

The complaint

The estate of Mrs A complain Scottish Friendly Assurance Society Limited has incorrectly paid out the sum assured on a life assurance policy.

What happened

Mrs A sadly passed away at then of July 2022. On 30 August 2022 notice of Mrs A's passing was provided to Scottish Friendly by the executor of her estate.

Subsequently, Scottish Friendly received a claim from another party and the proceeds were paid out.

Representatives for Mrs A's estate attempted to make a claim to obtain the proceeds of the policy for distribution in accordance with Mrs A's Will but were informed the policy had already been paid out.

In July 2023, a complaint was raised on behalf of Mrs A's estate because the death benefit under Mrs A's term assurance policy was paid to her next of kin, rather than in accordance with her Will.

Scottish Friendly didn't uphold the complaint. It said where a Grant of Probate is not submitted, it is obliged to settle a claim to the deceased's next of kin as by the law of intestacy. It acknowledged there may have been a Will in place for Mrs A, but said it does not recognise this as a legal title to claim.

The estate didn't agree with the response, so referred the complaint to this service for an independent review.

Our investigator initially upheld the complaint but following further representation by Scottish Friendly, she changed her findings, and issued a second assessment not upholding the complaint. In summary she said, while there is contention between the potential beneficiaries to the policy proceeds, Scottish Friendly's terms and conditions stipulate the person "legally entitled" to the policy receives it. Having reviewed Scottish Friendly's position, she didn't find it had acted incorrectly based on the information it held when dealing with the claims it received.

The estate didn't agree with the revised outcome and requested that an ombudsman reach a decision on the complaint. The representatives for the estate maintained that Scottish Friendly hadn't followed Mrs A's Will, which is a legal document and therefore the third party who received the proceeds wasn't legally entitled to them.

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.

At the outset, I'd like to acknowledge that the matter has caused much upset to the estate and the beneficiaries, and I recognise the circumstances of what has happened are emotive.

I'm required to reach a decision on the actions of Scottish Friendly, so I won't be commenting on the actions of any party not subject to the complaint. It is also not for me to decide who the claim should be paid to.

My decision is whether Scottish Friendly has acted fairly in how it dealt with the claim made by the estate - by not agreeing to pay proceeds as requested. Scottish Friendly declined to honour the claim made by the estate, essentially as it had already paid the proceeds due to an earlier claim

The estate have been clear that it expected the intentions set out in Mrs A's Will to be followed, so they don't accept the claim has been handled correctly due to the proceeds not being paid to the executor for distribution to the beneficiaries in the Will.

The policy terms and conditions says the following regarding payment of claims:

"Once the claim is accepted, we will pay the benefit amount due to you or the person who is legally entitled to it, whichever is appropriate."

Scottish Friendly's position is it made a business decision to settle a claim brought by a spouse in the scenario where the value of the claims was below the limit for probate. It says a Will is for the deceased to set out who they want to manage the estate and split it to, but a Will can be contested. And probate is the legal process to confirm the Will (but this can also be challenged). In the absence of a grant of probate it accepted Mrs A's next of kin was legally entitled to receive the proceeds.

I've considered the submission of both parties and the available evidence. The estate hadn't been through probate when the claims were made and it doesn't appear there was an intention to do so due to the size of the estate. So, this means the authenticity of the Will hadn't been proven to be valid and accepted, and the court hadn't officially appointed the executor. Scottish Friendly made a decision to accept a claim without probate, this in itself doesn't seem unreasonable in light of the value and information it had available at the time. I also note the earlier claim it accepted was from the spouse of a policyholder, who was also a life assured on the policy.

Having considered all of the evidence provided, I've reached the conclusion Scottish Friendly has acted in a fair and reasonable way based on the information that was available to it when it assessed the claims – and specifically when it declined to accept it was required to pay the proceeds to the executor of Mrs A estate when it made its claim.

I recognise that my findings will be very upsetting for the representatives of Mrs A's estate and the beneficiaries - but I haven't found Scottish Friendly having acted incorrectly or made an error in the way it handled the claim request presented by the estate. This means I don't require it to do anything further.

My final decision

I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs A to accept or reject my decision before 3 January 2025.

Daniel Little
Ombudsman