

## The complaint

Mrs D complains, via her representative, that Bank of Scotland plc trading as Birmingham Midshires has prevented her from accessing the funds in her account or any interest. She wants access to the balance in the account plus accrued interest.

## What happened

Mrs D opened a High Interest Savings Account with Birmingham Midshires (BM) in 1994. In February 2023 she discovered the passbook at her home, after it had been misplaced for many years, and contacted BM to recover the balance. The passbook showed a balance of £8,523.39 from October 1994, described as the transfer of a balance from another account.

Mrs D said the passbook states that it "...must be presented when withdrawals are required". Mrs D provided BM with the details of the account from the passbook, and said it had not been closed. BM responded in February 2023 to say that it only retained records for 10 years after an account has been closed and there was no record of the account.

Mrs D complained to BM that it hadn't provided any evidence of closure, only supposition. Following a review with Mrs D's representative, BM confirmed that it had no records of the account, and is only required to keep records of closed accounts for six years and not from 29 years ago. BM said It's likely the account was closed, and this could have been by phone, or letter if a signature can be verified. It said that if Mrs D still had an account, it would've written to her since 1994 with general mailings and statements. BM said that even though Mrs D's passbook states it's needed for transactions, in 2004/2005 its branches closed, and its terms and conditions changed so that this was no longer required.

Our investigator didn't recommend the complaint be upheld. She said there is not enough evidence to suggest that the account remains open, and the balance hasn't been paid to Mrs D. She said it's unfortunate that due to the passage of time that there are no records to confirm this. The investigator said BM explained as the account can't be located, the funds could've been sent to an account held by Mrs D, or a cheque could have been issued.

Mrs D disagreed with the investigator and requested an ombudsman review her complaint. Her representative said if the account had been closed no notification has ever been received by her. Her representative said, *'there is indisputable documentary evidence available which corroborates the fact that the account remains open, namely the existence of the passbook... and the credit balance to which it relates and that it has not been closed'*. He said the passbook states that withdrawals are not permitted without its presentation.

## 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.

I considered the six-and three-year rule, which can be found in the Financial Conduct Authority's handbook, DISP 2.8. Mrs D found the passbook in 2023 and so I consider that she raised her complaint within three years from the date she became aware she had cause

for complaint. And this means that I am able, under the time limits provided, to consider the merits of this complaint.

I have looked at Mrs D's complaint in common with the many other complaints we receive concerning historic accounts. I've considered whether BM has acted within the terms and conditions of the account and its procedures, and looked to see if it has treated Mrs D fairly.

BM said it has carried out searches but is unable to locate information about the existence of the account, its closure or the correspondence it said it would have sent Mrs D. This is unfortunate as it would help Mrs D to know what had happened and she is unhappy with BM's conclusion and justification.

I've looked at the available evidence to reach a conclusion about the complaint. Mrs D's representative says that her account passbook, *'is indisputable documentary evidence available which corroborates the fact that the account remains open...'* I think he is almost correct, in that the passbook clearly demonstrates the existence of the account, but not that the account remains open. BM's terms and conditions for the account changed when it closed branches almost 20 years ago and now state that accounts can be closed without a passbook. I have found this to be common practice with banks and building societies that previously relied on passbooks but now allow more modern means of transacting. Unfortunately for Mrs D, it follows that possession of a passbook no longer indicates that an account is open.

BM has speculated that the account may have been closed on Mrs D's request by letter of phone call. BM said the lack of account statements, or any other correspondence sent to Mrs D indicates the account was closed and added that the balance could have been paid to her or transferred. But Mrs D's representative states, *'The stark reality is that BM have no evidence at all to support a view as to what did happen'*. This may be correct, but then neither does Mrs D, and as she is bringing the complaint the onus is on her to show its merits.

Mrs D's representative said Mrs D overlooked the existence of the account opened in 1994 until she discovered the passbook in 2023. The representative also states that, *'if the account had been closed no notification of such has ever been received by her.'* The certainty of the second statement is hard to reconcile with the first.

BM said it would have written to Mrs D during this time and provided her with statements of her account. I think the lack of any correspondence is an indication the account is closed, rather than proof. I don't find it unreasonable that BM no longer holds records of an account that may have been closed more than six years, and possibly in 1994.

In conclusion, there is a lack of evidence to show that Mrs D's account with BM remains open and I can't uphold her complaint. The lack of evidence is unhelpful to Mrs D, but possession of her passbook doesn't mean the account remains open.

Mrs D's representatives will be aware that by rejecting this decision legal action remains open to Mrs D in pursuit of her complaint.

### **My final decision**

For the reasons I have given it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 22 December 2023.

Andrew Fraser

**Ombudsman**