

The complaint

The trustees of a trust which I will refer to as 'R', complain about the poor service they received from Barclays Bank UK Plc when updating new trustees' names on the trust account. They say that this caused financial loss, inconvenience and legal costs.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here. Briefly, in early 2020, the existing trustees of R retired, and two new trustees were appointed in their place. The bank was advised of the change in May 2020. However due to various reasons Barclays failed to update the mandate until September 2021. This meant that the trustees could not operate the trust account throughout this period.

The trustees complained that not only this caused considerable inconvenience but also an investment loss. This was because they had intended to invest £165,000 out of the trust account into an investment fund in November 2020 but couldn't do so due to delays by the bank. They calculated the investment loss to be about £10,000. They also said that they had to incur legal costs in sorting out this matter.

Barclays upheld the complaint. It accepted that there were errors on its part, causing delays. However, it only offered (and paid) £460 for the inconvenience caused to the trustees. The trustees then brought the complaint to us. When the complaint was being considered by one of our investigators, Barclays made a further offer to reimburse the legal costs which the trustees had claimed.

The investigator concluded that the complaint should be upheld. By way of resolution, he recommended that, in addition to what the bank had already agreed to pay, it should also compensate R for the investment loss. He said that Barclays should calculate the investment loss from December 2020 to September 2021 (when the trustees were able to operate the bank account). In addition, the bank should pay interest on that sum at 8% simple p.a. from September 2021 to the date of settlement.

Barclays agreed to compensate R for the investment loss but did not agree to pay interest. So, the matter has been referred to me for a decision.

My provisional decision

I issued a provisional decision upholding the complaint, which forms part of this decision. I said:

"Barclays has accepted its errors. It has already paid £460 for the inconvenience caused to the trustees and have also offered to pay £2,938.20 to cover the legal fees incurred by the trustees in dealing with Barclays. I consider this a fair offer in relation to these matters. In reaching my conclusion I have taken into account that we do not usually award legal costs incurred in bringing a complaint to us."

The remaining issue is about the investment loss to the trust. The trustees have provided sufficient evidence to show that if they had access to the funds in December 2020, they would have invested £165,000 at that time in the Sustainable Balanced Model Portfolio offered by a particular fund manager. But they were unable to do so due bank's errors. So, I consider it fair that Barclays compensates R for any loss incurred as a result.

From what I can see, R's adviser produced a report recommending the above investment in November 2020. There were some follow up correspondence between the trustees and the adviser about the recommendation and eventually the adviser received the completed application form on 10 December 2020. So, it seems to me that this was the earliest date the investment could have been made.

The trustees could ultimately access the funds in September 2021 and so they would have been able to invest into this fund or elsewhere at that time. However, the trustees told us that the beneficiary's circumstances had changed by then and as a result the beneficiary withdrew the funds outright on 2 February 2022.

The trustees also told us that if the funds had been invested when originally intended, then, at the time the beneficiary was paid in February 2022, the trust would have had the benefit of the rise in the value of the investment which could have been passed on to the beneficiary at that point.

I agree it is most likely that had the investment been made when originally intended, it would have continued until February 2022 at which point it would have been encashed and proceeds paid to the beneficiary.

Therefore, Barclays should calculate what the notional value would have been had the £165,000 was invested in the recommended Sustainable Balanced Model Portfolio on 10 December 2020 and held until 2 February 2022. From that value it should deduct £165,000 to arrive at the loss to the trust as at 2 February 2022. This should be paid to the trust.

I now turn to investigator's recommendation that Barclays should also pay the interest on the investment loss up to the date of settlement.

This complaint is brought by the trustees of the trust, and the loss to the trust on the missed investment opportunity was up to the point when the trustees paid the £165,000 to the beneficiary (2 February 2022). After that date any loss due to non-receipt of the higher amount is borne by the beneficiary. However, they are not a party to this complaint. And unfortunately, we are unable to consider a separate complaint from them in their capacity as the beneficiary.

Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (FSMA). The rules that govern our complaints are set out in the Dispute Resolution (DISP) section of the Financial Conduct Authority's Handbook.

Under DISP 2.7.1R, 'a complaint may only be dealt with under the Financial Ombudsman Service if it is brought by or on behalf of an eligible complainant'. There are two parts to the eligibility test and the complainant must meet both parts to be eligible.

DISP 2.7.3R sets out the first part of the test. It lists the categories of complainants that are eligible to bring a complaint to our service. Without going into great detail, I think the beneficiary would fall under the category of a 'consumer'.

However, the second part of the eligibility test states that, to be an eligible complainant, a person must have a complaint which arises from matters relevant to one or more of the relationships specified in DISP 2.7.6R with the respondent.

There are several relationships specified under DISP 2.7.6R but unfortunately the beneficiary does not have any of those relationships with the respondent. For example, they are not the customer of the bank in this instance, it is the trustees of the trust.

What this means is that I do not have jurisdiction to consider (a complaint about) any potential loss the beneficiary would have incurred since February 2022.

Taking all of the above into account, my provisional conclusion is that in full and final settlement of this complaint, Barclays should:

- *Pay the £2,938.20 to the trustees if it has not already done so.*
- *Calculate what the notional value would have been had the £165,000 was invested in the recommended Sustainable Balanced Model Portfolio on 10 December 2020 and held until 2 February 2022. Deduct £165,000 from that figure and if the resultant figure is positive, pay that to the trust. It should also provide a copy of the calculation to the trustees."*

What happened after my provisional decision

Both parties accepted my provisional decision.

Barclays however said that it wasn't able to calculate the notional performance of the investment using Sustainable Balanced Model Portfolio. It said that this was a discretionarily managed portfolio, whereby the portfolio manager would choose which assets to invest in dependent upon the client's risk profile, investment objectives and market conditions (amongst other things). Barclays said that it has no way of knowing what the modelled portfolio would have looked like for the period in question.

So, it suggested that it would use a benchmark instead to arrive at the notional performance. Accordingly, it calculated the notional value of the intended investment using APCIMS Income Total Return index (officially known as FTSE Private Investors Income Total Return index).

This calculation produced a loss of £10,087.61 for the period December 2020 to February 2022. This was compared to the bank's earlier offer to pay £10,780.95, which was based on an incorrect period (from December 2020 to September 2021).

Barclays however said that it is willing to honour this previous offer together with the reimbursement of the costs totalling £2,938.20. Thus, in effect, it offered a total payment of £13,719.15.

I considered Barclays' proposal. In cases where it is difficult to calculate the investment performance of a specific portfolio, we tend to ask the respondent firm to use a benchmark which broadly has similar asset mix to the said portfolio. In this instance, I was satisfied that the APCIMS Income index which Barclays has used as the benchmark had an asset mix similar to that of the intended portfolio during the relevant period.

So, I wrote to the trustees setting out Barclays' proposal, and said that I consider it to be a fair and reasonable outcome to the complaint. I invited their comments. The trustees responded accepting the bank's proposal.

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, I remain of the view that the complaint should be upheld for the reasons given in my provisional decision. I consider that Barclays' proposal to pay a total of £13,719.15 to the trustees represents a fair and reasonable outcome to this complaint, for the reasons explained above.

My final decision

My final decision is that the complaint should be upheld. In full and final settlement of the complaint Barclays Bank UK Plc should pay £13,719.15 to the trustees of R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Trustees of R trust to accept or reject my decision before 5 January 2024.

Raj Varadarajan
Ombudsman