

The complaint

Mr Z complains that Bank of Ireland (UK) Plc trading as Post Office (PO) didn't credit his account with cash deposits he made.

What happened

The detailed background to this complaint is known to both parties. So, I don't intend to set it out in detail here. In summary, Mr Z claims several cash deposits he made into his PO savings account are missing. He says a certain member of staff in his local branch (which has since closed) failed to deposit his money into his PO savings account as he'd requested. He says on each occasion the member of staff also told him they couldn't provide him with a deposit receipt. Mr Z is unhappy that PO won't provide him with a refund for the missing cash deposits. He also complains of PO not responding to his letters.

Ultimately, PO have relied on a provision within the Payment Services Regulations 2009 which only entitles a customer to redress for unauthorised – or incorrectly executed – transactions if the dispute is raised within 13 months of the original transaction. This provision has been adopted into the terms and conditions of the savings account Mr Z holds with PO. As Mr Z's dispute was raised more than 13 months after the allegedly incorrectly executed deposit transactions, PO have said he isn't entitled to any form of refund or redress. It also said it responded to Mr Z's letters that were received in 2017 and 2019.

One of our investigators considered the complaint but didn't uphold it. In short, she didn't think that it would be reasonable to ask PO to provide a refund in the absence of any evidence which showed when these cash deposits were made and for how much. She was satisfied that PO responded to Mr Z's letters in 2017 and 2019 and had not seen any evidence of any other correspondence Mr Z had sent to PO during that period.

Mr Z didn't accept the investigators conclusions and asked for an ombudsman to review the case. He made the following points in response to the investigator's outcome;

- Mr Z says the investigator was wrong to state he'd not provided dates for the disputed cash deposits. He said he had set out in his correspondence to our service dated 31 December 2019 that the first missing deposit was for a sum of £200, paid in at his local branch sometime in December 2012 and the third missing deposit was for a sum of £300, also paid in at his local branch in July 2014.
- Mr Z still maintained several letter's he'd sent in 2016 and 2017 had been ignored. He says the only response he received from PO was in 2019.
- Mr Z understands there to have been a problem with the PO's computer systems. He feels this may be of some relevance.
- Mr Z says his total loss is £750. But as the member of staff at his local branch failed to provide him with receipts and the investigator had erred by not acknowledging he'd provided an exact date and amount for the third missing deposit. He thinks at the very least, he should receive a refund of £300.

On 11 November 2021, I issued a provisional decision not upholding this complaint. For completeness, I repeat my provisional findings below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not intending to uphold it and I'll explain why.

Firstly, I appreciate Mr Z would like an in-depth investigation and explanation into what has happened. But it's worth noting that we are an informal dispute resolution service. My role here isn't to establish exactly what has happened. Presently, all I need to reach a decision on is whether or not it is fair and reasonable, in the circumstances of Mr Z's complaint, for PO to decline to investigate and refund the alleged missing cash deposits.

From what I've seen, it is clear, there has been variability in Mr Z's recollection of dates and sums disputed. Understandably so, as the events being complained of, span across several years – going as far back as 2012. I too recognise and am very sorry to hear of the loss of Mr Z's close family member. As well as the health concerns and difficulties that he has personally experienced over the preceding years. Nevertheless, these inconsistencies naturally raise a question about the reliability of Mr Z's testimony. Though I don't doubt Mr Z is honest in his belief about what has happened, I must give consideration to the possibility that he may be mistaken in his recollection of certain events. So, in the absence of any proof of deposits, where available, I've relied on the documentary evidence from the time of events in question, along with what Mr Z has said, to try and build the most accurate picture of the timeline of events.

Whilst a specific date has not been provided, Mr Z has told our service the first missing credit was deposited sometime in December 2012 and was for a sum of £200.

