DRN-4190612

The complaint

Mr T brings a complaint on behalf of the estate of his late mother, Mrs T. He says that Barclays Bank Plc has behaved unfairly in respect of administering Mrs T's investment ISA.

What happened

Both Mr T and his brother (who hereafter I will refer to as Mr G for ease of use) are executors of the late Mrs T's estate. Mrs T sadly passed away in early 2017. At the time of her death, she held a Barclays Investment ISA, which had all of its holdings placed within a Barclays Stirling Bond.

Mr T confirmed this in writing to Barclays on 7 March 2017. He asked Barclays for a number of details relating to Mrs T's investment account to assist himself and Mr G with applying for a grant of probate.

Later that month, Barclays wrote to Mr T and Mr G (at Mr G's address). Mr T says the letter contained a number of errors and suggested the account would be closed. It then sent Mr G a further letter asking for information it needed in relation to Mrs T's death.

Mr T then contacted Barclays on 29 March 2017 in order to clarify what was needed and why it had written to Mr G. Barclays explained Mr G was named on the death certificate and it had therefore written to him. Mr T thereafter sent Barclays all of the evidence it had asked him for. He also made a number of requests to Barclays by email, including asking that it wrote to him not Mr G.

Barclays provided the probate valuation to Mr T on 4 April 2017.

In January 2018, Mr T wrote to Barclays again with probate information for Mrs T's estate and an expression of wish form as required. In the form, Mr T and Mr G explained that they chose option 1 – which was to "*retain the assets from the [Mrs T's] account in an existing Barclays Direct Investment Account*". The following month, Mr T chased Barclays using its online chat facility and via telephone as it had not received his letter.

Barclays thereafter wrote to Mr G on 1 February 2018 explaining it could not action his and Mr T's wishes with transferring the late Mrs T's investment as they required. Mr T disagreed, he explained he knew that his instruction to Barclays was correct as he asked it to transfer half of Mrs T's Barclays Stirling Bond into his non-ISA Investor Account. He had done this because in his account he held the same funds inherited from his father (because both his mother and father had the same investments). At this time, Mr T says his suspicion was raised that Mr G may have converted his half of their father's Stirling Bond into an ISA because Barclays's letter referred to his account. Much later on, in was confirmed that Mr G also held merely an investor account, not an ISA.

Mr T says that following this discovery, there was a complete breakdown in the relationship between himself and Mr G. This meant they only now communicate by email and their mother's estate remained unsettled. He feels Barclays has caused this rift between siblings.

On 10 May 2022, Mr T formally complained in writing. He offered a synopsis of the complaint history akin to the overview I have given above, concerning the issues dating back to the first contact with Barclays in 2017. In summary, he said:

- Barclays had sent him and his brother letters with no reference numbers;
- if either he or Mr G contacted Barclays, it would reply to the other executor, which has made matters incredibly convoluted;
- it also cross-corresponded with them, for example addressing a letter dated 8 February 2018 to Mr G but sending it to Mr T's address;
- the correspondence from Barclays uses misleading language – for example, the use of the word "*funds*" would not be specified as to whether this was cash funds or investment holdings;
- Barclays had put in place unnecessary bureaucracy to allow Mr T and Mr G to obtain a valuation of Mrs T's investment, by asking for probate documentation;
- however, they needed the valuation on order to gain probate;
- they felt unnecessarily burdened by Barclays asking them to provide certified documentation merely to obtain an account valuation;
- they had not encountered issues of this kind when administering Mrs T's estate with any other financial institution;
- they received mixed instructions from Barclays's Smart Investor department and its bereavement case departments – it makes Mr T and Mr G question the point of having a bereavement department;
- their probate certificate wasn't returned; or even confirmed as received – he questions where it is now;
- their certified ID documentation wasn't returned either;
- they haven't received regular itemised statements from the late Mrs T's account;
- throughout their contact with Barclays, it had frustrated them and denied them lawful possession of their late mother's investment account;
- it remains the case that neither executor has access of control of the investment account since Mrs T passed away, and they are being prevented from taking any steps with the investment, such as selling it as required.

