

## **The complaint**

A partnership, which I'll refer to as "F", complains about the way Barclays Bank UK PLC processed a foreign cheque.

The director of F's operating company, Mr L, brings the complaint on the partnership's behalf. He is represented in doing so by Mr P.

## **What happened**

F attempted to pay a foreign cheque for just over \$1,800,000 into its Barclays account on 2 April 2019.

Foreign cheques can't be put through the UK clearing system and have to be dealt with in one of two ways – known as "negotiation" and "collection".

F's cheque was paid in on a negotiation basis but Barclays declined this and opted to process the cheque on a collection basis instead. However, the payer then rejected the cheque on a collection basis.

The bank wrote to F on 1 May 2019 returning the cheque, advising that it hadn't been paid by the issuing bank. But F didn't receive this letter because it was sent to an old address, which it says was due to an error by the bank in failing to process a change of address request back in 2018.

Concurrently, F was in touch with Barclays on a number of occasions to query the delay in the funds crediting its account.

Barclays initially responded to F's queries to advise that cheques could take up to six or eight weeks to clear when processed on a collection basis, which would account for the delay – even after 1 May, having returned the cheque as unpaid. But on 11 June 2019, the bank confirmed to F that the cheque had been returned unpaid as the issuer didn't accept cheques paid on a collection basis – and so the cheque had been posted back to F. It said F would need to arrange an alternative method of payment with the issuer.

F subsequently followed up with the payer and payment was successfully made by wire transfer on 23 September 2019.

F says that Barclays is responsible for the delay in it receiving these funds. It says it made errors in its initial handling of the cheque, meaning it didn't begin to process the cheque until 15 April. It then failed to notify F that the cheque had been returned unpaid, writing to an incorrect address because it hadn't acted on an instruction to update the partnership's address in 2018. F says the funds were to be used to settle a bridging loan taken out in anticipation of the payment in question, with the delay resulting in it being charged interest for longer than necessary and which it wants Barclays to reimburse.

Barclays accepts that there was a delay of two weeks in processing the cheque initially but says this isn't outside of its usual timescales for processing cheques in this way and, in any

event, didn't lead to the losses that F has claimed. It says it properly notified F of the returned cheque – with its letter having been sent to the correspondence address it held on file for the partnership. And it says this wasn't changed in 2018 because F hadn't provided the required notice to the bank to process this.

### **My provisional decision**

I issued a provisional decision on F's complaint earlier this month, setting out why I thought it should be upheld in part. I said:

Barclays initially accepted the cheque on a negotiation basis, before deciding two weeks later that it was only willing to process it on a collection basis. That was a decision that the bank was entitled to make but, as it has already acknowledged, there was an unnecessary delay in initiating the collection process. It was never going to agree to negotiate the cheque and that ought to have led it to collect the cheque at the outset.

The fact that the cheque was then unable to be processed through collection wasn't down to an error on Barclays' part. The payer didn't accept collection items. Barclays then returned the unpaid cheque to F in line with its usual process. While I can't see exactly when the payer rejected Barclays' request, it doesn't seem there was an unreasonable delay on the bank's part in relaying this to F. It wrote to F on 1 May 2019. This was a little over a fortnight over it had initiated the collection process, so – bearing in mind the time it would've taken to get the payer's response to this – this timeframe seems reasonable.

Barclays took appropriate action in returning the unpaid cheque to F and explaining what had happened. It was then up to F to arrange alternative payment. Problems began to arise, though, because F didn't receive this letter. But I don't think that was down to an error on Barclays' part. I can see that the bank wrote to F at the correspondence address that it held on file for the partnership. It's accepted that F contacted Barclays about updating its address in 2018, but the last record of contact on that matter shows that the bank confirmed to a representative of F in April 2018 that it had not received an instruction and asked it to be resubmitted. It doesn't appear that the bank received anything further about the request, so F's address remained unchanged on its system.

F had been in regular contact with Barclays about the cheque prior to its return. F's representative emailed the bank on 7 May 2019 to request an update – with the partnership evidently not having received the letter sent on 1 May. At this point, Barclays ought to have advised F of the position as set out in that letter. But it didn't. On a number of occasions thereafter, the bank continued to advise F that the cheque had been sent for collection, was with the payer's bank and that payment was still expected (for which it gave an estimated date of 28 May). It was only on 11 June that Barclays confirmed the position – making F aware that the cheque had been returned unpaid and that it would need to contact the payer to arrange an alternative means of payment.

