DRN-5430286

The complaint

Mr G complains about Barclays Bank Plc. He said it failed in its duty to revoke his instructions to tender his Eros bonds. He said its failure to do this, meant that he was unable to sell them when he wanted to, and for this reason he has incurred a loss. He would like Barclays to compensate him.

What happened

Eros, a media company, launched a bond issue in 2014 with a yield of 6% per annum. The initial offering was set to mature after seven years, but Eros extended the maturity date. It tried to restructure its debt in March 2023, initially offering to buy back half of the bonds at 60% of their value whilst at the same time, raising the interest payable for remaining bonds to 9% per annum and extending maturing to 2026.

Many bondholders agreed to the restructuring plans and gave their elections to accept the proposal. Eros then changed its proposal, and bondholders who initially agreed to the first repurchase, had their bonds held in escrow from April 2023.

Eros' new proposal in July 2023 was that it would buy back around £2m worth of bonds and said it would do this at a later date, this being March 2024. The news caused the price of the bonds to drop significantly to around 16p, and the market price fell further, as time went on. Eros then said in April 2024 that it was not going to repurchase any of the bonds, the corporate event was withdrawn.

Mr G bought £5,000 worth of bonds on the launch in 2014 and was one of the bondholders that had his bonds held in escrow from April 2023. He initially elected for Eros to buy them back.

But on 30 August 2023, he complained to Barclays about how long it was taking to revoke his choice and return his bonds to him. Within this letter he said he was minded to sell his bonds when he received them back. Under its memorandum issued in July 2023, Eros stated that he could do this.

Mr G's representative said Barclays failed in its duty to revoke Mr G's instruction to tender his bonds. He said Barclays told them it was not possible, and this was to do with the custodian Citi. The representative said Mr G had a contractual relationship with Barclays and it was therefore its duty to ensure his instructions were followed.

Mr G's representative said had Mr G's instructions been followed in a timely manner, as all other brokers managed to do for their clients, he would have been able to sell his bonds for around 16.375p, as this was the price available on 30 August 2023. He said the bonds were now trading at a lot lower price.

Barclays said in response on 11 August 2023, that the ringfence around the bonds had been applied correctly, as Mr G could not agree to tender his bonds and sell them on the open market at the same time. It said if he wished to sell them, he'd need to wait until the

corporate action event had ended. It said it was unable to remove or reverse the election as this had been accepted by the custodian.

Barclays then said on 1 December 2023, that it was unable to identify any errors caused by it and so couldn't agree with Mr G's complaint. It said it sent a cancellation instruction to its custodian, Citi, requesting the return of the bonds from escrow.

Barclays said in a later response on 30 January 2024, that Citi confirmed to it on 28 November 2023 that it was not allowing it to withdraw bonds from the election. It said the bonds remained up for tender and in escrow, and this meant Mr G was unable to sell his bonds.

Barclays said it couldn't comment on how other brokers had been able to un-tender their clients bonds. It said it followed the correct process in the corporate action, and there was nothing more it could do. It then referred to section 3 of the share account terms and conditions under the heading of corporate actions and voting rights. It said it followed its terms in relation to Mr G's instruction.

Mr G's representative was not happy with Barclays's response and referred his complaint to our service.

An investigator looked into Mr G's complaint and was able to obtain further information from Barclays regarding its conversations between it and Citi, the custodian. She said after reading through what was said between the parties, she didn't think Barclays were at fault. She said she considered whether Barclays could have revoked the tendered bonds sooner than it did, so Mr G could sell them on the open market, She said she didn't think it could be done.

The investigator outlined Barclays role as nominee broker and administrator. She concluded it hadn't done anything wrong in its role. She said she had seen communications it sent to the custodian, chasing payment. She said she was satisfied it did all it could for Mr G. She said, again she could see Barclays ask the custodian to revoke the tender, but the custodian confirmed the bonds were held in escrow and couldn't be released.

The investigator concluded it was clear from what she had read between the parties that the decision was out of Barclays control. So, she didn't agree that Barclays were at fault here. She said without confirmation from the custodian that the bonds were physically available, it was unable to release them to its platform. She didn't uphold Mr G's complaint.

Mr G's representative was not in agreement with the investigator's view. He said Mr G had a contract with Barclays, not Citi, therefore it was Barclays that held full responsibility for the corporate action.

He said if Barclays chose to use Citi as its custodian that is its prerogative, but it cannot pass the buck to another entity, for a client it is directly contracted to. He said if the complaint was about his firm, he could complaint to Citi, but he would be liable under contract with the client. He said Mr G has no right to complaint to Citi, therefore it is Barclays that holds full responsibility for any failures.

I issued a provisional decision on this complaint on 7 March 2025. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

"The crux of Mr G's complaint as I see it, is that he was denied the opportunity to sell his Eros bonds, because they were being held by the custodian, following a corporate action.

