

The complaint

Mr C says that Barclays Bank PLC has acted unfairly in relation to the selling of specific company shares following a proposed corporate action ('CA'). He says that Barclays sold all of his holdings without his agreement or consent, without converting any into share certificates. This has caused him a notable monetary loss and compliance issues due to his position as a director of the company.

To resolve his complaint, Mr C seeks compensation for the value he could have achieved for his transferred shares following a further company acquisition, and recognition for the upset and reputational damage he has suffered.

What happened

Mr C held 2.96 million shares in a company he was director of, which I will call Company X so as not to identify it in this decision. On 2 December 2021, Company X announced its intention to delist from the LSE on 28 January 2022 and thereafter, sell its assets to a private company based in the US. In its market announcement, Company X confirmed that after a share consolidation, shareholders in the UK public company were to be offered shares in the private company to the same value as their holding as at the delisting date. On 3 December 2021, Company X sent the relevant CA information to all of its shareholders.

On 6 January 2022, Mr C called Barclays to advise it of the announcement and the impending CA. During the call, Mr C told Barclays that he hadn't received any communication from Barclays about the CA and there hadn't been any update on the relevant section of the Smart Investor platform. His desired outcome was to transfer the shares before the last day of market trading on 27 January 2022, as he did not want to sell them.

Barclays says it agreed to look into the matter and update Mr C accordingly. The following day, it says it called Mr C and left a voicemail for him to call Barclays back, as it had an update for him regarding his share options. It thereafter says it sent him a text message on 11 January 2022 confirming its complete online update in response to the CA, which gave him time-constrained options in relation to sale or re-registration of the shares.

On 27 January 2022, Mr C called Barclays as he had not heard anything from it since 6 January 2022. Barclays explained the options it had already set out in the CA section of Mr C's Smart Investor online account and it had sent Mr C a text message alert on 11 January 2022 to confirm the options he had in relation to the CA event.

Barclays then called Mr C back the same day and explained the bulk sale had taken place on 21 January 2022, as directed. Mr C complained and said that Barclays' actions had placed him (as a director of Company X) in breach of stock market rules, by selling his holdings without his express consent.

On 2 February 2022, Mr C called Barclays to express his concerns that he hadn't heard about his complaint. In March and April 2022, correspondence was exchanged between the parties about the precise nature of the complaint and Barclays's reasons for a delay in

issuing an outcome.

Mr C thereafter told Barclays that on 2 December 2022, the value of his shares in Company X was £23,720. If he had been able to retain those shares and the company were to list in the US and be valued alongside its peers, then the valuation would be – in his view – four times that sum. At the time Barclays sold his shares without express consent, he had suffered a cash loss of £7,615. However, since then the US company was acquired by a different company, at a price significantly larger than the UK valuation. Taking the US share price at the time of the acquisition, his total shares would have been worth £75,053.

Mr C said Barclays was accountable for a financial loss of £64,384 – that being the valuation after the US acquisition less the value he had received from the sale of the Company X shares. He had also suffered embarrassment and reputational damage.

In May 2022, Barclays rejected the complaint. It said while it understood Mr C's frustrations with the way the CA for Company X was processed, it did not agree that this was as a result of a Barclays error. In summary, it said:

- its call handler explained to Mr C that the Smart Investor service operated on an execution only basis;
- he also told Mr C that Barclays would not share circulars issued by companies to individual investors nor would it be required to do so;
- he told Mr C that Barclays would not be able to accommodate Company X's new US holding as it operated as a UK-only broker;
- so whilst Mr C may have expressed that wish, it was not a service that Barclays could offer whether he instructed it to do so or not;
- when the call handler called Mr C back the same day, he correctly explained that Barclays had not received formal information from Company X and could not yet update its website;
- when he left the voice message on 7 January 2022, the call handler said the information was now available – it would be updated in due course and should Mr C call back in to Barclays and speak to someone else, he would be given the same information regarding the options he could take with the shares;
- when Mr C had called on 27 January, he was reminded that he had been sent a message on 11 January 2022 and that his online Smart Investor account had shown the relevant options open to him in the CA section of the website;
- it was sorry Mr C said he hadn't received a text message but it had been sent and no failings in the message sending service (to the correct number for Mr C) had been identified;
- it recognises that an instruction was issued by Company X to all nominee brokers to dematerialise the shares, and Mr C queried why this wasn't carried out by Barclays;
- however, it was not obliged to take instruction from a company directly as the direction or request may not comply with Barclays's own duties as a broker;
- in any event, it was satisfied that it had acted in accordance with its own regulations and operating guidelines;
- though Mr C was a director of Company X, that wasn't the fault of Barclays – it could not amend or adjust its operating guidelines to account for his separate alternative investment market ('AIM') duties;
- its legal department had now confirmed there was no AIM Rule (nor LSE rule) which requires Barclays, as an execution only broker, to make notifications to the LSE in relation to a client's holdings;
- it did not consider it was liable or accountable for the loss of the possible sale of the stock in the US – because it was only responsible for providing Mr C with execution only option in relation to the CA in a timely manner – which it had done.