So while I think Barclays took an appropriate step in notifying F of the unpaid cheque by letter on 1 May 2019, it ought also to have confirmed this to F on or shortly after the partnership sought an update on 7 May – given it was apparent that the partnership remained unaware of what was happening. Unfortunately, it failed to do so – and instead misinformed F with reassurances that the cheque collection process was underway. I think this meant F was then delayed in following up with the payer to arrange an alternative means of payment by around five weeks. It was always going

to be in that position and so I don't think that any delays that arose thereafter are down to Barclays.

F says that the delays in obtaining the payment at issue meant that it was delayed in repaying a bridging loan and therefore had to pay additional interest as a result. So I've thought about whether Barclays should compensate F for this, but based on what I've seen so far I don't think it should. I'll explain why in a little more detail.

While I don't agree with Barclays' point that it can't be held for any consequential losses that F may have sustained simply because its terms and conditions restrict its liability, it is right to say that the legal position generally requires such losses to have been a reasonably foreseeable consequence of the wrongdoing in order to be recoverable from the party at fault. I don't think that's the case here.

F's claimed losses arise from a pre-existing, short-term bridging loan that had to be repaid on 11 January 2019. Thereafter, high penalties would be incurred as long as the loan remained outstanding – with a fee of 5% of the loan balance (equating to around \$91,000) falling due each month until it was settled. I don't think such losses would've been reasonably foreseeable to Barclays. I can't see that the bank was made aware of the loan, F's intention to use the funds at issue to repay it or of the significant penalties F would face if it was delayed in doing so. As noted above, F was in touch with Barclays about the cheque on a number of occasions after its deposit to chase progress – but I've not seen that it said or did anything to put the bank on notice as to these possible consequences of any delay, referring only very generally to “onward payments to make”.

That said, even if I were to accept that the losses claimed were reasonably foreseeable to Barclays, I've not seen that F actually suffered the financial loss – being the payment of additional interest – that it has described. While the drawdown and repayment of the capital amount borrowed under the loan can be seen in payments into and out of F's account, the additional interest amount can't be seen in the same way.

F has explained that no other cash payments were made and that the loan was settled by a property transaction. It says the bridging loan provider is a shareholder in a company that purchased some land from F – and the consideration for that purchase (\$325,000) was the amount required to repay the loan, including all the interest that had accrued on it, which the lender accepted in settlement of the loan. So no money changed hands. And the consideration given for the purchase doesn't seem to have been the result of an independent valuation, but rather a figure arrived at between the two parties that suited their purposes. It seems most likely to me that the transaction would've happened in just the same way even if Barclays hadn't held things up by the six weeks or so outlined above. I think F would still have gone ahead with the transaction and it would've been utilised as the settlement of F's obligations under the bridging loan agreement.

In short, I can't see that F is in any different position as a result of the delays on the bank's part than it otherwise would've been. I don't think it actually paid any additional interest or that it suffered a loss in ascribing a higher consideration to the property transaction that would always have been utilised to settle the bridging loan. So I'm not intending to require Barclays to pay any compensation in this respect.

I do, though, think that F was put to some inconvenience by the bank's errors. As it wasn't advised of the correct position when raising enquiries from 7 May until 11 June, it continued to chase things up unnecessarily with a number of calls and emails

to the bank during this period. It's right that F is compensated for this inconvenience, for which I think £250 is fair.

Barclays accepted my provisional findings, but F didn't. Mr P said that while the level of the interest on its loan couldn't reasonably have been foreseen, *some* loss would've been a reasonably foreseeable consequence. So he thought Barclays should compensate F for the period of delay for which it was responsible by paying interest at HMRC's late payment interest rate of 3.25% on the funds.

### **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.

F's response to my provisional findings focuses on how it should be compensated for the impact of Barclays' error. I've considered what Mr P has said, but having done so I've not reached a different conclusion to that of my provisional decision. I'll explain why his comments haven't changed my view.

I agree that it would've been reasonably foreseeable that F *could* suffer a financial loss as a result of being deprived of its funds. But our approach to compensation is to put the complainant in the position they would be in had the error not occurred – and so I can only compensate F for any financial losses that it *actually* suffered. As F has told us, it was only ever going to use the funds in question to settle the loan. So it would not have derived any other benefit from them. And while it settled the loan later than it otherwise would've done, I've not seen that it suffered a financial loss in doing so.

So I don't think it would be fair to require Barclays to pay F a return on its funds that it wouldn't have obtained even if the bank hadn't made an error. I remain of the view that it is therefore only a matter of compensating F for the inconvenience it was caused in having to chase the matter up unnecessarily, for which I still think £250 is fair.

### **My final decision**

I uphold this complaint in part and require Barclays Bank UK PLC to pay F compensation of £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 25 April 2022.

Ben Jennings  
**Ombudsman**