

complaint

Mr H2 complains on behalf of his mother Mrs H that National Westminster Bank Plc ("NatWest") has lost a number of documents that were in its safe keeping.

background

Mr H2 believes NatWest has lost a signed copy of his father's will that it held in safe custody. I'll refer to Mr H2's father as 'Mr H'.

Without this will Mr H2 has explained he's unable to get a grant of probate for Mr H's estate. He says this means Mrs H is liable for inheritance tax and may lose her home.

NatWest said it had checked its database and spoken to its solicitors, but hadn't been able to trace the original will. It paid Mr H2 £150 compensation to apologise for the trouble and upset caused. However it's now confirmed that it doesn't think it made any error here. It's confident that any wills lodged with it by Mr and Mrs H were discharged some time ago.

Mr H2 also thinks NatWest has lost some other documents deposited with it by Mr H. He's told us an insurance company has requested a copy of original policy documents before it will settle Mr H's life assurance policies. And he thinks these were lodged with NatWest. But NatWest says it's carried out extensive searches and can't find these documents.

Our investigator didn't think there was sufficient evidence to conclude NatWest had done anything wrong here. But Mr H2 disagreed.

I issued a provisional decision to both parties on 15 August 2019. A copy of this is attached below as it forms part of this final decision. In it I explained why I didn't feel there was sufficient evidence for me to conclude that NatWest had lost the documents concerned here.

NatWest didn't make any comments on my provisional decision. But Mr H2, acting on behalf of Mrs H, sent a detailed response alongside some further evidence for my consideration. In summary he said:

the wills

- He feels Mr H's written instructions show that all three wills were lodged with NatWest.
- And that as NatWest were the executor for all three wills he thinks it should have kept a record of their location regardless of where they were stored.
- NatWest branch employees referred to its document storage area as being very disorganized and mostly uncatalogued. And he's been told that NatWest has a reputation for losing wills and documents.
- He thinks it's plausible there could have been a mix up with Mr H's wills because they were lodged prior to the barcode system used to identify them. And he feels the fact NatWest hasn't been able to evidence it carried out its procedures for discharging them from safe custody gives reasonable doubt as to which wills were discharged.

the insurance documents

- He provided a letter from Mr H's insurer to NatWest that he feels shows the policy documents were lodged with the bank.

- He said it's unacceptable for NatWest to have made mistakes such as saying it had discharged a policy document to the insurer, when it's now confirmed this wasn't the case.
- He feels there was an inaccuracy in my provisional decision. He said it's incorrect that reference numbers for the insurance documents were found on handwritten ledgers. Rather, he was told by a NatWest branch manager - who was told by its securities team - that it had two documents and would send these out to him. So he believes that the NatWest securities team has computerized records detailing what should be held in safe custody, but that on physically looking for the documents they cannot be found.
- He agrees NatWest isn't in possession of the documents now. But feels that given there are NatWest reference numbers for the documents, they must have at some point been its possession.

So now I need to make a final decision.

my findings

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

As I explained in my provisional decision, where evidence is incomplete or contradictory (as it is here) then I have to base my decision on the balance of probabilities – that is, what is most likely to have happened.

I'd like to thank Mr H2 for the detailed response he provided to my provisional decision. Whilst I've only summarised this above, I'd like to assure him I have taken everything he said into consideration when reaching this final decision. And I hope he won't take it as a discourtesy that I've concentrated my findings on what I consider to be the key points here.

I appreciate that Mr H2, on behalf of Mrs H, will be disappointed that I haven't reached a different conclusion to the one that I set out in my provisional decision. But I'm still not persuaded that, on the basis of the evidence available, it would be fair for me to conclude that NatWest has lost the documents concerned here. I'll explain why.

the will

I appreciate Mr H2 feels strongly that three wills were lodged with NatWest. And he's provided further copies of instructions left by Mr H concerning his affairs. But I still haven't seen conclusive evidence that this was the case. So whilst I understand why Mr H2 feels it's possible that NatWest has lost at least one of these wills, the information he's provided doesn't make me think that my provisional findings in respect of the missing will(s) were wrong.

