

## The complaint

N - a limited company - is complaining that Barclays Bank UK PLC didn't remove a third party from its mandate (I'll refer to the third party as B). This resulted in B making a payment on the account which N says he wasn't authorised to do. This caused N severe financial difficulties, resulting in it becoming insolvent. N is unhappy that Barclays is unwilling to refund the disputed transaction and its consequential losses.

## What happened

I will summarise the timeline of events below:

- N says it requested for B to be removed from the mandate on N's account. This was to ensure B could no longer make payments on behalf of N.
- N says this was discussed in a meeting with N's business manager at Barclays in 2015. Barclays has no record of this meeting.
- N has provided an email to show it chased the mandate update with the business manager a few weeks later. No response was received.
- Five years later, B accessed N's account and made a payment from it, which N says was not authorised.
- N says as a result of the fraudulent payment, the lack of cash in its business bank account led to financial losses through lost contracts. N says those losses resulted in N becoming insolvent.
- In particular, N says it lost a contract with an investor, which would have seen income for N totaling approximately \$257,000.
- N is seeking payment from Barclays for its consequential losses from the error it says Barclays made, by not removing B from its mandate.

Barclays initially declined to repay the disputed payment, saying it was a civil dispute between N and its employee. It said the payment was made by B, who had authority to make payments on the account at the time. It didn't have any record of a request for B to be removed from N's mandate. And it declined to reimburse any of N's consequential losses. But Barclays did offer to pay £250 in compensation and later added a further £50 to this. Barclays said this was to recognise the poor customer service it had provided and then the additional payment was for further servicing errors it identified.

As N's directors didn't accept this outcome it brought the complaint to our service. One of our investigators looked into things and in summary said:

- He was satisfied that the payment from N's account wasn't properly authorised.
- He thought it was likely a meeting did go ahead between N's directors at a branch. And paperwork was completed for the third party to be removed from the mandate. He said this was supported by an email from one of N's directors, chasing this up a few weeks after the meeting.
- N's directors hadn't been grossly negligent in keeping the account details or security

information secure.

- He concluded the fraudulent transaction should be refunded, plus 8% interest, and if any fees or interest were charged as a result of the transactions these should be refunded as well.

He went on to carefully consider N's claims for financial loss and loss of reputation. He said:

- He didn't think N did all it could to mitigate its losses – only one chaser was made by N's directors, regarding the removal of B from the mandate – despite it not receiving any confirmation that it hadn't been actioned. But Barclays error still resulted in the payment being made from the account.
- He hadn't been provided with any evidence to show N attempted to raise funds elsewhere so the lost contract could be executed. If he had evidence of this, it would have satisfied him that some efforts were made to mitigate N's losses.

The investigator continued to communicate with N's directors. As a result, it provided evidence which it felt demonstrated that attempts were made to raise funds elsewhere, after the disputed transaction was made. And N provided substantive correspondence and paperwork which it says shows the loss of a particular contract was directly impacted by the fraudulent payment made from N's account.

The directors say N couldn't complete its part of the contract, to pay a legal retainer fee, which then resulted in the investor losing faith and the contract to invest \$25m couldn't be completed. N says these income losses totalled an estimated \$257,000, made up of a management fee and an estimated performance fee.

The investigator wasn't satisfied that the loss of the particular contract N had described, was a reasonably foreseeable result of Barclays' error. He also said that there was still a chain of events which had to fall into place, following the error, which could have been interrupted at any point. So, he wasn't persuaded that the loss directly flowed from the error.

The investigator didn't make any award for N's consequential losses.

He also considered N's request for information relating to a GDPR request but explained this wasn't something our service could consider.

The investigator also considered the compensation Barclays had already offered. He agreed that the service N experienced had been poor and that a great deal of inconvenience was caused to N's directors. He explained our service can't make awards to individuals where the complaint is being brought by a limited company. And so overall, he felt the offer of £250 and then the further £50 was fair in the circumstances.

Barclays responded to say it accepted the investigators findings and recommendations regarding the refund of the disputed payment plus interest and would not be willing to reimburse N's additional losses.

N disagreed and asked for the complaint to be reviewed again. I won't set out all its responses, as these are detailed, but in summary it said:

- Barclays was culpable for the funds that were missing at a critical time for N. The money was needed for the chain of events that was interrupted due to Barclays error.
- Shareholder and client trust was eroded, as a result of all cash being lost, due to the fraudulent transaction. This undermined N's ability to meet its professional and regulatory obligations.
- This had an impact on N's ability to attract more funding for investments or develop

business opportunities.

- N detailed various impacts, to the course of its day to day operations, which had long term impacts on the business and its finances.
- N should not suffer as a result of Barclays failure - with regard to the email, that it sent to remove the third party - but was not acted upon by the Barclays member of staff.
- There's been no penalty for Barclays not keeping proper records and it is guilty of negligence or is complicit in theft and subsequent money laundering.
- N provided details of various other attempted contracts and negotiations to secure funding to execute the contract which it says failed due to the disputed transaction.

As N didn't accept the investigators recommendations to resolve the complaint it has been passed to me.

### **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.

Having done so I'm not upholding N's complaint and I'm not making any further award for compensation or consequential loss. I'll explain why

### **The disputed transaction**

The investigator upheld the initial disputed payment from N's account and Barclays accepted this finding and the recommendation and to pay interest. I have carefully considered the events and I think the payment was authorised by N as B was still authorised to act on N's behalf when the payment was made. But I would have come to the same outcome as the investigator, that the payment plus interest needs to be refunded.

