

The complaint

The estate of the late Mrs T complains that Barclays Bank UK PLC made a payment which the estate didn't specifically authorise.

What happened

In 2024, Mrs T unfortunately passed away. Barclays used funds in the account to pay her funeral costs, as part of its standard industry-wide practice.

The council contacted Barclays about Mrs T's unpaid care fees of over £32,000. Barclays paid the remaining funds in the account – around £25,000 – to the council for that.

The estate's representatives complained about this. They've asked for the money to be reimbursed to the estate, plus compensatory interest, plus compensation for distress.

Our Investigator looked into things independently and didn't uphold the complaint. The estate didn't agree, so the complaint's been passed to me to decide.

I sent the estate and Barclays a provisional decision on 13 January 2025, to explain why I didn't think the complaint should be upheld. In that decision, I said:

My decision is based on not only the law, but also the regulator's rules and guidance, relevant codes, good industry practice, and what I find to be fair and reasonable in the circumstances.

First of all, I do appreciate that dealing with a bereavement is upsetting at the best of times, and so the estate's representatives do have my sympathy there. I appreciate this cannot have been an easy time for them, and I'm grateful to them for being open and candid with us about how they've felt.

Turning to the matter at hand, there doesn't seem to be any dispute that the estate owed this money to the council for the care fees. And it seems the estate implicitly accepts that Barclays can pay priority bills – for example, the estate was fine with Barclays using the account's funds to cover the funeral costs. It's an industry recognised policy to settle such priority debt, and is considered good practice.

The estate's representatives rightly pointed out that care fees are not specifically named in the regulator's definition of priority debts. But that list is not exhaustive – the regulator uses the phrase "for example" to demonstrate that. Examples of priority debts do include key costs such as rent or mortgage for one's residence – and so if one is resident at a care home, it would fit with that. They also include essential bills or services, and I would consider the provision of care to fit with that too. So I can see why Barclays considered the council's bill to fit the definition of a priority bill.

With that said, even if I were to agree that Barclays paid this bill without the proper authority, it doesn't follow that they'd need to reimburse the estate. We're not here to issue fines or to punish businesses for getting something wrong – I'd only make an award if I could see that the complainant (the estate) suffered a loss. I'd then only tell the business to put the complainant in the financial position they would've been in had the mistake not been made.

But here, from what I've been sent, the estate was insolvent. Its liabilities were larger than its stated assets. So no matter how the funds were distributed, the estate itself would've ended up in the same financial position it's in now – i.e. with no funds left over. So even if I were to tell Barclays to put the estate in the financial position it would've otherwise been in, there would be no material change to the estate's position now.

The representatives argued that the account's funds should've been distributed pro rata across all the estate's debts. But while I see their thinking, it's worth keeping in mind that in this dispute between the estate and Barclays, I can only consider losses to the estate, or make awards to the estate. I can't make awards to the estate's creditors, as they are not the eligible complainant in this case. If one of the estate's creditors feels they've lost out because of the council getting the money, they'd need to take that up with the council and/or Barclays themselves directly. And the estate's representatives have not evidenced that there were any other priority debts which should've taken precedence over the care fees, nor provided any evidence that the estate has suffered a specific loss because such a priority bill went unpaid. The only other priority bill that's been mentioned was the funeral bill, and Barclays paid that out at the time. If the estate has evidence of another priority bill which has been left unpaid because of this and which has concretely negatively affected the estate, it should provide the evidence before the deadline of this provisional decision.

Finally, I do understand that the estate's representatives have found the matter to be distressing. But again, I'm only allowed to award compensation for losses that the eligible complainant suffered – not their representatives. In this case brought by the estate, I can only consider losses to the estate, but not losses to the estate's representatives, which includes any distress they suffered. And an estate, as a legal entity, is not capable of suffering distress itself. So I have no basis on which to award any compensation for distress.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 27 January 2025. Barclays didn't add anything further. I'll talk about the estate's reply below.

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.

The estate's representative said they don't accept that Barclays could pay priority bills. But as I explained before, it's an industry recognised policy to settle such priority debt, and my decision takes into account good industry practice and what's fair and reasonable in the circumstances. The representative also reiterated why they didn't feel the bill in question was a priority one. I set out in my provisional decision how it fits into the definition of a priority bill, and therefore why it didn't seem especially unreasonable for Barclays to treat it as one here.

The representative felt that the estate's insolvency was not relevant and that the payment in question was unauthorised. They argued that they weren't asking for Barclays to redress the estate's creditors, but to reimburse the payment to the estate, in order to put the estate in the financial position it would've otherwise been in.

However, as I explained before, even if I were to accept that this bill was paid without the proper authority, it doesn't follow that Barclays would need to reimburse the estate. The estate's insolvency would be relevant as, ultimately, the financial position it would've otherwise been in is the same as the one it's in now – i.e. with no funds remaining. And the estate has not provided any evidence of any priority bills which went unpaid because of this and which concretely negatively affected the estate, nor of any other substantive loss to the estate itself. As far as I can see, it's only the estate's other potential creditors who might have been potentially affected.

To elaborate: Barclays reimbursing this payment to the estate would *not* put the estate in the position it would've otherwise been in. Barclays cannot forcibly take the money back from the council. So if I were to tell Barclays to reimburse the payment to the estate, Barclays would have to credit the money to the estate's account themselves. But if they did that, the estate would be in a substantially different financial position than it would've otherwise been in; as it would have the £25,000 or so in its account, while its debt to the council would also be £25,000 or so lower. In other words, it would have the benefit of that £25,000 or so twice over. That's neither fair nor reasonable, and does not reflect the position the estate would've been in but for Barclays. Had Barclays not put that payment through, the estate's funds would still have had to go to its creditors one way or another, and it would've essentially ended up in the same financial position it's in now.

It's only the other potential creditors who might possibly have lost out, and they're not the eligible complainants in this case. I cannot make any awards to them, nor any findings on who might be owed what. And there's nothing to compensate the estate itself for – e.g. as set out before, an estate can't suffer distress. Similarly, the estate might then argue that we should claw the money back from the council. But this complaint isn't against the council, it's against Barclays. I do not have the jurisdiction or ability to make the council pay any money. If the estate's representatives feel that the council have taken too much, the estate should be able to take that up with the council directly. But that's outside the remit of our service.

Finally, the representative noted that the payment went to an "arms-length" account, and they hadn't seen a receipt. Having gone through the evidence, I'm reasonably satisfied that Barclays were dealing with the council, and the council confirmed that they received the payment. So I'm reasonably satisfied that the money did go to the council.

So having reconsidered the case, I've come to the same conclusion as before.

My final decision

I do not uphold this complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs T to accept or reject my decision before 24 February 2025.

Adam Charles
Ombudsman