

## The complaint

Mr and Mrs H complain about the financial impact Barclays Bank UK PLC's failure to accept a transfer caused them. They'd like compensation for the financial losses they've identified and the distress and inconvenience the matter has caused them.

## What happened

In February 2020 Mr and Mrs H held the proceeds of a property sale in the USA in an account there – this amounted to around \$1.7m. Mr H has explained that their original intention was to transfer this money in tranches, thereby minimising the risks of adverse swings in the exchange rate between the two currencies. But following some conversations with their financial adviser in the UK, and being made aware of a suitable property they were interested in buying for personal reasons, they decided to transfer this money to the UK all in one go. Mr H intended on using the bulk of this money to top-up a portfolio he held with another firm (and from which he had made significant withdrawals in previous years), and some of this cash to buy the property as he needed to be a cash buyer. He explained that his offer had been accepted at the time he initiated the transfer.

As part of the US bank's procedures, Mr H was required to initiate this transfer in branch, and so he travelled to the US for that purpose. He filled out the required forms, and as far as he was concerned the transfer was in progress. He therefore returned to the UK. Unfortunately, the transfer was automatically rejected by Barclays – but this did not become clear for a number of days. In addition, neither Barclays nor his US bank were clear on what had happened initially, and so Mr H was unable to trace where his transfer had gone. It eventually was returned to his US bank account – however by then, it was no longer possible for him to return to the US as a result of the restrictions associated with the pandemic. This caused Mr H to miss out on the property he had intended to purchase, missed investment opportunities and distress and inconvenience.

As a result of his clinical vulnerability to the coronavirus, Mr H was eventually able to persuade the US bank to allow him to instruct the transfer over the telephone from the UK. As a result, he was able to eventually transfer the cash. However, the rates he received were worse than the rates he would've received in March 2020 and therefore this also caused him a financial loss.

Although he could no longer purchase the property he wanted, Mr H did invest £250,000 (minus fees) in his portfolio in July 2020. He then invested another £250,000 in January 2021.

Mr H initially complained to Barclays and, after looking into the matter, it offered him compensation. Mr H didn't think that compensation was enough and referred the matter to this service. One of our investigators agreed with him, and awarded additional compensation. In short:

- She awarded him compensation for the foreign exchange rate difference between 17 March 2020 and May 2020 when he converted the majority of his money;

- She awarded him compensation for the financial loss he suffered on the missed investment opportunities, but only on the amount he invested in July 2020;
- She awarded £1,500 for the distress and inconvenience the matter had caused him and his wife.

She did not think she could award compensation for the miss opportunity to buy the UK property – but she did agree that Barclays offer of 8% simple interest per annum from 16 March 2020 to 11 May 2020 on the £225,000 earmarked for the property purchase was fair and reasonable.

Barclays didn't fully agree. In summary it said:

- The request made by Mr H ought to have been 'turned around' on day 1, so it felt that the correct rate that ought to have been offered to Mr H was the one applicable on 16 March 2020.
- It said it calculated investment loss based on £250,000 and agreed with the investigator on only compensating for that amount. It disagreed with the investigator's benchmark for calculating Mr H's investment losses.

Mr H didn't agree. In summary he said:

- He didn't agree with the date Barclays should use to calculate the losses he incurred from exchanging dollars to pounds.
- He disagreed that he shouldn't be compensated for the missed purchase of the property, and explained in some detail the impact missing that property caused – as well as the financial impact as property prices had gone up 10%. He said that when the transfer of the money from the US fell through, he had no other option but to inform the seller. There was a 'huge sell off' at the time and he couldn't afford to encash any of his investments. At the time he had other pending liabilities, and importantly, didn't know when he'd be able to access the funds in the US.
- He didn't agree that investment loss ought to be calculated only on £250,000. He said that by the time he was able to transfer the money to the UK, the situation had changed and the original investments he would've bought were no longer available or worthwhile. He explained that although it took some time, he did eventually reinvest £500,000 and compensation for investment loss ought to be calculated on that amount.

He didn't agree with the investigator's award for distress and inconvenience and considered it wasn't enough given the stress they were caused by Barclays' error, failure to acknowledge the error and then failure to put things right.

There was some further correspondence, during which the investigator suggested that investment compensation ought to be calculated based on the actual performance of Mr H's portfolio during the relevant period (March to July 2020).

