

The complaint

Mrs V complains that Nationwide Building Society has failed to comply with her instructions as set out in a Lasting Power of Attorney (LPA).

Mrs V has appointed two attorneys jointly to manage her affairs. The attorneys are represented by a firm of solicitors. In this decision I'll refer to the attorneys as Mr Q and Mrs C.

What happened

Mrs V has a current account with Nationwide. She created a LPA, using the standard documents provided by the Office of the Public Guardian (OPG), under which she appointed Mr Q and Mrs C as her attorneys. The LPA stated that the attorneys could make decisions "jointly" as soon as it was registered. Mrs V signed the LPA on 13 October 2017 in the presence of her solicitor. The LPA was subsequently registered with the OPG on 8 March 2018.

The solicitors for the attorneys wrote to Nationwide by letter dated 6 January 2020. Enclosed with the letter was a copy of the LPA. In the letter the solicitors stated that Mrs V now lacked capacity and on that basis the attorneys had assumed authority to deal with her financial affairs under the terms of the LPA. The solicitors drew Nationwide's attention to the fact that the attorneyship must function on the basis that the attorneys would act jointly and not jointly and severally. They asked for the name on the account to be changed and requested that a new cheque book in the joint names of the attorneys should be issued.

Nationwide responded by asking the attorneys to complete its "Registration of Power of Attorney" form. It didn't enclose a copy of that form and this caused a delay. The form was subsequently completed and returned to Nationwide on 20 January 2020. The attorneys also requested that three direct debits and one standing order on the account should be cancelled.

Nationwide responded by letter dated 31 January 2020. That letter was sent to the address of Mrs C. It confirmed that the power of attorney had been registered and that all correspondence would be sent to Mrs C's address. If the attorneys wanted to change this they could send Nationwide a request. The letter also confirmed that the standing order and the three direct debits had been cancelled.

The solicitors acting for the attorneys raised a complaint with Nationwide. They raised several matters which are summarised below:

- The standing order had not been cancelled as requested. As a result, there were insufficient funds in the account to make certain payments to HMRC which had been returned unpaid.
- Nationwide had sent a cheque book to Mr Q. The cheque book was in Mrs V's name and there was no indication of the status of Mr Q or Mrs C. Nationwide had also sent a cheque book to Mrs C in which she appeared as the sole attorney.

This showed that Nationwide had failed to understand the fact that the attorneyship was “joint.”

The solicitors asked Nationwide to confirm that it had noted the joint attorneyship on its records and would issue a cheque book with both attorneys’ names on it. They also asked for confirmation that the standing order and direct debits had now been cancelled.

Nationwide investigated the complaint. It said it had sent a letter to Mrs C’s address confirming that it had registered the power of attorney as joint and several. It said it hadn’t been possible to cancel the direct debits and standing order any earlier than it had. It confirmed they had all now been cancelled.

Nationwide said it didn’t offer cheque books with joint attorney details. It was possible to issue a cheque book in the sole name of Mrs V. It also confirmed that statements would be sent to Mrs C’s address as requested by the attorneys.

The attorneys were not satisfied with this response. They said:

- The letter dated 31 January should’ve been sent to both attorneys separately;
- Nationwide said it didn’t offer cheque books with joint attorney details. The attorneys said this approach was not in line with standard practice and they did not accept that it could be correct. They also queried how they could access the account in these circumstances; and
- Nationwide should’ve sent a response to the solicitors acting for the attorneys.

Nationwide reviewed its final response, but it didn’t change its decision. The attorneys referred their complaint to our service.

Our investigator looked into their complaint. She said that the original instructions had been sent by post and that was why it had taken Nationwide longer to action the request. She said that Nationwide didn’t offer the option for joint cheque books to be issued and it wasn’t our role to tell Nationwide to change its systems. She also considered what the attorneys had said about the address for statements. She referred to Nationwide’s letter dated 31 January where she said the attorneys had been informed that they could request the address for statements to be changed. They hadn’t done that and so she didn’t think Nationwide had made an error.

