

The complaint

The estate of Mrs H complains about the way Barclays Bank Plc (trading as Smart Investor (SI)) has dealt with the settlement of the estate. The executors say failings by Barclays Bank UK PLC has prevented the transfer of assets.

What happened

Mrs H held a portfolio of shares in a Barclays share dealing account. Sadly, she passed away in late 2017.

The executors made a request to Barclays to transfer shares to the beneficiaries as part of the settlement of the estate.

After some initial problems most of the shares were transferred by arranging for them to be assigned in a certificated format. But there remained two shares in non-UK companies that Barclays said it was unable to transfer, as these couldn't be certificated.

Barclays dealt with a complaint raised by the estate in relation to the transfer of assets and issued a response in February 2020. This response covered the period up to this point. In summary, this acknowledged more could have been done to reduce the delay in transferring the shares and included a £750 offer of compensation to the executors (which was declined). It also confirmed the executors intended on arranging for the remaining stocks to be transferred, and support would be given until the completion of the account closure pending further instructions.

Following this and throughout 2021 and into 2022 the transfer wasn't complete. Attempts were made to complete the transfer to a new account with a third-party stockbroker the executors had appointed, but ultimately this didn't happen at this time.

In March 2022, the executors raised a complaint with Barclays as they were unhappy that the remaining shareholdings hadn't been transferred as requested. Barclays responded in May 2022 and didn't agree it was at fault. The executors remained unhappy with the way Barclays had handled the transfer and raised further concerns. Barclays responded in November 2022; it again didn't agree to uphold the complaint.

The executors didn't accept the outcome reached by Barclays, so referred the complaint to this service for an independent review.

I issued a provisional decision in March 2024. This is what I said:

"Having reviewed the submissions, it is clear that the process to complete the settlement of the estate has been a timely and difficult process. The crux of the complaint I'm considering is in relation to the remaining two shareholdings that weren't transferred with the bulk of the shares that were certificated in late 2019.

When it resolved the previous complaint Barclays said it would continue to support the estate until completion of the account. The executors say Barclays have gone back on its

promises. Barclays's position is that it isn't at fault for the delays in the shares being transferred to the executors.

The shares were eventually transferred in June 2023. From the evidence I've seen it appears the solution that resolved the problem was for the executors to open an executor named account with a third party – and this was sufficient for the transfer away from Barclays to be complete.

Barclays says to complete the transfer to a third party it needed to do it in the same name. This meant any transfer made would need to match i.e. by way of transfer from executor account to executor account. It is unclear why Barclays didn't pursue an executor-to-executor account transfer in February 2020 when it said it would continue to support the estate in transferring the remaining shares. It seems Barclays only suggested this around April 2022. I haven't seen why this action couldn't have been taken sooner.

Barclays says initially the third-party broker selected by the executors wasn't willing to complete an executor-to-executor account transfer. And it was only in September 2022, the third party confirmed it could establish an account in the name of the executors. I acknowledge there was a period between Barclays approaching the third party to complete this type of transfer and its agreement (around five months), and it can't be held liable for causing delays during this period.

But Barclays accepts in September 2022 it had confirmation from the third-party broker that it could accept a transfer to an executor named third party account. I haven't found reason why it didn't then go on, after receiving this confirmation, to work on the executor's behalf to complete this type of transfer. It was clear from the ongoing correspondence that the priority for the executors was a transfer away from Barclays by whatever means possible. Barclays has told us in its submissions that its Bereavement Team confirmed it was able to proceed with a transfer without a further Expression of Wish (EOW) form – but some additional details would need to be collected. I haven't seen that Barclays sought to obtain the additional information needed. The executors were complaining and raising concerns throughout 2022 and 2023. What now appears to be apparent is that it was possible to complete the third-party transfer in a reasonably straight forward way. I've seen evidence of a lack of response from Barclays – this includes an email from the third party broker chasing Barclays in March 2023 for a response to a transfer form it sent in January 2023.

Based on the evidence I've seen; Barclays did cause delays by initially not pursuing the executor-to-executor transfer in February 2020. I also find that it didn't act as expected from September 2022 when it received confirmation from the third party it could accept this type of transfer. I find Barclays actions (and lack of) prevented the transfer occurring as soon as it should have. So, Barclays are at fault for the majority of the delays experienced by the estate.