Specifically, the owners of Eros, offered to buy back a proportion of the bonds, then changed its mind about the detail. This happened after bond owners, including Mr G, made their election. It said in its memorandum at the time in July 2023, that bond owners that had already made an election to tender their bonds, could revoke their instruction. So, this meant potentially, that Mr G could revoke his instruction, and be able to decide afresh whether to sell them or make an election to take up the revised offer.

Mr G and his representative have made the point that if Mr G's instruction had been withdrawn, he would have sold the bonds, even though at that time, Eros were still offering, at a later date to pay 60p to the £1. The bond price was in August 2023 around 16p. He said in a letter to Barclays on 31 August 2023, if and when his bonds were cleared and his instruction withdrawn that he was looking to sell them, as he was not convinced Eros were going to pay what it was offering to. Mr G was right to not be convinced as this turned out to be the case. I'm satisfied based on this contemporaneous evidence that, had he been able to sell his bonds at the time, this is what Mr G would have done.

Mr G's bonds were not cleared for him to be able to sell them, as they were escrowed. Barclays wasn't able to arrange with its custodian, Citi, a withdrawal of the instruction for Mr G, and so his shares were locked in, according to his initial choice, to accept the tender, even though a memorandum from Eros in July 2023 stated that he could withdraw from it, and he said he saw that there were others using other brokers that had withdrawn their tender and were able to sell their bonds if they wanted to. I can see why this would be of great frustration to Mr G, as I can see clearly what his intentions were at the time, that he declared in an email to Barclays.

What I need to consider here though, is whether Barclays made any mistakes when it handled his request. Mr G and his representative have been clear. They think Mr G had a contract with Barclays and so therefore it was Barclays that held the full responsibility for Mr G's instructions relating to the corporate action.

I acknowledge the point they are making, however just because Barclays had obligations towards Mr G as a customer, doesn't automatically mean it was responsible or at fault for what happened here. Rather, I have needed to look into whether Barclays carried out its obligations towards Mr G and treated him fairly, and whether in dealing with his instruction to withdraw his election choice in the corporate action in question, it made any mistakes. Because as unpalatable as it would be for Mr G to hear, it is possible that although he was unable to sell his bonds when others apparently could, Barclays did all that was required of it, and didn't make any mistakes when it attempted to carry out his instructions. I have looked into this further to see if this was the case, or whether it did make mistakes that led to Mr G not being able to sell them when he wanted to.

I first looked at the terms and conditions for Mr G's account, that he would have signed up and agreed to. This is the basis of the contractual relationship that Mr G and his advisor have pointed to. I have looked specifically at corporate actions and the terms that applied, that Barclays ought to have been adhering to, when it dealt with Mr G's instruction.

Barclays told Mr G and our service that it tried to withdraw his instruction with its custodian but was unable to. It said it was told that Mr G's bonds were locked in and couldn't be released at that time. So, according to Barclays it did seek to action Mr G's instruction with its custodian, but it was unable to. What I need to consider here, is in accordance with the terms of Mr G's account, whether there was anything else Barclays could have reasonably done.

The investigator asked Barclays to disclose more in relation to what it relied on to draw its conclusions, and because of this, I have been able to read the email exchange between Barclays and its custodian, to get a better understanding about what happened and Barclays role in this.

I can see, when reading through the messages, that there was a conversation between Barclays staff and the custodian specifically about whether the shares could be released or not. I can see that Barclays requested the shares be released and were told by the custodian that the shares were encumbered.

I went back to Barclays to ask them more about these messages again and asked a few more questions to satisfy myself that it had done all that was reasonably practicable, in the circumstances of Mr G's complaint.

I asked Barclays what happened when it made its original instruction to cancel the tender positions for its clients, with Citi. I have seen emails between Barclays and Citi sent between them in February 2024, that suggest to me that although Barclays instructions failed, its clients shares were not blocked or encumbered by Citi.

On 23 February 2024, Citi confirmed there was an uninstructed balance and that it did not see any encumbered positions due to previous elections. Then on 27 February 2024 it said, "from the screenshot supplied inx rejected due to deadline passing on two instances and on the other the inx has been cancelled as Barclays requested".

Citi then said, "If you can advise who/where told you that positions encumbered I can investigate further but team advised me they see eligible position and no encumbered position". And finally, 28 February 2024 Citi said, "Your cancellation inx were not accepted originally but your position was not blocked."

I asked Barclays to explain what happened here and whether it had made any mistakes with the instruction it provided. Barclays did not respond to my questions, so I have needed to consider what I do have in front of me, including the email exchange between it and Citi, in particular what I have shared above. In doing so, I don't currently think Barclays has treated Mr G fairly.

