

The complaint

Mr and Mrs C complain Barclays Bank UK PLC prevented Mr C accessing the Barclays' accounts of Mr P. They also say Barclays unfairly let a third party access the accounts. They want compensation for the distress and inconvenience caused to them and Mr P.

What happened

Mr and Mrs C hold power of attorney for Mr P. Essentially they have authority to act for him in relation to the accounts he holds with Barclays. In early 2020 Mr C's access to Mr P's accounts was removed by Barclays during a review. During that time, Barclays let another person – a family member of Mr P's - access his accounts. That person went on to make payments and access several months' worth of account history.

Mr and Mrs C submitted medical evidence to Barclays prior to the third-party being granted access. The evidence showed Mr P didn't have capacity. Barclays now admit they shouldn't have granted access, as the medical evidence should have taken precedence. They offered £200 to Mr C. They also refunded the payments which left Mr P's accounts.

An investigator at our service decided to uphold the complaint. They found Barclays acted in line with their legal and regulatory responsibilities when stopping Mr C accessing the accounts. So, while there was an impact on Mr and Mrs C and Mr P, they were not recommending compensation in this regard. But Barclays shouldn't have allowed another party to gain access to the accounts and the £200 offered wasn't enough to put things right.

Barclays agreed to the recommendation the investigator made to pay more in compensation. But Mr and Mrs C feel the compensation does not reflect Barclays failings regarding Mr P's privacy and finances, and the consequences this has had. They asked for a final decision from an ombudsman, so the complaint was given to me to decide.

I issued a provisional decision and found:

"Mr and Mrs C hold power of attorney for Mr P. This means they act for him in relation to financial and welfare matters. It also means they are authorised by law to bring this complaint on his behalf."

Under the dispute resolution rules (DISP) which govern our service's powers and jurisdiction, Mr P needs to be an eligible complainant. And he is – he holds the accounts in his name, so he is clearly Barclays' customer in relation to them, meaning he has a qualifying relationship under DISP. But while Mr and Mrs C are bringing this complaint on his behalf, which they can do under DISP, they are not themselves the eligible complainants. Our service construes a customer to be the account holder, and not someone who only has mandate over an account.

In view of the above, I can only consider losses experienced by Mr P. So, the personal upset, inconvenience and concern caused to Mr and Mrs C are not matters I have considered. This would include their concern about being discredited as Mr P's attorneys due to the actions of a third party. This doesn't mean Mr and Mrs C don't have a claim they might bring elsewhere. But I am not commenting on or making a finding on the previous £200 which Barclay's offered in regard to Mr C's personal experience. I leave it to Mr C if he wants to still accept that offer if it has not already been paid to him.

Barclays have extensive legal and regulatory responsibilities which concern preventing financial harm and crime where possible. And to give effect to those responsibilities Barclays may need to review an account and act on information it has gathered or received from elsewhere. They are not bound to always act on a power of attorney's instruction, just as they are not always bound to act on a customer's instruction directly.

Mr and Mrs C dispute that Barclays should have temporarily removed Mr C's access to the account. But I understand why Barclays took the action it did, and I find they were reasonable. It's common for banks to restrict access to accounts while a review is carried out to prevent potential financial losses occurring. So, I am not awarding compensation for the loss Mr P may have experienced by Mr C not being able to make payments for his benefit. Barclays weren't obligated to provide its reasons for conducting its review to Mr and Mrs C. Neither would they have been obliged to reveal them to Mr P if he still had capacity.

Barclays admit they should not have allowed the third-party to access Mr P's accounts. So, it's fair to conclude that party should not have had access to Mr P's financial information at that time, and they should not have been able to make payments. On balance, I find some compensation is due to Mr P as a result, but not the figure Mr and Mrs C have suggested. I find the sum of £200 is reasonable. I say this because:

- I am not here to award redress as a deterrent or to punish Barclays. That is not my role as an ombudsman. Instead, this is the remit of the financial services regulator – the Financial Conduct Authority (FCA). Similarly, although I can consider the impact a breach of personal data might have had on an eligible complainant, fines for breaches of data are a matter for the Information Commissioners Office (ICO).*
- Mr and Mrs C have said Mr P was caused anxiety by what happened, and I have no reason to doubt this. But I am also aware Mr P does not have capacity based on the medical evidence which has been provided, so it is difficult for me to truly ascertain his understanding of what happened at the time and the impact this had on him.*
- I can only award compensation on losses which have happened, or which are expected to happen. While personal financial data was accessed by a third party, I cannot know if that data is going to be used against Mr P. I simply cannot fairly judge the third party's intentions towards Mr P when they accessed that data or whether the data's future use would represent a loss to Mr P.*
- Barclays admitted to its error and made some amends by refunding the payments which left Mr P's accounts, rectifying the financial loss he may have suffered."*

Mr C responded to my provisional decision and reluctantly accepted it, although he says he reserves the right to bring his concerns about data protection to Barclays and the ICO. He said the complaint wasn't about compensation, but instead about Barclay's failure to protect

Mr P's finances and data. He also said his points in an email he sent weren't addressed by Barclays or the FCA, which meant he has lost faith in them.

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.

I have decided to uphold Mr P's complaint for the same reasons I gave in my provisional decision. Those reasons are repeated above and form part of this decision.

Mr C said his points in an email weren't addressed by the FCA or Barclays. I do not know what involvement he has had with the FCA, but it is not my role to consider the adequacy of a response he may have received from them.

Neither is it my role to dictate to Barclay's what processes and policies it should institute now or in the future to meet its obligations. Monitoring the conduct of a firm and assessing the adequacy of a firm's processes and procedures as a whole is the remit of the regulator. The Financial Ombudsman Service isn't the regulator.

I considered the points Mr C made in the email when reaching my provisional decision, but I will now address them more directly.

Mr C said the third party who accessed Mr P's account was the same person who instigated Barclay's police liaison team's investigation into Mr and Mrs C. But I find Barclay's were entitled to investigate and look into concerns reported to them by a third party about one of their customers, irrespective of the warning Mr C gave them. So, I don't find it was wrong for Barclays to look into matters. Again, I am not considering any losses experienced by Mr and Mrs C because they are not the eligible complainant for this complaint for the reasons I explained in my provisional decision.

Barclays acknowledged they made a mistake. They failed to prevent Mr P's account and data being accessed by the third party, and because of that I find compensation is due to Mr P. I must make clear that I have considered Mr P's data being accessed in my decision. Whether Mr C wants to pursue this matter further with Barclays after I have made a final decision is his choice.

Barclays may not have alerted Mr and Mrs C to another third party trying to access Mr P's account. They may have valid reasons for not revealing certain information which relates to other persons and their identification, irrespective of whether the Police later revealed this information. But either way, Mr and Mrs P know about what happened now, and I haven't found Barclays not contacting them is a reason to change the outcome I reached.

Putting things right

I direct Barclay's Bank UK Plc to pay £200 to compensate Mr P for the distress he was likely caused by his accounts and data being accessed by a third party.

My final decision

I have decided to uphold Mr P's complaint and I direct Barclays Bank UK Plc to pay £200 redress to Mr P.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision on Mr P's behalf before 23 March 2022.

Liam King
Ombudsman