

## The complaint

P complains about Probitas Fedelis Limited's (Probitas) failure to return funds that they were holding on its behalf.

In bringing this complaint P is represented by its director who I refer to as Mr K

## What happened

The background to this complaint is well known to the parties so, I won't repeat it in detail.

Briefly, Mr K has told us that:

- P held an account with Probitas which contained funds belonging to its clients.
- In April 2022, P submitted a request to Probitas to withdraw the full amount of EUR 74,900.
- As its request hadn't been dealt with promptly, P contacted the Business Development Manager at Probitas to see whether he could help. But P received no meaningful response.
- On 5 July 2022, Probitas wrote to P to say that it intended to close P's account: "*as services are no longer provided*".
- Probitas said that in order for them to close P's account, part of their closing down procedure was such that they required a fully updated Know Your Customer (KYC) check to be completed on P. So, they asked P for various items of information including:
  - A Certificate of Incorporation
  - Memorandum and Articles of Association
  - Proof of Address.

In addition, Probitas explained that P needed to provide them with a EUR account in P's name or local GBP account so that the account balance could be returned to it. They also said they were looking to finalise the process as soon as possible.

On 20 July 2022 P wrote to Probitas enclosing the documents they'd asked for to complete the KYC and closure process and return its funds.

On 25 July 2022 Probitas acknowledged receiving the documents and added that: "*the bank will return the funds directly to you after they review the documents*".

But to date the funds have not been returned. And on querying the reasons for the delay, on 8 August 2022 Probitas told P that:

*"it's the bank that holds your funds"*

Giving details of the bank in question Probitas added:

*“The bank requested KYC for your company for review. We provided it to the bank and they are still reviewing it. The issue is that they are taking ages to finish the checking process and release the funds. As we agreed please ask directly to the bank what is happening.”*

The bank referred to is Probitas' bank. In response to their suggestion P told Probitas it was their responsibility to communicate with their bank and revert to P.

As P's still hasn't had its funds returned, on its behalf. Mr K brought the complaint to this service.

On 16 January 2023 we asked Probitas to send us their response to the complaint so that we could look into it. We asked for this to be done by 30 January 2023.

On 18 and 30 January 2023 our investigator contacted Probitas also and asked them for information to help him investigate the complaint.

On 17 February 2023 our investigator chased Probitas for their response to the complaint and asked Probitas to provide their response by 24 February 2023. Probitas did not reply and still haven't done so.

He said that since there's been no information from Probitas regarding P's complaint, he's had to rely on the information available, which is enough to persuade him that Probitas is in error and needs to put things right. He said P's relationship is with Probitas and not Probitas' bank. Therefore, it's for Probitas to return P's funds to it.

So the investigator recommended that Probitas return to P the EUR 74,900 that is being held. And furthermore it also should pay P £350 for the impact and inconvenience caused by the delay.

P accepted the investigator's opinion. Probitas, on the other hand haven't responded.

### **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 note P's evidence that it had attempted to withdraw the EUR 74,900 from Probitas in April 2022 and although similar request in the past had been dealt with promptly this request was not.

But Probitas' letter dated 5 July 2022 explained that P's account was being closed because such services were no longer being provided. And I note they explained, the information they needed from P – principally KYC information in order to complete the closure process and return the account balance of EUR 74,900 to P.

From the available evidence, I am satisfied P provided the information Probitas asked for. And although Probitas acknowledge receiving the information, P has yet to receive its funds.

I note P has been told the failure lies with Probitas' bank and that P should contact them.

But as the investigator pointed out, and I agree, P's relationship is with Probitas not their bank. So, I do not find it is P's responsibility to contact Probitas' bank to determine why there has been the delay in returning its funds.

Beyond what Probitas has told P we've no information as to why Probitas have not returned P's funds. We've had no communication from them putting their case directly despite repeated requests.

Mr K has explained that the money that's being held belong to P's clients. And Probitas' failure to return it has caused inconvenience because it cannot, in turn return the funds to its clients.

Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (FSMA) and in rules known as the Dispute Resolution Rules (DISP) written by the Financial Conduct Authority (FCA).

Within these rules DISP 3.5.9 says that the Ombudsman may:

"(3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested"

DISP 3.5.14 goes on to say:

"If a respondent fails to comply with a time limit, the Ombudsman may:

(1) proceed with consideration of the complaint"

To date no response has been received from Probitas to the various requests by this service to assist our investigation into this case. And so, like the investigator, I have to base my decision on the available evidence.

That evidence confirms that in response to Probitas' request for the documents noted above to help it close P's account and return its funds, P responded on 20 July 2022 and gave them the information they requested. Probitas acknowledged receiving it but has not returned P's funds.

### **Putting things right**

I find therefore, that Probitas have treated P unfairly by their delay in returning to P the funds belonging to it. I'm persuaded also that the delay has caused P inconvenience for which it should also be compensated

### **My final decision**

For the reasons explained above I uphold this complaint. In full and final settlement, I recommend that Probitas Fidelis Limited:

- return to P the full balance in P's account of EUR 74,900
- Pay £350 compensation to P for the inconvenience Probitas Fidelis Limited's delay to date has caused to P.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 11 July 2023.

Asher Gordon  
**Ombudsman**