Mr Z has not provided a specific time or amount for the second deposit. However, having reviewed the evidence I think, on balance, it's most likely that the second missing credit was deposited sometime in April 2013 and was for a sum of £250. I say this because, Mr Z has provided a copy of a letter dated 13 May 2013 which he'd sent to the PO. The letter was a request for PO to send him his annual statement (which is usually produced and issued around that time). The letter also references his concern that he was not provided with a cash receipt for a deposit of £250 which he says he'd paid into his account when he visited his local branch the month before. I've reviewed the transaction history on Mr Z's account and there doesn't appear to be any cash deposits showing for April 2013. This reasonably leads me to believe, that on balance, this was the second payment that Mr Z alleges wasn't credited to his account.

Mr Z has told our service that he'd deposited the third missing amount of £300 on 28 July 2014.

So, whilst there's several pieces of correspondence between Mr Z and PO and Mr Z and our service in which he has indicated different dates between 2012 and 2015 for the disputed transactions; and he has cited differing amounts for his loss, which range between £750 and £1,000. The above suggests, most likely, Mr Z's total alleged loss is £750, with the first disputed transaction taking place in December 2012, the second in April 2013 and the last on 28 July 2014.

The relevant regulation that applies in the circumstances of Mr Z's complaint is the Payment Services Regulations 2009 (PSRs).

Section 59 of the PSRs says:

"(1) A payment service user is entitled to redress... only if it notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date..."

(2) Where the payment service provider has failed to provide or to make available information concerning the payment transactions...the payment service user is entitled to redress under the regulations referred to in paragraph (1) notwithstanding that the payment service user has failed to notify the payment service provider as mentioned in that paragraph."

This means that Mr Z had 13 months from the date of each missing cash deposit to raise it with PO. In Mr Z's case, this meant that he'd have to have raised the first incorrectly executed payment by January 2014; the second by May 2014; and the third by August 2015.

I'm satisfied the first contact PO received from Mr Z raising concerns about missing funds wasn't until several years later in May 2017, which is significantly beyond the 13-month time limit.

Whilst I've taken on board Mr Z's comments that he had written to PO several times and been ignored – I've seen no evidence of any letters that were sent or received by PO relating to missing credits prior to May 2017. I have seen a letter dated May 2013, but Mr Z has confirmed that at this point he was not aware of the missing credits, he was simply making a request for his annual statement to check that the money he'd deposited had credited his account.

The two letters Mr Z sent to PO in May 2017 cover;

- *his worry that a certain member of staff in his local branch (which has since closed) failed to deposit cash he'd paid in over the counter into his PO savings account;*
- *his concern that he wasn't provided with receipts;*
- *his fear his money may have been stolen.*

Mr Z asked PO to investigate and review deposits made across 2011 – 2016. At this stage he had not provided PO with a specific date and/or amount for each missing credit. He also stated that he found his annual statements to be unhelpful as they didn't show the dates and amounts of money going in. The letters did not contain any inference to having written to or the matter being raised with PO before – which I would've ordinarily expected to see had Mr Z raised it and not received a response.

I've considered the point Mr Z has made about only receiving statements yearly. Mr Z's account is a savings account and not one he often uses. So I think it ought to have been apparent to Mr Z from his statements that the disputed cash deposits had not been credited to his account. The statement covering the time period of the last disputed transaction was issued in May 2015 – yet Mr Z didn't raise the dispute until May 2017, which is two years later. I also note that Mr Z would've received a statement in between that time in May 2016. Whilst I note Mr Z has mentioned he has had long standing issues with his postal service, I'm satisfied, on balance, that he did receive his statements as he has referred to them in his letter to PO in May 2017 as being "unhelpful" and if he hadn't received them I think this is something he would have raised with PO (as he did in 2013).

I've reviewed the relevant yearly statement's which were sent to Mr Z's registered home address. I can see each statement clearly shows the balance of the account, and a small interest credit and tax debit. The basis of Mr Z's dispute was that his balance ought to have been somewhere around £7,750 to £7,900. I think it is reasonable to expect with an account with so few transactions on it, that Mr Z would notice sooner that the cash deposits he says he had made had not been applied to his account and that the balance of his account was below that which he expected.

