

## **The complaint**

Mrs F and Mr W, acting as the trustees of a trust I'll refer to as 'T', complained that Cofunds Limited was unreasonably refusing to accept a copy of the trust deed certified by a solicitor, and so preventing any withdrawals from the trust account.

Mr W has mainly dealt with the matter on behalf of the trustees, so I'll mostly just refer to him in my decision to keep things simpler.

## **What happened**

When Cofunds received a request to set up the account in 2006, it was originally created as a joint account in the names of the two people who had applied to invest the funds.

In 2019, one of the original account holders died and it then became apparent to those involved in bringing this complaint that the account wasn't set up as a trust as they had always understood to be the case. They thought Cofunds had made a mistake and set up the account incorrectly as a joint account.

In February 2021, Cofunds explained that in order for the account to be made a trust, it would need to have the following completed paperwork:

- General Investment Account to Trust application
- Trust and Identity Verification Form
- Deed of Appointment.

Cofunds said the first two documents could be either originals or certified copies, and it attached copies of these for completion. Cofunds said the Deed of Appointment would be generated by a solicitor.

Subsequently, Cofunds changed the account to a trust account in the name of T. But it mistakenly overlooked receiving a certified 'Deed of Appointment and Retirement of trustees' relating to the T trust, along with identity and verification evidence for the present trustees in June 2020. This resulted in Cofunds closing its file instead of actioning the necessary changes.

When it received a complaint about this in May 2021, Cofunds apologised and acknowledged that it had failed to provide the right level of service when updating the account and offered £200 compensation by way of apology.

This offer wasn't taken up and there has been ongoing correspondence between Cofunds and Mr W about exactly what paperwork Cofunds still needs to see in order to be able to enable withdrawals to be made from T's account.

Cofunds identified a further mistake on its part when reviewing all the paperwork and it realised that it hadn't ever seen the original trust deed dated 2005 or received a copy for its records that satisfied its own certification requirements.

On 14 April 2022, Cofunds confirmed it had made the required changes to record the present two trustees and changed the name of the holding to the name of the trust. But it said it still required an instruction by post signed by both of the current trustees to change the address. And it said the photocopy of the 2005 trust deed wasn't acceptable and that it required '*...the original or a certified copy of this document*'.

When this prompted a further complaint, Cofunds said the issue with the copy it received was that all pages were not certified. Cofunds said it couldn't liaise directly with the solicitors as it didn't hold authority to do that, and that this issue would need to be sorted out before a withdrawal could be completed. Cofunds did however acknowledge that this additional error, along with its delayed response to the complaint, had caused further inconvenience and it offered to pay a further £200, making a total payment of £400 compensation.

Mr W brought the complaint to this service when the issue with the paperwork couldn't be resolved, saying that the solicitor who had certified the copy 2005 trust deed had said it was ok and objecting to the fact that Cofunds was refusing to accept it.

Our investigator looked into the complaint and didn't feel this was a complaint we could uphold. She mainly said that Cofunds was entitled to set its own criteria and say how it wanted documents to be certified so we couldn't tell it to change its requirements in this regard. And she felt that the £400 compensation Cofunds had offered to pay was reasonable and that we wouldn't ask it to pay anything more.

Mr W disagreed, saying in brief summary:

- the issues have not been resolved
- it's not about the money, the questions haven't been answered
- Cofunds lost the information that was sent in 2020 after they had accepted everything, including the certified copy
- why was the investment in a joint account instead of a trust account
- why was all the information lost and it's taking this long to sort out
- having to pay another solicitor to get access to the funds is unacceptable
- Cofunds can pay for a solicitor to double check the information if they want to.

The complaint came to me to decide. I issued a provisional decision.

### **What I said in my provisional decision**

Here are some of the main things I said.

'I can understand Mr W's frustration at the delay there's been here especially since Cofunds agrees that overall, it hasn't dealt with matters as well as it should've done. So I've thought carefully about how far Cofunds was responsible for any unreasonable delay and about the quality of the service it provided in connection with this matter.

My role is to consider all the evidence presented by both parties and reach a fair and reasonable decision based on the facts of the case. We provide an informal complaints handling service and this is reflected in our approach. I've expressed some of the concerns mentioned in my own words and my focus is on what I think are the key issues here. Our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. This means I won't necessarily mention everything that Mr W has brought to my attention, especially where I have nothing to add to what the investigator has said already. But I will comment on everything that makes a difference to the outcome of the complaint and I will deal with the main points Mr W has raised in response to the investigator's view.

