

The complaint

Mr B complains that Barclays Bank UK PLC (Barclays) is pursuing him for repayment of an overdraft he says should be on hold pending the outcome of an HMRC investigation.

What happened

The background to this complaint is well known to both parties and was set out in detail by our investigator so I won't rehearse the same at length here. However, I've set out a brief summary of the key issues below.

Mr B holds a business account with Barclays. He told our service the account was used for a limited company I'll call L, and to pay things like taxes and fees. And that all deposits made into the account were made by two brothers who were also directors of L.

The account fell into overdraft on 27 April 2020 and had a negative balance of a little under £25,000 by 26 August 2020. Barclays has sought to recover the debt from Mr B, but Mr B has declined to repay the debt, saying there's an ongoing HMRC investigation into the account activity and he doesn't want to be complicit in the allegations made against L's other directors.

Our investigator didn't uphold the complaint. He said there had been no credits from L's other directors since 19 July 2019 and that the last substantial credit into the account was a payment of £65,049.04, being an insurance pay out in favour of Mr B. He said many of the transactions from early 2020 to 28 August 2020 were payments made using Mr B's business card, and payments to accounts in Mr B's name.

Our investigator hadn't seen any evidence of an ongoing HMRC investigation, and felt Mr B was liable for the debt given the above, along with the fact that account was in Mr B's sole name, and that the debit transactions had been made for his benefit.

Mr B didn't agree. He didn't challenge the assertion that he had authorised the payments out, but said he had further evidence (which he then submitted) to show the credits to the account had always been made by L's other directors. He asked for an ombudsman to review the matter afresh.

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.

I've looked at all of the evidence both parties have submitted, including the evidence Mr B sent in after our investigator issued his findings. I have no reason to doubt what Mr B says about the historic use of the account. The evidence he submitted included a number of historic text messages from 2016 to 2019 that seem to show one of L's other directors instructing Mr B to make payments, and Mr B agreeing to do so. It does seem that the last significant payment into Mr B's account was made by another party though, i.e. a payment of £65,049.04 from an insurance company with Mr B's name as the reference.

But, notwithstanding that, identifying who deposited funds *into* the account doesn't help Mr B in this complaint. Barclays is pursuing him for a debt, i.e. for funds withdrawn *out* of the account that took the account into overdraft. The account is in Mr B's name and so he is responsible for legitimate debts incurred in the ordinary course of the account. And debts of course arise from account debits, not credits.

Mr B hasn't sought to suggest that he didn't authorise the transactions out of the account, and indeed the evidence he has submitted shows he intended to make the payments and did so willingly in support of a business of which he was a director.

The transactions that took the account into overdraft were typical for the account, and I haven't seen anything to suggest those payments weren't authorised by Mr B, nor has Mr B sought to suggest he didn't authorise the payments *out* of the account.

I've also seen no evidence to support Mr B's contention that there's an ongoing HMRC investigation, but I would say that I don't see how that would help him in this complaint. Any investigation into Mr B or L's tax affairs is a separate matter that doesn't interfere with Barclays' right to recover a debt owed by its customer. And I've seen nothing that would prevent Barclays from pursuing Mr B because of any external investigation.

Mr B has said he's concerned that paying money into his account to clear the overdraft will mean he is complicit in the subject matter of the HMRC investigation. Notwithstanding that I haven't seen evidence to show there's an ongoing HMRC investigation, that would be a completely separate matter to the complaint I am addressing.

There appears to be a dispute between Mr B and L's other director, but that isn't a matter for Barclays (or our service for that matter) to concern itself with. Barclays' relationship is with Mr B and it is entitled to pursue him for a debt he incurred. The external matters Mr B has raised are a matter for him to address with the other parties, and do not prevent Barclays from seeking to recover a debt owed by Mr B and legitimately incurred.

Because I am looking at Mr B's complaint about Barclays, I make no findings as to the operation of the account in so far as that relates to Mr B or L's tax affairs. My determination simply relates to the debt Mr B says he doesn't want to pay at the moment. And, for the reasons I've set out above, I don't uphold that complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 18 May 2023.

Alex Brooke-Smith
Ombudsman