

The complaint

Mr D says Barclays Bank Plc unreasonably prevented him accessing a particular holding in his share dealing account for many months following a corporate action, as well as providing unreasonable customer service to him regarding the position. Accordingly, he believes Barclays ought to compensate him for the upset and inconvenience he has been caused.

What happened

Mr D holds a 'Smart Investor' share dealing account with Barclays. He purchased £22,000 of shares in a business I'll call "A".

In late 2022, A announced a corporate action. It confirmed it intended to delist from the UK Alternative Investment Market ('A/M') with the aim of retaining a sole listing in the Nasdaq (US) stock market, subject to shareholder approval at an Extraordinary General Meeting.

Barclays shared this corporate action notice with Mr D through his share dealing account. It told him he had one of three options in relation to the proposed delisting:

1. Retain A shares within his account. These could be held eventually on the US stock market – but this would be after Barclays launched international assets on its platform, as it was not a service that it currently offered. Mr D would also have to complete a W-8BEN form, used to report any non-US person that holds US stock or shares for taxation purposes.
2. Sell his holdings on the online system before the final dealing date set in December 2022.
3. Call Barclays to undertake a sale via telephone before the final dealing date.

Barclays also confirmed to Mr D that if he didn't reply, it would default to the first option. This is what happened, as Mr D didn't contact Barclays to confirm either of the other options.

From approximately February 2023, Mr D periodically queried the progress of Barclays's setting up of the electronic shares on the US stock exchange. However, the shareholding remained suspended on his account. At that time, Barclays was still unable to confirm when it could set up a facility to hold the shares on Mr D's (and other affected customers') behalf. It told Mr D that the matter had various complexities and it would take some time to resolve.

On 3 August 2023, Mr D emailed Barclays to remind it that it had been more than eight weeks since his complaint, and should the issue persist, he would seek £650 in compensation by the end of the month (which he had calculated at £50 per month, and now £100 per month thereafter) by pursuing his complaint at the Financial Ombudsman Service.

Mr D also complained that he had previously approached a second share dealing business and completed a transfer form for the A shares – after Barclays had confirmed it had been able to set them up in electronic form. However, he says Barclays never replied to that business in respect of his transfer request.

Shortly thereafter, a further corporate action took place. A US-based business announced its intention to purchase A, and a shareholder vote was scheduled. Barclays informed Mr D that it would submit the vote on his behalf ahead of the required deadline of 31 October 2023.

On 14 November 2023, Barclays rejected the complaint. It firstly noted it was pleased that Mr D was now able to trade his shares, and his vote was successfully submitted in relation to the takeover and sale of A.

Barclays told Mr D that as a UK-based nominee broker, it held UK shares in a bulking account before reconciling them to customers – but it could not operate in the same way for Nasdaq businesses as they had no nominees or equivalents. Consequentially, it had needed to amend its systems to allow it to take custody of the shares – which took many months - and until that was finalised, Mr D and other affected shareholders hadn't been able to trade. Barclays explained that it had actioned it as quickly as it could, but the change was complex.

In November and December 2023, Barclays sent Mr D further information about the scheme of arrangement which had been put in place following the vote by A shareholders on the takeover proposal – which had been agreed. It offered Mr D and other affected shareholders the option to sell their shares before the last trading date preceding the takeover, which was in December 2023.

Mr D chose to sell his shares and received a payment of £35,102.87 in December 2023.

Thereafter, Mr D lodged his complaint with this service. He explained that the reason he had a claim of £950 was based on the lost opportunity of the access to the shares for a sale, as well as the inordinate amount of time he had spent following up the issue and then the uncertainty surrounding the vote. Mr D said he believed he had asked for an extremely modest amount of damages to Barclays, but this service could consider an adjustment to his calculations, given the time he had spent and the anxiety the whole issue has caused him.

He also said that he had hoped to be able to sell around £5,000 to £7,000 worth of shares in spring 2023 to fund a holiday, as well as to move funds for his remaining 2022/2023 ISA allowance. Because of Barclays's inactions he had been unable to do so. However, he said he would have otherwise retained his shareholding so he could place his vote in relation to the likely takeover of A later in 2023.

