

The complaint

Mr G complains about the delayed transfer of his cash holdings from a third-party business (referred to as “the transferor”) to Barclays Bank UK PLC, referred to as “Barclays” or “the transferee”.

What happened

In late October 2022, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

“On the face of the evidence, and on balance, despite what Barclays says, I don’t think it behaved reasonably in respect of the cash transfer. Unlike the investigator’s recommendation, on balance, I think it should pay Mr G £350 compensation for the distress and inconvenience caused by the delays.

Whilst I don’t think Mr G intended to purchase shares by a specific date, based on his actions I think he probably intended to purchase AFC Energy PLC shares upon completion of the transfer.

But for the delays, on balance I think it’s more likely than not the transfer would’ve completed by 12 August 2020. Therefore, by way of redress I think Barclays should do the following:

- *Compare the AFC Energy PLC shares Mr G purchased on 3 February 2021, with what he could’ve purchased on 15 August 2020 using the same cash. If there’s a negative difference pay the loss of shares into Mr G’s ISA.*
- *Work out and pay any lost interest from the date of purchase to the date of settlement.*

Before I explain why this is the case, I think it’s important for me to note I very much recognise Mr G’s strength of feeling about this matter. He’s provided detailed submissions to support the complaint, which I’ve read and considered carefully. However, I hope that he won’t take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn’t to address every single point raised. My role is to consider the evidence presented by Mr G, and Barclays, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what’s fair and reasonable, I must consider the relevant law, regulation and best industry practice. But it’s for me to decide, based on the available information I’ve been given, what’s more likely than not to have happened.

Whilst delays can occur – where one or both parties are at fault – sometimes delays can also occur where neither party is at fault, and either scenario can have an impact on redress, depending on the individual facts of the case. In this case, and on balance, I think Barclays is to blame for the delay and poor service in respect of Mr G’s cash transfer request. That’s why I’ve chosen the date of August 2020 which I will explain later.

I make clear that in this decision I'm only considering the actions of Barclays, and not the transferor, despite the obvious connection to this complaint. In other words, a complaint against Barclays doesn't allow me to decide about the transferor's actions, which I understand has already been dealt with separately, but not upheld.

Nevertheless, I don't think Barclays managed Mr G's expectations as well as it could've or provided the level of service that he could expect from it, including accurate and up to date information about what was going on.

There's no dispute that on 14 May 2020, Barclays initially sent an 'unsigned' transfer request form to the transferor, received on or about 26 May 2020 – which in my opinion, and on balance, is the root cause of this complaint. I note Barclays did so on the basis that the transferor wasn't one of the businesses that had opted out of the 'contingency process', and it was dealing with the transferor in respect of two other cash transfers in which there were no issues.

In my opinion Barclays made a number of assumptions regarding Mr G's request, based on which it, of its own volition, it erroneously concluded that a signed transfer request form wasn't needed in this instance. As the transferee, I think Barclays ought reasonably to have made clear, at the outset, what was required in order to successfully initiate the transfer process. Regardless of what may or may not have happened previously, I note at no point did the transferor say that it wouldn't require a signed transfer request form in this case.

In my opinion what Barclays says explains its actions but doesn't justify it. I note in this instance the transferor simply couldn't act without the relevant signed transfer request form – which it only received in January 2021 – so was unable to progress matters in its absence. As I mentioned above, regardless of what the transferor may or may not have done in other instances, it needed a signed form in this instance.

The above notwithstanding, I don't think it should've taken Barclays six months, and an intervention from Mr G, to decipher that the transfer request wasn't going to plan – especially if the request wasn't (apparently) going as smoothly as its two other requests with the transferor. I'm mindful that Barclays wrote to the transferor between May 2020 and November 2020 and received up to nine holding letters but matters still failed to progress. In my opinion, Barclays – as the transferee and initiator - didn't act reasonably in the circumstances.

I'm conscious of what Barclays says about why it didn't telephone the transferor, but in the circumstances, and on balance, I think it ought reasonably to have telephoned the transferor and a lot sooner. Given the sorts of measures businesses had in place during the pandemic and homeworking, I don't think working away from the office, during this period, prevented it from calling another business to clarify matters that were clearly causing a delay. It seems to me this inaction aggravated the situation.

