

Ombudsman determination

CIFO Reference Number: 16-000324

Complainant: [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 that [Bank Y] failed to assist her with a declaration to [an overseas] tax authorities.

Background

The [overseas] tax authorities provide a discount of 5% to taxpayers who verify with their investment company the actual position reported; this is known as making a

“voluntary disclosure declaration.”

[The complainant] asked her [Bank Y] Client Manager to send information directly to the [overseas] tax authorities about her [Bond]. The reason for this was so she could declare her previously undeclared foreign investments – under a voluntary disclosure programme – before the [overseas] tax authorities’ deadline of 20 December 2015.

On 26 October 2015, [Bank Y] provided [the complainant] with a full transaction history; however, they were unwilling to complete a waiver form which she required and they did not communicate directly with the [overseas] tax authorities because they considered they were not obliged to communicate directly with a third party about a client’s tax affairs. On 30 October 2015, [Bank Y] did offer to send information to [the complainant] which she could send to the tax authorities.

As a result of her failure to meet the [overseas] requirements, [the complainant] was not entitled to a discount of 5% on the voluntary disclosure declaration.

As a fair and reasonable resolution to her complaint, [the complainant] sought reimbursement from [Bank Y] for the 5% discount, amounting to £822.14, and a one-off payment of £250 for the inconvenience caused.

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

Analysis

I agree with the conclusions of the case handler. The relevant terms and conditions state that [Bank Y] bears no responsibility in respect of a client's tax affairs. Paragraph 16.4 of [the complainant's] [Bank Y] terms and conditions reads as follows:

"[redacted for anonymisation purposes] Tax compliance

...Neither we nor any member of the [Bank Y] Group have responsibility in respect of your tax obligations in any jurisdiction in which they may arise including any that may relate specifically to the opening and use of account(s) and/or Services provided by us and /or members of the [Bank Y] Group."

I am satisfied that paragraph [redacted for anonymisation purposes] means there was no obligation on the part of [Bank Y] to cooperate directly with the [overseas] tax authorities or provide [the complainant] with a waiver so that she could obtain the 5% discount on her voluntary disclosure declaration.

In her facsimile letter to CIFO dated 25 January 2017, in response to her receipt of the conclusions reached by the case handler, [the complainant] wrote that the

"tax obligations are being faced by [her], I am merely asking for collaboration to verify, if needed."

Based on the information provided, I consider that verification was needed or the loss of the 5% discount would not have occurred.

Verification was provided by the full transaction history given to [the complainant] by [Bank Y]. I consider that asking [Bank Y] to complete a waiver to provide to tax authorities regarding an investment, was an attempt to impose a responsibility on [Bank Y] for [the complainant's] tax obligations.

[The complainant] writes further that

"the opening and use of the account is not in the discussion, it is mine and I operate it along with my PFI."

However, the request she made does relate to services provided by [Bank Y]. I conclude that [Bank Y] were not obliged to comply with [the complainant's] request given paragraph [redacted for anonymisation purposes] of the terms and conditions.

Final decision

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

[The complainant] must confirm whether she 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 **28 April 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 her legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming her acceptance before the deadline of 28 April 2017, she 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: 29th March 2017