

## The complaint

This complaint is brought by a company 'P', which is the corporate trustee and administrator of a small occupational pension scheme (OPS). The OPS's member trustee, Mr D, has also joined in the complaint together. The OPS itself is referred to as 'T' in the decision. T had a pension fund cheque account with Bank of Scotland plc (BoS). P complains that BoS:

- Withdrew this type of account in May 2019 and offered an alternative (a trustee account) which it was unable to honour as Mr D lives overseas.
- Failed to keep safe custody of T's Trust Deed and Rules, which has prevented P from opening a comparable account with another provider because both it and Mr D have been unable to access their own copies.
- *"Broke the law"* by offering a cheque for T's funds (of approx £77,000) payable to Mr D directly, as T had no alternative account for the proceeds to be paid to. It required Mr D to sign a disclaimer which would induce him into committing a fraud on the pension scheme trust.
- Prevented Mr D from making £80,000 additional contributions to the scheme, change the investments or pay for the scheme's expenses from the bank account.
- Prevented him from drawing benefits so that he can repay his mortgage (also with BoS). P has since suggested this is not part of the complaint and is only being mentioned to point out that Mr D is an existing BoS customer.
- Delayed Mr D's ability to return to the UK owing to this lack of access to funds in Sterling.

P has made a number of references to the issue T is facing impacting other OPS trusts he administers which also have BoS bank accounts. The purpose of the ombudsman service is to consider whether individual complainants have been treated fairly, and each pension scheme trust is its own complainant. However I've taken into account that P considers BoS has offered other schemes alternative banking arrangements that it hasn't offered to T, and I'll refer to this where relevant.

## What happened

Under advice from an independent financial adviser, Mr D set up the OPS for his UK company in November 2007. He was originally appointed as a member trustee along with a corporate trustee company (which has since dissolved).

In February 2008 an application was submitted for a pension fund cheque account with BoS naming the corporate trustee company and Mr & Mrs D as trustees of the scheme, and giving a c/o address of the corporate trustee. P says that this corporate trustee didn't open the account and the IFA did, but I think it's logical to say that the corporate trustee at that time would, or should, have been aware of the account and its operation.

As standard practice BoS carried out searches on the parties associated with the account: the corporate trustee and Mr and Mrs D. It also appears that as part of the account opening process, BoS expected a solicitor (or other individual certified by a professional body) to

complete a "Confirmation of Pension Trust Deed". This was signed by a firm of solicitors in January 2008. They certified that they had seen the original trust deed, which was available for inspection by BoS for a period of six years after the account had been closed.

Notably, Mr D and the corporate trustee were joint signatories on the account, and Mr D was to receive duplicate statements. When the account had been set up, Mr D transferred other pensions he held into it. I understand the scheme's main investment (other than the bank account) is an investment bond worth £129,057.

On 15 March 2019 BoS issued a letter giving the required two months' notice that the account was going to be closed. BoS no longer has a copy of the specific letter sent, but P has shared what I expect to be the same letter sent to another of its clients (also dated 15 March 2019) as follows:

***"Notice of account closure***

***We will be closing your bank account 'XXXX'***

*We need to ensure that we provide the levels of support appropriate to our clients' business needs and on occasion we have to take the decision to close an account when we can no longer offer this support.*

*We will be closing the account(s) listed on this letter on **20 May 2019** and at this point our banking relationship will come to an end, this letter acts as our formal notification.*

*...*

*if the account has a credit balance when it closes, will send you a cheque for this amount. Please contact me if you would prefer to receive any remaining balance in a different way. If you have any questions about this letter, please contact..."*

The account was subsequently closed on 24 May 2019, and a cheque for £77,519.88 issued in the name of T. P disputes that T was given notice, however BoS's customer contact history contains evidence of P getting in touch to query the closure on 27 March 2019:

*"Customer request received...Invest Acnt Closing...Call received from [named employee of P] regarding the account closure letter received for the above account."*

BoS has informed us that it closed a number of other accounts similar to this pension fund cheque account, as it had taken a commercial decision that it no longer wished to offer this service on an ongoing basis. At this point Mr D was aged 66. It doesn't appear he had yet drawn any benefits from his OPS, and he says he coincidentally had a sizeable mortgage of £300,000 with BoS which was approaching its due date for repayment – and he needed to access the pension for this reason.

P has provided evidence of it and a number of its clients receiving final responses from BoS to complaints about these account closures. P received one such response in respect of T and one other OPS on 21 May 2019. P attempted to refer a group complaint about the account closures to us on 18 November 2019, within the six month period afforded for doing so in BoS' final response. As each OPS would have needed to bring its own complaint we were unable to progress the matter at the time in the way P wanted at the time.

