

## **The complaint**

The estate of the late Mr G complains that Barclays Bank UK PLC, trading as Barclays Smart Investor (“Barclays”), delayed acting on its instruction to sell shares. It wants Barclays to calculate how much the estate would have received if the shares were sold on the day it received the instructions, and to credit the estate with the difference.

The complaint is brought by the executors of the estate, who I will refer to as Mr and Mrs P.

## **What happened**

Mr G had an execution only share dealing account with Barclays. He died in December 2017 and Mr and Mrs P were appointed as executors of his estate. Mr and Mrs P obtained the Grant of Probate and this was sent to Barclays in June 2018.

On 23 October 2020, Mr and Mrs P emailed Barclays a completed “Expression of Wish” form requesting that all Mr G’s shares be sold, and the proceeds paid to the executors’ account. Barclays sold the shares on 3 November. Mr and Mrs P complained about the delay.

Barclays said its bereavement team had five working days to process the instructions. So, it said, the shares should have been sold on 30 October. Using the closing shares prices on that day, Barclays calculated that the estate should receive an additional £5,636.82. It also offered to pay Mr and Mrs P £150 for the distress and inconvenience caused.

Our investigator didn’t recommend that the complaint should be upheld. Mr and Mrs P didn’t agree, so the complaint was passed to me.

### *My provisional decision*

I thought the complaint should be upheld. I said:

Barclays’ terms and conditions set out its obligations when a customer dies. Amongst other things, the terms say:

*“If you die, the Agreement will continue to bind your estate until terminated by, or us giving notice to, your validly appointed personal representative.” (A 9.1)*

I find this means Mr and Mrs P reasonably would have expected the terms and conditions, including any timescales set out in those terms, to still apply, unless Barclays communicated any new terms and timescales to them. I’ve not seen evidence to show that Barclays told them its usual timescales wouldn’t apply.

The terms also say:

*“Once we have received the grant of representation for your estate,....we will act in accordance with your Personal Representatives Instructions where Regulatory Requirements allow but.....(b) assets cannot be sold for any other purpose until*

*any reregistration process is completed with any fees, charges and expenses owed to us accounted for.” (A9.3)*

Mr and Mrs P provided Barclays with the Grant of Probate in June 2018. I think they reasonably would have expected Barclays to have completed any re-registration process by the time they gave instructions to sell the shares around 14 months later.

It follows that Mr and Mrs P reasonably would have expected Barclays to act on their instructions in line with the timescales set out in its terms and conditions. Clause 10 of Section A covers “Your Instructions”. I don’t find there’s anything in this section to suggest Barclays wouldn’t meet its usual timescales when it received Mr and Mrs P’s instructions. It hadn’t made Mr and Mrs P aware of any limitations (10.1), and it hadn’t told them about any Cut-Off time (10.2) and there isn’t anything to suggest that Barclays needed to check that the instruction was clear and genuine (10.3 and 10.4). And 10.6 says:

*“Unless we agree otherwise, Instructions are effective when we receive them. We will not generally acknowledge receipt of Instructions other than by acting on them.”*

Barclays said that it works to a five working day timescale for acting on dealing instructions for deceased customers. And that it would have told Mr and Mrs P about this timescale if they’d asked. It explained that instructions are received by its bereavement team who then have various tasks to complete before the instructions can be passed to its dealers. It said it wasn’t reasonable for Mr and Mrs P to assume their instructions would be picked up immediately when Barclays was a large organisation dealing with multiple customers.

I don’t agree. Barclays terms and conditions say:

*“When we decide to deal on your behalf, in response to an Order to deal:  
(a) we will deal promptly in accordance with your Order and our Best Execution Policy...”  
(B Part 2 1.5)*

Mr and Mrs P gave Barclays instructions to deal on behalf of the estate. Barclays received these instructions on 23 October 2020, and it looks like they were received at 2.30pm. Barclays already had the Grant of Probate and had verified Mr and Mrs P’s identity. There was nothing to suggest to Mr and Mrs P that there should have been any undue delay from when the instructions were received to Barclays deciding to deal. I think it’s reasonable for Mr and Mrs P, in the particular circumstances here, to expect their sale instructions to have been carried out by the close of business on 23 October.

And I explained what I thought Barclays needed to do to put things right. I said:

To put things right, I am minded to order Barclays to calculate how much the estate would have received had the shares been sold by the close of business on 23 October 2020. It should pay the difference to the executors’ account and provide them with details of its calculation.

