

Ombudsman determination**CIFO Reference Number: 16-000264****Complainants: [The complainant]****Respondent: [Bank Y]**

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 complainant] complained to CIFO that [Bank Y] did not release funds from his [relative's] account for a property purchase, when they had said that they would do so. [The complainant] is authorised to make representations to CIFO in relation to his [relative's] financial affairs.

[The complainant] claimed that the actions of [Bank Y] in delaying a money transfer caused an additional cost of £5,000 when the property conveyance was delayed.

Background

On 30 October 2015, [Bank Y] received a request for a money transfer of approximately £430,000 from the bank account of [the complainant's relative], [redacted for anonymisation purposes], to fund the purchase of a property.

On 6 November 2015, [the complainant's relative with support of another relative] met with representatives of [Bank Y] and [a law firm]. Those present from [Bank Y] and [the law firm] were concerned about [the complainant's relative's] capacity to understand the process. In the absence of the account holder's informed consent and/or authorisation, [Bank Y] refused to allow the transfer of funds from [the] account without a guardianship order in place.

The commitment to purchase the property was to last until 10 November 2015 or else the paid deposit of £46,000 would be lost. [The complainant] paid £5,000 to delay the purchase and obtained guardianship for [his relative] on 24 November 2015, at a further cost of £1,900 for the associated legal and court fees. The money for the purchase was released by [Bank Y] a day later on 25 November 2015.

[The complainant] suggested that [Bank Y] had previously informed him that no further steps were required in order to transfer the money, before they subsequently blocked the transaction following the meeting with [the complainant's relative] on 6 November 2015.

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

[The complainant] informed CIFO that he had communicated with [Bank Y] earlier in 2015. According to [the complainant], he had told [Bank Y] that [the complainant's relative] was [redacted for anonymisation purposes] and living in a nursing home, before telling them that they were considering the purchase of a property with a view to gaining rental income to cover her nursing home fees.

As a fair and reasonable resolution to the complaint, [the complainant] wanted to recover the costs incurred as a result of the money not being released when needed.

Analysis

I agree with the case handler that the complaint should not be upheld, and mainly for the same reasons.

I acknowledge [the complainant's] representations in his letter of 30 November 2016, sent in response to the case handler's conclusions; specifically, that conditions of sale for the property were signed only on the clear indication from [Bank Y] that funds would be released from [the complainant's relative's] account. Were it not for these assurances from [Bank Y] that the funds would be released, the agreement to purchase the property would not have been signed.

Based on previous discussions with the bank, I consider that the position would have remained the same and funds would have been released if [the complainant's relative] had been able to authenticate the transfer; however, when it emerged subsequently that [the complainant's relative] was unable to do so to the bank's satisfaction, and in light of this new development, a meeting was sought by [Bank Y] to satisfy themselves of [the complainant's relative's] capacity, and ability to control her financial affairs and authorise the transfer. As a result of that meeting, the bank required the appointment of a guardian to authorise the transaction on [the complainant's relative's] behalf.

The bank has an obligation to ensure that transactions are authorised. It is also emerging best practice for banks to exercise due care in accepting instructions from vulnerable customers. This ensures that the customer has the capacity to appreciate the implications of the transaction and is protected against potential undue influence or financial abuse.

I therefore agree with the case handler that it would have been unreasonable for [Bank Y] to have allowed the transfer of a substantial amount of money without being satisfied as to the capacity of the account holder to understand the nature and implications of the transaction.

Finally, I have not seen any evidence which reasonably would suggest that [Bank Y] was previously aware of any potential question regarding [the complainant's relative's] competency. Therefore, I cannot conclude that [Bank Y] should have considered sooner the issue of [the complainant's relative's] capacity to manage her financial affairs.

Therefore, it follows that it would not be reasonable for me to hold [Bank Y] responsible for the losses incurred following their decision to withhold the funds pending the appointment of a guardian for [the complainant's relative].

Final decision

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

[The complainant] 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 **15 June 2017**. The determination will become binding on [the complainant] and [Bank Y] 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 [the complainant] would be free to pursue his legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming his acceptance before the deadline of 15 June 2017, he should contact me with details. I may be able to take these into account, after inviting views from [Bank Y], 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

Date: _____