DRN-4618483

The complaint

Mrs T and Ms M, the executors of the estate of X, complain about information provided by Willis Owen Limited (Willis Owen) in respect of two investments within that estate: a Stocks and Shares Individual Savings Account (ISA) and a General Investment Account (GIA).

The estate complains that Willis Owen incorrectly informed the executors that the value the estate would receive from those investments, would be the value as at the date of death. It says because the executors were told that the value was fixed, the estate applied to encash the investments without first asking for a valuation.

The estate says had the executors been given correct information, it would have sought a valuation and it would not have applied to encash the investments in September 2022, because at that point the value had decreased by around £11,000, compared with the valuation at the date of death.

What happened

In April 2022 Mrs X sadly passed away.

On 30 May 2022 one of the executors, Mrs T, contacted Willis Owen to ask for information about two investments held by the late Mrs X.

On 6 June 2022 Mrs T contacted Willis Owen again to ask for further information about those investments.

On both occasions Willis Owen informed Mrs T that the estate would receive the value of the investments as at the date of death.

On 10 June 2022 Willis Owen sent the estate a valuation letter indicating it would require the provision of a Grant of Probate in order to carry out any instructions from the estate.

On 11 September 2022 the Grant of Probate was obtained.

On 21 September 2022 the estate sent Willis Owen a copy of the Grant of Probate and gave it instructions to sell the investments.

On 29 September 2022 Willis Owen responded and indicated that the sale was in progress.

On around 7 October 2022 the estate received the proceeds of the two investments.

On 10 October 2022 Mrs T contacted Willis Owen to query the amount the estate had received. She then spoke to Willis Owen on 11 October 2022 to express her concern that the estate hadn't received the date of death value for the investments which is what she had been told by Willis Owen it would receive.

On around 11 October 2022 the estate complained to Willis Owen. The executors said when Mrs T had telephoned at the end of May 2022, and at the beginning of June 2022, she had been informed on both occasions that the value the estate would receive, would be the value of the investments at the date of death, regardless of any market movement. So, it said the estate made the decision to sell based on the original valuation it had been given by Willis Owen.

The estate said that Willis Owen should pay out the value of the investments as at the date of Mrs X's death, in line with the information it had given the estate.

Willis Owen upheld the complaint brought by the estate and acknowledged the executors had been given incorrect information.

It explained that the valuation of an asset used for the purposes of applying for probate (and for the payment of any Inheritance Tax which might be due) was that as at the date of death. However, it said *that* value was different to the amount which would be received by the beneficiaries of the estate, if the executors chose subsequently to sell those assets.

Willis Owen said it could only act on the instructions of the executors, so it sold the assets when the estate instructed it to do so and that was the value the estate received.

However, it offered compensation for disappointment and loss of expectation as a result of the incorrect information it had provided.

The estate disagreed with the compensation offered. The executors said that Willis Owen should pay the difference in value between what the estate received and the value of the investments at the date of death.

Our investigator considered the complaint made by the estate of the late Mrs X. He said he had no reason to doubt that the estate would not have encashed the investment had it known the correct value.

The investigator said to put things right the received monies could be reinvested exactly as they were before, as if the investments hadn't been encashed and the monies would then be exposed to any market movements. However, the investigator said that wasn't an option because the monies had been placed elsewhere, into other investments.

The investigator was of the view that he couldn't determine whether or not the estate had suffered a loss because he did not know how the encashed investment would perform against the current investments.

The investigator was of the view that in the event that the investments hadn't been encashed, it couldn't be known whether the investments would have regained the value at an unknown future encashment date.

The investigator felt it would not be fair for Willis Owen to pay the estate the difference between the values, as he said the decrease was caused by market movement not error. So, he felt the compensation offered of £300 was fair and reasonable in the circumstances.

The estate did not agree with the investigator's conclusions and reiterated that it wouldn't have encashed the investments without a valuation, if it hadn't been told the value was fixed at the date of death.

As no agreement could be reached the complaint was referred to me for review.