She noted that Nationwide hadn’t correctly marked its records to say that the attorneyship was joint. But she didn’t think this mistake had caused Mrs V to experience any significant impact. She didn’t uphold the complaint.

The attorneys disagreed. So, the complaint was passed to me to decide. I issued a provisional decision in which I said:

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.

I’ve thought about the various points which the attorneys have raised on behalf of Mrs V. To make things clearer, I’ve dealt with each point separately.

The delay in actioning the instruction dated 20 January 2020 to cancel three direct debits and one standing order

This instruction was sent by post to Nationwide. Nationwide has confirmed that it was scanned by it on 21 January 2020. It confirmed it had actioned the correspondence by letter to the attorneys dated 31 January 2020.

The instruction here was to cancel three direct debits and one standing order. Nationwide says that this was received too late to cancel a direct debit which had been received for processing on 23 January 2020. It hasn't offered any explanation why it didn't cancel the standing order that was paid on 27 January 2020.

I've thought about what Nationwide has said here. I've looked at the terms and conditions for the account. These state as follows:

"You can cancel the payment [direct debit] up to 6.00pm on the working day or Saturday before it is due to leave your account.

...

You can cancel the payment [standing order] up to 8.30pm on the working day before it is due to leave your account"

Having looked at the date that the instruction was received by Nationwide here, I'm satisfied that the attorneys had given Nationwide sufficient time to cancel both the direct debit and the standing order that were debited to the account on 27 January 2020.

It is the case that any payment made by direct debit has the benefit of the direct debit guarantee. So, the attorneys could've asked for a refund of the direct debit that was paid after the date of cancellation. That option is still available to them. In relation to the standing order, I can see that that payment appears to have been made to an account in Mrs V's name with a different bank. So, the attorneys could've asked for that payment to be returned if that was what they wanted to do. There is no evidence that the attorneys have sought to recover either of the payments.

The attorneys have confirmed that the financial loss (interest due to HMRC for late payment) was nominal. So, I don't think Mrs V has suffered any direct financial loss as a result of the delay in cancelling the payments referred to.

The attorneys say that if these payments had not been made the payment to HMRC wouldn't have been returned unpaid. They've referred to embarrassment caused because of what happened.

I've thought about what the attorneys have said here. I can see that a payment to HMRC had already been returned unpaid prior to 20 January 2020. I've also noted that any interest charged by HMRC as a result of what happened was nominal.

Having considered everything, I'm satisfied Mrs V experienced poor service and for that reason I intend to uphold this part of her complaint.

Nationwide didn't action her request in line with the timescales set out in the terms and conditions for the account. This caused a delay in payments she was required to make to HMRC. So, although I don't think she suffered any direct financial loss, I think she should be compensated for the poor service she received. I'll comment further about this below under the heading "What needs to be done to put things right."

Nationwide didn't send communications to both attorneys

After it received the "Registration of Power of Attorney" form, Nationwide sent a letter dated 31 January 2020, to the address of Mrs C, one of the attorneys, to confirm that the LPA had been registered and that all future correspondence would be sent to her address. It also confirmed that the standing order and direct debits had been cancelled as requested.

The attorneys say this was incorrect since all correspondence should've been sent to each of them separately. They've also said that Nationwide should've sent a response to the solicitors.

I've looked at the Registration of Power of Attorney form which the attorneys completed. There is a section in that form entitled "Correspondence Address – for all future mailings and statements." The attorneys have ticked the box in this section to "Change address to Attorney 1."

"Attorney 1" on the form was Mrs C.

Beside this information there is an asterisk with the following handwritten note

"Would prefer solicitors address to be used..."

Having looked at the information on the form, I don't think Nationwide did anything wrong when it decided to change the correspondence address for the account to Mrs C's address. Although the form indicated that the attorneys might have preferred their solicitor's address to be used – that was not one of the options available. And, it is the case that the letter of 31 January 2020 did explain that if the attorneys wanted to change the mailing address then they could submit a written request to do that.

