

**Ombudsman determination**

**CIFO Reference Number: 16-000321**

**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 relates to a series of delays in the processing of a cheque for €250,000, drawn on [an] account, to [Bank W]. [The complainant] asked for these to be paid into his Euro account but indicated that he would be converting the proceeds into Australian Dollars.

[The complainant] informed CIFO that [Bank W] failed to give clear information when handling and processing a foreign cheque, failed to communicate effectively to resolve issues, could not give reassurance that the cheque had been received or forwarded leading to stress and trauma over many days and failed to grasp the gravity of the situation, offering inadequate compensation.

[The complainant] claimed to have lost AUD 1,191 in lost interest, AUD 13,968 due to fluctuations in the exchange rate, and the cost of international phone calls and postage. [The complainant] says that the total financial loss was AUD 15,500.

[The complainant] sought a payment for lost interest, a recalculation of funds based on the average exchange rate for February 2016, a €147.46 refund of the cheque handling charge and compensation for stress and trauma suffered

**Background**

[The complainant] stated that on 2 December 2015 he sent a cheque for €250,000 drawn on [an] account to [Bank W]. He had asked for these to be paid into his Euro account but indicated that he would be converting the proceeds into Australian Dollars.

On 15 December 2015, the cheque was received by [Bank W's] [jurisdiction 1] office. The cheque was returned to his address in Australia on the same day by registered post.

I note that the cheque was returned to [the complainant] on 15 December 2015 with a multiple-choice template document. This document had one of the option boxes ticked, explaining the reason why the cheque could not be processed as:

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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)

*'Endorsement required on all cheques drawn on France.'* (sic)

[The complainant] said that on 28 January 2016, he advised [Bank W] that he had received the returned cheque along with a letter advising

“Endorsement required by our International Payments Team on all cheques drawn on France”.

The following day [the complainant] contacted his Relationship Manager as he was not sure what the endorsement request meant or if this was an action for him to take.

On 2 February 2016, a Relationship Manager advised [the complainant] to send the cheque back to the [redacted for anonymisation purposes] office for processing. It was not explained to him that he needed to sign the back of the cheque before it could be processed. This lack of proper advice is accepted by [Bank W] as their error. The cheque was therefore returned by [the complainant] to [Bank W] without an endorsement.

On 25 February 2016, the cheque was received by [Bank W's] office but was again returned to [the complainant] by registered post asking him to complete the endorsement.

On 9 March 2016, [the complainant] confirmed receipt and said that it would be endorsed and posted back to [Bank W].

On 5 April 2016, the cheque was received by [Bank W]. The cheque was correctly endorsed and was then sent by [Bank X] for clearing.

On 11 April 2016, [the complainant] contacted [the debiting bank] to enquire if the cheque had been paid and he was told that the cheque had cleared and the funds had been taken from his account that day.

Between 13 April and 20 April, [the complainant] corresponded with [Bank W] repeatedly to enquire if the funds had been credited to his [Bank W] account. [Bank W] could not see cleared funds in his account and advised him to check again with [the debiting bank].

On 20 April 2016, [the complainant] contacted [Bank W] who confirmed the funds had not yet been credited to his account. [The complainant] was advised that [Bank W] would let him know once the funds had been received. [The complainant] expressed his concern that the cheque may have been intercepted by a third party. [The complainant] contacted both [the debiting bank] and the police to report what he believed to be a fraud.

On 27 April 2016, funds were received and credited to [the complainant's] [Bank W] account. The Relationship Manager subsequently advised him that the funds had been received.

Following a complaint about the cheque handling made by [the complainant] to [Bank W], on 26 May 2016 the Specialist Complaints Department at [Bank W] contacted [the complainant] and offered a resolution over the telephone while upholding his complaint. A £250 gesture of goodwill to acknowledge the distress and inconvenience was offered to him but he refused this offer. The complaint was referred to the Team Leader and Operations Manager to discuss the amount of compensation to be paid for the distress and inconvenience caused.

On 9 June 2016, [Bank W] agreed to increase the distress and inconvenience payment from £250 to £750. The Specialist Complaints advisor contacted [the complainant] by telephone to present the offer and followed this up with a formal offer sent by email. [The complainant] confirmed that he did not accept the revised offer.

## **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, not least the late information provided to me, since the case handler's initial view, that the funds had not been converted to Australian dollars more than a year after the Euros had been credited to [the complainant's] account.

In line with my statutory duty to disclose evidence, I have provided to both parties copies of the documents which I have relied upon in reaching my decision.