I issued a provisional decision where I upheld the complaint in part. I concluded that if the executors of the estate had been given the correct information they would have acted differently. I concluded that it was more likely than not, that they would have asked for a valuation, and then awaited the next statement and cashed in the investments approximately six weeks after the actual encashment date.

An extract from that decision is produced below and forms part of this decision.

Willis Owen didn't agree with my provisional decision and in summary it said:

- It accepted that mistakes were made but said those mistakes only resulted in a loss of expectation.
- It said there was no error in the sums paid to the estate, and any fluctuations in value resulted solely from normal market movements associated with the assets invested.

- It said it had considered the guidance provided by our service on compensation for distress and inconvenience. Willis Owen said the guidance addressed the impact of the disappointment rather than the quantification of the perceived loss. It said it had offered £300 which it felt was consistent with that guidance.
- It said the executors received the correct amount and it referred to legal principles which it said outlined that no-one should benefit from a mistake. Willis Owen said where a mistake was found, the usual basis applied by the courts was that the individual concerned should only receive the correct benefits, albeit consideration should be given to whether the mistake had led to a change of position for the recipient.
- It said there was no indication that the executors had entered into any commitments or made irreversible decisions, as a result of the mistake. Willis Owen said there was nothing to suggest they wanted to hold the investments for a longer period or reinvest the proceeds. It pointed out that the executors had paid off debts and placed the balance of the proceeds on deposit.
- It gave two reasons why it didn't think the executors would have acted any differently if they had been given the correct information:
    1) They were subject to legal and fiduciary duties because they were acting in their capacity as legal personal representatives;
    2) The actions taken by the complainants having received the proceeds from the sale were not consistent with those of persons who would be prepared to accept the risks of continued exposure to market volatility.
- It said there was a need to separate the legal responsibilities of the executors to the estate with their personal interests as beneficiaries. It referred to the legal duty of personal representatives under section 25 of the Administration of Estates Act 1925 and said they would've been subject to an obligation to collect in the assets as quickly as reasonably practicable and to protect the estate once the assets been collected. It referred to the case of Re Tankard 1942.

- It said the executors would've needed a good reason to consciously defer sale of the deceased's investments and in doing so could have become liable for any loss resulting to the estate from such a decision

- It said its view was that choosing to delay the sale of the investments pending an anticipated recovery in asset values would not have been consistent with their obligations as executors.

- It referred to the duties of executors imposed by the Trustee Act 2000 to preserve the trust fund, to have regard to the suitability to the trust of the investments and the need to consider diversification of the investments (taking advice if necessary). Willis Owen said given the imminent distribution of the estate proceeds this would likely have resulted in a need to quickly sell the investments in any case, to comply with those obligations.

- It said if the executors had sought to comply with their duties, they would've provided instructions to sell the investments at the earliest opportunity despite the fluctuations in the value of the investments. So, it said this supported the view that the misinformation didn't cause a financial loss or change in position.

- It said there was no evidence that the executors would've felt it appropriate to hold on

to the investments for any longer than was necessary, even if they had asked for a current valuation immediately prior to the encashment instruction. Willis Owen noted that the executors had used the sums received to pay off debts, placing the residual funds in bank accounts and deposit-based savings vehicles. It didn't consider those actions to be consistent with persons who would've chosen to leave the investments subject to market movements for any period of time in the hope that their value would increase.

- It said the investments represented a fairly high-risk portfolio constructed primarily of individual company shares and its value could've dropped, rather than risen had it not been sold and that nobody could have predicted this. Willis Owen said if the executors were willing to take risk, one would have expected them to re-invest the proceeds into equity investments, but they did not. Neither did the complainants contact Willis Owen to seek to have the assets reinvested or reinstated.

- It referred to a phone call from Mrs T in October 2022, where she expressed considerable distress and surprise at the fact that the funds had in fact remained invested and subject to market fluctuations. Willis Owen said in this call, Mrs T made a clear statement that as executors 'they were not risk takers in any way, shape or form'. It said this indicated that the executors wouldn't have delayed selling the late Mrs X's investments, had they not been misinformed and had an up-to-date valuation been obtained prior to the instruction being given.
- It said the executors' behavior and the decisions taken by them, were consistent with persons who would be keen to avoid potential further losses by immediately selling the investments, rather than those who would choose to hold onto the investments in the hope or expectation that they would quickly recover. Willis Owen said the executors now had the benefit of hindsight, and they didn't think that if they had been provided with the correct information they would've acted differently.