Mr Z has expressed that he has had a very difficult time with a lot going on over the last few years. I've considered the various reasons Mr Z has provided but I'm still not persuaded that any of those reasons means that it's unfair for PO to rely on the relevant regulations or it's terms and conditions when declining to investigate and provide a refund for the alleged missing cash deposits. And I think Mr Z has had ample opportunity to raise a claim sooner than he did. Ultimately, PO made statements available and the timescale in which to bring a claim is contained within the terms and conditions of Mr Z's account. I know Mr Z will be disappointed but overall, I don't think the position PO have taken is unreasonable.

Part of Mr Z's complaint relates to his dissatisfaction with the service he has received from PO – specifically his belief that they ignored the letters he'd written to them before his letter of complaint in March 2019. I appreciate Mr Z says he wrote to PO several times between 2017 and 2019 but beyond his testimony the only documentary evidence of correspondence between Mr Z and PO I've seen is his letters in May 2017 about the missing deposits; and his complaint letter in March 2019.

I'm satisfied having seen PO's records that they did receive Mr Z's correspondence in May 2017 and attempted to contact him by phone. No response was received, so they wrote to Mr Z in June 2017 explaining they would need proof of deposit and the precise dates of the disputed transactions. To assist Mr Z, they also sent a listing of all transactional data on his savings account since 2013. PO has provided a copy of the letter it sent to Mr Z in June 2017. It is correctly addressed to Mr Z's registered address, so I'm satisfied PO did appropriately respond to Mr Z's letters. It appears Mr Z didn't receive PO's letter. It's quite possible, given the issues Mr Z says he has had over the years with his post that the letter didn't reach his address. But PO couldn't have possibly known that, and it would not be fair or reasonable to hold them responsible for any postal service failures or the possible actions of a nuisance tenant who has allegedly been responsible for other missing/damaged post.

Mr Z also made several submissions about the possible impact of error's with PO's computer systems, CCTV and other missing credit claims against his local branch. However, as I've concluded that Mr Z didn't raise his claim within the 13-month time limit, and PO are not required to investigate and provide a refund. I don't need to make a finding in relation to these matters as it doesn't make a difference to the outcome of this complaint.

Overall, I've considered whether there are any grounds – on a fair and reasonable basis – for me to consider that regulation 59 of PSRs shouldn't apply to Mr Z's situation. But I haven't seen anything which leads me to conclude there is a reasonable basis for doing so. I'm also satisfied PO appropriately responded to Mr Z's letters."

PO agreed with my provisional decision and had nothing further to add.

Mr Z didn't agree with my provisional decision and questions whether his appeal has been reviewed.

He says the following issues have not been addressed:

- deceit/negligence of the member of staff in his local PO branch, specifically their failure to provide him with deposit receipts; and
- the possible impact, on his loss, of the known PO computer system issues.

He also expressed his worry about our service not investigating and turning a “blind eye” to whether there were other reports of a similar nature against the implicated PO branch. Mr Z says he suspects bias.

Mr Z thinks ‘timing’ is a weak justification and one he does not accept. He makes the following points:

- His condition(s) have not been taken into consideration.
- He was expected to realise something was wrong before he in fact did.
- He contacted our service within 12 months of date of knowledge.
- The timing issue was addressed by a member of staff at our service in 2019 (when the complaint was brought to us) and his case was accepted under the given circumstances.
- The investigator who considered his complaint made no issue of the timing.
- Mr Z finds it suspicious that I've changed my mind as I told him during a telephone call that timing was not an issue in his case.

So, based on the above Mr Z says, in his view, excuses and reasons have been sought to not award him his loss.

Further, Mr Z says in 2017 when he wrote to PO he was suffering with health issues and was still unsure as he had several missing statements. He maintains that he did not receive a response from PO. Had he done; he would not have written to them again and would have brought the matter to our service or pursued it through the courts in 2017.

