

The complaint

Mr D has complained that Barclays Bank UK PLC wrongly permitted his wife to use an invalid Power of Attorney (POA) to transfer £100,000 from his sole account into their joint account and then onwards to an account in her name.

What happened

Mr D said that on 15 May 2022 a sum of £200,000 was taken from his joint account with his wife by an alleged hacker. So, he called Barclays and moved funds into a sole account to keep the funds safe. Then he noticed this £100,000 was taken from his sole account. In contacting Barclays, he learnt that his wife had transferred this £100,000 from his sole account back into their joint account and then out to another account to which Mr D was not a party. Mr D also said he had been in touch with the police.

Mr D said Barclays permitted this transfer of this £100,000 by his wife, due to the fact that Barclays said a POA was registered against his account so permitting her to do this.

Mr D denies registering any POA on his sole account but did know the existence of one for their joint account. However, he believes this POA was deemed invalid some years previously. So, he believes that Barclays should now refund this £100,000 with interest plus the costs incurred.

Barclays said his wife was able to transfer £100,000 from his sole account due to the POA which had been placed on his records since 2010. This wasn't removed until Mr D attended the branch on 17 May 2022. Given the POA, Barclays said no bank error occurred. Barclays also said this was a civil matter between Mr D and his wife.

Mr D remained dissatisfied and brought his complaint to us. The investigator said there was no evidence of a scam or fraud, so he was of the view Barclays was right to conclude this was a civil matter between Mr D and his wife.

Mr D remained dissatisfied, so his complaint was passed to me to decide.

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.

Having done so, I'm not upholding this complaint. I'll now explain why.

Under the Payment Service Regulations (PSR's) which govern the duties of the bank and consumers using banking services, it says the following:

*'A payment transaction is to be regarded as having been authorised by the payer for the purposes of this part only if **the payer has given its consent** to the execution of*

the payment transaction; or the execution of a series of payment transactions of which that payment transaction forms part.'

Furthermore, the PSR's permit the following:

*'A payer can have someone else initiate a payment transaction on their behalf. In other words, the payer can give their consent to the execution of a payment transaction by having an someone else (an **agent**) complete the form and procedure for giving consent.'*

Lastly the PSR's state a consumer is liable for all authorised transactions and the bank is liable for all unauthorised transactions.

Barclays are adamant a POA was registered to Mr D's details which means the designated attorney would have powers to manage Mr D's funds and therefore the movement of funds in Mr D's accounts were authorised. I've asked Barclays for a copy of this POA but it's sadly not available anymore. Mr D no longer has a copy either. But he does recall making a POA in favour of his wife. So, although I've not had any opportunity to examine the terms of the POA, it's clear to me that one existed. It's also clear from Barclays' file a POA did exist and was registered to Mr D's details, most likely from 2010. And it's also clear Mr D removed the POA from his records, according to Barclay's file on 17 May 2022, when he attended the branch.

Mr D maintains this POA was invalid and was deemed invalid by another bank and possibly lawyers acting on behalf of Mr D since around 2002. However, I've received no evidence of this from Mr D, despite requests.

I consider that's a key point. So, as I've seen no evidence that this POA was invalid from Mr D, I'm not persuaded that it was invalid. Certainly, Barclays didn't consider it invalid as it was registered to Mr D's details. And furthermore, as against what Mr D believes, Barclays said in its final response letter, a POA isn't registered to specific accounts, merely to Mr D's name and details. So, that means if the terms of the POA permit the attorney access to Mr D's accounts, it's more than likely to permit access to existing accounts to include those set up after the POA was registered. So, I consider it's likely the transactions were authorised as required under the PSR's. However, given the lack of cogent evidence either way, plus the fact Mr D attended the branch on 17 May 2022 to remove any POA from his records, I'm more persuaded this is the case on the balance of probability.

Since the investigator's view, Mr D said there has been a reconciliation between him and his wife. Therefore, there is an assumption that there's likely to be no loss here, since if there is a reconciliation, Mr D's wife can return the £100,000 back into joint funds.

On this basis and the lack of evidence from Mr D in particular that the POA was invalid, which was clearly registered, given Barclays' evidence on his details, I'm not persuaded Barclays has done anything wrong here. The issue clearly did arise from a civil matter between Mr D and his wife. And now that Mr D and his wife are reconciled there's little evidence any loss occurred either.

My final decision

So, for these reasons, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or

reject my decision before 22 December 2023.

Rona Doyle
Ombudsman