- it understood that the events have led to an unwanted consequence for Mr C but it did not believe that these circumstances were created as a result of any errors by its staff, systems or processes.

Mr C then referred his complaint to this service, supplying a written account of the events which recounted the chronology of the complaint. I have read this in full, so I shan't repeat it verbatim here. He also made points, noting:

- he had a multi-decade history of acting as a director or chair for various public companies;
- he was well-versed in the regulatory requirements of share dealing by directors;
- he therefore wished to ensure that the share dealing for Company X was handled appropriately and in accordance with AIM rules;
- he expected Barclays would forward to him the published communication from Company X to its shareholders because it was quite specific about a timetable of actions prior to 28 January 2022;
- Barclays had improper communication channels;
- in the call of 6 January 2022, he had to tell Barclays's call handler all about the CA – rather than the other way around;
- despite being entirely clear in his instruction to Barclays during that call about his wish to dematerialise his shares (as reflected in the Company X published communication), Barclays did not do so;
- he wasn't told where to find information or that he would be called back – despite Barclays insisting otherwise;
- he disagrees that Barclays publishing the information online from 10 January 2022 was an appropriate notification of such an important event, given it would not take any action from him thereafter unless he advised Barclays otherwise;
- it was only to his horror that he discovered the shares had been sold several days earlier in a batch sale, when he called on 27 January 2022;
- to his knowledge, no shareholders were dematerialised or informed of the sales;
- this action placed him in a position with exposure with the AIM, and he has had to work with its team to explain why he was unable to fulfil his regulatory requirement;
- the final complaint response issued by Barclays on 10 May 2022 does not address his core complaint;
- the crux of the matter is that Barclays ignored his specific instructions, failed to notify him correctly and relied on implied consent to sell his shares;
- more recently, Barclays has acted with the same failings relating to a CA for a different business for whom he holds shares within his Smart Investor account, and yet again information has not been published online in a timely manner by Barclays.

An investigator from this service reviewed the complaint, but he did not think it should succeed. He noted that Barclays acted for Mr C in an execution only capacity. He felt it had reasonably made Mr C aware of the options open to him with the shares ahead of the CA.

Our investigator said he understood that Mr C had waited until 27 January 2022 to contact Barclays given that this was the last day of market trading but Barclays had previously been clear about Mr C's options before that date – as well as making a call to try to provide him additional information on 7 January 2022 and sending him a text message three days later. As Barclays did not receive a response within stated timescales, it sold Mr C's shares – which it was permitted to do in the circumstances.

Mr C appealed our investigator's view. He said he wanted the complaint to be passed to an ombudsman. He said he had a number of further representations, noting in summary:

- he believes our investigator has misdirected himself as to the facts of the complaint;
- the information from Barclays being relied upon is incorrect, incomplete and inconsistent;
- if, as the investigator says, Barclays didn't finish its legal review of the CA until 10 January 2022, he questions how the Barclays call handler (who was planning to call him on 7 January 2022) could have truly informed him about his options at that time;
- the dates Barclays has provided do not correspond with the publicly confirmed dates on which information was made available to the market;
- either Barclays has given wrong information or its market data supplier is accountable for reckless corporate inefficiency;
- it is not acceptable for Barclays to argue that it remained unaware of the transaction at a point when the whole of the rest of the market and every shareholder had received information which had been posted on the stock exchange for some while;
- Barclays is a financial institution and it should have taken steps to be properly informed;
- Barclays could have tried to contact him another way – for example by using its established Smart Investor app;
- he had received a statement through that app on 13 January 2022 – which he had opened believing it was an update about the shares;
- it also had his postal address and email as well as his telephone number – it could have tried harder to update him;
- if the sole evidence of Barclays trying to communicate with him boils down to the one text message on 11 January 2022 (which he maintains he did not receive) then Barclays should be able to provide proof of receipt as SMS messages have delivery receipt capabilities built in.

Our investigator wasn't minded to change his view. He explained how Barclays had known before 10 January 2022 about what it intended to do regarding the upcoming CA for the Company X shares but it hadn't been signed off as a confirmed action for mass distribution and publication until that date. However, in order to help Mr C, it had been willing to explain what the three options were earlier on 7 January 2022.