Whilst I can understand why the attorneys have said that Nationwide should've also sent a response to the solicitors acting for them, it is the case that it did send a response to Mrs C's address and she would've been able to pass that on to the solicitors. I've noted that Nationwide did respond directly to the other correspondence sent to it from the solicitors acting for the attorneys.

So, having considered the matter, my provisional decision is that I don't intend to uphold this part of the complaint.

Nationwide's failure to issue a cheque book in the joint names of the attorneys

I've looked firstly at the terms of the LPA. This makes clear that Mrs V's instruction was that the attorneys should act "jointly." The LPA gives some further information about what this means. It says that the attorneys must agree unanimously on every decision, however big or small. This was also

explained to Mrs V when she signed the LPA. The “certificate provider” certified that Mrs V understood the purpose of the LPA and the scope of the authority conferred under it. So, I think Mrs V’s instructions were clear – she wanted her attorneys to act jointly.

Nationwide says it cannot operate a cheque book account where the attorneys are to act jointly.

When I asked it to comment on its policy its response hasn’t been clear or consistent.

It has provided the following statements:

“We can issue chequebooks in joint names for accounts that are in joint names, however Mrs V’s account is in sole names meaning the chequebooks that are issued on the back of this account would be in sole names also. The POA [power of attorney] team have confirmed that chequebooks issued on the back of POA registration are not made in joint names but rather sole names and separate chequebooks for the relevant POAs on the account....”

It subsequently stated:

“Once both attorneys have been ID confirmed within the branch, they can make joint decisions in relation to Mrs V’s account. They will have a chequebook in joint names as the POA, however they will also be able to use Mrs V’s debit card or chequebook as there is a marker present on all of their profiles to confirm that they are Mrs V’s POAs. As there are two POA’s present for Mrs V, they will need to make joint decisions on the account meaning both signature is required.....

When we issue chequebooks for joint accounts, these are not in joint names but each account holder gets a chequebook in their sole name. The same applies when joint attorneys are on the account, they get a chequebook each in their sole names. We appreciate that there are two attorneys present, however as we don’t offer joint named chequebooks and it isn’t possible for us to produce joint chequebooks, this isn’t something that we can facilitate.”

Having read through these responses, although the information is inconsistent and contradictory, I’ve concluded that Nationwide does not offer its customers a joint cheque book service where the cheque book bears the names of both attorneys.

It’s not our role to tell a business that it must offer a service which it doesn’t provide to its customers. But, I can look at whether it has acted fairly and reasonably when dealing with its customer. This is particularly relevant where, as here, the customer lacks capacity and has appointed attorneys to manage her affairs.

Having considered the matter, I’m not persuaded, on balance, that Nationwide has acted fairly and reasonably here. I say this for mainly the following reasons:

(1) It didn't inform Mrs V that a joint cheque book wouldn't be available.

I've looked at the information that Mrs V would've had access to when she signed the LPA.

There is nothing in the terms that specifically states that Nationwide doesn't offer cheque books on a joint account where the joint account holders indicate that they want the account to be operated on a "both to sign" basis. There is a reference in the Current Account Declaration as follows:

"For joint accounts:

- (i) You can pay cheques and act on instructions signed by either of us unless you are told otherwise."*

Having considered this wording, I don't think it would've been clear to Mrs V that she couldn't tell Nationwide that she wanted her attorneys to sign cheques "jointly." In its response to our service about the meaning of this wording, Nationwide said

"Where the terms and conditions state "told otherwise" is for accounts that have operating instructions labelled as "all to sign". This means that for payments to debit the account, all payments must be agreed by both holders, however this is solely for joint named accounts. You wouldn't have "all to sign" registered on a sole named account."

But, as set out in the rules which govern LPAs, it is entirely possible to have an "all to sign" or "jointly to act" instruction on a sole account where the accountholder appoints two attorneys.

