complaint

Ms T is represented by her solicitor. Her complaint was raised in 2018 and is about Barclays Bank UK PLC. Ms T and her solicitor summarised the complaint as follows:

- Barclays failed in its obligation to inform Ms T that Amazon shares she purchased around 1998/1999 were registered in the United States (US) – and failed to inform her about the regulatory consequences of dealing shares listed in the US.
- Barclays failed in its obligation to update Ms T about developments related to her shares (and their consequences).
- Barclays closed her account without notifying her – she learnt about this by chance in 2007/2008.
- Barclays mismanaged its communication with Ms T's solicitor in relation to the complaint and her subject access request.

Ms T seeks compensation for what she considers to be the complete loss of her shares. Around December 2017 she says she appointed a third party firm to assist her in converting her shares into a digital format in order to trade them and that she then learnt that the US Registrar had escheated the shares in 2008, upon the incorrect basis that she was deceased. She and her solicitor submit that this would not have happened and would have been avoided if Barclays had not failed in its obligations (as summarised in the first three bullet points above).

background

Barclays disputes the complaint. It says:

- It provided an execution only service to assist Ms T in buying the shares and she held them in certificate form – not in its nominee account – so it had no further involvement with the shares after their purchase. Her account would have been closed after an extended period of dormancy. It has not retained and is not obliged to retain historic records, that go back far enough to when the account was closed. By 2007/2008 Ms T says she was told the account had been closed and around that time it also withdrew its service with regards to dealing certificated foreign holdings. In 2015 it discontinued the type of account that Ms T had.
- Contrary to Ms T's assertion, it was not involved in additional Amazon shares she says she received in 1999 subsequent to stock splits. As she held the share certificates from the point of purchase it had no intermediary role to play thereafter, so any communication with her about the share splits and additional shares would have been directly from the Registrar for the shares.
- Registration of the shares in the US would have been a matter instructed by the Registrar for the shares and would not have been a matter it had any control over.
- It communicated with Ms T, with regards to her complaint, based on the contact details it had for her in its identification records and was unaware that her address had changed. It did not communicate with her solicitor because it did not have her letter of authority to do so.

One of our adjudicators considered the complaint and concluded that it should not be upheld. In the main, she said:

- Ms T has raised the matter of her subject access request with the Information Commissioner's Office (ICO), which is the correct body to address the matter.

- With regards to Barclays' complaint related communication, the final response it issued on 28 June 2018 was done within the regulator's time limit.
- Given the passage of time, Barclays was unable to find details about Ms T's account and the requirement for her to re-register the account if she sought to use it is not unusual in the financial industry.
- Barclays would not have had any input in the registration of the shares in the US and there is no evidence to suggest it provided an advisory service to Ms T in relation to the shares.

Ms T and her solicitor did not accept this outcome. They noted that they had not previously seen Barclays' final response letter and, overall, they concluded that Barclays' position in terms of the communications issue was unacceptable. Ms T made personal submission about the gravity of the loss she has suffered from what happened with the shares and about background information upon which she asserts that Barclays' negligence led to her loss. The matter was then referred to an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Like the adjudicator, I too consider that the subject access request matter has correctly been referred to the ICO. The ICO is the appropriate body to treat such a matter and I do not propose to duplicate that treatment.

With regards to the overall communication related issue – outside of the subject access request matter and in relation to Barclays' complaint management – I am not quite persuaded that Barclays has committed the alleged wrongdoing. I fully appreciate Ms T's solicitor's position in the matter, as it appears that his efforts to progress the complaint for her was not assisted by Barclays' communication with Ms T – not with him. In addition, said communication was to an address in which Ms T no longer resided.

However, in the context of Barclays having closed her account by 2007/2008, given Ms T's confirmation that she still resided at the former address at that time (and moved thereafter) and in the absence of evidence of contact between both parties after 2008 I do not consider it surprising or fault worthy that Barclays did not have her current address. The complaint and subject access request submitted to Barclays appears to have been submitted by Ms T's solicitor and the relevant letters do not appear to refer to her current address. I note her solicitor's point about Barclays not responding to him. Barclays says that it did not receive Ms T's letter of authority to do so but her solicitor disputes this and says it was sent (and re-sent) to Barclays.

