

The complaint

Mr M complains about Nationwide Building Society for not taking his instructions when it was in possession of a lasting Power of Attorney on his account.

He wants compensation and an apology.

What happened

Mr M held a Nationwide Building Society (“Nationwide”) account for some time.

In mid-2017, Mr M signed a Lasting Power of Attorney, giving his parents power to make decisions on his financial affairs. This Power specified that it would come into effect as soon as it was registered, rather than only when Mr M lacked competency.

This Power of Attorney was witnessed by a solicitor and was registered, and stamped, by the Office of the Public Guardianship.

A certified copy of the Power of Attorney was provided to Nationwide in January 2020.

Thereafter Nationwide dealt with Mr M’s parents, as directed to by the Power of Attorney.

Mr M made efforts to contact Nationwide to access his account and attended branch in person. On those occasions he was not permitted to access his account.

Mr M told Nationwide that the Power of Attorney was fraudulent. Nationwide did not accept his instructions and directed him to contact the Office of the Public Guardianship.

Mr M complained to Nationwide. He also contacted his solicitor who provided an email to Nationwide confirming that Mr M currently had competence and that he wanted to close his account.

Nationwide received this confirmation in mid-July and immediately acted upon Mr M’s instruction to close his account. His balance of more than £2000 was sent to him.

Nationwide then provided its final response to Mr M’s complaint. It did not uphold his complaint and considered that it had acted reasonably in relying on the Power of Attorney.

Mr M was not happy with this and contacted us.

One of our investigators has looked into this matter and set out her view to the parties. This was that Nationwide had acted in line with its policies and had been fair in the circumstances. She therefore did not recommend Nationwide do anything further.

Mr M did not accept this view and asked for an ombudsman 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.

Firstly, I must set out my sympathy with Mr M for his experience. He believes that the Power of Attorney was fraudulently obtained and used and that businesses have made assessments of him unfairly in order to deny him access to his accounts. I can understand his upset and frustration on this basis.

I must be clear, however, that this service does not have the power to look at the actions of everyone involved in this matter, or to rule on whether the Power of Attorney was valid or not. Other organisations serve these functions.

Our role is to look at whether the business has treated him fairly and reasonably, in the circumstances that existed at the time. Where a business has not acted fairly, we can direct it to make amends, but where there is no evidence of wrongdoing, we will not ask the business to do more.

In this circumstance, I have seen the certified copy of the Lasting Power of Attorney that was provided to Nationwide and it appears formal and genuine. It has been stamped by the Office of the Public Guardianship and makes clear where spaces were left in the form before it was registered.

The form for a Lasting Power of Attorney gives the donor (in this case Mr M) options of when they want the Power to take effect, and the option chosen on this copy was for it to be effective immediately on signing. The form had the option for it to only take effect when the donor lacked competency to make decisions, but this was not selected.

When Nationwide received the Power of Attorney, this meant they were authorised by Mr M to take instructions from the people named on the Power (his parents). Because it was effective immediately upon registration, Nationwide was not asked to make any assessment of Mr M's capacity before acting on his parents' instructions, and it would have been inappropriate for them to make any assessment of him in order to take his instructions.

Consequently, once Nationwide had received that Power of Attorney, Nationwide no longer had the choice of whether to accept contradictory instructions from Mr M.

This was Nationwide's process and it was reasonable. I do not criticise them for following their policy on this.

When Nationwide received formal information making clear that it was able to accept Mr M's instructions, it did so promptly and closed his account, releasing his funds back to him.

I understand why Mr M is upset, but based on the evidence available I do not consider Nationwide has done anything wrong.

For those reasons, I do not uphold Mr M's complaint and do not ask Nationwide to do anything further.

I realise that this decision will be disappointing for Mr M but I hope it makes clear the reasons I have reached it.

My final decision

For the reasons given above I do not uphold Mr M's complaint and do not ask Nationwide Building Society to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 December 2020.

Laura Garvin-Smith
Ombudsman