DRN-6176748

The complaint

The estate of Mr G complains that Barclays Bank PLC sold one of Mr G's investments without any communication, either before or after the sale. The estate says the sale resulted in a capital gains tax ("CGT") liability and that, if Mr G had known about the sale, he could have taken action to mitigate that liability.

The estate wants Barclays to pay it £11,474.20 to compensate it for the tax it had to pay. And compensate it for the distress and inconvenience caused.

The complaint is brought by the estate's executors.

What happened

Mr G had an execution only share dealing account with Barclays.

He held units in a fund which I'll refer to as "M".

On 9 August 2024, M gave Barclays notice that it would be terminating its agreement with effect from 8 November. M said it had reviewed its distribution model and had chosen to remove distribution through investment platforms. It said deals would be placed on 8 November to sell any units held on the Barclays' platform and that the sales would take place on 11 November. It said Barclays should make holders aware that, alternatively, they could open accounts with M and transfer their investment in M to it.

Mr G still held units on 8 November, and these were sold on 11 November.

Mr G passed away on 26 January 2025.

In May 2025, the executors asked Barclays what authority it had to sell the fund and asked for information about the book cost of the holding. Following further correspondence they complained, saying that Mr G could have carried out a "bed and ISA" transaction to mitigate the CGT liability if he'd known about the sale.

Barclays said there was no obligation on it to tell Mr G about the sale or to seek his instruction and that it held the right to make decisions on his behalf for any corporate action. It said this was covered in its terms and conditions.

Our investigator recommended that the complaint should be upheld. She said that, whilst Barclays' terms didn't obligate it to notify Mr G or obtain his instructions, Barclays had wider responsibilities to act in Mr G's best interests. She thought Barclays was given enough time to give Mr G a choice. She thought it was plausible that, if Mr G had known about the corporate action, he would have either transferred his investment or bought it back to avoid the CGT liability. She recommended Barclays paid the estate £11,474.20 to cover the CGT it had paid. She explained why she couldn't recommend any compensation award for the distress and inconvenience the executors may have been caused.

The executors accepted the investigator's conclusion.

Barclays said it strongly disagreed with this conclusion. It said, in summary, that:

- The corporate action was initiated by M, and it required the removal of Mr G's investment from its platform. Barclays exercised its right under its terms to act at an asset level for all impacted clients. There was a limited timeframe, and it wasn't feasible to give the option of transferring investments. The requirement to open accounts with M would have been a large burden for its clients and there was no certainty that account openings and transfers would be completed within the timeframe.
- Its terms under section 3.1 permit it to act without prior notification or instruction. There's no regulatory requirement which obligates it to offer individual elections or pursue re-registration for selected clients within the available timeframe.
- No other comparable platforms guarantee to share all such events with their clients.
- It was for Mr G to maintain appropriate and regular checks of his investments. The statement it sent him in November showed the units had been sold, which gave him the opportunity to seek more information or take any steps he thought appropriate.
- There's no evidence Mr G would have taken action to mitigate CGT if he'd been notified about the sale. This would have required several contingent steps. And there's no evidence to demonstrate a prior pattern of CGT mitigation.
- The investigator's recommendation sits outside Barclays' terms, its operating model, and wider retail platform practice. The ombudsman service should be assessing fairness, not directing how firms should structure or deliver their business models.

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.

The sale of Mr G's fund was due to action initiated by M. M took the decision that its funds could no longer be held on Barclays' platform. Whilst this was M's decision, Mr G's relationship was with Barclays, and I need to decide if Barclays treated him fairly once it knew about M's decision.

M emailed Barclays on 9 August 2024 to say that:

> *"….. I am writing to inform you that we wish to terminate the distribution relationship in place between [M] and Barclays …. with an effective termination date of 08 November 2024.*
>
> *We will instruct the sale of any remaining units held on the termination date, with these units being priced at the next valuation point on 11 November 2024.*
>
> *…..*
>
> *In the interests of acting to deliver good customer outcomes, impacted unitholders of [M] funds should be made aware of the opportunity to transfer their existing investments so that they are held directly with [M]. Any customer of Barclays …… who wishes to transfer their investments back to [M] would need to follow our standard account opening process*."

I find M made it clear what was going to happen and what choices customers, including Mr G, had.

Barclays refers to its terms for corporate actions which it says allowed it to act without notifying Mr G or seeking his instructions. The term in relation to "*rights in relation to a company*" says that:

> "*to the extent permitted by Regulatory Requirements we will not be obliged to notify you or obtain your Instructions in relation to these matters*."
> (Section B, 3.1 (ii))

Firstly, I don't think M's action was a "corporate action" in the sense that there was no change to the underlying investment here – there was, for example, no takeover, stock dividend, rights issue etc. Rather, the fund manager had decided that its funds could no longer be held on Barclays' platform.

