

## **complaint**

This complaint is referred here by Mrs J, a daughter of Mrs M and the executor of her estate. Mrs J complains that Barclays Bank Plc incorrectly allowed payments and withdrawals to be made from the late Mrs M's account between January 2015 and July 2016.

To resolve the dispute Mrs J would like Barclays to take responsibility for its incorrect actions in not protecting Mrs M's money with the bank. She says the value of the transactions should be credited to Mrs M's estate.

## **background**

Mrs M and the late Mr M held joint accounts with Barclays before Mr M unfortunately passed away on 15 January 2015. The accounts were then transferred to Mrs M's sole name. In February 2015, a relative of a third party became the paid carer for Mrs M before Mrs M gave Barclays an authority for the third party to operate her account on 6 March 2015. A separate card was provided, so the third party could carry out transactions herself.

The first disputed transaction was a withdrawal for £300, on 6 January 2015, from a cash machine. But Barclays says the withdrawal was made using a card which was issued to Mr M and it was authorised with the correct personal identification number ("PIN") being entered. So the withdrawal appeared genuine to the bank.

On 5 March 2015, a cheque for £6,000 was issued in favour of another relative of the third party and the cheque was debited to Mrs M's account on 11 March 2015. A cheque for £10,000 was cashed on the same day.

Mrs J queried a 'missing' deposit of £1,000 as a receipt was stamped 19 March 2016, Saturday. But the deposit was credited to Mrs M's account on 19 March 2015 although the branch in question didn't open for business on Saturdays, so it appeared the date stamp had been changed incorrectly by the cashier.

A series of withdrawals from cash machines and branch counters together with retail card payments were made using the cards issued to Mrs M and the third party between April 2015 and July 2016 including transactions when Mrs M had been admitted to hospital in February 2016. There were two transfers for £800 and £1,400 made to the carer on 11 November 2015 and 7 March 2016.

The third party made a withdrawal of £2,150 on 8 July 2016 after Mrs M was admitted to hospital although this amount was re-deposited to her account on 18 July 2016.

The third party and the relatives are all named as beneficiaries in Mrs M's will and Mrs J also has concerns about how the will was made in March 2015.

Mrs J identified there may have been problem with the account when Mrs M fell ill and was admitted to hospital. She spoke to the third party following this and found out about the authority that had been given to allow her to operate the account.

Mrs J considers, broadly, the transactions from March 2015 were outside the normal pattern of spending on Mrs M's account. She says the bank should have been alert to something untoward happening early on and queried the transactions, especially those made shortly

after the third party authority was recorded. She says if Barclays had made enquiries about the legitimacy of the transactions, the later payments could have been prevented.

Mrs J estimates that, after making allowances for living expenses and care costs, more than £29,600 is not accounted for from Mrs M's account. She says that the money was likely to have been misappropriated by the third party who'd been authorised to operate the account and her relatives, including the carer.

Barclays says the transactions were carried out by Mrs M or the third party that she'd authorised to make transactions on her account and there was no evidence that fraud had taken place - so the bank didn't agree that the transactions were unauthorised or made fraudulently.

The bank did though acknowledge their poor handling of the complaints that Mrs J had made to it, including there being delays with the response to a subject access request, and offered to pay compensation of £300 to her.

Our adjudicator was satisfied that the deposit of £1,000, for which there's a slip, issued in connection with a different joint account but had an altered number which was Mrs M's savings account, was credited to the Mrs M's savings account on the date that was marked on the slip, as the bank has suggested.

As regards the cheques, for transactions that are also in dispute, the adjudicator said that he considered the signatures on the cheques, where seen, as having some similarities to the signature on some cheques that haven't been disputed and the signing mandate for the account that was held by Barclays for Mrs M. The adjudicator also said that there was no information to suggest Mrs M had queried the authenticity of the cheques around the time when the cheques were paid from her account.

As regards the third party authority that was accepted from Mrs M, Barclays had said that when a customer asks for a third party authority to be arranged on their account, both the customer and the third party are required to visit a branch. And the adjudicator explained that both parties are required to pass the bank's identification process and the member of staff will discuss the accounts that the third party will be able to access together with whether a debit card, and access to telephone banking or online banking, is required. There's also an option for the third party to receive statements for the customer's account.

Once the parties have been satisfactorily identified and the staff are satisfied that the customer has capacity, and hasn't been coerced into making the arrangement; the authority is registered in the bank's records for the customer's account.

Here, the adjudicator didn't conclude that Barclays was incorrect to carry out the instructions that Mrs M had seemingly given to the bank.

