

Ombudsman Determination**CIFO Reference Number: 17-000044****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] made a complaint against [Bank X] via her representatives, [redacted for anonymisation purposes]. [The complainant] complained that [Bank X] did not carry out instructions to sell shares belonging to her husband in July 2016, following his passing.

Background

On 4 July 2016 Advocate [redacted for anonymisation purposes], in his capacity as the [jurisdiction 1] Royal Court-appointed Attorney Administrator of [the complainant's husband's] estate, gave instructions for shares belonging to [the complainant's husband] to be sold and for the proceeds of sale to be remitted to the client account of his law firm, [redacted for anonymisation purposes].

[Redacted for anonymisation purposes], an English Solicitor at [redacted for anonymisation purposes], wrote to [the attorney administrator] on 16 August 2016. [The complainant's representative] asked [the attorney administrator] to send him the original [jurisdiction 1] Grant of Letters of Administration and a copy of all correspondence he had exchanged with [Bank X] on this matter.

[The attorney administrator] complied with [the complainant's representative's] request and released the [jurisdiction 1] Grant of Letters of Administration, although he did question whether [Bank X] would be willing to accept this authority because [the complainant's representative] was not authorised by [jurisdiction 1's] Royal Court.

[Redacted for anonymisation purposes], the [Bank X]-related entity with conduct of this matter, received a letter from [the complainant] which notified them of the appointment of [the complainant's representative] as her representatives; however, with no official identification documents on file, [the Bank X representative] was unable to confirm [the complainant's] signature.

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

The [Bank X representative's] registration team contacted [Bank X] in order to identify [the complainant]. They asked for confirmation of the following:

1. Whether [the complainant] was known by [Bank X], and whether there was any existing relationship in place between her and the bank;
2. If a relationship did exist, what Know-Your-Customer documentation was held on file (for example, a copy of [the complainant's] passport); and,
3. Whether [Bank X] held any contact details for [the complainant] (for example, an email address, mailing address or phone number).

[Bank X] confirmed to [the Bank X representative] that [the complainant] was not a client of theirs. Therefore, they were unable to progress matters.

On 13 September 2016, [the complainant's representative] telephoned [Bank X] to advise that they were instructed in place of [the attorney administrator]. A day later, [the complainant's representative] sent a letter of authority, signed by [the complainant], to [Bank X].

On 29 September 2016, [the complainant] attended [the complainant's representative's] offices in [the] United Kingdom, and spoke with [Bank X] by telephone. [The complainant's representative] contacted [Bank X] again on 4 and 6 October, informing [Bank X] that [the complainant] was going back [overseas] on 8 October. [Bank X] said they could not discuss the matter with [the complainant's representative] because they were not shown on their records as the requested solicitor to place the redemption on the account.

[Bank X] received an email from [the attorney administrator] on 6 October 2016 which confirmed that he had been dis-instructed by [the complainant's representative] in his capacity of Attorney Administrator of [the complainant's husband's] estate. [The attorney administrator] advised [Bank X] to contact [the complainant's representative] and the client directly if they required any further documentation. However, [Bank X] had no authority on file to do so; therefore, the case remains outstanding with no [jurisdiction 1]-appointed solicitor in the place of [the attorney administrator].

On 6 October 2016, the [Bank X representative's] registration team contacted [Bank X] to enquire as to whether or not they had received the relevant documentation regarding the case. [Bank X] explained that, according to their files, they had been notified of [the complainant's husband's] passing but they had no documents on record to confirm this (for example, a death certificate). No redemption trades could be placed until all documents were received and found to be in good order. According to [Bank X], the money is still currently invested in the investment fund. [Bank X] had liaised internally and considered that this was the correct process to follow.

On 27 October 2016, [the complainant's representative] called again and the employee at [Bank X] said that the issue would be referred to management.

[The complainant's] representatives complained to [Bank X] on 1 November 2016. The complaint related to the issues experienced in attempting to gain access to the funds belonging to the estate of [the complainant's deceased husband]. [Bank X] issued a response on 7 November 2016.

On 5 December 2016, [Bank X] sent a further letter regarding the complaint to [the complainant] directly. The letter set out that the grant of probate could only be accepted from [the attorney administrator]. [Bank X] informed [the complainant's representative] that any change in this would have to be dealt with between themselves and [the attorney administrator].

On 9 January 2017, [Bank X] replied to [the complainant] with their final resolution letter. The letter asked [the complainant] to contact the [jurisdiction 1] Grant of Probate Office to make the necessary arrangements if she wanted [her representative] to be authorised to deal with [Bank X] about the matter. [The complainant's representative] say that [the complainant] did not receive this letter.

Since this letter, [Bank X] say they have had no further reply from [the complainant], [the complainant's representative], or [the attorney administrator]. [The Bank X representative] has received a document from someone claiming to be [the complainant]; however, they are unable to link this person to the account in the name of [the complainant's deceased husband] as the account was not held jointly with [the complainant], and they have no official and authenticated documents to confirm [the complainant's deceased husband's] passing.

As a fair and reasonable resolution to the complaint, [the complainant] wanted [Bank X] to carry out the instructions to sell the shares. She also sought compensation for alleged stress and inconvenience caused and for her costs to travel from [overseas] in an effort to resolve the matter.

Subsequent submissions

[The complainant's] representatives did not agree with the decision of the case handler who did not uphold the complaint. In response, they wrote that [Bank X] had not carried out [the complainant's] instructions or dealt with her complaint either in a timely manner or at all.

[The complainant's representative] submitted that [Bank X] had evidence that they represented [the complainant]. [The complainant's representative] further submitted that [Bank X] was emailed a copy of the death certificate of [the complainant's deceased husband] in September 2016. Furthermore, [the complainant's representative] added that they sent proof of [the complainant's] identity on 10 October 2016, together with the original letter of authority.

Findings

I acknowledge that [the complainant's representative] say they provided a copy of a letter of authority to [Bank X], together with a number of other documents. [The complainant's representative] complained on 1 November 2016 and a final response was issued approximately 10 weeks later, on 9 January 2017. The final response advised [the complainant] of the next steps required to resolve the situation. [The complainant's representative] has suggested [the complainant] did not receive this letter but, having reviewed a copy forwarded by [Bank X], to a PO Box address [overseas], on the balance of probabilities I am satisfied that [Bank X] sent the letter to [the complainant].

I do not, therefore, consider that [Bank X] has acted unreasonably in its handling of the complaint made by [the complainant's representative] on behalf of [the complainant].

[Bank X] has not been able to provide CIFO with a copy of [the complainant's husband's] death certificate. In the absence of a certified copy, [Bank X] has been unable to confirm [the complainant's husband] has died and is unable to proceed with any distributions without this confirmation. I am satisfied that it was reasonable for [Bank X] to hold the funds of [the complainant's] late husband pending verification of the death and who was entitled to the assets, and I do not consider that [Bank X] has acted unreasonably by holding the shares pending the verification of the appropriate legal authority to distribute them through the [jurisdiction 1] Royal Court.

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 **15 January 2018**. 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 her legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming her acceptance before the deadline of 15 January 2018, she 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: 14th December 2017