

The complaint

The estate of Mr N complains OneSavings Bank Plc unfairly retained and obstructed the executors' efforts to disperse cash savings which were due to the estate.

What happened

Mr N held a cash investment with OneSavings. Sadly, he passed away in November 2014.

Mr N's accountant provided notice of his passing to OneSavings in December 2014. The bank replied to the accountants a few days later to give the balance of the investment, and to provide instructions on how the executors could assume control of it.

In June 2015, the executors of Mr N's estate made contact with OneSavings. They explained probate had been acquired, and asked the bank to transfer the proceeds of Mr N's investment to his widow. OneSavings replied to explain what the executors would need to do in order to take control of the investment, and asked to see a copy of the grant of probate.

OneSavings received no reply to this letter. Over the years, the bank continually reinvested Mr N's funds into new savings products. In April 2022, OneSavings wrote to the accountant it'd heard from in 2014, to explain it still held Mr N's funds and that it needed to see a copy of the grant of probate in order to release them.

Following this letter, OneSavings and the executors discussed Mr N's investment. The investment was ultimately released to the executors for it to disperse appropriately. Shortly thereafter, in October 2022, the executors complained to the bank. They complained that:

1. OneSavings had failed to notify the executors of the existence of Mr N's pot of savings and should've followed up with them sooner.
2. When they eventually made contact, the executors argued OneSavings made the process of taking control of Mr N's money difficult and time consuming.

The bank issued a pair of responses to the complaint. For the service it provided during the closure of the investment, it offered £100 as an apology. But it rejected their concerns with retaining the funds. As the executors didn't accept OneSavings' response, they referred their complaint to our service.

Upon referral to our service, OneSavings explained it would not consent to us investigating any matters which would fall outside of the time limits described in DISP 2.8.2R. As a result of this, I decided we could consider the estate's complaint about any events which took place on or after 23 October 2016. But that we did not have the power to consider the estate's complaint about matters which took place prior to that date.

Our investigator proceeded to consider the events which took place on and after 23 October 2016. In summary, they found that:

- OneSavings was at fault for retaining and reinvesting the estate's money, because it knew the executors had already asked for it to be returned.

- They didn't feel it would be fair or reasonable to award compensation for distress or inconvenience, because the eligible complainant, the estate, is incapable of feeling distress or inconvenience.
- They didn't feel it would be fair or reasonable to hold the bank responsible for the various losses claimed by the estate, because the evidence showed the executors knew OneSavings still held the estate's funds and didn't mitigate their losses by following up sooner.

As the estate did not accept our investigator's findings, the matter has been referred back to me for a decision on its merits.

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'll begin by saying that as per my decision on jurisdiction, because of the time limits in DISP 2.8.2R, I'm only deciding on matters which took place on or after 23 October 2016. I do not have the power to decide on the estate's complaint about the matters which took place prior to this date. I can however consider the relevant facts from this period, and use them to inform my decision about the parts of the estate's complaint which fall within our jurisdiction.

Having considered what I can of this complaint, I agree with the findings made by our investigator, for largely the same reasons.

Firstly, I'm satisfied that from 23 October 2016 onwards, OneSavings is at fault for not following up with the executors sooner than it did. The evidence shows that as of 2015, it knew Mr N had passed away and that his executors were seeking to disperse his savings. But it had asked for and not received the paperwork necessary to grant their request. Despite knowing this, OneSavings continually wrote directly to Mr N when his savings matured, advising him that his funds would be reinvested. In my opinion, knowing what it knew, and treating the estate fairly as regulations required, it should have followed up with the executors much sooner than it did.

Had OneSavings done so, some of the likely consequences of this would have been that:

1. The estate won't have received the interest from OneSavings that its money attracted whilst it remained invested.
2. The dispersal of the estate's funds would likely have happened more quickly, which is likely to have mitigated or perhaps avoided some of the losses the executors are claiming for.

Despite this, the evidence and circumstances of this complaint do not persuade me it would be fair or reasonable to award the estate any compensation. I shall explain why.

In my opinion, the claims the executors have made around delays paying beneficiaries and difficulties settling the estate, are undermined by their knowledge that throughout the period in question, OneSavings was still retaining Mr N's money.

The letter the executors sent OneSavings in 2015 shows they were clearly aware the bank held funds which belonged to the estate. The executors claim they never received a reply to this letter, though I note OneSavings has insisted one was sent. But even if I take the executors at face value here, if they were aware the estate was facing difficulties caused by the absence of the money at OneSavings, in my view and in spite of the bank's mistakes, it would fairly and reasonably be incumbent upon them to have followed the matter up and

mitigate the estate's losses. I note the executors did not do so until many years later after OneSavings erroneously contacted Mr N's former accountant, instead of the executors directly.

Because of this, I don't think it would be fair or reasonable of me to direct OneSavings to pay any losses the estate has experienced as a result of not acquiring the funds sooner. And for the same reasons, I shan't be awarding the estate any additional interest, over and above what it earned by leaving the money invested with OneSavings.

I've considered the executors' complaint about poor service when it contacted the bank more recently to acquire Mr N's savings. Having studied OneSavings' submissions, it seems there's no dispute that this service should have been better than it was. This is regrettable. And will doubtless have been both distressing and an inconvenience to the executors. But as regrettable as it is, I can neither increase nor enforce the offer of £100 OneSavings made to the executors.

Our service's powers allow me to award compensation for non-financial losses to eligible complainants. In this case that means the executors' poor experience of OneSavings' service is excluded from consideration. Because here, the eligible complainant is the late Mr N's estate, not the executors themselves. And Mr N's estate is an entity which is incapable of being distressed or of feeling any inconvenience. Because of this, I'm satisfied it would not be fair or reasonable of me to award the estate any compensation in these circumstances.

My final decision

My decision is that I uphold the estate's complaint about OneSavings Bank Plc. But I do not require the bank to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr N to accept or reject my decision before 24 November 2023.

Marcus Moore
Ombudsman