

The complaint

A pension scheme trust which I'll call 'C' complains that Bank of Scotland Plc ('BoS') didn't pay a cheque as expected and froze their account which caused them a financial loss.

The complaint is brought on C's behalf by their trustees Mr M and Mrs M. Mr and Mrs M are also represented by C's pension practitioner, which I'll call 'X'.

What happened

C holds a business account with BoS which was taken out in 1999. In line with pension scheme rules, any payments made by C need to be counter signed by a pension practitioner.

C told us:

- They tried to issue a cheque in December 2020 which wasn't honoured by BoS as the bank said it wasn't signed in accordance with the mandate.
- BoS has honored around 100 cheques which C has issued over the last eight years that wouldn't have been in accordance with the mandate details the bank said it held for C.
- X had requested changes to the mandate in 2003 due to a change of name which it didn't appear BoS had actioned. BoS said it didn't receive this request, but X had requested a change of address at the same time which was actioned.
- BoS had effectively 'frozen' their account as they could only make payments via cheque which meant C had to borrow money to pay their required invoices totaling around £23,000 and they also hadn't been able to make a planned investment of around £100,000.
- The mandate was now updated but C had been given incorrect information by BoS about what was needed to do this, which had caused them inconvenience.

BoS told us:

- The cheques C had issued weren't signed in accordance with the mandate it held on file, so it was right for it to decline them.
- It was C's responsibility to update it when any changes were needed, and it had no record of a request being made in 2009 when an existing signatory had retired.
- Mr M had told the bank C hadn't issued the cheque for the investment as their account was blocked so there was no point. Therefore, any losses C says it has incurred were speculative.

- It was C's decision to borrow around £23,000, they hadn't discussed this with the bank before taking out the loan, so it couldn't be held responsible for C's actions.
- It had apologised and paid £276 compensation to Mr M as C's trustee for the inconvenience and call costs incurred, which it felt was reasonable.

Our investigator recommended the complaint be upheld in part. She said:

- It was difficult to say when C's mandate was updated at the bank due to the time that had passed and because this was disputed by both parties.
- She thought that it was unfair for BoS to honour so many cheques and then decide in December 2020 that it wouldn't pay a cheque which had been signed in the same way for so long.
- It had taken too long for BoS to update C's mandate in 2021 as the trust was in regular contact with the bank and quickly provided any information that was required.
- She didn't think BoS had told C about their mandate being updated, which meant the trust didn't issue cheques for around nine months. When C was made aware, they made an investment for £120,000 and repaid their loan.
- She hadn't seen enough evidence to show that C had planned to make the investment in January 2021 so she couldn't award compensation for any financial loss from this. She also couldn't see that C had paid interest on the loan they had borrowed, so she couldn't ask for this to be refunded. However, she agreed C had been caused inconvenience from BoS's actions and recommended the bank pay the trust a further £500 compensation.

C didn't agree and asked for an ombudsman to review the complaint. They said:

- Mr M could claim trustee expenses which wouldn't have been incurred if BoS had updated its records correctly.
- They had various payments which needed to be made throughout 2021 when they were unable to issue cheques so Mr M as the trustee had no option but to take out a loan for C through his company and under the pension scheme regulations, interest must be payable.
- Historically, they had built up funds in the account held with BoS which had then been invested, and this is what they had done as soon as they were aware in September 2021 that they could now issue cheques from their account.

I issued a provisional decision on 6 January 2023. I said the following:

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've decided to uphold it in part. I'll explain why.

C says BoS treated them unfairly by not paying two cheques it issued in December 2020 and January 2021. However, the bank says this was because they weren't signed in accordance with the mandate it held on file. I've looked at the evidence from both parties and I recognise X's comment that they changed the mandate in 2003, and that BoS must have received this as it was at the same time as they

changed address and the bank had written to that address – but issue only appears to have arisen later in 2009 when a specific signatory retired from X.

