property investment) and capacity for loss that it appeared broadly suitable. The investigator was satisfied Barclays had reasonably categorised Mr D as a customer suitable to receive this type of recommendation.

In respect of the issues at the heart of Mr D's complaint the investigator acknowledged Barclays' responsibility to provide information that was clear, accurate and not misleading. He said there didn't seem to be any dispute that documentation concerning the investment had been provided to Mr D. And looking at it in detail he accepted there was specific mention of only the management and placement fee. However, he noted that the documentation also pointed out that was intended only a summary.

The investigator felt this disclaimer made clear Barclays' documentation was for information only and shouldn't be relied upon as the sole basis for any investment decision. It also made

clear that other documents issued by Paladin, including the 'private placement memorandum' (PPM) would take precedence when determining the basis of the contract. The investigator noted that the PPM had referred to other charges and fees but not in detail, but he felt that given the complexity of the investment it was reasonable that it had not covered each and every potential additional cost that might be incurred.

The investigator also noted the subscription agreement signed by Mr D in January 2011 and highlighted two clauses.

*Clause 3.4 – “The Investor confirm that its subscription for a Commitment and Shares is made solely on the basis of the information contained, and directly referred to, in the Memorandum and the Investment Documents and not in reliance on any other information, statements, representations or warranties, whether oral or written whatsoever. The Investor understands and has evaluated the risks connected with acquiring Shares”.*

*Clause 5 (c) – “I/we have requested a copy of, and have received, the Memorandum, and have been given the opportunity to obtain additional information necessary to verify the accuracy of the information contained in the Memorandum, in order for me/us to evaluate the terms and conditions of the investment in the Shares and the merits and risks of the investment in the Company...”*

The investigator acknowledged that the subscription agreement didn't refer specifically to charges or the term, but he felt it was a relevant document. He noted that Mr D had confirmed he had considered all the information and relied on the memorandum and other documents issued by Paladin before investing.

The investigator didn't consider the information contained in Barclays documentation to be misleading or deliberately misinformed the investors. He said there was nothing to suggest that Mr D had asked direct questions about the charges to which Barclays had provided inaccurate or wrong answers.

In respect of the investment term, the investigator acknowledged the seven to nine-year timescale, but stressed the documentation made clear that the investment was illiquid and had no secondary market. He felt that due to the nature of the investment and its illiquidity there had been a reasonable possibility that the desired timescales might not be met.

Mr D didn't accept the investigator's view. He said, in brief:

- He understood there were disclaimers on the marketing material but felt these were aimed at absolving Barclays from any responsibility. He said the error regarding the fees was so critical to his decision to invest that it constituted gross negligence. He didn't think Barclays should be able to absolve itself from blame for mis-stating the cost of the product. The marketing presentation was used to sell the product and the cost of the product was grossly understated.
- He understood the investment was illiquid and there was no secondary market during its term. But the contract had explicitly stated that the term would be for seven years with the possibility of a two-year extension. The fact that the investment was still not fully redeemed after almost 14 years constituted a clear breach of contract and was not a risk that was adequately explained at the time.

As the investigator wasn't persuaded to change his opinion, the matter's been referred to me to review.

## What I've decided – and why

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

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, I'm ultimately deciding what I consider to be fair and reasonable in all the circumstances.

As noted, the investigator gave some consideration to the suitability of the investment for Mr D and concluded it appeared to be generally consistent with his personal and financial circumstances. I'd agree with this and further, as it doesn't appear to be in dispute and Mr D has confirmed that the crux of the matter concerns the fees and term information, I'll therefore not comment further in that respect.

Turning to those key issues, the fees and the term, I'd stress that I'm looking at the acts, or omissions, of Barclays, not any other parties to the investment arrangement. So, in short, did Barclays provide a reasonable level of detail about the investment to Mr D given its role in the process and its responsibility to provide information that was clear, accurate and not misleading?

In respect of the fee information, Barclays' own documentation referred solely to fees charged by the fund manager (the management fee, from which Barclays received a trail fee, and a performance fee) and Barclays itself (the placement fee). And it's based upon this information that Mr D says he made his decision to invest.

However, there have clearly been additional charges incurred by Mr D, which have prompted the complaint. He feels Barclays should've alerted him to the possibility of this happening and had it done so, he wouldn't have chosen to invest.

I think Barclays' documentation made reasonably clear that prospective investors should only base investment decisions on the full offer documentation. This was stated in the disclaimer. I appreciate Mr D's point regarding that disclaimer – that it shouldn't be used as a means by which to absolve Barclays of its responsibilities. But in this specific case, I think the complexity of the arrangements and the associated risks meant it would've been very difficult to have identified at the outset precisely what additional costs/fees might be incurred.

I accept that Barclays *could*, alongside the fee information that was provided, perhaps have stated that there could be additional costs involved. But I don't think it can be said that it *should* have done, not given the wealth of additional documentation that it pointed to, which when taken together I think ought reasonably to have put Mr D on notice that, given the nature of the investment, additional fees could potentially be incurred.

Mr D has acknowledged that the documentation did make some reference to additional fees, but I note his concerns that this could be said to be hidden away deep within the large volume of documentation. But again, I'd stress that it's not the clarity or quality of the Paladin information I'm considering, it's the information provided by Barclays.

When Barclays supplied its own documentation to Mr D in an email in January 2011, it was accompanied by all the other relevant Paladin documentation. And Barclays prompted him to make contact if he had any questions or needed clarification. While I accept there was no requirement for him to do so, I've not seen that Mr D did ask further questions. But given the nature of the investment and what he subsequently agreed to in signing the subscription

agreement and investing, I think if the level of fees/costs was a principal factor in him deciding to go ahead it would've been reasonable for him to make further enquiries and satisfy himself that he was comfortable with the potential costs. I don't think the investment opportunity was presented by Barclays, or any other party, as a straightforward investment with a functionality akin to more commonly seen investment funds.

In respect of the term of the investment, I accept that Barclays' documentation appeared unambiguous on this point. But I don't think it would've had sufficient reason at the time to think that this was likely to be inaccurate. Again, the Barclays information was not intended to be the sole basis on which investment decisions were to be made.

The Paladin information, which set out the complex set up of the investment by reference to the numerous entities involved – the company, the partnership, the directors, the fund itself, said in the PPM for the company (as opposed to PPM for the partnership) that *“The term of the Partnership expires on the seventh anniversary of the Partnership's initial closing or as described under the heading “Summary of Terms for the Fund—Term” in the PPM. The term of the Partnership may be extended by the General Partner for up to two additional one-year periods, subject to the approval of the Partnership's advisory committee. The Directors intend that the Company will be wound-up following the dissolution of the Partnership.”*

I don't include this wording with the intention of suggesting that it should've been abundantly clear to Mr D that the matter of term might not be as straightforward as suggested by Barclays' documentation. Rather, I include it as I think it demonstrates again the difficulties that would've been faced by Barclays had it attempted to make its own documentation anything more than a broad overview that was accompanied by the caveat that investment decisions should be made only on the basis of the complete documentation.

I appreciate it will be disappointing that the investment, despite some capital distributions having been made during its term, is still, according to the September 2023 performance report, *“continuing under an orderly liquidation clause to allow the remaining assets to be realised”*.

But in summary, while I have sympathy for Mr D's points, in all the circumstances I don't find Barclays to have acted incorrectly or unfairly in respect of the way in which it communicated the investment.

### **My final decision**

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 April 2024.

James Harris  
**Ombudsman**