Although she received comments in response, they were broadly of the same nature – and so, as agreement couldn't be reached, the case was passed to me to decide.

### **The provisional decision**

I issued a provisional decision in October. In it I said:

*In terms of compensation for the property that Mr and Mrs H were unable to purchase, I'm*

*satisfied that this is not something that it would be fair and reasonable to ask Barclays to compensate for, and for much the same reasons as the investigator already identified. In particular, Mr H did have other liquid assets he could've used if necessary. Whilst I entirely understand his reasons for not doing so, I don't agree that it would be fair to ask Barclays to pay compensation in relation to this. It's also common ground that contracts had not been exchanged on this property at the time of Barclays' error.*

*In relation to the foreign exchange losses caused by the fluctuation in rates after March 2020, I understand Mr H's reasons for believing he ought to be compensated for all of his losses in relation to the currency moves. But I think the investigator has robustly explained why her approach is fair and reasonable, and I agree with it:*

- Whilst Mr H was in a difficult situation by May 2020, I agree with the investigator that there was an element of speculation around his decision not to convert all of the transferred cash to pounds. In those circumstances, even if I accept that the situation had changed and he no longer needed the same amount converted, I don't agree it would be fair and reasonable to give him the difference in rate between November 2020 and March 2020 on the remaining amount he didn't convert. Therefore, I agree with the investigator that he should be compensated for the difference in rate on the \$1.2m he did convert in May 2020.*
- I also agree with the investigator that it isn't possible to say precisely when between 16 and 18 March 2020 the transfer would've been actioned properly and the amount converted from US dollars to GBP. However, instead of using the rate applicable on 17 March 2020, I think a more appropriate method is simply to use an average of the applicable rates on 16, 17 and 18 March 2020. This is because the transfer could have taken place on each of those days, but it isn't possible to say precisely when. An average in my view gives the most appropriate rate.*

*I'm also satisfied that in terms of the investment redress, the appropriate benchmark ought to be Mr H's existing portfolio in the UK. It's clear to me that this is where his money would've been invested. Whilst it isn't possible to say precisely what his returns would've been had he carried out the investments he wanted, I think it's likely his returns would've been similar to the returns actually achieved by his portfolio during that period.*

*However, where I disagree with the investigator and with Barclays is on the amount that this investment redress ought to be based on. In my view, compensating Mr H for lost investment returns on only £250,000 significantly undercompensates him. All the evidence I've seen, including Mr H's persuasive and consistent submissions, demonstrate that Mr H was not intending on transferring a significant amount of cash and simply have it sat in a UK bank account doing nothing. I say this because:*

- He travelled all the way to the US for the purposes of this transfer, and I think this would've been highly unlikely if the reason was to have half of it uninvested;*
- I'm satisfied Mr H was an active and very well informed investor, who would not have wanted to keep such large sums in a low interest environment unless there was a specific purpose – the risk tolerance of his UK portfolio corroborates this;*
- I'm satisfied there was no other reason Mr H needed to effectuate this transfer other than the purchase of the property and reinvestment of money he had previously withdrawn from his UK portfolio.*
- His actions after the transfer, whilst delayed, demonstrate that he was at least willing*

*to invest £500,000 because he did so within about 6 or 7 months of receiving the money.*

*In my view, it's clear that the very minimum Mr H would've invested in March 2020 is the amount he actually ended up investing, and that is £500,000 (subject to my comment about the fees he paid with some of this money below).*

*I accept that his second reinvestment occurred much later, in January 2021. But I don't agree that in order to mitigate his loss Mr H needed to make precipitous or otherwise unreasonable decisions with such large sums, particularly at a time of extreme uncertainty and volatility. Mr H has persuasively explained why the opportunities available to him in March 2020 were not available in July, and that was the main reason he did not reinvest the full amount he intended to invest at that moment in time. In my view too much weight has been placed on the timing of his decision to reinvest the second £250,000 and not enough weight on the fact that he actually did end up reinvesting the very sum he has said he would've invested in March 2020 but for Barclays' error.*

*Given Mr H's background, his financial circumstances and the specific reasons why he had gone ahead and initially requested the transfer of this sum, I'm satisfied that but for Barclays' error, he would've invested at least £500,000 in March 2020. And therefore I consider that compensation for any investment loss ought to apply to that sum in its entirety.*