As both parties have now responded to my provisional findings it is appropriate to move to the final stage of our process. I will respond to Mr Z's points in my findings below.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, much of what Mr Z has said in response to my provisional decision has already been explored and explained in my provisional findings which I have outlined above and form part of this final decision.

I appreciate that Mr Z feels very strongly that his complaint should be upheld and naturally he is disappointed with the outcome I reached in my provisional decision. But as I've not been provided anything new (that is relevant) to consider, I've not been persuaded to alter my conclusions.

Firstly, I'd like to assure Mr Z that I've considered this complaint independently and without bias to any party involved. I've read carefully and taken into account all of the information provided by both parties. If I've not commented on something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of Mr Z's complaint – which is that PO has not investigated his missing cash deposits claim; has failed to provide a refund of the loss he says he has sustained and ignored his letters. This isn't intended as a courtesy to either party, but merely reflects my informal role in deciding what a fair and reasonable outcome is. And whilst I understand that Mr Z would like everything investigated and commented on – that isn't something that I feel is necessary to do. The purpose of my decision is simply to set out my conclusions and reasons for reaching them – not to provide an answer for every question raised.

But I think it would be helpful to clarify that there is a difference in the time limits that apply to making a complaint and bringing it to our service, and the time limits under the PSRs which apply to unauthorised – or incorrectly executed – transaction claims. So, Mr Z hasn't been provided with incorrect information. His 'complaint' that PO have not refunded or investigated his missing cash deposits and have ignored his letters has been brought to our service within the time limits that enable it to fall within our jurisdiction. But the issue is that his 'claim' has been raised with PO more than 13 months after the date of the original transactions. So for the reasons that I've explained in my provisional decision I don't think PO relying on reg 59 of the PSR's or the terms and conditions of Mr Z's account when reaching its decision to not investigate and provide a refund is unreasonable or unfair.

I note Mr Z says in 2017 he was suffering with health issues and was still unsure of the missing deposits as he had several missing statements. But I've already addressed these issues in my provisional decision, so I don't intend to repeat at length what I've already said. But ultimately, on balance, I think Mr Z did receive his statements and reasonably had the opportunity to raise a claim sooner.

Mr Z also hasn't said anything new, that I haven't already considered and commented on in my provisional decision in relation to him not receiving PO's letter in 2017. Of course, I accept it's entirely possible that Mr Z didn't get PO's letter. But I'm satisfied PO did send a letter to Mr Z in June 2017. And in any event, this still wouldn't change the outcome of this complaint as Mr Z hadn't raised his claim within 13 months of the original transactions and PO hadn't failed to provide or to make available information (statements) concerning the payment transactions.

I consider Mr Z's complaint about PO's branch staff's negligence in failing to provide him with cash deposit receipts intrinsically linked to his disputed transactions claim. As Mr Z says, but for this negligence he would not be struggling to prove his loss. Ultimately, what Mr Z wants is for PO to investigate and refund the loss he believes he has sustained due to the acts or omissions of the member of staff at his local PO branch. Likewise, concerns relating to other possible like claims or the impact of PO computer system errors, would also form part of an investigation into the validity of Mr Z's missing cash deposits claim, which under the terms of his savings account PO does not need to investigate as he isn't entitled to any form of refund or redress as his claim was raised more than 13 months after the dates of the disputed deposit transactions.

I'd also like to note that Mr Z has suggested that a particular PO employee might have acted dishonestly. He has shared that he fears his funds may have been stolen. If Mr H feels that a crime has taken place, he should report that to the police. I'm confident PO will co-operate with any police investigation.

Although I've thought about everything Mr Z has said, I've not been persuaded to alter my position on the matter. I'm aware Mr Z will be unhappy with my decision. However, he doesn't have to accept this decision and may pursue this matter through other avenues should he wish to do so, including in court, subject to any relevant time limits.

My final decision

My final decision is that I don't require Bank of Ireland (UK) Plc to do anything further to resolve Mr Z's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 27 December 2020.

Sonal Matharu
Ombudsman