

## Complaint

Mr W is represented by a court appointed deputy, a solicitor who I'll refer to as "Mr M". Mr M complains about the actions of Barclays Bank UK PLC (Barclays) when he applied for statements on behalf of Mr W.

## Background

Mr M was appointed interim deputy for property and affairs by the Court of Protection on 14 June 2017 because of serious concerns about financial abuse in respect of Mr W. The order allowed the deputy to make financial decisions for Mr W as he lacked capacity. The Interim Order was registered with Barclays in branch the following day. Barclays wrote to Mr M on 1 July 2017 acknowledging receipt of it and saying a copy of the order had been sent to the Barclays Direct Business Team with which Mr W held other products.

Mr M made a number of calls to Barclays. On 12 July 2017 he contacted the business team and was told to contact the mandate team when it opened. No action was taken for a year until 6 July 2018 when Mr M called the mandate team and was told to sign a mandate form and letter of explanation to replace Mr W as signatory, which he sent on 16 July 2018. At this stage Mr M said that once the changes to the account had been made, he'd be grateful for copy statements for the account (a business account for an organisation I'll call "S" for which Mr W was a joint signatory) from its inception. Mr M chased Barclays on 20 August and called Barclays on 6 September 2018 saying he'd not received the statements or heard from Barclays. At this stage Mr M was told Barclays couldn't provide the statements as the account was dormant and Mr M wasn't registered on the account.

A formal complaint letter was sent to Barclays on 16 September 2018. This letter wasn't issued by Mr M and asked Barclays to contact a solicitor at the same firm who had day to day conduct of the matter. The letter also explained what the Deputy Order means, Mr W's vulnerability and the fact that as a court appointed deputy Mr M was under a duty to investigate potential fraud.

Barclays sent a final response in early October 2018. Barclays noted Mr M had asked it to contact a particular fee earner but said this wasn't possible because she wasn't listed on Mr W's business account. No reference was made to any of Mr M's complaint points. Mr M responded to Barclays' final response on 11 October and chased Barclays on 19 November 2018. As he didn't receive any form of response Mr M brought a complaint to this service in February 2019.

Mr M would like Barclays to meet his firm's legal costs in obtaining statements from Barclays and bringing Mr M's complaint to this service. He has explained that in the interests of saving costs some work has been completed by other fee earners at his firm with lower hourly rates – as he is a partner.

### *Our investigation so far*

During the investigation the requested statements were sent in August 2020. The investigator set out his thoughts soon after and asked Barclays to pay Mr W £400 compensation. He said it was unclear why Barclays had been unable to add Mr M to Mr W's account for such a long time when it had acknowledged the court order appointing him as deputy. He also noted that Barclays hadn't explained why it had been unable to provide the statements requested for so long. Even during his investigation Barclays had told Mr M to

attend a branch with various forms of identification so that the statements could be provided, but when he did so no statements were given.

I reviewed the complaint and informally asked Barclays to reconsider its position. I noted that Barclays hadn't provided an explanation for the significant delay in providing statements and as a result Mr M had incurred unnecessary legal costs which would be claimed back from Mr W. But I didn't think Mr M's full legal costs should be met by Barclays. This was because the order appointing Mr M allows for fixed costs for the management of Mr W's affairs. These costs are not Barclays' responsibility. I felt that some of the costs on the breakdown provided by Mr M would have been incurred in any event and the breakdown included other costs that weren't related to this complaint. I also referred to the fact this service is free and informal and only awards costs in exceptional circumstances. Barclays reconsidered and offered to pay Mr W £750.

Mr M didn't accept my informal review and made the following points:

- Reference to "fixed costs" and assessed costs" aren't relevant to this case. The key point is that the costs of the deputyship, as determined and ordered by the court, are paid by Mr W out of his funds. In this case Mr W has incurred these costs directly as a result of failures by Barclays. As a result, Mr M says costs should be based on his firm's time in resolving the issue with Barclays and £750 doesn't cover this.
- Mr M provided a revised schedule from which he removed costs that he felt would have been incurred anyway and unrelated costs. The revised schedule showed costs of £3,290.70 up to 17 September 2020.
- In relation to my point that our service is free Mr M said I haven't addressed the fact that as deputy he had to be the one to request the statements. And even if a friend or family member were to bring the complaint to this service, Mr W would still have had to brief them and consider any offer that was made. His time to do so would be chargeable and would ultimately be Mr W's responsibility.
- Barclays should be accepting Mr W as he is – a vulnerable client who the Court of Protection has determined needs a Professional Panel Deputy to act on his behalf to protect his best interests.

