

Ombudsman's Determination

Applicant	Mr N
Scheme	Barclays Standard Life SIPP (the SIPP)
Respondents	Barclays Smart Investor (Barclays) AJ Bell (the administrator)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Barclays or AJ Bell.

Complaint summary

2. Mr N's complaint is that he is unable to close his SIPP because it holds illiquid funds which cannot be sold, meaning that it will be subject to ongoing fees. The administrator's process requires him to leave £500 in the account to cover fees. Mr T says this is unfair.
3. Additionally, he experienced poor service from Barclays and the administrator, both of which caused delays in responding to his complaint. On occasions when he telephoned to chase matters, he was passed between Barclays and the administrator, and often he had to wait on the telephone line for a considerable period of time before a member of staff became available to speak with him

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. Barclays is the provider of Mr N's SIPP and provides the investment and stockbroking services. AJ Bell is the SIPP administrator and provides the pension and administration services. Both Barclays and the administrator charge fees for their respective roles in the day-to-day management and administration of the SIPP.
6. The SIPP was set up on an execution-only basis, meaning that neither Barclays nor the administrator is responsible for investment choices, and they do not offer advisory services. Mr N is responsible for all investment decisions, including choosing and

managing the investment content of his SIPP and for all buying and selling of stock held within the SIPP.

7. Mr N had withdrawn the bulk of the SIPP's assets over the years and, at the pertinent time, it held assets worth £1,705.00. Mr N decided it would be better for him to close the SIPP as the effect of fees on the remaining value would make the future of the SIPP uneconomic.
8. On 3 March 2019 Mr N telephoned Barclays to inform it of his wish to sell all of his remaining SIPP assets and close his SIPP. He asked for a cheque to be sent to him in respect of the sale proceeds.
9. On 4 March 2019 Mr N followed up this call with an emailed request to Barclays to sell all of his SIPP assets. Barclays responded to confirm that its process did not permit selling of stock via email, but only via telephone or through its online service.
10. On 5 March 2019, the administrator emailed Mr N to explain that three lines of stock held within his SIPP were illiquid and untradeable due to being delisted from the Alternative Investment Market (**AIM**), so they could not be sold. It confirmed that it was reviewing the matter to establish what options might be open to Mr N, given that the SIPP could not be closed while it still held assets. In order to prevent unnecessary future delays should the illiquid assets become liquid, the administrator provided a closure form to be held on its records until it could be used, asking that Mr N complete and return it.
11. On 6 March 2019, the administrator received the completed closure form, and emailed Mr N again on 8 March 2019 to confirm receipt and to provide the following information regarding the three illiquid assets:-
 - Herencia Resources plc was suspended from trading on the AIM.
 - Central Rand Gold Limited and Vatukoula Gold Mines plc were both delisted from the AIM.
12. Mr N did not respond to the administrator's email of 8 March 2019. On 1 April 2019, it emailed him again to ask whether, or not, he wished to proceed with a payment from his SIPP, leaving £500 to cover ongoing administration charges.
13. Also on 1 April 2019, Mr N attempted to sell his SIPP assets online. Mr N says that he found Barclays' online dealing service to be rather complex, so he telephoned Barclays and sold all of his liquid SIPP assets by that method. During the call, Mr N suggested donating the illiquid assets to charity, but the administrator said this was not possible under HMRC rules. Mr N then raised a complaint about not being able to close his SIPP and about the requirement to leave £500 in the SIPP account to cover future fees.
14. On 3 April 2019, Barclays wrote to Mr N to acknowledge his complaint and to confirm it would be investigating the matter.