I note Mr H2 feels NatWest should have had a record of where all three of Mr H's wills were stored regardless of whether or not they were in its safe keeping. He's provided us with a copy of an old NatWest brochure which says "*The executed will and any Codicils may of course be deposited with the Bank for safe custody, but in any event it is important that we are told where the executed Will and any Codicils are deposited*".

We've asked NatWest for more information about this and it's confirmed that it doesn't keep a record of any documents that aren't lodged with it. And given this brochure's age I don't think it's necessarily indicative of NatWest's current process in respect of these matters. So I haven't concluded that it's made a mistake by not recording this information either.

the insurance documents

Mr H has explained that some of the information contained about these documents in my provisional decision was wrong. He says the only two ledger entries found were in relation to the missing wills. But that he was told by a NatWest branch manager last year - who was informed by its securities team - that it was in possession of two of Mr H's life assurance policy documents.

We've asked NatWest to provide us with any further information it has in light of Mr H2's suggestion that its securities team has records which detail that these documents should be in its safe custody. But it's confirmed it's already given us all of the information if holds in respect of this matter – and I haven't seen anything that suggests this is the case.

Mr H2 has also provided a copy of a letter sent to NatWest by Mr H's insurer in respect of one of the missing documents that states that *"the above policy was assigned to NatWest on 1 September 1987 and I enclose a copy of correspondence from NatWest Iron Gate branch in Derby confirming the assignment."* He feels this shows that NatWest had – and has lost – these documents.

I know Mr H2 will be disappointed, but I haven't reached the same conclusion. I don't think the insurance company's use of the word *'assigned'* here necessarily means that NatWest were sent the original policy document for safe keeping. Life insurance or assurance policies can sometimes be assigned to a third party – meaning that the third party becomes a beneficiary of the policy. And Mr H has suggested NatWest were the beneficiary here. But I don't think that it would have necessarily had to retain a copy of the original policy document for this to be the case. Mr H2 has also made reference to the documentation mentioned in this letter. But as I haven't seen this, I don't think I can reasonably infer what might have been included.

Its clear NatWest did previously provide some misleading information when it suggested a policy document had been discharged to the insurer. I acknowledged this in my provisional decision. And I appreciate why Mr H2 is so frustrated about it. But I don't think this was done "tactically" as he's suggested. And for the reasons outlined above I still don't feel I can reasonably conclude that it's more likely than not NatWest has lost documents here.

my final decision

My final decision is that I do not uphold this complaint for the reasons I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H2, on behalf of Mrs H, to accept or reject my decision before 18 November 2019.

Jenette Lynch
ombudsman

copy of provisional decision

complaint

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NatWest said it had checked its database and spoken to its solicitors, but hadn't been able to trace the original will. It paid Mr H2 £150 compensation to apologise for the trouble and upset caused. However it's now confirmed that it doesn't think it made any error here. It's confident that any wills lodged with it by Mr and Mrs H were discharged some time ago.

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Our investigator didn't think there was sufficient evidence to conclude NatWest had done anything wrong here. Mr H2 has given us a detailed response to explain why he disagrees with this view. So the case has been passed to me to decide.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete or contradictory (as it is here) then I have to base my decision on the balance of probabilities – that is, what is most likely to have happened.

Having looked at everything both sides have provided here, I don't feel that I can conclude that NatWest has lost any of these documents based on the evidence provided. So I won't be asking it to do anything further. I know Mr H2 and Mrs H will be very disappointed with this, but I'll explain why.

the will

Mr H2 believes that Mr H lodged three wills with NatWest for safe keeping - individual wills for Mr H and Mrs H, and a joint will. I can see NatWest's solicitors have suggested its unlikely three wills would have been prepared. But Mr H2 has shown us a copy of instructions left by Mr H which do refer to three wills. So I have no reason to doubt that three wills were in existence at one time or another.

However, I haven't seen conclusive evidence that all three wills were lodged with NatWest for safe keeping. Mr H's instructions state that NatWest is the executor for his will. But they don't confirm that NatWest held signed copies of all three wills in their possession. I've seen a letter from NatWest confirming receipt of Mr H and Mrs H's wills in 1983. But it doesn't specify how many wills there were. And Mr H2 has told us he's spoken to the solicitors who prepared two of the wills. Which suggests to me that the third will was prepared at a different time. And I have to consider that its possible different arrangements could have been made for its safe keeping.

