

The complaint

Mrs G complains in her capacity as deputy appointed by the Court of Protection, for Mr S, that Barclays Bank UK PLC allowed Mr S1 as his former deputy to open a joint account with Mr S and, after being removed as deputy, to withdraw a substantial sum of money from that account.

What happened

In or around June 2021, Mr S1 was appointed by the Court of Protection as deputy for his father, Mr S. As I understand it, Mr S's current account was put in the name of Mr S1 as Mr S's deputy. Mr S lacks capacity to act on his own behalf. On 19 August 2021 Mr S1 opened a joint savings account in his and in Mr S's name. The account was opened with £32,000 and a standing order was set up, whereby £1,000 was transferred to the savings account from the current account each month.

In February 2022, Mrs G was appointed as deputy for Mr S in place of Mr S1. The court order was sent to Barclays on 19 May 2022 with a request that Mr S1 be removed as a deputy from the system and advising that he should no longer have access to his father's accounts.

Barclays removed Mr S1's name from the current account and registered Mrs G as Mr S's deputy as from 1 June 2022. Mr S1 was replaced as deputy on the current account. On the joint savings account, Mrs G was named as deputy for Mr S. Mr S1 remained as the other joint account holder. In August 2022 Mr S1 took out £50,000 by transfer to another account from the savings account, by transactions on 26 August of £500, then by three transactions on 30 August for £24,000, £25,000, and £500. All to the same account. At present Mrs G advises that that money has not been recovered.

Mrs G complained to Barclays on behalf of Mr S as she only received notification that the money had been removed when she received the next statement for the savings account. She requested to know why Barclays had allowed Mr S1 to open an account in his and his father's personal capacity when his father lacked capacity to do so. Further why Mr S1 was allowed to remove funds from the account after Barclays was served with a court order. And she said that Barclays should have put safeguards in place and obtained her consent or at the very least notified her when Mr S1 sought to remove the funds.

Barclays responded that the terms of the account, and of the order appointing Mr S1, allowed him to open a joint account in his and his father's names. The terms of the account allowed either account holder to operate the account. And as Barclays was not notified of any disputes between Mr S and Mr S1, it said it did not have to notify Mrs G of the withdrawal.

On referral to the Financial Ombudsman Service, our Investigator said that Mr S1 was entitled to open the joint account and, under the terms and conditions of the said account, to remove the funds.

Mrs G did not agree and the matter has been passed to me for further consideration.

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 note that Mr S lacks the mental capacity to operate his financial affairs, and Barclays was aware of this. However, in my view Mr S1 was entitled as deputy for Mr S to open the joint savings account in his and Mr S's names. Equally he could have operated the account as Mr S1 jointly with himself in his capacity as deputy for Mr S. The current account was operated at the time by Mr S1 as deputy for Mr S.

Mr S's solicitors (of which Mrs G is a partner) wrote to Barclays on 19 May 2022 enclosing the court order appointing Mrs G as deputy and setting out "*Please ensure that [Mr S1] is removed from your system as he is no longer Mr S's deputy and is not legally authorised to have access to Mr S's bank accounts.*"

And the letter went on to request that Barclays : "*Confirm the details of any sole or jointly held bank accounts Mr S has with Barclays (i.e. full account name, account number and sort code and also current balances).*"

Barclays divulged the existence of both the current and the joint account at that stage, and provided the statements for both accounts to Mrs G on 1 June 2022. It was clear on the face of the statements that Mr S1 was a joint account holder for the savings account.

The letter to Barclays didn't divulge why Mr S1 was removed as deputy, and the Court Order merely states that he was "*unable to continue as deputy*". I can find no evidence whether from the Court documents or from communications between Mrs G and Barclays that there was any indication that Mr S1 and Mr S were in dispute or that he might remove funds from the joint account. A lot of the affidavit that Mrs G made to the Court of Protection has been redacted which presumably means the redacted parts aren't relevant to the complaint. As I've said, the statements were sent to Mrs G on 1 June 2022, so she would have been aware of the joint account and she could have got a court order or asked Barclays not to authorise transactions on the account.

Barclays says that there were no restrictions on the joint account and had received no notice of any dispute between the parties. So it said there was no reason why it should have notified Mrs G of the transactions in August 2022 (when the £50,000 was removed).

Barclays had a duty to treat Mr S fairly, whilst being aware of his vulnerability, as a person who lacked mental capacity. And I note that Mrs G has raised the issue of financial abuse. Yet I've seen no indication from the way the account was run, that Barclays could have been alerted to any financial abuse on the part of Mr S1. On the face of it the account was opened to earn interest. I haven't noted any problems with the saver account whilst Mr S1 was still Mr S's deputy. And as I've said, Barclays wasn't alerted to any potential problems about Mr S1 remaining as signatory on the joint account.

The removal of the £50,000 took place in four transactions noted as FT (funds transfer) on the account, all to an account named "DAD1." Whilst noting that Barclays should have been alert to any unusual transactions, that would usually be in respect of a possible fraud. To that extent a transfer to the account named would not in my view have been so unusual for Barclays to question it, again bearing in mind that it hadn't been alerted to any dispute between the parties.

As the terms of the joint account allowed either party to carry out transactions on the account, I can't say that Barclays acted inappropriately in allowing the transactions to take

place or in not immediately alerting Mrs G.

Overall, I'm satisfied it was fair and reasonable for Barclays to open the joint savings account and act on instructions from one of the account holders. It follows this isn't a complaint I should uphold.

My final decision

I don't uphold the complaint .

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 December 2023.

Ray Lawley
Ombudsman