Turning, more generally, to the transactions made on the account, the adjudicator said if a bank makes a transaction in error, or if a third party makes an unauthorised payment or withdrawal from a customer's account, then the bank may be liable to reimburse the amount of the loss, depending on the circumstances.

Also, he said a bank will normally only carry out a transaction or allow a withdrawal to be made upon receipt of a correctly authorised payment instruction from a customer. But Barclays' records show that the signing arrangements allowed for either Mrs M or the third

party to authorise withdrawals and to make payment instructions on the account. And the transactions all appear to have been authorised by the account holder or the third party.

Further, a bank should generally act on its customer's payment instructions for the operation of an account and if a customer or an authorised third party requests a payment or a withdrawal and there is enough money in the account, the bank should process the transaction, debiting the customer's account with the amount.

In a very small number of cases, a bank might be under a duty to ask questions about why the money is needed, point out the dangers of carrying cash or to suggest an alternative form of payment, but such cases are the exception. There's no general duty on a bank to check why the customer needs the money or to ask any further questions. Indeed, many customers would take offence if bank staff did ask too many questions.

In this matter, the adjudicator said he had no reason to believe that members of staff had any reason to doubt that withdrawals or payments that were requested were not being made for a legitimate reason. And in these circumstances, there would have been no proper grounds for Barclays to have refused to process the transactions that were requested, including those that were for a withdrawal of cash.

The adjudicator accepted that the transactions and expenditure on the account formed a different pattern when compared to previous usage of the account. But that is a single consideration for the bank and while it will have measures in place in order to try to protect themselves and their customer from fraud, the transactions here were made with use of the genuine cards that the bank issued to Mrs M or the authorised third party and the transactions made use of funds that were available from the balance on the account.

There's no evidence to suggest the transactions did trigger an alert on the bank's fraud monitoring systems – that it could be said it didn't respond to – and the adjudicator didn't consider that the bank ought to have seen any problems on the account, simply because the pattern of the transactions might have looked different but every other element of how the transactions were made didn't indicate misuse of the account.

As regards what Mrs M intended in respect of the access to, and usage of, the account, sadly that couldn't now be known as a matter of fact. The adjudicator accepted Mrs J's own evidence as to how the account funds had been manipulated but he felt he couldn't establish and substantiate with any certainty what Mrs M's intentions were. And insofar as the complaint involves the disputed activity of a third party, with the third party not subject to the complaint and with an inability to compel them to co-operate with enquiries, it's simply not possible to be at all certain about the intended or actual use of the funds.

Taking everything into account, the adjudicator didn't consider there were grounds for Barclays to have queried the transactions or properly refused to have carried out the instructions that were requested to be made.

He didn't conclude the bank had made an error by carrying out transactions that appeared to have been properly authorised by Mrs M or the third party she had authorised to make transactions on her account. He therefore didn't recommend Barclays reimburse to Mrs M's estate the value of the losses claimed.

He agreed Barclays should pay £300 to the estate however for the poor handling of Mrs J's concerns and he left Mrs J to deal directly with the bank on that.

Mrs J didn't accept the findings and conclusions of the adjudicator. In ongoing exchanges, the adjudicator went on to say that, in particular, he didn't think there was anything untoward about Barclays processing a cash withdrawal, at the counter, for £10,000 on 11 March 2015. Mrs J says that the third party took a cheque, signed by Mrs M, to the bank and took away the cash, despite Mrs M already having the same amount of cash in the house and the third party having only recently been added to the account an authorised user

Accepting it might have looked unusual for the account, the adjudicator reiterated that all of this didn't mean that the withdrawal shouldn't have been allowed or only processed after some degree of questioning. He said it wasn't now known as to whether Mrs M or the authorised third party made the withdrawal but, if either did, he considered the bank was entitled to process the request. On the face, of it, the bank was faced with a seemingly properly signed cheque and one or both of the signatories to the account. Its primary responsibility was to carry out the transaction.

The adjudicator also addressed issues raised by Mrs J about the bank's actions when dealing with accounts in the name of Mr M, after his death. Funds from these accounts were paid to the third party. Barclays has now made those payments again to the correct beneficiary of the funds but he didn't consider that this was material to Mrs M's complaint, beyond it supporting Mrs J's assertions that the third party was seeking to misappropriate funds from both Mr M and Mrs M.

He didn't think that there was anything about its actions in that regard that would lead him to conclude that later transactions on Mrs M's account may be untoward. No dispute about the bank's settlement of the funds from Mr M's accounts was raised until very recently.