15. On 5 April 2019, Barclays emailed the administrator to inform it that Mr N had asked to close his SIPP. The administrator responded the same day to explain that the illiquid assets could not be removed from the SIPP. Only once it was in a position to remove these assets could the SIPP be closed and any remaining funds paid to Mr N.
16. On 3 May 2019 Barclays sent a further email to the administrator, querying the possibility of removing the delisted and suspended assets. However, the administrator confirmed that this was not possible.
17. On 17 July 2019, Barclays emailed the administrator to inform it that Mr N had again requested the closure of his SIPP. The administrator confirmed again that this was not possible.
18. On 27 July 2019, the administrator paid the sum of £597.39 to Mr N's bank account.
19. On 31 July 2019, Barclays issued its final response to Mr N's complaint about its part in the matter as follows:-
 - It apologised for the distress and inconvenience caused to Mr N due to the inability to close his SIPP account. The administrator had confirmed that the SIPP could not be closed while it held assets. The assets held in the SIPP could not be sold because they were illiquid.
 - It had explored with the administrator's senior management the possibility of closing the SIPP without any requirement to pay SIPP fees but the administrator did not change its decision. The account would therefore continue to be serviced until the situation regarding the illiquid funds changed. It confirmed the scale of fees charged was in line with industry standards and had been enforced by the Compliance department.
 - It was unable to make a charitable donation of SIPP investments that retained or might acquire a future value, due to HMRC rules and the unauthorised payment penalties that would result if it were to do so.
 - It was arranging for £100 to be paid into Mr N's bank account in recognition of the time he had spent trying to resolve the matter.
20. In February 2020, Mr N complained to the administrator by letter about being unable to close his SIPP.
21. On 5 February 2020, the administrator telephoned Mr N in response to his letter, and confirmed it remained unable to close his SIPP as it was unable to sell the illiquid assets held within it. As the administrator had been unable to resolve Mr N's complaint, it was referred to its Customer Relations Team for review and a formal response.
22. On 25 March 2020, the administrator issued a final response letter to Mr N, explaining that, as the provider of administrative services to the SIPP, it was responding to the complaint. It set out the reasons why it had not upheld his complaint as follows:-

- It had considered donating the illiquid assets to charity. However, this could only be done if the assets had been declared to have a “negligible value” by HM Revenue & Customs (**HMRC**). Alternatively, it may be possible to consider this possibility where the administrator could “make a confident judgement” that HMRC would likely make such a declaration in future.
- It concluded that the holding in Herencia Resources plc was not of negligible value, as Mr N may be able to sell it in future if it “comes back to market”. In order to consider the other two lines of stock for a charity donation, Barclays would need to obtain any available company updates. However, given their current status, the administrator would not be able to fulfil Mr N’s closure request.
- In discussions with Barclays, it emerged that Barclays would begin the closure process of the part of the SIPP for which it was responsible, so that no further ongoing stockbroking fees would become due.
- The administrator confirmed it had already emailed Mr N about this solution, and confirmed that, while it had paid £597.39 of the value of his SIPP to him, he must leave the sum of £500 in the SIPP to cover future administration charges.
- It did not uphold Mr N’s complaint.

23. Barclays’ and the administrator’s position:-

- The SIPP cannot be closed because it contains illiquid assets, some of which may have a value in future.
- While Barclays has been able to close its part of the service to the SIPP, the administrator continues to service the SIPP, for which it will charge fees. It requires the sum of £500 to be held in the SIPP to cover future fees. It does not consider this to be unreasonable, and the fees are in line with industry standards.

24. Mr N’s position:-

- He understood Barclays and the administrator together were the single provider of his SIPP. However, he was repeatedly passed from the one to the other in efforts to close his SIPP. He believes Barclays should not have passed administration of his SIPP to a separate organisation.
- He wanted the illiquid assets donated to charity so that he could close his SIPP but was told this could not be done. He provided a paper written by AJ Bell (**the AJ Bell Paper**) entitled “How to Deal with suspended, illiquid and distressed SIPP investments”, which he said Barclays should consult with a view to removing the illiquid assets from his SIPP so it could be closed.
- He will continue to incur charges for which he has been forced to leave the sum of £500 in the SIPP.

- He had to chase both parties on several occasions, even though he had lodged a complaint with each party. He had to wait several months for a response to his complaints.
- He sought compensation for the cost of telephone calls and the stress the matter had caused him.

Adjudicator's Opinion

25. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Barclays or the administrator. The Adjudicator's findings are summarised below:-

- The literature provided to Mr N at the outset in respect of both fees and Terms & Conditions (**Ts&Cs**) set out the role of both the administrator and Barclays as Service Providers to the SIPP. It also confirmed that Mr N would be responsible for the payment of fees, and that he authorised the Service Providers to sell his SIPP assets if necessary to meet the cost of fees. Where this was not possible, Mr N would remain personally liable, and for making good any unpaid fees. The Adjudicator noted that, while Barclays had waived its future fees, the administrator was not willing to do so. The Adjudicator took the view that the administrator had the right to be paid for its services. It also had the right to require Mr N to leave £500 in his account to cover fees, and to ask him for further monies in future to cover further fees should the SIPP have no remaining funds.
- The Adjudicator noted the problems caused by the illiquid assets, and confirmed the Ts&Cs prevented the administrator from being compelled to donate them to charity where this would generate an Unauthorised Payment charge from HMRC.¹ In her view, it would be pointless to donate assets that resulted in the SIPP going into debt as a result of such charges.
- The AJ Bell paper outlined potential solutions to the problem of illiquid assets, but it was not for either Barclays or the administrator to impose such a solution. Mr N should take advice before asking Barclays and the administrator whether they would consider such a strategy.
- The Adjudicator understood that Mr N was in an unfortunate position which he may not have been able to foresee when he was selecting investments to hold within the SIPP. However, he had chosen these investments and neither Barclays nor the administrator owed him any compensation for losses incurred as a result of his own investment decisions.

