

The complaint

Mrs H and Mr H have complained about Barclays Bank UK Plc (“Barclays” trading as Barclays Wealth Management). They said they wanted to invest in an exchange traded fund (ETF). They said the investment Barclays bought for them was an exchange traded commodity (ETC). They said this investment was not what they wanted, was unsuited to their risk appetite at that time and was overly complex.

Mrs H and Mr H said Barclays bought the wrong investment and because of this they have incurred significant investment losses. They would like to be compensated for this.

Mrs H and Mr H have been represented by a third party throughout their complaint.

What happened

Mrs H and Mr H invested around £728,530 in ETFS natural gas in 2009. By 2022, the value of these units dropped in value by around 95%. They said they have suffered significant investment losses.

Mrs H and Mr H said the investment they made is now worth a fraction of the book cost and has not tracked the natural gas spot price to any reasonable extent, something that they were looking for their investment to do. They said the way the fund operates is overly complex and the investment is incorrect for their risk profile. They said Barclays failed in its duty of care to explain the product or inform them of the risks associated before they bought into it.

Barclays said in response that it could see Mrs H and Mr H had made four purchases between 9 March 2009 and 11 June 2009 into ETFS natural gas which is now known as Wisdom Tree natural gas. It said their total investment was for around £728,530.

Barclays said Mrs H and Mr H invested in this fund on an execution only basis and no advice was given to them. It said this means it was up to them to take responsibility for the trades they made. It said it was not obliged to assess suitability as it didn't give any advice to them.

Barclays said it was clear at the time from their activity that they had a strategy to invest in commodity funds and that most did reasonably well. It said it can understand why the loss incurred has been frustrating for them. Barclays reiterated that it was not responsible for the loss incurred and it carried out Mrs H and Mr H's instructions on an execution only basis.

Mrs H and Mr H were not happy with Barclays' response and referred their complaint to our service.

An investigator looked into Mrs H and Mr H's complaint. He said he didn't think Barclays needed to take any action. He said he'd seen nothing to suggest Barclays advised them to invest in ETFS natural gas or that Barclays were obliged to check its suitability. He said Barclays said its service was execution only, so no advice was provided. He added that Barclays said its process for execution only was the same in 2009 as it is now, that is that Mrs H and Mr H would have needed to provide clear and unambiguous instructions and no

advice is provided. He said Barclays said Mrs H and Mr H would have needed to tell them what to buy, rather than Barclays' source the investment for them based on what they were looking for and their need.

Mrs H and Mr H through their representatives were not in agreement with the investigator's first view. Their representatives provided a detailed response. I have summarised what I think their key arguments were at this stage, namely:

- Mrs H and Mr H were relying on the expertise of Barclays to invest their monies into an appropriate natural gas ETF product and not an ETC product.
- Barclays failed to follow the investment instructions given to them and bought the wrong product.
- Barclays failed to comply with its obligations under the regulator The Financial Conduct Authority's (FCA) rules at that time. They referred to COBS10 and the version that was in place at the time of the purchases. They said Barclays didn't assess appropriateness of the product as it was obliged to.
- They said if Barclays had complied with its obligations under COBS10 then Mrs H and Mr H would have been alerted to the fact the product was an ETC and not an ETF as they had requested. If they had known this, then they would not have invested in that product.

The investigator then sent out a second view in October 2023. He had gathered further information from both parties and responded to Mrs H and Mr H's representative's comments. The new information and key findings from this are:

- He went back to Mrs H and Mr H and asked for more information about the sort of investment they think they wanted to invest in at the time. In response they said they were looking for modest risk investments. Mrs H and Mr H said they wanted to hold their assets – cash, bonds, and commodities, rather than stock. They said they wanted to invest in ETFs to spread risk.
- Mrs H and Mr H reiterated that if Barclays had warned them an ETC was inappropriate, it was likely they wouldn't have invested their money into it.
- They said there seemed very few ETF's which invested in natural gas, but they more likely would have invested in something similar like an energy ETF. They said they wouldn't have made significant losses if they had done so.
- He asked Barclays for clarification on the relationship between it and Mrs H and Mr H at the time. He said he could see they were high net worth, had a private banker and held regular meetings. He sought to clarify what Barclays' role was here.
- Barclays said from its records Mrs H and Mr H made a mixture of advised investments, where it had made one-off advice, but also made trades on an execution only basis, like this one.
- It said because there was a mix of advised and execution only trades, it needed to discuss risk profiles and objectives with Mrs H and Mr H.
- Barclays said it could only trade on investments available on its platform. So, as was the case here, if a client wanted to invest in a natural gas fund, then it would present

options and it would be down to its client to choose one. Then would carry out their instructions on an execution only basis.

