

Losses from an investment in a structured product

Topic: **Investment advice** Case number: **2019/09**

After a consultation with her client advisor, the client invested in a structured product based on forex transactions. She claimed that she did not understand the essential characteristics of the product and its risks. Due to a lack of sufficient knowledge of English, she was not able to understand the factsheet on the product. The product also did not correspond to her risk profile. She therefore claimed compensation from the bank for the damage she had suffered as a result, which she estimated at GBP 140,000. The bank refused to pay compensation. The customer then submitted the case to the Ombudsman. In the ombudsman proceedings, the bank was finally prepared to compensate the client with GBP 50,000. The client accepted this settlement proposal.

With the structured product, the client undertook to periodically sell certain amounts in GBP over a certain period of time and to purchase her home currency at a certain price. If the price of this currency rose against GBP during the term of the product, she made a profit. In the opposite case, she suffered a loss. The client's domicile was in an emerging market. She was unlucky that her home currency fell sharply during the term of the product, mainly due to political turmoil. She claimed that she had relied heavily on the client advisor's explanations in her mother tongue when purchasing the product and that she had not been able to understand the English product documentation for linguistic reasons, among others. She had therefore assumed that the product had a much shorter life and a much smaller maximum investment amount. The Ombudsman could see from the documents that the structured product was explicitly aimed at professional investors. In his view, the product documentation was not easy to understand.

The Ombudsman contacted the bank and asked it how it had prepared the client's profile, how the advisory process had been conducted and why it was of the opinion that the recommendation of the product was compatible with the client's profile. The bank stated that at the beginning of the business relationship it had clarified its investment objectives with the client and had drawn up a client profile. The client had requested investment proposals for bonds in GBP. She had chosen USD as the reference currency, although she had primarily invested in GBP. The client profile that had been drawn up showed a medium risk tolerance but a high loss capacity. The client then signed various documents, including a risk disclosure document focusing on the risks of structured products similar to the one at issue in the present case. She then invested in fiduciary investments in GBP and USD with banks in her country of domicile, but was not satisfied with the returns. She then inquired about forex products which enabled her to exchange GBP and USD into her home currency at favourable rates and later to exchange them back again. She had already carried out such transactions with banks in her home country on various occasions.

In the Bank's view, the main characteristics and risks of the structured product were explained in a comprehensible manner in the documentation provided to the client. Her client advisor had also explained these in an e-mail and in a telephone conversation in the client's native language. The customer then decided to invest. The bank stressed that it had proposed a discretionary asset management mandate to the client. However, she had wanted to make her own investment decisions and had only requested investment advice, which was not set out in a written contract. Finally, she noted that the client had used the product to purchase currency from her home country, which she

could use there for her livelihood. It was therefore questionable whether one could effectively speak of a loss which had only been incurred in relation to the original currency GBP, since the respective exchange transactions had been made at higher prices than she could have achieved with a so-called spot transaction. The bank therefore saw no obligation to pay damages from a legal perspective. However, it was prepared to settle the case comparatively without acknowledging a legal obligation and offered to pay GBP 20,000.

The Ombudsman then contacted the bank a second time. He found it difficult to understand why the bank had recommended this particular product to the client, which was explicitly aimed at professional investors, and asked the bank to explain in more detail why it considered it suitable and appropriate for the client in the light of the client profile it had drawn up. He took the view that the product documentation was not suitable for inexperienced investors and understood that the client was relying on the statements of her client advisor, which were more understandable to her. These did not contain any specific assurances regarding the product, but were characterized by a very optimistic attitude towards it. On the basis of the information available to him, he considered a settlement proposal of GBP 20,000 to be insufficient.

The bank then increased its settlement offer to GBP 50'000. The Ombudsman recommended that the client accept this offer, as the Bank again stated that the product was suitable and appropriate for the client and ruled out any further concessions in the ombudsman procedure. In the Ombudsman's view, going to the ordinary courts with the aim of obtaining higher compensation would have entailed considerable risks for the customer, even though the product documentation was not written in an easily understandable way. She had signed a risk disclosure document and, according to her own statements, had been prepared to take certain currency risks. Her view that she had assumed a shorter term and a lower investment amount was poorly documented. The client followed the Ombudsman's advice and accepted the settlement.