Mr T thereafter brought the complaint to this service. He explained that in order to resolve the complaint, he required Barclays to transfer their inheritance from the late Mrs T's investment fund equally split into two investment accounts with the same fund and without necessitating them to provide additional identification as it had been previously sent anyway.

He also wanted Barclays to send a detailed statement of all transactions on the account since Mrs T had passed away, since the one it had provided was insufficient. Finally, Mr T wanted an apology letter personally signed by a Barclays director, alongside compensation for mental distress, anguish and the impact on his time caused by Barclays's errors.

Barclays told Mr T that it could understand his frustrations, and by way of an apology for service failings it was prepared to pay Mr T and Mr G £200. It otherwise said it would be able to settle the investment account for the late Mrs T once it had received updated expression of wish information.

An investigator considered the complaint, and she did not believe it should succeed. She said that it was clear how Barclays had made administrative errors and caused unreasonable delays. However, Mr T and his brother were representatives of the estate of their late mother, and she could not propose that they were paid any compensation directly due to Barclays's errors, though she noted it had since offered to pay Mr T £200.

In the interim, on 18 October 2022, Barclays contacted Mr T and explained it still hadn't

received a completed expression of wish form from him and Mr G. It said it was prepared to accept a free format letter with the requisite information of Mr T and Mr G found the form too restrictive. Mr T and Mr G therefore returned another form on 24 October 2022.

In respect of the investigator's view, Mr T said he and Mr G disagreed. They provided a jointly issued statement with detailed reasoning. I have read that letter in full, though I shan't be repeating it verbatim here. Part of the letter corrected all of the parts of the investigator's view that Mr T and Mr G noted as incorrect, with reasons. They also provided a precis as to why they didn't accept the outcome. In summary, they said:

- their primary relationship with the late Mrs T is that they are her next of kin;
- they fail to understand that in having been given roles as executors of her estate, this somehow overrides that position;
- they are eligible complainants in their own right because they both also have Smart Investor accounts;
- they also consider that in acting on behalf of the estate of Mrs T, they are eligible complainants on that basis too;
- their primary aim has always been to carry out Mrs T's wishes and this has been continually blocked by Barclays;
- the Financial Ombudsman Service seems to make no distinction between executors, third parties or solicitors and family members, which they feel is morally wrong;
- the proposed opinion of the investigator permits financial institutions to procrastinate for many years without recourse;
- further, compensation is denied merely because the original asset owner has passed away – which cannot be fair;
- they remain of the view that they ought to be fully compensated for all of their losses;
- they want the complaint to be referred to an ombudsman.

Mr T then put further questions to our investigator about the operation of this service in respect of our rules and what constituted an eligible complainant.

In late 2022, Mr T supplied his own valuation calculations of the late Mrs T's investment account from 2018 to 2022, noting he believed the bond had suffered a loss in fund value amounting to £1437.77. He therefore felt this loss ought to be corrected before the transfer of the late Mrs T's investment, as well as returning all fees it has charged since 2018.

In early 2023, Mr T confirmed that Mr G had contacted Barclays on 19 April 2022 as the matter had not been resolved. He said Barclays told Mr G that it couldn't see why their original letter of instruction in January 2018 could not have been accepted as an expression of wish. They both therefore took the view that the action they had to take in 2022 was a duplication and in the time this matter was still rolling on, the investment bond was decreasing in value.

In May 2023, a different investigator supplied a view on the complaint, which he believed should succeed. He said that the expression of wish information sent by Mr G and Mr T in 2018 ought to have been accepted by Barclays at that time. In his view, the late Mrs T's investment holdings should have been transferred in specie to Mr T and Mr G equally, as directed. He didn't think any financial loss had been suffered on the transfer, as the investment hadn't been out of the market at any time. He did note that the ISA had a cash balance which should have interest added at 8% to account for the fact Mr T and Mr G had been deprived from utilising that capital.

Barclays accepted the second view and agreed to uphold the complaint.

However, Mr T said he and Mr G only accepted the outcome in part. They said that whilst they agreed the complaint should succeed, it wasn't correct to disregard their loss on the investment since 2018 – as Barclays had effectively locked them out of it. Their view was that Barclays should have distributed the investment as originally instructed. In not transferring upon their instruction, Barclays should take responsibility for the loss.

