

**Ombudsman determination**

**CIFO Reference Number: 16-000307**

**Complainant: [The complainant]**

**Respondent: [Bank W]**

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.<sup>1</sup>

The complaint concerns the sale of a fee-paying bank account and associated overdraft fees incurred over the course of a banking relationship.

**Background**

In June 2012 [the complainant's] current account was converted to a fee-paying [redacted for anonymisation purposes] account, after it was agreed that she would benefit from the reduced overdraft rate of 7.25%. [The complainant's] account had frequently been overdrawn since it was opened in 2010, and the standard overdraft rate was significantly higher at 18.25%.

On 14th January 2013 [the complainant] visited [Bank W] for a financial review where she informed them that she was in financial difficulty. This was due to a number of personal loans [the complainant] held with external providers.

[Bank W] provided her with an information leaflet and offered to assess the loan contracts. They also referred her to the Citizens Advice Bureau for further assistance.

Between 2013 and 2016 [the complainant's] account continued to be overdrawn, and [Bank W] began to waive and refund the associated charges as a gesture of goodwill following a number of complaints from her about the charges.

[Bank W] also refunded the fees for her [redacted for anonymisation purposes] account after [the complainant] complained in 2015 that it had been mis-sold to her. [Bank W] considered this to be a gesture of goodwill, as [the complainant] had benefited from the significantly reduced overdraft rate.

On a number of occasions [the complainant] applied to increase her overdraft limit, but these requests were declined after [Bank W] reviewed her income and expenditures.

In 2014 [the complainant] informed [Bank W] that she had obtained permanent employment, and requested a refinancing loan to clear her outstanding overdraft

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

balance. [Bank W] considered that her income and expenditure was now sufficient, and agreed to the loan. The usual charge for setting up a loan was waived.

In 2016 [Bank W] decided to close [the complainant's] account, and provided her with 60 days' notice to make alternative arrangements. [Bank W] had waived or refunded a total of £222.70 in fees and charges. In addition, the outstanding balance of her loan, which was £71.67, was written off.

[The complainant] subsequently referred her complaint to CIFO for further review. She considered that the [redacted for anonymisation purposes] account had been mis-sold to her. She also sought the repayment of all overdraft charges and other fees since her original account was opened in 2010. Finally, she complained that [Bank W] had subsequently closed her account unreasonably.

The case handler assessing the complaint did not recommend that it be upheld. He considered that [Bank W] had made reasonable attempts to assist [the complainant] with her financial difficulties, and had already waived a significant amount of the fees and charges she incurred as a gesture of goodwill.

He considered that the [redacted for anonymisation purposes] account did not appear to have been mis-sold, and the reduced overdraft rate would have been to [the complainant's] benefit, but noted that the account fees had been refunded in full regardless.

[The complainant] disagreed with the initial findings of the case handler and the complaint was subsequently escalated to me for review and final decision.

## **Findings**

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

### *Overdraft Fees*

Overdraft fees have previously been considered by the Supreme Court in the UK. The court upheld their validity and ruled that a challenge cannot be brought on the basis that they are unfair or too high. UK judgments are not binding, but they are persuasive. The ruling has also been adopted by the UK Financial Ombudsman Service. In this case, I am minded to take the same view.

However, there is a reasonable expectation that when a customer is in financial difficulty, the bank will treat them sensitively and take reasonable steps to avoid exacerbating the issue.

[The complainant's] account was frequently overdrawn since its inception in 2010. [Bank W] recommended that she switch to a [redacted for anonymisation purposes] account to take advantage of the reduced overdraft rate, which I consider to be a reasonable suggestion under the circumstances.

In addition, [Bank W] began waiving overdraft fees and refunding charges after they were made aware of [the complainant's] financial difficulties in 2013, to a total of £222.70.

I therefore consider that [Bank W] have taken reasonable steps to avoid exacerbating [the complainant's] financial difficulties and assist her with managing her finances.

#### *Fee Paying Account*

I have not considered the alleged mis-selling of the [Bank W] account, as I consider that this already been dealt with. The account fees have been refunded in full, and [the complainant] has therefore benefited from the reduced overdraft rate without cost.

#### *Account Closure*

Banks are commercial entities, and are therefore entitled to close accounts at any time, providing they give sufficient notice before they do so.

I consider 30 days' notice to be reasonable in most cases, and note that in this case [Bank W] provided [the complainant] with 60 days. I am therefore satisfied that [Bank W] have not acted unreasonably in this regard.

#### **Decision**

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

Douglas Melville  
Principal Ombudsman and Chief Executive

Date: \_\_\_\_\_