

## **The complaint**

Mr B complains that after his account with Bank of Scotland plc ("BoS") was closed and the debt sold, payments made to the account were forwarded on to the debt collection business that BoS sold the debt to. Mr B says the money should've been returned to the sender.

## **What happened**

Mr B sent us evidence that his BoS account was closed on 21 October 2013. He said that some small payments made long after this had been redirected to the debt collection agency that his debt had been sold to. Mr B thought the money should've been sent back to where it came from. He has told us that these payments have led the debt collection agency to say that he has acknowledged this debt. He didn't think BoS should've passed this money over.

BoS sent us evidence of its internal procedures, which set out how payments made into accounts which have been the subject of a debt sale will be transferred to the business who bought the debt.

BoS said that it had received two payments to Mr B's account long after the account was closed, £10 on 19 December 2017 and £25 on 29 August 2018. Both of these payments were transferred by BoS to the debt collection business that BoS had sold the account to.

BoS said that it hasn't been the owner of the account since 2014, so it can't keep hold of any payments which credit this account. BoS said Mr B hadn't been in touch when either of these payments were made, and if he had, it would've asked him to contact the debt collector, to ask for the money to be returned. BoS said Mr B could still do that if he wanted to.

Our investigator didn't think this complaint should be upheld. She said that BoS had followed its own internal process, and she didn't think it had made a mistake.

Mr B didn't agree. He said that BoS was illegally forwarding money to other organisations when it had no business doing so. He said the money should've been returned to the sender. Mr B said that the sender should get their money back, and he should get compensation.

As no agreement was reached, this case was passed to me for a final decision.

## **My provisional decision**

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

Mr B ran up a debt on his account with BoS, which he wasn't able to clear. So, in 2013, BoS sold the debt to a third party. I think that when BoS did that, it was closing Mr B's account, under the terms of the agreement he had with BoS.

BoS says that the payments into the account, since the debt was sold, don't belong to it, and it has passed them to the third-party debt collection agency it sold the debt

to. But the terms of Mr B's account do set out what should happen to payments which are later made into an account that has been closed. The terms say this –

*15.8 - If someone sends a payment to your closed account, we will take reasonable steps to return the payment to the sender.*

I haven't been able to identify any term of the account which permits BoS to use payments which are made into a closed account, to cover the debt which was on the account when it was closed. I note that BoS has a right of set-off, but I don't think that a right of set-off both survives the closure and sale of the account, and in addition trumps the express provision on returning money to a third-party sender. I think that in this instance, passing this money on to the debt collector rather than trying to pass the money back to the sender instead, was a mistake.

I expect that, if the money was passed back, then the sender would most likely have paid Mr B a different way. So Mr B didn't get £35, which he would otherwise have had.

I can see Mr B has derived some benefit from this money, because it has been used to reduce his overall debt. But I also have to bear in mind that Mr B has told us he can't pay the rest of the debt. So a limited reduction in a debt that Mr B cannot otherwise clear, does seem to me to be of very little practical benefit to Mr B. And my current view, on balance, is that this money should not have been used in this way. For that reason, I think BoS should pay Mr B the £35 that was paid into his account, now.

Mr B also says that he hadn't been making payments, and indeed hadn't even spoken to the debt collector for some time. So it looks like the debt was quite old, and Mr B was trying to get it reduced. He may even have been seeking to argue that it was statute barred. But he says that these payments are being used by his debt collector as evidence that he has acknowledged this debt, and as a result, the debt collector is refusing to accept a smaller settlement amount. For that reason, I think that these two payments have caused Mr B some distress and inconvenience, so I think that BoS should pay Mr B £50 in compensation now.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both parties replied.

### **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.

BoS said that it would make the payments I'd suggested to Mr B.

BoS said it acknowledged that the outcome of this complaint wouldn't affect money held by the new owner of Mr B's debt, and that my decision didn't require it to do anything to influence how the new debt owner is handling this debt. BoS said it was happy to pay compensation of £50 to acknowledge the consequences of it passing on the £35, which I had described in the provisional decision.

It is correct to say that I'm not requiring BoS to contact the new debt owner in this case, and my decision is limited to the payment of compensation.

Mr B wanted to say that he had contacted the third party, and it had said it would not, under any circumstances, refund the money. He didn't know if the person who originally sent the money had followed up since.

Mr B said that the effect on his life of these small payments being passed over in his name has been significant, aside from the time he'd spent trying to put this right. So Mr B wanted me to tell BoS to pay more compensation. And he wanted me to tell Bos to contact the third party to explain that the payments made were wrongfully made in my name.

Mr B then wrote again to say the original offer from BoS was that it would reduce the amount due with the third party by approximately £160, and it had sent him a cheque for £200.

I think that the offer Mr B refers to here was made in a letter dated 12 November 2020, and it was made because BoS felt, looking at the conduct of his account before it was closed, that it should've closed his account sooner. I don't think this offer was made because BoS felt it owed this for passing on Mr B's payments to the new debt owner. I can see that this letter said Mr B's complaint on this point wasn't upheld.

I understand that BoS has reduced Mr B's debt by £106.30, which is in line with its offer, and sent him a cheque for £200. If Mr B hasn't yet cashed that, then it may no longer be valid, and if not, then he can ask BoS to reissue it.

I do understand that Mr B would like more compensation for this issue. But I don't think that I can hold BoS solely responsible for the problems that Mr B has told us he experienced after these payments were made. So I won't ask it to increase compensation in this case.

Mr B also wanted BoS to tell the new debt owner that these payments were wrongfully made in his name. I think that my decision makes clear that this is my finding. But I don't think that BoS has to contact the new debt owner about this. That's because Mr B can show this decision to the new debt owner, to explain the circumstances in which these payments were made, if he wishes.

### **My final decision**

My final decision is that Bank of Scotland plc must pay Mr B £85 in total, made up of the £35 that was paid into his account, and £50 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 October 2021.

Esther Absalom-Gough

**Ombudsman**