Subsequently in 2021 P applied for a different type of account BoS offered (a trustee account), but the application was declined in March 2021 - as what BoS describes as a 'key account party' (Mr D) was resident overseas. Then, in December 2021 BoS took a further commercial decision to withdraw provision of the trustee account in any event. P argues that its other pension schemes were able to open trustee accounts before that deadline in order to continue operating.

P says that this, combined with its and Mr D's inability to locate the scheme's trust deed (which they believe BoS has lost), has meant that they're unable to open a comparable account with another bank. They complained afresh to BoS.

BoS issued its final response to the further complaint on 11 August 2022. It said that the account agreement "...advises we reserve the right to close your account at any time without the need for an explanation. This decision is never made lightly, however, I can confirm that we did in line with the account agreement issue a notice to closure.

*I can confirm that there's no account type for which we offer in our current product range that would be acceptable for your needs.*

*[Mr D] is non UK based, and we do require that account signatories be UK based...we no longer offer Trust Accounts for new applications, so even if [Mr D] was UK based, and this account was likely to have been the best fit, it's not a product we still offer."*

In a follow up response on 21 September 2022, BoS said that it "took far too long" to confirm it couldn't provide a replacement account. It expressed deep "...regret that we haven't done more to get your client's funds back to him, following our decision to close his account" and "more should've been done in order to give him a way forward to have those funds in his own account". It said it would send Mr D a cheque for £400 for the distress and inconvenience caused, and that it would be "happy to review any reasonable costs incurred trying to resolve this matter".

BoS told P that it wouldn't have needed to see the scheme's trust deed when the account was applied for, but would have been have supplied relevant information to verify the scheme. As a solution to P's problem in being unable to find an alternative account, it agreed to pay the outstanding funds to Mr D's personal account. But to do this it required a letter of instruction signed by Mr D, acknowledging that any tax or other liabilities arising from funds leaving the pension scheme were his and not BoS's responsibility.

P didn't agree and referred the complaint to the Financial Ombudsman Service. In March 2023 one of our investigators concluded that BoS was entitled to close the account, because it provided sufficient notice and offered a solution for Mr D to access the funds. It was also entitled to reject an application for a new account on the basis of Mr D's residency.

The investigator also considered that although BoS's solution for Mr D to access the funds involved tax implications, that was because the trustees couldn't locate the trust deed. That was their responsibility as there was no evidence that BoS had ever received this. He noted that P and Mr D may need to draft a new trust deed. The investigator also thought the £400 BoS had offered was reasonable overall for the distress caused.

P disagreed. In addition to reiterating the points of complaint listed above, it maintained that Mr D had a registered address in the UK and is registered for and pays tax in the UK. It continued to think it "extremely unlikely" that BoS was able to set up the original account without the Trust Deed as it defined the owner of the funds. P had seen a blank copy of the "Confirmation of Pension Trust Deed" form I've mentioned above and believes this form indicates that BoS, rather than the named solicitor, was required to hold on to the Trust Deed.

My understanding is that Mr D's interest-only mortgage came to an end in 2021. But as he hadn't been able to make arrangements for repayment, interest has continued to accrue at an increasing rate and only the previous monthly payment has continued to be deducted. Mr D then chose to make overpayments to bring down the principal sum. He reports that BoS also sent an agent to his UK home, where members of his family live, in October 2023 to discuss the matter.

Although P says these events were relayed to us to illustrate Mr D's ongoing relationship with BoS, it's apparent that he's unhappy with them. I must emphasize that Mr D is not the complainant in this case: T and its trustees are, and they are a separate legal entity. Our investigator has told P that Mr D would need to raise any concerns about how BoS is dealing with his mortgage in his personal capacity. I'm aware that BoS previously addressed a complaint in November 2021 from Mr D about his mortgage term ending.

### **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.

BoS has explained that originally, T applied for a pension fund cheque account as that was the account available through a corporate application. I'm satisfied that's what happened here, as the corporate trustee was named on the application.

A bank is entitled to close an account just as a customer may close an account with a bank. It makes no difference that this account represents assets held within a pension scheme trust. The bank cannot be forced to provide banking services in perpetuity if it no longer wishes to do so. But before a bank closes an account, it must do so in a way, which complies with the terms and conditions of the account. The terms and conditions of the pension fund cheque account state the following:

*"The Bank reserves the right to refuse a deposit, or decline to open an Account or to require a depositor to close the Account without giving a reason for any such decision. However, the Bank will not close an account without sound financial, business or legal reasons and will not give less than 30 days' notice of its intention to do so."*

BoS has explained that the reasons that led to it closing the account were that a reorganisation of its business after its merger with Lloyds. A different Pension Fund Account is now available for corporate pension administration companies with a turnover of greater than £25m, but as an individual pension trust, T was now more suited to a trustee account.

