DRN-4671484

The complaint

Mr S has complained that Barclays Bank Plc caused delays in applying shares to his investment accounts following a corporate event. Mr S complains that but for the delay, he'd have been able to sell the shares at a higher price than they were trading at when he eventually received them.

What happened

Mr S held shares in EKF Diagnostics Holdings PLC, who announced a share distribution of shares in Verici Dx Plc in 2020. The shares were subject to a lock up provision, which meant they would be distributed after one year, which came to an end on 3 November 2021.

In practice the distribution involved certificated shares – so the registrar sent the certificates to those shareholders named on the share register. In Mr S' case, this meant the company Barclays had appointed as nominee, who would then apply to dematerialise the shares. Once dematerialised, the shares would be applied to the beneficial owners' investment accounts, and they would then be able to sell the shares if they wished. For the purposes of this decision, as Barclays is responsible for the actions of their nominee, I'll just refer to Barclays going forward.

The share registrar says they sent the share certificates to Barclays on 3 November 2021. However, Barclays say they didn't receive the certificates and began speaking to the registrar in March 2022 to arrange for the certificate to be reissued. On 1 August 2022 Barclays received the certificates and then applied to have the shares dematerialised on 7 September 2022. The shares were eventually applied to Mr S' account on 13 September 2022.

Mr S raised a complaint about the amount of time this took as a whole, saying he had planned to sell the new shares to pay off his mortgage. The share price fell from November 2021 to September 2022 and so he wasn't able to utilise the profit he was hoping to make in that way. Mr S was also unhappy with the number of times he had to chase Barclays about this issue.

Overall, Barclays didn't uphold the complaint, saying they felt the delay was outside their control. They could only find evidence of one call made by Mr S prior to raising his complaint. However, they admitted they could have updated Mr S more throughout, so offered £25 compensation.

Mr S remained unhappy and so brought the complaint to our service. An investigator looked into it and found it should be upheld – they said Barclays had caused delays and that Mr S ought to have received the shares by June 2022 not September. The delay the investigator found was a two-month delay between November 2021 and March 2022, (allowing Barclays a two-month timeframe to realise they hadn't received the certificates). The investigator also found a six-week delay between March and April 2022, due to a lack of evidence from Barclays that they were contacting the registrar during this time.

Though they agreed Barclays had caused delays, the investigator found it unlikely that this had led to a financial loss – they said that by June 2022 the share price had fallen to a third of what it was in November 2021, and so they didn't think Mr S would have sold his shares at that time.

The investigator also found that it was likely Mr S had called Barclays several times, despite the fact Barclays couldn't trace those calls. In total they recommended that Barclays pay £350 in recognition of the distress and inconvenience caused. However, they said that Barclays were reliant on the registrar and didn't have an obligation to ensure they received the share certificates. Barclays accepted this recommendation.

Mr S ultimately didn't accept the investigators opinion, in summary because:

- Barclays caused a further delay in dematerialising the certificates between August and September 2022, which hasn't been accounted for.
- He didn't accept that it wasn't Barclays responsibility to ensure they received the shares in November 2021. He'd complained to the registrar, who hadn't upheld his complaint, and our service had found that we couldn't investigate his complaint about the registrar. He felt it would be unfair to say that Barclays could rely on the actions of an unregulated third party to excuse the delays, and that most investors would assume they'd be able to access our service if a process like this went wrong.
- In complaining to the registrar, he had been asked to provide an "investor code" in relation to this transaction – he'd asked Barclays for this several times, but they didn't provide it.

The investigator explained that even if they agreed a further delay had occurred, there was still no financial loss, as the share price was around the same price in May 2022 as it was in June 2022. They maintained that Barclays had no control over the registrar and so couldn't be held responsible for any delays caused by other parties. As Mr S remained unhappy, the complaint was passed to me for a final decision.

I requested further information from Barclays, including a statement of the transactions Mr S carried out in his accounts with regards to Verici, and Barclays' normal time frames for dealing with this type of corporate event and asked for any explanation for the delays. Barclays explained they don't have set timeframes, as each corporate event is different, but they'd expect it to begin to be processed within a reasonable time frame – which they consider to be at most 30 days. They were unable to explain in detail the cause of the delay, and simply admitted it was an error.

I issued a provisional decision on the complaint – my findings are copied at the end of this decision, and it forms part of my final decision.

Barclays replied and said that to resolve the matter, they were willing to pay £500.

