

The complaint

The estate of Miss W complains about the way Scottish Widows Schroder Personal Wealth Limited (SPW) has dealt with the settlement of the estate. The executors say there were failings that caused the estate additional costs and upset to the lay executors.

What happened

Miss W held an investment portfolio with SPW. Sadly, she passed away in January 2022. The estate applied for a grant of probate – with the executors detailed as a professional executor (a solicitor) and two other lay executors.

A firm of solicitors (acting as a representative of the professional executor) contacted SPW to obtain the necessary information about Miss W's investments in order to make arrangements to settle the estate.

The estate encountered several problems whilst seeking to obtain the necessary information. In May 2022, this led to the professional executor raising a complaint with SPW.

Initially SPW apologised for the poor service provided and offered to pay the estate a compensation amount of £100. It then provided a final response letter to the complaint and upheld it. It made a payment of £500 to the estate to cover the cost of the expenses charged as a result of delays incurred. It acknowledged the concerns raised about the time taken to provide a valuation and accepted the wording of the valuation and description in its bereavement letters could be better. It also accepted there were communication errors when it sought to gain identification information from the executors. But it maintained that it was reasonable for it to make the requests it did.

Following this, the estate experienced further problems relating to references given in respect of payments SPW made to HMRC. The solicitors raised further concerns with SPW about the handling of this matter as it caused anguish to the lay executors. SPW admitted it had provided an incorrect reference when dealing with a query from the solicitors, but it maintained it sent the correct funds to HMRC with the correct reference, so did not uphold this complaint point.

The executors didn't accept the outcome reached by SPW, so referred the complaint to this service for an independent review.

One of our investigators looked into the complaint. He thought the offer made by SPW was fair and reasonable in the circumstances, so didn't recommend it do anything further. He explained his reasoning for this, setting out where he found SPW responsible for additional fees being incurred by the estate. In summary he said:

- In relation to the obtaining of valuations in February 2022, he didn't find SPW responsible for undue delays or at fault for providing information in an incorrect format. So, he didn't think it was responsible for the solicitors' fees incurred by the estate in relation to this work.

- Errors by SPW in respect of requiring a letter of authority (LOA) resulted in additional work incurring fees chargeable to the estate that wouldn't otherwise have been payable.
- He wasn't persuaded SPW caused a delay by requesting identification documents to verify the professional executor. He was satisfied it was acting in accordance with its data protection and security procedures.
- Despite the discrepancy in the surname of one of the executors in Miss W's Will, the solicitors had told SPW of the anomaly. So, the breakdown in communication by SPW led to the solicitor spending additional time reconfirming the surname, and to the estate incurring additional fees because of it.
- SPW failed to act on the instructions to sell the investments provided in the discussions by the executors and indemnity form. This meant additional work was required to reconfirm which funds were to be sold, which the solicitors would not otherwise have needed to do if SPW had given due consideration to the information already given. So, SPW is responsible for any fees incurred by the estate for this additional work.
- SPW failed to provide confirmation of the payment to HMRC on 4 May 2022, which it said it would do. This caused the solicitor to have to chase things up. It's fair to say SPW is responsible for the additional fee paid by the estate for the chaser email sent.
- In respect of the incorrect reference that SPW provided to the solicitor for the HMRC payment, it isn't in dispute the payment was made and the correct reference was provided to HMRC. So, this element of the complaint is not upheld. But SPW did confirm an incorrect reference to the solicitor on 17 June 2022, which took a few days to clarify. Despite this, the problems with the payment seem to be on HMRC's part by not correctly allocating the funds. SPW isn't responsible for any delay to the Grant of Probate, or the additional fees incurred by the estate relating to any additional work regarding this matter.

Overall, the investigator found that the amount of compensation paid, more than made up for a reasonable level of fees incurred by the estate for the elements of the complaint he thought should be upheld – and as part of this finding he considered that it was reasonable for fees to be attributed at a junior solicitor's cost base. He also noted the emotional impact on the lay executors but said, they are not eligible complainants in their own right, so we can't award compensation for any distress or inconvenience suffered by them.

The estate didn't accept the investigator's conclusions, and requested an ombudsman reach a final decision on the complaint.

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'd first like to acknowledge the significant amount of correspondence that has been put forward by the executors on behalf of Miss W's estate. I won't be commenting on everything that has been submitted, but I want to reassure them that I have considered everything provided.

The crux of the complaint centres on the impact of the services provided by SPW when the executors were attempting to complete the settlement of Miss W's estate. The executors claim that as a result of errors the estate has incurred fees that it wouldn't have otherwise.

As part of Miss W's Will, a professional trustee was named, this resulted in the services of a solicitor being involved in the settlement of the estate. The services provided by the solicitor would result in costs being incurred for which the estate would be responsible for. SPW wasn't party to the fee agreement with the solicitor. I'm also conscious completing the settlement of an estate of this size can involve some delay and the need to check and chase information from the various parties involved. So, it wouldn't be reasonable to expect SPW to cover all the fees charged relating to the investments. But I have considered whether there are errors by SPW which meant there were additional fees that were incurred as a direct result of failings on its part.

Firstly, I've considered the period that covers the first invoice the solicitors have sent us. This spans the period from February 2022 to 18 May 2022. Having reviewed the available evidence, I've found there have been problems with SPW's handling that have led to the requirement for the solicitors to complete additional work. Indeed, SPW has accepted that the service it provided wasn't always to the level it should have been, but it doesn't accept it is responsible for all the issues raised by the executors. SPW has made a compensation payment of £500 to cover the estate incurring additional solicitor's fees that it wouldn't have otherwise needed to pay. The executors do not believe the compensation paid is sufficient to cover the costs the estate has incurred due to SPW's handling of the matter.

