

The complaint

This complaint comes from the estate of the late Mr H. Miss H, as administrator, has brought the complaint on the estate's behalf. She says that Bank of Ireland (UK) Plc released funds to the estate's solicitors without the proper authority.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

In early 2021, Mr H unfortunately passed away.

In late 2022, a solicitors' firm representing the late Mr H's estate applied to Bank of Ireland for the release of the estate's funds. They provided the Letters of Administration, which they were named on for having extracted them. Bank of Ireland paid the solicitors the funds, which came to around £165,000.

However, Miss H says she did not authorise the solicitors to handle the estate's funds, and says the solicitors received the funds without her knowledge, though she declined to provide her terms of engagement with the solicitors. She says the solicitors took around £15,000 from the estate's funds, for fees which Miss H says were not owed. She pointed out that she was the estate's personal representative, and that Bank of Ireland did not get a signed payment authorisation form from her.

Bank of Ireland say they acted correctly, as for an estate of this size they only required the Letters of Administration, which the solicitors provided and were named on.

Our Investigator looked into things independently and didn't uphold the complaint. Miss H appealed, so the complaint's been passed to me to decide.

I sent both sides a provisional decision on 26 June 2024, to explain why I didn't think the complaint should be upheld. In that decision, I said:

First, I do understand that Miss H has found the matter most stressful to deal with. I'm grateful to her for being open and candid with us about how she's felt. I should explain that in this complaint brought by the estate, the estate is Bank of Ireland's customer, and the estate is the eligible complainant. That means I can only consider losses to the estate – but not losses to its representatives, who are not eligible complainants themselves. So I need to clarify that I cannot consider any losses to Miss H, nor make any awards for such losses, which includes any stress or inconvenience she suffered. As such, I have to keep my decision focused on the estate itself.

I also need to explain that we are not the regulator – that's the Financial Conduct Authority (FCA). That means we do not oversee banks' processes, nor punish them or issue fines for breaking a process. Instead, we're an informal dispute resolution service, here to put things right if a bank's error caused a loss. This is important to note, as we won't necessarily award compensation just because a business got something wrong. I would only tell the business to pay compensation if I found that their error caused a loss to the complainant (the estate).

It's not clear that Bank of Ireland did make an error here. Their process documents say that the Letters of Administration are what's needed when the funds exceed £50,000 – which the funds did here. They do list some other documents they can obtain – notably, the payment authorisation form which Miss H has referenced. But it appears these would only be required instead of the Letters of Administration should the funds be less than £50,000 – which these funds were not. Here, the funds exceeded £50,000, Bank of Ireland received the Letters of Administration from the appointed solicitors, and the solicitors were named on those Letters of Administration as the party who extracted them. So on that basis, it looks like Bank of Ireland followed their process.

However, I understand that the process is not worded particularly clearly, and that Miss H was given conflicting information. So I'll assess the case on the basis that Bank of Ireland did not follow the correct process.

But even if I accept that Bank of Ireland didn't get the correct forms, that doesn't mean they paid an incorrect party. Much of Miss H's arguments centre around how she was the court-appointed personal representative of the estate. And that's not in dispute – I accept that she was the estate's personal representative. But she was still able to appoint solicitors to then represent her/the estate on her behalf. It's normal for people to hire solicitors to act on their behalf. And it was both normal and allowed for a bank to deal with a solicitors' firm that the personal representative hired.

Here, I can see that the solicitors were representing the estate, and were not de-instructed until several months after they were paid the funds. The solicitors' firm was the party who extracted the Letters of Administration, which they would usually only be able to do if they were acting on behalf of the estate and its personal representative. I've not found any evidence that Miss H or any other party applied to receive the funds at the time – it looks like the solicitors were the party handling that. And it would be normal for a solicitor representing the estate to do that. Meanwhile, Miss H has declined to give us the terms of engagement, contract, or correspondence between her and the solicitors, and I can't see why she'd do that if these would evidence her claim that the solicitors were not authorised to handle this matter. This means I have no evidence to support Miss H's claim, and instead the other evidence points to the solicitors being authorised to act on behalf of the estate and its personal representative. So even if I were to accept that Bank of Ireland didn't get the right forms, based on the evidence at hand, it's most likely that they paid a correct party anyway.

Then even if I were to accept that Bank of Ireland were incorrect to pay the solicitors' firm – despite the evidence at hand – I still would not have a sufficient basis on which to conclude that this caused the estate a loss.

This is because I cannot consider the underlying dispute between Miss H and the solicitors. I have no authority over that matter, nor any ability to require the solicitors to give us their side of the story. That dispute is simply outside of our remit. And I've not been given any outcome from any relevant body who could consider that dispute, such as a court or the solicitors' regulating body. That means I cannot reach any conclusions on what money was or was not due to the solicitors. This is very important. As noted before, I could only award compensation if I saw that Bank of Ireland's error caused the estate a loss. But for all I know, the estate really did owe the solicitors the fees in dispute – the solicitors would presumably argue that they were owed that money. And if the estate owed them that money anyway, that would mean there was no loss caused to the estate in Bank of Ireland paying the solicitors and the solicitors keeping the fees owed. As I cannot make any findings on the dispute with the solicitors, nor conclude what the estate did or did not owe the solicitors, I cannot definitively conclude that the estate lost out here at all.

