

The complaint

Mr P complains on behalf of the estate of his late wife, Mrs T, that National Westminster Bank Plc took several months to register a power of attorney to her account during her lifetime, and about related matters.

What happened

Mrs T had an account with NatWest. She had executed a power of attorney naming Mr P and a third party as her attorneys, with power to act jointly and severally. In September 2019, while Mrs T was alive, her husband went to a branch of NatWest and asked to be added to her account (there is a dispute about in what capacity). The branch staff refused. In October, he went to another branch, twice, and on the second visit to that branch his request was granted (there is no dispute that this was a request to be registered on the account as his wife's attorney). The branch staff took copies of the documents he provided. But in April 2020 he had still not been added to the account, and it transpired that the bank had failed to process his request. NatWest told him it had failed to retain the copies it had made of his documents, and that he would have to provide them again. The power of attorney was not recorded on the account until June, and Mrs T died a short time after that.

Meanwhile, Mr P tried to pay a cheque for a six-figure sum from Mrs T's NatWest account into her NS&I account, but NatWest did not pay it. NatWest said this was because it had sent a text message to Mrs T's mobile phone as a security measure, and she did not answer it. Mr P said that this was another mistake by NatWest, because he had previously asked it to remove her number from her account when he had registered the power of attorney. NatWest could find no record of that request, but it accepted that the request had been made, and apologised. Mr P wants to be refunded the interest that was lost as a result.

Mr P complained (initially as his wife's attorney and then as administrator of her estate). NatWest apologised and offered to pay his travel costs for his branch visits. Mr P then brought this complaint to our Service, but our investigator did not uphold it. She thought NatWest had blocked the account in good faith, to protect Mrs T's money. She thought that NatWest had only been following its security procedures when it had not paid the cheque. She recognised that Mr P had been put to a great deal of trouble, but she explained that Mr P was not an eligible complainant in his own right – he had only been bringing this complaint as a representative, first of his wife and then of her estate. This meant that our Service could not award compensation to Mr P for his own inconvenience.

Mr P did not accept that opinion, and he asked for an ombudsman's decision. I wrote a provisional decision which read as follows.

What I've provisionally 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.

NatWest has not disputed that it should have processed Mr P's power of attorney in 2019, and that it should not have taken several months. I appreciate that this must have been

frustrating for him. But I cannot award him compensation for that because, as our investigator said, he is not the complainant. I cannot see that Mrs T was personally inconvenienced as a result of this delay. So I will not uphold that part of this complaint (but I have considered the issue of financial loss below, in the context of the cheque complaint).

The cheque is another matter. I completely accept that NatWest had a duty to protect Mrs T's money and that it was entitled to carry out a security check, particularly given the amount of money involved. Sending a text message to request confirmation of the cheque's authenticity is a reasonable security measure. However, sending the text to the wrong mobile phone is clearly an error, and the result was that the cheque was cancelled and another one had to be written, and presented a few days later.

NatWest has accepted that Mr P had asked for his own phone number to be substituted for Mrs T's on the account, and I think it was right to do so. There is no evidence to contradict what he says about this. (I think that the absence of any record on the subject does not have any probative value one way or the other, as it is equally consistent with Mr P not requesting it or with NatWest not acting on his request.) Given that he was her attorney, and that she was in the last days of her life, I think it is plausible and probable that he did make that request, and I find that he did.

It follows that Mrs T (and subsequently, her estate) lost out on the opportunity to earn interest on the deposit to her NS&I account during the period between when the first cheque would have cleared and when the second cheque cleared. I think it would be fair to require NatWest to pay that, but I have not seen evidence on how much that is. I ask that Mr P provide evidence of the interest rate on the NS&I account (including evidence that it is the same account that the cheque was paid to).

Mr P has argued that he should be compensated for the period from October 2019 to the second cheque, since he says that NatWest's failure to process the power of attorney in 2019 prevented him from writing the cheque earlier (and he did not even know the balance in the account until he was finally added to the account). He also says that he missed the opportunity to invest the money at the interest rate he'd wanted to get in 2019, and had to settle for a lower interest rate in 2020. He would like to be compensated for the difference in interest rates. (I would need to see evidence of this.)

However, I do not think that it would necessarily be fair to award compensation for that period. Mr P knew that other banks were processing similar applications in only a matter of a few days, so he must have known that NatWest had not done so long before he complained in April 2020. In its final response letter, NatWest asked him to bring the necessary documents back to branch again and he refused. Although NatWest eventually accepted service by email, that was a departure from what it would normally do. So I currently don't think I should award compensation for a period earlier than the date of the first cheque.

