

## The complaint

Mr W complains that Barclays Bank UK PLC provided an incorrect instruction to a third-party to sell his entire stocks and share Individual Savings Account holdings ('ISA') and transfer the full amount in cash instead of the £5,000 cash transfer he requested.

## What happened

In early 2023, Mr W opened a cash ISA account at a Barclays branch. Shortly after, Mr W says he told Barclays he wanted to transfer £5,000 from his cash holdings in his stocks and shares ISA with a provider I will call Company H. Barclays sent a completed transfer form to Mr W and he signed it before returning it to Barclays.

When Mr W checked his account to see if the £5,000 had been transferred, he saw that all of the holdings in his stocks and shares ISA had been sold to cash. Company H confirmed to Mr W that Barclays had requested a transfer of all the holdings in the stocks and shares ISA. Company H agreed it would now stop any payment being made to Barclays – although the units in the funds had already been sold down. Mr W complained to Barclays.

Barclays accepted it had made an error when it completed the ISA transfer form it had sent to Mr W for signature but confirmed it had now abandoned the transfer. Barclays said that it had initiated a new transfer request for £5,000 cash and asked that Mr W use the final response it had sent to confirm to Company H that Barclays had made the error. Barclays credited Mr W with £150 for the distress and inconvenience this had caused him and paid him £27.52 for loss of interest for the delay in the £5,000 being transferred. The £5,000 cash ISA transfer completed on 5 June.

Mr W called Barclays several times after he had received the final response to find out what Barclays were going to do to put him back in the position he would have been in if the sale of his entire ISA holdings hadn't been requested. In the meantime, Company H told Mr W it was awaiting confirmation from Barclays that it would cover the cost of re-purchasing the units it had sold.

Barclays sent Mr W a further response to his on-going complaint on 7 August. Barclays said it would consider any 'costs' that Mr W had incurred in the failed transfer, but that it needed more information from Mr W or Company H in this regard. Mr W told Barclays that it must put him back into the position he was in before the full ISA holdings were sold and that any losses he incurred would need to be covered by Barclays.

In late November, Mr W purchased new holdings in his ISA with Company H, as he or Company H hadn't received confirmation from Barclays that it would cover the losses he'd incurred.

Mr W brought the complaint to the Financial Ombudsman Service and one of our Investigators looked into things. The Investigator thought that Barclays should contact Company H for an accurate and up to date valuation for Mr W's holdings, had they not been sold in error in March 2023. And, that Barclays should undertake to pay Company H any shortfall that may occur when Company H reconstructs the original portfolio after the

proceeds of Mr W's current portfolio has been fully utilised.

Barclays asked that an Ombudsman decides the complaint as it believes it should only be responsible for the losses Mr W may have incurred up until 21 March 2023 as it hadn't received the additional information it required from Mr W.

As I reached a significantly different outcome than our Investigator, I issued a provisional decision and asked for further comments from Mr W and Barclays. In my provisional decision I said:

*Mr W has an execution-only account with Company H. This means that Company H hasn't provided advice to Mr W in relation to the stocks and shares he invested in, and that Mr W makes his own investment decisions. The ISA Mr W held with Company H had holdings in over 20 different unit trusts – all of which he must reasonably have purchased on an execution-only basis. Mr W has also told us that he had previously transferred some of his ISA funds into a cash ISA with another provider. Taking this into account, I'm persuaded that Mr W more likely than not has a reasonable understanding of ISA's, their investments and how he could transfer assets between different ISA accounts.*

*There are no telephone recordings or detailed notes of the discussions Mr W had with Barclays prior to the pre-filled ISA transfer form it sent to him. So, my decision will be based on what I think is more likely to have happened taking into account what Mr W and Barclays have said and the documents they provided. In calls with Barclays after the initial transfer was abandoned, Mr W was consistent with his version of events and maintained that the instruction he provided to Barclays was that he only wanted to transfer £5,000 of the cash holdings in his ISA. In telephone calls and in written responses to the complaint, Barclays accepts that the initial ISA transfer form it sent to Mr W was pre-filled with the incorrect information.*

