



Case study: Banking / Credit

BANK HANDLING OF VULNERABLE CUSTOMER COMMENDABLE

Themes: Vulnerable customer, protection against undue influence or financial abuse, customer capacity to appreciate nature of the transaction

In 2015, Mr P and his brother were planning to purchase a property with financial assistance from their mother. Mr P's mother signed a letter advising the bank that she would be providing a large amount of money to enable her two sons to purchase the property. Mr P's mother was elderly and lived in a nursing home. At the time the letter was provided, there was no indication of any issues with respect to her capacity to appreciate the nature of the transaction. Lawyers for the mother, who would have had professional obligations to determine her capacity to instruct them, had indicated they were happy for the transaction to proceed.

A few days later, when it came time for the funds to be transferred to finalise the house purchase, the bank, before executing the transfer of funds referenced in the mother's letter, attempted to contact the mother by telephone to verify the transfer in accordance with its internal procedures. The bank was unable to reach the mother by phone and became concerned about her capacity to understand the nature of the transaction; a concern reportedly shared by one of the sons.

The bank staff member took the extraordinary step of visiting the mother at the nursing home to verify the transfer instructions and confirm that she was fully aware of the implications of what she had previously signed. As a result of the visit, the bank was not satisfied that Mr P's mother had the capacity to understand the process and the implications of what she had instructed the bank to do. The bank therefore refused to execute the transfer of funds from the mother's account without a guardianship in place to protect her interests.

The commitment to purchase the property was imminent and was already agreed to close on a certain day or the deposit paid would be lost. Mr P paid £5,000 to the vendor in order to extend the closing date of the purchase and used that extension period to obtain legal guardianship for his mother at a further cost of £1,900. Once the bank was presented with instructions from the son as the legally appointed guardian, the funds transfer was executed by the bank to enable the property purchase to close. Mr P considered that the bank had not previously informed him of any additional requirements in order to transfer the funds from his mother and made a complaint to the bank asking for reimbursement of the incremental

costs of £6,900 he had incurred to close the property deal (£5,000 for the extension and £1,900 for the legal guardianship). When the bank did not agree he brought his complaint to CIFO.

Conclusion

After reviewing the case, CIFO did not uphold the complaint for the following reasons.

CIFO concluded that the bank has an obligation to ensure that all transactions are authorised, meaning to ensure that the account holder or their guardian are fully aware of the nature and implications of transactions. It is also emerging good practice for banks to exercise due care in accepting instructions from vulnerable customers, especially in circumstances where transactions may be for the economic benefit of others, to make sure that the customer is able to appreciate the nature and implications of the transaction and is protected against potential undue influence or financial abuse.