So my provisional decision is that I am currently minded to uphold this complaint in part. Subject to any further representations I receive from the parties ... I intend to order National Westminster Bank Plc to pay Mrs T's estate compensation for the interest lost as a result of the delay caused by it sending its text message to the wrong phone number.

Responses to my provisional decision

NatWest accepted my provisional findings. Mr P did not. In brief summary, he said:

- NatWest was the first bank he had asked to register him as an attorney, so he hadn't known what timescale to expect. He had been told it would take up to eight weeks.

- Until April 2020 all of his time had been taken up with looking after his ill wife, and so he had not had time to complain earlier than that.
- He had not known that the balance in his wife's NatWest account was so large, until he discovered how much it was on gaining access to it. He had assumed it was a small balance.
- He had not gone back to the branch in 2020 because of the covid-19 pandemic, and he and his wife had been sheltering.
- The NS&I account had been an income bond, and the interest rate in July 2020 had been 1.16%.
- NatWest had actually never sent Mrs T a text message about the cheque, and had therefore not followed its security procedures.
- Our Service's website says that we actually do award compensation to attorneys, not just to complainants.

My findings

Mr P has made numerous other points in support of this complaint. But my decision focuses on what I consider are the central issues.

What our website actually says is this (emphasis added):

"We usually don't award compensation for distress and inconvenience to any third party such as a family member or attorney acting under the power of attorney. However if we think a donor has experienced extra distress seeing their attorney distressed, we may award additional compensation *to the donor*."¹

So that paragraph actually says the opposite of what Mr P understood it to be saying. We don't award compensation to attorneys, because they are not eligible complainants. We occasionally, but rarely, award compensation to complainants if they have been caused distress as a result of seeing their attorney in distress, but not for the attorney's own distress. What I wrote about this in my provisional decision was correct.

Whether NatWest sent a text message to Mrs T's phone or not would not affect my decision to uphold the part of this complaint which relates to the cheque. All that matters is that it didn't send one to Mr P. I therefore do not need to investigate that issue further.

I accept that Mr P paid the £275,000 into an NS&I income bond and I have verified that the interest rate at the relevant time was 1.16%.² The delay caused by NatWest was 17 days (from 10 to 27 July). 2020 was a leap year, but NS&I still calculates the daily interest in leap years as 1/365th of the annual interest. So 17 days' interest comes to £148.58. I will order NatWest to pay the estate that amount, and also award simple interest on that compensation at 8% a year from 5 August 2020 (being the date when NS&I would have credited the interest to the account³) to the date on which it is paid.

I accept Mr P's explanation about why he did not complain until April 2020, and I think it is reasonable. I also accept his explanation for not returning to the branch. So I have reconsidered whether he should be compensated for the period starting in 2019 after all.

However, although NatWest accepts that it ought to have processed the power of attorney in October 2019, it has also explained that the reason it did not was because it had been carrying out further checks (including seeking advice from the Office of the Public Guardian,

¹ <https://www.financial-ombudsman.org.uk/consumers/complaints-can-help/complaints/power-attorney>

² <https://www.nsandi.com/historical-interest-rates>

³ <https://www.nsandi.com/products/income-bonds>

and legal advice from its own lawyers). This was due in part to the large balance in the account, and also because in September 2019 Mrs T had told bank staff that she wanted to leave the account the way it was (according to branch staff). This had caused the bank some concern. This was also the reason why the bank had not retained its records of the documents which were provided to it in October (because it had destroyed its records in accordance with its data security policy).

The bank ultimately came to the conclusion that it should still add Mr P to the account as Mrs T's attorney. But I understand its reasons for wanting to proceed with caution. While it is unfortunate and regrettable that it caused such a delay in this instance, I think that this Service should only rarely find fault with a bank's efforts to safeguard its customers' money, because to do otherwise might deter banks from taking due precautions. For that reason, I am not upholding that part of this complaint. (I have not written a second provisional decision because this reason has already been given by the investigator in her opinion.)

My final decision

My decision is that I uphold this complaint. I order National Westminster Bank Plc to pay the estate of Mrs T £148.58, and also pay him simple interest on that amount at 8% a year from 5 August 2020 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P, on behalf of the estate, to accept or reject my decision before 25 May 2021.

Richard Wood
Ombudsman