

Ombudsman determination

CIFO Reference Number: 16-000127

Complainant: [Mr T]

Respondent: [Bank P]

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

This complaint concerns an error made during a money transfer conducted by [Bank P], which the complainant says has resulted in financial loss.

Background

[Mr T] instructed [Bank P] to send money to a GBP account in Switzerland. It was intended to be transferred onward to Thailand. He transferred it to his Swiss account because he felt he could obtain a better foreign exchange rate.

The transfer was delayed and eventually the money was transferred to his SFR account in Switzerland, whereupon it was recalled.

On 6 July 2015 [Mr T] emailed [Bank P] and informed them that the delay affected the purchase of wood which would have taken place on 20 June 2015 for work to commence on 21 June 2015. Instead, the delay meant that work did not start until 5 July 2015. During these 14 days the workmen engaged were unable to perform any work but still required payment and reimbursement for food and accommodation.

[Mr T] sought recovery of the costs for these 14 days from [Bank P]; however, the bank did not refund these costs because they did not have sufficient evidence that the workers did not undertake work and that [Mr T] was obliged to pay these costs.

As a fair and reasonable resolution to his complaint, [Mr T] felt [Bank P] should meet the costs of THB 350,000 (equivalent to approximately £7,530) and should pay further compensation for credibility he had lost amongst the small community where he lived.

Findings

I have considered all the available evidence to decide what is fair and reasonable in the circumstances of this complaint.

I note that the bank has agreed to compensate for the losses of £415.12 incurred from the exchange rate transfers. They also offered £100 to [Mr T] as recompense for

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

telephone calls made and a further £250 for distress and inconvenience caused. A total of £765.12 was offered by the bank in an email of 10 July 2015. [Bank P] have confirmed that on 29 July 2015 they made payments totalling £770 to [Mr T's] account accordingly.

In relation to the costs incurred in the 14 days from 21 June 2015 to 5 July 2015 when the workmen were engaged by [Mr T], I take the view that CIFO would usually not uphold claims for consequential losses. Nonetheless, on 10 July 2015 an employee from [Bank P] provided [Mr T] with an opportunity to make a claim for consequential loss subject to meeting the appropriate criteria. The compensation already agreed by [Bank P] for his direct trading losses, telephone expenses and distress and inconvenience represents a fair and reasonable resolution to those aspects of [Mr T's] complaint. The [Bank P] offer to consider [Mr T's] claim for consequential loss is therefore the only aspect of this claim which I have considered here. The [Bank P] employee wrote:

"...please note that we are unable to offer financial recompense in this regard at present as it appears to be a consequential loss. However, should you have further information in this regard for our review, such as payslips confirming the hours not worked, but paid for and signed contracts reflecting the arrangement for payment to be made regardless of work not carried out, then we may be in a position to take this into consideration."

[Mr T] subsequently provided [Bank P] with an invoice from the local Thai company who were carrying out the work and an invoice for the workmen's expenses. [Bank P] did not consider this information sufficient to meet their criteria and on 23 July 2015 they emailed [Mr T] seeking further documentation:

"May I therefore please ask for confirmation that you will provide us with the information requested, in particular:

- evidence of your agreement with [the local Thai company] to pay the workmen if no work is carried out, together with*
- evidence that the workmen have not carried out any work for the time paid"*

[Bank P] stipulated certain conditions that needed to be met in order for [Mr T's] claim to be considered for consequential loss and these conditions were not met. As a result, it is not fair and reasonable to expect [Bank P] to pay additional compensation for the consequential loss claimed.

[Mr T] has submitted that [Bank P] has admitted making a mistake but he has already been compensated for this through the £770 paid into his account. Without the evidence requested by [Bank P], the link is not established that [Bank P] caused the additional losses and it would not be fair or reasonable to make [Bank P] pay for them.

Final decision

My final decision is that I do not uphold this complaint.

[Mr T] must confirm whether he accepts this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **4 September 2016**. The determination will become binding on [Mr T] and [Bank P] if it is accepted by this date. If we do not receive an email or letter by the deadline, the determination is not binding. At this point [Mr T] would be free to pursue his legal rights through other means.

If there are any particular circumstances which prevent [Mr T] confirming acceptance before the deadline of 4 September 2016, he should contact me with details. I may be able to take these into account, after inviting views from [Bank P], and in these circumstances the determination may become binding after the deadline. I will advise both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville
Principal Ombudsman and Chief Executive