

The complaint

This complaint is brought on behalf of the estate of Mr C, by his executor and former attorneys (from a Lasting power of attorney/LPOA that was in place whilst Mr C was alive).

The complaint is that Barclays Bank UK PLC was wrong to pay two cheques towards a supposed investment – totalling £150,000 – without any of the attorneys being consulted first. As the money has now been lost, the representatives believe it should be repaid to the estate

What happened

In June 2016 Mr C appointed three attorneys under an LPOA. Barclays was made aware of this and confirmed, by letter, it had registered the details in October 2016.

In November 2016 Mr C wrote two cheques – for £100,000 and £50,000 – to be paid toward an investment opportunity he'd learned about.

Whilst the cheques were being processed an attempt was made to contact Mr C to discuss them. But no contact could be made, and the cheques were processed anyway.

Mr C received payments from the investment over the next two years, with £30,000 being paid to him across four dates: 10 May 2017, 7 November 2017, 18 May 2018, and 9 November 2018. Mr C raised no concerns or complaints regarding the payments he had made or received in relation to the investment. Nor did any other party attempt to raise concerns on Mr C's behalf whilst he was alive.

Mr C sadly passed away in June 2020. It was after his death, upon reviewing his account history, that concerns were raised by the representatives of this complaint about the cheques Mr C had issued. Concerns were also raised about other payments – this time sent via CHAPS and totalling £60,000 – made toward an investment in 2018. Those concerns have since been withdrawn as it's become clear they were approved by one of the attorneys at the time.

The representatives believe that Barclays ought to have done more to question the 2016 cheques at the time. They believe that because Barclays was aware of Mr C's vulnerabilities it ought to have contacted one of his attorneys about the payments before allowing them to be completed. They say that, had it done so, they would have asked for the cheques to be stopped as they considered the type of investment (property development with a company registered overseas) to be too risky, and not what Mr C might have ordinarily invested in.

Although the complaint representatives have said members of Barclays staff told them that the cheques hadn't been put through the correct procedures, and that the bank hadn't responded properly to Mr C's vulnerabilities at the time, Barclays ultimately said it wouldn't be refunding the cheque payments. It said they'd been properly executed, the correct processes had been followed, and there was no third-party involvement in the issuing of the cheques.

The complaint was referred to our service as the representatives didn't agree with Barclays' position. They said it went against what they'd been told over the course of discussing the complaint with the bank, where errors were admitted and so it seemed the money would be refunded.

One of our investigators looked into what happened and didn't find Barclays had acted unfairly. She found the cheques had been paid in accordance with the bank's rules and procedures.

She wasn't persuaded that the cheques would have been stopped had an attorney been contacted at the time, especially as one of the attorneys approved later investments in 2018 and given the payments seemed to be going toward a genuine investment.

The complaint representatives disagreed and so the case has been passed to me for a final decision.

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 the complaint. I'll explain why.

It will often be the case that I must make findings on a complaint without having access to all the evidence and information I might wish to see. That's commonplace, especially when considering events that occurred several years ago. Records may be lost or deleted. And, of course, I can't ask Mr C about what was happening at the time.

Where evidence is missing or incomplete, I must make my findings on the balance of probabilities. That is to say what I think is more likely than not to have happened. Or I may need to make a finding on what I believe would more likely than not have occurred if certain events had unfolded. There is of course no way to be completely certain of such findings, but a position must be reached.

Did Mr C fall victim to a scam?

In setting out my findings I shall first provide some context about who the cheques were being paid to and for what purpose. Mr C believed he was investing in a property development company. And he did receive returns on his investment over the two years that followed the cheques being paid. But it is now apparent that this was a scam, operating as a Ponzi scheme.

The complexity and sophistication of the scam is significant. There was indeed an ostensibly genuine company that sat behind the scam. It appears to have operated successfully, and perhaps even legitimately, for several years. It's even the case that an official liquidator was put in place when the company was eventually wound-up.

This service is aware of the advanced practices behind securing investors and the high-quality, persuasive nature of the literature facilitating this scam.

These factors help to understand how the scam was able to run for such a long time. It was uncommonly convincing and sophisticated, only truly being exposed in 2020.

Did Barclays need to do more than it did when paying the cheques?

I'm not persuaded Barclays needed to do more than it did when it processed the two cheques Mr C issued. Barclays has a duty to process genuine and properly authorised payments quickly. There are only limited times where a bank might consider not fulfilling its legal obligations to follow a customer's payment instruction.