Mrs J has asked for her complaint to be reviewed by an ombudsman.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First, I'd like to express my condolences to Mrs J for the loss of her mother. And I'm sorry that she's had to deal with this matter, and for so long, against that background. I accept that matters concerning allegations of fraud and significant monetary loss are difficult to deal with at any time and more so in circumstances such as here.

I'd also like to acknowledge that I recognise that Mrs J is certain in her belief that the third party took advantage of her parents to her own financial benefit. And I accept that might be true although I have to, on balance, accept that Mrs M can't sadly give her own evidence to me about any matters such as her relationship with the third party, the reasons for allowing the third party authority over the account, or her intentions for her funds.

And I also accept that Mrs M's will named the third party as a beneficiary. And the police have still to conclude, after investigating allegations and interviewing the third party, that the third party has done anything untoward – although I understand that a final conclusion about that remains pending.

I've taken all of this into account and read carefully all that Mrs J has said about the timeline of events, her belief of what's happened and also what she's said about how the bank

should – or shouldn't - have acted at various times. I don't need to repeat all of that here though.

This complaint turns on - and Mrs J identifies this as a major strand of her arguments - whether Barclays ought to have identified, early on, that there was something untoward with the activity on Mrs M's account, in the immediate aftermath of the third party being given authority over the account. It's suggested that if it had done so and raised concerns, the third party's access to the account would have been restricted and financial losses avoided.

I apologise if some of what I say here sounds a lot like what the adjudicator said. But I do agree with his findings and conclusions. I start with the finding that Mrs M did give authority to the bank for the third party to have the ability to make transactions on the account. In principle, at least, therefore I can't say the bank was incorrect in allowing the third party to authorise payments or withdraw cash.

And, in broad terms, the authority given to the third party by Mrs M enabled her to stand in her shoes and have the equivalent entitlement to access the account.

The bank's operation of accounts is also undertaken against a background where a bank's primary responsibility - when processing payment instructions or cash withdrawals and when administering access to an account - is to enable account holders (or those with third party authority) to move and withdraw funds in accordance with instructions. Not processing a payment in accordance with properly authorised instructions ought to be a rare and non-routine occurrence.

A further broad principle is that if a customer asks to make a payment, and there is enough money in the account, the bank should make it and debit the account without there being any general duty on it to check why the customer's making a payment or ask specific questions. That also applies to the instructions received from authorised third parties.

There's also no clear obligation on the bank to prevent its customer from being scammed. I accept there might be occasions where a bank might make the exceptional decision to ignore the explicit instructions of someone with authority over the account, or at least question the requested transaction but it remains that the bank wasn't inclined to do so here.

While Mrs J may think that the bank's systems ought to have automatically raised concerns about the pattern, and the value, of the payments being made – I do accept that it might reasonably be considered that the bank is more expert in fraud matters, and aware of current scam trends and activity - banks do have in place appropriate security arrangements in order to try to prevent fraud.

But these are for each bank to implement. And Barclays has such measures in place, arranged to take account of what it knows about actual and potential risks. And given its primary obligation to adhere to its customers' instructions, and the reasonable certainty that fraud might be taking place that must exist for the bank to block a payment or suspend it during questioning, I can't say that the bank was obliged to have security arrangements in place to have definitely prevented the transactions that Mrs J says were carried out fraudulently.

Ultimately, I return to the point that whatever fraud prevention systems were in existence at Barclays, I can't fairly and reasonably say that the bank wasn't entitled to follow the

instructions of both its customer and the third party that she'd given explicit authority to over the account.

I've taken into account, for example, the change in value of transactions being made; the makeup of who was transacting on the account; the activity of the third party so soon after receiving 'authority'; and what it might be said this should have all 'looked like' to the bank.

But given that Mrs M did give authority to the third party to transact on the account; the provisions of Mrs M's will; that there has to remain at least some doubt that all transactions might have been carried out with Mrs M's agreement; that the transactions were legitimately authorised; and the legal and regulatory obligations that are actually in place for the bank; I can't fairly and reasonably say that Barclays ought to have failed to respect the authority given by Mrs M for the third party to transact on the account, and prevent her from making transactions while further enquiries were made about Mrs M's intentions.

I therefore don't require Barclays to refund to Mrs M's estate the value of any transactions carried out by the third party. But the £300 compensation that Barclays offered, for its handling of Mrs J's enquiries and complaint, remains available for her to claim if she wishes.

I realise that Mrs J will be most disappointed to read this decision. I'm left with no doubt as to her genuine belief that the third party acted in her own interests here. But my decision concerns whether the bank ought to have stopped the third party from transacting – and I hope I've explained why I can't say that that's the case.

### **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 Mrs J to accept or reject my decision before 8 March 2018.

Ray Neighbour  
**ombudsman**