

The complaint

A company, which I'll refer to as "H", complains about the way Barclays Bank UK PLC blocked and closed its account.

H's director, Mr W, brings the complaint on its behalf.

What happened

H held a business current account with Barclays.

On 18 July 2019, Barclays reviewed the account and restricted H's access while it did so. This included the removal of the account funds, which were in excess of £11,000,000.

Barclays completed its review on 27 August. It also wrote to H that day to advise that it was closing its account with immediate effect. It advised Mr W that the funds had been returned to the account, but when he visited a branch to arrange their release he was told that this wasn't possible.

Barclays later advised Mr W that H's funds could only be released by way of a banker's draft, and one was issued on 16 September. But this was returned unpaid the following day, on the basis that it hadn't been signed in accordance with the bank's mandate (which required two signatures). A further banker's draft was issued on 28 October, which was successfully credited.

H complained. It was unhappy that it had been deprived access to its funds without explanation while the review was ongoing – and that even after the review was completed, errors and miscommunication on the bank's part had delayed the return of its money. H wanted Barclays to compensate it by way of 13% simple interest per annum on the funds for the period it had been unfairly deprived of them, which it calculated could be as much as £399,000. It said this was on the basis that the account funds came from the issuance of 5% preference shares in H, and that a return on the capital would've been at least the 8% benchmark rate commonly used in compensation claims.

Barclays said that its decision to review and restrict H's account had been taken in line with its legal and regulatory obligations, and that its internal procedures had been correctly followed. It accepted that it had made an error with the first banker's draft, which hadn't been "dual authorised" in the necessary way. So it apologised and offered H compensation of £300. But it also said that H wouldn't have been able to cash the draft anyway, as it wasn't drawn to the correct payee due to a mistake in H's instruction.

With no resolution, H referred the complaint to us and it was reviewed by one of our investigators. He thought Barclays had acted in accordance with the terms and conditions in restricting and closing H's account – for which it wasn't required to disclose its reason. And looking at the circumstances that had prompted the bank's actions, he didn't think it had done anything wrong. But during his investigation, Barclays accepted that its error on the first banker's draft was likely the sole cause of its failure – and that the funds ought to have

been available to H from 27 August. So he thought that aspect of the complaint should be upheld.

In setting out its claim for compensation, H said that the bank's actions had left it unable to implement its business plans – and that its investors had withdrawn capital. So it wanted the bank to cover the costs it had incurred in raising the capital in the first place, which it said amounted to £715,000.

Our investigator didn't think it would be fair to hold Barclays responsible for these costs, as they'd not been incurred as a result of the bank's actions and there wasn't sufficient evidence to show that the delay caused by the bank was the reason for any of the investors' withdrawal. But he did think that the delay had put H to some significant inconvenience, noting it had spent a lot of time and effort in visiting branches and chasing things up that ought not to have been necessary. So for this, he recommended that Barclays pay H compensation of £1,000.

Barclays accepted our investigator's view but H didn't. Mr W's representative, Mr P, said that H had suffered significant financial losses as a result of being denied access to its funds, which was the result of an accepted error on the bank's part. The primary purpose of the funds was to invest in the business, but he said H may also have made use of the funds on the financial markets before committing to the project. So he thought H should, at the very least, be compensated for the "funding cost" of the money – for which he thought the precedent was 8% simple interest.

With no resolution, the complaint was passed to me to decide.

My provisional decision

As my initial conclusions differed from those of our investigator, I sent both parties a provisional decision earlier this month in which I set out my thoughts and invited them to respond with any final submissions. I said:

The review, restriction and closure of H's account

Barclays has a number of legal and regulatory obligations to meet in providing banking services to its customers. Banks are required to keep accounts and their use under review, and may need to suspend access or services in order to do so.

The terms and conditions of H's account allowed Barclays to suspend its services. Barclays has explained that it did so in order to comply with its regulatory obligations. From the information I've seen, I'm satisfied that this was the case. And while I note Mr W was unhappy at the lack of information or explanation he received about the matter, Barclays wasn't required to give H notice of its actions, or explain the reason for its decisions. It also wouldn't be appropriate for me to require the bank to do so now.

I recognise that being unable to access its funds while the review was ongoing would've caused H some inconvenience. But as I've not found that Barclays did anything wrong in undertaking the review or applying the restriction, it follows that I don't think it's responsible for any loss or inconvenience this caused H.

The terms and conditions also allowed Barclays to close H's account immediately in certain circumstances. I'm satisfied that it was reasonable for the bank to do so here.

The release of the account balance

Barclays completed its review on 27 August 2019 and accepts that this is the point at which H's access to the funds ought to have been restored. But it was only on 28 October 2019 that the funds were successfully released.

Barclays now accepts that this delay was due to errors on its part. While it told Mr W he could access the funds on 27 August, his attempt to do so in branch was rejected because the bank required a banker's draft to be issued. I think its process was reasonable but it erred in failing to make this clear to Mr W.

The most significant delay was due to the issue with the first banker's draft. Barclays accepts that it failed to properly sign it, resulting in it being returned unpaid when presented. A further few weeks was then spent investigating what had happened, cancelling the first draft and arranging for a replacement to be issued.

All of this means that H was deprived access to its funds for longer than necessary. While it might always have taken Barclays a few days to arrange the banker's draft, I think it's reasonable to say that this ought to have been requested at the time it confirmed H's access to the funds had been restored (27 August 2019) and arranged shortly thereafter.

H says that the inability to access its funds meant it couldn't proceed with its business plan and this, in turn, prompted investors to withdraw their funds and the business to wind down its operations. But H has provided very little explanation of how it intended to utilise the funds or how the delay in obtaining them meant that it was no longer able to proceed at all.

