

The complaint

The estate of Mrs B is represented by one of its executors ('E'). The complaint, made in 2024, is about Barclays Bank Plc referring the late Mrs B, in 2007, to its subsidiary at the time – Barclays Bank Trust Limited ('BBTL'), now Zedra Trust Company (UK) Limited – for Inheritance Tax ('IHT') planning advice.

E says the referral should not have happened; it resulted in Mrs B following BBTL's advice to set up a Discretionary Trust ('DT') in June 2007 for assets she wished to bequeath; the advice, overall, was unsuitable; it has led to a catalogue of problems in the DT arrangement (including BBTL's role as a professional trustee) which are the subject of a separate complaint (against Zedra); the root cause of the problems is Barclays' 2007 referral.

What happened

E says Barclays ought reasonably to have known that the trust related advice/service she was likely to receive from BBTL would probably not meet her objective, and/or if it did not know the type of advice/service she was likely to receive from BBTL it should not have made the referral. The underlying argument being that Mrs B was a longstanding Barclays client who placed her trust in Barclays, so it breached that trust when it put her, knowingly or recklessly, in a position to receive allegedly unsuitable advice from a third party.

Barclays disputes the complaint.

It says Mrs B's objective in 2007 required dedicated IHT planning advice that her adviser could not provide, such advice was one of the specialist areas BBTL was created to cater for so the referral was justified, thereafter BBTL (not Barclays) was responsible for the IHT planning advice/service given to her. It adds that she received BBTL's advice accompanied by a relative, and she would have been told to separately obtain legal and tax advice in the matter, but she appears to have considered that to be unnecessary.

Barclays also questioned our jurisdiction over the complaint, given the timing of its submission, alongside its assertions that it did not give Mrs B regulated investment advice in the matter (instead, it referred her elsewhere to receive such advice).

One of our investigators looked into the case. She found that we have jurisdiction to address it and that the referral took the form of a recommendation that Barclays is responsible for, but she also found no merit in the estate's substantive complaint.

She summarised Mrs B's IHT planning objective, the referral to BBTL, and the advice she received from BBTL. She did the same with the grounds on which E/the estate allege parts of the DT arrangement were unsuitable and that BBTL mismanaged its role within it.

Returning to Barclays' position in the matter, she disagreed with its view that the complaint is out of time. She referred to the relevant complaint time limits and accepted that the 2024 complaint happened more than six years after the 2007 complaint event, so the complaint is outside the regulator's six years time limit.

However, she found that the complaint is within the regulator's three years time limit (beginning from when the complainant knew or ought to have known of cause for complaint).

The investigator summarised how the DT's portfolio's performance was one of the estate's main causes for complaint. She noted that the portfolio's statements had not been sent to Mrs B before she passed away in 2021, and that they had not become available to the estate until after E's involvement (in late 2021) and his complaint on behalf of the estate in 2024. For these reasons, the investigator concluded that the complaint was made within the three years time limit, within three years of awareness of cause for complaint.

With regards to the distinction Barclays sought to draw between its referral and BBTL's separate regulated advice, the investigator noted that Mrs B had a pre-existing ongoing relationship with Barclays, under which the referral was made, and that a Barclays official was even present during BBTL's advice to her, so she concluded that the referral happened in the context of the regulated activity of advising on investments.

The investigator summarised Mrs B's profile at the time and concluded that any prospect of a trust based IHT planning solution from Barclays' referral to BBTL was not unsuitable for her profile, and that the same applied to any prospect of BBTL acting as a professional trustee in such a solution. She found no evidence that Mrs B was averse to, or misled about, either being the case, so she did not consider there was anything wrong in Barclays' referral of Mrs B to BBTL.

E disagrees with this outcome. He asked for an Ombudsman's decision.

He mainly said –

- Barclays would have known how professional trustee arrangements worked;
- it would have known reasons for which such an arrangement was unlikely to be suitable for Mrs B (or that a variation to such an arrangement or an alternative arrangement would have been in her best interest);
- it would have also known that, because of her trust in Barclays, she was bound to follow BBTL's advice, Barclays had essentially recommended that she do so;
- so Barclays retained a duty of care for her in the referral *and* thereafter;
- it "... *should not have recommended the Professional Trustee and in doing so breached its duty of care*";
- "*Barclays Bank has caused all loss arising from the Professional Trustee's mishandling of the trust affairs by recommending it to [Mrs B] and is jointly liable with the Professional Trustee for the loss caused*";
- and, the investigator's view "... *does not address the heart of the complaint, namely the introduction to and recommendation of the Professional Trustee*".