If Barclays had sold the shares on 23 October 2020, the proceeds would most likely have been paid to the executors’ account within the 10-day timescale it told us applied here. It should pay interest at 8% per annum simple (less tax if properly deductible) on the amount it pays, from the start of that 10-day timescale to the date of settlement.

Barclays offered to pay Mr and Mrs P £150 for the distress and inconvenience they'd been caused. Whilst I accept Mr and Mrs P have been put to some inconvenience because of Barclays' mistake, I've not seen evidence to show that the mistake was particularly upsetting for them. In the circumstances, I think £150 remains a fair and reasonable amount of compensation.

I invited both parties to provide further information and evidence in response to my provisional decision.

Mr and Mrs P didn't have anything further to add.

Barclays replied in some detail to say, in summary, that:

- Clause A.9.1 means the portfolio owned by the late Mr G continues to be bound by the terms. But the terms don't apply to the executors because they haven't signed up to them. The executors are merely representatives for the late Mr G.
- Clause A10.4 explains that Barclays won't act on an instruction until certain checks have taken place. Barclays listed what checks it had to carry out and why it wasn't feasible to carry out the sales the day after the instruction was received. It said there were 20 lines of stock, each of which had to be checked to make sure they were tradable. It said the Financial Conduct Authority's rules allow it up to 10 working days to carry out an instruction and process payment.
- The executors for Mr G deceased failed to give instructions for two years after supplying the grant of probate. This meant its staff weren't familiar with the case and they had to make sure the information it had was up to date and correct.
- The bank's service level agreements aren't published because they are subject to change.
- In October 2020, the bank's processing times were impacted by the pandemic and its staff working remotely.

### **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.

First, I'm aware I've summarised Barclays' response to my provisional decision in far less detail than the bank and in my own words. I'm not going to respond to every single point it's raised. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Having carefully considered everything Barclays has said, I'm not persuaded to depart from my earlier conclusions for the following reasons:

Although Barclays has quoted some of its terms, it says they don't apply to the executors. But its terms do apply to the estate itself, so it's right that they are considered in deciding what the fair outcome is here.

I accept that Barclays requires written dealing instructions from the executors. But I'm not persuaded that it should have taken five working days to carry out the required checking here, particularly as the checks required on receipt of the Grant of Probate had already been completed.

There was no obligation on the executors to complete the EOW earlier than they did and there are many reasons why executors may not be able to provide instructions within a few days, weeks, or months of obtaining probate. And, contrary to Barclays' suggestion, its staff did seem to be aware of the position here as they'd spoken to Mr P in August 2020 to ask when they could expect to receive the EOW.

Barclays said it had to check each line of stock for corporate actions or other outstanding issues, but I don't find this is any different to any other sale instruction it receives. Barclays said not all of Mr G deceased's holdings were tradable, but this isn't reflected in the information it's provided to us, so I'm not sure this is relevant here.

Barclays has made reference to FCA's CASS rules. But this complaint is not about when the executors were paid the proceeds of the sales, but when the sales were carried out.

I accept Barclays will have various service level agreements for various processes. But there was nothing to suggest to the executors of Mr G deceased's estate that their instructions to sell his portfolio of shares would not be carried out in line with the published terms and conditions. Particularly as Barclays had been in touch to say that they needed the EOW, which suggested it was ready and waiting to act on the executors' instructions. Mr and Mrs P reasonably expected the sales would be carried out on 23 October 2020. And it shouldn't have made a difference to them that Barclays' working arrangements had been affected by the pandemic.

Overall, I'm not persuaded that there was anything that should have prevented Barclays from completing the sales on that date. I think it should pay compensation as I set out in my provisional decision.

### **My final decision**

My final decision is that I uphold this complaint. Barclays Bank UK PLC should:

1. Calculate how much the estate would have received had the shares been sold by the close of business on 23 October 2020 and pay the difference to the executors' account.
2. Provide the executors with details of its calculation.
3. Pay interest at 8% per annum simple (less tax if properly deductible) on the amount it pays, from the start of the payment 10-day timescale to the date of settlement. \*
4. Pay Mr and Mrs P £150 for the distress and inconvenience they'd been caused.

\* HM Revenue & Customs requires Barclays Bank UK PLC to take off tax from this interest. Barclays Bank UK PLC must give the executors a certificate showing how much tax it's taken off if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr G to accept or reject my decision before 24 February 2022.

Elizabeth Dawes  
**Ombudsman**