

## **complaint**

Mr Y complains that Duncan Lawrie Limited (DLL):

- Disclosed his account information to a third party without his authority.
- Invested in the JP Morgan Euro Liquidity Fund (the JPM fund) without authority.
- Hasn't disclosed details of all accounts held by his father.
- Invested in Blanc De Bierge shares, which has caused a loss of £200,000.

## **background**

I issued a provisional decision about this complaint on 9 February 2017. I said DLL had accepted someone else had seen Mr Y's account. And I thought the £150 suggested by the adjudicator for the trouble and upset caused by this was reasonable.

I didn't think the other complaints were ones we were able to consider as they were about accounts that belonged to Mr Y's father, Mr G. And as he had died the only person who could bring a complaint about them was the executor of Mr G's estate. I also said I thought the complaint about the Blanc de Bierge shares had been made too late which was another reason I couldn't consider it.

I gave both parties the opportunity of responding. Duncan Lawrie agreed with my provisional decision but Mr Y didn't respond.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have been given no other evidence that changes the findings I made in my provisional decision. In the circumstances I think DLL should pay Mr Y £150 for the trouble and upset caused by allowing someone else to see Mr Y's account.

We are unable to consider the other parts of Mr Y's complaint because he isn't an eligible complainant. Also the complaint about the Blanc de Bierge shares has been made too late anyway, under the rules I have to apply. This is because the complaint was made more than six years after the investment started and more than three years after Mr Y ought reasonably to have been aware he had cause to complain.

## **my final decision**

For the reasons set out above and in my provisional I uphold Mr Y's complaint about the disclosure of his account information and Duncan Lawrie Limited should pay him £150 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 18 April 2017.

Philip Gibbons

**ombudsman**

## **COPY PROVISIONAL DECISION**

### **complaint**

Mr Y is unhappy that Duncan Lawrie Limited (DLL):

- Disclosed his account information to a third party without his authority.
- Invested in the JP Morgan Euro Liquidity Fund (the JPM fund) without authority.
- Hasn't disclosed details of all accounts held by his father.
- Invested in Blanc De Bieres shares, which has caused a loss of £200,000.

### **background**

Mr F's father (Mr G) had various accounts with DLL when he died in 2010. Mr Y was his sole beneficiary and his complaints, apart from the disclosure of his account information, relate to the accounts held by Mr G before his death.

DLL didn't accept it had provided information about Mr Y to a third party. It explained the investment in the JPM fund was made after an instruction was received from Mr G. But confirmed this was based on a discussion between an adviser and Mr G when this was agreed because he wanted a better rate of interest to a cash deposit.

DLL said it had no records of the Blanc De Bierge investment as it took place before 2005. But the adviser's recollection was that the instruction to invest in this was from Mr G's accountant who also held a power of attorney. It also confirmed Mr G had five accounts in existence at the time he died.

One of our adjudicators considered the complaint. He said:

- He thought DLL had failed to prevent someone from seeing Mr Y's account details when making a payment into his account. And that it should pay him £150 for the trouble and upset caused by this.
- He thought it more likely than not the investment into the JPM fund was authorised by Mr G.
- There was no evidence Mr G had more than five accounts. The fact Mr Y only became aware of certain accounts after Mr G's death doesn't mean there are other accounts DLL has not disclosed.
- The complaint about the Blanc De Bierge investment had been made too as the advice to invest was made in 1997 – more than six years ago. And more than three years from when Mr Y knew he had cause to complain – being when Mr G's estate was valued on his death. It was at this time Mr Y would have known the investment had lost £200,000.

Mr Y didn't agree with the adjudicator. He said:

- DLL had now accepted Mr G had written to it in 2007 placing restrictions on putting his money into investments.
- He didn't understand how the adjudicator had been able to say the investment into the JPM fund was with Mr G's authority when DLL had produced no evidence of this.
- The investment in the JPM fund ignored Mr G's instruction in 2007 that he didn't want any change to his portfolio.
- The JPM fund exposed Mr G to a higher risk which he never intended.
- The £150 offered for a third party seeing his account details wasn't sufficient to compensate him for the stress caused by this and the possible financial loss.
- He has evidence Mr G had more than five accounts.

As Mr Y didn't agree with the adjudicator the case has been passed to me for review.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Three out of the four issues Mr Y has raised relate to Mr G's accounts. The other issue is about disclosure of Mr Y's account information to a third party.

*Disclosure of Mr Y's account information.*

DLL accept it did disclose details of Mr Y's account to another person but that this wasn't done deliberately. It has said the person who got the information must have positioned himself so he could see the computer screen which displayed this.

There is no doubt that having your personal information given to someone else – whether deliberately or not – is upsetting. But I think £150 for the trouble and upset caused is reasonable.

*The Blanc De Bierge investment, the JPM fund and non-disclosure of accounts.*

We can only consider complaints by eligible complainants. Who is eligible is set out in the 'Handbook' of the industry regulator, the Financial Conduct Authority (FCA) - at DISP 2.7.

In this complaint Mr Y complains as a consumer and will be eligible if his complaint arises out of matters that are relevant to him being a customer of DLL. So he has to be a customer of the bank in relation to the investment and accounts he complains about.

He was the sole beneficiary of Mr G's estate. But a beneficiary isn't a customer, so isn't an eligible complainant under the rules. The JPM fund was transferred to him after Mr G's death. So he can complain about anything relating to that fund after the transfer. But his complaint is about money being invested before the transfer.

The only person who can bring a complaint about what Mr F has complained about is the executor of Mr G's estate.

There is a further reason I'm unable to consider the complaints about the Blanc De Bierge investment. There are time limits within which complaints have to be brought. These are also set out in the FCA's handbook at DISP 2.8. In short a complaint has to be made within six years of the event complained about. Or within three years of when the person complaining was aware, or ought reasonably to have been aware, they had cause to complain - if that is later.

The event complained about – the sale of the investment in 1997 - was more than six years before Mr Y complained to us in 2016. And he has provided a letter from the executor in April 2011 which shows he was concerned about the 'misappropriation' of Mr G's funds. And it is clear from the letter Mr F was already concerned at that time about the Blanc De Bierge investment. So I think he had cause to complain at the time – more than three years before his complaint.

So even if he was an eligible complainant his complaint about the Blanc De Bierge investment has been made too late.

**my provisional final decision**

I uphold one part of the complaint as set out above and direct Duncan Lawrie Limited to pay £150 for the trouble and upset caused.

Philip Gibbons  
**ombudsman**