The estate also responded to my provisional decision and said in summary:

- If the executors had been provided with the correct information, they would've thoroughly reviewed the investments held by the late Mrs X, and taken time to assess their performance over at least a six-month period, before making any decision as to when to encash them.
- There was no logical reason why the executors would've instructed a sale without first asking for a valuation. They only did this because Willis Owen had told them on two occasions that the amount was fixed regardless of the date of sale.
- Ms M said she would've held on to the investments because their value had dropped by approximately 10% and she had no immediate financial need to encash them, as can be seen from her bank statements. In addition, an inheritance was due from the sale of the late Mrs X's house.
- Ms M reiterated that her share of the proceeds had been placed in a bank account with no interest being paid on the balance.

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.

I have considered the representations sent by both parties in response to my provisional decision.

I have taken into account all relevant law, regulations and best practice at the time.

Having done so, I still remain of the view set out in my provisional decision an extract of which is produced below and forms part of this decision.

Provisional decision

"What I've provisionally 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.

Willis Owen accepts that its representatives gave out incorrect information to one of the executors acting for the estate, in two phone calls. So, the key issue for me to determine is the impact of those errors.

In order to assess the impact of those errors I have to consider what, it is more likely than not, would have happened, if Willis Owen had given incorrect information. So what action would the executors have taken if they had been given the correct information. And was there any financial loss as a consequence of that incorrect information being given.

Value of investments at date of death

The estate has indicated in its complaint that it believes Willis Owen should pay the difference between the amount the estate received and the value of the investments at the date of death. The estate received approximately £91,000 and the value at the date of death was approximately £102,000.

I think that would be the position if the incorrect information; that the value was fixed at the date of death, was correct.

The terms and provisions for those accounts set out what happens in the event of the death of the account holder.

Term 3.6 entitled "Deceased Clients" relates to ISAs and states:

When we are notified of your death, your Willis Owen ISA will be designated as a Continuing ISA Account which will retain the tax benefits of a Willis Owen ISA until the earlier of:

• closure of the Account
• the completion of the administration of your estate resulting in your Account being closed; or
• three years from the date of your death;

In the event of your Continuing ISA Account has not been closed prior to the expiry of the three year period from the date of your death, we will start the process of moving all investments from your Continuing ISA Account to the Willis Owen General Investment Account (GIA).

It also explains that:

"Investments will remain unchanged, but will remain subject to market movement until we receive the required documentation from the beneficiaries (or their personal representatives) that allows us to distribute any proceeds from the Continuing ISA Account to the Willis Owen GIA as the case may be."

Term 5.2 relates to GIAs and it says that where the client is deceased:

"The Assets will remain unchanged but their value will be subject to market movement until we receive any required documentation from the beneficiaries, or their representatives that allows us to distribute any proceeds from the GIA."

So I am satisfied on balance that the assets in those accounts would remain invested and subject to market movement until the required documentation was provided by the estate and it gave instructions to sell the investments. So, the information provided to the estate in the two phone calls was incorrect.

When I am assessing whether any financial loss has occurred, I can't use the value from the incorrect information as a starting point. So, I don't think it is right to use the value as at the date of death.

Instead, I have to consider what the position would have been if Willis Owen had given the executors correct information.

Grant of Probate

I also note that when Willis Owen wrote to the executors in June 2022, it indicated that it would need to be provided with the Grant of Probate in order to administer any instructions from the estate in relation to the investments.

The Grant of Probate was obtained by the executors in September 2022 and provided to Willis Owen shortly after. So, as the terms provided that the investments would remain invested until instructions were given by the estate to sell them, and instructions could only be given once the appropriate authority, namely the Grant of Probate, had been obtained, then the value as at the date of death in April 2022, wouldn't have been paid out to the estate. Even if Willis Owen had given the executors the correct information about what happened to the value of the investments upon the death of the account holder.

