

## **The complaint**

Mrs J complains that ReAssure Limited has behaved unreasonably when dealing with the administration of her late husband's investment bond – which she says has led to her incurring legal fees after ReAssure mistakenly destroyed a copy of his Will.

## **What happened**

Mrs J's husband (Mr J) held his investment with ReAssure in his sole name from February 2007. He sadly passed away in September 2021. Mrs J and her two children were named as executors in Mr J's Will. Mrs J thereafter contacted ReAssure in late January 2022 with regards to taking over the policy.

In February 2022, ReAssure wrote to Mrs J to explain that the investment benefits were payable in the event of her death. If Mrs J wished to take ownership of the policy now, ReAssure would require the legal representatives for the late Mr J to transfer the policy to Mrs J by deed of assignment because Mr J was the sole policyholder.

Mrs J called ReAssure on 8 and 9 February 2022 to complain about the service she had received. She said the information from ReAssure relating to reassignment of the policy was confusing and its bereavement team hadn't done enough to support her, such as making a call back that was promised on 11 February 2022.

On 16 February 2022, Mrs J was sent another letter regarding a standard deed of assignment.

On 21 February 2022, ReAssure upheld the complaint and issued Mrs J with a final response letter ('FRL'). It said it accepted its standard fell below of what should be provided and offered Mrs J £200 compensation. A cheque was thereafter issued to Mrs J, which she accepted.

In March 2022, ReAssure wrote to Mrs J again, to reiterate how ownership of the policy had passed to the executors of Mr J's estate. It said the policy could remain property of the executors or it could be assigned to any beneficiary within Mr J's Will, by completion of the enclosed deed of assignment. In order to verify evidence of the executors it asked that Mrs J supply either the late Mr J's Will or a Grant of Probate.

In July 2022, Mrs J's independent financial adviser ('IFA') wrote to ReAssure on her behalf. It included all the documentation ReAssure had asked for including a copy of Mr J's Will, a completed deed of assignment on behalf of Mrs J and her children, and certified proof of their identities. The deed confirmed that they wanted all segments of the investment assigned to Mrs J.

Mrs J thereafter complained again in November 2022 – because Mr J's Will had never been returned to her and she had been mistakenly informed it was returned to her or her IFA in August 2022. The complaint was made to ReAssure by Mrs J's IFA on her behalf.

On 14 December 2022, ReAssure upheld the complaint and issued a second FRL. It said human error had led to the copy of Mr J's Will being destroyed. It offered £300 for the upset caused by the error, and to cover the cost should Mrs J wish to obtain a further certified copy of the Will. A cheque was again issued to Mrs J regarding the error, which she retained.

On 29 December 2022, ReAssure issued a third FRL. In the interim, Mrs J had called ReAssure to explain that she did not believe the compensation she had been sent of £300 was sufficient in the circumstances. ReAssure rejected the complaint. It said it had appropriately compensated Mrs J for the upset she had been caused. It also told Mrs J that it would consider additional compensation if she provided evidence of the costs she incurred due to the mistake made in destroying the copy of the late Mr C's Will.

On 8 February 2023, Mrs J called ReAssure and asked for a call back – which she did not receive.

On 17 February 2023, Mrs J wrote to ReAssure explaining why she felt additional compensation was necessary.

Mrs J called ReAssure again on 23 February 2023. She says during that call she asked for an update as to the position with the reassignment of Mr J's investment. She also asked to speak to a specific complaint handler named Mr R, but she was told that he was working from home and she couldn't be connected.

On 24 February 2023, Mrs J says Mr R from ReAssure called her again and agreed to pay the solicitor's fees she had incurred.

That same day, ReAssure issued Mrs J with a fourth FRL. It said it was sorry for mentioning the prior complaint. It agreed that the change of ownership was yet to be finalised to Mrs J. For that, it agreed to pay a further £200 and confirmed a cheque had been sent to Mrs J. Mrs J accepted the compensation.

In respect of the costs incurred by Mrs J, ReAssure again asked her to evidence the work carried out by her solicitor as it related to the previous error made regarding destroying Mr J's Will.