Mr S didn't accept the provisional decision, in summary because:

- He felt I've not understood the difference between the shares he was getting for free, and others that he's paid for and why they ought to be treated differently. He felt it was unreasonable that I based my findings on the activity on his account – particularly in relation to the fact I was relying on the activity of the Verici shares he paid for, which shouldn't be compared, as the ones that were delayed were free.
- Mr S says the Verici shares were issued due to his holding in Renalytix and not EKF Diagnostics.

- His contract is with Barclays, not the other parties involved. As Barclays are the main reason behind the delays, they should be held to full account for the problems he's experienced. In particular he feels investors ought to be protected from dealings with unregulated parties through their contracts with regulated firms.
- Barclays should be held to account for not being able to provide all the evidence requested, and for not being able to explain the delays.
- He asked if I had sight of the tracking information mentioned in my provisional decision.
- He felt I was "*too willing to accept Barclays versions of events regarding the apparent delays caused by the unregulated party*".
- He strongly feels it is "*unacceptable that I have to accept all of the reasons and excuses being put forward, and totally unacceptable that Barclays have no records, or have mislaid or accidentally deleted the records of my enquiries.*"

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.

Before I go into my findings, I'd like to answer some of Mr S' questions. Mr S has said he was entitled to the Verici shares due to his holding in Renalytix, not EKF Diagnostics as I'd set out. I'd note that the final response letters from both Barclays and the registrar refer to EKF, and from looking into this further, it appears that Renalytix is a subsidiary of EKF.

Mr S has asked whether I've seen the tracking information – I have attempted to view it online, but due to the time that's elapsed the postal service no longer show the tracking results. Regarding his comments that I've simply accepted Barclays' excuses as to delays caused by third parties, I must disagree. The delays I've found to have been caused by third parties – for instance the delay between 17 May and 23 June 2022 – are based on evidence I've seen of correspondence between the parties.

Turning to my findings, having carefully considered the further submissions, I'm not persuaded to reach a different conclusion to that I previously set out, and I'll explain why.

I understand Mr S is particularly concerned to discover that unregulated parties to activities like share dealing can cause problems and there might be no recourse to our service when things go wrong. Though I appreciate this might be the first time Mr S has come across this situation, I should explain that it isn't unusual in investment complaints. For instance, the activities of a share registrar are often not covered by our service, nor are the activities of the share issuing companies themselves. Our service has not been set up to look at all parties involved in financial products and services in the UK.

I don't consider that it would be fair to hold a broker responsible for the actions of a share issuer – or their appointed registrar – when problems occur during the issuing of shares. What I would expect the broker to do is take reasonable steps to act on behalf of their customers, and work towards putting things right. Having reconsidered the timeline of events that I think ought to have happened, I'm satisfied what I set out in my provisional decision is a fair and reasonable representation of what Barclays ought to have done in the circumstances.

I remain satisfied that Mr S ought to have held the Verici shares in his account during the week of 21 March 2022, rather than on 13 September 2022. So, I then must consider whether I'm satisfied that its more likely than not that Mr S would have sold the shares if he'd received them at that time. Even if I were satisfied Mr S would have sold the shares, I'd also need to be reasonably able to pinpoint when those shares would have been sold. To consider these points I've looked at Mr S' actions over the months regarding the Verici shared he'd purchased, the share price of Verici, and when Mr S did sell the free shares.

Mr S has said that I shouldn't be looking at what he did with the other Verici shares that he'd separately bought, because they are substantially different due to the gain he would stand to make on the ones he was being issued with for free, compared with the gain (or loss) he would get from the ones he'd paid for. I'd like to emphasis that I do understand the difference between the two, and why Mr S may have had different plans for the ones he'd bought and the ones he was issued with for free.

The reason I had focused on the steps he took with the shares he'd bought, was because it was the only tangible evidence we have of Mr S' reaction to the Verici share price. This naturally feeds into my overall considerations of what Mr S would have done regarding the ones he was issued with. Though the gain on the shares would have been larger with the ones he was issued with, the timing of what he did regarding buying and selling Verici shares goes to his thought process and approach to holding shares in this company.

What is clear is that Mr S held all of the shares he'd acquired until October 2022, when he sold some of them and he retained the bulk of them until September and October 2023.