I acknowledge that C believes BoS has acted negligently in not updating the mandate and that it should have contacted them to change this. However, the bank says it has no evidence of being notified of a mandate change in 2009 and neither C nor X have been able to show that this was sent either. And ultimately, it is the responsibility of the account holder to check that they have provided the bank with the relevant mandate information to ensure any payments can be made when requested.

BoS has told us that it is unable to provide a copy of the mandate which was in place when the December and January cheques were returned – as this was updated in July 2021 and old mandates are destroyed once a new one is created. So it would be difficult for me to say that BoS did anything wrong by declining the two cheques in question which weren't made in line with the mandate it held on file.

However, both parties agree that C has issued numerous cheques since the retirement of X's mandate signatory in 2009, and many of these have been for a high value which would have required them to counter sign the cheque. BoS told us that not all the cheques it receives are checked against the mandate and this is on more of an ad-hoc basis, and I think this process is reasonable. But I don't think it's fair that C was able to issue cheques over a period of eleven years – including when they were for a significant value – without a single mandate check being carried out by the bank until 2020.

I say this because, BoS says that C didn't update their mandate as it has no record of this on file. This means that the bank shouldn't have paid out on any of the cheques issued by C since 2009 as none of them would have had the correct authority. I recognise that C hasn't been caused a financial loss as they wanted the cheques to be paid, so I don't think compensation is warranted for these errors. However, whilst I think BoS made an error in paying the earlier cheques, I think it was reasonable for them to decline the December 2020 and January 2021 cheques as these weren't in line with the mandate it held on file. And just because BoS made a mistake in paying the other cheques, doesn't mean it was required to keep making the same error.

I've seen that once C was made aware of the issue with the mandate, they looked to put things right with the bank as soon as possible. However, there were delays, issues with the documentation and periods where C was told they would receive a call back which didn't happen. I don't think BoS treated C fairly as it took from January 2021 to July 2021 for the bank to update the mandate, and I haven't seen evidence from the bank which explains why it took so long to make the change. I also think C made it clear to BoS that they had no other way to make their required payments and this delay was causing them inconvenience. BoS since has apologised and agreed that its service could have been better here.

C told us that they had to borrow around £23,000 as they couldn't make their required payments from their account from January 2021 to October 2021. They explained that they took out a loan from the sponsoring employer at an interest rate of 8% as this was the rate used as 'statutory interest' for business-to-business lending on the HMRC website. X also told us that as a pension scheme account, C was required by regulation to pay interest on all pension scheme borrowing, although there wasn't a set rate which needed to be applied which is why the sponsoring employer had used the 'statutory interest' rate. BoS said it didn't think it should be liable for any loan repayments as C had chosen to take out the loan

themselves. But I don't agree.

I've looked at the evidence from both parties and I've seen that C made it clear that they needed to make payments from their account. I've also seen that the trustees repeatedly contacted the bank to say that they couldn't make payments without the mandate being updated and explained that the trust was being caused reputational damage as their cheques had bounced to the same business – and I recognise how concerning this would have been for the trust and why they felt they needed to resolve this issue quickly - but I can't see that BoS offered to assist C in anyway.

As a trustee of the pension scheme, I think it was reasonable that Mr M wanted to mitigate any losses or reputational damage to C – given that several cheques had bounced to the same company already. And as a service, we would expect a complainant to look to mitigate any losses where possible. I also think C has provided a reasonable explanation for the rate applied to the borrowing – which was less than the rate offered by another bank at the time – and why this needed to be charged. So I think it's reasonable for BoS to cover the interest payments for the period in question and for the amount of borrowing required to cover the required repayments.

C told us that it needed to borrow around £23,000 between February 2021 to October 2021 and the interest payable on that period totalled £976.88. However, I'm not persuaded that's a fair amount. I say this because, I've seen evidence that BoS made C aware in July 2021 both in writing and by phone, that the mandate on the account had been updated and they could now issue cheques. So I think the interest should be payable from 3 February 2021 when the agreement was signed until 31st July 2021 to allow for the time it would have taken for C to receive the letter and repay the loan.