Thereafter, Mrs J's solicitor wrote to ReAssure on her behalf setting out the total billed to Mrs J in March 2023, as well as a breakdown of time recording spent on the matter.

On 30 June 2023, ReAssure provided a final fifth FRL to Mrs J's solicitor. It said it had reviewed the information sent relating to costs, but it did not agree those costs had been caused by its actions in 2022 relating to the Will.

In July 2023, Mrs J wrote to ReAssure again, copying in its CEO. She explained that Mr R had given her verbal assurance that ReAssure would pay her solicitor's fees in full – which equated to £2,501.70 - during the call of 24 February 2023. She asked ReAssure to reconsider its decision, as the latest two FRL's it supplied had been a misrepresentation of what actually happened.

Mrs J thereafter referred her complaint to this service, where it was reviewed by one of our investigators. On 31 October 2023, ReAssure said it was willing to pay Mrs J a further £200 to reflect the upset she had suffered – taking her total compensation to £900.

Our investigator put the additional offer to Mrs J, but she said she did not accept it. She reiterated that on 24 February 2023, she had spoken with ReAssure by telephone and

during the call, Mr R agreed to cover her solicitor's fees in full. She therefore felt the offer should be increased to cover the fees incurred.

Our investigator then issued a written view on the complaint. He said that from the review he had undertaken, he could not evidence any agreement on ReAssure's part – verbal or otherwise – that it would cover Mrs J's full legal expenses by way of compensation for its mistakes. Instead, it had invited Mrs J to confirm direct costs relating to its mistakes, and ReAssure said it would consider reimbursing the costs if it was given appropriate evidence.

Our investigator also could not find any evidence of the call that Mrs J said took place on 24 February 2023. The call log evidence from ReAssure did not include any call from that date – though there was a call from 23 February 2023. However, in that call, ReAssure did not give any confirmation or acceptance that it would reimburse Mrs J's legal fees in full.

Overall, our investigator didn't think ReAssure needed to do anything further to resolve the matter. He felt ReAssure had been reasonable in determining that it wasn't liable for Mrs J's solicitor's costs. He believed the total payment of £900 offered to Mrs J was fair and reasonable in the circumstances of the distress and upset she had been caused by ReAssure's errors.

Mrs J disagreed. She said she wanted her complaint to be referred to an ombudsman. She supplied a letter setting out a reiteration of the chronology of her ongoing complaint, as well as grounds of appeal. I'd like to confirm to Mrs J that I have read this letter in full, though I shan't be repeating it verbatim here. In summary, Mrs J said:

- The letter sent to her from Mr R dated 24 February 2023 is evidence that a call took place that same day, as it notes *"thank you for speaking with us today regarding your complaint"*.
- Another letter sent to her from Mr R dated 28 September 2023 says, *"I have reviewed the recording of our conversation on 24<sup>th</sup> February 2023"*.
- She always makes notes of telephone recordings and she has supplied copies of her notes from 23 February 2023 which show that Mr R was not available due to working at home, and a call back would be placed – which happened on 24 February 2023.
- ReAssure may have been unable to obtain a call recording if Mr R was still working at home on 24 February 2023; nonetheless, a transcript ought to be available.
- A call took place and during that call, Mr R agreed to reimburse Mrs J's legal fees in full.
- The only cause of her complaint is the matter relating to the legal fees promised – all other issues that took place previously are things she considers to be separate.
- She would not have incurred the fees if ReAssure hadn't destroyed her late husband's Will.
- She accepted the first offer of £200 from February 2022 for separate administration issues.
- She was sent the second £300 cheque without explanation following the intervention by her IFA in December 2022. Again she accepted this for separate, ongoing issues notwithstanding that she remained unhappy about the destruction of Mr J's Will.
- She had experience of dealing with probate applications and she wouldn't have appointed a solicitor but for ReAssure destroying what she believed might be the original copy of Mr J's Will.
- The £200 sent to her in February 2023 was – in her view – for ReAssure's delay in assigning Mr J's policy to her.
- She accepts that her solicitor's fee letter does not state that it was an application for probate, but it does confirm that work was undertaken relating to Mr J's estate and

she cannot understand how ReAssure cannot link the costs incurred to its actions in destroying the Will.

