

Ombudsman determination

CIFO Reference Number: 16-001163

Complainant: [The complainants]

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 complaint relates to a request for assistance in reclaiming a payment made to a, now defunct, travel company.

Background

In 2014 [the complainants] made an advance payment of £2,100 to a travel company in order to book a holiday for the following year.

The travel company subsequently became insolvent shortly before the departure date, and the holiday bookings were cancelled. Customers were advised to contact their banks or travel insurance providers in order to see whether they could reclaim their money.

[The complainants] recalled that they had made the payment using their credit card with [Bank Y], and so they contacted the bank for assistance.

[Bank Y] declined to assist, stating that their terms and conditions provide 90 days for a credit card transaction to be disputed, after which the bank will no longer be able to assist. The payment made by [the complainants] fell outside of this timeframe, because it had been made a year prior to the dispute.

[The complainants] complained, arguing that they had disputed the transaction immediately once they became aware that the travel company was insolvent, and that there should be some form of protection available to them. [Bank Y] did not formally respond further to [the complainant's] complaints, and so the matter was referred to CIFO for further review.

CIFO's initial view

The case handler responsible for the initial investigation contacted [Bank Y], and was advised that the transaction had not in fact been made using a credit card, but through a Bankers' Automated Clearing Services ("BACS") transfer.

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

The case handler viewed the account statements from [Bank Y] and confirmed that this was the case. Unlike with credit and debit card transactions, the case handler was unable to identify any relevant protections associated with BACS transfers, and so did not consider that [Bank Y] would be liable to reclaim or refund the money.

However, the case handler noted that this complaint could have been avoided, had [Bank Y] realised and explained this to [the complainants] at the time. [Bank Y] had also failed to respond to their formal complaint, which was referred to them by CIFO in the first instance to allow an internal investigation to take place.

The case handler therefore recommended that [Bank Y] should pay [the complainants] £100 in recognition for the inconvenience caused by these actions.

[The complainants] accepted that the transfer had not been made using their credit card, as they had originally thought, but considered that a settlement of £500 would better reflect the inconvenience they had been caused. The case handler did not consider this to be proportionate to the level of inconvenience caused, and so the case was escalated to me for a formal 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 find that I agree with the conclusions of the case handler, and largely for the same reasons.

I acknowledge that there was an oversight in this case, and [the complainants] could have been informed earlier that the transfer had been made by BACS rather than by credit or debit card and that they were therefore not protected by the rights normally associated with these payment products.

I consider that [the complainants] have suffered moderate inconvenience as a result of this oversight and that, on the scale of moderate inconvenience, an award of £100 represents a fair and reasonable gesture, consistent with our benchmarks for non-financial loss.

I therefore conclude that an award of £100 would be a fair and reasonable conclusion to this complaint.

Decision

My final decision is that [Bank Y] should pay [the complainants] £100 in compensation for their inconvenience.

Next steps for the complainants, [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 **4th June 2017**. The determination will become

binding on you and [Bank Y] 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 4th June 2017, please 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 you and [Bank Y] of the status of the determination once the deadline has passed.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 5th May 2017