

The complaint

Mr R complains that Bank of Scotland plc (BoS) allowed him to withdraw money from a blocked account causing him to incur a large amount of legal fees in respect of divorce proceedings.

What happened

In November 2021 a block was put on transactions from a joint account with BoS at the request of both parties to the account. This was to protect the monies from being removed by Mr R or his ex-wife in respect of impending divorce proceedings. Mr R says he visited the bank regularly after that to check the block still applied. In June 2023, having made enquiries, he found that he would be allowed to transfer monies out of the account. He decided to close the account and move the monies to a “safe” account so that his ex-wife would not be able to access the account and remove the funds.

As a result Mr R found that he was served with proceedings. And he had to attend court to explain his conduct, and provide undertakings concerning the monies. He had to employ a solicitor and incurred, initially, over £16,000 of legal fees.

BoS admitted that it had made an error. It explained that there was a block in the account but that the advisers involved weren't aware that there was a dispute. So they allowed Mr R to withdraw the funds. It paid Mr R £350 for his distress and inconvenience and also contributed over £8,200 towards his legal fees.

Mr R says his legal fees are now in excess of £40,000 and that his solicitor has told him that he might be liable to have a costs order against him in respect of the other party's costs. BoS felt that its contribution towards Mr R's costs was reasonable and that it couldn't consider wider legal costs incurred which were not directly associated with its error.

On referral to the Financial Ombudsman Service, our Investigator said that BoS's response to Mr R's complaint was reasonable. And that ultimately it was his choice to move the money.

Mr R did not accept this, pointing out that he had incurred very little legal costs up until the time of BoS's error, and that it had only paid a small amount of his legal costs. He also pointed out that he had a block on an account with another bank and that that block had been maintained by that bank.

The matter has been passed to me for an Ombudsman's consideration.

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, according to BoS's records, there was a block put on the account in November 2021. For some reason, and I'm not clear why, the adviser and the branch manager were unaware

that there was a dispute. So as the monies in the account were being paid into an account in Mr R's sole name, the block was overridden.

I can understand why Mr R was disturbed to find that his ex-wife potentially had access to the money, which was a substantial amount. But he didn't have to remove the money himself and as I understand that relations between the parties were far from amicable I think it's fair to say that he could have expected a reaction, albeit not the one he suffered. I appreciate that he felt that the block wasn't being applied properly. However, he had previously consulted a solicitor and could have asked for advice about what to do, rather than moving the monies himself without notice. Or he could have asked BoS to confirm that the block applied, and that neither party would be able to move the monies.

I have noted Mr R's recent further notes. This wasn't a case of the block not applying or asking for it to be re-blocked. Rather I understand that the block was overridden by BoS's adviser.

From BoS's point of view, it's clear that there was an error on its part in either not recording the position of the parties properly or in not noticing that there was a dispute. If the parties to an account have frozen it so that neither party can have access, they should expect the bank to honour that. As a result, BoS paid Mr R £350 compensation for his distress and inconvenience. And it paid over £8,200 towards his legal fees.

Given that there was an error by BoS, I have to assess whether the compensation paid was reasonable. The immediate result is that proceedings were served on him and he had to use a solicitor to represent him in those proceedings. I appreciate that Mr R says that it has caused financial problems for him, and problems with his mental health. But I think it was fair that BoS paid the compensation that it did in respect of his distress and inconvenience. And that it paid towards his legal fees.

Regrettably divorce proceedings can end up costing the parties a great deal when they are in dispute. I confirm I've taken account of what Mr R said in his recent notes about the divorce proceedings. I don't know what all the costs Mr R says he has incurred relate to, but I think it's likely that they concern wider issues in the divorce proceedings rather than just the moving of the monies. So I think it reasonable that BoS should pay towards the cost of Mr R being represented for the purpose of the proceedings concerning the moving of the monies. I don't think it would be reasonable to expect BoS to contribute further towards those costs.

So I think that overall, BoS recognised its error which contributed to Mr R having the proceedings served on him. And in paying the amount it did for distress and inconvenience and towards his legal costs I think that BoS acted fairly and reasonably in dealing with Mr R's complaint.

My final decision

I don't uphold the complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 January 2025.

Ray Lawley
Ombudsman