The complaint was thereafter considered by one of our investigators. However, our investigator did not believe it should succeed. He said that he felt Barclays had behaved fairly and reasonably in the circumstances, which were not of its making. In his view it had carried out instructions reasonably and passed information to Mr D wherever it was required in accordance with his account terms and conditions. Overall, he didn't agree that Barclays owed Mr D the compensation he had claimed.

Mr D disagreed. He made some further detailed written submissions to our investigator in which he reiterated his view on the complaint. He said, in summary:

- He continued to believe that Barclays failing to allow him access to A shares for almost a year was a failure on its part that could have been avoided.
- A duty of care must be shown by Barclays in its role as a custodian of his shares.
- To that end, customers of Barclays should be allowed to access their shareholding and compensated if not.
- The onus was always on him to find out what was happening.

- He could have earned a notable profit had he been allowed to trade the restricted funds and so he believes his compensation calculation of £50 per month was reasonable.
- Equally, he could have suffered a substantial loss by being unable to access his shares.
- He cannot agree with the investigator that Barclays could not be at fault for the situation.
- Even after he had decided to transfer the A shares elsewhere, Barclays made things unnecessarily difficult.
- Information given by different Barclays employees was contradictory.
- The voting process was also inconsistent and needlessly stressful, meaning he had to enquire several times to establish that his vote had been placed.
- Overall, the service he received was substandard – in Mr D's opinion, a smooth transition of the A shares could have been achieved in around two months.
- Barclays didn't think about the impact of the delay on Mr D – for example, he questions if it could have instead supplied his shares back to him in a certificated format as an alternative.
- He repeats his assertion that his estimate for fair compensation of £50 per month, and thereafter £100 per month (totalling £950) should be paid by Barclays as a minimum.

Barclays did not have any other comments to make.

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 thank the parties for their considerable patience whilst this matter has awaited an ombudsman's decision. Whilst I know this decision will not be what Mr D has hoped for, I cannot agree that this complaint should succeed. I'll explain my reasons for reaching that conclusion below.

I've included a chronology of the complaint in the background of this decision to assist Mr D and to recognise the depth of his ongoing concerns. However, I won't be addressing every individual submission Mr D has made in turn, as that isn't what's required of me.

It's also important for me to point out that we do not act in the capacity of a regulator. That remit falls to the Financial Conduct Authority ('FCA'), where it may look at wider issues governing how businesses conduct their operations or exercise what may be commercial judgment on the provision of a particular service.

This service's role is to investigate disputes and resolve complaints informally, whilst taking into account relevant laws, regulations, and best practice. In reaching my decision, I'll focus on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all the circumstances. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

I can see that Mr D feels very strongly that Barclays has prevented him from taking action with his shares, which meant he couldn't sell some of his holding in early 2023 as he would have wished to. Whilst Mr D is entitled to form his own view on what has gone on, I must also do the same. And from an objective standpoint, I do not consider that Barclays has acted unfairly in the circumstances of this complaint.

Mr D believes Barclays could have undertaken the steps to allow affected customers to trade A shares more quickly, and that it failed in a customer service duty to him. And whilst I accept the frustration Mr D feels, I don't take the same view. Barclays's duty to Mr D in respect of operation of his Smart Investor account was set up on an execution only basis. This means it will execute (or carry out) instructions and provide information, not advice and it is obliged to act within the terms and conditions agreed with Mr D from the outset.

In relation to corporate actions, those terms say:

"3. Corporate actions and voting rights

3.1 Unless we agree otherwise with you, where we hold Assets which give you rights in relation to a company, including if we become aware of any proposed class action or group litigation:

- (i) we will not be responsible for taking any action in relation to these matters, except to give effect to Default Action if you do not give us an Instruction;*
- (ii) to the extent permitted by Regulatory Requirements **we will not be obliged to notify you or obtain your Instructions in relation to these matters** [my emphasis];*
- (iii) if we do seek but do not receive your Instructions by any deadline stated by us, we will take such action as we consider appropriate (including taking no action); and*
- (iv) if we seek and receive your Instructions by any deadline stated by us, we will take such action as we reasonably consider appropriate, including action that does not accord with your Instructions where following such Instructions is not reasonably practicable.*

3.2 If you instruct us to vote as a proxy for you, we may refuse or agree on payment of a fee."

I believe the above terms are clear as to the limitations and extent of Barclays's actions in respect of any corporate action notifications. Though it wasn't obliged to do so under clause (ii), it did notify Mr D and all other affected customers with shares in A as to both the transfer to the US stock exchange, the vote on the takeover and the option to dispose of the shares once they had been successfully transferred.