I consider that the most persuasive evidence we have of what would have happened here, is taken from looking at the way Mr S acted at the time. Mr S' testimony of what he believes he'd have done is also evidence, but I don't consider it to be as persuasive as what he actually did. This is because its being given with the benefit of hindsight and has been given with knowledge of the value of the shares in mind.

Even if I were persuaded that he would have sold the shares earlier, I don't think I could fairly say when he'd have done so. It's unfortunate that after buying the shares, their price steadily declined. However, the fact he didn't panic and sell the shares when that happened, shows me that he was hoping the price would again recover. So, I find it likely that he would have taken similar action with the free shares, as he took with the ones he paid for. While he may have sold the free share earlier, as the gain he'd have made would have been bigger, it's impossible to know what price would have caused him to sell. As a result, I'm not persuaded that I could fairly say when he'd have sold the shares, if they'd been available earlier. So any loss experienced couldn't be quantified in a reasonable manner.

Putting things right

Mr S has said Barclays ought to be held to account for not providing all the evidence and answers requested of them during this complaint. My role is not to punish or fine a respondent firm – that is the role of the regulator, the Financial Conduct Authority. Instead, my role is to award compensation for the impact a firm's errors had on the particular complainant.

As set out above, I'm not satisfied that I can fairly account for any financial loss Mr S may have experienced here. I remain satisfied that compensation totalling £500 would be fair and reasonable for the problems caused here. This takes into account the delays Barclays are responsible for and the poor service provided by them, and I consider it to be a fair amount for the frustration caused to Mr S.

I understand Mr S will be disappointed with this decision, but I hope the further explanation provided above helps him understand how I've reached this conclusion.

My final decision

I uphold the complaint. Barclays Bank Plc should pay Mr S £500 in total compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 April 2024.

My provisional decision

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

As there are several elements to this complaint, I've set them out separately, for clarity.

The delay

In these circumstances, I'm satisfied Barclays knew in 2020 about the distribution of shares, as I understand they'd notified EKF shareholders of it. As such they were already on notice that they would be receiving the shares and would need to distribute these at the end of the lock up period in November 2021. I'm satisfied they a responsibility to follow this up with the registrar within a reasonable period, if they didn't receive the shares as expected.

I'm mindful that these shares were being issued in certificate format, and this understandably can take longer than transferring dematerialised shares. So, Barclays were not going to receive the shares on 3 November itself – and it's not unreasonable for them to expect a short delay before they did receive the shares. While I appreciate Barclays has said they'd at most wait 30 days to follow up on events like this, I am mindful that they have also told us that on 26 November 2021 the registrar made them aware that share certificates had been issued. So, I think as of that date they were aware that they ought to have received something. I see no reasonable explanation as to why the missing certificates weren't looked into at that time – rather than waiting until March to follow up on this.

I understand Mr S is unhappy that the share certificates weren't initially received by Barclays, as this is the root of the events. There are three parties involved in the sending of that certificate – the registrar, the postal service and Barclays. As a service we are only able to look into the latter. I don't think it would be fair to say Barclays ought to be held responsible for all the resulting delays simply because they are the only party our service can investigate, when they have no control over the actions of the other two parties.

I appreciate Mr S strongly feels that Barclays ought to be held fully responsible – and I'd like to reassure him that I've considered all of his comments about this. However, we only have the power to look into specific firms, about specific activities – and sometimes this does mean consumers cannot use our service to look into all aspects of a complaint, especially when it concerns multiple firms, only some of whom are covered by our service. In addition, as an informal service, we can't go to firms and audit their records – we are reliant on firms replying to questions we ask and supplying evidence to us. Occasionally there are situations where we simply can't resolve a situation to everyone's satisfaction, or we can't fully discern exactly what went wrong and why.

I appreciate that's frustrating to Mr S, but I don't think we are going to find out with certainty which party is more likely to be responsible for Barclays not receiving the initial share certificates. I must make what I consider to be a fair and reasonable finding – and I don't *think it's fair to conclude that its wholly or mainly Barclays' fault that they didn't receive the certificates, based on the evidence we have.*

I consider the initial delay Barclays caused to be from 26 November 2021 to 14 March 2022 (15 weeks), when they first got in touch with the registrar. Barclays then sent a tracked letter of indemnity to the registrar – this was needed as they didn't receive the original share certificate issued in November. On 12 April 2022 the registrar told them they hadn't received it and according to their checks on the tracking information, it was delivered to a different company. Though I appreciate Barclays were waiting to hear from the registrar during that time and sent several emails, I'm satisfied it would have been reasonable for Barclays to also have checked the tracking information themselves during this period. So, I'm satisfied this has contributed to a further four-week delay.