After reviewing Mr M's additional points, I issued my provisional decision on 5 February 2021 and said,

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

*It's important to remember that this case involves a vulnerable person and the reason Mr M requested statements related to this vulnerability and the potential that Mr W was the victim of fraud.*

*Mr M first requested Mr W's statements from Barclays in July 2018 and received them following this service's involvement in August 2020. Barclays has never provided an explanation for this lengthy delay, for its failure to respond to legal correspondence or its failure to clearly set out what it required for statements to be sent. The result is that the legally appointed deputy has incurred unnecessary costs in trying to obtain the statements. These costs are claimed back from Mr W, who is being protected because he's vulnerable.*

*The table below sets out the costs Mr M believes Barclays should meet as a result of its poor service. In my mediation I noted that Mr M's original schedule of costs included costs Mr W*

would have incurred even if Barclays had acted appropriately and costs unrelated to the request for statements. Mr M revised his schedule by showing no cost to the client for costs he felt were unrelated or would have been incurred in any event, but I've removed them completely. I've also anonymised all references to individuals and businesses in the "Activity" section.

In respect of the costs incurred prior to the complaint being referred to this service I've separated out the costs I believe would have been incurred in any event in registering the order and initially requesting and chasing the statements and costs I don't believe relate to Barclays' actions. The costs I don't consider Barclays should be responsible for are shown in *italics* in the table above.

*Before referral to the Financial Ombudsman Service (FOS)*

	Date	Fee earner	Activity	Units	Cost
1	12/07/17	Mr M	Attending branch to obtain account balances and information about signatories on the account. A cheque payment from the account had been honoured post-registration of the COP Order. Mr M was told he needed to call Barclays Business to discuss the account with a signatory.	14	£303.80
2	12/07/17	Mr M	Call to Barclays Business regarding the account with a signatory. Mr M was told he needed to speak to the mandate team, who were not currently in the office.	1	£21.70
3	19/09/17	Mr M	Attending branch to request statements and obtain balances for accounts. These were not provided.	6	£130.20
4	06/02/18	Other	Letter to Barclays requesting statements for all accounts urgently.	1	£11.80
5	20/04/18	Other	Letter to Barclays, again requesting to close account ending 4521	1	£11.80
6	08/06/18	Other	Letter to S requesting bank statements	1	£19.20
7	18/06/18	Other	Call from S. They confirmed they had no record of the account.	1	£11.80
8	18/06/18	Other	Call from S requesting that they put anything they know about the Barclays account in writing.	1	£11.80
9	06/07/18	Mr M	Call to Barclays to discuss their letter dated 30th April 2018	6	£173.60
10	06/07/18	Mr M	Call to Barclays about the S account	3	£65.10

11	06/07/18	Mr M	Call to Barclays about the S account (second call)	2	£43.40
12	06/07/18	Mr M	Letter to Barclays Business registering the COP Order	1	£19.20
13	06/09/18	Mr M	Call to Barclays mandate team requesting statements. Mr M was told he could not have them, asked to speak to supervisor who confirmed letters are still being written to Mr W and the Order had not been noted on the account properly. Mr M requesting complaints contact details. Barclays refused to speak to Mr M's colleague, despite him giving authority.	10	£217
14	06/09/18	Other	Completing the 'My Lost Account' form to locate S account. AE was told he should hear within 12 weeks	5	£96
15	19/09/18	Other	Long letter of complaint to Barclays	10	£192
16	17/09/18	Other	Letter to Barclays re the suspension of internet access	1	£19.20
17	18/09/18		Attending branch meeting with Barclays to reinstate internet access.	9	£173.60
18	09/10/18		Letter to Barclays customer relations with a further complaint and costs update.	1	£19.20
19	19/11/18		Letter to Barclays to chase response to complaint		£19.20
					<b>£562.60</b>

## After referral to the Financial Ombudsman Service

20	13/02/19	Other	Letter to Financial Ombudsman Service (FOS) with complaint and background	10	£192
21	12/03/19	Other	Completing forms for FOS	2	£38.40
22	12/03/19	Other	Letter to FOS with forms and further information	1	£19.20
23	26/06/19	Other	Call to FOS re the time frame for complaint	4	£76.80
24	30/07/19	Other	Call to FOS to check progress on the complaint. Told the case had been prioritised	1	£19.20

