

The complaint

Mrs C complains, in her capacity as executor of the late Mrs M's estate, that Yorkshire Building Society ("YBS") has paid the proceeds of Mrs M's accounts to someone that was not entitled to receive them, after it was notified Mrs M had passed away.

What happened

Mrs M had several savings accounts with YBS. YBS had record of a power of attorney registered against those accounts. The registered attorney was not Mrs C – it was another party.

Mrs M passed away in February 2019. Mrs C informed YBS of this on 6 February 2019. YBS' records show a death certificate was received at the end of February 2019. The total combined balance of Mrs M's accounts at that point was over £13,500. Mrs C then began discussions with YBS about the documents that needed to be provided for the estate to be settled.

While this was ongoing, YBS sent a cheque for £7,870, payable to a firm of funeral directors, to the party that previously held power of attorney, at the end of February 2019.

It then sent the remaining balances from all three of Mrs M's accounts (totalling £5,791.68) to the same other party (the former attorney) by cheque in March 2019.

Once Mrs C became aware of this she complained to YBS that it had released the funds to a party that did not have authority to request them. The solicitors acting for the estate in dealing with arrangements following Mrs M's death also wrote to YBS and made attempts to recover the money – at additional cost to the estate.

YBS said it had acted in good faith in releasing the funds as the other party (previous attorney) had provided a copy of Mrs M's death certificate – so was considered the informant. It said that the requirements for what documentation it needed to release proceeds of an estate differed depending on the amount involved. If it was under £5,000 a solicitor was not required to sign the release form. If it was over £5,000, they were. Here as the estate was 'slightly over' £5,000 it had released the funds at its discretion, without a solicitor's signature on the form provided by the other party. In any event it considered this a civil dispute between the estate and the other party. And it noted that the other party had signed a declaration indemnifying YBS. YBS did offer Mrs C £20 in respect of a delay in processing correspondence.

Unhappy with this response Mrs C, on behalf of the estate, asked our service to look into the complaint. She said that the validity of the power of attorney was in question before these events – and has provided evidence to support this. And in any event the person the money was released to was not authorised to give instructions relating to the accounts or receive

funds at the time it was sent. So, she felt YBS should pay the estate an amount equivalent to the funds that were wrongly released to an unauthorised party as well as covering the additional legal costs incurred.

An investigator looked into the complaint. He felt the estate had received the benefit of the cheque payment to the funeral director's so there was no loss in respect of this amount. As a result he didn't think this amount needed to be refunded. However, he felt that YBS was wrong to pay the remaining balance of the accounts to the other party. This was because he felt that YBS was on notice of a dispute but had paid the funds out, using its discretion and not in line with its own internal policies, simply on the basis that the other party had claimed them first. He didn't feel this was a valid reason to do so and that this had caused the estate a loss. He also felt the estate had incurred additional legal costs as a direct result of this error. So, to put things right he recommended that YBS pay Mrs M's estate an amount equivalent to the balance incorrectly paid to the other party plus the additional legal costs incurred.

Mrs C, on behalf of Mrs M's estate, accepted the investigator's findings.

YBS did not agree. It said it had no reason to doubt the instruction it had been given, it does not become involved in disputes between third parties and it felt it had followed its procedures correctly.

As YBS did not agree with the investigator's opinion the complaint has been passed to me to decide.

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.

Mrs M passed away on 6 February 2019. At that point any existing power of attorney ceased to be valid and the attorney was no longer authorised to act on Mrs M's behalf. I've seen a copy of the grant of probate relating to Mrs M's estate and this confirms Mrs C was the appointed executor. So, Mrs C is and was the only party entitled to act for the estate. No other party is named. So very simply, at the points YBS released funds, the party it released them to was not entitled to act on behalf of Mrs M or her estate.

YBS has said a lot about its processes and requirements and that it acted in good faith when it sent the money to the other party, based on their previous association with the account.