He otherwise felt Barclays had acted fairly and reasonably within the constraints of its execution only share dealing service, and he couldn't ask it to do anything more.

Barclays made no additional submissions, and the complaint was thereafter referred for an ombudsman's review.

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 thank the parties for their considerable patience whilst this matter has awaited an ombudsman's decision. Whilst I know this decision will not be what he has hoped for, I cannot agree that this complaint should succeed. I'll summarise my reasoning for reaching that conclusion below.

I've included a detailed chronology of the complaint in the 'what happened' section of this decision. I have done so to assist Mr C and to recognise the depth of his ongoing concerns. However, I won't be addressing every individual submission Mr C has made in turn.

This service's role is to investigate disputes and resolve complaints informally, whilst taking into account relevant laws, regulations and best practice. In reaching my decision, I'll focus

on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all of the circumstances. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

It's also important for me to point out that we do not act in the capacity of a regulator. That means our decisions don't ordinarily interfere in how a business may conduct its operations or exercise what may be commercial judgment on the provision of a particular service. That remit falls to the Financial Conduct Authority ('FCA').

I can see that Mr C feels very strongly that Barclays has prevented him from taking action with his shares which in turn has caused him detrimental recourse in his corporate capacity as director of Company X. Whilst Mr C is entitled to form his own view on what has gone on, I must also do the same. And from an objective standpoint, I do not consider that Barclays has acted unfairly in the circumstances of this complaint.

I realise that in his unique position as a director, Mr C knew sooner than Barclays did about the impending CA, and he was central to the communication issued to the market in early December 2021. By the time Mr C called Barclays on 6 January 2022, the CA was known to Barclays but only that same week – when its data vendors had referred an update. It has provided us evidence that it received a notification in the form of a report on 6 January 2022.

Thereafter, Barclays says the matter was referred to its legal, risk and compliance teams for confirmation on the next steps. Its for that reason that the call handler speaking with Mr C on 6 January 2022 explained that while Mr C had a stated aim of transferring the shares, the actions Barclays could provide as an execution only broker were yet to be confirmed.

It is clear from that call that the matter was unclarified. Mr C did express unequivocally what he wanted to happen with the shares – but Barclays gave no validation to that request; at no time was it set out that it *would* undertake the transfer that Mr C wanted.

From this date until the final trading day of 27 January 2022, Mr C did not follow up the matter with Barclays. I appreciate he says he was waiting for it to clarify matters, and I accept that Mr C says he placed reliance on further updates from Barclays.

However, from the evidence I have seen, Barclays did provide those updates. Firstly, the same call handler called him back the following day and left a voicemail. In that message, the call handler told Mr C that he would write up notes of Mr C's options and he could call back to discuss them with any of his colleagues. And he did record the notes as promised. The internal call log from that day says [in extract]:

“Outbound call unsuccessful, vm left. When client calls please advise the info on the email [that the call handler had received from the relevant team] below:

Hi, we're just finalising the wording for this CAID via our legal, risk and compliance community and we should be posting [online] details to clients early next week. We'll be offering three options: 1) Client sells on their own 2) Re-register to certificate in own name 3) Bulk sale due in late Jan – expected 21/01. We will not be supporting transfers to another provider for this security under any circumstances. Re-reg to own name only.”

On 10 January 2022, Barclays posted to its online service platform for Smart Investors with an update in respect of the Company X's CA. It gave the delisting and the final trading dates correctly as 28 January 2022 and 27 January 2022 respectively. It also explained that the intention of Company X was to undertake a share consolidation and de-merger, following

which shareholders would be transferred to its nominated US company with unlisted shares. It explained that the new company had the aim of listing on a recognised US exchange sometime in mid-2023.

The note went on to say:

“What this means for you

Please note any action you take as a result of this notification is carried out at your own risk.

Your Smart Investor accounts won’t be able to support [the new company] shares as these will not be listed on a UK stock exchange.

Below we’ve listed alternative options available. These options contain dates specific to Smart Investor, to allow action to be taken ahead of the market deadlines. Please consider which option best meets your needs:

- 1) Sell your holding – you can sell your holding of [Company X] shares at any point before the last dealing date. The final dealing date to sell your [Company X] shares held within Barclays within your Smart Investor account will be 20 January 2022. This option allows sales proceeds to be available for reinvestment at the earliest opportunity... [the note continues with specific instruction on how to sell the shares online or by telephone].*
- 2) Retain your holding – you can re-register your holding onto a certificate in your own name (provided this is available) and you can then add these to accounts you may hold with other providers, if you wish to do so. Please ensure you contact us by 19 January 2022. If your instruction is not received before this date, the default action will be as detailed in 3) below.*
- 3) Take no action. As the new shares will not be supported by Smart Investor, we will sell all remaining holdings on [Company X] prior to delisting from AIM on 21 January 2022. There will be no dealing charge for this transaction and sale proceeds will be paid into your portfolio two business days after the sale.”*