*I understand Mr H's comments that the only reason £231,600 was invested in July 2020, as opposed to £250,000, is because of the fees that were due at the time of reinvestment from their portfolio. Essentially these fees were taken from that cash rather than the portfolio, and this would not have happened in March 2020.*

*However, those fees would've been payable regardless of Barclays' error, and presumably the reason the cash was used at that time was to avoid encashing some of the portfolio to cover the fees.*

*Furthermore, had the money been invested in March 2020, the fees due in July would've been larger. Given these circumstances, I think it is right that the service take into account the money that was actually invested when awarding investment compensation and I'm not persuaded overall it means Mr and Mrs H are undercompensated.*

### **Putting things right**

*This means that in order to put things right, Barclays needs to do the following:*

- *Calculate the average USD to GBP conversation rate on 16, 17 and 18 March 2020 and compare that average with the rate Mr H actually received in May 2020 when he converted around \$1.2m. If Mr H received a worse rate, Barclays needs to pay the difference to Mr H.*
- *Pay Mr and Mrs H a total of £1,500 for the distress and inconvenience its error has caused them.*
- *Use Mr H's existing portfolio to calculate the investment loss Mr H suffered by not being able to invest his money in March 2020. I've considered carefully the start date for this calculation. It's clear that the money would most likely not have been reinvested on the day of transfer. But I'm satisfied it would've been reinvested promptly, and certainly within 5 days of when the transfer should've happened. Therefore I'm satisfied the start date for the calculation ought to be 23 March 2020.*
- *Barclays then needs to:*

- *Assume Mr H would've invested £481,600 on 23 March 2020.*
- *Work out the performance of Mr H's portfolio between 23 March 2020 and January 2021 – this being the end point for the purposes of this calculation.*
- *Mr H invested £231,600 in July 2020, and £250,000 in January 2021. Therefore, in calculating how much investment redress to pay, it needs to treat Mr H's actual investment of £231,600 in July 2020 as a withdrawal for the purposes of this calculation. This is to avoid that money having double redress.*
- *It needs to add 8% simple interest on any investment loss from January 2021, when the calculation ends, to the date of settlement.*

### **Responses to my provisional decision**

Barclays provided detailed comments in response to my findings on how to put things right. It said:

- It disagreed with my reasons for concluding that Mr H would've invested £500,000 and not just the £250,000. It said that Mr H only invested the second £250,000 much later, when 'things were calmer overall, vaccines had been developed and then roll out had begun'. It said that it didn't understand what opportunities were available to Mr H in March 2020 which were unavailable in July 2020, but Mr H could've invested the additional funds in his portfolio but decided to do it in tranches, in order to mitigate his overall risk.
- It 'strongly' felt that only £250,000 ought to be used as a basis for the remediation 'because that is reflective of what the client actually did, based on his reading of the market and risk considerations'.
- It didn't think the BD portfolio ought to be used as a benchmark for calculating what loss, if any, was caused to Mr H. It said that if Mr H had invested in March 2020, he would've invested in structured notes, which may or may not have produced a return by the present time. It said that it wasn't fair to use a 'notional market return' on these notes, because this could leave him 'in a very advantageous position' given that the notes either had, or may in future, produce a return. It said that it felt a general market return would be a fairer method for calculating compensation.
- Its understanding was that Mr H was not a 'high risk, sophisticated investor' but had a 'background [of] being cautious and having most of the money in cash'. It said 'he was only this risk level with the portion of money he wanted to invest'.
- It didn't agree that his travel to the USA indicated a particular keenness to invest, and considered this was due to other considerations, such as his need to re-locate.

Mr H was given the opportunity to provide comments too. In summary he said:

- He had provided proof of his intentions in March 2020, but Barclays preferred to make assumptions which were in its favour.
- They still didn't know what had caused the error and subsequent rejections of their funds in March 2020.
- During its investigation Barclays had already had evidence from their portfolio manager about what they would've done with the transferred cash, and what opportunities were available to them.
- He explained the structured notes that his portfolio manager had been suggesting were attractive options in March 2020, and explained the rationale for going to the USA in order to initiate the transfer – which included the property purchase and a significant investment. It wasn't reasonable to suggest they were only looking to

invest £250,000.