*I must consider what impact the mistake Barclays made had on Mr W and whether this has resulted in any monetary loss and inconvenience. But I must also take into account what actions Mr W took when he became aware of the error - in other words were the actions taken by Mr W reasonable in the circumstances of this case.*

*When Company H received the original transfer request from Barclays, it would have seen that the request was for 'all' parts of the ISA to be transferred. The request also confirmed that it was a condition of the transfer that the funds be transferred as cash only. That is why Company H sold the funds Mr W held. Unfortunately, this meant that by the time Mr W told Company H that he had never intended to sell his entire holding, Company H had already sold the units.*

*Barclays sent the corrected cash ISA transfer form to Company H on 21 March and the transfer of £5,000 cash completed in June. However, this left Mr W holding a significant amount of cash in his unit trust ISA with Company H. Barclays did ask Mr W to provide information about the costs he'd incurred in this regard, but this demonstrates that Barclays didn't quite get to grips with the crux of Mr W's complaint. The crux of the complaint is that Mr W wanted Barclays to cover any losses in reconstructing his ISA with Company H to what it was on the day the unit trusts were sold. This is despite Barclays telling Mr W, in a telephone call on 18 March, that it understood he wanted his investments with Company H to be put back to how they were before Company H acted on the incorrect instruction sent by Barclays.*

*Barclays referred to these potential losses as 'costs' but, when speaking with Barclays on 21 March, Mr W again explained the crux of his complaint was that the price of buying units to reconstruct his holdings would be different and he didn't want to lose out. Barclays*

reassured Mr W it would put him back in the position he would have been in as if the sale of units hadn't happened.

Company H has provided evidence that it emailed Barclays transfer team on 20 March and asked, "Before we are able to reverse the sales and return our mutual client to their original position, we require you to accept full accountability for the error and provide confirmation that you will cover any costs involved in re-instating the client's position. Note that we do require this in writing, via email, rather than over the phone." And, on 29 March Company H has provided evidence that it emailed Barclays transfer team again and asked, "Please can you confirm that you are happy to cover the cost of any losses accrued by returning {Mr W's} account to the correct position, and we will duly begin the reversals process."

Barclays believes it was waiting for further information from Mr W about any specific losses, or costs, that he may have incurred. However, emails sent by Company H made it clear to Barclays that it needed confirmation that Barclays would cover any losses – if there were any at the time. So, I'm persuaded that by 21 March, Barclays would have been aware what Mr W wanted it to do and that it needed to provide confirmation to Company H or himself that it would cover any losses Mr W had incurred because of its error. Regardless of the communications Barclays received from Company H and Mr W, it didn't provide Mr W with anything that confirmed it would cover any losses to which it had contributed.

Mr W complained to Barclays again in late March and April that it still hadn't confirmed to him or Company H that it would cover any losses he may incur if he reconstructed his holdings. Barclays sent several holding letters to Mr W explaining it was still looking into this part of his complaint. Barclays provided a final response in this regard on 7 August. In its response Barclays said, "...we'd need more clarity on these ['costs'] before we could consider these as part of the complaints process. If these are costs you have incurred, we will need to see evidence of these and then we can consider these further."

When he first complained Mr W made it clear to Barclays that it should cover any potential losses he incurred because of its error. I'm satisfied Barclays told Mr W it intended to put him back in the position he was in before the units in his ISA were sold to cash. The difficulty here is that Mr W was aware that Company H had sold his investments to cash by 18 March, but he hadn't taken any reasonable steps to mitigate his losses or future losses. However, in its initial final response letter dated 22 March, Barclays didn't address this issue directly – it simply said Mr W should use this letter to confirm to Company H that there had been a bank error. I intend saying that this didn't provide Mr W with the clarity he wanted that Barclays would cover the costs of repurchasing the investments he held with Company H before the error happened. This is supported by Barclays notes about the complaint that record Mr W made further contacts in March and April to try and resolve this specific issue.