NatWest has shown us that two wills were withdrawn from its safe custody in 2009. I understand Mr H2 feels it should be able to show him signed receipts to confirm these withdrawals. But I'm satisfied that, on balance, it's more likely than not two wills were withdrawn at this time given the evidence it has been able to show us, which consists of a discharge note signed by a bank employee.

This discharge note advises that the wills for Mr H and Mrs H were lodged with NatWest on 26 January 1983. And it states that Mr H's will was discharged on 28 May 2009, and Mrs H's will was discharged on 8 June 2009.

Mr H2 thinks that it's likely that if two wills were withdrawn at this time they were actually Mrs H's will and his parent's joint will. He thinks its likely NatWest are either still in possession of, or have lost, Mr H's individual will.

I appreciate Mr H2 feels there is reason to doubt what is written on the discharge note. But I haven't seen the two wills that were discharged, or any other evidence to suggest that the description on the note was incorrect. So I don't think I can fairly conclude that any error was made in this respect.

I'm very sorry to hear of Mr H's passing. I appreciate this is a difficult time for Mr H2 and Mrs H. I also understand the severity of the implications of Mr H's will not being located. But I haven't seen any evidence that I think means I can reasonably conclude that NatWest has lost Mr H's will.

the insurance documents

Mr H2 says that NatWest has also lost some of Mr H's life assurance policy documents. He's shown us evidence that Mr H withdrew a number of documents from NatWest's safe custody in 1995. But has explained that Mr H also had two other sequentially numbered policies. NatWest says it can't locate these policy documents. But Mr H2 believes it was in possession of them last year. He's explained that when he went into a NatWest branch the branch manager spoke to its securities team and passed on two reference numbers to him.

NatWest has given us a statement from the member of staff who assisted Mr H in branch. She's explained that the reference numbers she gave to Mr H2 were old reference numbers she'd found on some handwritten ledgers. But that she thought they'd been released to the customer, so she advised Mr H2 to try and locate receipts and check with solicitors around the additional dates she'd provided to him. So I don't think NatWest was in possession of the documents themselves when Mr H2 was quoted these reference numbers. Rather they were given to him to help him locate the documents, or any further details about their lodging with NatWest which would assist NatWest in making further searches for them.

Mr H2 has explained NatWest were a beneficiary of one of Mr H's policies that he is now unable to locate. He's told us he asked the bank to send a letter of no interest to the insurer last year. NatWest confirmed it did this. It also told us previously that it had sent the original policy document with this letter.

We've asked NatWest for more details about this as Mr H2 has confirmed NatWest didn't have permission to discharge any policy documents. NatWest has now advised that it did not send the policy document to the insurer. It's shown us a copy of the letter that it did send. And I can see the letter doesn't make any reference to the policy document. Nor does the insurer's letter which NatWest were responding to.

Taking all of this into account, I don't think there is any evidence that NatWest had these policy documents last year. In these circumstances I'd expect to see NatWest has done all it can to try and locate the documents Mr H2 believes it has. And it's explained it has undertaken extensive searches but not found anything.

I know Mr H2 is frustrated by the lack of information NatWest has been able to provide to confirm what happened to these documents. And I appreciate it doesn't have any evidence to confirm that they were discharged. But, in situations like this, evidence can be limited because of the time that's passed. So I have to impartially consider what information is available and reach my findings based on this.

I should also add at this point that I haven't seen any evidence to confirm that these missing policy documents were definitely lodged, or are still lodged, with NatWest. The instructions left by Mr H refer to one insurance policy and simply advise that the policy document should also be sent to the insurer "if the latter can be found". He doesn't state it was being held by NatWest.

So I know Mr H2 and Mrs H will be disappointed, but again, on the basis of the evidence provided, I don't think it would be fair for me to conclude that NatWest has lost these documents.

my provisional decision

My provisional decision is that I do not uphold this complaint for the reasons I've outlined above.

Jenette Lynch
ombudsman