

Ombudsman determination

CIFO Reference Number: 17-000298

Complainant: [The complainants]

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.

[The complainants] complained that [Bank X] had prevented them from taking advantage of the Euro to Sterling exchange rate on 7 October 2016 because their joint account had been rendered dormant and could no longer be accessed by them. They complained that [Bank X] had lost their letter of instruction to reopen the account and that the bank is still refusing them access to their funds.

As a fair and reasonable resolution to their complaint, they sought the closure of their [Bank X] account and the balance in Euros converted to Sterling at the exchange rate applicable on 7 October 2016. The complainants also sought compensation, an apology, and an explanation regarding their inability to access the account.

[Bank X] had initially offered £25 for distress and inconvenience and £10 towards the cost of telephone calls. However, after a further review, [Bank X] increased its compensation offer to £200, which included £125 in recognition of upset and inconvenience, £25 for telephone costs, and £50 towards unspecified additional expenses.

The case handler upheld the complaint, increasing the level of compensation to £300, which sum consisted of £225 in recognition of upset and inconvenience and £75 for telephone and other expenses. While agreeing with their complaint being upheld, [the complainants] disagreed with the case handler's assessment of the case and the level of compensation suggested so the matter was passed to me for determination.

Background

From 2002, [the complainant's] account had been held with [Bank Y] until [Bank X's merger with Bank Y]. The merger was communicated to customers at the time and included details on the changing of their account details. Following the merger, [the complainant's] account moved to the [Bank X] platform in 2012.

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

On 29 December 2014, the complainants' joint [Bank X] account became dormant due to a lack of activity. It is [Bank X's] policy that accounts that are inactive for over 36 months are placed into a dormant state to ensure that funds cannot be withdrawn without increased security checks and to meet its regulatory obligation to maintain up-to-date customer information.

On 5 October 2016, [the complainants], intending to exchange the €56,000 held in their [Bank X] Euro account into Sterling, attempted to register for internet banking but could not do so and advice and assistance was provided by [Bank X]. On 7 October 2016 they attempted to gain access again, but it was discovered that the account had become dormant due to a lack of activity. [Bank X] provided advice on how to proceed including attending at their local branch with relevant identification documents.

The complainants hand-delivered the instruction a month later and these were sent to the [UK] for processing via [Bank X's] internal mailing system. Unfortunately, the instruction did not arrive in the [UK] and has not since been located.

Analysis

Account access and dormancy

[The complainants], in response to the case handler's conclusion, sent an unsigned letter making additional points and asking a number of questions of CIFO, which I will answer during the course of this determination.

The first question asked by the complainants is whether [Bank X] provided the same banking services after the merger regarding the account access. The apparent reason for this question is to support their claim that the lack of activity on the account was solely due to [Bank X] changing the means of account access, thereby preventing access.

From the information I have seen, the ability for customers to access accounts via branch access, telephone banking and internet remained after the merger, along with traditional postal methods.

The banks merged in 2009 and customers were given the option to continue their banking relationship with [Bank X], or seek the services of an alternate provider if they felt that [Bank X] did not support their needs. [The complainants] were therefore provided with an opportunity to leave [Bank X] and seek an alternate provider which met their needs. They did not do so.

In their letter to CIFO, [the complainants] say that they had not moved the account because no-one else was offering a Euro account in the UK at the time. This is not an accurate reflection of the UK banking industry in 2009. I note that, at the time of the merger, all major high street UK banks offered Euro accounts.

I also note that, except for the two initial deposits made in July and October 2002, [the complainants] had not made any attempt to access the [Bank Y] account in the succeeding 10 years, including when the banking services moved to [Bank X].

Therefore, I do not accept that the reason for a lack of activity on the account was due to [Bank X] preventing it in any way.

