

## **complaint**

Mrs M complains about the service she received from Bank of Ireland (UK) Plc (BOI) following the death of her father (S). She also complains that BOI allowed a cheque drawn on S's account to be represented and paid after he had passed away.

## **background**

The adjudicator's background summary covered all the relevant facts and is known to both Mrs M and BOI, so I won't repeat it in any great detail. If I've not mentioned something it's not because I've ignored it, but because I don't think it's relevant to the issues.

S passed away on the 7 November 2017. Prior to his death he wrote 2 cheques on his 'Property Account' both made payable to a third party 'A'. The cheques were signed and the account was in S's sole name. The first was for £60,000 and dated the 5 August 2017. It was cleared and paid to A. The second cheque was for £100,000, dated the 1 November 2017 and returned 'refer to drawer' as there were insufficient funds in the account when it was presented. Mr S's wife then deposited £1,000 into S's property account and the second cheque was re-presented, cleared, and the funds paid to A on the 16 November 2017.

BOI was advised that S had passed away on the 7 December 2017. Mrs M took out a Grant of Probate as one of the Executrixes on 15 August 2018. The other Executrix, S's wife, renounced Probate. Mrs M believes BOI would have known S had passed away and as such ought not to have allowed the second cheque to be re-presented. She feels BOI would have been told by S's wife of that fact when she attended a meeting in branch with her daughter shortly after S had passed away. She does not believe the cheque was written out by S and is also unhappy at the way in which she was treated by BOI.

BOI rejected Mrs M's complaint. They argue that they allowed the re-presentation of the second cheque as soon as the account was in funds when they were unaware that S had passed away. And further that they were simply following an authorised payment instruction from S. They do accept that Mrs M asked for information about S's property account and the joint account he held with his wife, but said they couldn't provide information in relation to the former, because when she asked for it she wasn't in receipt of a Grant of Probate confirming her appointment as an Executrix. And they couldn't disclose details of the joint account because on death it had been transferred into S's wife's sole name.

Mrs M was unhappy with BOI's response and so the adjudicator looked into the complaint but didn't think BOI had acted unfairly. As Mrs M didn't agree, the complaint has been passed to me for a final decision.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. The role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where it is appropriate so to do. I need to consider whether BOI acted fairly and reasonably in its dealings with Mrs M. I take into account both BOI's view and that of Mrs M. My aim is not to address every single point which might be raised, rather to reach a fair and reasonable decision based on the evidence before me. Where that evidence is incomplete, inconclusive or contradictory, then I have to come to a decision on the balance of probabilities – in other words, I consider what

is more likely to have happened in the light of the available evidence and the wider circumstances of the case.

This is a very unfortunate situation and I do understand Mrs M's concerns. But an analysis of the evidence does confirm that BOI have not acted unfairly. I know Mrs M feels that BOI knew S had passed away, but there is simply no evidence of that. To the contrary BOI say that they were not aware of his passing until the 7 December and I have no reason to disbelieve them since they have recorded the date they were advised. Mrs M however is simply assuming they would have known, but has no direct evidence to support that.

Having made that finding, I turn to the signature on the cheques. Both signatures are similar and there is no evidence to say that it was not S who signed them. Mr S's wife was perfectly entitled to make a deposit to S's property account and I can't say BOI acted unfairly in accepting it as they did not know S had passed away. Having put his property account into a position where the £100,000 could then be honoured, allowing it to be re-presented, was quite normal banking practice as BOI were under the impression S remained alive and wished the cheque to be re-presented since he had not called to stop it. They were entitled to work on the basis that there remained a valid authorised payment instruction from S.

Turning to the complaint that BOI have treated Mrs M badly, I can't find any evidence that they have done so. I accept that Mrs M was appointed as an Executrix in S's Will, but her appointment only takes effect upon the Grant of Probate being issued. Until that time BOI were perfectly entitled not to discuss any aspect of S's banking with her. And it is clear that BOI were aware of a potential dispute between Mrs M and S's wife, so I think they acted reasonably in being very careful about disclosing information and by referring it to their legal department, with whom Mrs M's lawyers were able to correspond.

So, I know Mrs M will be disappointed but I have come to the same conclusion as the adjudicator and I can't say BOI have acted unfairly.

### **my final decision**

For the reasons set out above I do not uphold the complaint against from Bank of Ireland (UK) Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 9 April 2020.

Jonathan Willis  
**ombudsman**