			but that, to date, nothing further has been heard.		
25	12/08/19	Other	Email to FOS to chase	1	£19.20
26	15/08/19	Mr M	Call to Barclays returning their call. Mr M was told that the person he needed to speak to had left but that the call was regarding 'something amiss on their system with regard to it being a Deputy'. Mr M was told to call back tomorrow.	1	£21.70
27	16/08/19	Mr M	Call to Barclays returning their call.	2	£43.40
28	28/08/19	Other	Call from FOS. Told that the case would be prioritised and requested historical statements for the S account.	1	£19.20
29	05/09/19	Other	Email to FOS to chase	1	£19.20
30	09/09/19	Other	Considering offer of compensation from Barclays. They offered a refund of £299.80 plus £75 for the inconvenience.	1	£19.20
31	13/09/19	Other	Email to FOS with COP Order	1	£19.20
32	13/09/19	Other	Call from the FOS, who had today been assigned as the investigator on the complaint.	3	£57.60
33	30/09/19	Other	Email to FOS. Mr M to attend branch again to provide COP Order.	1	£19.20
34	30/09/19	Other	Email to FOS providing copy of original letter received from Barclays dated 1st July 2017.	1	£19.20
35	16/12/19	Other	Email to the FOS with an update	1	£21.70
36	16/12/19	Other	Review of previous correspondence with Barclays and the FOS to ascertain current position. Requesting archived files from storage to review historical correspondence with Barclays in order to further pursue the matter with them.	3	£65.10
37	16/12/19	Other	Email to the FOS requesting that they do not close the complaint, as we have not yet received the statements.	1	£21.70
38	23/12/19	Other	Email to the FOS in response to them confirming that they will keep the complaint open	1	£21.70

39	09/01/20	Mr M	Attending branch to request statements from. Mr M was told these had been ordered to be sent to branch.	12	£260.40
40	16/01/21	Mr M	Attending branch to collect statements. Mr M was told that they have not been received and that DC was out.	1	£21.70
41	31/01/20	Mr M	Attending branch to collect statements. Mr M was informed the statements had not arrived and may have been sent to the other address.	3	£65.10
42	10/02/19	Mr M	Attending branch to collect statements. Mr M was told they had still not arrived.	2	£43.40
43	25/02/20	Mr M	Attending branch to request update on statements. IM was told Barclays would chase the statements.	1	£21.70
44	27/02/20	Other	Email to the FOS to confirm that Mr M has visited Barclays branch and provided the information requested.	2	£43.40
45	20/04/20	Other	Email to the FOS to chase for statements	1	£21.70
46	22/04/20	Mr M	Attending Barclays branch to see if the statements were ready to be collected. Mr M was told that they had still not arrived and that no one in the branch could help.	12	£260.40
47	26/05/20	Other	Email to the FOS. We have still not received statements, requesting update.	1	£21.70
48	18/06/20	Other	Email to the FOS chasing a response.	1	£21.70
49	30/06/20	Other	Reviewing file for correspondence and meetings with Barclays to chase statements in order to update the FOS.	1	£21.70
50	30/06/20	Other	Email to the FOS with chronology of meetings with Barclays and requesting that the complaint is escalated	1	£21.70
51	22/07/20	Other	Email to the FOS chasing for a response	1	£21.70
52	27/07/20	Other	Email to the FOS confirming we want compensation for Mr W	1	£21.70
53	03/08/20	Other	Email to The FOS confirming we need statements for the last 7 years	1	£21.70

54	17/09/20	Mr M	Preparation for call to FOS to challenge offer of £400 compensation and explaining that Barclays has increased costs for Mr W. Mr M was unable to get through to anyone.	2	£43.80
55	17/09/20	Mr M	Email to FOS challenge offer of £400 compensation and explaining that Barclays has increased costs for Mr W, as unable to get through on the phone	3	£65.10
					<b>£1,731.10</b>

*Mr M has provided attendance notes for the meetings and calls that can be provided, although Barclays should have its own records of what was discussed.*

*It may be that Barclays has its reasons for the delay registering Mr M as deputy and in the provision of statements in this case, but to date it hasn't shared them with Mr M or this service. If Barclays doesn't accept my provisional findings, I'd ask it to provide full details of the reasons for the delay and an explanation as to why Mr M wasn't at least kept informed.*

*In the absence of any reasonable explanation for the lengthy delay and failure to communicate with Mr M I consider Barclays should meet the reasonable additional costs incurred in trying to get relevant statements and in bringing a complaint to this service.*

*I consider items 1, 2, 3, 4 and 5 in the above table would have been incurred in any event and don't relate to failings by Barclays. I also don't consider Barclays should be responsible for items 6,7 and 8 – which relate to contact with the joint signatory on the account. I'm uncertain what item 9 relates to, as Mr M and Barclays haven't referred to a letter dated 30 April 2018, so I have excluded it. I have also excluded items 10 and 11 as, again, I consider the deputy needed to have these conversations and initially request the statements. I'm uncertain whether item 14 would have been necessary in any event. I've included it for now but am open to discussion about it. I'm persuaded that the remaining pre ombudsman complaint costs totalling £562.60 would not have been incurred and should be met by Barclays.*