There's no evidence to show it was the delay caused by problems in obtaining the banker's draft – as opposed to the inability to utilise the funds due to the legitimate restriction on them beforehand, or indeed another reason altogether – that meant H couldn't proceed in the way it originally intended. So I don't think it's down to the delay in arranging the banker's draft that H's business was wound down, and therefore don't think that Barclays should compensate the company for any costs it incurred in raising the investment capital in the first place.

H has also said that the delay led to an increase in its liability to the investors – as it was unable to repay them as quickly as it otherwise would have done. I accepted this argument in principle and asked H for evidence to support this aspect of its claim. In particular, I wanted to see when funds were returned to investors – as if, for example, the funds weren't promptly returned once received from Barclays, it would be harder to say that delays caused by the bank had an impact.

H provided evidence of the transaction with one investor, with a demonstrable audit trail of the receipt of investment funds initially followed by their return shortly after receipt of the banker's draft and showing the 5% return paid. I am satisfied from this evidence that H's liability to the investor was increased as a result of delays on the bank's part – as I think it would most likely have returned the funds sooner if it could have. So I think it would be fair for Barclays to pay interest at 5% on this portion of the funds (£2,000,000) for the period 1 September 2019 (in recognition of the fact that it would always have taken a few days for the bank to arrange the banker's draft) to 28 October 2019.

H has, however, declined to provide similar evidence to show the return of any of the other funds. Without that, I've not been able to establish whether delays on Barclays'

part had a material impact – so I’m not currently intending to require the bank to pay any further compensation for losses in this respect.

Mr P has highlighted the rate of 8% that’s often used by way of compensatory interest for being deprived the use of funds. But I don’t think it would be fair to award that in the circumstances here. Our approach to compensation is to put the complainant in the position they would be in had the error not occurred. I can’t see that H would’ve been able to utilise the funds in any way, other than to return them to its investors. So I don’t think it would be fair to require Barclays to pay H a return on its funds that I can’t see it would have realised.

I can see that the delay in releasing the funds from 27 August 2019 onwards did put H to some inconvenience. Mr W visited a branch with a view to accessing the funds because Barclays hadn’t, initially, explained that a banker’s draft would be necessary. And the invalid banker’s draft meant that Mr W had to follow up with the bank on a number of occasions to find out what had gone wrong and to remedy the situation. Looking at the inconvenience that H was caused by Barclays’ errors, I think the £1,000 it’s already agreed to pay is fair compensation.

Barclays accepted my provisional decision, but H didn’t. Mr P and Mr W didn’t accept the level or rationale for the compensation I’d proposed, saying in summary that:

- They didn’t agree with my view that H wouldn’t have utilised the funds in any way other than to return them to the investors. H would’ve had the benefit of the funds for a further two months and so they still thought the company should be awarded the funding cost and/or compensatory interest. On the latter, Mr P highlighted the 8% statutory interest that can be claimed on late commercial payments.
- It was accepted that the bank’s actions had caused a two-month delay in the release of the balance and there was no basis for differentiating between the £2,000,000, on which I’d awarded compensation, and the remaining balance, on which I hadn’t.
- The two-month delay was the result of “poor operations” on Barclays’ part, for which the bank should be fined.

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.

There is no dispute over the errors on the bank’s part, rather the issue is how H should be compensated for them. I’ve reviewed this in light of Mr P and Mr W’s further comments, but I still think the redress proposed in my provisional decision represents a fair way to put things right. So I’ll explain why Mr P and Mr W’s points haven’t led me to a different conclusion.

Mr P has queried why I don’t think Barclays should compensate H for the funding cost in light of its errors. I explained the reasons for this in my provisional decision and there is little more detail I can helpfully add. H had already incurred these costs but says Barclays should reimburse them on the basis that its errors meant that the company couldn’t proceed with its business plan. I said that I couldn’t see that it was the two-month delay for which Barclays was at fault that had left H unable to proceed rather than any other cause, and I’ve not been provided with any new comments or information that would lead me to think any differently about this.

I understand that Mr P thinks that H is entitled to compensatory interest in line with the Late Payment of Commercial Debts (Interest) Act 1998. I don't think this legislation applies to the circumstances in question here. It entitles one business to claim statutory interest if it's paid late by another for goods or services. That's not what happened here. H wasn't providing Barclays with any goods or services and didn't have a contract with it of the nature covered by the legislation.

Our approach to compensation is to put the complainant in the position they would be in had the error not occurred. As noted above and in my provisional decision, I've not seen that H would've done anything other than return the funds to its investors and wind down its operations, had Barclays not delayed things. So I still don't think it would be fair for Barclays to compensate H with 8% interest on the balance when that is not something it would've obtained if things had gone as they should have.

Rather, I still think it is fair in the circumstances here for Barclays to compensate H for the losses that it actually sustained as a result of the bank's error. In that respect, it is only the delay in returning £2,000,000 to its investors that H has provided any evidence to demonstrate – despite a number of requests and opportunities. I still don't think I can fairly require Barclays to compensate H for losses incurred in returning the remainder, as I still don't have any evidence that shows these funds were actually returned (or if they were, when) or that any additional interest was paid when doing so.

Lastly, I note Mr W's comment that he believes Barclays should be fined for the shortcomings in its procedures and service that caused the problems H experienced. That isn't something that falls within our remit – we don't have the power to fine or punish a financial business. It would be more of a matter for the industry regulator, the Financial Conduct Authority – to whom Mr W may wish to refer any concerns as to the bank's processes or procedures.

My final decision

I uphold this complaint and require Barclays Bank UK PLC to:

- Calculate and pay to H interest at a rate of 5% per year on £2,000,000 for the period 1 September 2019 to 28 October 2019; and
- Pay H compensation of £1,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 28 March 2022.

Ben Jennings
Ombudsman