On 5 October 2016, [complainant 1] telephoned [Bank X]. I have seen the notes of this telephone call. The purpose of the call was to request a foreign exchange spot rate as he was considering a currency exchange transaction from Euros to Sterling. The [Bank X] staff member [redacted for anonymisation purposes] explained that she would need to properly identify [complainant 1] before she could provide account details. She then transferred the call to another department. No notes are available from this transferred call.

In a further call to [Bank X] that afternoon, the notes from which I have seen, [complainant 1] complained that he was unable to register for online banking and was requesting assistance. The [Bank X] staff member [redacted for anonymisation purposes] provided advice on the password format required to set up internet banking and the call ended amicably.

I am satisfied that, in line with its regulatory obligations to update their customer information, without proper identification [Bank X] would have been unable to discuss the [complainant's] account. I am therefore satisfied that no currency exchange was requested on 5 October 2016.

On 7 October 2016, [complainant 1] made a call to [Bank X] to seek assistance as he was unable to set up his online banking access. I have reviewed the transcript of that call. The [Bank X] staff member [redacted for anonymisation purposes] assisted [complainant 1] with the initial set up process until he was asked to provide details of a mobile telephone. [The complainants] did not own a mobile telephone between them, so he felt obliged to purchase one.

During the call of 7 October 2016, [Bank X] staff member [redacted for anonymisation purposes] advised the complainant to go into any local branch with a written instruction to withdraw funds but, when checking to see if the account was set up for telephone banking, discovered it had become dormant. [Complainant 1] suggested the account was last used some 6 years previously. In fact, there had not been any activity on the account since 2002. In accordance with bank policy, as there had been no activity for more than 36 months, the account had been made dormant. I do not consider this unreasonable.

In their letter to CIFO, [the complainants] asserted that they should not have to buy a mobile telephone just to access their account and money. I would agree with this assertion if it were the case. They were not obliged to have a mobile telephone to access their account. Not having a mobile telephone might limit their options but does not prevent account access and I do not consider it fair and reasonable to compensate [the complainants] for the purchase of a mobile telephone and related accessories.

[Bank X] explained that it did not have up-to-date information about the complainants who asked for the Customer Update Information (CUI) form to be posted to their home address. On the same day, [complainant 1] called an independent currency broker,

[redacted for anonymisation purposes], and enquired into his firm's Euro/GBP exchange rate.

I am satisfied that the account dormancy was legitimate and that, without the relevant information required by the bank to identify the complainants; the account would not have been reopened on 7 October 2016, so no currency exchange could have taken place on that date.

Account Re-Activation

On 7 November 2016, a hand-delivered letter of instruction was delivered to the branch manager at [Bank X] by [complainant 1], attaching photographic identification and proof of address. Copies of the documents were to be sent to the [UK] office for processing. No reasonable explanation has been forthcoming from [the complainants] to explain why it took a month for them to hand-deliver this letter of instruction.

It was suggested in their letter to CIFO that the complainants were recovering from the frustration and disappointment of not being able to register for online banking and discovering their account had been made dormant. I do not accept this as a reasonable excuse. [The complainants] suggest that their frustration and disappointment was exacerbated by seeing the Euro/GBP currency rate dropping further.

In my view their observations of the exchange rate changing should have instilled a sense of urgency in resolving their access issue. The complainants however still consider that they could take as long as they wished to hand-deliver the letter. This is not a reasonable position to adopt in the circumstances given the loss claimed relates to a specific day's exchange rate.

On 30 November 2016 [complainant 1] called [Bank X] again because he could not get set up for online banking. While a [Bank X] staff member [redacted for anonymisation purposes] tried to assist, it became clear that the letter of instruction had not reached the [UK]. [Bank X] offered to re-send the information to allow the bank records to be updated and the account reopened. [Complainant 1] refused this offer on the basis that [Bank X] had lost the papers he had already completed. He said that he would go into his branch and, if they were unable to assist, he would close the account. A formal complaint was raised.