E also raised enquiries about disclosure and transparency of evidence from, and of submissions by, Barclays in the complaint, which the investigator addressed.

The matter was referred to an Ombudsman.

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.

Jurisdiction (Time Limits and Regulated Activity)

The regulator's Handbook contains rules on the time limits for complaints. They are set out

in the Dispute Resolution ('DISP') section of the Handbook. DISP 2.8.2 R says –

“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received ...”

Therefore, we cannot consider a complaint referred more than six years after the complaint event or, if later, more than three years after the complainant knew or ought reasonably to have known there was cause for complaint. In the present case, the question of awareness of cause for complaint applies to Mrs B up to the point she sadly passed away, after that point it applies to the trust.

The complaint event is Barclays' referral of Mrs B to BBTL in 2007, so it is quite clear that the 2024 complaint happened more than six years later and is outside the six years time limit. The next consideration is the three years time limit.

The complaints against Barclay and against Zedra have both been referred to me. In the former, the estate complains about the referral. In the latter the DT is the complainant, it is also represented by E and its complaint is about BBTL's recommendation of the DT arrangement and about BBTL's/Zedra's professional trustee role within it.

Without straying too far into the complaint against Zedra, which is beyond this decision's scope, it is relevant to note that it appears to have prompted by the consideration that the DT has been allegedly mismanaged, with regards to execution of the professional trustee role, resulting in alleged investment underperformance and avoidable costs. Identification of these alleged problems in the DT is what triggered the estate's pursuit against Barclays, which the estate regards as the root cause of the problems (because of its 2007 referral).

In other words, the estate's awareness of cause for complaint about Barclays is defined by its awareness of cause for complaint about the alleged problems in the DT arrangement. Such awareness could only have existed with knowledge of what was happening in that arrangement, with regards to how it was being professionally managed and, perhaps more importantly, how its investments were performing (including the effects of costs on performance).

I have not seen evidence of such information being routinely shared, or shared at all, by BBTL/Zedra with Mrs B, so I do not have grounds to conclude she was or ought reasonably to have been aware of these matters before her passing. Indeed, information in the complaint against Zedra includes the terms of the DT arrangement in which BBTL (and then Zedra) held absolute discretion over its operation, and there is evidence that suggests the availability of information about what was happening within the arrangement was only available upon request. In this respect, I have not seen evidence of any such requests by Mrs B before her passing.

Soon after her passing in 2021 E became involved in the estate, as one of its executors. It appears that disclosures from Zedra about the DT's investment portfolio did not start to happen until 2023. E, on behalf of the estate, complained to Barclays in 2024.

In the above circumstances, I am satisfied that the estate became aware of cause for complaint against Barclays no earlier than 2023 and that there are no grounds on which it ought reasonably to have been aware of such cause earlier than that. Its complaint in 2024 means it complained within three years of that awareness, so its complaint is within the regulator's three years time limit, and is in time.

I now turn to what appears to be Barclays' concern about facing the complaint despite having no role in the regulated activity conducted by BBTL in advising Mrs B *after* its referral. Returning to the regulator's Handbook, the following is relevant –

“DISP 2.3.1 ...

The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one of more of the following activities:

(1) regulated activities ...

or any ancillary activities, including advice, carried on by the firm in connection with them.”

Under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, regulated activities include 'advising on investments' and 'managing investments'.

The facts show that what Barclays did was essentially a recommendation of BBTL's IHT planning/advice service. Documentation in the complaint against Zedra shows that Barclays stood as the 'introducer'. In addition, and as the investigator noted, Mrs B's Barclays adviser also appears to have been present at the meeting between her and BBTL.

Furthermore, and importantly, the funds Mrs B wanted to use in the IHT planning objective were from her Barclays Investment Management Portfolio, for which Barclays was already providing a regulated advisory and/or management service. It is in this context that she first approached Barclays with the objective, and that Barclays then recommended BBTL's service to her. In other words, its recommendation happened in this same context, it had an *ancillary* connection to the regulated service it was already providing her, so it is captured by our compulsory jurisdiction over regulated activities and ancillary activities (including advice) connected to them (as stated in DISP 2.3.1 R).

Therefore, the complaint is about Barclays allegedly committing wrongdoings in an ancillary activity (its recommendation of BBTL) connected with the regulated service it was providing Mrs B (for her investment portfolio), and we have jurisdiction to address it.