What action would the estate have taken, if the executors had been given correct information in May and June 2022?

I have listened carefully to the phone calls between Mrs T and the representatives of Willis Owen. Having done so, I am satisfied on balance that Mrs T was informed in clear terms that the value the estate would receive on surrendering the investments, would be the value as at the date of death. So, I don't think there was any reason for her to question this information, particularly as this was confirmed by Willis Owen on the second phone call.

I note that in that second phone call, Mrs T referred to previous statements received in respect of these investments, to a deposit the late Mrs X had made, and the values shown on the statements. So, I consider Mrs T was actively trying to ascertain what the position was with those investments and their value.

Both executors have expressed in strong terms that if they hadn't been informed by Willis Owen that the value was fixed, they wouldn't have given instructions to cash in the investment, without first obtaining a valuation. The executors have explained they didn't obtain a valuation because they had felt there was no need, as Willis Owen told them that the value wouldn't change.

I am satisfied on balance that this is an entirely reasonable assertion in these circumstances. So I consider it is more likely than not, that if they had been given the correct information, they would have asked for a valuation in September 2022, when they contacted Willis Owen,

having obtained the Grant of Probate.

And if they had asked for a valuation at that time, they would have been informed that the value had fallen by nearly £11,000 since April of that year. I think therefore, it is more likely than not, that would have given then cause to pause matters and take stock before taking any further action. Of course, investments can go down as well as up, so there was nothing to say that waiting would improve the situation. However, unless there was a pressing need for those funds at that time, I cannot see why these executors would have gone straight ahead with cashing investments that had fallen in value by that amount over a few months. I also note it was only five months since Mrs X had passed away and they had only just obtained the Grant of Probate.

We have asked the estate what happened to the monies it received from these investments. It has confirmed that the monies were split equally between Mrs T and Ms M as they were the beneficiaries.

Mrs T has indicated that around 20% of her share of the monies, was invested in a cash ISA and the rest was used to pay off some liabilities. Mrs T has provided statements which show that those payments and the contribution to a cash ISA were made a few days after receiving the monies. Ms M has indicated the monies she received were paid into a bank account and remained there.

So, while I note that about 40% of the monies was used to repay liabilities, I am not persuaded on balance that meant that the executors of the estate had a pressing need for those funds meaning they couldn't wait at all to see if the value would recover to some extent.

If the ISA and GIA investments hadn't been encashed in September 2022, the next statement would have been issued on 3 November 2022, as statements were issued every three months. We asked Willis Owen to calculate the hypothetical value for that statement.

Willis Owen has indicated that both investments would've had a combined value of approximately £96,500. I think as the value had increased by approximately £5,000 and was roughly halfway between the value at the date of death and the value shortly after obtaining the grant of probate, and also taking into account the uncertainty posed by this type of investment, it is more likely than not that the estate would have given instructions to encash at that time.

I think it is reasonable to assume that having received the statement on 4 November 2022, those instructions would have been sent on 8 November, because I think the executors would've needed a few days to consider the matter before making their decision. So the relevant value for redress calculation, would be the value the estate would have received if it had sent instructions on 8 November 2022.

I note that the instructions the estate sent on 21 September 2022 resulted in the monies being received by the estate on 7 October 2022, so 12 working days later. Therefore using that time period, if the instructions had been sent on 8 November, the monies would have been received on 24 November 2022.

So, I think Willis Owen should compare the encashment value the estate received, with the amount it would have received if it had sent instructions to Willis Owen on 8 November instead. If the later amount is higher, than Willis Owen should pay the difference to the estate.

When calculating redress on the basis of the estate requesting encashment later, in November rather than September, I think that account also has to be taken of the benefit of receiving those monies earlier. In Mrs T's case, if the encashment had been later, she wouldn't have been able to pay off her liabilities until later, so I think it is likely on balance she would have incurred additional interest.

In addition Mrs T's cash ISA paid interest of 0.6%, so for the six-to-seven-week period between those dates she would have received interest on that proportion of the monies. Details of the relevant interest for both should be provided so that Willis Owen can take account of this when it carries out the difference in value calculation.