- Once the money was transferred, the situation had changed considerably, and therefore the original reasons behind investing a larger portion of their liquid assets were no longer relevant. This is why Mr H only invested a portion of the money in July 2020, and subsequently the remainder in January 2021.
- He didn't agree with Barclays' categorization of his risk profile, and said that his history showed that he continued to invest during various turbulent events. He also said that it wasn't true that they held most of their money in cash.
- He disagreed with the reasons Barclays gave for his visit to the USA. He said he had been consistent in explaining that they had originally considered transferring tranches of money to the UK for various purposes, but they abandoned this strategy when highly attractive investment opportunities arose. Mr H also clarified that they had never lived in the USA and only had a holiday home there, which they were only selling in order to rebalance their portfolio.

### **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 provided a response to Barclays before this final decision and gave it a further opportunity to respond. I've reconsidered all the evidence, and my response to Barclays after my provisional decision, and I'm not persuaded to depart from my provisional conclusions.

#### *The amount Mr H would've invested*

In relation to Barclays' objections around the second £250,000, I'm not persuaded by its submissions – and for much the same reasons as I've already outlined in my provisional decision. I agree that in July 2020 the situation was more volatile and less certain, and Mr H likely decided not to invest the second half of the money he had earmarked because of this. However, the question in my view isn't about Mr H's rationale in July 2020, but what Mr H would've done in March 2020 but for Barclays actions. And in my view, for the same reasons I outlined in my provisional decision, the evidence and Mr H's testimony is clear that he would've invested at least £500,000.

As I explained in my provisional decision, whilst Mr H did have an obligation to mitigate his losses, the situation in July 2020 had changed to the extent that I'm not persuaded his delay in investing was unreasonable or should be taken to mean that he never intended on investing that amount of money in March 2020. I'm satisfied his actions, his testimony, and the amounts he was intending on transferring given his approach to investment all suggest that, on balance, he would've invested at least that amount in March had he been able to.

Nothing in Barclays comments have caused me to question this finding – and whilst I appreciate this means an increase to the possible compensation, my role is to consider what's fair and reasonable when putting Mr H back in the position he would've been in but for Barclays' error.

In my view, had there been no error by Barclays, Mr H would've received all the funds he was intending to transfer in March 2020, and he would've proceeded to invest at least £500,000 of it (which would still have left some cash uninvested, as the property purchase that fell through does not account for the remainder). This means that in my view, Mr H's financial loss is the return he would've made had he been in that position – and this is what I've set out in the provisional decision.

#### *Using the Brewin Dolphin portfolio as a benchmark*

I've considered Barclays comments in relation to this. I accept its comments that given the nature of structured notes, the performance of the portfolio itself is not an exact proxy for what Mr H's returns would've been had the transfer taken place as it should have, and he been able to invest the money I've accepted he would've invested.

However, I remain satisfied that it is the most accurate indicator of the type of investment loss Barclays actions have caused Mr H. I say this for two reasons:

I'm satisfied on balance that Mr H would've invested in the same portfolio, and broadly following the same strategy. I cannot replicate precisely what his trades would've been, and so consider that the notional return of his portfolio during the relevant time period to be the most accurate benchmark – because, at the very least, it mirrors the strategy I think on balance Mr H would've continued following. As Barclays says, this approach would not have been an issue if Mr H's existing portfolio had been invested in equities or other market based assets. The difficulty stems from the types of investment held in the portfolio, but:

- a) Using another equity benchmark would give an entirely arbitrary return, not based on the type of investments Mr H was actually looking to buy.
- b) Using 8% per year simple, which is what this service would normally use in cases where a consumer is deprived of their funds, would also give an arbitrary fixed return, with no bearing on what Mr H would've done had there been no error by Barclays.

I'm also satisfied on balance that given the nature of what Mr H was looking to invest in (structured notes), and the timing, his financial loss is significant. The reason for this is to do with how structured notes work. I cannot say precisely which indices or underlying assets the notes Mr H would've invested in would've been linked to. But I'm satisfied that the timing of when he was looking to invest would've likely meant a much greater than normal chance of the underlying asset or index growing by the percentages required to make a return at maturity in subsequent years.