Whilst investment scams were a known risk in 2016, they were not as prevalent as they are today. And it's true to say that what banks were expected or required to do, in terms of monitoring accounts and questioning transactions, was significantly less than what is expected today. The cheques that are the subject of this complaint were issued and paid before the introduction of much best practice and industry guidance that is now in place. And so, there are doubts as to whether the bank needed to contact anyone about the cheques, Mr C or otherwise.

It does appear that some contact with Mr C was attempted but unsuccessful. The decision was made to pay the cheques anyway. It seems more likely than not the cheques were held up to make sure they were properly authorised. I can't say for certain, but it seems likely Barclays (or its cheque processing agent) were able to satisfy the authenticity question by comparing the cheques to others issued by Mr C around the same time.

I can't see there was a specific record of Mr C's vulnerabilities at the time the cheques were being paid. The LPOA had been registered, but I can't see there's any other detail. That's not to say anything else absolutely wasn't recorded, but I've seen no evidence of such a record. And the representatives of the complaint have been unable to provide any other evidence to show Barclays were on notice of any specific vulnerabilities.

What would more likely than not have happened had Barclays done more?

I have considered what might have happened if I were to make the finding that Barclays ought to have done more. In the first instance Barclays might have continued to attempt contact with Mr C. It could perhaps have held up processing the cheques until it had spoken with him. However, given what I've said about how convincing this scam was, I'm not persuaded such contact would have made a difference.

I don't believe Barclays would have been able to uncover that Mr C was falling victim to a scam. It would then have no reason to stop the payments from being made. Indeed, if all appeared above board, Barclays would have fairly considered it had a duty to proceed with the payments.

I also consider it unlikely a different position would be reached if Barclays had contacted one of the attorneys. No-one would have been in possession of more facts than Mr C himself and it's difficult to see how one of the attorneys might have uncovered the scam. It's important to note here that an attorney's role isn't to overrule what he/she might consider to be a poor or unwise decision of the donor. And so, if those were the grounds on which one of the attorneys might have objected – as has been stated by the representatives – I'm not persuaded the bank ought to have disregarded its obligation to execute its customer's instruction.

I've also thought about who, if anyone, Barclays might have contacted. The letter confirming the registration of the LPOA sent in October 2016 confirms only one attorney might potentially deal with Barclays on Mr C's behalf. That is the same attorney who approved the investment payments from 2018, which were also disputed initially. To me, that suggests that the same attorney would have followed Mr C's instructions at the time the cheques were being processed, had they been questioned. It doesn't seem unreasonable to suggest that the attorney was even aware of the investment being undertaken at the time.

In making these findings I've also considered that the LPOA was signed by Mr C in June 2016, before being registered with the Office for the Public Guardian in September 2016. For the LPOA to have been established Mr C must have been considered to have been of sound mind and with the capacity for making his own decisions. The LPOA could not have been put in place otherwise. The payments in dispute occurred just a few months after Mr C signed the LPOA, and with there having been no apparent or recorded changes in Mr C's mental state. And so, it seems more likely than not he would have still been considered as having capacity to make his own decisions, as he did here. That it has since transpired that he fell victim to an uncommonly sophisticated scam does not alter that in my view.

This position is further supported by the fact that there were no claims or concerns raised about the cheques (or other payments) until after Mr C's death. Whilst I don't doubt what's been said about Mr C's declining health over the years, it doesn't appear his finances were being monitored by anyone, indicating the attorneys were satisfied he could either handle his own financial affairs, or had people close enough to him and with enough oversight to help if necessary.

I've considered what the attorneys have said they were told by Barclays staff over the course of the complaint: that the proper process hadn't been followed when the cheques were paid, and that they were told Mr C's vulnerabilities hadn't been properly taken into account. The suggestion has been that these points ought to mean Mr C's estate is reimbursed now.

I've not seen or heard substantive evidence about such conversations taking place. I've requested and reviewed contact notes from Barclays. And I've been provided with searches for calls using the contact details provided by the representatives, with no results showing up. But, even if what the representatives say is true, and they were told what they say they were, those statements alone don't mean Barclays ought to be held liable. I must still consider what I find to be the fair and reasonable outcome in all the circumstances of the case. And I don't find it would be fair and reasonable to say Barclays is responsible for refunding the loss to Mr C's estate.

My final decision

I don't uphold this complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C to accept or reject my decision before 31 August 2023.

Ben Murray
Ombudsman