

The complaint

D complains Bank of Scotland Plc provided incorrect information and a poor service when he asked it to supply a letter.

D is represented by Mr P, a director.

What happened

The facts of the complaint are well known to both parties, so I will only provide a summary of the key points.

Mr P says in August 2022 D entered into a financial arrangement with a third party. This involved the third party supplying a letter for guarantee for €85,000,000 which was to be followed by a line of credit for €67,500,000. Mr P says these funds would be sent by an overseas investor and they had been secured for a housing project.

As part of this arrangement Mr P says he contacted BoS to ask if it could receive a bank guarantee in order for funds to be paid into D's account. Essentially, D required BoS to confirm it could securely hold the funds and wouldn't make any claims on it. Mr P says he was informed a letter to this effect could be issued.

BoS says initially it was believed Mr P required a letter of guarantee. However, as BoS doesn't provide these, it explained it could provide a letter of reference to Mr P. But this wasn't sufficient for D's purposes. Mr P contacted multiple BoS departments on 29 September 2022, 30 September 2022, 3 October 2022 and 4 October 2022 to try and secure the confirmation letter he needed. Mr P also prepared a letter for BoS which met the requirements D had for this business agreement. Mr P asked for this to be signed by BoS, but it explained this would not be possible. Mr P raised a formal complaint about the issues he had in obtaining the letter D required.

As already explained by our service D was issued with multiple final response letters. In summary these apologised for any confusion caused by Mr P's dealings with various BoS members of staff, but that it would not be able to provide the confirmation letter D required. BoS offered D £250 in recognition of the impact the poor communication had on D.

Mr P remained unhappy and referred his complaint to our service. Mr P explained the financial arrangement had been seriously delayed and D's losses were around €900,000, as D had made an advance fee payment based on the business deal concluding and the line of credit being in place. Mr P says the third party pulled out of the arrangement and refused to refund the fee he paid.

BoS initially said D's complaint was not one we could consider as Mr P had referred it to our service too late. However, an ombudsman reviewed the jurisdiction aspect of the complaint and found that D's complaint was one we could consider.

An Investigator then reviewed the merits of the complaint and in summary, made the following findings:

- D had made the advance fee payment before Mr P discussed D's requirements with BoS.
- It was for Mr P to clearly establish what BoS was able to provide in relation to the business arrangement before he pursued it.
- The account block was fair and in line with the account terms and conditions.
- The £250 compensation offered by BoS was appropriate in light of the inconsistent and unclear information Mr P says he received.
- BoS isn't liable for the advance fee D has now lost.

Mr P disagreed with the findings. Mr P explained his complaint was about a lack of duty of care provided to him by BoS. Mr P says he was assured the credit line could be received by D's account and there were no limits on the account. Mr P says the constant misinformation and lack of clarity from BoS has resulted in significant losses for D.

As no agreement could be reached the complaint was referred to an ombudsman for a final decision.

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.

Firstly, I'm aware that I've only summarised Mr P's complaint points. No discourtesy is intended by this. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. I can assure Mr P that I have carefully considered his detailed submissions.

As part of Mr P's complaint there has been reference to the potential for the financial arrangement D was about to enter as being a scam. However, Mr P hasn't pursued his complaint at this angle, and his focus is on BoS's handling of his request and D's account. Mr P's comments suggest D is obtaining legal advice about the financial arrangement that D was due to enter and its decision not to refund the advance fee paid. I won't be addressing these issues in my final decision and D should continue to obtain separate advice about this aspect of the transaction.

I also note D's account was closed by BoS in February 2023. If Mr P has any concerns about this, he will need to raise a separate complaint with BoS.

The issue at the heart of D's current complaint is BoS's failure to provide what Mr P has termed a letter of guarantee. Mr P has explained this letter was to be provided to the third-party D was dealing with to assure it that D's account could receive the credit line that had been negotiated and ensure the account wasn't 'encumbered' during the period the promised funds were within it.

I've thought carefully about D's request and the information it received from BoS. It's not in dispute that this wasn't a standard request for BoS – it seems initially BoS staff thought Mr P was asked for a letter of guarantee. However, it seems D's request was quite specific, and Mr P says he sent a copy of what was exactly required to BoS and offered to discuss D's exact requirements.

BoS accepts that the specifics of D's request weren't clearly picked up by its staff. It seems there was a period of confusion and inconsistency – hence Mr P's comments that he was assured that D's request could be met. However, the evidence I've seen from BoS shows

that once BoS had a better understanding of D's request it was properly reviewed by its legal team and senior managers. This review clearly established that BoS wouldn't have been in a position to provide the assurances in writing that D required.

I appreciate this process must've been very frustrating for Mr P – especially given his comments about the time taken to secure the funding for D. However, given the funds involved and the scale of the business venture D was about to undertake I think it would've been reasonable for there to have been engagement with BoS at an earlier stage about what business services it could offer to D.

Mr P says BoS has failed in its duty of care to D. I understand Mr P's perspective on this, but the terms and conditions of D's account set out BoS's duties, as well as D's. I've considered these in light of Mr P's comments, and I'm satisfied BoS's decision is in keeping with these terms.

As part of D's complaint Mr P has detailed the advance fee paid by D to the third party as a loss that BoS is responsible for. I've considered the timeline of events based on the information provided by Mr P and BoS to establish whether BoS lack of clarity around the confirmation D required had a financial impact on D. The evidence I've seen shows D made payments to the relevant third party on 19 August 2022 and 1 September 2022. BoS was contacted about the pending credit line after these payments had been made.

Based on this timeline, I can't say that BoS's miscommunication is responsible for the losses Mr P says D has incurred. I appreciate Mr P's comments about the contract D had with the third party and the legal advice he is now seeking, but when looking at BoS's role in the situation I don't think it can fairly or reasonably be held responsible for the breakdown in D's venture.

Mr P says the offer of £250 compensation from BoS for its poor communication is insulting. I must highlight that because D is a separate legal entity to Mr P, I must consider if the award for inconvenience experienced by the company is appropriate, and not Mr P personally. Further, while the compensation can represent the inconvenience of the time one of its directors spent away from the business, it isn't intended to compensate Mr P for his personal experience of dealing with BoS.

Reaching an award for distress and inconvenience is seldom straightforward. The issues involved are subjective by their very nature and the impact can be difficult to determine. Our awards are not intended to be punitive for businesses and their fundamental aim is to recognise the impact on a customer where there have been shortcomings. In D's case I think £250 accurately reflects the issues between it and BoS and I'm not persuaded further compensation is necessary.

I've also considered BoS's handling of the account in general. I can see a block was placed on D's account in October 2022. Mr P believes these steps were taken as D's business name was used by scammers and a warning about D was issued on the FCA website.

As a UK financial business, BoS is strictly regulated and must take certain actions in order to meet its legal and regulatory obligations. It's also required to carry out ongoing monitoring of an existing business relationship. This includes reviewing account activity. That sometimes means BoS needs to restrict customers' accounts. BoS has explained and given me information in confidence, which our rules allow, to show why it reviewed D's account. Having carefully considered this, I'm satisfied BoS took these actions in line with the obligations it must adhere to.

I'm sorry this isn't the outcome Mr P hoped for and I know Mr P will be disappointed with the decision I've reached, but I hope it provides some clarity around why I won't be asking BoS to take any further action or compensate D.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 3 January 2025.

Chandni Green
Ombudsman