¹ See Appendix 2

- For his distress and inconvenience, the Adjudicator considered the sum of £100 already paid to him was adequate compensation to cover his administrative costs and to acknowledge any distress he had experienced in pursuit of his complaint.

26. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N and Barclays provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr N and Barclays, which are set out below.

27. Mr N's responses:-

- The administrator could have actioned the advice set out in the AJ Bell paper at any time after he requested the closure of his SIPP.
- He did not receive either of the two emails sent to him on 8 March 2019 and on 1 April 2019. He was thus denied the opportunity to encash any funds available at that time.
- The nearest email he received to those dates was one dated 6 March 2019, stating that his email address had been updated. However, he had not changed his email address and had received "numerous emails previously for several years".
- He forwarded to the Adjudicator an email he had received dated 21 June 2022 from Barclays in response to his telephone call of 15 June 2022 and the email he had sent that day asking for the two delisted lines of stock (Central Rand Gold Limited and Vatukoula Gold Mines plc) to be sold at "arm's length" to himself as per the AJ Bell paper.
- Barclays confirmed in the email of 21 June 2022 that it would not be possible to arrange an "arm's length" sale of his SIPP assets to a new share dealing account in Mr N's name. This was because it would need to be able to establish a reliable and up-to-date value for the shares. Barclays also said that it appeared Central Rand Gold no longer existed as there was no listing for that company or a set of accounts available online. The last update had been a letter to shareholders in October 2019. Based on this information, Barclays' technical investment team had said Mr N likely could "share gift" the Central Rand Gold stock if his intention was to remove them from his SIPP. It invited Mr N to get in touch if he wanted to proceed with the share gifting, at which point it would obtain more information on the process through which he could arrange such matters.
- Mr N said the content of this email was evidence that at least one of the lines of stock could have been donated "as requested, years ago" and this new information should allow the Adjudicator to uphold the complaint.

28. The Adjudicator responded to Mr N's further submission to explain that she did not consider this new information would result in me upholding the complaint. In her view, it simply meant that, if Mr N wished to donate that line of stock to charity, he may do

so and could contact Barclays to take matters forward. However, there would still be illiquid assets in the SIPP so it could not be sold, and AJ Bell would continue to take charges until it could be sold.

29. Barclays and the administrator's responses:-

- It agreed with the Adjudicator's findings. It refuted Mr N's assertion that he had not received its emails and provided evidence that he had received and responded to at least one of them as follows:-
 - In response to the email from the administrator dated 1 April 2019, Mr N telephoned Barclays on 4 April 2019 regarding the £500 retention to cover fees, querying this as he had already been informed Barclays would be closing his account with no further charges.
 - Also on 4 April 2019, Mr N sent Barclays an email from his Hotmail account entitled "SIPP encashment" under which he forwarded the email it had sent him dated 1 April 2019 which had asked him whether he wished to proceed with the payment of all but the sum of £500 from the SIPP.

Ombudsman's decision

30. Mr N wishes to close his SIPP but cannot do so while it holds illiquid assets. Barclays has agreed not to collect any more charges for its part in the management of the SIPP. The administrator is unwilling or unable to do so while the SIPP continues to hold assets. It will continue to act as administrator for the SIPP, and will charge fees for this service for which it requires £500 to remain in the SIPP to cover future fees.
31. I have examined the evidence and am satisfied that Mr N was aware of the service provided by Barclays and the administrator in the running of his SIPP and, also, the charges and fees made in respect of the service provided. Under the SIPP Ts&Cs, the administrator has the right to be paid for the services it provides.² It also has the right to continue to charge fees while the SIPP exists.
32. It was not the administrator that invested in assets which were high risk, alternative investments, with a propensity to become illiquid. It was Mr N's own choice to invest in the three lines of stock. While I appreciate he may not have foreseen that the stocks could become illiquid, there was adequate warning in the literature provided to him that he would be responsible for fees, and if the SIPP had inadequate funds to cover fees, it was ultimately his responsibility to ensure fees were paid.
33. In such circumstances, I do not consider the administrator should stop providing a service or stop charging Mr N fees. It is within its rights to require him to set aside provision for future fees and the sum of £500 does not seem disproportionate to me.

