DRN-4763505

The complaint

Mr G complains that Barclays Bank Plc did not tell him about a company merger, which was relevant information to a shareholding he had in a company I shall refer to as 'A.' He says he only discovered his shares were delisted as a result of the merger when Barclays sent him his quarterly investment account statement. He says Barclays were unhelpful and appeared disinterested in helping him get the new company shares in his name. And when he took action himself to try and sort things out, he says Barclays declined to help. Mr G says if Barclays had passed on information about the merger, he would've sold the shares prior to the delisting. Mr G wants compensation for the loss of value of his shares, a refund of his investor account fees and an amount for the distress and inconvenience caused.

What happened

While I have read and considered everything presented by both parties, the following is a summary of the key events and circumstances leading up to this complaint.

Mr G held shares in company A using the nominee services of Barclays through a Smart Investor account. Unbeknown to Mr G, in January 2022, A agreed a merger with a company I shall refer to as 'B'. In February 2022, A's shareholders agreed the deal and in March 2022, in line with the merger, A's shares were delisted from the sub-market of the London Stock Exchange – Alternative Investment Market ('AIM').

Mr G received his quarterly investment account statement in June 2022, which said that his shareholding in A had been delisted.

Mr G says in July 2022, he contacted Barclays to find out what was going on. He says he was first told that they didn't know what was going on. But on the third call, he was told more about the merger and that he didn't need to do anything as Barclays had things in hand and were dealing with matters – the shares would either be sold or Mr G would get a new share certificate representing his holding in B.

Mr G says he contacted Barclays several times during this time and was told the same thing – the matter was complex and would take some time. Mr G says because he became frustrated by the lack of progress, he took it upon himself to try and sort things out.

Mr G made contact with the stock transfer company or custodian dealing with things and requested and completed the necessary forms to allow him to receive the shares in the newly formed company B.

Mr G's attempts ultimately failed because Mr G did not have a share certificate in his name – the shares were held in Barclays' name as the nominee, so he couldn't complete the required process – only Barclays could.

Mr G says he told Barclays what needed doing. He says he was also told the necessary forms had already been sent to them anyway by the stock transfer company. He says he told them who to speak to if they didn't know what to do, but he says Barclays refused to help. Mr G then raised his complaint with Barclays.

On 11 April 2023, Barclays issued its final response to the complaint. It said the service Mr G received in terms of the experience he'd had with its agents when he spoke to them about his shareholding was below the level it expected. It said they should have been more proactive and shown more willingness to help with the process. It said in recognition of this, it offered a payment of £100. It said because the share transfer hadn't completed and there was no timeframe for when it would be, and it had already been ongoing for some time, it would close the complaint but promise to continue to work on the transfer.

Dissatisfied with its response, Mr G asked us to consider the matter. Mr G said the Barclays agents gave him incorrect and misleading information; he did lots of the groundwork himself including getting the necessary stock transfer forms, but Barclays weren't interested in helping and refused to complete the forms; Barclays should have received information about the company merger and passed it on to him because that's what he thought he was paying it for; if it had he would have made the correct decision and sold the shares immediately given the terms of the merger and the proposed reduction to his holding; and he didn't realise his shares weren't held in his own name.

Barclays said the corporate event in question is highly complex. It said it is trying to get Mr G his shares in company B. But the holding is a restricted US holding, which requires legal work before any restriction can be removed. It said it is under no obligation to take part in any legal action, but it is nevertheless trying to find a solution for Mr G. Barclays said it first learned of the corporate event when the holding was marked as suspended from trading on 28 March 2022, so because it didn't receive prior notification, no information was shared with Mr G.

Barclays later went on to say that the event in question was a mandatory event and in line with its terms and conditions, it doesn't communicate these directly with its customers. It said it would not share information in any event which came from sources other than the company direct or via CREST the UK national settlement system. It also clarified it wasn't the case that it refused to complete the paper transfer forms – it was unable to carry out the transfer this way and outside of CREST. It said Mr G had always been the owner of the shares, but Barclays Smart Investor provides all services on a nominee basis, something made clear to consumers at the outset because it is the only way it can offer electronic trading.

One of our Investigators considered all of this and they ultimately concluded that the £100 Barclays offered for the poor service Mr G received was fair and in line with our approach. They said despite what Barclays had said, they thought as a shareholder it should have received notification of the merger of company A. And they said this should have been shared with Mr G regardless of whether action could be taken or not. But they said, they weren't persuaded, without the benefit of hindsight, that if the information had been shared, Mr G would more likely than not have sold his shares as he said. They said they couldn't ask Barclays to complete paper stock transfer forms to complete things when this wasn't a service it provided. And they relayed what Barclays had said about Mr G's Smart Investor account service being provided on a nominee service basis.

Mr G disagreed. He said that he would have sold his shares had he been given information about the proposed merger, which he said it should have received as the registered shareholder. He said the conversion rate of the shares was approximately 80 to 1, so even taking into account the increase in A's share price, his holding would have reduced by a factor of 40. So, for this reason he said he would have definitely sold the shares before the March 2022 delisting deadline.

The Investigator wasn't persuaded to change their opinion. Mr G broadly repeated the points he'd made about why he would have sold his shares had Barclays shared the information about the merger.

Because things couldn't be resolved informally, the complaint was referred for a final decision.