Ordinarily, so that the records could be updated, the letter of instruction presented to the branch in [redacted for anonymisation purposes] would have been sent via [Bank X's] internal mail to the International Team on the [UK]. Unfortunately, the [UK] office did not receive them and there is no explanation provided for the missing documents. [Bank X] have accepted that this should have reached the [UK] in two days and therefore I conclude that 9 November 2016 would have been the earliest date the account could have been updated.

[Bank X] issued its final response on 9 December 2016, upholding the complaint and offering £25 compensation for distress and inconvenience and a further £10 towards the cost of telephone calls. The case handler considered this sum insufficient compensation for the distress and inconvenience and I am in agreement with that view.

[The complainants] replied to [Bank X] in a letter 16 January 2017, complaining that the recompense offered was inadequate to cover the telephone calls. They also complained at some length that [Bank X] were demanding sufficient proof of identity but that neither of them held passports and so could not provide such proof. Maintaining updated information on customers is a regulatory requirement which all financial institutions must follow, and I do not consider the requests made by [Bank X] to be out of the ordinary or unreasonable.

[Bank X] wrote to the complainants on 9 February 2017 explaining that the account was still in a dormant state. As [the complainants] had requested to close the account, [Bank X] asked the complainants to complete an account closure application form, which [Bank X] enclosed and, again, to provide documents to confirm their identity.

Alternatives to passport photographic identification were fully explained and, in the event that [the complainants] had no photographic identification to support the account closure application, asked them to contact her directly so that the issue could be urgently reviewed. The Dormancy Team enclosed a letter further explaining what was required.

In my view, regardless of the missing instructions, for which [Bank X] admitted fault, the bank was still required, from a regulatory standpoint, to obtain sufficient information to identify the complainants. The request for this information was therefore not unreasonable and the bank had made offers to assist.

On 22 March 2017, [Bank X] provided an updated final response to the complaint. [Bank X] explained that, as the account was dormant, there could be no transactions allowed and telephone and internet banking would not have been available. In my view the provision of the documents required to update the bank records remains the only way the account can be accessed, and funds released.

[Bank X] acknowledged that the documentation [the complainants] provided to the [redacted for anonymisation purposes] branch went missing and that this was [Bank X's] responsibility. Consequently, [Bank X] apologised to the complainants and increased the compensation offer to £200, which sum included £125 in recognition of upset and inconvenience, £25 for telephone costs and £50 towards unspecified additional expenses.

[Bank X], in its final response letter, since the information had not reached the [UK] office and the account details had not been updated, once again enclosed a new form requesting certified copies of the complainants' passports or driving licences for photographic identification and, in the absence of either, urged them to make contact so that a satisfactory way forward could be found to resolve the issue. The letter highlighted for convenience those parts of the form that were required to be completed, together with a pre-paid envelope. I understand that the complainants have still not provided the requisite documents.

The Exchange Rate

[The complainants] have referred to suffering a 'substantial loss' due to the fluctuation in the Euro/GBP exchange rates and believe that the exchange rate from 7 October 2016 should be applied.

The account was dormant as a result of over 12 years' lack of activity, between 2 October 2002 and 29 December 2014. I am satisfied that [Bank X] followed its procedures by placing the account into a dormant state. I do not consider this unreasonable.

Furthermore, without the required information to update the account details [Bank X] could not have reopened it on 7 October 2016 or carried out any exchange transaction on that day. [Bank X] cannot be held at fault for the subsequent month-long delay in providing the required information and I consider that if [the complainants] were truly concerned about the exchange rate moving against their interests they should have acted quickly to mitigate any potential loss. [The complainants] appear to have done nothing during that 7 October to 7 November period to minimise the impact of the dormancy or the fluctuating exchange rate.

In my view, given the information provided to me, the earliest date the account could have been reopened, had the paperwork reached the [UK], was 9 November 2016.

It is clear from their letters to [Bank X], that they do not wish to provide the documents requested again. The bank has clearly advised that it is unable to carry out any transactions, including closing the account, until it receives these documents and has indicated its willingness to assist the complainants should they have difficulty producing certain documents. I do not consider this to be an unreasonable position for [Bank X] to take. It therefore appears that the intransigence of [the complainants] is preventing access to their account, I would urge them to co-operate with [Bank X] to establish their identity and reactivate their account.

