

The complaint

P, a partnership complains that in 1999, Bank of Scotland plc (BoS) opened the wrong account. P says that this led to significant difficulties and wants BoS to pay substantially more compensation than it has offered to date.

P is represented in its complaint by a partner, Mr S.

What happened

P operates as a letting agent. In July 2019, Mr S asked BoS to confirm in writing that it wasn't entitled to set-off monies held in P's client account as this was a requirement of the Letting Agent Code of Practice (the Code) in Scotland.

BoS responded in August 2019 saying that it couldn't provide the required confirmation as P had a business account and not a client account. In October 2019, BoS suggested that it open a Designated Client Account (DCA). As Mr S thought this would be administratively burdensome, he said he'd need to speak to P's clients.

Mr S says he tried to contact BoS after Christmas 2019. When someone rang back in early 2020, Mr S was told that his contact had left and that there was now a problem with opening the account due to the impact of the Covid-19 pandemic.

Mr S says this negatively affected P's application to be placed on the Scottish Letting Agent Register (the Register). He was deeply concerned and BoS offered £500 for any distress caused. BoS also wrote to the affected landlords and the Register to explain the difficulties P was facing because of BoS's mistake.

Mr S continued to ask BoS to review its position but says he didn't receive any reply until October 2021 when BoS restated the position it had previously maintained.

Mr S says he's suffered two years of distress, uncertainty and inconvenience and P's application to join the Register was refused due to being unable to provide evidence that P held a client account. Mr S says that P lost £9,000 income during this period.

The investigator thought that BoS had already done and offered enough to put things right. The investigator said that it would've been reasonable to expect P to try and open the client account sooner than it did and before BoS placed a hold on opening such accounts. The investigator agreed that BoS's mistake caused distress to P but that BoS had also tried to minimise the impact on P by writing to landlords and the Register. Overall, the investigator thought £500 was fair compensation.

Mr S disagrees with the investigator's view. He points out that the letters BoS sent to the landlords and the Register didn't help P at all. Mr S says that P couldn't mitigate its losses as it was waiting for the outcome of BoS's investigation into P's complaint. Mr S says he tried to contact BoS in early 2020 but his calls weren't returned. By the time he heard from BoS in May/June 2020, it was no longer possible to open the DCA due to the restrictions imposed by the Covid-19 pandemic.

Mr S says that P continued to try and open a client account in 2020 and 2021 but the pandemic stopped this from happening. P managed to open a client account with another provider in early 2021.

Mr S says BoS failed to correct its mistake despite saying a DCA would be opened to satisfy the requirements necessary to join the Register. Mr S says this resulted in significant financial loss and reputational damage as P couldn't act as a letting agent.

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.

I realise that I've summarised this complaint in less detail than the parties and I've done so using my own words. I've concentrated on what I consider to be the key issues. The rules that govern this service allow me to do so. But this doesn't mean I've not considered everything that both parties have given to me.

BoS agrees that it made a mistake so my decision focusses on whether its offer to pay £500 compensation goes far enough to put things right for P. It will disappoint P but I agree it's fair and I will explain why.

Mr S became aware of the problem with P's account in mid-2019. BoS told him in early August 2019 that it couldn't provide the confirmatory letter that he required as P's account was a business account rather than the client account Mr S thought had been opened many years before.

In October 2019, BoS explained to Mr S that P would need to open a DCA but Mr S was concerned that this would create problems for P, so he'd need to speak to his clients before deciding.

Although P may have found the requirements for setting up the DCA burdensome, this was the process that customers of BoS would have to follow. So, by around October 2019, Mr S should have had a clear idea of the steps P would need to take to open a DCA with BoS.

If P was unhappy with BoS's proposed solution, it could've tried to find an alternative one. It appears that bodies representing the interests of letting agents in Scotland made updates available to letting agents which included details of other banks providing client accounts and the platform that P ended up using in early 2021.

Although Mr S says made unsuccessful attempts to contact BoS in early 2020, given the urgency of needing to have a client account in place to ensure that P's application to join the Register was successful, I would've reasonably expected Mr S to act more quickly than he did.

It's very unfortunate that by the time Mr S spoke to BoS in around May/June 2020, the impact of the Covid -19 pandemic meant that BoS couldn't open the account P needed. But I don't think this detracts from the fact that Mr S knew of the problem in the middle of 2019 and could've taken steps to either open the DCA with BoS or find an alternative solution before the start of the pandemic.

I take on board what Mr S says about his attempts to contact BoS in early 2020. But again, as I've said above, having a client account was key to P's ability to act as letting

agent. By the time Mr S became aware of the problem with the account, he'd already submitted P's application to join the register. Without the DCA or a suitable client account, I think P should've reasonably been aware that its application to join the Register was likely to fail. In the circumstances, I consider it reasonable to have expected P to do more to mitigate its losses than it appears to have done.

I want to make it clear why I've referred to both the DCA and client account in my decision. The Code stipulates that the letting agent must *"hold client money in one or more separate and dedicated bank accounts...separate from your main business or private accounts."* And the letting agent must have written confirmation from their bank or building society to say that all the money in the account is client money and that the bank or building society is not entitled to use the money in that account to set-off any sum owed to the bank on any other of the letting agents accounts that the bank or building society holds. The DCA was the name of the client account that BoS offered but different banks might have offered other solutions.

I agree that BoS made a mistake and that this led to additional work and stress for P but for the reasons I've outlined above, I don't think I can hold BoS responsible for all the problems and financial loss that P faced in 2020 and 2021.

The compensation of £500 falls in the middle range of the type of award this service might make where the mistake has caused considerable distress and significant inconvenience. Our approach to awards like this is on our website. Overall, I consider BoS's offer to pay £500 compensation is fair and reasonable in the circumstances.

My final decision

I consider that BoS has already made an offer that is fair. So, my final decision is that Bank of Scotland plc should pay P £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 8 February 2023.

Gemma Bowen
Ombudsman