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've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Having done so, I've reached the same overall conclusion as the Investigator and for broadly the same reasons, that Barclays' offer of £100 is a fair way to settle the matter. I'll explain why.

Barclays says that the first time it learned of the corporate event was when A's shares were marked as suspended on 28 March 2022. It says it only acts upon an event or relies on information when it is confirmed directly from the company, which is mostly via CREST. It says it wouldn't for example rely on or pass information to consumers based on media articles.

I don't think it is unreasonable to expect Barclays to limit its action to events it receives through official channels or sources such as CREST. It simply isn't realistic or practical to expect Barclays to track and decipher information from media articles for example and to pass this information on to its relevant customers. So, on the one hand it is entirely possible, as it says, that Barclays did not receive any information from company A via this official source to pass on to Mr G. In which case, Barclays hasn't done anything wrong.

On the other hand, a company is obligated to pass on information to its shareholders about things it intends to do which could have an impact or affect its shareholders – known as a corporate event – which, in my view would include details of a merger with another company. So, because Barclays was the named shareholder, it ought reasonably to have been notified of the corporate actions A intended to undertake. And like the Investigator, and despite what Barclays says about its terms not obligating it to inform customers of such things, I think it is fair and reasonable for it to have passed on any information to Mr G it received in relation to a corporate action or event A was undertaking. Mr G was the beneficial owner of the shares and I think having regard for the regulatory principle of acting in a customer's best interests, Mr G ought reasonably to have knowledge of these events whether they were mandatory or not.

Nevertheless, even if I thought Barclays was at fault for not passing this information on to Mr G, I'm not persuaded by his argument that he would, more likely than not have sold his shares prior to the suspension of trading in March 2022 and so has suffered the financial loss he describes.

I think Mr G would have had a lot of information to weigh up in deciding what to do. Mr G has focused on the resulting reduction in the number of shares he would receive following the merger and that this alone would have been the deciding factor in him selling his holding in A

prior to the merger. But there would also likely have been other information Mr G would have considered – for example, given the shareholders in A approved the merger deal, I think it's likely there was a positive view held about the future potential for the company and its shareholders. The news article Mr G has referred to about the merger from January 2022 contains a quote from A's chief executive for example, which says: "This merger is an achievement for the company and its shareholders. The merger presents a compelling opportunity to achieve superior shareholder value and liquidity than [A] currently believes is possible as an independent company listed on AIM.." I think it's reasonable to assume that Mr G would also have considered this and the future potential for his shareholding in weighing up what to do.

I'm also mindful of the timetable of events. The merger was announced in January 2022, but it wasn't approved by the shareholders until February 2022. I'm not persuaded Mr G would have sold his shareholding prior to the shareholder approval of the merger. Nothing was certain before then. But the uncertainty continued afterwards because of court action taken by a shareholder. This affected the timetable of events and this wasn't resolved until early March 2022. So, given the trading deadline later in the month, the period for Mr G to act and sell his shares was not in my view long.

Furthermore, at the point all of this information was available to the markets, it would have likely had an immediate impact on the price of A's shares. And given the circumstances and the AIM market where they were listed, I think the price was likely to be volatile. But more importantly, I think given both the circumstances of A's merger with B and the nature of the AIM market in general, liquidity levels were likely to be lower at the time in question, making it harder for investors like Mr G to sell their shares whenever they wanted. So, even if Mr G had made the decision to sell his shares, he might not have been able to sell them anyway due to a lack of liquidity.

So, taking all of this into account, I'm not persuaded it is more likely than not that Mr G would have sold his shares in A prior to the delisting deadline. For this reason, I don't think he's suffered a financial loss as a result of anything Barclays did wrong.

I appreciate Mr G's frustration with the ongoing issue of the transfer of his holding. Ultimately what led to this issue was the result of a corporate event – an action or decision taken by the company Mr G held his shares in. It's not something Barclays instigated. It appears this is a complex event as Barclays has described. This is why Barclays hasn't been able to simply complete the physical stock transfer paperwork as Mr G hoped was the case. From what I have seen, I think Barclays is making efforts to sort things out for Mr G despite it not being obliged to do so, although I think it is fair it does so in the circumstances. But I'm afraid that I can't intervene in any way, speed up the process or direct Barclays to do something it cannot do.

It is not disputed that the level of service Mr G received when he spoke to Barclays following his discovery about his shareholding was not as he should have expected. Barclays describes a lack of willingness to help Mr G with the process and that it should have been more proactive. In my view this mirrors what Mr G has described.
It is clear that this lack of service and update led to Mr G taking matters into his own hands to try and resolve things. As a result I think Mr G suffered a degree of distress and inconvenience. Barclays has already offered to pay Mr G £100 in recognition of the inconvenience caused, which I consider is in line with the award I would make had Barclays not offered to do so. So, I think it is fair in all the circumstances.

In conclusion, while I think Mr G has suffered distress and inconvenience which warrants a small award as Barclays has offered, I don't think any failing on Barclays part to not pass on

information about company A's corporate actions has led to Mr G suffering a financial loss as he describes.

Putting things right

Barclays should pay Mr G £100 for the distress and inconvenience the matter has caused as it has already offered to do.

My final decision

The offer Barclays Bank Plc has already made to pay £100 to settle this matter is fair in all the circumstances. So, my decision is that Barclays Bank Plc should pay Mr G £100. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 May 2024.
Paul Featherstone
Ombudsman