I am satisfied that Cofunds didn't make any mistake with the original set up of the account. I've seen a copy of the completed Investment Funds Transfer Form. It's clear that originally the account was correctly set up as a joint account because that's what the application was for. So I don't find that Cofunds did anything wrong when it didn't set up the trust account in the first place.

Cofunds amended the account in April 2022 to reflect the fact the holding was in the name of T and it updated the trustee details to show the present trustees. But as far as I can see, it didn't at that stage ask to see the original trust deed – it relied on the information in the 'Deed of Appointment and Retirement of trustees' form. I don't think it's unreasonable for Cofunds to require the trustees to provide this. To be clear, as there seems to be some misunderstanding on this point, Cofunds is willing to accept a certified copy of the original 2005 trust deed – it isn't insisting on seeing the original. So I don't find that Cofunds is being unfair or unreasonable about this.

The particular issue that seems to be causing a problem now is that the way the solicitor has certified the copy that's been provided to Cofunds doesn't match Cofunds' criteria.

Cofunds clearly stated what its requirements were in April 2022 as follows:  
'...This is the link to our web page which details our full certification requirements and approved certifier list [www.aegon.co.uk/certify](http://www.aegon.co.uk/certify). Please note if a document is being certified it must be certified, fully on every page. Also if it is certified by a solicitor we do require the actual name of the solicitor on the certification stamp and not just the Company name.'

How a financial business chooses to operate and its business processes are outside our remit - these are matters that come under the oversight of the regulator, the Financial Conduct Authority (FCA). So it's not up to me to say that Cofunds shouldn't require certification to be done this way. And I don't think that needing to have each page certified in the way Cofunds has said it needs to see is a particularly unusual or onerous requirement – and Cofunds communicated this information clearly some time ago. So I don't find that Cofunds is imposing requirements on T that are unfair or unreasonable.

Cofunds can't reasonably be expected to process any withdrawals from the account without first being satisfied that it has the proper authority to do so – so I think it's fair and reasonable for Cofunds to require sight of either the original trust deed or a copy certified in line with its requirements. And it's up to the trustees to arrange for the certification of the 2005 trust deed in line with Cofunds requirement or alternatively, produce the original document.

The fact that Cofunds accepted differently certified documents previously makes no difference to my decision. If the certification didn't match their requirements, that could've been an oversight on the part of Cofunds. But this wasn't detrimental to T as it saved the trustees the trouble of getting those documents re-certified, so this doesn't affect the outcome of this complaint.

Cofunds however upheld aspects of this complaint and whilst I don't need to make any findings about what's already been agreed, this seems fair to me. Looked at overall, I think Cofunds was right to acknowledge that there have been some serious service failings on their part.

I think it's worth mentioning that where an error has occurred, our aim is to put the complainant in the position they'd be in now had the error not occurred. Here, it wasn't wrong for Cofunds to request all the documents it has asked to see, in whichever format they

choose to request them. The error Cofunds made is not having requested all the necessary documents sooner. So ultimately, the trustees would always have ended up in this position.

I appreciate that Mr W has said money isn't the issue here, but Cofunds has offered to pay a total of £400 by way of compensation for the shortcomings it identified on its part. This seems fair to me as it recognises the fact that it's taken a lot longer for the complainants to have clarity over Cofunds' requirements than it otherwise ought to have.'

### **What the parties said in response to my provisional decision**

Mr W doesn't agree with everything I've said but says he'll accept the £400 so things can move forward.

Cofunds said that the reason the £400 hadn't been paid was because the offer hadn't been accepted and it didn't have the necessary bank details.

The deadline for responses has now passed so I think it's reasonable for me to proceed with my review of this complaint.

### **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.

Having done so, after taking carefully into account everything that's been said in response to my provisional decision, and as no further comments have been received in response to my provisional decision that change what I think about this case, I still think it's fair to uphold this complaint for the reasons I explained in my provisional decision.

**Putting things right**

Cofunds should pay Mr W, in his capacity as one of the trustees of T, the £400 compensation it has already offered by way of redress.

**My final decision**

I uphold this complaint and direct Cofunds Limited to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr W to accept or reject my decision before 1 December 2023.

Susan Webb  
**Ombudsman**