On balance, I think the email sent from Citi on 19 October 2023, where it stated the bonds were encumbered, was not correct, and that it was the instruction from Barclays that was not accepted, because Barclays made a mistake in how it completed this. It is this reason, on balance, that would explain to me why Mr G was unable to have the option to decide whether to sell his shares when other bondholders using other brokers could.

But even if that wasn't the case, I also don't currently think, Barclays did all it could reasonably do to ask Citi why its instruction wasn't accepted in September 2023, or then why the bonds were encumbered for it and its clients when seemingly they weren't elsewhere. I don't currently think it was fair and reasonable of Barclays to just accept what was being said by Citi, bearing in mind the detail of the memorandum issued by Eros in July 2023 and what was happening across the marketplace with other bond holders and their brokers. Barclays didn't seek to resolve matters for Mr G here and for this reason as well, I don't think it treated him fairly.

In conclusion, I currently think Barclays has made mistakes here, in that it sent an instruction that wasn't accepted, as confirmed in an email from the custodian in February 2024. On balance I think it was Barclays that made a mistake that caused this. I say this, as other brokers were able to release bonds to their clients. Barclays then didn't do all it

reasonably could to understand why its instruction failed and didn't ask its custodian why its bondholders bonds had been encumbered, when others across the markets hadn't.

I think this all mattered for Mr G as he made it clear in an email at the time that he was looking to sell his bonds as soon as he received them back and gave his reason why. So, I think it was clear what his intentions were here. I think for the reasons I have explained, Barclays has made mistakes, not treated Mr G fairly, and I think this has caused Mr G to incur losses. Barclays needs to put things right."

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision.

Mr G responded through his representative on 17 March 2025 and made a few additional points. These being:

- That whilst they were both in agreement with the outcome, they were disappointed our service did not initially find Barclays at fault.

- They reiterated their stance that Barclays were the regulated entity that Mr G signed terms with, not the custodian CITI. They said CITI had no direct duty towards Mr G.

- They added that any failure by CITI was de facto a failure by Barclays, and Mr G would like this point corrected for the record by me in this final decision.

Barclays responded on 24 March 2025. It made the following points:

- It disagreed with the conclusions I had reached.

- It said there had clearly been some issues with the information provided by its custodian CITI, which led to some incorrect information.

- It said though, under the terms of Mr G's account and in particular term 3.1. in relation to corporate actions, that sometimes there were factors that were outside of its control.

- It said whilst it makes every effort to participate in corporate events, there are factors can affect its ability to do so. It said in this instance, CITI contributed to the delay, but so did Eros with unclear instructions and often changes to the event in question.

- It said it also had concerns about the proposed redress that I have put forward.

- It said the date I used; it was unable to agree to. It said it wouldn't normally accept instructions to trade through a letter, and it would normally reply to a client and discuss options. It asked that I take this into account.

- It said it could see most difficulties with what I had proposed in part B of my redress. It said it was unable to take ownership of any shares. It referred to the FCA CASS sourcebook guidance and segregation of assets. It said taking ownership of the shares would prove extremely difficult.

- It said Mr G has had the ability to trade the shares but had not done so. He said I should consider the fact Mr G had not mitigated his position.

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.

Comments by Mr G and his representative

I have read Mr G and his representatives response to my provisional decision and note they are disappointed that the investigator did not initially uphold Mr G's complaint.

Our service has a two-stage process so if either party disagrees with what has been said at the first stage, they can refer the complaint to an ombudsman for a final decision. The point of this is to ensure that a complaint can be fairly aired and considered by more than one independent decision maker, so that a fair and reasonable outcome can be reached.

So, although I note Mr G and his representatives disappointment, they exercised their rights to do this that enabled the service to look again at the circumstances of this case. When they did that, and their complaint was given to me to look into, I was soon able to see that a lot of time and hard work had been spent by staff at our service, in particular by the investigator to try and find out what had happened here. A lot of critical information relevant to the outcome, in relation to conversations between Barclays and Citi had been gathered, and because of this, I was able to get to the crux of Mr G's complaint and be in a position to ask further questions. These questions ultimately led to the outcome that Mr G and his representative are now in agreement with. So, within that context, I don't share in their disappointment or agree with them.

Mr G and his representative again reiterated their stance about Barclays and its contractual relationship with Mr G. Again, I do agree that Mr G and Barclays have a contractual relationship. I said within my provisional decision that this was the case and looked through the terms and conditions of the account and service that Mr G had signed up for.

But I don't agree with Mr G and his representative when they say any failure by Citi is de facto a failure by Barclays, because Mr G has a contractual relationship with it. As I explained in my provisional decision, there was a scenario here, where I could have concluded Barclays did all it reasonably could have done and met its obligations to Mr G as a customer. Ultimately, I have looked at this case on its own merits, and I need to decide here, using the contractual relationship between the two parties, as the basis of my findings, whether Barclays did all it reasonably could have done, and if not whether it made any mistakes.