For example, in the screenshots Barclays has provided, one of the notes Mr H was invested in was linked to the FTSE100 and S&P500, and the return based on the performance of the worst performing index. In a situation where both indices were at inordinately low points, as was the case in March 2020, a note linked to these indices in this way would've almost guaranteed a positive return for Mr H at maturity (aside the usual counterparty risks). From the evidence I've seen, most of the notes Mr H was invested in worked in the same way – and I'm satisfied, taking into account this evidence as well as Mr H's testimony, that it's substantially more likely than not that he would've purchased structured notes of a similar type, working in similar ways and likely linked to similarly major indices.

What all this means is that I agree there's a chance that Mr H's loss hasn't yet technically crystallised – because he did buy some notes in July 2020 and January 2021, and these will mature at some point. I'm also conscious that I don't know precisely what Mr H would've bought in March 2020.

So there's a chance that the notes he did buy in July 2020 and January 2021 might outperform the notes he could've bought in March 2020. But I don't consider this likely. In my view, given the circumstances of this case, and in particular the markets in March 2020, Barclays actions mean that the returns he could've achieved had he invested in March 2020 will not be matched.

I appreciate Barclays' comments in relation to the difficulties around quantifying his loss in the way I've set out in the provisional decision. However, my role requires me to put matters

right in a way that's fair and reasonable in order to bring some finality to a complaint and taking into account all the circumstances. And I'm not persuaded it would be fair to leave Mr H with nothing for the period where the money was not invested because, for the reasons I've given, I'm satisfied there is an investment loss, however difficult to quantify. Nor do I think an equity benchmark is in any way more reflective of the type of loss Mr H is facing, particularly given Mr H's attempts to mitigate his losses in July 2020 and January 2021.

Ultimately, I remain of the view that among these various options, the change in the value of the notes Mr H had in his portfolio is, in my view, the best proxy currently available to quantify, in some way, the loss that will more likely than not crystallise in future as a result of Barclays actions. So whilst I accept and understand Barclays comments in relation to using Mr H's existing portfolio, I don't agree another benchmark would be fairer in the circumstances. And most importantly, I remain of the view that the method for putting things right that I set out in the provisional decision remains fair and reasonable and takes into account all relevant considerations.

### **Putting things right**

For the reasons I've given, my approach to putting things right in this case hasn't changed since my provisional decision. I consider that what I provisionally awarded is fair and reasonable compensation that puts Mr H as close as possible to the position he would've been had Barclays not made an error in rejecting the funds initially.

This means that in order to put things right, Barclays needs to do the following:

- If it hasn't already done so, pay Mr and Mrs H the original offer it made of 8% simple interest per annum from 16 March 2020 to 11 May 2020 on the £225,000 earmarked for the property purchase.
- In relation to the losses caused by the changing FX rates, Barclays needs to:
  - Calculate the average USD to GBP conversion rate on 16, 17 and 18 March 2020 and compare that average with the rate Mr H actually received in May and July 2020 when he converted around \$1.525m. If Mr H received a worse rate overall, Barclays needs to pay him the difference. In other words, if Mr H would've received more GBP using the average rate on 16, 17 and 18 March 2020, compared to what he received in May 2020 and July 2020, Barclays needs to pay that difference.
- Pay Mr and Mrs H a total of £1,500 for the distress and inconvenience its error has caused them.
- Use Mr H's existing portfolio to calculate the investment loss Mr H suffered by not being able to invest his money in March 2020. I've considered carefully the start date for this calculation. It's clear that the money would most likely not have been reinvested on the day of transfer. But I'm satisfied it would've been reinvested promptly, and certainly within 5 days of when the transfer should've happened. Therefore I'm satisfied the start date for the calculation ought to be 23 March 2020.
  - Barclays then needs to:
    - Assume Mr H would've invested £481,600 on 23 March 2020.
    - Work out the performance of Mr H's portfolio between 23 March 2020 and January 2021 – this being the end point for the purposes of this calculation.
    - Mr H invested £231,600 in July 2020, and £250,000 in January 2021.



Therefore, in calculating how much investment redress to pay, it needs to treat Mr H's actual investment of £231,600 in July 2020 as a withdrawal for the purposes of this calculation. This is to avoid that money having double redress.

- It needs to add 8% simple interest on any investment loss from January 2021, when the calculation ends, to the date of settlement.

### **My final decision**

My final decision is that I uphold Mr and Mrs H's complaint. Barclays Bank UK PLC must pay the compensation I've outlined above within 28 days of when we tell it Mr and Mrs H have accepted this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 4 March 2024.

Alessandro Pulzone  
**Ombudsman**