

The complaint

Mr H complains that Santander UK Plc have incorrectly registered the Lasting Power of Attorney (LPOA) set up for his parents.

What happened

In 2017, Mr H and a third party were registered as replacement attorneys for a LPOA for Mr H's parents. In 2018, the original attorneys were unable to act in this capacity so Mr H and the third party fully replaced the original attorneys and this was registered on Santander's systems.

Mr H says his father wanted him to open a Cash Individual Savings Account (ISA) and a regular savings account also. As Mr H says he could see the accounts online which had originally been registered as part of the LPOA, Mr H tried to open the ISA first online. Mr H says he was unable to see how he could open the ISA under LPOA so he opened up the ISA in his own name. Mr H later did the same with both regular savers.

Mr H says he thought his online banking log-ins were solely for the LPOA as he said he didn't have any accounts with Santander himself so he thought the actions that he was taking would be viewed as him acting in his capacity as an attorney. He says that he thought any new accounts opened with the online banking credentials would automatically fall under the LPOA agreement.

Over the next two years Mr H moved a total of £35,000 from his parents joint account to the ISA. He received the statements for these and the statements were in his name only. No statements were sent for the regular saver accounts.

When Mr H's parents and the other third party found out that money had left the joint account to go into accounts in Mr H's sole name this created a breakdown in Mr H's relationship with his parents. He says he transferred the money back into his parents account but his parents decided to revoke the LPOA and replace him with another attorney in 2020.

Mr H complained to Santander. He said that the opening of an account for a LPOA was confusing and he had no help to set this up. He said the LPOA was registered on their systems incorrectly and that he shouldn't have been able to move money by himself as the LPOA should've been registered as jointly as opposed to joint and severally. Mr H said he spoke to the Office of the Public Guardian (OPG). The OPG said that the LPOA paperwork said that him and the third party were granted this agreement on a "jointly basis only", he decided to put a complaint into the bank as he felt Santander hadn't set up the LPOA access to the account correctly.

Mr H said that section three of the LPOA was blank next to how the donor wants the attorneys to act – either jointly, jointly and severally or jointly for some decisions, jointly and severally for other decisions. He also says that section four of the LPOA states in relation to replacement attorneys (which he was at the time of the registration of the document) – *"If they fully replace your original attorney(s) at once, they will usually act jointly. You can*

change most aspects of this but most people don't." Underneath this statement there is an unticked box which says *"I want to change when or how my attorneys can act (optional)"*.

Santander did not uphold his complaint. They said there was no bank error with how the LPOA was registered. They said that there wasn't a specific online banking sign in for attorney's vs sole customers and that no online banking log ins for LPOA were issued to either Mr H or the third party. Santander said Mr H had various accounts with them from 2005-2013 so he would have used his personal online banking to view all of the accounts (including accounts where he is an attorney).

Santander said that had Mr H used his father's name and details, this would have registered the account LPOA for both Mr H and the third party. As Mr H completed the application with his sole name, this opened the account in Mr H's name and was not a Santander error. In addition, the third party was LPOA jointly and should have been made aware of the account. Mr H didn't agree with this so brought his complaint to our service.

Our investigator didn't uphold Mr H's complaint. The investigator said that Mr H had opened the accounts in his own name, under his own personal log in credentials and said Santander made no error with how they registered the LPOA.

Mr H asked for his complaint to be reviewed by an Ombudsman. He now accepts that he shouldn't have opened the aforementioned accounts in his own name. But he specifically has drawn attention to the LPOA document itself, namely sections three and four. Mr H says if Santander had registered the LPOA correctly, he wouldn't have been able to move money from his parents accounts online and would need the agreement of the third party attorney to move money from his parents accounts.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so, I'm issuing a provisional decision here, as I want to clearly outline the scope of what I think we can consider and give my thoughts on that. So for clarity, my decision here will only be a provisional one – so both sides can respond before I reach a final decision.

Mr H has made a number of points to both Santander and this service and I've considered and read everything he's said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of his complaint in deciding what's fair and reasonable here.

The starting point here is that I don't think this service can investigate Mr H's concerns that he's raised around the LPOA and the withdrawals that he made under it. That's because The Financial Ombudsman Service operates under a set of rules, known as the DISP rules, which set out the scope of our powers. These say that we can only consider a complaint from an 'eligible complainant'. Here Mr H says he had the intention of setting up the ISA and regular savers in his father's name, but he actually opened the accounts in his own name. So he would meet the definition of an eligible complainant for being a customer of Santander himself in terms of when he opened these accounts.

But I can't look into the issues around the registration of the LPOA and the withdrawals that followed. That is a complaint that only his parents or those authorised to represent them are eligible to bring, as these issues arise from their relationship with Santander rather than Mr H's. Mr H may have made the withdrawals at the time, but that doesn't change the fact that only the account holder or those authorised to represent them would be eligible to complaint

about that here. And in the circumstances, I can't see that they have consented, or would consent to us looking at this matter.

So, the only part of the complaint I can consider from Mr H is about the opening of the ISA and regular saver accounts. I've thought about if Santander have made a mistake when they allowed Mr H to open these accounts in his sole name, when he wanted to open them for his father. I'm not persuaded they did anything wrong here though.

Santander explained that Mr H logged into his online banking using his own personal credentials as he had held accounts with them. They have gone on to explain that he set the new accounts up in his sole name and not his father's name. That's because there was no reference to his father on any of the online applications. Santander said if he had put his father's name on the application then it would've registered with the LPOA for both Mr H and the third party attorney. So overall here, I'm satisfied that Santander opened Mr H's accounts in line with how he completed the information on the application form.

I realise that Mr H says he's realised that he's made a mistake and shouldn't have opened the new accounts for his parents in his sole name. But I haven't seen anything that makes me think that Santander was doing anything other than following his instructions at this time. So it follows I won't be asking Santander to do anything further."

I invited both parties to let me have any further submissions before I reached a final decision. Santander had no further comments to add, but Mr H responded with further comments. In summary he said he had a mortgage with Alliance & Leicester which ended in early 2008, before Santander took over their business and he asked how his parents could've prevented him from having access to all of his accounts from May 2020.

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've thought about what Mr H has said regarding not having a personal account with Santander. But Santander have said that Mr H had personal savings account with them previously and because of this, he had his own customer profile and own online banking credentials for this account.

Santander said it was these online banking details which Mr H used to open the cash ISA and regular saver accounts. I've seen evidence confirming that these accounts were held in Mr H's sole name and Santander have also sent me screenshots of Mr H's customer profile too. These clearly show that it was his personal log-in used for the online banking too, so I'm satisfied that this was what Mr H used here. It may be that he thought he had opened and was using these accounts for his father, but as I explained in my provisional decision – I don't think it's fair to hold Santander responsible for that assumption here.

Mr H has asked how, if the savings accounts were in his sole name, was his access to these accounts restricted by his parents? But Santander have shown that these accounts were closed on 13 and 14 May 2020. The LPOA was revoked on 28 May 2020. So it doesn't look like his access to these accounts was restricted. Instead, it looks most likely that they were closed after he transferred money to his parents.

As Mr H is aware, I can't comment on what happened in May 2020 with his parents and the LPOA as I can't look at this part of his complaint and I explained why in my provisional decision.

In summary, Mr H's response hasn't changed my view and my final decision and reasoning remains the same as in my provisional decision. I know Mr H will be disappointed with the decision, but I hope he understands my reasons.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 April 2021.

Gregory Sloanes
Ombudsman