I'm satisfied that BoS did have a business reason for closing the account and that it gave a reasonable notice period for doing so – which in fact was double that stated in the terms and conditions. P recently told me that BoS *"closed these accounts in some cases not adhering to their own stated closure rules"*. I'm satisfied BoS did adhere to the rules, and in fact what was fair and reasonable, in T's case. To answer another of P's points, it makes no difference that this is an account for a

*Did BoS treat T fairly when refusing to open a new trustee account?*

My understanding is that for most of P's customers, a trustee account was available as an alternative because they were individual pension scheme trusts. P says that T's application was turned down for risk reasons and it would like to know what has changed. BoS says it was rejected because Mr D was resident overseas. At that time, it was BoS's policy that all key account parties for this type of account reside in the UK. Both the member trustee and the corporate trustee are regarded as key parties.

In my view, BoS is entitled to decide what appetite it has for new business when a key party is resident overseas. As the application for the original pension fund cheque account shows, both Mr D and the former corporate trustee were signatories and searches were carried out on both of them. The difference at that time was that BoS understood Mr D to be residing in the UK. That is no longer the case.

I've seen that in April 2021 BoS wrote to P explaining that all trustees would need to be

added to the application, and the details required for them included the past 3 years' address history and permission for a credit search. So, it's clear that BoS was applying the criteria it says it would to all trustees.

As BoS has the right to close the existing account, it doesn't owe T any obligation to offer an alternative account in circumstances where, because of Mr D's residency, a key account party doesn't fit the criteria for that account. Although P argues that BoS has treated T differently to other schemes which were allowed to open trustee accounts, that seems to be because those other schemes do not have a member trustee who is resident overseas. P also says BoS reopened an account in one instance – but neither of the accounts T had, or wishes to have, are now available for new business. And I'm insufficiently persuaded that the particular difficulties T faced were the same as other clients. If P has evidence to the contrary, it should present that to BoS for it to be considered afresh.

I also don't consider P or Mr D have demonstrated that they have exhausted their options for establishing alternative banking arrangements. I say that because a barrier to their doing so seems to be their lack of a trust deed for T. So I'll next consider whether BoS is responsible for this trust deed being missing.

#### *Has BoS lost T's trust deed?*

The available evidence shows that the original corporate trustee was required to show the trust deed and rules to a certified professional rather than provide them to BoS. That person then signed the "Confirmation of Trust Deed" form.

When signing the form, that certified professional was agreeing that *"The Trust Deed will be available for inspection by the Bank, if required and that the copy will be retained for a period of 6 years after the account has closed"*. BoS has produced the form signed by a solicitor in T's case, which I note is still trading. As this wasn't the only such scheme P administered, and I believed it was therefore aware of what solicitor was used, I therefore asked why it hadn't attempted to see if that solicitor still had a copy of the trust deed.

P's responses to my questions suggest that it has no interest in pursuing this matter with the solicitor, as it doesn't accept the premise of the form itself. It says the form required BoS and not the solicitor to retain the trust deed. This is plainly a misreading of the form, as I've pointed out to P several times. Further, P says that no one certifying documents keeps copies, as they are certified and given back to the client. I don't think the form was just certifying the documents, as it appears to indicate who will be storing them for further inspection. But either way, if the documents were given back to the trustees, then they will need to locate their copies. I'm satisfied they were not given to BoS.

P also maintains that BoS couldn't have opened the account without direct sight of the original trust deed. However this isn't supported by any of the evidence. Ultimately it was for BoS and its risk appetite at that time to decide what information it needed to open the account, and it was evidently satisfied with the solicitor's confirmation that the trust deed existed and gave the corporate trustee and Mr D the ability to operate the account. That is not a matter for me to determine here.

Confusingly, P has also told us that both it and Mr D *do* have a copy of the trust deed but aren't able to access to their papers or records to locate them. P's position has since changed to say that only Mr D *may* have a copy. On 7 October 2021 Mr D said, *"I got tons of stuff from [financial adviser when the scheme was set up] initially and then it all went quiet. I have 5 box files worth"*. This matter has now been going on for several years, and locating the trust deed would be the most straightforward way to resolve it. Mr D or P's (temporary) loss of the trust deed doesn't make it BoS's responsibility to locate this, as it's never had it in the first place.