Merits

For the sake of convenience, I will quote what I said earlier about E's submissions on the complaint –

“He mainly said –

- *Barclays would have known how professional trustee arrangements worked;*
- *it would have known reasons for which such an arrangement was unlikely to be suitable for Mrs B (or that a variation to such an arrangement or an alternative arrangement would have been in her best interest);*

- *it would have also known that, because of her trust in Barclays, she was bound to follow BBTL's advice, Barclays had essentially recommended that she do so;*
- *so Barclays retained a duty of care for her in the referral and thereafter;*
- *it "... should not have recommended the Professional Trustee and in doing so breached its duty of care";*
- *"Barclays Bank has caused all loss arising from the Professional Trustee's mishandling of the trust affairs by recommending it to [Mrs B] and is jointly liable with the Professional Trustee for the loss caused";*
- *and, the investigator's view "... does not address the heart of the complaint, namely the introduction to and recommendation of the Professional Trustee".*

Barclays did not make a personal recommendation to Mrs B advising her to use a DT arrangement and/or that she should use a professional trustee in the arrangement and/or that she should use BBTL as that professional trustee. I have not seen evidence that it did any of these.

Barclays only recommended BBTL's IHT planning/advice service, in response to the IHT planning objective she presented.

E's arguments seem to be based on the premise that Barclays knew, probably knew or ought reasonably to have known that BBTL would recommend, to Mrs B, a DT arrangement with itself (BBTL) as a professional trustee within it. I have not seen evidence to support this. Even if her Barclays adviser had an idea of the possible range of IHT planning solutions that BBTL might consider, an argument that says at the point he referred her to BBTL (and before she even met with BBTL) he had prior knowledge of exactly what BBTL would advise her to do is something different. I have not seen enough evidence to draw this conclusion.

In this respect, I also have not seen evidence that shows Barclays was aware, after the referral and in the lead up to the June 2007 meeting, of the advice BBTL would be giving Mrs B.

I understand E's arguments about her pre-existing and longstanding relationship with Barclays, the resulting trust she would have developed in Barclays, the likelihood that such trust would influence her in being receptive to advice from BBTL (because it had been recommended by Barclays, who she trusted) and the extension of Barclays' duty of care towards her in this regard.

However, there was nothing wrong in her being referred to a source of specialist advice in an area her Barclays adviser did not consider he could cover. Indeed, the opposite could be argued – that it would have been unreasonable for the adviser to deal with her IHT planning objective despite knowing it was an area beyond his expertise, and despite being in a position to refer her to a source of specialist advice on the matter.

There is a suggestion of a conflict of interest in the referral, because BBTL was a subsidiary. The existence of such a conflict, alone, does not automatically prove a wrongdoing. Depending on the circumstances, it is usually necessary to also show that a conflict of interest was mismanaged. I have not seen grounds to show, on balance, that any such conflict was mismanaged in this case. Mrs B needed IHT planning advice that her Barclays adviser could not cater for, and her referral to a third-party source of that advice was in her interest. I am not persuaded it has been established that it made a detrimental difference to her that she was referred to BBTL as opposed to a firm unconnected with Barclays.

E's argument might gain traction if Barclays could foresee that any referral elsewhere would not be in her best interest and/or if it could foresee that the specific recommendation of BBTL's service would not be in her best interest.

Her IHT planning objective, which is not disputed, nullifies the former, because that objective meant it was in her best interest to receive competently delivered suitable advice, and the prospect of receiving such advice from a specialist in IHT planning would have been in her best interest. With regards to the latter, there is no evidence to show that Barclays knew anything specifically about BBTL that made its IHT planning/advice service contrary to her best interests.

As I said earlier, her Barclays adviser appears to have been present at the meeting with BBTL. E could argue that, at this point, Barclays would have known about the nature of BBTL's advice to her, so its duty to protect her from proceeding with the recommended DT arrangement existed here, and it failed to discharge that duty.

The adviser had declared his position, at the outset, as being one in which he was unable to advise on the IHT planning matter. I do not have enough evidence to explain why he appears to have been at the meeting with BBTL, but there is also no evidence that he contributed to BBTL's advice.

In this context, I do not find it reasonable to expect him to advise Mrs B against a recommendation from BBTL – or to discourage her from proceeding with the recommendation – on a matter that he had already conceded an inability to address. I cannot reasonably impose upon him expertise that he appears not to have had. Even if he had some expertise in IHT planning – which has not been established – the facts suggest that he did not consider himself fit enough to address Mrs B's objective, hence his recommendation of BBTL. I cannot reasonably find that he should have advised her if or where he did not consider himself fit to do so.

Overall, on balance and for all the above reasons, I am not persuaded by the estate's complaint against Barclays.

My final decision

I do not uphold the complaint by the estate of Mrs B.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs B to accept or reject my decision before 17 March 2026.

Roy Kuku
Ombudsman