

Ombudsman determination

CIFO Reference Number: 16-000164

Complainant: [The complainant]

Respondent: [Bank X]

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

The complaint relates to the process of reopening four bank accounts following their closure.

Background

On 11th September 2015 [Bank X] took the decision to withdraw banking facilities from [redacted for anonymisation purposes] and close the accounts of any clients resident there.

[The complainant] was completing her PhD at the time. This required her to spend extended periods of time [overseas] conducting field research for her project. [The complainant's] records at [Bank X] therefore suggested that she was resident [overseas], and she was subsequently sent a letter advising that her accounts would be closed in 60 days.

[Bank X's] records indicate that this letter was sent to her correspondence address in Italy, but [the complainant] says that this letter was not received. [The complainant] therefore took no action and was unaware that the four accounts she held with [Bank X] were due to be closed.

On 13th December 2015 [the complainant] attempted to use the debit card for her current account while on holiday in the UK. The card was declined, and so [the complainant] contacted [Bank X] for assistance. [Bank X] advised her that, in accordance with their decision in September, [the complainant's] accounts were in the process of being closed.

[The complainant] explained her situation regarding the research project [overseas], and it was agreed that [Bank X] would change her residency address to Italy in order to keep her accounts open. [Bank X] assured [the complainant] that her current account would be reopened within a few days.

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

The current account remained closed, and [the complainant] raised a complaint with [Bank X] on 18th December 2015. [Bank X] acknowledged the complaint and began investigating, but in the meantime two more of [the complainant's] accounts had been closed.

By January 2016 only the savings account remained open. Although [the complainant] was due to return [overseas] on 27th January 2016, she elected to remain in the UK until all her accounts had been reopened. She incurred penalties of EUR 260 as a result of changing her flights at short notice.

[The complainant] subsequently contacted the UK Financial Ombudsman Service ("UKFOS"). Although it was later discovered that they did not have jurisdiction over the complaint, their office assisted by making enquiries to [Bank X] in an attempt to have the accounts reopened as soon as possible.

By 8th February 2016 all the accounts had been reopened, and [the complainant] was able to return [overseas] to continue her research project. However, the additional month spent in the UK had a number of financial consequences which [the complainant] sought to reclaim from [Bank X].

In summary, [the complainant] sought the following in compensation:

- EUR 260 for the cost of changing her flights;
- GBP 1,332 for a monthly maintenance grant from her research grant funder which was lost;
- GBP 1,617 for an additional month in research costs which would fall outside of the scholarship period; and,
- GBP 1,131 for travel and living costs to be incurred in association with the aforementioned additional month of research.

CIFO's Initial Findings

The case handler reviewing the complaint considered that [the complainant's] claims were largely consequential, meaning the losses were indirect and not directly caused by [Bank X's] actions. CIFO's general approach is to consider the foreseeability of such losses before determining whether to award compensation.

The case handler considered that the cost of changing the flights was reasonably foreseeable by [Bank X]. [The complainant] had previously warned [Bank X] on 1st January 2016 that she was due to leave on 27th January 2016 and would need to change her flights if the matter was not resolved in time. However, [Bank X] subsequently gave a timescale of 8 weeks to resolve her complaint, and so [the complainant] changed her flights on 11th January 2016.

The case handler considered that it was reasonable for [the complainant] to wish to stay in the UK while the complaint was resolved, as remote access to bank accounts was critical and it would have been significantly more difficult to stay in touch with [Bank X] from [overseas]. He therefore concluded that [the complainant] had not acted

unreasonably and it would be fair for [Bank X] to compensate her GBP 260 for the penalties charged by the airlines.

The case handler considered that [the complainant] should be further compensated for the stress and inconvenience she was caused, and considered GBP 1,000 to be more reasonable than [Bank X's] previous offer of GBP 200.

The case handler also considered that an additional payment of GBP 100 would be reasonable to reflect an estimate of the cost of international phone calls made by [the complainant] throughout the complaint.

However, the case handler did not consider that [Bank X] knew or could have reasonably foreseen the numerous costs involved with delaying [the complainant's] research project, and so did not consider that it would be fair for [Bank X] to pay these costs.

Response to CIFO Initial Findings

[The complainant] disagreed with the case handler's conclusion that her losses in relation to the research project and the scholarship should not be compensated by [Bank X].

[The complainant] considered that both her and the adjudicator at the UKFOS had made [Bank X] aware of these consequences throughout their correspondence in January, February, and March of 2016. [The complainant] therefore considered the losses to be reasonably foreseeable.

[Bank X] initially indicated that they disagreed with the findings of the case handler. However, in the course of reaching this decision I was made aware that [Bank X] had decided to settle the complaint on the basis of the case handler's findings and credited [the complainant's] account with the amount recommended, less the GBP 200 they had already credited her.

This was unusual and I would advise that informal settlements should only be paid if the complainant first confirms that they agree to them. [The complainant] chose to escalate her complaint for a formal determination, and so no payment should have been made until a decision was reached on the matter.