Ms M should also confirm whether the bank account, that her share of the monies was paid into, paid any interest.

I have also considered whether the estate would have waited longer to encash the ISA and the GIA, to see if the value would return to the level it was in April 2022. I cannot say for certain what the estate would have done if Willis Owen had given the executors the correct information. So, I have to consider what is more likely than not. And I have concluded that it is more likely than not that the executors would've waited a short additional period until the next statement was issued. And as the value had increased by that point, I consider it was more likely than not that they would have given instructions to encash the investments.

However, I think it is less likely that the executors acting for the estate would have waited for several more months after this with no guarantee that the value of the investments would increase. In addition, by doing so, the estate would take the risk that the value, which had recovered by approximately £5,000, would fall again. The executors would also need to administer the estate. I also note that encashing the investments allowed one of the executors to pay off some liabilities. So, taking all that into account, I don't think it is more likely than not that they would have waited for the next statement to be issued in February 2023."

I would like to address the points raised by both parties in response to my provisional decision.

Impact of mistake

Owen Willis argues that the only loss here is a loss of expectation and it says that it isn't correct that the estate benefits from its mistake. It refers to guidance addressing the position when an overpayment is made in error.

I don't consider this to be a situation where the estate was paid too much by Willis Owen in error and is now seeking to keep that incorrect amount. And I have already explained, in my provisional decision, that the estate isn't entitled to the value as at the date of death because that would be the amount the estate would've received if the incorrect information, was in fact correct. In that situation the estate would be benefiting from Owen Willis's mistake by receiving the value as at the date of death which it wasn't entitled to.

Whereas what I consider happened here, was that the information provided, which was incorrect, caused the executors of the estate to act in a certain way and I am satisfied on balance that in doing so, they acted to the detriment of the estate. I am satisfied from the valuations provided that the estate received less than it would've done, had it been given the correct information and then taken the actions I have identified in my provisional decision. So, any compensation should seek to put the estate back in the position as if the mistake hadn't occurred.

I also note that the decision to encash the investments was in reality an irreversible decision. Because by the time the executors had been made aware of the change in value, I think it is more likely than not that they wouldn't have been able to re-invest at the same price. They weren't experienced investors, so I don't think they would've immediately known how to action this, and it would've taken some time to process. In addition, I think it is more likely than not that the estate would also have incurred dealing costs in re-purchasing the same investments and it would've had to be able to justify incurring those additional costs.

I note that the estate contacted Owen Willis very promptly after the proceeds were paid out and Mrs T expressed surprise and concern that they hadn't been told the investments would remain invested. I consider the reason she was concerned is that she been told on two occasions by Owen Willis that the value would remain fixed. If instead, Mrs T had been told that they would remain invested, I think it is completely reasonable to conclude that the estate would have asked for a new valuation once it had obtained the grant of probate. And I think seeing a reduction in value of nearly £11,000 in 5-6 months, would have given the estate cause to pause and consider what it should do next. So, I still remain of the view that the estate would have acted differently if Owen Willis had given it the correct information.

Risk

Owen Willis points out that Mrs T said in a phone call to its operative in October 2022 that they were not risk takers. It says this demonstrates the executors wouldn't have kept the money invested for a further six weeks. Owen Willis also asks me to consider where the proceeds were then placed; to pay off liabilities and on deposit and to conclude that this also supports the position that the executors weren't willing to take any risk by keeping the money invested.

I have carefully considered the phone call between Mrs T and Owen Willis's operative in October 2022, and I think that the comments made there about risk need to be considered in the context of that conversation, rather than in isolation.

Mrs T made the comments about risk in the context of her belief that as she said in the phone call everything should "stop and freeze" after the death of the late Mrs X. Instead of which the investments remained invested and subject to fluctuations in value. So, not taking a risk wasn't an option for the executors because the investments remained invested after the death of Mrs X, whether they wanted them to, or not.

Owen Willis says the executors wouldn't have left those investments invested for any additional period of time because they weren't willing to take any risk. I don't agree because I think there is more than one type of risk.