I'm not therefore satisfied that P or Mr D have taken sufficient steps to locate the key document that they need to establish if another bank is willing to open a new trustee account with them. The steps they might need to take here could include taking legal advice on whether the deed and rules, once found, are acceptable in terms of banking requirements and current pensions legislation or might need to be amended – because standards are significantly different today than they were in 2008. Similar legal advice could be taken in the event that the trust deed and rules can't be found and need to be drawn up again.

Unless P or Mr D take those steps, I'm not satisfied that it can be shown that BoS has treated them unfairly in no longer providing them with a banking service, because it's not been established that no other institution can provide that service either. And by failing to take those steps, T has not mitigated the losses which are being claimed. I would remind P that in a message of 18 July 2019 BoS actually suggested several other institutions that do offer pension bank accounts.

*Did BoS "break the law" by offering a cheque payable to Mr D directly?*

The banking provider to a pension scheme isn't expected to establish which payments are and are not permissible under pensions legislation, as they operate on the instructions of the trustees. Particularly here where Mr D logically would be entitled to receive payments from the scheme: he was over 55 years of age. What BoS was offering was a potential solution for Mr D to receive the funds directly, if that was acceptable to the trustees.

I suggested to P that it might have been possible for the trustees to record this as a payment (or payments) of tax-free cash and income to Mr D, which would then have alleviated the financial difficulties Mr D complains of. But P says that the scheme rules do not permit any payments of tax-free cash or income, but rather a transfer would have to be made to another scheme in order to do this.

Given that BoS do not have the scheme rules, I fail to see how it could have been aware of this. Ultimately the trustees rejected the proposal to make the cheque payable to Mr D, but that doesn't mean BoS has done anything wrong or it is in breach of any legislation by offering it.

#### *Other matters*

P has mentioned that BoS's actions prevented Mr D from changing how his pension scheme is invested. I appreciate how frustrating the lack of access to banking facilities has been for T, given that anything he doesn't want to invest in the third-party investment bond has to be moved through that account. However I expect there were some investment options within the bond, and I think it was open to T to explore whether at least some of the money still residing in the BoS account could be paid across to the bond provider, with whom T had an established relationship, where it could potentially gain more growth until this matter was resolved.

Accessing Mr D's benefits for payment is likely to have been more difficult if, as P says, a transfer to another pension arrangement was needed and they lack the legal documents confirming the nature of the existing scheme. But I'm afraid that is a matter only P and Mr D can address themselves and I've set out the steps they might take above.

Mr D has since said (on 17 March 2022) that "*The SIPP money is not needed for the new mortgage*". However it is also being alleged that the lack of access to funds is preventing Mr D returning to the UK. Confusingly, it's also being alleged that Mr D (or his employer) has been unable to pay £80,000 into the scheme, so presumably those funds exist elsewhere. One option for Mr D to explore might therefore be to return to the UK as it appears he intends to do, and apply for a new account when he is resident there – for instance if his

residency situation is also a problem for other banks.

### *BoS's offer of compensation*

BoS said it would send Mr D a cheque for £400 for the distress and inconvenience caused by not offering an alternative solution for Mr D to receive the proceeds of the bank account sooner, and that it would be *"happy to review any reasonable costs incurred trying to resolve this matter"*.

Our investigator thought the £400 offer was fair and reasonable compensation, and I agree. I've taken into account that the alternative solution BoS offered wasn't acceptable to P and Mr D in any event – as they either don't or can't agree to benefits being paid directly to Mr D under the scheme rules. But BoS wasn't to know this at the time it made the offer.

I've also taken into account that BoS didn't reveal until later, through this service, who had signed the Confirmation of Trust Deed form. Again, however, P has expressed no interest in pursuing the solicitor mentioned for a copy of the trust deed – so I'm not satisfied this has caused Mr D any further distress or P any further inconvenience.

Had the alternative solution to receive the funds or the provision by BoS of the original Confirmation of Trust Deed form enabled the trustees to proceed further, I might have revisited the amount payable for distress and inconvenience and/or any costs they had incurred before BoS made these available. But as it is, I see no reason to revise the offer BoS has already made.

### **My final decision**

Bank of Scotland plc has already offered £400 to Mr D for the distress and inconvenience it caused when closing T's bank account. I consider that is a fair and reasonable offer. My decision is that Bank of Scotland plc must pay that sum to Mr D if it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask the trustees of T to accept or reject my decision before 22 March 2024.

Gideon Moore  
**Ombudsman**