C has provided a list of 17 payments it needed to make whilst it couldn't issue cheques from its account – however only sixteen of these were due where I think C wasn't reasonably able to make the cheque payments. I've also seen that C's invoices were payable throughout the period to July 2021, so I think it's reasonable for BoS to refund the interest from the date of each individual invoices to the 31 July 2021. Although C would need to provide the evidence to BoS of the invoices which were payable and the date that these were paid so the bank can provide this refund as these were paid through Mr M's third-party company.

C told us that as a result of the bank's actions, they were unable to make their investment of £100,000 and had been caused a financial loss - but I'm not persuaded that's the case. Mr M has provided a cheque stub (ending 173) which he says shows C intended to make the investment and therefore should be compensated for the loss of any return they would have made. However, the cheque stub Mr M has provided is hand-written and this information could have been completed at any point and made payable to anyone retrospectively so it isn't sufficient to show that the investment would have been made at this point.

I haven't seen any evidence that C attempted to make the payment for the investment and that this was returned by the bank – in the same way that the other cheques were returned. I also think it's worth noting that Mr M has repeatedly told this service that cheque was never actually written to make the £100,000 investment as there was no point as the account was blocked. He also told the bank the same information in February 2022 which was recorded in its Final Response Letter.

Furthermore, I've seen C's account statements from January 2021 at the time the company said they intended to make the £100,000 investment. However, the account balance wasn't sufficient at that time to make this payment as C had paid out other cheques around the same time. And although C says that the cheque ending 173 was written but couldn't be paid due to the issues with the mandate, later issue cheques, ending 175 and 178 were written, issued and debited C's account after the date of the investment cheque. So if C always intended to make the investment but was unable to do so due to the mandate issues, it's unclear why they chose to issue cheques after this date - because based on C's logic, these wouldn't have been paid either.

I recognise C contacted X in January to say that they were unable to make investments and that they made the investment as soon as they could, once they were comfortable the account mandate had been updated. However, there isn't sufficient supporting evidence which shows that C intended to make an investment on a specific date, or for a specific amount. So based on what I've seen I'm not persuaded C intended to make the investment at the time that they've said, and therefore I won't be recommending the bank compensate them for the financial loss.

Putting things right

Overall, I think C has been caused inconvenience by BoS's actions in not reviewing their cheques for around eleven years and then deciding not to pay two cheques after such a significant period. I also don't think BoS treated C fairly in how it dealt with the mandate change after it became aware of the previous signatory had retired and the impact on C as they were only able to make payments by cheque.

I can see that C has told us that it doesn't think that the investigator's recommendation for a further £500 compensation is enough for the time they've spent to resolve the complaint. However, this service doesn't look at an hourly rate when making awards, we look at the complaint holistically and consider the wider impact of any inconvenience caused. So to put things right, I think BoS should:

- Refund the loan interest incurred by C for each of the invoices from the date they were paid to 31 July 2021. Interest should be at a rate of 8% simple.
- Pay C £500 compensation for the inconvenience caused in addition to the £276 paid to Mr M. It is open to the trustees to decide if they wish to use this to pay Mr M's expenses if they feel this is appropriate.

I invited C and BOS to give me any more evidence and information they wanted me to consider before issuing my final decision. BOS didn't have anything further to add but requested C provide evidence of the interest they had incurred so this could be refunded.

C didn't agree. They said in summary:

- They believed the cheques honoured by the bank were in line with the mandate, so it was inappropriate for the bank to decline them. They also say the signatory changed in 2003 not 2009.
- They hadn't received the letter in July 2021, so they felt the loan interest should be payable until October 2021.
- It is unfair to say that C had no intention of making the £100,000 investment when it

said would, their account had never been overdrawn so they would have had enough funds to over the investment and other payment. They also feel it is only fair for BOS to cover the loss of investment.