- The investigator made several findings from the additional information that he gathered. He said it wasn't clear how the ETC came about. He didn't feel he had seen enough evidence to suggest Barclays played an integral role in selecting the ETC.
- He concluded on balance, that it would have provided information on the investment and given it to Mrs H and Mr H, for them to make an informed decision.
- He didn't think Barclays would have checked how appropriate the investment was, as was their regulatory obligation. But he said, even if it had done so, the likelihood was that the investment would have been appropriate for Mrs H and Mr H anyway.
- He said Mrs H and Mr H say they were after a UCITS compliant ETF and one that didn't invest in shares. But he said this type of investment most likely didn't exist.
- He said the energy ETF suggested by them, invests in shares so wouldn't have met their stated objectives at that time. He also made the point that it was more likely than not the other ETF investments they held at the same time were ETC's.
- He concluded that it was unlikely Mrs H and Mr H would have invested in a different fund to the one they did at the time. He didn't uphold their complaint.

Mrs H and Mr H's representatives responded to the investigator's second view. They made the following points:

- Mrs H and Mr H have said consistently all along that they were not presented with any natural gas investment options by Barclays. They asked their private banker to invest in a natural gas ETF and relied on her to select the appropriate product. She picked the ETC and did this without presenting any options to them.
- If Barclays had provided a prospectus detailing the fund to Mrs H and Mr H, then it's reasonable to assume that Barclays would have read the information themselves and would have used the correct terminology when referring to the product. They then clearly stated that Mrs H and Mr H did not receive any documentation or prospectus about the investment.
- Mrs H and Mr H were not experienced investors in commodities when the natural gas ETC was purchased. The ETC invested in was also very complex and high risk. Whilst Barclays were not required to advise on risk, they were nevertheless obliged to assess on appropriateness. It is unlikely Mrs H and Mr H would have invested if they genuinely understood the high-risk nature of the product.
- Barclays knew what Mrs H and Mr H's investment aims were with regards to commodities and if no product met those goals existed, then Barclays should have informed them of this. Barclays should not have gone ahead with purchasing units in an ETC, which was not appropriate for them.
- The other commodity investments purchased by Barclays on Mrs H and Mr H's behalf were also ETC's. Barclays did not assess the appropriateness of any of the investments. But just because Mrs H and Mr H didn't make a loss on the other

investments, does not mean that Barclays are not liable for the losses on the natural gas ETC investment.

- Barclays failed repeatedly to comply with their regulatory obligations. They failed to assess the appropriateness of the investment. Mrs H and Mr H did not have the experience or knowledge to understand the risks involved. The relevant individuals at Barclays also failed to understand the true nature of the ETC as well. If Barclays had assessed the appropriateness of the investment, and explained the risks involved then Mrs H and Mr H wouldn't have agreed to invest in it.

So as Mrs H and Mr H and their representatives do not agree with the investigator's findings, their complaint has been passed to me, an ombudsman, to look into.

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.

Barclays has said to our service that Mrs H and Mr H's complaint is within our jurisdiction to consider. It has given its permission for our service to investigate their concerns. Therefore, I have proceeded to look at the merits of Mrs H and Mr H's complaint.

I have carefully read all that Mrs H and Mr H and their representatives have said and submitted to our service. Due to the length of the submissions and the number of points made within them, I won't be responding to every point Mrs H and Mr H's representatives have raised. Instead, I have focussed on what I think is relevant to their complaint and the outcome.

I've looked at the complaint afresh and I've independently reached the same conclusions as our investigator. I will explain my reasons.

What did Barclays do when it bought units for Mrs H and Mr H in ETFS natural gas?

There isn't a dispute between the parties, about whether Barclays gave advice to Mrs H and Mr H when it purchased units in ETFS natural gas in 2009 for them. Both say it didn't. But their recollections do differ with regards to what happened. Barclays has said to our service that it carried out the trades on an execution only basis and would have needed to be given clear and unambiguous instructions from Mrs H and Mr H about what they wanted to invest in. Mrs H and Mr H on the other hand said they would have told Barclays they wanted to invest in a natural gas ETF as part of their strategy to diversify their portfolio. They said they would've had that conversation, and Barclays would have sourced the investment for them. There is a dispute here between the parties about this, so I have looked into it.

Our investigator asked Barclays about its relationship with Mrs H and Mr H in 2009, recently to gauge a better understanding as to how it would usually carry out trades on their behalf. After all Mrs H and Mr H had a personal banker they could call, were designated high net worth by Barclays and held regular meetings with it. Barclays said that it carried out a series of execution only trades and gave one off advice when called upon or when it needed to. It said it offered both and tailored its service to suit the needs of Mrs H and Mr H.

Mrs H and Mr H have said they were not presented with any natural gas investment options by Barclays, and that what happened was their private banker selected the investment for them. She picked the ETC and did this without presenting any alternatives.