The fact that the Barclays' transfer team had apparently successfully corresponded with the transferor on other transfers, is all the more reason why Barclays ought reasonably to have called up the transferor. In my opinion, and on balance, it doesn't justify why in the face of numerous holding letters, it continued to simply await the transfer for a period of six months. Whilst I appreciate what Barclays says, I think every transfer request ought to be dealt with on an individual basis. I don't think that's unreasonable.

Whilst I note what Barclays says about the transferor's actions, I'm only considering the actions of Barclays in this case. I think on balance it ought reasonably to have confirmed whether or not the transferor was able and willing to accept an unsigned transfer request in

this instance. Rather than continue to chase the transferor in a way that was evidently getting nowhere.

I note the transferor wrote back to Barclays, several times – to an address on the continent that was displayed on correspondence – in response to Barclays. Despite what Barclays says, its email/document looked as though a corresponding business should only write to its UK address if it was in relation to an in-specie transfer. I'm aware that the example referred to by Barclays said: "Our in-specie details are:" and then provided the address for Smart Investor in the UK. In my opinion it probably wasn't clear that the same address should also be used for cash transfer correspondence.

The above notwithstanding, I note that on 28 May 2020 after contacting Barclays, Mr G was told that it would send out a transfer request form for him to sign. Despite what Barclays says, it seems that's what was ultimately required, and I'm conscious that Barclays (arguably) had the necessary document in its possession but didn't and/or couldn't act upon it. Mr G did what was required of him, but through no fault of his own, his instructions weren't actioned.

I note Mr G again contacted Barclays on 30 November 2020 but was told that it was still chasing the transferor – I think this was likely to have caused some significant distress and inconvenience. It was only after that he contacted the transferor himself, and led the way, and matters were eventually sorted. I'm aware that in the process Mr G had to chase and make numerous calls to both businesses.

I note Barclays opted for the Altus method, but on 17 December 2020, it was notified by Mr G that the transferor was only accepting paper-based requests. In due course, on 22 December 2020 it was established, unsurprisingly, that a new transfer request would be required.

On balance, I think this information should've and could've been clarified by Barclays a lot sooner. On balance, I'm satisfied that in this instance Barclays is to blame for things not moving along more efficiently, and not keeping Mr G updated with what was happening and managing his expectations.

For clarity, I don't accept that Barclays is only to blame for its actions after 22 December 2020.

Regardless of what the transferor may or may not have done in due course, on balance I'm satisfied that the issue was caused by Barclays failing to provide the correct instructions.

I note that the investigator, despite his findings in this instance, hasn't commented upon when he thinks this request would've completed but for Barclays' error. Perhaps he deliberately did so on the basis that Mr G didn't chase Barclays' request for six months and therefore he failed to mitigate his own position. But if that's the case, it could also be argued (as Barclays has argued) that the £500 compensation for distress and inconvenience is too high in the circumstances – which I'm minded to agree with in any event.

In my opinion, the transfer request – between transferee and transferor – isn't wholly contingent upon the investor chasing the businesses. In other words, Mr G not chasing Barclays doesn't of itself absolve Barclays of its responsibility to successfully complete the transfer. It may however have an impact on any redress if Mr G were to claim that he wanted to purchase shares on a specific date at a specific price, but he hasn't.

In this instance Mr G not chasing the transfer suggests that he didn't have a specific date by which he wanted to purchase new shares. But based on his actions, on balance, I'm

satisfied that Mr G was content to purchase shares upon the successful transfer of his cash. Based on Barclays' last response and calculation, I note it also accepts this general premise.

In the circumstances I accept that it's very difficult to know exactly when the cash transfer would've/should've completed by. Even if the correct documentation had been provided by Barclays at the outset, I can't safely say the transfer would've/should've completed within 30 days or by end of July 2020 in this instance. I appreciate what Mr G says about 'up to' 30 calendar days to transfer. But I can't blame Barclays for not being able to complete the transfer according to what Mr G says – more recently by two weeks. I'm conscious that the transfer process is a dynamic process, and that not all delays can be controlled and/or are blameworthy.

