

The complaint

The estate of Mr R ("The Estate") is unhappy that Bank of Scotland plc ("BOS") released the proceeds of an account to someone who wasn't entitled to them.

What happened

Sadly, in February 2018, Mr R died. At that time, a will written in 2017 named Mr R's partner as sole executor of his estate. This replaced a previous will which named Mr R's two daughters as the executors of his estate.

Mr R's daughters felt that Mr R had been coerced into changing his will by his partner and placed a formal caveat on the estate a few days after Mr R died, contesting the 2017 will. An agreement was reached in mediation between Mr R's daughters and his partner in October 2019 that the 2014 will would be recognised as valid, and that Mr R's daughters (henceforth referred to as "The Estate") were the executors of the estate.

The Estate then approached BOS and requested the release of the funds held in Mr R's account, whereby it was told by BOS that the proceeds of the account had previously already been released to solicitors acting on behalf of the partner, who had supplied the 2017 will to BOS to support her claim. The Estate then approached the partner who advised that the proceeds of that account were no longer available and could not be recovered.

The Estate weren't happy that BOS had released the proceeds of the account to the partner, especially given the formal caveat they'd placed on the estate and which had been in place when BOS had released the money to the partner. So, they raised a complaint.

BOS looked at The Estate's complaint. It explained that in cases where an account balance is less than £50,000 – as was the case in this instance – that BOS's policy is to not require probate to be granted to a party making a reasonable request for the account funds, with the intention being to not place unnecessary barriers to a bereaved party at that difficult time. BOS also noted that the partner had provided what appeared to be a valid will which confirmed that they were the executor of the estate and as such they didn't feel that they'd acted unfairly by releasing the money to the partner as they had.

The Estate wasn't satisfied with BOS's response, so it referred its complaint to this service. One of our investigators looked at this complaint. But they didn't feel that BOS had acted unfairly or unreasonably in how it had managed the situation, and so they didn't uphold The Estate's complaint.

The Estate remained dissatisfied, so the matter was escalated to an ombudsman for a final decision.

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 issued a provisional decision on this complaint on 2 August 2022, as follows:

BOS has explained that they have a policy where they don't require probate to be granted before releasing the proceeds of accounts where the balance of that account is less than £50,000. I can see why BOS may have a policy like this, but as with any policy or procedure, the strict application of this can sometimes lead to an unfair outcome in the individual circumstances of a complaint. And in this instance, while I can see that BOS has stuck to their policy, in my view that has resulted in an unfair outcome for The Estate.

BOS may contend that the partner provided what appeared to be a valid will which named her as the executor. And given their policy, BOS then didn't do any further checks or insist on further documentation before releasing the money to them. But matters relating to the financial affairs of estates can be involving and complicated. And in my view, by following the policy that BOS did here, and in not doing any checks, I feel that BOS accepted the risks present in not asking for further information from the partner before releasing the funds.

Such an approach may help many customers in reducing the friction involved in getting access to funds at a difficult time. But it also runs the risk of releasing money to parties that might not be entitled to it – which is what happened here. Had BOS performed more checks, or asked further questions, they would have realised that the party requesting the money may not have been entitled to it, where the will had been contested. In these circumstances, I don't think it's fair that The Estate incurs the loss that was suffered as a result of BOS's acceptance of the risks involved in the decision they made.

BOS can say that they weren't aware of any reason not to release the money. But I don't think The Estate needed to have contacted BOS about this matter. It had already contested the will and I think it's reasonable to say that the executors wouldn't have believed there were any further steps they needed to take, where the formal caveat they had in place was intended to avoid situations just like this one – especially given as there appears to be little information on BOS's website to suggest that the proceeds of an account could be released to an applicant party without the need for probate to be granted.

It's also worth noting that The Estate has acted in a reasonable manner in the overall circumstances here. It placed a caveat on the 2017 will within days of the death of Mr R, and it then sought to legally challenge that will, which ultimately resulted in the October 2019 mediation agreement that the prior 2014 will would be accepted as Mr R's valid will. And following this, The Estate then approached BOS to request the release of the money, only to discover that BOS had already released the money to an illegitimate party – the partner – without requiring evidence of probate.

The Estate has also sought to recover the money released to the partner from the partner, but without success because the partner no longer has the money.

So, in the circumstances here, my provisional instructions are that BOS must make a payment to The Estate equal to the balance of the money that was released illegitimately to the partner.

Additionally, BOS must also pay interest on that balance to The Estate at the rate the balance would have achieved had it remained in the account from the date that BOS released the money to the partner to the date that The Estate approached BOS to request the release of the funds having successfully challenged the will.

Finally, BOS must pay 8% simple interest on the combined balance and interest outlined above calculated from the date The Estate first approached BOS to request the release of the funds having successfully challenged the will to the date that BOS make the payments to The Estate as instructed in this letter.

In response to my provisional decision, The Estate provided some further points that it asked me to consider. These included that it felt that BOS allowing the partner to take the money from the account financially facilitated the partner's subsequent legal challenge against The Estate's attempts to have the 2014 will recognised as the late Mr R's valid will. The Estate contends that it incurred legal expenses and costs it otherwise wouldn't have done, had BOS not released the money to the partner which the partner then used to fund her legal defence.

I can appreciate The Estate's position here, but I don't feel I can reasonably instruct BOS to pay additional costs to The Estate as The Estate would like here. There are several reasons for this, including that legal matters such as this generally fall outside the remit of what this service can consider. Additionally, I'm not convinced it can be reasonably demonstrated that the partner wouldn't have been able to mount a similarly effective legal challenge without the money being made available to her by BOS. And this is especially the case given that the partner's position regarding this matter appears to have been defensive, in that they were attempting to confirm the validity of the most recent will, rather than seeking to overturn it.

The Estate has also explained that Mr R's daughters have personally incurred a great deal of stress and upset because of BOS releasing the money to the partner. I don't doubt that this is the case, but the rules by which this service must abide – which can be found in the Dispute Resolution (DISP) section of the Financial Conduct Authority (FCA) Handbook – don't allow for this service to instruct compensation for trouble and upset when a complaint is brought to this service in the name of an estate, as this complaint has been. In short, this is because an estate is a legal entity, rather than a person, and a legal entity can't be distressed or inconvenienced – these are things that happen to a person.

Of course, this isn't to suggest that the daughters of Mr R haven't incurred stress and upset because of what's happened here – and I can appreciate that they may well have done. It's only to say that I'm unable to consider this complaint from the personal perspective of the daughters in this instance, given that this complaint is brought in the name of The Estate.

In my provisional decision letter, I also gave BOS the opportunity to provide any relevant comments or new information it might wish me to consider before I moved to a final decision. However, BOS didn't respond within the 28-day timeframe provided. As such, given all of the above, I see no reason not to issue a final decision upholding this complaint on the same basis as described in my provisional decision, and I can confirm that I do uphold this complaint on that basis accordingly.

Putting things right

BOS must make a payment to The Estate equal to the balance of the money that was released to the partner.

Additionally, BOS must also pay interest on that balance to The Estate at the rate the balance would have achieved had it remained in the account from the date that BOS released the money to the partner to the date that The Estate approached BOS to request the release of the funds having successfully challenged the will.

Finally, BOS must pay 8% simple interest on the combined balance and interest outlined above, calculated from the date The Estate first approached BOS to request the release of

the funds having successfully challenged the will, to the date that BOS makes the payments to The Estate as instructed in this letter.

My final decision

My final decision is that I uphold this complaint against Bank of Scotland plc on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr R to accept or reject my decision before 28 September 2022.

Paul Cooper
Ombudsman