Notwithstanding the above, this decision is made on the basis that [Bank X] should only pay the difference, if any, between the amount recommended by the case handler and already paid, and the amount awarded in this determination.

Findings

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

I have taken note of further representations made by each party following the case handler's initial conclusions.

In respect of the compensation previously recommended by the case handler, I find that I do not disagree with the amounts awarded. It is clear that [the complainant] was placed under a great deal of stress, and went to considerable lengths to try and resolve the problems caused by [Bank X]. It appears that it was also necessary for her to seek assistance from the UKFOS before any significant progress was made. I therefore conclude that increasing the compensation for distress and inconvenience to £1000 is appropriate.

It is also fair and reasonable for [the complainant] to be compensated for the estimated cost of her research-related telephone calls, many of which were international resulting in increased charges.

In order to uphold [the complainant's] additional claims for consequential loss, I need to be satisfied of the following:

1. The losses must have been caused by [Bank X's] actions, and they would not have been incurred otherwise;
2. The losses were reasonably foreseeable and not overly remote, meaning that [Bank X] could have reasonably foreseen that they would have been incurred as a result of their actions; and,
3. It would be fair and reasonable to hold [bank X] accountable for the losses.

In respect of point 1, I am satisfied that none of the losses would have been incurred had [the complainant] been able to leave the UK on 27th January 2016 as planned. In the event, she delayed her travel by a month as a result of [bank X's] failure to resolve her issues in time.

In respect of point 2, I agree that the costs associated with changing [the complainant's] flight arrangements were reasonably foreseeable by [Bank X], and so it is fair and reasonable for her to be compensated for the penalties involved in doing so.

In relation to the costs associated with delaying the research project by a further month, I have considered [the complainant's] additional evidence to decide whether it is fair and reasonable for [Bank X] to compensate for these as well.

The costs are significant, and result from a need to complete a further month of research outside of the dates in which the scholarship would cover [the complainant's] expenses. [The complainant] has previously broken these costs down further for the case handler as follows:

Research Costs

- GBP 1,617 for the cost of research [overseas];

Travel and Living Costs

- GBP 1,332 for the lost maintenance grant;

- GBP 713 for a return flight from [redacted for anonymisation purposes];
- GBP 23 for a [redacted for anonymisation purposes] Visa;
- GBP 62 for a one night stayover in [redacted for anonymisation purposes];
- GBP 77 for a taxi to the border [overseas]; and
- GBP 256 for a [redacted for anonymisation purposes] Visa.

[The complainant] has provided some further correspondence with [Bank X], and I have reviewed this to examine whether [Bank X] was clearly made aware that the above losses would be incurred as a result of their actions.

In an email dated 31st January 2016, [the complainant] advises the adjudicator at the UKFOS that she has lost a month of scholarship and research time.

In an email dated 9th February 2016, [the complainant] advises the adjudicator at the UKFOS that she is concerned whether [Bank X] are considering the loss of her scholarship maintenance and research grant.

In an email dated 17th March 2016, [the complainant] breaks down the cost of her maintenance and research grant losses to her complaint handler at [Bank X].

[The complainant] also says that these concerns were raised in telephone conversations with [Bank X] in an attempt to prompt a quicker resolution to the matter.

In order to uphold the above claims, I require evidence that [Bank X] were made aware of the potential losses or could have reasonably foreseen them and, importantly, that this was at a point in time when they could have taken reasonable steps to mitigate them.

In regard to the flight changes, [Bank X] were clearly warned in advance about [the complainant's] travel plans, and so they could have reasonably foreseen the costs involved with changing the flights if they did not resolve the issue for her.

By contrast, it appears that [Bank X] did not become aware of the additional losses until the end of January 2016 when the flights had already been rearranged, which was the act which triggered the other consequential losses. The subsequent correspondence in February 2016 and March 2016, which [the complainant] has drawn my attention to, also occurred after this event.

It follows that [Bank X] could not have foreseen the full extent of the additional consequential losses until the cost breakdown was subsequently provided to them after the flight change had been made. I therefore do not consider that [Bank X] should be liable for further compensation in respect of these consequential losses.

Decision

My final decision is that [Bank X] should pay [the complainant] GBP 1,100 and EUR 260:

- EUR 260 for the cost of the changed flights;
- GBP 100 for the estimated cost of the international telephone calls;
- GBP 1,000 to reflect her distress and inconvenience.

Next steps for the complainant, [redacted for anonymisation purposes]

You must confirm whether you accept 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 **5th June 2017**. The determination will become binding on you and [Bank X] if it is accepted by this date. If we do not receive your email or letter by the deadline, the determination is not binding. At this point you would be free to pursue your legal rights through other means.

If there are any particular circumstances which prevent you confirming your acceptance before the deadline of 5th June 2017, please contact me with details. I may be able to take these into account, after inviting views from [Bank X], and in these circumstances the determination may become binding after the deadline. I will advise you and [Bank X] of the status of the determination once the deadline has passed.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: _____