On the face of the evidence, and on balance, I think it's more likely (than not) the transfer probably would've completed within 3 months of Mr G instructing Barclays. So, roughly by 12 August 2020 Mr G would've received his cash thereafter allowing him to buy the relevant shares two days later, on 15 August 2020.

So, by way of redress, provisionally, I think Barclays should do the following:

- *Compare the AFC Energy PLC shares Mr G purchased on 3 February 2021, with what he could've purchased on 15 August 2020 using the same cash. If there's a negative difference pay the lost shares into Mr G's ISA.*
- *Work out and pay any lost interest from the date of purchase to the date of settlement.*
- *Pay Mr G £350 compensation for the distress and inconvenience caused by the delays."*

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision.

Mr B responded and accepted my provisional decision. In summary, he said:

- He's grateful and very much appreciates the considerable thought and time taken to deal with this complaint and for recognising his strength of feeling and financial loss suffered.
- He doesn't have any further information to provide, but has the following two observations to make:
 - The date of 15 August 2020 is a Saturday, therefore it needs to be clear what the exact share price was at the time. He's expecting around 127,000 AFC Energy shares to be deposited to his account.
 - Regarding the interest, and noting that the Bank of England base rate was around 0.1% - does the late payment of Commercial Debt Regulations 2013, apply? He's unsure which rate I'm thinking of applying and for what period it would apply from.

Barclays also responded and made the following key observations:

- Given the high value of the redress it needed to discuss this matter with senior stakeholders before passing the decision on/processing the payment.
- Although it understands it would've taken three months, it wants a more detailed explanation of my rationale for choosing the date of 12 August 2022 as the date of completion. In other words, it needs more detail as to why this date was used as part of my provisional decision.

Our investigator explained to Mr G that the answers to his queries can be found on our website.

I provided an explanation to Barclays about why I chose 12 August 2020 as the date of completion, effectively reiterating my decision. In summary I said:

- Mr G wanted to transfer his cash so that he could buy specific shares – this is evidenced by what he did, days after the transfer, albeit nine months later.
- In the circumstances, and on balance, I'm satisfied that's what he would've done had the transfer happened sooner.
- I've not based my decision on what the shares prices would've been. It's not material to my decision to uphold this complaint. I made clear in my provisional decision that Mr G may or not be entitled to losses.
- I appreciate Mr G didn't chase the business for some months, but this didn't excuse the business from doing what it should've done. He also didn't have a date by which he wanted to purchase shares, just that he wanted to buy shares on completion.
- The alternative, much like the investigator's view, is to hold the business responsible for the significant delay, but not accept that Mr G would've done what he said he would do and subsequently did do, shortly after the transfer, but pay substantial compensation for distress and inconvenience. That's not a decision I was able to safely come to.
- I note that Barclays, unlike the investigator's view, also accepts that Mr G would've purchased shares upon completion of the transfer, and that's why it did the 'calculation' it did and concluded that there was no loss.
- Barclays only accepts that it's responsible for the poor service from December 2020 – in the main because Mr G didn't chase the business for six months – but I don't agree with that. I can't dismiss the fact that Barclays made the mistake in the first instance, and in due course (from June 2020) had in its possession the relevant signed form.
- Like Barclays, I'm aware government guidance is 30 calendar days and Mr G thinks it should've been even sooner, but I thought it ought reasonably to have happened by 12 August 2020 which is roughly three months – taking into account the circumstances at the time – from when the instructions were first given.
- I acknowledge that it's very difficult to know for sure 'exactly' when the cash transfer would've/should've completed by – I don't think it's an exact science – and I don't claim to have the 'perfect' answer. This is why I issued a provisional decision inviting Mr G and Barclays to provide any further submissions they wished me to consider including regarding the date I recommended.
- Barclays's response suggests that it accepts my provisional decision to uphold this complaint and for the reason set out in my provisional decision, and is also open to my proposed redress methodology which I appreciate, however it would like further explanation as to my rationale for choosing 12 August 2020 as the date of completion. However, despite wanting further explanation regarding the August date, Barclays hasn't made any points about why this date isn't fair.
- I think it's more likely (than not) the transfer probably would've/should've completed within three months of Mr G instructing Barclays. So, roughly by 12 August 2020 Mr G would've received his cash allowing him thereafter to buy the relevant shares two days later on 15 August 2020.
- The date of 12 August 2020 should be considered in light of my findings overall, and not in isolation, which could give the incorrect impression that I've selected this date without any consideration, which I have not.
- Notwithstanding that I have a fairly wide date range, I believe the date of 12 August 2020 is an informed and considered date by which I think the transfer probably ought reasonably to have completed by. It's also three months from the date of the request

