

complaint

Mrs M complains, through her representative Mrs G, that Scottish Widows Unit Trust Managers Limited closed her investment account without authority and then wouldn't issue a cheque for the proceeds of the account to Mrs G who held a power of attorney (POA).

background

Scottish Widows provided a final response which was limited to explaining it could only issue a cheque for the proceeds of an account to the account holder. It didn't comment on whether it had done anything wrong in closing the account when it did.

One of our adjudicators considered the complaint but didn't uphold it. She said Scottish Widows hadn't acted unreasonably when it closed the account, because it fairly believed the letter Mrs G had sent meant Mrs M wanted the money released immediately. She also noted Scottish Widows had offered to reinstate the investment.

The adjudicator also said Scottish Widows were entitled to make decisions about how it paid money to customers. She agreed it hadn't dealt with all the issues raised in the telephone call made by Mrs G in its final response to the complaint. But said the final response isn't expected to confirm everything spoken about.

Mrs G didn't agree with the adjudicator. She said:

- The adjudicator hadn't interpreted what she said she was told by Scottish Widows - about its requirements before the account could be closed - properly.
- Scottish Widows had said 'when and only when' she had received a letter of authority from it she could close the account by telephone or letter.
- Her expectation was it wouldn't release the funds until she had made a further request to close the account.
- She was shocked the adjudicator considered the letter she wrote to Scottish Widows – in particular the word 'intend' – could be interpreted as giving authority to close the account.
- When Scottish Widows offered to reinstate the account when discussing the complaint she wasn't in a position to accept as she didn't know what the value would be currently. She expected the entire conversation to be referred to in the written response and she could then have decided whether to reinstate. But there was no reference to this in the letter.
- Scottish Widows has not dealt with the complaint she made but instead has dictated what the complaint is about. So she has not had the opportunity of formally submitting the complaint to Scottish Widows before referring it to us.
- She told Scottish Widows when she telephoned to close the account that her mother didn't have a bank account. So it knew this before it sent the cheque. And the adjudicator was wrong to say it had fairly assumed she did have an account.
- The adjudicator hadn't even admonished Scottish Widows for closing the account without authority and then creating distress in being able to explain where the money had gone when she telephoned to find out what had happened.

As Mrs G hasn't agreed with the adjudicator's opinion the matter has been referred to me for review.

my findings

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

It's very clear from what Mrs G has said in this complaint that she has been very upset by the way Scottish Widows has dealt with the closure of the account and payment of monies to Mrs M. In particular she was upset when she found out there was no money in the account and thought the account had been the subject of some sort of fraud.

I think it's important I explain I can only consider the complaint made by Mrs M. In doing so I can award her any financial loss she has suffered because of something Scottish Widows did wrong. I can also award her an amount for what is known as 'trouble and upset' where I consider this appropriate.

But I don't have power to award Mrs G – who is not the complainant but simply brings the complaint on behalf of Mrs M - anything for financial loss she has suffered or any trouble and upset she was caused. And it is also not my role to admonish a business for any failings.

I think the first issue I have to consider is what happened when Mrs G contacted Scottish Widows about closing the account. The initial contact was by telephone on 1 August 2016. Scottish Widows has only been able to provide a recording for the first part of the call and this provides no useful information about what was discussed.

But Mrs G has said she had decided to close the account 'now' (at the time of the call) as the stock market was at a high. So I think her intention was to close it immediately. But to do this she needed to send in her POA so Scottish Widows could accept her instructions.

Mrs G wrote the same day with the original power of attorney and supporting documents and within that letter stated:

"My intention is to close this account as soon as possible as my mother is now in need of the money in the account."

I acknowledge what Mrs G has said about what the word intention means – namely that it isn't an instruction.

But I don't think it was unreasonable for Scottish Widows to think she wanted the account closed immediately when she telephoned on 1 August to close the account. And used words like 'as soon as possible' and that Mrs M is 'now in need of the money' within the letter sent the same day. It seems to me Scottish Widows did what she wanted and closed the account 'as soon as possible'.

Mrs G has said she was told in the telephone call on 1 August that the account would only be closed upon her receiving a 'letter of authority' after which she could close the account by telephone or letter. In her complaint she has explained what she is referring to is Scottish Widows confirming the POA had been registered. The original POA she sent in showed it had been registered so it didn't need to check this.

And it seems to me once she sent in the POA Scottish Widows had all it needed – valid authority – being the POA - and a letter saying she wanted the account closed as soon as possible. I don't think it needed to confirm to Mrs G the POA had been accepted before closing the account.

And I don't think she would have done anything different even if there had been no reference in the telephone call to Scottish Widows confirming registration of the POA. It is Mrs G's case that the letter she sent wasn't an instruction to close the account. So whatever she was told on the phone she didn't expect her letter to lead to the account being closed anyway.

I think her concern, when she checked the account and found there was no money in it, was understandable given she hadn't expected it to be closed. However, as I don't think Scottish Widows did anything wrong in closing the account, I can't say it was responsible for her concern.

The second issue is the cheque being issued in the name of Mrs M. Scottish Widows has said it would always make a cheque payable to the account holder except where the account holder has died.

I don't think there is anything wrong in Scottish Widows only making cheques out to account holders. As it has explained, making payment to someone else would potentially conceal who benefitted from the money.

So I don't think it did anything wrong in deciding to make the cheque payable to Mrs M – it was just following its normal process. And I don't think there was anything unreasonable in that process or in its refusal to make the cheque out differently when Mrs G's bank manager telephoned.

Mrs G has said she told Scottish Widows Mrs M didn't have an account when she telephoned on 1 August. But she hasn't suggested she was told the cheque could be made out in her name or could be paid into an account in her name. So there is no suggestion she was misled by Scottish Widows about who the cheque would be made payable to. And she was always going to have to open an account in Mrs M's name to pay the cheque in to.

I note what Mrs G has said about the way the complaint has been handled by Scottish Widows. But whilst it would have been better if all her complaint points had been addressed in its final response letter, this hasn't prevented everything she has raised being considered by me. And I don't think she needed to put the complaint 'formally' to Scottish Widows or that the outcome would have been different if she had.

I note the offer to reinstate the account wasn't referred to in the letter. But she was aware the offer had been made and there was nothing stopping her contacting Scottish Widows about reinstatement if that is what she wanted to do.

In summary I don't think Scottish Widows did anything wrong in closing the account when it did and making out a cheque payable to Mrs M.

my final decision

For the reasons I have set out above, I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 16 January 2017.

Philip Gibbons
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