

The complaint

Mr T, as the director of a limited company “K”, complains that Barclays Bank UK PLC (“Barclays”) allowed misappropriation of funds instead of safeguarding K. He’s unhappy that Barclays has deemed the matter to be a civil dispute while several statutory and regulatory bodies are investigating the actions of the perpetrator.

What happened

The detailed background to this complaint is well-known to both parties and has been set out by the investigator previously. So, I’ll only provide an overview of what happened and focus on giving my reasons for my decision.

In July 2023, one of the directors of K – I’ll refer to them as “X” – made two payments totalling just under £50,000 from K’s current account into their own personal account. As soon as he discovered this, Mr T notified Barclays that K had been a victim of potential fraud. He said X had violated the terms of the company’s shareholder agreement which required two signatories to make transactions exceeding £10,000.

Barclays looked into the matter and concluded that X was a signatory on K’s account and the mandate, which was agreed by all signatories including Mr T, was that any signatory could make withdrawals from the business account. As X was authorised to make withdrawals, the disputed transactions were completed in line with the mandate. Barclays said it couldn’t treat the matter as a fraud claim and considered it to be a dispute between the directors.

Following a complaint raised by Mr T, Barclays offered £200 compensation in recognition of failing to provide clear information and not managing expectations while it was looking into his claim. Barclays also refunded some charges applied to K’s account. But it maintained that it hadn’t made an error in not blocking the transactions made by X.

Our investigator noted that although we didn’t have consent from all the directors of K, we could still investigate this complaint. The investigator concluded that there were no limitations on the account mandate as to what transactions individual signatories could make. They recognised that this was in contravention to the shareholders agreement between the directors of K. But the instruction the bank had received was that any signatory could operate the account. And that is what X did on the day in question.

The investigator thought the compensation Barclays had offered for service failures was fair. They also explained that the concerns Mr T had raised with Barclays since receiving its final response letter in relation to the £50,000 transaction would need to be considered separately under a different case reference.

Mr T didn’t agree with the investigator’s conclusions and asked for the matter to be reviewed by an ombudsman.

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.

Mr T has made substantial submissions about what has happened and the devastating impact this has had on K and him personally. I don't doubt the difficulties this situation has caused K and Mr T, and I'm sorry to hear how distressing this has been for him personally. I want to acknowledge the strength of feeling Mr T has about this complaint and the lengths he has gone to in providing further evidence and arguments for my consideration. My summary of what has happened, and the concerns Mr T has brought to us isn't meant as a discourtesy; it's reflective of my considering the crux of K's complaint about Barclays.

At the heart of this complaint is Barclays allowing X to transfer funds from K's account, which Mr T says is theft. He argues that the bank shouldn't have allowed the transactions to have gone through, not just because X shouldn't have been allowed to but also because they ought to have flagged as unusual for the account activity. Mr T is also unhappy that Barclays didn't take steps to protect K from potential future losses at the hands of X (and another director) after he reported the matter.

I've seen a copy of the shareholder agreement and there are limitations on the amount of company funds the directors can move individually without agreement from others. I've also seen the bank account mandate that was in place at the time X made the transactions. According to the mandate, any authorised signatory could make withdrawals from K's accounts. X was an authorised signatory at the time.

I can see Mr T has forwarded documentation he sent Barclays at the end of 2021 which sets out the signing instructions he and other directors of K provided. According to the mandate form, Mr T was the authorised to make transactions apart from those exceeding £10,000. The cover letter which accompanied the form says only Mr T was authorised to make online transactions. It is therefore understandable why Mr T might think a mistake was made with the setting up of the mandate.

But I've seen the bank's system notes from the time, and it shows that it was unable to accept the instructions provided by the directors of K at the time. Contact notes show that Mr T visited a branch in January 2022 to sort out the mandate change. The mandate instructions, which appear to have been updated on 11 January, note that the signing rule was set to be any one person (signatory) for any amount.

This suggests to me that while there may have been an intention to place restrictions on what the signatories could do individually, ultimately it was decided that any signatory could give the bank instructions to make withdrawals from K's account. Mr T also seems to acknowledge the arrangement in his complaint submission to Barclays, seeing as his concern is that the shareholder agreement supersedes the bank's mandate.