and takes into account the unique circumstances at the time – namely the Covid-19 pandemic and government lockdown – that would've inevitably impact on the transfer not happening sooner.

- I'm conscious that the transfer process is a dynamic process, and that not all delays can be controlled and/or are blameworthy. I believe the date of 12 August 2020 broadly takes all this into account.

Barclays responded and said that it had reviewed the information provided and liaised with its business teams. Having done so, it suggested the date of 14 December 2020 as the date Mr G would've purchased the shares in question.

In other words, it said that Mr G originally disagreed with the investigator's (non-uphold) view and suggested that he should've received the money in his Barclays account by Friday 11 December 2020, and that he would've placed the order to purchase AFC Energy shares on Monday 14 December 2020.

Mr G didn't accept the business' response. He hopes that I will consider Barclays' failing to respond with additional points within the allocated deadline.

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.

Having done so, notwithstanding the latest submissions from Mr G and Barclays, my decision to uphold this complaint remains the same, principally for the same reasons as set out in my provisional decision.

In other words, despite being given time to respond to my provisional decision, I'm satisfied that no new material points have been made that persuade me I should change my decision.

In this instance, and on balance, I'm still satisfied that the key points remain the same, and have been considered by me, in my provisional decision (and further response to Barclays) so I don't think I need to repeat myself.

On the face of the evidence, and on balance, despite what the parties say, for the reasons set out above I still think the complaint should be upheld and Barclays should pay Mr G the following redress:

- Compare the AFC Energy PLC shares Mr G purchased on 3 February 2021, with what he could've purchased on 15 August 2020 using the same cash. If there's a negative difference pay the lost shares into Mr G's ISA.
- Work out and pay any lost interest from the date of purchase to the date of settlement.
- Pay Mr G £350 compensation for the distress and inconvenience caused by the delays.

I appreciate what Barclays says about Mr G's prior comments regarding the December 2020 date. But that was in relation him (in my opinion prematurely and erroneously) accepting that Barclays wasn't at fault for certain delays and that it was only responsible from the point that he re-chased the transfer, which I don't believe is correct for the reasons that I've considered and explained in my provisional decision. With the greatest respect, I don't think Mr G would've known any better about what Barclays was or wasn't doing during this period.

I also maintain, for the reasons set out in my provisional decision, that Mr G didn't have a specific date by which he wanted to trade but was evidently keen to do so as soon as the transfer was complete.

In response to Mr G's questions, I don't know exactly how many additional shares this will mean for him or what the eventual value will be, this is for Barclays to work out. The interest rate is 8% simple, from the date of payment to the date of settlement.

As I understand, the Late Payment of Commercial Debts Regulations 2002, as amended by the Late Payment of Commercial Debts Regulations 2013, generally allow a creditor to charge 'statutory late payment compensation' on top of any debt claim. This is provided that both creditor and debtor are acting in the course of a business which isn't the case here, so it's unlikely to apply.

In this instance, and on balance, but for Mr G chasing Barclays in November 2020 I think the December 2020 date isn't material in the circumstances, given that the business at the outset, failed to do what it was supposed to do.

Putting things right

Barclays Bank UK PLC should pay Mr G the following redress:

- Compare the AFC Energy PLC shares Mr G purchased on 3 February 2021, with what he could've purchased on 15 August 2020 using the same cash. If there's a negative difference pay the lost shares into Mr G's ISA.
- Work out and pay any lost interest from the date of purchase to the date of settlement.
- Pay Mr G £350 compensation for the distress and inconvenience caused by the delays.

My final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint.

Barclays Bank UK PLC should work out and pay Mr G the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 February 2023.

Dara Islam
Ombudsman