I've seen a copy of YBS' processes and the requirements it sets for releasing funds. It says a will or grant of probate is not necessarily required. But a form does need to be filled in. And if the estate / amount of money in the accounts exceeds £5,000 this form has to be counter signed by a solicitor. The total amount in Mrs M's account – either before or after accounting for the payment of funeral expenses – exceeded £5,000. I've seen a copy of the form provided by the party the funds were released to. This wasn't signed by a solicitor. So, it didn't meet the requirements of YBS' internal processes. But YBS released the funds anyway – outside of its usual process.

YBS says it decided at its discretion to release the funds. But that decision has led to the situation that caused the complaint. And I think this also shows the same discretion could've been used to require additional evidence not usually part of YBS' process – such as the grant of probate which would've confirmed whether this was the correct thing to do.

I've seen YBS' internal system notes. These indicate that YBS was aware of a potential dispute about the proceeds of Mrs M's account before releasing the funds. The same dispute is referenced in the note that was made at the time it used its discretion to release the funds. It had also received two versions of its internal form required to release the funds – one filled correctly, one not – as well as notification of Mrs M's death from different parties. So, I think it was aware that there was a dispute here. And this also calls into question whether YBS did truly act in good faith. YBS says it does not involve itself in disputes between third parties. But by making the payment to one party when it had knowledge of a dispute I think that it is exactly what it has done – intentionally or not.

But in any event, the central issue here is that YBS has released funds to someone that was not authorised to receive them. I'm not commenting on YBS' processes or whether these are correct – it isn't my role to do so (although again I note the funds were actually released outside of its processes using its discretion). I'm simply considering whether it has made an error when it decided to release the funds to the other party. And based on the information available in this specific complaint, I think it has. And I think this has caused a direct loss to Mrs M's estate.

I agree that the cheque that was paid for funeral expenses has benefitted the estate. And Mrs M has acknowledged it was always the intention that the funeral would be covered from the proceeds – although she still thinks YBS was incorrect to make this payment. As I don't think the release of the payment for funeral expenses has caused a loss, I don't think this needs to be refunded.

The residual amount however, was released to the wrong party, in error. The estate has been unable to recover this. This means it has directly lost out on this amount as a result of YBS' error. So, I think on a fair and reasonable basis, YBS should make a payment of this amount to the estate.

I also think YBS' error caused the estate to incur costs it otherwise wouldn't have. Specifically, additional costs from the solicitors acting in relation to settling the estate. It isn't the case that Mrs M's estate went out and appointed the solicitor's firm just to deal with this dispute. They were already dealing with the probate and settlement of the estate. The costs of this have increased due to YBS' error. And as a result, I think it's reasonable that YBS cover those additional costs. We've been provided with an itemised breakdown of the solicitor's costs. Having reviewed this, I'm satisfied that the reasonable additional costs incurred dealing with this matter were £850. So, I think YBS should cover these costs.

YBS has said that the party it paid the funds to, signed a declaration indemnifying it. But I don't think that means that the estate can't seek to hold YBS liable for any errors. It might allow YBS to pursue the person that signed the indemnity but that is a matter for it to consider.

YBS has also said there is the possibility that these funds will be recovered twice by the estate. As I've said, the estate has been unsuccessful so far in recovering the funds from the third party. And it thinks it is unlikely that it will be. But I do understand YBS' point. With that in mind, if as part of the settlement of this complaint YBS requests Mrs C, on behalf of Mrs M's estate, sign a declaration covering this scenario, I think that would be fair. For the avoidance of doubt I mean by this that the estate agrees to return the portion of the

settlement equivalent to the balances of Mrs M's accounts that were incorrectly paid out to the third party (£5,791.68) in the event the estate successfully recovers these funds from the third party.

My final decision

For the reasons set out above I uphold the estate of Mrs M's complaint.

To put things right I require Yorkshire Building Society to;

- Pay Mrs M's estate £5,791.68 representing the amount paid incorrectly to another party. YBS can reasonably request a declaration be signed in respect of this figure confirming the estate agrees to return it in the event the estate successfully recovers the same amount from the party it was incorrectly paid to.
- Pay Mrs M's estate a further £850 representing the additional legal costs it incurred as a result of the error.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C, on behalf of the estate of Mrs M, to accept or reject my decision before 31 July 2020.

Ben Stoker
Ombudsman