I agree with Owen Willis that remaining invested in the stock market is a risk, as values can go up and down. But encashing an investment without first knowing its value by obtaining a valuation is also a risk. And similarly, encashing an investment that has reduced in value by about £11,000 in a few months poses a risk – the risk that you crystalise this reduction without waiting to see if the market settles, for instance.

So, while I agree that the executors didn't choose to take out these investments, that doesn't mean that the least risky option in the circumstances as they were, was to encash them immediately.

I also don't agree with Owen Willis that where the proceeds were then placed demonstrates that if the executors had been fully informed, they wouldn't have left the investments where they were for a short while. Mrs T paid off some liabilities and placed the rest in a cash ISA whereas Ms M placed her half share in a bank account. Those actions could easily have been delayed by a short while with little impact on the situation of the executors, who were also of course the beneficiaries.

I also consider there is a distinction between the actions they took as beneficiaries, where they could simply spend the money they had inherited as they wished, and their actions and

decision making as executors where they would be acting in terms of ensuring that a fair value was realised for assets and efficiently distributing those assets to beneficiaries.

In addition, I don't think the fact that the beneficiaries didn't invest the monies, they had just inherited, immediately in the stock market demonstrates that they weren't willing to keep monies that were already invested where they were, in order to try to minimise the sudden reduction in value.

I also don't think the duties under the Trustee Act 2000 would've required them to encash immediately without regard to what had happened to the value of the investment in the preceding months. I note the nature of the assets held within these investments. However, the reasonable course of action would depend on the circumstances at the time, and I don't think waiting for a short period would have been unreasonable in the circumstances.

Duty of executors in collecting the real and personal estate of the deceased

Owen Willis says that waiting for approximately six weeks to encash the investment was not consistent with the executors' legal duties and obligations.

As Owen Willis has pointed out, the executors of the estate have a duty to collect the property of the deceased as set out in section 25 of the Administration of Estates Act 1925 which says:

"The personal representative of a deceased person shall be under a duty to—

(a) collect and get in the real and personal estate of the deceased and administer it according to law;"

I note that I have taken into account the role of the executors in my provisional decision and as a result I have concluded, it was more likely than not, that the executors wouldn't have waited beyond the six-week period I had identified, to encash the investments. So, I don't think the six-month period put forward by Ms M would be fair and reasonable here. I also note that after six weeks the value had recovered by approximately £5,000 so they would risk losing that partial recovery.

Owen Willis has also referred to the case of Re Tankard [1942] Ch 69) which considers the role of personal representatives and indicates they should act with due diligence when paying the debits of the testator which also includes payment to the beneficiaries.

However the Judge in that case said in determining whether due diligence had been shown that "*regard must be had to all the circumstances of the case*"

The Judge in that case concluded that:

"Apart from any provisions contained in the will of a testator which expressly or impliedly deal with the payment of the debts, it is the duty of executors, as a matter of the due administration of the estate, to pay the debts of their testator with due diligence having regard to the assets in their hands which are properly applicable for that purpose, and in determining whether due diligence has been shown regard must be had to all the circumstances of the case. It was contended by the defendants that this was not a duty which was owed to beneficiaries. In my opinion, this contention is not correct. The duty is

owed not only to creditors, but also to beneficiaries, for the ultimate object of the administration of an estate is to place the beneficiaries in possession of their interest and that object cannot be fully achieved unless all debts are satisfied."

The Judge also held that:

"With respect to the period within which debts should be paid, there is, in my opinion, no rule of law that it is the duty of executors to pay such debts within a year from the testator's death. The duty is to pay with due diligence. Due diligence may, indeed, require that payment should be made before the expiration of the year, but the circumstances affecting the estate and the assets comprised in it may justify non-payment within the year, but, if debts are not paid within the year, the onus is thrown on the executors to justify the delay."

So, I consider the sudden reduction in the value of the investments would be something that could reasonably be taken into account, as part of the circumstances of the case. I also note that six weeks is a relatively short time considering it had taken some five to six months to obtain the grant of probate.

Owen Willis says that there should be a good reason for any delay by the executors. I note the period I have identified is a relatively short period. So, looking here at what is fair and reasonable and taking into account the duties of the executors, I think waiting a short period would represent striking a balance between acting promptly to collect the estate and ensuring a fair value was obtained, and therefore would be justified.