- There was another copy of the Will, but she believed ReAssure had destroyed the original copy and therefore probate *could* have been refused.
- This prospect would not have come about if ReAssure hadn't destroyed the Will.
- She believes she has provided sufficient evidence for this service to conclude that she was provided with a verbal agreement to reimburse her for costs, and that ought to be returned to her now.

ReAssure had no other comments to make. The complaint has since been referred to me.

### **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 thank the parties for their patience whilst this matter has awaited an ombudsman's decision. I was sorry to learn Mr J had passed away and I send my condolences to Mrs J and her family. I appreciate how strongly Mrs J feels about the matter, and whilst I am mindful of her frustrations, I cannot uphold a complaint merely because of my empathy for a complainant; I must be fair to both parties in a complaint. Having reviewed everything carefully, I am also of the view that this complaint should succeed – but only in respect of awarding the £200 compensation that ReAssure has already offered to Mrs J. I do not otherwise find it should pay her legal fees. I'll explain my reasons for that below.

I've included a detailed chronology of the complaint in the 'what happened' section of this decision which encompasses all of the issues Mrs J has experienced with ReAssure. However, I won't be addressing every individual submission Mrs J has made or giving my view on every aspect of the background. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

The Financial Ombudsman Service provides informal dispute resolution. My remit is to make findings on what I believe to be fair and reasonable to both parties in the circumstances and this does not follow a prescribed format. Instead, I will set out my reasons for my findings on what I consider to be the central issues in this complaint, based on the evidence before me.

I have included the background detail in relation to the complaint in order to recognise the depth of Mr J's ongoing concerns. However, I note that only the final issue relating to legal fees remains in dispute between the parties in any event.

Whilst Mrs J is entitled to form her own view on the reasonableness of ReAssure's refusal to pay her solicitor's fees, I must also do the same. And from an objective standpoint, I do not consider that ReAssure was wrong to do so.

I do note that the evidence Mrs J has relied upon centres around a call that she says took place on 24 February 2023 – I have no reason to disbelieve Mrs J about that. Despite ReAssure not being able to locate the call, I find it likely did take place given it was thereafter referenced by the complaint handler in the fourth FRL issued the same day.

That being said, I do not place the same reliance on this call that Mrs J does. Put another way, I do not accept that the adviser agreed to pay the £2501.70 costs (which had yet to be confirmed) during that call, when none of the other evidence I've seen supports that contention. The absence of the call recording or a transcript of the call does not mean I must otherwise uphold the complaint.

I say that because there is some evidence available for me to consider; this in the form of ongoing correspondence between Mrs J, her solicitor and ReAssure both before and after the work was undertaken by the solicitor – following the loss and confirmed destruction of the certified copy of Mr J's Will by ReAssure's postal department.

On 24 November 2022, Mrs J's solicitor wrote to ReAssure, setting out:

*"I was trying to help [Mrs J] complete an assignment form to assign her deceased husband's policy to her. I sent the documents to you on her behalf including a certified copy of his Will and requested that the documents be sent back to the client. She needs another copy of the certified Will for something else and will now have to go through the costly/timely process of getting another one done."*

In the third FRL of December 2022, ReAssure confirmed how it would *"be happy to consider additional compensation should you wish to confirm [the] costs our recent error has caused you to incur. Please contact us at your earliest opportunity should you wish to recover the associated costs via additional compensation from ReAssure, and we'd be happy to consider this further"*.

However, none of the correspondence I've seen sets out any commitment from ReAssure to pay Mrs J's full legal costs in relation to obtaining probate. Those costs go beyond obtaining a further certified copy of the Will. Mrs J contends that the costs she would incur from her solicitor (as instructed from January 2023 onwards) for obtaining the Grant of Probate in March 2023 were necessary because of ReAssure's actions.

I don't agree with Mrs J's assertion on the causation of the costs. The confirmation from the solicitor relates to the loss and destruction of a certified copy of the Will – with the solicitor retaining a further copy. Though Mrs J says she held concerns about obtaining probate in case the copy the solicitor held wasn't the original Will – the financial cost of doing so was not caused by ReAssure, as this would only happen *if* probate was refused.