Secondly, regardless of whether term 3.1 applied, I need to think about whether Barclays treated Mr G fairly in the circumstances here. Particularly, taking into account Financial Conduct Authority rules which say a business shouldn't seek to exclude or restrict its regulatory obligations to comply with its clients' best interests. And say that businesses must act "*honestly, fairly and professionally in accordance with the best interests of its clients*."

Having considered everything carefully, I don't think Barclays treated Mr G fairly for the following reasons:

Barclays didn't, at any point, contact Mr G to let him know what was happening. It didn't give him an opportunity to decide what to do. And it didn't provide him with any explanation either before or after the sale took place. This information wasn't in the public domain, unlike a corporate action. Whilst Mr G had an execution only account, and was therefore responsible for monitoring his own investments, he wouldn't have known about M's decision and proposed action unless Barclays told him.

Barclays refers to "*a relatively limited timeframe*" and that "*there is no way we can [*sic*] ensure all customers could set up accounts with a third party in time.*" M gave Barclays three months' notice of the sale of Mr G's fund. I think, if Barclays had contacted Mr G shortly after receipt of M's 9 August email, there most likely would have been enough time for Mr G to open an account with M and for Barclays to transfer his investment before 8 November. Barclays could have given Mr G a clear cut-off date for when his account needed to be open to allow it to complete the transfer. And, if the transfer couldn't be completed in time – either because of delays by Mr G or by M, the default action would have applied – in other words, the fund would have been sold if the deadlines couldn't be met.

Barclays has also expressed concern that opening an account with M would have been a "*large burden*" on Mr G. But that was for Mr G to decide if he had been given the choice to make.

Barclays has explained that it needed to consider the interests of all of its customers. But I need to decide what Barclays should fairly and reasonably have done for Mr G. In his case his investment in M represented around 23% of the value of all his investments held with Barclays. So I think any sale, or transfer, would have been significant for him. I've outlined above why I think, in all likelihood, Barclays could, and should, have given Mr G a choice to transfer his holding. But, even if it wasn't possible to do this, Barclays fairly should have given Mr G notice that his holding would be sold if he still held it on 8 November. I'm satisfied this would have given him enough time to check the book cost, realise a sale would result in a substantial gain, and take mitigating action to reduce or avoid a CGT liability.

For the reasons I've explained, I think Barclays should have communicated M's decision to Mr G and given him the opportunity to choose if he wanted to open an account with M or, at the very least, given him notice of the sale.

I now need to decide what I think Mr G would have done differently if he'd been given that choice or notification.

His executors say he would have wanted to avoid any CGT liability. They explain that Mr G had held his investments for some time and they'd performed well. In view of his age and tax situation, his plan was to maintain the "status quo", knowing that CGT wouldn't be applicable on his death. They say that if M had to be sold, Mr G would have taken steps to mitigate the tax liability by buying back the fund within 30 days.

I've considered this very carefully. Mr G was of advancing years, and his son was acting on his behalf as his attorney, although the power of attorney hadn't been registered with Barclays and it was unaware of it. Barclays sent Mr G a periodic valuation of his investments as at 23 November 2024. This would have been the first opportunity Mr G, or his attorney, would have had to realise M had been sold. But, by the time this valuation was received, and Mr G or his attorney had realised what had happened, and why, I think it more likely than not would have been too late for him to take any mitigating action.

Had Barclays communicated with Mr G shortly after 9 August, I think it more likely than not that he would have taken that mitigating action – either to sell at a time of his choosing and buy back within the 30 days or, more likely, to transfer the investment to M. I think this is most likely because, from what the executors have told us, he wanted to keep his holdings as they were, and he wanted his beneficiaries to inherit them when he died.

It follows that, if Mr G had been given the opportunity to transfer the holding, he wouldn't have incurred a CGT liability. So I agree with our investigator that Barclays should compensate the estate for the sum it had to pay. As the estate has been without that money, Barclays should add interest at the rate of 8% simple per annum.

I want to be clear that my decision is about what Barclays should have done in response to this particular issue and in Mr G's particular circumstances. In other words, I have assessed fairness in the specific circumstances of this case and am not directing Barclays to deliver its service in a certain way as it suggests.

Our investigator explained why an award for distress and inconvenience couldn't be made. Whilst accepting the executors have personally been caused some distress and inconvenience, I can only make an award to eligible complainants and the eligible complainant here is the late Mr G. Whilst Mr G was alive when M made its decision to terminate its agreement with Barclays, and when his investment was sold, he was unaware of what had happened. So I don't find he was personally caused any distress or inconvenience. For that reason, I make no award for any distress or inconvenience.

My final decision

My final decision is that I uphold this complaint. Barclays Bank PLC should:

1. Pay the estate of Mr G £11,474.20 to compensate it for the CGT it had to pay.

2. Add interest at 8% simple per annum from the date the estate of Mr G paid the CGT to the date of settlement. *

* HM Revenue & Customs requires Barclays Bank PLC to take off tax from this interest. Barclays

Bank PLC must give the executors a certificate showing how much tax it's taken off if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr G to accept or reject my decision before 21 April 2026.

Elizabeth Dawes
Ombudsman