² See Appendix 1

34. Mr N's assertion that he did not receive the emails of 8 March 2019 and 1 April 2019 has been refuted by Barclays's provision of his response to one of those emails. While Barclays noted that it did not receive a response from Mr N to its email of 8 March 2019, I do not agree that the possible non-receipt of this particular email prevented Mr N from being able to sell his illiquid assets at an earlier stage. The administrator had emailed Mr N three days earlier, on 5 March 2019, to explain that three lines of stock were illiquid and untradeable. Accordingly, if Mr N did not receive the email of 8 March 2019, it would have made no difference as he had already been informed that the illiquid state of the assets had rendered them unsaleable.
35. Regardless of that email, the SIPP is an execution-only product. All investment decisions, including those to sell, are the responsibility of Mr N. It was for Mr N to have been monitoring his investments so that he could take action for any that were losing value before they became illiquid. It was also for Mr N to have been carrying out his own research on the continued financial strength and viability of the assets in which he had invested as neither Barclays nor the administrator offered that service to execution-only clients.
36. With regard to the recent email which Mr N has provided, I do not consider this new information changes the position. I note that a Shareholders' letter was issued in 2019, but surely Mr N would have received a copy of this as he was a shareholder. He could have taken action to sell his shares at that point provided they were still liquid.
37. In any event, I do not agree with Mr N that the recent conclusion by Barclays' research team that a line of stock can now potentially be donated to charity means the administrator should have done this in 2019. It was a judgment call for the administrator to make as it could only be done if the assets had been declared to have a "negligible value" by HMRC, or where the administrator could "make a confident judgement" that HMRC would likely make such a declaration in future. In my view the decision made by the administrator in 2019 cannot be said to be unreasonable.
38. However, even if Mr N does find a way to successfully gift the stock to charity, there will still be two lines of illiquid stock in his SIPP for which the administrator will have to supply services for the foreseeable future. It is within its rights to charge for such services, as set out in the Ts&Cs.
39. In respect of poor service, the administrator has acted within its powers; it has provided an explanation of why the SIPP cannot be closed and has responded within a short space of time to Mr N's complaint. While Barclays took a few weeks longer than might have been preferred in order to provide its formal response, it was able to close its part of the SIPP to new fees. Further, it paid Mr N £100 in recognition of the time and effort he had expended in pursuing his complaint.

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40. I consider that between the waiving of future fees and the payment already made, Mr N has received an adequate award for the distress and inconvenience and for the overall poor service he has experienced.

41. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
30 June 2022

Appendix One

Relevant Terms and Conditions of the Barclays SIPP

3.8

- “3.8 AJ Bell cannot be compelled to make and is obliged to report to HMRC any Unauthorised Payment and will only pay you money from your SIPP in accordance with the Scheme Rules. If an Unauthorised Payment is made from your SIPP, you authorise:
- 3.8.1 AJ Bell to recover the amount of any scheme sanction charge or other charge which is imposed on AJ Bell by HMRC from your SIPP;
- 3.8.2 authorise Barclays Investment Solutions upon request to make such payment to AJ Bell out of your SIPP Cash Account.”

Appendix Two

Relevant Terms and Conditions of the Barclays SIPP

4.2

- “42.14 You authorise Barclays Investment Solutions to deduct the fees, charges and other payments due to each Service Provider under the Agreement from your SIPP when they are due for payment...”
- “42.15 If there is not sufficient cash available in your SIPP Cash Account to pay the fees, charges and other payments due to each Service Provider under the Agreement when they are due for payment...and to the extent that Barclays Investment Solutions is unable to realise sufficient cash from the sale of your SIPP Assets to meet such unpaid amounts, you will be personally liable to the relevant Service Provider for such unpaid amounts.
- If there is not sufficient cash available in your SIPP Cash Account, you authorise Barclays Investment Solutions to sell your SIPP Assets ...and accept that you will be personally liable to AJ Bell for any shortfall.”