Mrs J recognised this in her own correspondence to ReAssure of February 2023 and again in July 2023, where she set out:

*"To remind you. as I explained quite clearly in my letter of 17.02.2023, it was believed that the Will in question was the original (a legal document which should not have been destroyed) and without it I would have difficulty in applying for probate myself and that I would need to employ the services of a solicitor in case my only remaining copy of the Will was challenged, **if this were to be the case then my solicitor would have additional work in arranging for your company to provide a Statute of Declaration explaining what had happened to the original, at a further cost to me [my emphasis].** You also agreed verbally to meet this extra cost should it become necessary. Fortunately the copy of the Will was accepted and so my costs remained at the original amount agreed to i.e. £2501.70."*

As I've set out above, I have not seen any objective evidence that ReAssure agreed on 24 February 2023 to pay the unconfirmed future full legal fees (for which the solicitor had given an estimated fixed fee of £2,160 as of January 2023), specifically where its letter of the same date asks Mrs J to provide itemised costs from the solicitor, that it would then assess as appropriate.

What this service does is consider if a business has treated a customer unfairly because of actions or inactions. And if it has done so, we then go on to consider what ought to be done to put the mistake(s) right. In this case - relating to the destruction of the late Mr J's Will -

that was to properly compensate Mrs J for any financial losses she suffered as a consequence of the destruction. That would include the cost of Mrs J's solicitor providing another certified copy of the Will, and *potentially* reimbursing the cost of any legal fees incurred should Mrs J have had to instruct the solicitor for the Statute of Declaration (in the event of the original Will being lost).

As it was, the need for further legal work in the event of the loss of the original Will did not arise – probate was accepted and granted to Mrs J by the court in March 2023 with the Will held by the solicitor. So, I cannot agree that ReAssure has caused Mrs J financial loss here. It was a matter of her choosing to appoint her solicitor in relation to applying for probate, but that application wasn't directly due to ReAssure's actions in relation to destruction of the certified copy of the Will sent by the solicitor. It follows that I cannot agree that ReAssure should be liable for the £2501.70 fees which were payable by Mrs J having appointed her solicitor to obtain probate on her (and the other executors') behalf.

As well as putting right any financial losses in a complaint (though there are none in this circumstance as ReAssure has already compensated Mrs J for any impact in seeking a second copy of the Will for which we have insufficient evidence as to cost and the need for declaration did not otherwise arise), we also consider the emotional or practical impact of any errors on a complainant. In doing so, we do not fine or punish businesses; we are not a regulator, that role falls to the Financial Conduct Authority.

It may be helpful for Mrs J to review to the guidance available on our website around the amounts and types of awards made in instances of upset, trouble, inconvenience and distress caused by businesses in the complaints we see at this service.

Taking into account the impact of the error made in relation to the Will (the only outstanding point of complaint), I believe the proposed combined payment of £500 was reasonable in the circumstances where ReAssure caused additional worry for Mrs C as well as her possible requirement to seek a second certified copy of the Will from her solicitor at further – unconfirmed – cost. The mistake also took several months to be identified and thereafter rectified and it has had a notable impact on Mrs J at a time when she was bereaved. The amount of £500 is an amount I believe appropriate for an error of this nature, and I do not make any other award.

### **Putting things right**

I believe that ReAssure has taken reasonable steps to resolve the complaint, by already paying Mrs C £300 to account for the cost and emotional impact of its mistake in losing and thereafter confirming the accidental destruction of a certified copy of the late Mr J's Will. I am pleased to note it has now agreed to pay a further £200 to Mrs J. I think this offer is fair in all the circumstances. So my decision is that ReAssure should pay the outstanding £200 to Mrs J, if it hasn't already done so.

### **My final decision**

I uphold this complaint for the reasons outlined above and direct ReAssure Limited to pay Mrs J a further £200 – if it has not done so already. I make no other direction or award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr J to accept or reject my decision before 23 May 2024.

Jo Storey  
**Ombudsman**