Role of executors and beneficiaries

Owen Willis has also pointed out that it is important to separate the role of the executors and the beneficiaries. I agree that they have different roles and responsibilities. The executors will act to collect the estate and preserve its value, and the beneficiaries may not always agree with the actions they take. And of course, the executors run the risk that if they delay encashing an investment and it falls in value, the beneficiaries could bring an action against them for any loss.

However, here the executors and the beneficiaries are the same individuals. That doesn't mean that the executors can ignore their duties. However, I consider they were taking decisions in the knowledge of how they, the beneficiaries, would feel about those actions and whether they were likely to be contested.

In any event, I don't think the executors had to make a perfect decision - they had to make decisions that could be reasonably justified, and I think given the relatively short time period and the background this could be reasonably justified – whether or not they were also the beneficiaries.

As an aside, I also note the terms and conditions of the ISA allow it to remain as a continuing ISA and thereby remain invested, for up to three years after the date of death. So, the terms appear to envisage situations where encashment of the account could not occur straight away because it had taken some time to obtain the grant of probate. In this case the grant of probate was obtained approximately five months after the date of death.

Interest saved and gained as result of encashment

I have concluded that had the estate been given the correct information, it would have waited for approximately six weeks prior to encashing the investments held by the late Mrs X. So it would have sent instructions to Owen Willis on 8 November 2022 and the monies would have been received on 24 November 2022.

Accordingly I have concluded that a comparison should take place between the value actually obtained and the value the estate would've obtained had it waited for the period set

out in my provisional decision. However, I think account also has to be taken of any gain made as a result of an earlier encashment.

I can see that Mrs T placed £9,351 in an ISA with an interest rate of 0.6%. So approximately six weeks (from 11 October 2022 when monies were placed to 24 November 2022) of interest on that amount should be calculated and deducted from any financial loss.

Mrs T also paid off a loan, car finance and a credit card. Mrs T was asked to provide information about the interest saved and has said there was little, or no interest saved. Approximately £7,319 was used to repay credit card loans and the remaining £28,475 to repay loans and car finance.

I think it is more likely than not that repaying a loan or credit card would result in some saved interest, otherwise there would be little point in repaying it early.

I did ask in my provisional decision for figures to be provided showing the amount of interest saved, with a view to that amount being deducted from the compensation. As that hasn't been provided and in order to bring finality to the matter, I think it fair and reasonable to assess the interest saved by paying off liabilities, using information from Moneyfacts about the relevant rates at that time, as I consider that to be a fair and reasonable estimate in the circumstances.

Looking at the information provided by Moneyfacts for the relevant period, the rates for unsecured loans range from the high 2% to just over 3%. So I think a rate of 3% simple per annum should be used to calculate the interest, that is more likely than not, to have been saved on the loan amount of £28,475 for the period of approximately six weeks identified (from 11 October 2022 to 24 November 2022).

Moneyfacts also indicates the credit card standard interest rate (APR) for that particular credit card over that period to be 22.9% per year. So interest saved should be calculated at that rate on the amount of £7,319 for the period of approximately six weeks identified (11 October 2022 to 24 November 2022).

So those amounts of interest can also be deducted from any financial loss.

Putting things right

Willis Owen should compare the amount received by the estate for the ISA and the GIA in October 2022, with the amount the estate would have received if the estate had sent instructions to sell and encash the investments on 8 November 2022. If the later value is higher, the difference between the two should be paid to the estate.

However account should also be taken of any interest saved on liabilities for the period between 11 October 2022 and 24 November 2022, (as outlined above) and any interest earned on the proportion of money invested in a cash ISA over that period, and those amounts should be deducted when calculating the loss.

Interest of eight percent simple per year should also be added to that loss from 24 November 2022 to the date of this decision.

My final decision

My final decision is that the estate of X's complaint against Willis Owen Limited is upheld and it should pay the estate of X compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of X to accept or reject my decision before 17 May 2024.

Julia Chittenden
Ombudsman