I've gone on to consider the impact of Barclays failings on the estate. The estate isn't claiming an investment loss. But the executors say that the estate has incurred costs. Firstly, it says due to Barclays handling of the transfer of the remaining share it has incurred additional solicitor's fees that wouldn't have been due. The executors have provided a breakdown from its solicitors to quantify the fees incurred solely as a result of Barclays's failures. This indicates that fees of £8,764.08 were charged in this respect. The investigator suggested Barclays cover these costs – plus interest from the date the fees were paid until the date of settlement. I haven't seen that Barclays replied to the investigator, so it isn't clear whether it disputes that it is liable for any or all of the costs that have been evidenced by the estate. I'm presently inclined to agree with the investigator that Barclays should cover all of these costs, but Barclays can only be held responsible for fees that were as a direct result of failings on its part - not for fees that would have been incurred regardless. I will consider any

comments from the parties on this subject before reaching my final decision on the amount of fees liable.

The executors have also requested compensation for the time and trouble in pursuing this complaint. We can only consider complaints brought by eligible complainants. So, it follows we can only award compensation – including awards for distress or inconvenience – to eligible complainants. In respect of this complaint, Mrs H is the eligible complainant as the assets subject to the complaint were held in her account with Barclays. The executors are able to bring this on behalf Mrs H's estate as they are authorised to do so in law. But the executors are not eligible complainants in their own right. This means we can't compensate an executor for any impact incurred by them personally, when representing the estate. So while I acknowledge and have read all the submissions made by the executors about the impact Barclays's handling of the estate has had on them, I have no power to make a compensation award directly to the executors.

I'm aware this service has considered separate complaints in respect of the problems the individual executors have incurred in setting up accounts with Barclays in their own names. These complaints relate to them acting in a personal capacity and not as executors. So, any issues they have suffered in their personal capacity are being dealt with outside of this complaint and I won't comment further on this here. I appreciate the executors see the issues as one and the same, but for the purpose of our rules and the eligibility of who can bring a complaint, I'm satisfied it is correct to separate the complaints.

The executors have also raised concerns that the estate hasn't received all of the cash funds that are associated with the account. They say they require a final statement that shows all assets have been transferred to them. Barclays says it did send a cash payment in July 2023 but this was returned to the account – so it isn't clear everything has been transferred. To date this service hasn't been provided with confirmation from Barclays of a closure statement showing a final settlement. From the evidence provided it isn't clear to me whether there is any residual cash remaining that still needs to be transferred to the estate. So, Barclays needs to provide a final statement for the estate, so that it can establish that all assets (shares and cash) due have now been transferred. If there is any remaining cash, this needs to be sent with interest to the estate. Also, where there were delays in sending cash due, I find Barclays will be liable to pay interest for the period of delay until the cash was received. Again, I will consider the date any interest needs to be paid from when I receive responses to my provisional decision to clarify the account settlement.

Lastly, I acknowledge the wider comments about Barclays and how it treats its customers. I won't be commenting on the broader points made as I'm only considering the individual circumstances of this complaint, but I have read them and understand the frustration caused by Barclays handling of the administration of Mrs H's estate. The executors have requested an apology from Barclays, I think this is something that it would be fair and reasonable for Barclays to consider providing in the circumstances."

The executors responded on behalf of the estate. They essentially agreed with the decision but made notes on various sections within the decision providing clarification and opinion on the content. This included specific comments about the compensation award.

In summary they said:

The direction in the decision should be specific as to the amount and the relevant dates since otherwise if Barclays fail to comply with the decision the executors will be forced to relitigate the point through court proceedings.

The executors have been open and transparent in respect of the solicitors' costs. It is also difficult to fix a date for when the fees were incurred. The money was never with the executors or the beneficiaries. It always remained in an account controlled by the solicitors. The fair solution would be for interest to be paid on the sum of £8764.08 from the time that the transfer could have been completed until the date of reimbursement, say from 11th June 2020 until the date of actual payment.

Barclays admitted to the third-party stockbroker and to the investigator that further cash was due. It is suggested that Barclays should pay interest at 8% on the outstanding cash balance held by it from the date the sums should have been transferred, 11th June 2020, to the date of payment.

The Executors do not know why they are not eligible complainants. The rule under DISP 2.7 says a trustee of a trust which has a net asset value of less than £5 million is an eligible complainant. The executors were both executors and trustees under the Will. No explanation has been provided as to why the complainants do not qualify under this rule.

Barclays didn't respond to the provisional 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.

As the executors have agreed with the basis of my decision, and Barclays hasn't provided any further submission, my overall findings remain as set out in my provisional decision, for the reasons given. I acknowledge and note all of the comments made by the executors on my provisional decision. I haven't commented specifically on all points made where they don't impact my findings. But I've considered the additional points the executors have made in relation to the direction of the award.

