

The complaint

A partnership, which I'll refer to as "L", complains that Barclays Bank UK PLC restricted access to its bank account for longer than necessary.

Mr K is one of L's partners and brings the complaint on the partnership's behalf.

What happened

L banked with Barclays, holding a business current account and a client account (the latter being an account designated for the sole purpose of holding funds belonging to L's clients, rather than its own).

One of the services L offers its customers is the procurement of tax rebates from HM Revenue and Customs ("HMRC"). L received eight payments into its client account on 23 April 2020, which it says were tax rebates due to its clients.

Barclays restricted L's access to its accounts shortly after these payments were received. The bank says this was in response to notification from HMRC that the eight payments were potentially fraudulent as a result of a "large scale fraudulent attack" that was affecting a large number of transactions.

Barclays conducted a review of L's accounts with a view to returning any payments that it could recover – but as it concluded that the funds in question had already been spent, no action was needed. The review led the bank to end its relationship with L, and it wrote to the partnership on 8 May to advise that it would be closing its accounts on 12 July. The restriction on L's accounts remained in place and L was only able to access its funds when they were released on 10 July.

Mr K complained about Barclays' actions, particularly unhappy with how long the account restrictions had been in place and at misinformation he'd received when speaking to the bank about the matter.

Barclays upheld the complaint in part. In summary, it said:

- It had applied the restriction legitimately, with a view to preventing the funds at issue being spent in light of the HMRC notification.
- It should, however, have removed the block sooner – on realising that the funds had been spent, there was no need for it to have remained in place.
- It had misinformed Mr K when advising that the funds would be returned to HMRC.
- Its decision to close L's accounts was subject to a strict internal review process and wouldn't be changed.

- In response to L's intention to apply to the bank for a Bounce Back Loan, it had advised Mr K to await a call back – before belatedly confirming that the partnership wouldn't be eligible to apply, due to the closure of its accounts.

By way of apology and recognition of the distress and inconvenience caused, Barclays paid £600 to L's account. But Mr K remained unhappy, and referred the matter to us. He said that Barclays' delay in releasing the funds had delayed the onward payment of tax rebates to clients, for which L had to write off invoices for its work totalling £2,080 and leading to loss of future business from the clients. He also said that the matter had damaged L's reputation and thought that compensation for the time he'd spent dealing with the matter was insufficient.

One of our investigators reviewed L's complaint. She didn't recommend that Barclays take any further action, as:

- It had been reasonable for Barclays to restrict and review L's accounts in response to the information received from HMRC.
- Barclays had concluded that the funds had been spent and therefore didn't return them to HMRC. But she thought the funds had actually remained in the account. Therefore, had things gone as they should have, those funds would have been returned to HMRC. And she thought this would've meant L's business would've been impacted in much the same way as it was – in that the clients wouldn't have received their tax rebates, and so L would have suffered the same losses.
- There was an undisputed delay in the release of the funds, but the £600 compensation that Barclays had already paid L for this was fair.
- Barclays was entitled to close L's accounts and had done so in line with the applicable terms and conditions.
- L was ineligible to apply to Barclays for a Bounce Back Loan once its accounts were being closed. And the bank's actions hadn't prejudiced L's ability to apply elsewhere.

Mr K didn't accept our investigator's view. He said that if Barclays had returned the funds in question to HMRC, L could then have obtained payment from HMRC to a different account – which he thought would've been a quicker process than the experience with Barclays. So he didn't think it was fair to say L would've been in the same position and still thought Barclays should compensate the partnership for the consequential losses arising from the delay in releasing the funds.

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

My provisional decision

As my initial conclusions differed slightly from those of our investigator, I issued a provisional decision on L's complaint earlier this month and invited both parties to let me have any further comments or information that they wanted me to take into account before making my final decision.

I said:

As I understand Mr K accepts, Barclays didn't do anything wrong when initially applying a restriction to L's accounts and conducting a review. The terms and

conditions of L's accounts allowed the bank to take such action and I'm satisfied that it was reasonable for Barclays to do so in light of the information received from HMRC about the eight credits to L's account and in the fulfilment of its legal and regulatory obligations. The bank was also entitled to end its relationship with L, and did so in a manner that complied with the terms and conditions.

There has been some confusion as to the action that Barclays took – or, at least, should've taken – in respect of the eight payments. The bank says that it would've returned the payments to HMRC had the funds remained in the account, but could not do so as they had already been spent. While there were funds available in the account, the issue is whether the funds in question had already been utilised. Very broadly speaking, this is based on the "first in, first out" common law principles established by what is typically known as "Clayton's case".