*This service only awards legal costs in respect of complaints brought to us in exceptional circumstances, as we are a free and informal service. Having considered this case carefully I believe that it is exceptional for a number of reasons. Mr W is clearly vulnerable and because of this Mr M has been appointed by the Court of Protection as deputy. This means that family members and friends aren't helping Mr W with his financial affairs and are not in a position to bring a complaint to this service on his behalf. Mr M, as Mr W's court appointed deputy, is the only person with sufficient knowledge of Mr W's affairs to bring a complaint on his behalf. In the circumstances I consider Barclays should also meet the costs incurred in bringing Mr W's complaint to this service, as set out in the table above. If Barclays had provided a better service, it wouldn't have been necessary to bring this complaint.*

*Mr M has pointed out his costs schedule isn't up to date. There hasn't been significant input from Mr M since September 2020, but if Mr M believes further costs are due, he should submit a schedule showing these recent costs that I'll share with Barclays and consider before issuing a final decision.*

*I'd ask both parties to take a pragmatic approach when considering costs in this case. I am not a costs draftsman but am seeking to reach a fair and reasonable resolution in all the circumstances of the case."*

Mr M responded to my provisional decision, broadly accepting it but asking me to take in to account the following:

- He agreed with my reasoning in respect of items 1 and 2 in the table of costs as these actions were necessary in any event to register the order and request statements.
- Mr M asked me to re-consider items 3 and 4. This was because the follow up was necessary because Barclays hadn't responded to previous requests.
- Item 5 was included in error and Mr M was happy for me not to consider this cost.
- Mr M asked me to re-consider items 6,7 and 8 on the basis that these calls were necessary because Barclays failed to act on instructions in an efficient and timely way.
- Mr M also asked me to consider including item 14 as he said it was necessary to complete the form because Barclays requested it having not correctly identified the account or provided statements.
- In my provisional decision I invited Mr M to provide an update on his costs as the schedule he provided went to 17 September 2020. Mr M set out a schedule of his costs to date amounting to £1,515.30.

Barclays confirmed it agreed with my provisional decision (to pay Mr W £2,293.70). I provided Barclays with Mr M's response to my provisional decision and asked it to consider the points raised by him in respect of items 3,4,6,7,8 and 14 as well as the updated legal costs. Other than raising a query Barclays has not provided any further comments. So I wrote to Barclays and said I planned to add items 4 and 14 to my award as well as the legal costs that had been incurred from September 2020 onwards amounting to £1,515.30.

### **My findings**

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

Barclays has accepted the award I made in my provisional decision and Mr M agrees that the costs I set out in it should be met. In addition, he has asked me to consider some additional costs. So, I am awarding the costs I set out in my provisional decision for the reasons I discussed in it and which I have re-produced above. But I need to go on and consider Mr M's points to decide whether I will also award items 3, 4, 6, 7, 8 and 14 in the table I set out in my provisional decision, together with the fees Mr W has incurred from September 2020.

I can't be certain that Mr M first requested statements in branch in July 2017, as I haven't seen anything to confirm this. But in any event sometimes mistakes happen and it's necessary to chase something up. So I'm not awarding item 3. But I now consider it would be fair and reasonable for Barclays to pay item 4 as by this stage Barclays should have responded to the request either by providing statements or explaining why this wasn't possible or there would be a delay.

I still don't consider Barclays should meet the costs incurred in contacting the joint signatory (items 6,7 and 8). I think this contact was partly to gain information about the account and that in any event Barclays should only be responsible for the cost of communication with it. But I now believe that item 14 should be awarded to Mr W as I'm persuaded on balance it was necessary to complete this form because Barclays hadn't identified the account and provided statements.

In my provisional decision I awarded legal costs from when Mr W's complaint was brought to this service to September 2020. I did so because Mr W is vulnerable and as a result has a court appointed deputy to handle his financial affairs. This means Mr W's family or friends aren't in a position to bring a complaint to us and the only person with the relevant knowledge to do so is the deputy, Mr M. I also noted that had Barclays provided a better service it wouldn't have been necessary to bring a complaint to this service. For the same reasons I consider Barclays should also meet Mr W's legal costs from September 2020 to date, amounting to £1,515.30.

### **My final decision**

My final decision is that require Barclays Bank UK PLC should pay Mr W £3,916.80.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 April 2021.

Jay Hadfield  
**ombudsman**