Final decision

On the basis of the information provided, including that provided subsequent to the case handler's initial view, I am of the view that the complaint is upheld in part and only to the extent that [Bank X] had lost the documentation the complainants had provided it on 7 November 2016.

I determine that the compensation should be increased to £300, consisting of £225 in recognition of upset and inconvenience and £75 for telephone and other expenses.

I am satisfied that there was no material difference in the services offered between [Bank Y] and [Bank X] and that, at the time of the merger, other banks were offering similar products. I therefore do not accept that [the complainants] were compelled to stay with [Bank X] and I find that [Bank X] did not unreasonably prevent access to the account given the regulatory requirements.

Given the lack of any attempt for 10 years to make a transaction, I find that [Bank X] were reasonable in placing the account into a dormant state.

I also find that [Bank X] were reasonable in restricting access to the complainants' account in October and November 2016 pending receipt of the information it required under the regulations. Similarly, I find that [Bank X] are still entitled to restrict access to the account, or close it, until it has obtained the information it requires in accordance with regulations. I consider [the complainant's] continued intransigence unreasonable. This is particularly so when, from the information provided to me, it is clear that [Bank X] will assist the complainants with the collation of the required documents and help them to ultimately access the account.

Given that [the complainants] were unable to provide the required documentation to [Bank X] on 5 or 7 October 2016, I find that the account could not have been accessed on those dates and so no currency exchange transfer could have taken place.

[Bank X] provide various ways for customers to access their accounts. The use of a mobile telephone is a useful facility but is not obligatory. It is one of a number of choices for the customer to choose to access their accounts. The lack of a mobile telephone does not prevent access to a customer's account. I therefore find that it would be unreasonable for me to direct that [Bank X] should pay for the complainant's mobile telephone, SIM card, credit balance, mobile telephone case or any other accessory.

I find that the month-long delay in providing the documentation to the [redacted for anonymisation purposes] branch to be a relevant consideration. It is clear that [the complainants] were unreasonably slow in trying to minimise the impact of the fluctuating exchange rate and their argument for delaying is unsustainable.

I also find it clear that [Bank X's] internal mailing system failed on this occasion. Had this error not occurred, the documents would have been in the [UK] within 2 days, the account could have been accessed on 9 November 2016, and a currency transfer done at that day's exchange rate.

I strongly suggest that [the complainants] cooperate with [Bank X] in providing the required documentation to enable them to access their account. [Bank X] have confirmed that it is prepared to complete the foreign exchange transaction subject to a commitment from [the complainants] that required KYC documentation is being sent and have also confirmed it is willing to pay for any DHL cost incurred for the documentation being couriered.

Should this occur, and a currency exchange subsequently takes place through [Bank X], as opposed to an independent currency exchange company, I am of the view that, should the [complainants] so instruct, [Bank X] should process the transfer at the currency exchange rate obtainable at [Bank X] on 9 November 2016, or the current [Bank X]-offered currency exchange rate on the actual transaction date within 30 days of this determination, whichever is more advantageous to [the complainants], to a maximum GBP-EUR exchange rate of 1.1537. If [the complainants] fail to instruct [Bank X] to carry out the currency exchange transaction within 1 month of the date of

this determination, [Bank X] will no longer be obliged to carry out a foreign exchange transaction with [the complainants] at the 9 November 2016 rate and the current [Bank X]-offered rate on the day of the foreign currency exchange transaction will apply to any such transaction.

[The complainants] must confirm whether they 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 **15 February 2018**. The determination will become binding on [the complainants] 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 complainants] would be free to pursue their legal rights through other means.

If there are any particular circumstances which prevent [the complainants] confirming their acceptance before the deadline of 15 February 2018, they 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: 15 January 2018