I've considered the points raised in the original complaint letter sent in May 2022. Having done so, I don't find there to be failings by SPW in relation to providing valuations and identification documents that mean it should be responsible for additional fees. I acknowledge the executors feel these issues weren't handled as smoothly as they expected. In respect of the valuations, I find they were provided within a reasonable timescale and while the format was questioned, I don't think this caused significant delay to the settlement. Similarly, I don't think it inappropriate for SPW to request identification for the professional executor. It says it was following its process to ensure it met its regulatory obligations. This did require time being spent by the solicitors dealing with this request, but for the reasons given I think it was reasonable to expect this to be completed. So, any fees incurred by the estate for this work it would be liable for as per the agreement it entered into with the solicitors.

But there are aspects of SPW's handling where I think it has caused the estate to incur additional fees that it wouldn't have otherwise. Like the investigator I find SPW did make some requests that were unnecessary and caused the solicitor to have to complete work to resolve things. This includes the requesting of a LOA when it already had sufficient information to act on instructions. This caused the need to make unnecessary inquiries with the executors. Also, I note SPW failed to keep to its promise to provide confirmation of the payment of inheritance tax that had been sent to HMRC. This led to the solicitor having to chase the matter on 4 May 2022 to get the confirmation. SPW also made requests to clarify the surname of one of the executors as it differed from that given in the Will. While I think it is reasonable for it to gain clarification, I've noted there was an acknowledged breakdown in communication at SPW that meant additional time was spent by the solicitors having to reconfirm information that had already been provided as to the reason for the discrepancy. Because of all the issues raised, the solicitors made a complaint on behalf of the estate in early May 2022 – which again it wouldn't have needed to do if there were no errors by SPW.

I've also considered the period that covers the second invoice (from 18 May 2022 to the end of 2022). Some of this relates to the initial complaint being raised, but the majority of items relate to the second complaint that was made in June 2022. This complaint is about issues

to do with establishing whether payments had been made to HMRC. The available evidence indicates SPW did make the payment when it said it did (in May 2022) and provided the correct reference to HMRC. The mistake it made was giving the wrong reference number to the solicitor when inquiries were made in mid-June 2022. I accept this did cause some confusion for a short period, but I don't find it resulted in a delay to the payment or the probate application. From the correspondence I've seen, SPW wasn't responsible for the delay in reconciling the payments, but rather something that needed to be taken up with HMRC. I don't think it would be fair to hold SPW responsible where it has completed the transaction correctly, even where there was a short period of confusion. So, I'm not recommending SPW needs to pay anything towards the fees that were incurred in relation to this issue, as I haven't found it at fault.

I have noted the estate raised a subsequent complaint about problems that occurred after the complaint was referred to this service. From review, this relates to issues that happened in January 2023. I understand compensation has been accepted in settlement of this complaint. So, I haven't considered the specific issues raised in that complaint within this decision.

I've reviewed the invoices provided by the solicitors, to help establish what the additional costs incurred by the estate were due to the failings described above. As explained, I only find SPW responsible for the actions that directly relate to situations where I have identified failings. It can't be held responsible for costs linked to the issues raised where I've found it acted in a fair and reasonable way despite the complaints made. So this means, I'm not recommending that SPW need to cover the full costs of the invoices provided. I say this particularly as I haven't found the majority of the issues raised resulted in costs being incurred that weren't reasonable in the course of the settlement of the estate as part of the agreement it entered into with the solicitors.

From reviewing the invoices provided by the solicitors, it is difficult to distinguish exactly what amount of the time (and costs) of the actions taken should be attributed directly to the failings. The evidence indicates the additional work involved telephone calls and emails being needed to clarify and rectify misunderstandings, and not complex investigations or detailed analysis. The issues also appear to be resolved fairly quickly once further inquiries were completed. I've also taken into account the points made about the fee level charged for the work completed – including whether it is reasonable to take into account the type of work and the grade of fee earner when thinking about what the compensation should be based on. And I acknowledge the reasons provided for the specific solicitor that was assigned to complete the settlement of the estate.

In deciding whether the offer made is fair, or whether further compensation should be paid, I've taken a holistic approach. I've taken into account the amount of fees, the complexity of the work involved due to the failings by SPW and the information provided about the solicitors' fee structure. Having done so I'm satisfied that the offer already made by SPW is fair and reasonable in the circumstances – and adequately compensates the estate for the fees incurred as a direct result of SPW's failings. I appreciate this will come as a disappointment to the executors, but I don't think the evidence supports that it is fair to tell SPW to pay more compensation, in light of the findings I've made about the extent of its failings and the work required to rectify them.

The estate has mentioned that there has been an emotional impact on the lay executors as a result of SPW's handling of the matter. We can only consider complaints brought by eligible complainants. So, it follows we can only award compensation – including awards for distress or inconvenience – to eligible complainants. In respect of this complaint, Miss W is the eligible complainant as the investments subject to the complaint were held in her accounts with SPW. The executors are able to bring this on behalf of Miss W's estate as

they are authorised to do so in law. But the executors are not eligible complainants in their own right. This means we can't compensate an executor for any impact incurred by them personally, when representing the estate. So while I acknowledge the information about the impact on the lay executors, I have no power to make a compensation award directly to them.

My final decision

Scottish Widows Schroder Personal Wealth Limited has already made an offer to pay £500 to settle the complaint and I think this offer is fair in all the circumstances. This has already been paid to the estate.

So, my decision is I don't uphold the complaint or require anything further to be done.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Miss W to accept or reject my decision before 23 May 2024.

Daniel Little
Ombudsman