

The complaint

Mr C complains about the way Barclays Bank Plc has handled an investment he made through it several years ago. He says that he is entitled to distributions from the investment, but nothing has been provided to him.

What happened

Mr C was a Barclays Wealth client and, as part of a portfolio, he was recommended to invest funds in the Fairfield Sentry Fund ("FS Fund"). Mr C's investment was held on his behalf by Barclays in a nominee account. The fund has failed and has now been placed in the hands of liquidators. Mr C has been waiting to see if he will have any funds returned to him for several years.

Over a number of years Mr C has raised complaints with Barclays about this investment. He has also referred complaints to this service. This includes the complaint Mr C raised in 2017 regarding Barclays' handling of the situation and lack of information about his investment. Our service considered this complaint and we confirmed Barclays' compensation offer was fair. This complaint also covered the points raised about the reasons why the investment was held in a nominee account with Barclays – we didn't think Barclays had done anything wrong in this respect.

In October 2018, Mr C raised another complaint with Barclays, again seeking clarity over what was happening with his investment and asking for information about distributions due to him. Barclays didn't uphold the complaint and said it had provided all the updates it could. This complaint was referred to this service and an ombudsman issued a decision in November 2019 not upholding it.

In November 2022, Mr C raised further concerns with Barclays as he hadn't received any distributions from the FS Fund and he was aware other investors had received compensation. He was unhappy that he isn't recognised as the owner of the investment as his shares are registered with Barclays. He wanted to understand if Barclays had been receiving compensation distributions like other shareholders, or whether it had retained these distributions for itself and not passed them onto him.

Barclays didn't respond, so Mr C referred his complaint to this service. While we were investigating the complaint, Barclays made an offer to Mr C to recognise the delays in responding to his queries. It offered him £300 in compensation.

Barclays also provided its understanding of the situation with regards to Mr C's investment in the FS Fund. In summary it said:

- Given there are still currently ongoing litigations about settlements being made by the liquidators, no compensation distributions have been forwarded to Mr C by Barclays.
- Barclays has not received any distributions in relation to the FS Fund. The reason for this is that although distributions have been made to other investors, the distributions that would flow to Barclays (and then on to Mr C) are being held in escrow by the liquidator pending the resolution of the connected litigations.
- It issued a complaint response on 12 November 2018 – which confirmed the reason

why the investment is not in Mr C's name is due to the way his investment was set up in his portfolio, with Barclays Channel Islands Limited as the nominee. This is the way in which any ExQ portfolio would have been set up at the time.

- Mr C is the legitimate owner of holdings in the FS Fund that is now under liquidation.

I issued a provisional decision in January 2023.

I clarified that I wouldn't be considering any complaint points that had previously been considered by this service. I was satisfied that the following complaint points had previously been considered:

- Concerns regarding the investment being held in a nominee account by subsidiary of Barclays and not in Mr C's own name.
- Concerns about updates not being provided prior to November 2018.

But there were elements of Mr C's most recent complaint that I did make a finding on. These are the complaint points in relation to:

- Barclays withholding payments that are due to Mr C.
- Whether Barclays is required to make him payments now pending the outcome of the ongoing litigation.
- Updates not being provided by Barclays since November 2018.

In summary I said:

"Having considered these points, I don't intend on requiring Barclays to do anything more than it has already. I'll explain why.

Mr C is unhappy with the lack of updates provided for Barclays to understand when he is likely to find out if he will be receiving any compensation from his investment. Barclays has explained previously that the reason it is unable to provide substantive updates is because of ongoing litigation.

Barclays has confirmed there are still currently ongoing litigations in relation to the FS fund. It says it hasn't received any distributions in relation to the fund. While distributions have been made to other investors, the distributions that would flow to Barclays (and then on to Mr C) are being held in an escrow account by the liquidator pending the resolution of the connected litigation. This all means that Barclays has not received any funds so far to pass on to Mr C. There remains uncertainty on the outcome, but it says if the litigation is dismissed against Barclays, then the funds would be released and it can pass on any amounts due to Mr C.

I acknowledge Mr C's frustration that he hasn't had any meaningful updates to help him understand when and whether he is likely to receive compensation, but I haven't found there is anything Barclays could reasonably tell him until the litigation is complete. The length of time it has taken for the litigation to complete is outside of Barclays control, so I haven't seen that it is at fault for delays. Barclays has previously made Mr C aware of the public website, which details the communications that are made available to shareholders by the liquidator, so that he can see the updates provided. This remains the primary source of updates for him.

Essentially Mr C thinks he would have received compensation by now if his holdings were in his own name rather than on a nominee basis. I haven't seen evidence that Barclays has withheld distributions and retained money that is due to Mr C. The position is that as Mr C's

holding is on a nominee basis, he isn't eligible for the distributions that have been paid to other investors. I know he is frustrated by this. But as previously mentioned I've decided it is not appropriate for me to consider why the investment was set up on this basis. This means I won't be considering this point further.