Really, this dispute is better directed against the solicitors rather than Bank of Ireland. The underlying dispute with the solicitors is what forms the crux of the issue. And even if it were to be found that the solicitors took the fees unduly, then the solicitors would be required to repay that money anyway.

In summary, it looks like the payment in question was authorised. And even if I were to conclude that it wasn't, based on the evidence I have so far it's most likely it was paid to a correct party anyway. And even if I were to conclude that it was paid to an incorrect party, I don't have any basis on which to award compensation as I cannot conclude that the estate suffered any loss.

So based on what I've seen so far, I do not have any basis on which to tell Bank of Ireland to compensate the estate.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 10 July 2024. Bank of Ireland didn't add anything further. Miss H replied on behalf of the estate, which I'll talk about below.

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.

Miss H expressed her dissatisfaction with how long it took Bank of Ireland to provide us with call records and forms, which she felt meant the bank was misleading us. I should explain that we can only consider complaints about "regulated activities", such as processing payments. But handling complaints is not a regulated activity in and of itself – i.e. we're not really set up to deal with complaints about complaints. And I explained before that we're not the regulator and are not here to punish businesses, including for delays in replying. We also wouldn't tell the bank to pay the estate thousands of pounds they don't otherwise owe to the estate, just because the bank administered the complaint poorly. So I'm not really best placed to address that point. But I will point out that Bank of Ireland did ultimately provide their information, that banks can sometimes have difficulty finding things like call recordings, and that the bank didn't think the forms were relevant as their argument was that they only needed the Letters of Administration. I do not find that we were misled.

Miss H pointed out that a different bank had asked her to sign some forms before releasing funds. But while that may well have the case, different businesses will often have different processes. This case is about Bank of Ireland, not that other bank.

Miss H wanted me to answer whether the bank had the authority to release the money to anyone other than the court appointed legal representative. To reiterate: yes, had the court appointed legal representative hired solicitors to represent her/the estate and handle the estate's funds (which solicitors would commonly do), then normally the bank could deal with the solicitors and pay the funds to them. And based on everything that's been sent, that was most likely the case here. So it's most likely that Bank of Ireland did pay a correct party.

Miss H reiterated that she should have been asked to sign a form. As I set out before, it looks like that would've only been the case had the funds been less than £50,000 – which they were not. And even if I accept her argument, it's most likely that Bank of Ireland paid a correct party anyway; and even then, I cannot conclude that the estate suffered a loss.

Miss H said she didn't have to give us her engagement letter with the solicitors, and said she hadn't de-instructed them yet because she didn't yet know they'd received the estate's funds without her permission. While she didn't *have* to give us this key evidence, I am nonetheless able to draw negative inferences from her refusal to provide evidence. Without this evidence, I have nothing to substantiate Miss H's claim that the solicitors were not authorised to handle the estate's funds. Whereas from what I do have, I see that the solicitors were representing the estate at the time, the solicitors extracted the Letters of Administration, no other party had applied to receive the funds, it's normal for a solicitor representing the estate to handle the funds, I've not been given any findings from any relevant court or regulating body which says the solicitors did anything wrong here, and Miss H has refused to evidence what the terms of engagement were – which she would be unlikely to do if the terms of engagement showed that the solicitors were not authorised to handle the funds. So I find it's most likely that the solicitors were authorised to handle the estate's funds, and that Bank of Ireland therefore paid a correct party.

Miss H said the estate lost out because the solicitors took fees she claims they weren't entitled to. But as I set out before, I cannot consider the dispute between Miss H and the solicitors, and I've not been given any outcome from any relevant body who could consider that dispute, such as a court or the solicitors' regulating body. I have no evidence which substantiates that the solicitors were not entitled to those fees, whereas I can see that the solicitors were representing the estate, and that would normally mean they were owed fees. So for all I know, the estate owed them that money anyway. I cannot reach any conclusions on what money was or was not due to the solicitors, so I cannot conclude that the estate suffered any loss due to Bank of Ireland paying the solicitors.

Finally, Miss H asked us to gather audit trails from Bank of Ireland for her. It's unclear what type of audit she wants or what this is for. But to clarify, I am not her representative, nor Bank of Ireland's. I am not here to act for either side or to run errands for them. I am here to decide this case impartially based on what I find to be relevant. I would only ask for further information if I felt it was needed for me to decide the case. And I have already asked for the information I found to be relevant. So I see no need to ask Bank of Ireland for audit trails.

So having reconsidered the case, I've come to the same conclusions as before. Namely, that it looks like Bank of Ireland were authorised to pay the solicitors. And even if I were to conclude that they weren't, it's most likely they paid to a correct party anyway. And even if I were to conclude that they paid to an incorrect party, I don't have any basis on which to award compensation as I cannot conclude that the estate suffered any loss. So I do not have any reasonable basis on which to tell Bank of Ireland to compensate the estate. Really, this dispute is better directed against the solicitors rather than Bank of Ireland.

My final decision

I do not uphold this complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr H to accept or reject my decision before 12 August 2024.

Adam Charles
Ombudsman