From what I've seen of the account activity, I accept that it may not have been possible for Barclays to return the funds to HMRC. L's account balance on 22 April was just under £30,000. L then received the £17,000 in question the following day. That day, it made payments totalling around £23,000. Approximately £20,500 was paid out of the account before the end of April. And a further £21,000 was paid out up to and including 5 May. So quite feasibly, by the time Barclays had completed its review there were no funds originating from the transactions in question left to return.

That said, it is unclear why Barclays' restriction wouldn't have prevented the funds in question from being utilised while its review was in process – and therefore being available for return to HMRC. In any event, I don't think the fact that the funds weren't returned to HMRC has prejudiced L's position. I accept that it *may* have then been able to obtain the funds more quickly than proved to be the case with Barclays, but it may not have been.

Either way, Barclays ought to have removed the restriction once its review was complete. I understand the bank's timeframe for such a matter to be 10 working days. And that represents a reasonable expectation. So if things had gone as they should've done, L's access to its accounts would've been fully restored on or around 8 May 2020. But that didn't happen, and the partnership was only able to access its funds on 10 July.

Mr K says that as a consequence of the bank's delay, L was delayed by two months in remitting the tax rebates to the affected clients. This, he says, meant that L suffered consequential losses in two ways – firstly in having to write off the fees that L would otherwise have received for the work it did in obtaining these rebates, and secondly in losing future business from these clients. I've carefully considered everything Mr K has said and provided to us on these points but, having done so, I don't currently think it would be fair to require Barclays to compensate L for the losses being claimed. I'll explain why in a little more detail.

Mr K describes L as having been "forced" to write off the amounts that it was owed for the work carried out in obtaining the rebates in question. I don't think that is a reasonable position. L had evidently carried out the work and obtained the rebates as it was instructed to do. And the delays were outside of its control. Mr K has advised that it would ordinarily deduct its fee from the rebate and forward the remainder on to its client, which it could still have done. It chose not to do so. And Mr K hasn't demonstrated that any attempts were made to resolve the matter with any of its clients beforehand – at least, for example, accepting a partial reduction in the full amount billed. So I don't think it would be reasonable to hold Barclays responsible for these losses, which I think L could've mitigated.

In respect of lost future business, I don't think I can say with any level of certainty that the clients in question would've returned to L for further work were it not for the delays in obtaining their rebates. And even if they would've done, what this work would've been and at what profit to L. Mr K has also been unable to provide any contemporaneous evidence of the clients' discontent or L's attempts to resolve the situation and so, again, there is little to show that reasonable attempts were made to mitigate any losses in this respect.

It is evident, however, that the delay would've put L to some avoidable inconvenience. Mr K was engaged in a number of phone calls to the bank that he would not otherwise have been, in seeking an explanation and chasing things up. This was exacerbated by misinformation from the bank as to what was happening, prompting Mr K to call HMRC unnecessarily. While there is limited evidence to confirm the position, I accept there would also have been some level of additional work in liaising with the affected clients. And – while I'm not currently intending to hold the bank liable for the financial losses suffered as a result of it for the reasons given above – I can also see that there would have been some damage to L's reputation.

Barclays has also accepted that it ought to have been clearer with Mr K as to how the matter impacted L's ability to apply to the bank for a Bounce Back Loan. I understand that Mr K attempted to apply online in early May, after the Loan Scheme was launched, but was unable to complete an application or see why. And when he called the bank, he was repeatedly told to wait while a technical issue was resolved. It was only some time – and several calls – later, in June, that the bank confirmed L would be unable to apply due to the pending closure of its accounts. That position ought reasonably to have been relayed sometime sooner, without the need for several requests from Mr K.

Taking all of this into account, I am currently intending to require Barclays to increase the total compensation payable to L to £800 – requiring a further payment of £200 on top of the £600 that's already been paid.

I understand Mr K doesn't think such compensation is sufficient, primarily as he has calculated an alternative amount based on his hourly rate and billable time. We don't typically award compensation based on a complainant's hourly rate – rather we look at the overall impact that the financial business's mistake had. And while I accept that dealing with this matter would've taken Mr K away from L's day-to-day activities, I've not seen that it caused a loss of business such that a separate award for financial loss ought to be made.

Barclays accepted my provisional decision. Mr K confirmed that L had nothing further to add.

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, and with no further information for me to take into account, I see no reason to depart from my provisional decision. So this final decision simply confirms my provisional findings, as set out above.

My final decision

For the reasons I've explained, I uphold this complaint and require Barclays Bank UK PLC to pay L a further £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 7 December 2022.

Ben Jennings
Ombudsman