

Ombudsman Determination

CIFO Reference Number: 17-000391

Complainant: [The complainant]

Respondent: [Company 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 about the level of documentation required in order for him to obtain access to his late mother's assets held with [Company X].

Background

In December 2015 [the complainant] obtained and provided [Company X] with a Power of Attorney granted to him in respect of his mother. The Power of Attorney was granted by the Office of the Public Guardian in [the UK]. [The complainant] advised that he had dealt with [Company X] on many occasions whilst his mother was alive, with her consent.

On 11 December 2015 [Company X] emailed [the complainant] and advised that

"a foreign law jurisdiction POA is not acceptable for a bank account held in [jurisdiction 1]".

[Company X] provided three options for obtaining access to the bank account, one of which was to obtain a [jurisdiction 1] Power of Attorney. [Company X] also included the contact details of three local law firms able to assist in this regard.

In approximately August 2016, [the complainant] made enquiries with [Company X] regarding access to the funds. On 3 October 2016 [Company X] sent [the complainant] an email to confirm the documents it required when a sole account holder had passed away. These documents included certified copies of a death certificate, Will and Executor's passport. [Company X] also confirmed that:

"For balances over £10,000 sight of the [jurisdiction 1] Grant of Probate or letters of Administration issued by the Ecclesiastical Court of [jurisdiction 1]".

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

[The complainant] considered that this request for additional documentation made by [Company X] was unreasonable because it would cost him a considerable sum and he already held a Power of Attorney from [the UK]. [The complainant] did not, therefore, wish to apply for [jurisdiction 1] Probate. He informed CIFO that he was the sole beneficiary and his wife was the Executor.

[The complainant] complained to [Company X's] successor firm, [redacted for anonymisation purposes]. In its response, [they] confirmed its request followed local law and standard practice in [jurisdiction 1].

[The complainant] then complained to CIFO, suggesting that it was unreasonable for [Company X] to ask for a [jurisdiction 1]-based Grant of Probate. In [the complainant's] view,

“this policy has to be counter to consumer interests as it could very substantially reduce the assets involved and its application without regard to the amounts at issue or the risk in terms of the complexity of the inheritance arrangements is disproportionate and prejudicial”.

As a fair and reasonable resolution to the complaint, [the complainant] sought the release of his mother's funds on the basis he had the requisite UK documentation and he was prepared to offer an indemnity if required.

The case handler did not uphold [the complainant's] complaint because both [jurisdiction 1] court guidance and [Company X's] internal policy appeared to have been followed. In the case handler's view, the request for a Grant of Probate had been a legitimate exercise of [Company X's] commercial judgement.

Subsequent submissions

[The complainant] did not agree with the case handler's conclusions. He considered that CIFO should undertake an assessment of whether the terms and judgement applied by [Company X] was reasonable. In addition, [the complainant] suggested that CIFO should challenge the exercise of [Company X's] commercial judgement where necessary.

Findings

I agree with the conclusions of the case handler, and for the same reasons.

In its document titled *Applying for a [jurisdiction 1] Grant of Representation (Probate or Letters of Administration)*, the Ecclesiastical Court of [jurisdiction 1] provides the following guidance:

“If you already have a Grant in England & Wales, Scotland or Northern Ireland

“[Jurisdiction 1] is not part of the UK. Therefore, a separate Grant may be required by the bank or other body where the assets are held.”

The same guidance document acknowledges that the decision to release funds or require Probate is for [Company X] to make:

“Asset value

An asset holder can at its discretion release funds of any amount without the need for a [jurisdiction 1] Grant. The decision to require Probate is entirely up to the asset holder concerned and it might ask for a Grant irrespective of the value of the [jurisdiction 1] estate.”

In its email to [the complainant] of 3 October 2016, [Company X] confirmed that its internal policy is that it requires a [jurisdiction 1] Grant of Probate or Letters of Administration for accounts where the assets held are in excess of £10,000. [The complainant] advised CIFO that the assets in this case are over £134,000. [Company X] has, therefore, appeared to apply its policy correctly.

I recognise [the complainant’s] view that the cost involved could substantially reduce the assets; however, based on the above guidance from the Ecclesiastical Court, I consider that the decision to release funds either with or without a [jurisdiction 1] Grant of Probate is a commercial decision for [Company X]. Given the guidance specifically sets out that this is a matter for the asset holder itself, the internal policy was followed and the amount involved substantial, it would not be reasonable for CIFO to interfere with an exercise by [Company X] of its commercial judgement.

I agree with [the complainant] regarding his view of whether CIFO should conduct an external assessment of whether the terms and the judgment applied are reasonable. CIFO would consider – and did consider in the present case - whether an exercise of the commercial judgement was conducted reasonably and whether any applicable policies were followed correctly. Nevertheless, based on the above, I cannot conclude that [Company X] has applied any policies incorrectly or exercised its commercial judgement unreasonably.

[Company X] has advised [the complainant] that he needs to apply for a [jurisdiction 1] Grant of Probate and has provided details of the appropriate contacts who may be able to assist. I am satisfied that [Company X] has not 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 **21 June 2018**. The determination will become binding on [the complainant] and [Company 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 21 June 2018, he should contact me with details. I may be able to take these into account, after inviting views from [Company 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: 21st May 2018