Overall, the transfer was a highly complex event, initiated by A, which required Barclays to undertake numerous operational decisions both internally and externally with its custodian, international custodians, and settlement agencies.

I can also see that it explained to Mr D why this was required - the A shares were American Depositary Shares; they couldn't be held electronically with a broker. This meant they must be held with A directly and A would issue Barclays with an American Depositary Receipt ('ADR') to confirm the holding for all Barclays customers. Once Barclays had access to the Nasdaq, it actively worked with its custodian and relevant US counterparties to receive the ADR and complete its overall intention to move the shares from the ADR to a holding which could then trade on its international platform. However, this was also impacted by the further corporate event in relation to the external takeover of A.

As I've noted, the terms of Mr D's share dealing account do not compel Barclays to inform Mr D of its actions. Furthermore, Barclays told Mr D how it was required to comply with its regulatory obligations set out by the FCA, noting:

“As we handle Client Money and Assets (CASS) the Financial Conduct Authority sets out rules which govern how we handle these. In line with these rules, clients aren’t permitted to trade in any asset until we have it in custody. For your reference, the specific area [we] refer to is CASS 6.4.1 – Use of Safe Custody Assets. Due to these rules, before we’re allowed to hold the shares, we have to complete a number of legal and regulatory changes in order to convert them to the US stock line. We have to make sure they adhere to the Barclays retail proposition and that we can physically hold the actual share rather than simply a receipt of those shares. I appreciate this has been a lengthy process to complete. However, we’ve acted accordingly and processed everything required from us within expected timescales ”

Due to the nature of some evidence which Barclays says is commercially sensitive, I am not able to repeat the exact detail here of the steps undertaken by Barclays to permit the move of the A shares from UK to US exchanges. However, having reviewed Barclays’s evidence carefully, I am satisfied that it was acting fairly and reasonably to facilitate this move, and though this matter took far longer than Mr D would have hoped, I cannot agree with Mr D’s contention that he has accumulated financial compensation (at his calculated rate of £50 then £100 monthly). That is since I’ve not seen any objective evidence that Barclays contributed to the delay or caused an identifiable financial loss.

As it was, Barclays gave Mr D the option of disposing of all or part of his shareholding ahead of the delisting from the AIM, so if Mr D had intended to use some of his shareholding to fund a holiday or move to a cash ISA, he was given sufficient notice to do so.

I realise Mr D also says he was unable to transfer away his holding to a different share dealing business. However, I cannot say that the failure to process a request was the fault of Barclays. Its records show it never received any communication from the transferee business to initiate a transfer. It explained how that business would have been able to access its transfer contact details from the relevant industry transfers database, if needed.

Finally, I am aware that Mr D was concerned that Barclays took far longer than it should to reply to the complaint. I do realise that this was frustrating for Mr D, where the rules set out by the FCA applying to this service gives businesses eight weeks to provide complainants with a final response letter. However, despite the disappointment a complainant may feel when a business fails to comply with the time limit, I am not obliged to apply a penalty for it not having done so. As I noted earlier in this decision, we do not ‘police’ businesses or issue directions as to how a business ought to conduct its operations. This is because we do not act in the capacity of a regulator.

The recourse open to Mr D (instead of waiting longer than eight weeks for a reply) was to bring the matter to this service once the time limit had passed. I am not able to otherwise look at concerns about the timeliness for which Barclays dealt with the complaint, as complaint handling is not a regulated activity in its own right and it doesn’t fall within the jurisdiction of this service.

My final decision

I am not able to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 15 April 2025.

Jo Storey

Ombudsman