I completely understand Mr T's concerns about X transferring funds into their personal account. From what he's told us about X's actions and the circumstances in which they were taken, he may very well have a legitimate complaint about X. But that would be a matter for the courts to decide as our service can only consider complaints against FCA-regulated firms. We don't have the remit to consider complaints about individuals or directors of limited companies. In this case, Barclays is the FCA-regulated firm which K is a customer of. As far as Barclays is concerned, I can't fairly conclude that it acted unfairly or unreasonably in following the instructions of an authorised signatory to the account in line with the signing instructions.

I've also considered Mr T's concerns about the transactions not being flagged when they were authorised by X. Looking at the account activity in the months leading up to the disputed transactions, I acknowledge that the amounts involved – particularly the larger transaction – were higher than the usual spending activity. But this is a business account, and it isn't unusual for one-off large payments to be made every now and then. The bank would have seen that transactions had been authorised using the security credentials of a signatory to the account. Even if I were to conclude that Barclays ought to have taken additional steps and intervened, it wouldn't have been unreasonable for it to have made enquiries with the signatory who had authorised the transactions. It's therefore unlikely that an intervention would have prevented the transactions from being made.

Mr T has also complained that Barclays didn't help protect K's account after he notified the bank about the unlawful transfer of funds. I can see that Barclays placed a block on K's account as soon as the transactions were reported as fraudulent. But when the bank established that the transactions couldn't be classed as fraudulent as they were initiated by an authorised signatory and would therefore be classified as a dispute between the signatories, it removed the block. Barclays informed Mr T that it could put the block back on, but it would mean that Mr T wouldn't be able to access the funds either. I can understand his reasons, but it wasn't something he wanted to do at the time.

It's also my understanding that Mr T wanted Barclays to freeze X's personal account which is also held with the bank. But banks simply can't block a third party's account at the request of another customer. I appreciate Mr T states that regulatory bodies are investigating X's actions and that should be sufficient for Barclays to block the account. But I can see that Barclays has confirmed to Mr T that it will fully co-operate with any enquiries it receives from the police or other statutory bodies.

I've also considered Mr T's comments about the service he's received from Barclays. It's important I mention that my consideration of this aspect of the complaint is limited to the service Mr T received up to the point Barclays sent its final response to the complaint I'm deciding. I understand that there were subsequent service issues and further compensation was offered. But as the investigator has previously explained, those matters arose after this complaint was referred to our service. A separate case has been set up for those matters and I can see we've corresponded with Mr T about that under that reference. So, I won't be commenting on those issues in this decision.

Barclays has accepted that there were service failings when Mr T notified it of the transfers and the breach of the shareholder agreement. I can see from its system notes that recognises it wasn't always as empathetic as it could have been in its correspondence with Mr T. The bank has also recognised that Mr T spent several hours on the phone, referring to 40 plus calls. In its last response to Mr T's complaint in consideration, Barclays offered £200 compensation.

I've thought carefully about what happened during that period. I've also kept in mind that the eligible complainant here is K and not Mr T. That matters because under our rules, I can only consider and award compensation to K for any inconvenience or damage to reputation it experienced as a result of Barclays's failings. I can't compensate K's directors or shareholders personally for any distress they've experienced. I've weighed up the fact that Barclays concluded its investigation into Mr T's fraud claim – as well as the complaint that followed – in a reasonable period of time. And I haven't found that the outcome it reached was wrong. But the bank has acknowledged that there were some customer service failings during that time. Having given this a lot of thought, I consider the amount that Barclays has offered is fair in the circumstances. Mr T should contact Barclays directly if he now wishes to accept the offer.

I'm sorry to disappoint Mr T as I know this isn't the answer he wanted. And I do recognise that his complaint has been with us for some time. But for the reasons given, I won't be telling Barclays to take any action in relation to this complaint.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T, in his capacity as the director of K, to accept or reject my decision before 5 August 2024.

Gagandeep Singh
Ombudsman