

The complaint

Mr S has complained that Barclays Bank Plc ('Barclays') prevented him from trading in his holding of Multi Units Luxembourg Lyxor Australia (S&P/ASX 200) UCITS ETF ('Lyxor'). To put the matter right, he wants financial compensation.

What happened

In May 2020 Mr S invested £89,500 in the above Lyxor Australia fund in the GBP Sub-Fund via Barclays Smart Invest in his SIPP. At the end of 2021 he wanted to sell his holding but saw the fund was 'Delisting' and he was unable to proceed with the sale. At the time the holding was valued at around £137,400.

Mr S contacted Barclays but wasn't given any explanation or told when he would be able to access his money. He wanted to sell his holding but was stuck with no explanation or timeframe and wanted to be able to access other investment opportunities.

Mr S complained to Barclays on 14 April 2022. In its letter of 11 July 2022, it didn't uphold the complaint. It said that Lyxor had removed the investment from the London Stock Exchange on 16 December 2021 and Barclays didn't have any vehicle to be able to sell the holding. Smart Investor is an execution only broker and wouldn't advise Mr S or provide him with any personal recommendation. It had no part in the decision made by Lyxor.

Mr S wasn't happy with the outcome and brought his complaint to the Financial Ombudsman. He told us the fund price was being updated so it was trading somewhere. He had no way of getting his money back.

Our investigator thought Mr S's complaint should be upheld. He said;

- The Lyxor fund had stopped trading in GBP, but it carried on trading in USD. It was Barclays' internal processes that meant it couldn't facilitate a sale until the Lyxor fund was converted into USD. He'd seen nothing to suggest Barclays was restricted from converting the fund earlier.
- From the evidence Barclays had provided he thought it indicated that Barclays could convert the holding to USD if it was still trading on the London Stock Exchange.
- He thought Barclays should have acted in Mr S's best interests and carried out his instruction to sell the holding on 19 January 2022.
- He was satisfied that Mr S would have reinvested the sale proceeds but there wasn't anything to show what he would have reinvested into.
- To put the matter right Barclays should look at an average return of Mr S's pension at the time and assume Mr S would have reinvested the sale proceeds in the same way.

Mr S thought the matter should be put right in a different way. He said if he had been able to sell when he wanted to, he would have held onto the proceeds pending an interesting entry point into another investment. He didn't want to sell at the current price so suggested he be

paid the difference between the value of the holding on 19 January 2022 and its current price.

Our investigator explained that the redress recommended was to put Mr S back in the position he would have been in but for Barclays' mistake. And he wasn't persuaded that Mr S would have kept the sale proceeds in cash as the expected behaviour of an investor would be for them to be reinvested. And when bringing his complaint, Mr S had mentioned that he had missed out on the opportunity to invest the money elsewhere.

Barclays didn't agree with the investigator's conclusion. It said that the notifications it was given in its role as nominee didn't call for it to take any action. It was a delisting of the currency class, and the fund wasn't being liquidated so it was correct that the position was maintained. It wasn't obligated to convert the fund and there was no requirement or obligation noted by Lyxor in its communications for it to do so.

The investigator reiterated his view that it wasn't that Barclays should have converted the asset when the notice was issued by Lyxor, but that it had an obligation to act in the best interests of Mr S and should have looked to move the asset when it was told by him that he wanted to sell the holding on 19 January 2022. He was satisfied that Barclays was able to do this.

As the complaint couldn't be resolved, it has been passed to me for a decision.

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 told us that the UCITS ETF – the GBP fund conversion to the CLS B \$ - the USD fund was completed on 21 June 2022 for all of its customers.

From what Barclays has told us, the GBP fund would be considered a fungible asset – which means it is interchangeable with another asset of the same type. And my understanding is that this would apply to the USD 'class' of the same fund in this case.

The investigator had concluded Barclays was responsible for converting the fund and should have done so when Mr S instructed that it be sold.

I asked Barclays for more information about this as this as I wanted to consider whether the action taken was fair in the particular circumstances of this complaint. I say this because the corporate action itself is driven by the fund manager and the instruction to Barclays about what action it should take was provided via the industry settlement agency, CREST, and I'd seen a copy of that CREST notification.