Whilst Mr T and Mr G accepted that the loss wasn't crystallised, their intention had always been to transfer the two investments (once split and received in their own accounts) away from Barclays and sell them. They did not accept that there was a lack of evidence of their intent, especially when they'd been blocked from selling them at all.

Mr T and Mr G said they also questioned if the correct outcome ought to account for charges to Mrs T's investment that had taken place from 2018 to date. They asked for a complete breakdown of the application of the simple interest, along with a confirmation that the £200 ex-gratia payment would still be made to them for the upset they'd been caused.

Our investigator agreed to revisit his approach for the basis of recommending the complaint being upheld. He sought evidence from Barclays and it confirmed no fees had been charged on the investment. He noted Mr T and Mr G hadn't told Barclays they would intend to sell the investment so he remained of the view that there was no financial loss in that part of the calculation but interest remained due on the cash part of the late Mrs T's investment ISA.

Finally, our investigator directed Mr T to our website, in respect of how this service makes directions for financial loss calculations including 8% simple interest. He did not consider anything further was required.

Mr T said he and Mr G still wanted the complaint to be looked at by an ombudsman. When he did so, Mr T said he and Mr G had some final submissions to make. These were, in summary:

- even if there were no service fees, the investment would have had a product fee of approximately £55 per year;
- they remain of the view that they have been denied the right to take action with the investment whilst the asset value has fallen in the intervening years;
- in terms of the intention of the executors, they supplied the relevant directions from Mrs T's Will in respect of the need to sell assets;
- to carry out the instructions set out in Mrs T's Will is legally binding on them;
- Mr G confirmed his and Mr T's intention to have transferred then sold the investment in his telephone call of April 2022;
- Barclays has never made the £200 ex-gratia payment.

Barclays had no further comments to make.

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.

I'd like to thank the parties for their considerable patience whilst this matter has been pursued at this service and awaited a review by an ombudsman. Having looked at everything before me, I also believe this complaint should be upheld.

I've included a detailed chronology of the complaint in the 'what happened' section of this decision. I have done so to assist to recognise the depth of Mr T and Mr G's ongoing

concerns, as I realise this has been an emotive matter for them. However, I won't be addressing each individual submission Mr T has made in turn. We are not a court; though there are rules I may rely on in respect of complaint handling procedures, I am not required to make specific determinations on each submission put forward by the parties.

And in any event, during the course of this complaint proceeding at this service, Barclays has now agreed (following the assessment from our second investigator) that the complaint ought to be upheld. I am pleased to note that it accepts that, on receipt of a clear instruction as to the expression of wishes, it ought to have settled the investment account in January 2018.

For that reason, I don't believe that it is necessary for me to make specific findings about the merits of this complaint; both parties agree it ought to succeed. For the avoidance of doubt, I also agree that the complaint should succeed. By January 2018, Mr T and Mr G had supplied both a letter of intent and an expression of wish form to Barclays – it therefore had clear instructions at that time as to how to proceed with administering the late Mrs T's investment account but mistakenly did not do so at that time.

The delay thereafter was not directly the fault of Barclays, but Mr T and Mr G have explained in mitigation that the impact of Barclays's administrative failings caused a rift between them whereby they could not agree to revisit the matter until 2022.

Barclays has now rightly agreed that it is willing to resolve the matter in the fairest way possible for the estate. Therefore, the only remaining issue for me to resolve is the direction as to redress.

Barclays has told this service that there would be no basis for an established financial loss (given Mr T and Mr G intended to transfer the investment in specie split equally between them) unless they were planning to sell the fund. I recognise that; however, Mr T and Mr G have shown us the relevant extract of Mrs T's Will which required them to sell the assets (and split them if necessary with their father, but he had sadly predeceased Mrs T).

I therefore agree with Mr T that there would be an attributable financial loss if the investment was now split and transferred in specie *unless* the transfer uses the value of the investment as at the assumed transfer date in 2018. I will address this below within my redress for putting matters right.

Otherwise, Barclays has correctly identified and agreed that the cash portion of the investment should be calculated within redress including interest.

