

Ombudsman Determination

CIFO Reference Number: 16-001311

Complainant: [The complainant]

Respondent: [Bank X]

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 the [Bank X] refused to close a bank account and release its funds to him.

Background

In December 2007, [the complainant's] account with [Bank Z] was transferred to [Bank X], as part of [Bank Z's] overall transfer of its book of business. According to the documents provided to [Bank X], [Bank Z] had been attempting to obtain identification documents from [the complainant] since December 2006.

[The complainant] informed [Bank Z] that he did not hold a passport or driving licence. [The complainant] says he provided them with telephone bills, medical cards and a hospital prescription.

[Bank Z] wrote to [the complainant], advising that they would appoint a solicitor in his area and would outline the documentation he would need to give the solicitor in order for [Bank Z] to be satisfied as to his identity.

In 2008, after the transfer of his account to [Bank X], [the complainant] contacted [Bank X] and asked them to unblock his account. In the absence of suitable identification documents, [Bank X] would not release the funds held in the bank account to [the complainant].

In order to obtain the funds, [the complainant] provided [Bank X] with an affidavit, together with a recent bank statement and a directive from the UK Government's Fraud Investigation Service (FIS). The affidavit was dated 26 August 2008 and signed and witnessed by a solicitor. It confirms that [the complainant's] identity and address is verified on the basis of his disabled parking badge, telephone bill and polling card.

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

Subsequently, [the complainant] contacted [Bank X] in June 2016 with a view to obtaining the funds from the account. On 7 October 2016, [Bank X] wrote to [the complainant] to advise him of what documents were acceptable for the purposes of authorising [Bank X] to remit the funds to [the complainant].

On 24 November 2016, [Bank X] again wrote to [the complainant] to advise they were unable to accept the 2008 affidavit because they were required by regulation to satisfy themselves of [the complainant's] identity on the basis of appropriate documentation.

As a fair and reasonable resolution to the complaint, [the complainant] wanted [Bank X] to release the funds to him and compensation for being unable to access them.

The case handler did not uphold the complaint. He considered that [Bank X] were obliged to verify [the complainant's] identity in order to comply with their regulatory requirements.

Subsequent submissions

[The complainant] did not agree with the case handler's conclusions. He has provided me with telephone bills, a medical card, bank statements, a disabled parking badge and polling cards for previous UK elections as proof of [the complainant's] identity. [The complainant] also enclosed an extract from a document which he says was produced by [redacted for anonymisation purposes], a Channel Islands law firm, which he says indicates that no criminal offence would be committed by [Bank X] if they were to release the funds to [the complainant] in accordance with a directive from the FIS.

Findings

I agree with the conclusions of the case handler. [Bank X] are required to obtain appropriate documents which verify [the complainant's] identity in order to satisfy their regulatory requirements.

The [jurisdiction 2] regulator for financial services business in [jurisdiction 2]. As a regulated entity, [Bank X] has to comply with the current requirements set out by the [jurisdiction 2 regulator] and needs to be able to authenticate its customers. In this respect, the version of the [relevant legislation] which was in force at the material time in June 2016, outlines the requirements with which [Bank X] must comply in relation to verifying [the complainant's] identity:

"[redacted for anonymisation purposes] Identification data for individuals

86. A financial services business must, subject to section 6.2.1, collect relevant identification data on an individual, which includes:

- *legal name, any former names (such as maiden name) and any other names used;*
- *principal residential address;*
- *date and place of birth;*

- *nationality;*
- *any occupation, public position held and, where appropriate, the name of the employer; and*
- *an official personal identification number or other unique identifier contained in an unexpired official document (for example, passport, identification card, residence permit, social security records, driving licence) that bears a photograph of the customer.*

[redacted for anonymisation purposes] Verification of identity – the individual

87. The legal name, address, date and place of birth and nationality of the individual must be verified.

88. In order to verify the legal name, date and place of birth and nationality of the individual, the following documents are considered to be the best possible, in descending order of acceptability:

- *current passport (providing photographic evidence of identity);*
- *current national identity card (providing photographic evidence of identity);*
- *armed forces identity card.*

89. The examples quoted above are not the only possibilities. There may be other documents of an equivalent nature which may be produced as satisfactory evidence of identity of the individual.”

[The complainant] suggests that the above [jurisdiction 2 regulator’s] rules relate to opening an account, not to closing the account and remitting funds; with respect, I disagree. The above provision that

“A financial services business must... collect relevant identification data on an individual”

does not specify that the requirement is solely for instances of account opening. The obligation is an ongoing one and the risks associated with withdrawal of funds make due care reasonable in the circumstances.

The [jurisdiction 2 regulator’s] requirements above appear to suggest that photographic evidence of identification is needed in order for financial services providers to satisfy themselves of the identity of their customers. [The complainant] has provided me with a copy of a disabled parking badge. This badge does include a photograph but, given that the badge expired in 2010 it is not unexpired for the purposes of the above [jurisdiction 2 regulator’s] regulations.

[Bank X] is aware that [the complainant] has indicated he does not have a driving licence or a passport. In an attempt to obtain proof of [the complainant’s] identity, [Bank X] wrote

to [the complainant] on 24 November 2016 to suggest a face-to-face meeting so they could have sight of his birth certificate and obtain a certified copy of the same.

[The complainant] did not agree to a face-to-face meeting. He stated that he was not satisfied with [Bank X's] rejection of the 2008 affidavit. In his letter to CIFO, [the complainant] wrote that

“it is totally unacceptable and out of order under the Human Rights Act.”

[The complainant] is free to raise this issue with the appropriate UK human rights authority.

In my view, [the complainant's] refusal to meet face-to-face put the bank in an untenable position when attempting to meet both its regulatory obligations and provide [the complainant] with access to his funds in a safe, properly authenticated manner in the absence of photographic identification. Furthermore, by suggesting a face-to-face meeting, [Bank X] has offered a reasonable alternative to receiving photographic evidence in an attempt to resolve the situation. [Bank X] has not, therefore, acted unreasonably in the circumstances.

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 **2 October 2017**. The determination will become binding on [the complainant] and [Bank X] 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 2 October 2017, he should contact me with details. I may be able to take these into account, after inviting views from [Bank X], 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: 1st September 2017