After complaining about this matter again in April, Mr W received several holding letters from Barclays. It wasn't until 7 August that Barclays made it clear to Mr W that it needed details of the costs, or losses he'd incurred. I intend saying that this was the first time Barclays had explicitly dealt with the crux of Mr W's complaint about his potential losses. This is despite having conversations with Mr W, in which it said it would put him back in the position he would have been in but for its error. I also intend saying that this would have been the first time that Mr W would reasonably have been aware that Barclays were relying on him to produce evidence of any losses he'd incurred as a result of its error. Up until this point I think it's reasonable for me to consider that Mr W believed Barclays would be resolving this with Company H, particularly as it's clear Company H had been communicating with Barclays in this regard but hadn't received a response.

*Balanced against this, Barclays view is that Mr W didn't take reasonable steps to mitigate any losses, including potential future losses, after the error occurred in March. The rule of mitigation requires Mr W to take reasonable steps to minimise any loss and to avoid taking unreasonable steps that may increase his losses. Mr W cannot rely on doing nothing. But, in this case, I intend saying that I don't think it was unreasonable that Mr W gave Barclays the opportunity to put things right, given that Barclays said it would ensure he was put back in the position he would have been in but for its error. It's for this reason that I think it would have been reasonable for Mr W to have mitigated his losses once he received the August final response letter. Unfortunately, Mr W didn't reconstruct his portfolio until November 2023.*

### **Putting things right**

*Taking all of the circumstances of this complaint into account, I intend saying that Mr W would have been aware by August that he needed to provide Barclays with details of any crystallised losses he'd made due to its error. As Mr W didn't provide this information, I intend saying it would be unfair for me to decide that Barclays should be responsible for any losses – if any – after 9 August (two days after Barclays sent its final response to Mr W by post). This is because I intend saying this was the point at which Mr W should reasonably have taken steps to mitigate any losses made – if any – because of the error made by Barclays. It is also the point in time when I consider Barclays explicitly addressed the crux of Mr W's complaint. And for this reason, I'm not persuaded any losses Mr W made - if any – after this date were caused by Barclays error but were a result of Mr W not taking steps to mitigate his position.*

*We've reached out to HMRC about the implications of paying any losses back into Mr W's ISA with Company H. HMRC has told us it would agree the amount compensated (for the loss of growth whilst uninvested) can be paid to the original ISA Mr W held.*

*The error Barclays made caused Mr W ongoing distress and inconvenience before and after the correct transfer was completed. Barclays has already paid Mr W £150 to reflect the impact of its poor service on Mr W. Barclays has also paid Mr W £27.52 to reflect the loss of interest on his cash when the cash ISA transfer was delayed. I intend saying that Barclays should pay Mr W a further £350 for the significant distress and inconvenience its poor service from February to August 2023 caused Mr W. In this time Mr W had to chase Barclays more than he should have needed to, and he had to chase Company H to see if it had received a response from Barclays accepting that it would pay the difference in the value of Mr W's investments caused by its error.*

Mr W accepted my provisional decision without further comment.

Barclays also accepted my provisional decision and said it would be helpful if Company H could provide the value of Mr W's fund or provide details of the investments Mr W held when it sold the funds down. Barclays say this would allow it to make a calculation of the loss.

### **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 both Mr W and Barclays have accepted my provisional decision without any substantive comments, I've decided to adopt it as my final decision.

In respect of the breakdown of the investments held by Company H at the time they were sold down to cash, I've seen that Company H has provided our service with a number of

calculations in this regard. However, I think it's important for Barclays to obtain an accurate breakdown of the funds Mr W held on the day the sale took place. Although this will have no significant impact on my final decision, I would suggest that Mr W and Barclays work together to obtain an accurate breakdown of the funds Mr W held immediately before they were sold. If this involves Barclays asking Mr W to provide a signed authority from him for it to approach Company H directly for the breakdown, it shouldn't be unreasonably withheld.

### **My final decision**

I've decided that to resolve this complaint:

- Barclays Bank UK PLC should ask Company H for details of Mr W's holdings at the time of the sale.
- Barclays Bank UK PLC should then work out how much it would have cost to repurchase those units on 9 August 2023. This is Mr W's loss (if any).
- If there is a loss, Barclays Bank UK PLC should pay this amount into Mr W's ISA with Company H and inform HMRC that the ISA with Company H has been reconstructed.
- Barclays Bank UK PLC should pay Mr W a further £350 for the distress and inconvenience its error has caused Mr W.

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

Paul Lawton  
**Ombudsman**