In its response, Barclays made clear that at no point was it given instruction to move the GBP asset to the USD version of the asset. And from the copy of corporate action instruction it provided that seems to be the case. It told us the conversion to the USD version only came about as a result of customer feedback and Barclays approaching its custodian to consider the different class of asset.

Barclays said that while this wasn't something it would usually do, it was able to do so on this occasion and it was able to change the class of the Lyxor shareholding held by its customers. But it did stress this was outside of its normal procedures and not something that it was under any obligation to do.

Barclays told us it is reliant upon the information provided by CREST about corporate actions and was told by Lyxor the class held by its customer was to be delisted. It wasn't asked to switch into a different share class. It is not obliged under its own terms and conditions or any regulatory requirement to seek an alternative option for its customers.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

I've reviewed Barclays terms and condition and I need to consider the fairness of the outcome they would create. The 'Barclays Smart Investor Terms' say;

'3. Corporate actions and voting rights

3.1 Unless we agree otherwise with you, where we hold Assets which give you rights in relation to a company, including if we become aware of any proposed class action or group litigation:

- (i) we will not be responsible for taking any action in relation to these matters, except to give effect to Default Action if you do not give us an Instruction;
- (ii) to the extent permitted by Regulatory Requirements we will not be obliged to notify you or obtain your Instructions in relation to these matters;...

So, on the face of it, it seems clear that Barclays did carry out what was required of it in that it noted the Lyxor share classes held had been delisted and it told us it wasn't given an indication of any alternative action that it could take.

And Barclays has provided us with a copy of the notification of 16 December 2021 which details the delisting and includes nine of Lyxor's share classes. Mr S's Lyxor ETF was one of the share classes that was being removed from the London Stock Exchange. At the bottom on the notice and highlighted in red it says;

'Please note the share classes will not be liquidated. Listings on other trading venues will not be affected.' [original emphasis.]

But I'm not sure that the underlined comment would have drawn Barclays' attention to the fact that the share classes being referred to in the notice could be converted to another class. It only refers to 'listings on other trading venues' which would be other than the London Stock Exchange which is where Barclays traded. But equally, I consider it was sufficient to prompt an inquiry as to whether a conversion would be made. And as the operator of a share trading platform, Barclays should have been familiar with what might be possible in these circumstances.

However, as well as the notification Barclays provided to us, I've also seen the 'Notice to the shareholders of the Multi Units Luxembourg – Delisting of 7 sub-funds from London Stock Exchange'. It confirms the delisting of the sub-funds, which included Mr S's GBP holding. The Notice continues;

'Following the above-mentioned delistings, the Share Classes will be only removed from London Stock Exchange. Indeed, the listing of the shares within the Share Classes from the other stock exchange listed on the table below will not be affected.'

The Investors protection is not at risk. If they want to sell their positions, it can be made on the following other stock exchange where the Share Classes are listed:’ [my emphasis].

It then goes on to include Mr S’s share class asset which has the same ISIN (the stock’s unique International Securities Identification Number) but in a USD currency and tradeable on the London Stock Exchange. So, I’m satisfied those shareholders at the time would have seen that an alternative was available. I asked Barclays for confirmation as to whether it had seen the notice as it begins with the statement ‘We count you amongst the investors of the funds in table below...’ as acting in its role as nominee I don’t think it’s unreasonable to assume that Barclays would have received the notice.

Barclays didn’t provide any further information about this but in my opinion, acting in its role as nominee, I think it’s more likely Barclays would have received full details from the investee company itself, so I think this information was available to Barclays. And because of that I don’t think it’s unreasonable to conclude that in its role as custodian for its customers’ investments, it should have read those notices and other information that was publicly available. And if it had taken account of the information given in those notices, I think it more than likely it would have concluded that to act in the best interests of its customers it should convert the non-tradeable GBP Lyxor fund to the USD fund which was tradeable as it later did.

In response to my other questions Barclays told us that as part of its operating model it takes a regular review of assets held and it was at that time it was determined it could move the GBP denominated class into the USD denominated class and this was completed in June 2022.

But it also told us that the decision to convert the Lyxor fund to USD was because of customer feedback which suggests to me that other customers had also raised the issue with Barclays.