Mr C has suggested that all Barclays need to do is contact the liquidators to confirm he is the legal owner of the investment and it can be transferred to him, so that he can receive compensation. Having reviewed the information he has received from the liquidators, I don't agree the position is as straightforward as Mr C suggests. He has been provided with share transfer information from the liquidator. But I note this explains that a decision on whether or not to grant a transfer will be dealt with on a case-by-case basis at the discretion of the liquidator. It also refers to stipulations where the transferor or transferee are subject to litigation (which is relevant in Mr C's situation). This further supports that the possibility of Mr C obtaining access to the holding is uncertain in light of the ongoing litigation Barclays is involved in with the liquidator.

Mr C has requested that Barclays make him a payment now pending the outcome of the litigation. Barclays has explained this wouldn't be possible as the outcome of the litigation would determine how much he would receive. It says there is no guarantees on what any distribution will be as it is governed by the terms of the investment. This effectively means it couldn't accurately compensate Mr C even if it wanted to. I do empathise with Mr C, and I appreciate he is concerned that he won't receive what he believes he should, or worse still he won't receive anything. But due to the uncertainty of what he is due, I don't find it is reasonable to request that Barclays make him a payment now. When the litigation is complete and Mr C knows what is due to be paid to him, he can raise specific concerns about this. Until that time I don't think I can make a finding that Barclays has treated Mr C unfairly.

I note Barclays did put forward an offer to this service to pass on to Mr C in relation for the way it handled the queries he raised in late 2022. It has offered to pay him compensation of £300 by way of an apology and in recognition of the inconvenience caused by the delay. Mr C has requested significant information from Barclays and it hasn't always been able to provide him with everything he has asked for. I recognise it didn't respond immediately to the queries raised and it wasn't until this service became involved that responses were received. This did cause frustration to Mr C. I therefore find the offer of £300 to be fair and reasonable in the circumstances. In conclusion, I intend on telling Barclays to pay Mr C the £300 compensation it offered (if it hasn't already), but for the reasons given, I don't find that it needs to do anything further."

Mr C responded to acknowledge the decision and provided further submissions. In summary he said:

- He is being denied compensation due to him, simply because unbeknown to him at the time, Barclays registered his shares in its subsidiary company name, without ever informing him of this, nor did it ever seek his approval to do so. Although Barclays charged him \$500,000 plus fees for the shares, he is not the legal owner, but Barclays is, although it paid nothing towards the cost of the shares.
- The situation is further compounded by the fact that Barclays is being sued by the very same liquidator for wrongdoing associated with the very same case. Thus, the shares Barclays charged him for, which the liquidator and court incorrectly assume belong to Barclays, have been seized pending the outcome of a court case, simply because the court incorrectly believes Barclays is the rightful owner.
- The Financial Ombudsman Service is willing to accept the fact that he will be the one bearing the financial loss imposed by the court, although he is entirely innocent and unlike Barclays has done absolutely nothing wrong.

Barclays didn't respond with anything further by the deadline set for further submissions.

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 considered the further submissions provided by Mr C, I haven't found reason to change the outcome I set out in my provisional decision. I'll explain why.

Mr C has made further submissions with regards to his unhappiness that his investment is held on a nominee basis by a subsidiary of Barclays. I understand he sees this as the root cause to why he hasn't been able to receive compensation.

Barclays has confirmed in its submissions Mr C is the legitimate owner of holdings in the FS fund that and this is confirmed in the statements it holds for his portfolio. I've already explained in provisional findings why I won't be commenting on complaint points in relation to the shares being held on a nominee basis rather than in Mr C's name. So, while I acknowledge the comments Mr C makes here, I will not be considering them further.

Mr C has expressed dissatisfaction that he hasn't received compensation due to him because Barclays is involved in litigation linked to its involvement with the FS fund. I empathise with Mr C and acknowledge his frustration that legal action that he is not party to is affecting him. I also appreciate the time it is taking and the uncertainty of the outcome of the legal action is causing him significant concern.

Within the complaint I'm considering, I'm not able to comment on the likely outcome of the litigation – so I offer no opinion of whether any party is at fault or speculate on the likely outcome. This is a separate matter for the US courts. I acknowledge that Mr C is not involved in the litigation, so in that sense he can't be seen as at fault. While I'm not considering the subject matter relating to the litigation, I appreciate it has implications for Mr C. Despite this, for the reasons set out in my provisional findings, I don't think it is fair and reasonable to require Barclays to make Mr C a payment now, pending the outcome of the litigation.

To be clear, I'm not saying Mr C should bear a financial loss. Instead, my finding is, in light of the unresolved litigation, at the present time Barclays hasn't treated him unfairly by not making distributions to him.

In conclusion, for the reasons described in my provisional decision, and those above, I uphold this complaint in part. Barclays needs to pay Mr C compensation for its communication failings and handling of queries and the impact this had on him.

My final decision

Barclays Bank Plc has already made an offer to pay £300 to settle the complaint and I think this offer is fair in all the circumstances.

So, my final decision is that Barclays Bank Plc should pay Mr C £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 March 2024.

Daniel Little
Ombudsman