Overall, it could be said that Barclays could have made more effort to clarify and resolve any missing letter of authority – at its end. It knew about the solicitor's involvement and appears to have responded to the complaint as presented by the solicitor, so it could have liaised with the solicitor to obtain another letter of authority. However, it cannot fairly be said that Barclays did not respond to the complaint. It issued a reasonably populated response letter that addressed the issues raised in the complaint. This displayed its effort in considering and addressing the matters raised and showed that it took the complaint seriously. Unfortunately, its response was sent to the wrong address but, as explained above, I do not consider that Barclays can reasonably be blamed for that.

I have not seen evidence of obligations, upon Barclays, arising from an advisory relationship with Ms T – nor have I seen evidence of an advisory relationship between them. In her submissions to this service, Ms T expressly and repeatedly confirms that she had the share certificates from the outset and at all times thereafter and that the same applies to direct ownership of the shares. This is consistent with Barclays' assertion that it only discharged the service of executing her purchase of the shares at the outset and it played no nominee role thereafter. Ms T refers to Barclays communicating the first of two stock splits (and additional shares) – with the second, she says, being communicated directly by Amazon. She asserts that the first communication affirmed her belief that Barclays had a form of management role over the shares after purchase, she concedes that the second communication felt odd to her because it was not from Barclays but says she nevertheless continued to believe that nothing had changed in Barclays' involvement in the shares.

I have not seen evidence of an investment management relationship between the parties. Barclays was not involved with the shares after Ms T purchased them. I have not seen evidence of the letter from May 1999 in which she says it informed her about the first stock split and additional shares. Barclays says it does not recognise its existence and that such a letter is implausible because Ms T – not Barclays – held the share certificates and it had no management role in her affairs so the Registrar would have communicated directly with Ms T – not with Barclays. I agree with this response.

The consequences that Ms T has described are indeed grave and I empathise with her current position. However, I must restrict myself to addressing the complaint before me – which is that Barclays is responsible for said consequences. I consider that Barclays does not hold such responsibility. I further consider that Ms T either knew or ought reasonably to have known that Barclays had no responsibility for her shares and that the responsibility was all hers. It appears that she knew (or ought to have known) this at a point in time when she might have been able to take action to avoid the consequences she now faces.

In her submissions, she concedes that she learnt her account had been closed around 2007/2008 and that, at the time, Barclays told her she could either directly contact a third party US entity (with regards to selling the shares) or she could contact that entity through Barclays if she opened a new account. Knowledge that her account had been closed would have been enough to inform her that Barclays had no involvement in the shares – even if she previously thought the opposite. She chose to contact the third party directly but says she was unsuccessful and that she then left the situation as it was. As I said in the "complaint" section above, around December 2017 Ms T learnt that the US Registrar escheated the shares in 2008.

If, between 2007 and 2008, Ms T either opened a new account in order to have Barclays contact the third party US entity on her behalf or if she had persisted in doing so directly and had not left the situation as it was, it appears possible that she could have avoided the escheatment of her shares that took place in 2008. In the alternative and if the escheatment occurred before it could be stopped, a reasonable assumption would be that she could have taken steps to address or reverse it in its immediate or not too distant aftermath.

Overall, the balance of evidence supports the conclusion that Barclays had no responsibility for the shares after they were purchased, that it was not involved in the stock splits that occurred thereafter, that it was not obliged to advise Ms T or to manage her shares and that Ms T either knew all of this following the purchase or she became aware (or ought reasonably to have become aware) by 2007/2008 at the latest when she learnt her account was closed. Dormancy of the account after the purchase in 1998/1999 does not appear to be

in dispute, so I do not consider that Barclays' decision to close the account was unreasonable.

my final decision

For the reasons given above, I do not uphold Ms T's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 20 April 2019.

Roy Kuku
ombudsman