

Complaint

Mr H complains a locked box that was left with National Westminster Bank Plc (NatWest) for safe keeping has been lost or stolen. He brings this complaint in his capacity as the executor of his late-father's estate.

Background

Mr H has a receipt which shows the box was left with NatWest in 1970. His father died a couple of years later and the contents of the box was valued. But he says the box was never collected and he only remembered it in mid-2017 when one of his daughter's read a letter relating to it from the 1970s.

Mr H thinks it's more likely than not the box was lost or stolen. But NatWest thinks it's more likely the box was collected at some point after the valuations was carried out. Our investigators thought there were a number of things that could have happened and didn't think it was more likely than not the bank was responsible for the loss or theft of the box.

Mr H didn't agree, so the complaint has come to me to review. Mr H said, in summary, that:

- The solicitors that acted for his father still has a large file of papers relating to the settlement of his estate, which includes the original receipt from when the box was deposited with the bank. If the box had been collected by the solicitors then there would be paperwork relating to this and the receipt would've been relinquished. The absence of such paperwork and the presence of the receipt indicates the box wasn't collected.
- He doesn't know why the box wasn't collected by the solicitors. But they've said the probate application and settlement of the estate could've been completed without collecting it. He didn't collect it and didn't actually know where the holding branch was located. The other executor was unwell and died in 1973 – he had no reason to collect the box because the contents had been left to Mr H's daughter. His daughter was fairly young at the time and the decision was made to give her the contents of the box when she was older. For reasons he cannot be sure of now, the whole family overlooked the collection of the box while the estate was being settled and then forgot about it entirely until 2017.
- NatWest hasn't explained why the solicitors still have the receipt or why it's no longer valid. If the box was collected then the bank should, and would, have demanded the receipt be returned and retained a record of the collection. The fact the bank no longer has any record of the box indicates it was lost or stolen at some point after the contents was valued in 1972. The receipt should be honoured unless the bank can prove the box had already been collected.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I have to make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

Mr H clearly has very strong feelings about this matter, which I completely understand given what was in the box. He's provided detailed submissions, which I've read and considered in their entirety. I trust he won't take as a discourtesy the fact my findings focus on what I consider to be the central issues and are expressed in less detail.

Mr H seems to suggest the existence of the receipt in the solicitors' files is proof enough that the box wasn't collected. But I disagree. Nowhere on the receipt does it say it must be produced and surrendered before the box will be relinquished. And, in my experience, even when a document does say it must be produced – as, for example, is the case with the older-style bank and building society passbooks – sometimes they go astray. So banks and building societies usually have processes in place which allow the owners of such items to obtain them in the absence of the such documents. Quite often proof of identity and, thereby, ownership is enough.

In this particular case it wouldn't surprise me if the bank would've asked for proof of identity in addition to seeing the receipt – if such had been produced – given that it knew the actual owner of the box had died. And I say this because Mr H seems to suggest that the receipt on its own would have been sufficient for an individual (perhaps acting on the solicitors behalf) to collect the box.

Mr H also says the bank should still hold records of the box and its collection. But, again, I disagree. Forty-five years had passed between Mr H's father's death and him getting in touch to query the box's whereabouts. It's apparent Mr H's father held various accounts with the bank as well as the safe custody arrangement. And records relating to all those holdings were destroyed at some point in the intervening years. I wouldn't expect a bank to retain records for anything like that length of time after a relationship had ended. And retaining data indefinitely in the way Mr H suggests could contravene the various data protection laws that've been in force over the years.

I also have some difficulty understanding how the box could have been overlooked and/or forgotten for so long either by the family or the solicitors. I appreciate it was probably a busy and stressful time for Mr H. But there's no dispute that both he, the other executor and the solicitors were aware of its existence following Mr H's father's death – the box and its contents were referenced in several documents around that time. In particular:

- The solicitors say their records indicate the box's contents was valued on the bank's premises by a third party. Mr H might not have known when the holding branch was but whoever instructed the valuers must've had this information.
- The estate duty Inland Revenue forms make reference to the box's contents which were gifted to Mr H's daughter in 1970 on the same day the box was deposited with the bank, and prior to his father's death.
- The solicitors wrote to the holding branch soon after obtaining the Grant of Probate. They enclosed the executors' authority, gave instruction about certain holdings, confirmed they would send someone to the branch to collect some documents – indicating the solicitors knew where the branch was – and confirming instructions about the box would follow separately. The letter also said the executors were taking steps to realise securities and would be in touch soon to settle some debts. That suggests to me that both executors were actively involved in the process of settling the estate. And I have some difficulty accepting the other executor was as incapacitated by sickness as Mr H suggests – if he was I don't see why he accepted the executorship and/or why the

solicitors indicated his involvement in settling the estate. I can't rule out the possibility that the other executor collected the box.

NatWest's records suggest it carried out a thorough search but didn't find the box. So I have little reason to think it's still held somewhere by the bank. I've also taken into account NatWest's comments that it would usually make a charge for keeping boxes in safe custody and, this charge would've been passed over to someone else once Mr H's father's accounts were closed. In my experience, that's usually what happens and I can see from the solicitor's letter that an executor account was held at the bank. So payment may have continued from that account until the box was collected. It's also my understanding that banks will occasionally complete audits of their safe custody contents yet there's been no suggestion this particular box turned up at any point in the intervening years.

Having considered all the possibilities, and in light of what I've already said, I don't think it's more likely than not the bank lost the box or it was stolen while in the bank's possession. So it wouldn't be fair to instruct the bank to pay Mr H the current value of the box's contents or any other compensation.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 August 2019.

Ruth Hersey
ombudsman