

complaint

Ms Z, executrix for her father's estate, complained that Lloyds Bank PLC delayed and did not provide documents which she needed.

background

Mr Z was in residential care from late 2004 until his death in October 2006. He had to sell his house to fund this care. Ms Z made payments for the care from her father's Lloyds account, and after he died, she destroyed her records of the payments.

In July 2012, Ms Z became aware that the family could challenge the fact Mr Z's care had had to be self-funding. The family took legal advice and started the review process. Ms Z needed proof of payments made. She couldn't get this from the care home because the previous owners' business had collapsed, and the current owners had no records of Mr Z. The key period she needed to document was December 2005 to October 2006.

Ms Z asked Lloyds for bank statements and copies of cheques which would prove what the family had paid out for Mr Z's care. Lloyds requested extra information, and Ms Z responded to the bank's requests. This included, at one point, spending an hour in the branch handwriting information from a statement onto her request document. Ms Z told Lloyds her request was urgent. Lloyds provided her with copies of seven cheques, and said that others no longer existed.

In August 2014, the review process about whether Mr Z's care had to be self-funding was decided in favour of Mr Z's estate, agreeing that he had been entitled to NHS funding. So getting proof of what they'd paid was very important. Ms Z was told verbally that most banks kept copies of cheques for ten years, so she complained to Lloyds in September 2014.

Lloyds said it tried to get the cheques Ms Z needed, and had also tried to trace debit card payments from 2005, but it hadn't been able to. It did provide statements for a passbook account. Lloyds didn't have records of exactly what had happened in 2012, so it accepted Ms Z's version and agreed the delays fell short of its standards. Lloyds paid Ms Z £100 for the upset. Ms Z wasn't satisfied and complained to this service.

The adjudicator noted that, since Ms Z had submitted her complaint, Ms Z had confirmed that the care home records had been found, and that these should be enough. But the adjudicator said that, if they hadn't been found, there wasn't enough evidence for her to have upheld Ms Z's complaint and ordered Lloyds to be responsible for any unproven payments. The adjudicator also explained that this service can only make awards for matters such as distress and inconvenience to individual consumers, and not to executors.

Ms Z sent a detailed explanation about why she was unhappy with this. This included saying that she was bringing the complaint as her father's Executrix, but that she was also an individual beneficiary of his will and therefore an individual consumer as well.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I can understand that Ms Z and her family have suffered a great deal of stress and upset over the whole situation of the review about whether they, or the NHS, should have paid for their father's care. It's good news that they now have the care home proofs they need for the next stage of that process.

Looking at Ms Z's complaint to this service, there were two parts to her original claim. The first was for potential loss, which might have arisen if the relevant authorities were to decide that the family's proofs of payment weren't satisfactory without the information from Lloyds. As proof has now been identified from the care home records, there will not be any such financial loss. So this part of the claim no longer needs to be considered - there's no need to consider hypothetical loss about what might have happened.

The other part of Ms Z's claim is for compensation for distress and inconvenience. Ms Z's view is that a legal entity such as an estate can only articulate its distress and inconvenience through the experiences of its beneficiaries. She pointed out that she was authorised to act on behalf of the estate, and so was making the claim for distress and inconvenience which all three beneficiaries had suffered.

I don't doubt that Ms Z and her fellow beneficiaries have personally been very upset and frustrated. But I'm bound by what we can and can't do, and we can't award compensation to executors who have brought a complaint on behalf of an estate. I'm aware that Lloyds did pay Ms Z £100 for the delays, and having looked at this offer, I find it's a fair and reasonable amount. I'm not able to award more.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Z, on behalf of the estate of the late Mr Z, to accept or reject my decision before 9 November 2015.

Belinda Knight
ombudsman