I’ve borne in mind that Mr S’s assets with Barclays were held on a pooled basis with all of its other customers’ assets. But it had to take into consideration its customers’ best interest in its role as nominee.

Barclays had told us that its customers ‘cannot expect us to find an alternative solution on every occasion’ [of a similar corporate event] but the above notices suggest that Barclays wouldn’t need to ‘find an alternative’ as one was already available at the time.

Barclays said any decision about action to be taken on those pooled assets would need to be carefully considered. And that is perfectly understandable. While a USD denominated asset might not have suited all of its customer base, I don’t think it would be unreasonable to assume that a customer priority would be for those assets to be freely tradeable rather than delisted but not liquidated, and the customer not being able to take any action during that time. And the comment Barclays made – that the decision to convert the fund to USD was because of customer feedback – suggests to me that other customers had also expressed their need to trade. If Barclays’ inaction meant that its customers were left with an asset they could not trade, then that is something Barclays should have considered if it was to act in the best interests of its customers.

It’s clear that Barclays took the action to convert to the USD in June 2022 as a result of its own review and customer feedback. But I am satisfied there was sufficient information available for Barclays to have reached this conclusion at a much earlier date and at least when Mr S expressed his wish to sell the holding on 19 January 2022.

Taking all of the above into account, I think Barclays should have converted the Lyxor fund after being told about the delisting, rather than waiting for several months. This would have meant the shares were tradeable when Mr S called to say he wanted to sell his holding. Mr S has been put in a detrimental position – by not being able to trade as he wanted to – because of Barclays' inaction. And I don't think that Barclays treated Mr S fairly or reasonably by not acting sooner.

So, for the reasons given, and in the particular circumstances of this complaint, I uphold Mr S's complaint and Barclays needs to put the matter right.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr S as close as possible to the position he would probably now be in if he had been able to sell his holding on 19 January 2022.

I asked Mr S at what point he was made aware of the conversion to the USD class and that it was tradeable again. He told us that he only became aware of the conversion when he launched his complaint and there was no notification from Barclays via its platform. And even though the fund conversion took place on 21 June 2022, Mr S wasn't advised of this by Barclays in its final response to his complaint on 11 July 2022. Mr S told us that by the time he was aware it was possible for him to sell his holding, the value of his investment had fallen well below where he had planned to sell it.

When considering redress for a complaint I need to assess whether the complainant has done what they can in order to mitigate any loss. In the particular circumstances of this complaint, I don't think it would be fair to have expected Mr S to have had to sell at the point he became aware the investment was tradeable again and as a result have lost out because of Barclays' actions. So, I don't find it unreasonable that Mr S didn't sell at that point of his awareness.

In response to the investigator's assessment Mr S said that he would have retained the sale proceeds rather than reinvested them. But I note from his complaint form that Mr S told us that by not being able to sell when he wanted to, he hadn't been able to invest into other opportunities. So, I think it's more than likely that Mr S would have reinvested those sale proceeds rather than retaining them in cash.

Clearly, it's not possible to say precisely where Mr S would have invested the proceeds of the sale, but I am satisfied that what I have set out below is fair and reasonable given Mr S's circumstances.

To compensate Mr S fairly Barclays should:

- Calculate the net amount Mr S would have received, had he sold on 19 January 2022.
- Calculate compensation based on what Mr S would have got from investing these proceeds based on the average total return of his portfolio from 19 January 2022 to the date of the settlement.
- Barclays should pay into Mr S's pension plan, to increase its value by the amount of the compensation. The payment should allow for the effect of charges and any available tax relief. Barclays shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Barclays is unable to pay the compensation into Mr S's pension plan, it should pay

that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr S won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr S's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr S would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Provide the details of the calculation to Mr S in a clear, simple format.

If Barclays doesn't pay Mr S the sum above within one month of receiving from us notification of Mr S's acceptance of my decision, Barclays must also pay Mr S simple interest on the outstanding amounts at the rate of 8% per year from the date of my decision until the date those amounts are paid.

My final decision

For the reasons given, I uphold Mr S's complaint and Barclays Bank Plc should put the matter right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 November 2023.

Catherine Langley
Ombudsman