I don't think it would be fair and reasonable of me to automatically, without consideration of the individual circumstances of this complaint (or any other), conclude that Barclays were responsible for mistakes of another party, whether this be a third party, sub-contractor, or otherwise. Instead, I do think it is about the individual circumstances of each complaint and Barclays role within that. So, in short, I am not going to do what Mr G, or his representatives have asked here regarding correcting my decision for the record. This is because I don't think I have made an error and I don't agree with them.

Comments by Barclays

I acknowledge the comments Barclays has made about the terms and conditions in relation to Mr G's account. I have read the term that it has referred to in relation to corporate actions. I do understand why it has referenced this term, and as I have already said in response to Mr G's comments, I have taken into consideration the contractual relationship that exists between Mr G and Barclays. The terms and conditions attached to Mr G's account form the basis of this relationship and I have taken this into consideration when I have looked into what has happened.

I do also agree with Barclays when it said Citi and Eros have both contributed to what has happened here. But as has already been said by all, they are not the responsible party in this complaint: Barclays are. So, I have looked at Barclays role in all this and whether it treated Mr G fairly or not. I drew the conclusion that it didn't, and I haven't read anything that has persuaded me to change my mind here.

I still think Barclays made a mistake and so it needs to put things right. On balance I think it put in an incorrect instruction to Citi for it to revoke the original corporate action instructions. But even if that wasn't the case, I still think Barclays didn't do enough to find out why the bonds were encumbered. I don't think Barclays could have been assured by what it had been told and it should have asked for an explanation as to why that was the case, especially when other brokers were able to release their clients bonds back to them.

So, I don't think Barclays treated Mr G fairly here. It is for this reason, in the circumstances, that I uphold Mr G's complaint and Barclays should put things right.

Barclays has raised a couple of issues with the redress that I proposed. I understand the point it has made about its processes and the date of the letter. That said I needed to find what I felt was a fair date for it to work out the redress from. The date of Mr G's letter seems to be that point, as it was this date that he was clear about his intentions to sell the bonds and I think, on balance, he should have had the bonds back by then too. So, although I understand Barclays comments, they don't persuade me to change the date here.

Secondly, I have taken on board its concerns about taking shares back. I think this is something Barclays could do. However, I am able to change the wording here to alleviate its concerns and still achieve the same outcome. I think Barclays could use the value of Mr G's bond on the day of settlement instead or use the price Mr G obtained when he sold them or on maturity. This would achieve the same outcome as it taking ownership of the asset.

Finally, on the issue of mitigation, although I understand Barclays point here, I think Mr G was clear about his intentions to sell on 31 August 2023 when the price of the bond was higher.

The price of the Eros bond then went sharply down and since then there has again been a confusing mixture of news from Eros. So, I can understand Mr G's reluctance at this stage to sell at a much lower price and consider his options with any further development from Eros, if this is what he has done.

Putting things right

Barclays has made mistakes, and in doing so, I think has caused Mr G to incur losses. It should look to put Mr G back into a position he would have been in but for the errors I have described above that it caused.

In the circumstances of this complaint, I think Barclays ought to have revoked Mr G's instruction and returned his bonds to him. I can see that Mr G said he would have sold his bonds on 31 August 2023, and I think Barclays ought to have returned his bonds to him by that date. So, I currently think this is a fair and reasonable date for Barclays to use to put things right.

So, I think Barclays should do the following:

A) It should assess the average price of the bond on 31 August 2023 and use that to calculate how much Mr G would have received on that date if he had been able to sell them.

B) If Mr G still has the bonds, Barclays should find out what they are worth on the date of settlement and subtract this from the total it has calculated above, or if he has sold them or they have matured, Mr G should notify it of what he received for them, and Barclays can then subtract this amount from what I have described above.

C) Barclays should then pay Mr G 8% simple interest on the settlement amount after subtracting B from A, from 31 August 2023 to the date of settlement, as he has been denied use of these funds.

In addition, I conclude Barclays has caused Mr G distress and inconvenience, by not allowing him the ability to sell his holding, when he could see that bondholders were able to sell theirs. It would have been stressful for him, seeing the price go down during this time. He was also not given a clear answer as to why the bonds were encumbered as Barclays had not followed this up with Citi and asked why this was the case. I think for these reasons Barclays should also pay Mr G £300 for the distress and inconvenience it has caused.

My final decision

My final decision is that I uphold Mr G's complaint about Barclays Bank Plc. I direct Barclays Bank Plc to put things right as I have described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 April 2025.

Mark Richardson
Ombudsman