Barclays then followed this up with a text message to Mr C (and all other affected customers) the following day. I realise that Mr C disputes delivery of the message, however, Barclays has been able to provide audit log evidence showing the SMS message was sent, the relevant reference number, along with the specific date and time of the message. I believe that this message was sent to Mr C to the correct mobile number confirmed on 6 January 2022. I haven’t seen any objective reason to persuade me that this message wasn’t sent to him. I therefore believe Barclays acted fairly in issuing due notification in accordance with Mr C’s recorded communication preferences.

Mr C submits that the crux of the matter is that Barclays ignored his specific instructions and failed to notify him correctly. As a result, it relied on implied consent to sell his shares.

I disagree. Barclays’s duty to Mr C in respect of operation of his Smart Investor account was set up on an execution only basis. This means it will execute (or carry out) instructions and provide information, not advice and it is obliged to act within the terms and conditions agreed with Mr C from the outset.

In the sole notification from Mr C in respect of his wishes, it was confirmed to him that the call handler would enquire as to Barclays’s decision on the notified CA for Company X – and the call handler did as he was asked and contacted the relevant department about the position. He attempted to update Mr C by telephone with a preview of the decision issued on 10 January 2022 and this was confirmed to Mr C the following day by text message.

I do not find these actions to be unfair or unreasonable; and, importantly, Barclays acted within the terms and conditions of Mr C's Smart Investor account. Under "*Part 3 – Our Custody Services*" within section 3.1 "*Corporate actions and voting rights*", the terms set out that:

"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;*
- (iii) if we do seek but do not receive your Instructions by any deadline stated by us, we will take such action as we consider appropriate (including taking no action); and*
- (iv) if we seek and receive your Instructions by any deadline stated by us, we will take such action as we reasonably consider appropriate, including action that does not accord with your Instructions where following such instructions is not reasonably practicable."*

I believe the above terms are clear as to the limitations and extent of Barclays in respect of any CA notifications. Though it wasn't obliged to do so under clause (ii), it did notify Mr C and all other affected customers with shares in Company X by publishing a notification on its online portal. And, in the first call of 6 January 2022, Mr C specifically asked the call handler why Barclays hadn't issued any update as to his options following the CA because he had checked the FNZ One online services portal for Smart Investors. So, I believe it likely that Mr C was aware of the need to check the online updates as well as the Smart Investor app. Furthermore, Mr C had direct involvement with Company X – he was in an advantageous position of having prior knowledge of the CA and the relevant dates for appropriate action.

As it was, Mr C didn't contact Barclays again until the final trading day – which was after the dates by which Barclays could take any agreed instruction relating to the CA - the relevant dates ended on 19 and 21 January 2022. Barclays has explained how it had to provide earlier cut-off dates in order to reconcile the different options and ensure they were submitted with enough time to meet the market deadline. I find this a reasonable proposal.

Though Mr C submits otherwise, I do not consider that Barclays acted with only implied authority. To the contrary, it gave Mr C and all other affected shareholders within the Smart Investor platform two clear options of recourse for their shares (and a default third option) because it could not undertake a transfer where that transfer would entail overseas holdings, since it is a UK-only broker. Furthermore, this situation is expressly accounted for in the terms at clause (iii) above. In the absence of any notification to the contrary, Barclays reverted to option 3 as the default instruction. It did so in the knowledge that Mr C had been advised of the online CA options via text message on 11 January 2022, and issued a voicemail notification to call its helpline earlier on 7 January – going beyond the wording of clause (ii), which did not require it to do so. Those points notwithstanding, Mr C had been fully apprised of the upcoming CA, given his particular position at the company.

It therefore follows that I cannot uphold this complaint on the basis Mr C has asked for, or conclude that Barclays is liable for his lost opportunity of transferring the shares. In any event, the transfer was not possible. The options open to Mr C regarding selling the shares, re-registering for certification or taking no action were provided in a reasonable time and

manner – something Mr C was familiar with. As Barclays received no reply, it sold the shares. It was reasonably permitted to do this in the circumstances and in accordance with Mr C's terms and conditions. I cannot therefore hold it responsible for any consequences flowing from the automatic bulk sale of the shares on 21 January 2022, where this was duly notified in advance as one of three possible actions given the impending CA for Company X.

My final decision

I am not able to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 February 2024.

Jo Storey
Ombudsman