I find that the template form sent to [the complainant] with the returned cheque on 15 December 2015 was wholly inadequate to explain the requirements for endorsement of the cheque. In my opinion, this sentence did not provide clear and unequivocal information or guidance to [the complainant] and it should have been reasonably foreseeable that he would need to make contact with [Bank W] to seek clarity. Had the cheque been accompanied by clear instructions on what was required at that time, the cheque is likely to have been returned to [Bank W], properly endorsed, by mid-January 2016 and likely to have been credited to his account in the first week of February 2016.

I find that, in these particular circumstances, it would have been reasonable for [Bank W] to contact [the complainant] directly by telephone and to provide him with more specific information about their endorsement requirements. Furthermore, it would also have been reasonable at that time for [Bank W] to explore a more efficient and convenient method of dealing with the transfer of these funds. The cheque was for a considerable sum where differences in the exchange rate could result in substantial loss, or gain, to [the complainant].

However, in relation to any financial loss on the foreign exchange market, it is unfortunate that neither [the complainant] nor [Bank W] disclosed important information until after CIFO's initial view; namely, that the funds had still not been converted into Australian dollars at the time of our review.

[The complainant] has told CIFO that he would have accepted the exchange rate in December 2015 when it ranged between 1.52254 and 1.48679 and that he would have immediately transferred the Australian Dollars into his Australian interest-bearing account.

During the extended period that the cheque was being processed, the exchange rate generally remained above the December 2015 rate until 29 February 2016 when it fell and remained below the December 2015 rate.

However, on 2 May 2016, less than a week after the funds had reached [the complainant's] account, the rate became favourable once again to [the complainant]. Until 14 June 2016, the exchange rate remained above the December 2015 rate; peaking on 15 May 2016 at 1.55869.

In correspondence with CIFO, [the complainant] stated that he would have accepted the exchange rate on 15<sup>th</sup> December 2015, the date suggested by the case handler as the relevant date where the initial mistake was made by [Bank W]. If [the complainant] had been willing to accept the exchange rate in December 2015, I find no reason why he did not seek to capitalize on the exchange rate between 3 May and 14 June 2016 once he was in possession of the cleared funds in his [Bank W] account.

I conclude that, not only did [the complainant] have an opportunity to completely mitigate his claimed foreign exchange loss, he could also have capitalized on an exchange rate which had risen above the rate which he stated he would have accepted in December 2015.

After considering this late information, I find that there has been no tangible foreign exchange loss. Compensation for such a theoretical loss would be inappropriate.

Additionally, given that [the complainant] has still not taken advantage of favourable exchange rates since receiving his funds, the merits of the cheque transaction compared to the benefits of an electronic transfer loses its relevance. I consider it appropriate however to refund the cheque handling fee of €147.46, converted to sterling at the foreign exchange rate applicable on 5 April 2016, the date the cheque was processed, on account of what can only be categorized as poor cheque handling service. The amount to be refunded is £118.57.

[The complainant] also claimed for lost interest. I note however that the account in which he wanted the funds credited was a non-interest-bearing account; where the funds have remained for over a year. [The complainant] has not sought to place the funds into an interest-bearing account where, over the course of the year, interest could have been earned. I do not therefore consider a payment for lost interest appropriate under the circumstances.

[The complainant's] claim for distress and inconvenience is upheld. [Bank W] had admitted that it had erred in providing incorrect and misleading information on 2 February 2016, which delay caused him considerable concern that the cheque had been stolen or lost. [Bank W] initial offer of £250, and their later improved offer of £750 for the frustration and upset caused, was rejected [the complainant].

In my view, the initial error in providing incorrect or misleading information was on 15 December 2015. This began the chain of events leading to the distress and inconvenience. The error was compounded by the misleading information provided on 2 February 2016. I therefore find that the compensation of £750 should be increased to recognize the longer delays as a direct result of [Bank W's] errors or omissions on two separate occasions. I conclude that [Bank W] should pay [the complainant] £900 in compensation for inconvenience and distress caused between 15 December 2015 and 27 April 2016.

## **Decision**

My final decision is that it would not be fair and reasonable in the circumstances to compensate [the complainant] for any theoretical foreign exchange loss; it would also be inappropriate to compensate [the complainant] for lost interest.

I conclude that [Bank W] should pay to [the complainant] the sum of £900 for the inconvenience caused by the level of service provided and the distress suffered by believing that his funds may have been stolen. I also conclude that [Bank W] should refund [the complainant] the sum of £118.57, this being the cheque handling fee. Therefore, the total sum to be paid is **£1,018.57**.

## **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](mailto:ombudsman@ci-fo.org), or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **31 August 2017**. The determination will become binding on you and [Bank W] 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 31 August 2017, please contact me with details. I may be able to take these into account, after inviting views from [Bank W], and in these circumstances the determination may become binding after the deadline. I will advise you and [Bank W] of the status of the determination once the deadline has passed.

Douglas Melville  
Principal Ombudsman and Chief Executive

Date: 31<sup>st</sup> July 2017