I say this because although the payment was authorised it shouldn't have occurred because B ought to have been removed from the mandate by the time of the payment. Like the investigator I'm persuaded that N's director at the time most likely completed the mandate for B's removal, in branch, and followed this up with the business manager. I think it's likely the business manager didn't correctly complete the procedure, and this incorrectly allowed B to remain as an authorised party on the account. The disputed payment would not have occurred if it not for Barclays error. Barclays has agreed to refund the disputed payment plus 8% interest, and I think this is fair and reasonable in the circumstances.

Barclays offered £300 in compensation for the initial poor service it provided and for further servicing errors. I think this is fair in the circumstances and haven't seen any reason to direct Barclays to pay further compensation.

### **Consequential loss**

What remains in dispute is N's claim for consequential losses and damage to reputation. I will focus the remainder of my decision on these points.

N's directors have provided a considerable amount of correspondence between it and various other parties, which it says demonstrates that:

- The loss of the £15,000 from the disputed transaction was a direct cause for a specific contract to fail, costing N \$257,000 in potential lost income.

- N was unable to produce any revenue and is now insolvent.
- The directors could not attract financial support for N because of the error made by Barclays, which in turn caused damage to its reputation and loss of faith from its shareholders and investors.

I'll start by saying I agree with the investigator, that N's directors had an opportunity to mitigate N's losses when they didn't receive a response from Barclays - following the request to remove B from N's mandate. I think action by N's directors at this point would have been reasonable, given B had authority to make transactions on N's behalf which its directors no longer wanted. No response was received, following the chaser email N's director sent and no written correspondence was received to confirm the updated mandate. If this had been followed up, then the error would have likely been identified and the losses prevented altogether. So, I've taken this into account when considering N's claim for consequential losses.

N's directors have also provided numerous email chains and correspondence. I won't comment on every piece of correspondence, but these include contact with the parties involved in a particular contract/agreement which N said was lost, due to Barclays' error. Having read the documents N's directors have provided carefully, I'm not persuaded that I can say with any certainty that the agreement failed as a direct result of Barclays' error and the money that was missing from N's account. In the weeks and months leading up to the potential contract execution date I can see N's director was dealing with the fund manager and the investor. I can see that N agreed to pay £15,000 as a legal retainer fee, as part of its role in the agreement. This was the money that N says was then fraudulently taken from its account, meaning it couldn't execute its part of the agreement. But it also needed to secure \$25m from its investor as well. And whilst I can see there was interest from the investor there isn't any documentation or correspondence which shows confirmation that the investor had agreed and committed to the \$25m investment. So, whilst I can see there was a possibility the agreement could have been executed as N says, there is also the possibility that it wouldn't have.

I'll go on to comment about N's attempts to raise funds, in general, later, and why I don't think these were directly impacted by Barclays' error. But I also can't see that N discussed making any alternative arrangements for the £15,000 to be paid, with either party to the contract, after it became aware the funds were missing from the account. Given the uncertainty here, I don't think it would be fair to conclude that the error and missing funds are the sole reason the contract wasn't executed or could reasonably be considered as a direct loss. Like the investigator, I agree that there was a chain of events involved here which could have broken at any point.

In addition to the above. I can see that N has calculated its losses linked to this contract based on a management fee and predicted performance on the fund. This also doesn't appear to have been formally agreed and is a speculative estimate rather than a guaranteed income amount. So, I also don't agree that the losses N has stated were guaranteed, even if this contract had been executed as N says. It's also true there was no historical performance that N might refer to to demonstrate potential income from any deal.

N has provided evidence of other attempted negotiations after these events. It says these failed due to the loss of faith in N because of the missing funds from its account. But from the correspondence provided, it would appear that at least several of these ventures failed due to investors not being interested in the deals N was offering. I haven't seen anything which persuades me these were directly linked to the missing funds. It's unclear how the other parties would have been aware of the loss and so it's not possible to say how this may have affected the sentiment of potential investors. This also adds to my finding that there was no guarantee, that the contract N has specifically referred to, was guaranteed either.

I can see that N's directors also attempted to raise funds by using personal contacts, but these also weren't successful. The reasons for not securing these funds were varied but also related to the financial markets and businesses being impacted by the Covid-19 global pandemic. So again, I'm not persuaded that N's failure to secure funding or other contracts was as a direct result of the error made by Barclays.

Overall, I'm not persuaded Barclays error created a direct loss for N, other than the missing funds themselves. I can see N was having financial difficulties during this time but there were a number of factors involved including, as I've mentioned, the impact of Covid-19 on the financial markets. As a result, I don't recommend that Barclays pay N its claim for consequential loss or damage to reputation.

### **Putting things right**

I agree with the investigator and Barclays has agreed to:

- refund the disputed transactions for EUR 14,945;
- add 8% simple interest from the date the disputed transaction was made to the date of settlement (less any tax properly deductible);
- refund any additional fees or interest in relation to the disputed transaction (only) if these were charged; and
- pay the £300 in compensation if this has not already been paid.

### **My final decision**

I partially uphold this complaint against Barclays Bank UK PLC. I now direct Barclays to pay the settlement as set out above. But I do not recommend that it pays anything further.

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

Sophia Smith  
**Ombudsman**