

The complaint

The estate of Mr M has complained that The Royal Bank of Scotland Plc (“RBS”) changed the law firm who was appointed as an executor of Mr M’s Will without notifying the late Mr M or his wife.

The estate of Mr M has also complained about the difficulties they faced in obtaining Mr M’s Will.

What happened

The late Mr M and Mrs M had previously arranged for their Wills to be drawn up through RBS. Sadly, Mr M passed away on 1 September 2022. However, when Mrs M contacted RBS to request a copy of Mr M’s Will, she says she was abruptly told that RBS doesn’t know where the Will is and said that it can’t do anything until Mrs M provides Mr M’s death certificate.

Mrs M says that she later discovered that the executor of her and the late Mr M’s Wills had been changed, without their knowledge, from a relatively local law firm to one based in Wales.

Unhappy with this, Mrs M appointed her own solicitor and after waiting a while, Mrs M received a copy of Mr M’s Will and was charged £180 to change the executor on the Will to her appointed solicitor.

Because of how things were handled, Mrs M complained to RBS about the handling of such matters.

RBS issued its final response letter on 3 April 2024. It acknowledged that, after Mrs M had submitted Mr M’s death certificate, Mrs M followed up with phone calls, but nobody could explain where the Wills were. RBS upheld this aspect of the complaint and paid Mrs M £300 to apologise for the level of service received. RBS also addressed the issue concerning the Will be sent to its appointed solicitor. RBS says that it had followed the correct procedure and sent the Will to its appointed solicitor, so it didn’t think it had acted in error by not having the Will. RBS also acknowledged that Mrs M was unhappy with how long the solicitor had taken to respond and to release the Will. RBS explained that Mrs M would have to complain directly to the solicitor if she remained unhappy with its handling of matters.

Unhappy with RBS’s response, Mrs M referred the estate of Mr M’s complaint to this service.

One of our investigators assessed the complaint and they upheld the complaint and recommended that RBS reimburse the estate of Mr M £180 for the cost to appoint its own solicitor. RBS agreed with the investigator’s assessment, but the estate of Mr M didn’t. So the matter was referred for an ombudsman’s final decision.

I note that Mrs M has referred to both her late husband’s Will and her own Will. However, as this complaint has been raised by the estate of Mr M, I have not addressed any matters regarding Mrs M’s Will.

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.

Having reviewed everything, I agree with the outcome reached by the investigator, for broadly the same reasons. I will explain why.

Firstly, before I get into the complaint, having reviewed everything I have to say I feel a great deal of sympathy for Mrs M in having to deal with such matters. I appreciate that it is difficult enough to deal with the loss of a loved one, but then having to locate the whereabouts of her husband's Will so that Mrs M could settle his estate has, in this case, clearly added a great deal more stress to the process.

Having said that, it is the case that I'm not able to instruct RBS to pay any more compensation - for any distress or inconvenience caused to Mrs M - than it has already paid. And that is the case even if I thought more compensation was warranted.

The reason for this is because, as the investigator explained, the eligible complainant in this case is the late Mr M. This means Mrs M is acting in the capacity of a representative for the estate in this complaint. Furthermore, when Mrs M first contacted RBS to explain that her husband had passed away, Mrs M was not a representative of Mr M's estate at that point, as RBS was the named executor. Having seen a copy of the Will, it appears she was a beneficiary instead.

This is an important distinction to make. Because this service can only award compensation for any distress and inconvenience (if it's warranted) that eligible complainants experience. But we can't generally make any awards of compensation for any distress or inconvenience experienced by a representative of an eligible complainant.

So, although I can see this matter has been stressful for Mrs M, I wouldn't be able to award compensation for any distress or inconvenience that she has personally experienced in this matter, as she is not an eligible complainant. And, as the events complained about have only come about after Mr M passed away, I can't reasonably say that the late Mr M suffered any distress or inconvenience concerning the matters that this complaint relates to either.

Having said that, I'm pleased to see that RBS has chosen to pay Mrs M £300 for the distress and inconvenience its handling of this matter caused her.

Turning now to the different aspects of the complaint. I note that when Mrs M first notified RBS that Mr M had passed away, RBS told her that she would first need to provide a death certificate before anything could be done. This is correct information and so I think that Mrs M was given the right information.

I understand that when Mrs M first notified RBS of Mr M's death, the RBS staff had no idea as to the whereabouts of Mr M's Will. I appreciate that this would've been alarming and deeply concerning for Mrs M – although for the reasons given above, I can't award any compensation for any distress caused to Mrs M. I understand that, once Mrs M was able to locate a copy of Mr M's Will, she contacted the solicitor who'd originally drawn up the Will and says she was told that RBS had passed on the Will to another solicitor and that RBS was no longer executor.

We asked RBS to provide some context around what exactly had happened. RBS explained that previously, where it was appointed as an executor of a Will, it would manage the settling of estates 'in house'. However, in 2014 it chose to no longer do that and appointed a Solicitor (a different one than had originally drawn up Mr M's Will) to act on its behalf in such matters going forwards.

So, by 2022, it's clear that RBS staff had long since stopped dealing with such matters 'in-house', as such matters were dealt with by its appointed solicitors. I suspect this is why the branch staff had no idea about the whereabouts of Mr M's Will, and may not have even been aware that RBS had previously offered such a service.

In terms of the Will itself, RBS has explained that nothing had changed. So although Mrs M says that RBS were no longer executors, from everything I have seen, that was not the case - RBS were still appointed as the executor at the point that Mr M had passed away. Also, RBS have said that Mr M's Will remained stored with the Solicitors who'd originally drawn up the Will, although it's clear that the branch staff were unaware of that fact.

It was only once RBS was notified of Mr M's death, RBS says that it then arranged for the Will to be sent to its appointed Solicitor. RBS was reasonably entitled to appoint solicitors to act on its behalf in such matters. So, although the estate of Mr M is unhappy that RBS had appointed its own solicitors to settle the estate, I can't say that RBS was being unfair or unreasonable in doing so.

Having said that, I understand that Mrs M had appointed her own solicitor and it took a number of months to arrange for RBS to be removed as an executor. Due to the delays incurred, the investigator recommended that RBS reimburse the estate of Mr M the cost to remove RBS as an executor.

Overall, this seems reasonable, because although it had appointed its own solicitor to act on its behalf, RBS was still ultimately responsible for carrying out its duties as the executor of Mr M's Will and therefore it's responsible for settling Mr M's estate correctly and within a reasonable time frame. RBS agreed with the investigator's assessment and, having considered everything, I think what was recommended is a fair way to resolve this complaint. I say this especially as I can't make an award for the distress and inconvenience that Mrs M personally experienced.

Putting things right

So to put matters right, I require RBS to pay the estate of Mr M £180 (if it has not paid this amount already) due to the delays incurred in removing RBS as the executor of Mr M's Will.

My final decision

Because of the reasons given above, I uphold this complaint and require The Royal Bank of Scotland Plc to do what I have outlined above to put matters right, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of M to accept or reject my decision before 10 January 2025.

Thomas White
Ombudsman