In respect of investment fees, Barclays has sent us a screenshot of its system records which confirm that no fees whatsoever have been charged to the account since Mrs T passed away. I therefore do not believe any fees should be accounted for within the redress in this decision.

Finally, Mr T and Mr G have asked that I ensure the £200 offer made to them for the upset they have been caused is included within any direction by this service. However, I cannot do so. Even if I were to agree that an additional payment of compensation was appropriate, I couldn't propose any payment of the upset caused to Mr T or Mr G directly. That is not to say I don't recognise how distressing this matter has been for them, but I do not have a free hand to make an award of that type directly to Mr T or his brother. I can see that this seems confusing to them, but our rules do not allow it. I'll explain why that is.

We are bound by the Dispute Resolution ('*DISP*') rules which apply to this service, as set out in the Financial Conduct Authority Handbook. An ombudsman is not able to avoid the rules

or apply discretion to certain rules. Complaints that are made to this service must be pursued by an '*eligible complainant*' (for example, a consumer or a micro-enterprise) and those complaints must be about acts or omissions by businesses when carrying out certain '*regulated activities*' – in this case, administration of the investment held by the late Mrs T.

A specific rule (DISP rule 2.7.2 R) allows a third party to bring a complaint on behalf of an eligible complainant (such as an investor) to this service, for example, from an appointed representative or an executor of an estate for an eligible complainant that has since passed away. That applies here as Mr T and Mr G are executors of Mr T's estate. But that doesn't mean that they, as representatives, are eligible complainants in their own right.

Though this service can make further awards for the distress a business has caused in relation to a complaint (DISP 3.7.2 R), and whilst a complaint can be made to this service by a representative on behalf of the eligible complainant (or the estate of a complainant that has passed away), that does not confer the right to receive a money award to the representative.

Consequently, I cannot make an award for distress or trouble caused to Mr T or Mr G based on their unhappiness caused by their dealings with Barclays as representatives for the late Mrs T. And though Mr T says otherwise, I cannot consider directing a payment for compensation to them because they are both Barclays's customers in their own right; their complaint is not about their investment holdings with Barclays – it is about the account held by the late Mrs T. I know that does not change how upset they may feel, but our rules do not permit me to award compensation to a representative in the circumstances.

That being said, Barclays has offered a payment to Mr T and Mr G on an ex-gratia basis, and it may still be willing to honour that offer. Mr T and Mr G may therefore want to contact Barclays directly about that if they wish to accept the £200 now. As stated above, I cannot otherwise award it.

Putting things right

Barclays agrees it should have accepted the relevant expression of wish form and accompanying letter sent by Mr T and Mr G in January 2018 as satisfactory evidence as to how to administer the investment ISA account for the late Mrs T. I believe it should have done so by 1 February 2008, as this was the date it wrote to Mr T and Mr G (incorrectly at the time) about the request.

Barclays ought therefore to ascertain the value of the late Mrs T's investment as at 1 February 2008 and arrange to transfer that to Mr T and Mr G's existing direct investment accounts in a 50/50 split as directed in their letter of 8 January 2018. If (because the current value of the investment is lower at the settlement date) the complete asset transfer value cannot be completed then Barclays should transfer the value of the assets as at the date of settlement and provide the equivalent cash value to bring the holding up to the correct valuation from 1 February 2008 without any fees being applied.

For the cash holding of the investment, Barclays must also transfer this to Mr T and Mr G's existing investment accounts in the same 50/50 split as directed in the letter of 8 January 2018.

To the cash portion of the late Mrs T's investment being transferred to Mr T and Mr G, Barclays must add 8% simple interest from 1 February 2018 to the date of settlement for each of them.

If Barclays considers it is legally obliged to deduct income tax from the interest paid, it should issue a tax deduction certificate with the payment. Mr T and Mr G may be able to

reclaim the tax paid from HM Revenue and Customs, if applicable.

My final decision

I uphold this complaint. Barclays Bank Plc must pay Mr T and Mr G on behalf of the estate of Mrs T the redress I've set out above. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs T to accept or reject my decision before 15 February 2024.

Jo Storey
Ombudsman