On 28 April 2022 the registrar let Barclays know that all requests regarding these shares needed to be made by post (where previously Barclays had mostly been emailing them) and on the same say Barclays wrote to them to request the required paperwork to have the shares reissued. The registrar says that on 17 May 2022 they issued the required forms to Barclays – but Barclays don't have a record of receiving this letter. Barclays chased this within a few days, which I consider reasonable.

Unfortunately, between then and 23 June 2022, the registrar sent Barclays incorrect and confusing information, and Barclays had to repeatedly ask questions of the registrar. This meant that the registrar didn't issue the correct paperwork until 27 June 2022. I don't think it would be fair to hold Barclays responsible for the delay over this time, as their questions to the registrar were reasonable.

By 14 July 2022 Barclays had paid the fee required for the indemnity, and had sent the required paperwork to the registrar. On 21 July 2022 Barclays requested an update and on 25 July the registrar confirmed they were processing the request. The new certificates were issued on 1 August and received by Barclays on 2 August. From mid-April to August, I'm persuaded that Barclays wasn't the main cause of the delay and took reasonable steps to proceed with the receipt of the certificates. However, I see no reason why Barclays then waited five weeks before requesting that the shares be dematerialised on 7 September, so I do find them responsible for that part of the delay.

Overall, I'm satisfied that Barclays caused delays totalling around 25 weeks – so if those delays hadn't happened (but all other events had happened, for instance delays caused by other parties) then Mr S would have received the shares into his account in the week of 21 March 2022, rather than on 13 September 2022. Over that week in March, I can see the share price fluctuated between 32.25 and 36.85 – whereas in the week of 13 September it was 17.80 at its highest.

Mr S has said he was planning to sell these shares once received, to pay off his mortgage. However, I can see from a statement of his accounts that from December 2021 to February 2022 he bought over 60,000 more Verici shares. He's not explained why he didn't use that money to instead pay off his mortgage. So, I'm not convinced he would have sold the shares for this purpose in November 2021.

I can also see that he didn't sell any of the Verici shares until October 2022 – either those he'd bought in 2021 and 2022, or those he received under the share distribution. So, I'm not convinced he would have sold any of the shares he owned any earlier than he did. It follows that it wouldn't be reasonable to conclude that he was caused any financial loss by the delays Barclays caused.

However, I have taken the delay into account when considering the amount of compensation Barclays should pay Mr S for the distress and inconvenience caused here.

The amount Mr S needed to contact Barclays

I understand Barclays only has a record of one call from Mr S prior to when he raised his complaint. Like the investigator, I'm persuaded that he likely called several times, based on the testimony he's provided, and I note Barclays hasn't disputed the position the investigator took on this point. So, I've taken into account this unnecessary work Mr S did in order to find out what was happening with the shares, when considering the amount of compensation that I think is fair here.

The problems getting the investor code

This was an 11-digit code that our service was asked for by the registrar when Mr S made a complaint to them, and we asked Mr S to get this from Barclays. Mr S told us that he spoke to Barclays about this on 28 June, 5, 6 and 31 July 2023 and Barclays were unable to locate this. During my enquires, Barclays has told our service that their broker code is the only similar-sounding code they have, but that this is a five-letter code, with no numbers.

Mr S has said that this appears to be a request for the code shown on share certificates (as he discussed with Barclays in a call on 5 July 2023) – and this is my understanding as well.

I appreciate Mr S was frustrated with Barclays' inability to provide the investor code. This isn't something I would expect their front-line staff to have to hand, as they likely wouldn't have sight of the share certificates, given they weren't attached to Mr S' account. But based on the above, I think this is probably something Barclays could have found out from the nominee between 5 July and 31 July 2023 – which is when they told him this still wasn't available. From the evidence I have, it seems Barclays never provided this number.

As I think Barclays could have done more on this point and Mr S had to call several times about this, I've taken this into account when considering the amount of compensation payable here.

Putting things right

Having considered everything, I think compensation totalling £500 would be fair and reasonable for the problems caused here. This takes into account the delays Barclays are responsible for and the poor service provided by them, and I consider it to be a fair amount for the frustration caused to Mr S.

Katie Haywood
Ombudsman