Setting out the precise details of the requirements for the compensation has been made more difficult as Barclays has not responded to the provisional decision. I accept the executors' points about the need for specific detail on the calculation to ensure that the award is followed as intended. As far as possible I will set out precise dates, but where this isn't possible, I will set out the parameters for how the direction should be followed.

In respect of the solicitors' fees, the executors have provided information obtained from the solicitors to support the costs incurred as a result of Barclays' failings. This does breakdown the fee earner and the units charged at the relevant rate, but it isn't a specific breakdown of the work completed and relevant dates of when the fees apply from. But in the absence of further comments or evidence from Barclays to dispute what's been provided, I think it is reasonable to accept it in the circumstances as evidence that additional fees were incurred as a result of Barclays' failings. But on the subject of additional interest to be paid on this amount, I don't think it is reasonable to take the date from June 2020 as when interest should start accruing from. I'll explain why.

Additional interest is to be paid in the scenario where the estate hasn't had access to funds that it would have but for Barclays' failings. This means that the executors need to show that an invoice was paid that would have otherwise meant the funds would have been sent to the estate to be distributed. For this reason, I don't agree a blanket payment of interest from June 2020 is appropriate, particularly as the costs incurred (as detailed by the solicitors) are as a result of work completed after this date. The interest isn't a penalty placed upon Barclays, but rather to recognise where the estate has been out of pocket as it hasn't had access to funds it would have otherwise. In order to calculate any interest due to the estate,

the executors will need to provide evidence of a bill payment being made to the solicitors to cover the additional fees claimed due to Barclays failings (not the payment of the solicitors' fees that would always have been due as part of agreement the estate had for services). Then from this date, interest will be due up to the date of settlement. If the fees haven't yet been paid, then Barclays will only be required to cover the cost of them.

Barclays hasn't provided me with a closing statement to show what residual cash was due to the estate once the settlement of all the shares had been completed. As I still don't have complete information, I need to make reasonable assumptions. It doesn't seem to be in dispute that there will be residual cash that should have been passed to the estate sooner than it was due to the delay in transferring the remaining shareholdings. What is less clear is from what date interest should be applied on this residual amount. The interest due represents the estate not having access to funds it would have had Barclays completed the settlement without any errors. The investigator suggested this would have been from July 2020, taking into account the third-party broker took a few months from February 2020 to confirm it could accept the transfer. While the executors have suggested an earlier date of 11 June 2020, I'm not persuaded the evidence is sufficient to support this. So, I think the investigator's suggestion of July 2020, is a reasonable date to start interest payments accruing from. If there have been dividend payments made after July 2020, that form part of the residual cash due to the estate, interest should be paid from the date these dividends (or other distributions) were received in Mrs H's Barclays account until the date of settlement or if earlier the date they were paid to the estate (rather than from July 2020).

Lastly, the executors have again queried why they are not considered eligible complainants. They refer to the DISP rules and the parts relating to the eligibility of trustees to bring a complaint. I note these comments, but from the evidence I've seen they are bringing this complaint on behalf of Mrs H's estate as an executor, not as trustees of a Trust. So, the part of our rules relating to trustees wouldn't be relevant. For the reasons I've previously explained, I don't find the executors in their role of completing work for the settlement of the estate are eligible complainants in their own right. So, I can't award compensation to them personally.

Putting things right

I consider that my aim should be to put the estate of Mrs H as close to the position it would probably now be in but for Barclays' errors. This means it should not incur fees and costs that were as a result of the errors.

What should Barclays do?

Based on the evidence I've seen; I direct Barclays to do the following:

- Cover the solicitors' fees incurred relating to the additional work that was carried out as a direct result of its errors. The estate has confirmed this to be £8,764.08. If the fees have already been paid, it should add interest at a rate of 8% simple from the date they were paid until the date of settlement. The estate will need to demonstrate to Barclays the date the fees were paid in order for it to calculate if any interest is due.
- Provide a final statement of Mrs H's account demonstrating all assets have been transferred.
- Pay any residual cash left in the account to the estate.
- Pay interest at a rate of 8% simple on any cash balances that were delayed due

to failings by Barclays. For cash that was available for transfer on 1 July 2020 but wasn't paid due to the delays caused by Barclays, interest should be paid from this date until the date of settlement or if earlier the date it was paid. For any distributions to the impacted shareholdings that were made after 1 July 2020, interest should be paid from the date these distributions were received in Mrs H's account to the date of settlement or if earlier the date they were paid.

My final decision

I uphold this complaint and require Barclays Bank Plc to pay the estate of Mrs H compensation in line with the above methodology.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs H to accept or reject my decision before 30 May 2024.

Daniel Little
Ombudsman