I can't be sure what happened here, but I can see that it has been agreed between the parties that Barclays didn't give advice to Mrs H and Mr H. This suggests to me, on balance that Mrs H and Mr H gave an instruction to Barclays to find a natural gas ETF for them to invest in. I don't think, if Barclays were carrying out the trade on an execution only basis, something both parties agree they were doing, that it would go on and select an investment and present it to Mrs H and Mr H. Rather, I think Barclays more likely than not would have either presented options to Mrs H and Mr H for them to choose the investment they wanted to invest in, as Barclays has suggested could have happened here. Or there simply weren't the choices available at that time, with Mrs H and Mr H having one option available on Barclays trading platform and their choice was to either invest in ETFS Natural Gas or not.

There has been a discussion between the representatives of Mrs H and Mr H and our service about this and the alternative investments that they would have looked at. But I've not been provided with information from either party that suggests to me there was an alternative investment at that time that met what Mrs H and Mr H were asking for. So, even if I were to conclude Barclays should have done more to present different options or help Mrs H and Mr H to find the investment they were looking for, I am not persuaded there was a product that it could have pointed them towards such that they are now saying they were after.

When I consider both parties recollections and read through the documentation available including a call note provided by Barclays from that time, I think on balance either Barclays presented options to Mrs H and Mr H or it presented one option to them, and they made a choice, with the trade being conducted on an execution only basis. There is a distinction here I think between either of these scenarios and Barclays choosing an investment and presenting it. On balance, I think Mrs H and Mr H instructed Barclays to invest in ETFS natural gas rather than Barclays advising them to do so, or Barclays doing it on their own accord.

I would have expected Barclays to have provided Mrs H and Mr H with key information about ETFS Natural Gas at the time in either of the scenarios I have given above, so they could make an informed decision. I think on balance, as it was an execution only trade, this would have happened, or they would have been notified as to where to find the information. Of course, it maybe that Barclays didn't do this, but I haven't seen enough from what has been provided by the parties, that I can safely conclude this was the case. As I have concluded this was an execution only trade, there was also, I think, some responsibility on Mrs H and Mr H to ensure they understood how the investment worked, especially considering the size of the investment they made.

So, I think on balance, Barclays carried out Mrs H and Mr H's instructions about an investment they chose on an execution only basis, after they were given information about it.

Mrs H and Mr H's representatives have made a few points about Barclays' understanding of how the product worked in practice. They have made the point that they can't see how Barclays would have provided information on an investment, that it didn't understand itself. I haven't seen enough from what I have read that would indicate to me that Barclays didn't understand how the investment worked, other than the observation from its representatives that Barclays staff used the term ETF rather than ETC to describe it. I don't think this observation on its own about terminology used, is enough evidence for me to conclude Barclays didn't know how the investment that it had listed on its trading platform would've worked.

Barclay's responsibility here, as it was an execution only trade, was to provide information that was clear and not misleading and ensure Mrs H and Mr H were able to make an

informed decision. It was for Mrs H and Mr H to then ensure they understood the risks and were comfortable with them or ask for more information if they wanted to.

Was ETFS natural gas appropriate for Mrs H and Mr H?

Mrs H and Mr H's representatives have said ETFS natural gas, was not an appropriate investment for them. They have referenced FCA regulations and COBS10 from the handbook. They said Barclays should have assessed whether the investment was appropriate for Mrs H and Mr H. They said if it had done this, it would have seen that the investment was complex and an ETC. They said if Mrs H and Mr H had been alerted to how inappropriate the investment was, it would have put them off from investing in it.

I acknowledge the point Mrs H and Mr H's representatives are making here and agree that Barclays ought to have considered the appropriateness of the investment under their wider obligations to them if it didn't do so. But in any case, even if it hadn't, I don't think it would have made a difference. This is because on balance, I think Barclays would have assessed the investment to be appropriate for Mrs H and Mr H.

I can see that Mrs H and Mr H had already invested in similar investments and held several exchange traded investments within their portfolio. I think on balance, Mrs H and Mr H would have been considered to have enough experience and knowledge to understand the risks involved. So, if Barclays had carried out an assessment on this investment, I think on balance it would have deemed it appropriate for them.

In conclusion, I think on balance, that Mrs H and Mr H gave Barclays an instruction that they wished to invest in a natural gas ETF. Barclays then either gave options or gave an option and Mrs H and Mr H selected it, on an execution only basis. I'm not persuaded Barclays misled or otherwise gave Mrs H and Mr H incorrect information about the investment's risks or how it worked. On balance I think more likely than not it provided them with information to satisfy themselves about the product, and whether they wanted to invest in it. As I've found that the decision to invest rested with Mrs H and Mr H, I don't think it would be fair and reasonable to hold Barclays responsible for any losses Mrs H and Mr H say they've suffered as a result of making the investment.

I appreciate that my decision will be disappointing for Mrs H and Mr H as well as their representatives, and I acknowledge the amount of time and effort they have spent in providing their submissions. But based on everything I have read and the findings I have given, I don't uphold their complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 19 January 2024.

Mark Richardson
Ombudsman