- As the Pension Scheme Administrator Mr M was permitted to charge for extra costs incurred not expenses which he said totaled around £8,500 for dealing with the complaint.

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, I've reached the same conclusion as I did in my provisional decision.

I acknowledge Mr M feels strongly about what's happened. He's provided a lot of information and testimony in support of C's complaint. I've read and considered everything Mr M has provided, however, in this decision I've not commented on each and every point he's raised, but I assure Mr M I have considered everything. My decision focuses on what I consider to be the key points. Our rules entitle me to do this, and it simply reflects the informal nature of this service.

Mr M has repeated that he feels BOS didn't treat C fairly by not paying the cheques they issued in December 2020 and January 2021. However, as I explained in my provisional decision, I do think the bank made an error with the pension scheme cheques. But as BOS has told us the mandate it held was effectively incorrect from 2009, it shouldn't have paid any of the cheques prior to this. I recognise that Mr M feels it's unacceptable for the bank not to have the records he says are accurate. However, it's not the role of this service to fine or punish the bank for making a mistake. We look at putting a complaint back in the position they would have been had the mistake not occurred, which is why I have recommended that the bank cover C's loan costs for example.

Mr M says that he wants the loan repayments paid between February and October as that's when he repaid C's loan. He also says that he doesn't accept that the letter was sent by the bank in July as there isn't a signature saying it was received on C's behalf. However, I'm satisfied based on the evidence I've seen that C ought reasonably to have been aware in July 2021, that the issues with their mandate had been resolved and they could issue cheques and therefore repay the outstanding loan before the end of the month. Just because C chose not to repay the loan until October, doesn't mean that BOS should be held responsible for the delay of several months.

I recognise Mr M says that C always had the intention of making the £100,000 investment at the time they said. I also recognise that Mr M says funds would always be credited to C's account if there wasn't enough to cover any repayments. However, this service is evidence based, and from the evidence available I'm not persuaded C intended to make the investment at that time. Therefore any loss C says it would have made had it been able to invest would be speculative, and I don't think it would be fair to make the award Mr M is seeking. Nor can I accept that the investment would have been made simply because the service has been told after the event that this was the case.

Mr M told us that as the scheme administrator, he is able to charge for the costs involved for the extra work as a result of the complaint. I acknowledge this may be the case, however this service doesn't make awards based on an hourly rate, nor does it award compensation for bringing a complaint to this service or providing the information required as part of our

investigation. To assess the level of any costs, I need to compare what actually happened with what would have happened in the absence of the bank's failure.

For this reason, I can't agree with the cost figures that Mr M has provided as I don't think they are reasonable in relation to the circumstances of the complaint. I have considered the inconvenience caused to C and awarded a further £500 compensation in addition to the £276 already paid by the bank - which I believe is reasonable under the circumstances. I've also explained that it is the trustee's decision on whether or not it's uses the compensation to pay Mr M's costs as he says these were incurred on behalf of the trust.

So whilst I have considered Mr M's comments in response to my provisional decision, my decision remains the same, in that BOS should pay C an additional £500 compensation and refund the loan interest incurred by C for each of the invoices from the date they were paid to 31 July 2021 plus 8% simple interest. C should supply evidence to BOS of the invoices and loan interest incurred by the trust so that the bank can arrange for a refund.

My final decision

My final decision is that I uphold this complaint in part. I direct Bank of Scotland Plc to do the following:

- Refund the loan interest incurred by C for each of the invoices from the date they were paid to 31 July 2021. Interest should be at a rate of 8% simple. C will provide evidence of the invoices and interest payable so the bank can undertake its calculations.
- Pay C £500 compensation for the inconvenience caused in addition to the £276 paid to Mr M. It is open to the trustees to decide if they wish to use this to pay Mr M's expenses if they feel this is appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 20 February 2023.

Jenny Lomax
Ombudsman