

The complaint

The estate of Mr S ("The Estate") is unhappy that Lloyds Bank PLC haven't kept a copy of the late Mr S's most recent will in safe keeping as they were entrusted to.

This complaint is brought to this service on behalf of the Estate by the widow of the late Mr S in her role as executor, whom I'll refer to as Mrs S.

What happened

Mr S maintained a safe custody account with Lloyds for the safe keeping of his will. Following Mr S's passing in May 2022, Mrs S went into Lloyds to request the will. Lloyds promised to send this to her within two weeks. But Mrs S didn't receive the will for over two months, and when it arrived it was an older will and not the most recent will that had been submitted to Lloyds by her late husband.

Mrs S raised this point with Lloyds who said they would investigate the matter, but who then took a further two months to confirm to Mrs S that they held no additional items from Mr S for safe keeping. Mrs S wasn't happy about this and was confident that a later will had been deposited with Lloyds, so she raised a complaint.

Lloyds responded to Mrs S and reiterated that they had no record of every receiving anything for safe keeping other than the one will which they'd already supplied to Mrs S. However, Lloyds did accept that they didn't return the will they did hold to Mrs S in a reasonable amount of time, and they apologised to Mrs S for this and made a payment of £100 to her as compensation for any trouble and upset this may have caused. Mrs S wasn't satisfied with Lloyds' response, so she referred the Estate's complaint to this service.

One of our investigators looked at this complaint. But they didn't feel it could reasonably be said that Lloyds had received a later copy of Mr S's will. Mrs S remained dissatisfied, so the matter was escalated to an ombudsman for a final decision.

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 done so, I'd like to begin by confirming that this service isn't a regulatory body or a Court of Law and doesn't operate as such. This means that it isn't within my remit here to declare that Lloyds have or haven't acted in a non-regulatory or unlawful way.

Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the circumstances and factors of a complaint into consideration.

Mrs S is certain that her late husband provided an updated version of his will to Lloyds for safe keeping. So, I can appreciate why it would be distressing for her that Lloyds haven't

been able to find this later will and return it to her so that the most recently recorded wishes of her late husband could be affected.

On the other hand, Lloyds say that they initially only had record of Mr S depositing one item with them for safe keeping – the will that they did return to Mrs S – and note that after a thorough search of their systems following Mrs S raising her concerns with them that they continued to only have record of the one item ever being left by with them by Mr S.

In circumstances such as this, where the position of the complainant and the respondent parties is in contradiction with one another, I must decide – if I feel it's reasonably possible to do so – which of the two versions of events I feel is most likely to have happened, from an impartial perspective and in consideration of all the information and evidence available to me. And in this instance, I find the position of Lloyds to be the more persuasive here.

One reason for this is that I would have expected a receipt-of-deposit to have been provided by Lloyds when the later will was left with them for safe keeping. But Mrs S hasn't been able to provide any such receipt or any evidence that the later will was given to Lloyds. And I feel that this absence of proof corresponds with Lloyds own enquiries, which showed only that the older will had been deposited with them.

Of course, this isn't to say that a later will wasn't left with Lloyds by the late Mr S. But it is to say, given the information and evidence available to me, that I don't feel it can reasonably be postulated from an impartial perspective that it is more likely than not that Mr S did deposit a later will with Lloyds, such that I'd feel it fair to uphold this complaint against them.

I realise this won't be the outcome Mrs S was wanting, but it follows from the above that I won't be upholding this complaint or instructing Lloyds to take any further action here. I hope that she will understand, given what I've explained, why I've made the final decision I have.

Finally, I note that Lloyds made a payment of £100 to Mrs S for the upset and frustration the delayed provision of the will that Lloyds did hold may have caused her. And I also note that this amount appears to have been paid by Lloyds to Mrs S in a personal capacity, and not to her in her role as executor of the Estate. As such, given that the eligible complainant here for the purposes of this service is the Estate, and not Mrs S in a personal capacity, I'm unable to comment on this compensation payment further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 1 August 2023.

Paul Cooper
Ombudsman