So, I've looked at Nationwide's website to see if there is any further clarity there. The website includes a page setting out what attorneys can and cannot do. It refers to the fact that if the LPA states "jointly" then the attorney cannot have a card. There's no reference to cheque books. And, there's no warning on this page to alert a customer who is granting a LPA that if they decide to appoint joint attorneys they cannot have a joint cheque book. I would've expected that to be made clear on this page.

At this point I'd just point out that I understand why a business may decide not to issue a card where there is a joint account and the mandate requires "all to sign". A card requires a PIN (personal identification number) to be issued to the cardholder. A PIN is a personalised security feature. It is unique to the cardholder and cannot be shared with another party. For that reason, a card could not be issued where there is a joint attorneyship. But a cheque is different – it does not include any personalised security features because it can be signed by both attorneys without breaching the terms and conditions that would be associated with the issuance of a payment instrument such as a card, which requires a PIN.

When considering this point, I've also noted the inconsistent statements Nationwide has provided to our service about joint cheque books.

So, having taken everything into account, I don't think it would be reasonable to assume that Mrs V should've known that because a 'joint' card wouldn't be available to her attorneys, the same would apply to a joint cheque book. And in these circumstances, I don't think Nationwide did enough here to make clear to Mrs V, before she signed the LPA, that her attorneys couldn't have a joint cheque book if she required them to act "jointly".

(2) It didn't respond appropriately to the request to register the LPA

The attorneys sent a copy of the LPA to Nationwide with the letter from their solicitor dated 6 January 2020. The letter explicitly asked Nationwide to note that Mrs V now lacked capacity and they held medical evidence to support this. The letter asked Nationwide to note that the attorneyship must function on the basis that the attorneys were to act jointly and not jointly and severally. Nationwide was instructed to "change the nomenclature on the account and issue a joint cheque book".

If Nationwide couldn't issue a joint cheque book I would've expected it to respond immediately to the solicitors to advise them of this. That might have enabled the attorneys to make informed choices at an early stage about how best to manage Mrs V's finances.

Nationwide didn't do that. Instead it asked only for its own form - "Registration of Power of Attorney"- to be completed.

I've looked at that form and there is a note in section one which says:

"Attorneys appointed to act jointly are unable to receive cards or chequebooks."

But I don't see where Nationwide drew this specially to the attention of the attorneys. And when it processed the form, it doesn't appear to have dealt with the fact that this was a joint attorneyship. Instead it marked the LPA on its records as "joint and several." It issued two separate cheque books to the attorneys. That was an error on its part which it didn't deal with even after the solicitors acting for the attorneys brought it to Nationwide's attention in several subsequent letters including letters dated 20 February 2020 and 2 April 2020. I'll comment further about this point below.

(3) It didn't provide any information to the attorneys about how they could access the account

After the attorneys complained to Nationwide about what had happened it confirmed that it couldn't offer joint cheque books. But it didn't provide any assistance to them or information about what it could do to help them to access the account in other ways.

It said in its letter dated 27 February 2020 that the donor (Mrs V) could still have her own cheque book. But, that information was incorrect because by that stage Mrs V had lost capacity – so she couldn't operate her own cheque book. The attorneys, through their solicitors specifically asked Nationwide in the letter dated 2 April 2020 how they could access the

account. Nationwide didn't respond to that query and it has recently confirmed to our service:

"Our records don't indicate that there had been a discussion with the attorneys on how they can access the accounts."

The Financial Conduct Authority (FCA) in its recent "Guidance for firms on the fair treatment of vulnerable customers" urged firms to set up systems and processes in a way that supports and enables vulnerable customers. Having thought about Nationwide's response here, I don't think it has done everything that it could've reasonably been expected to do to support and enable Mrs V to access her account.

It has recently told our service that it would be able to comply with written payment instructions provided that such instructions are signed by both attorneys. It says it can also provide a counter service to the attorneys providing they are both present at the same time. So, even though it couldn't provide a joint cheque book, I think it should've discussed these options with the attorneys at an early stage. That might have prevented some of the difficulties that have arisen in this case.

*Nationwide's failure to register the power of attorney as joint
As mentioned above Nationwide failed to register the power of attorney as joint. It has accepted this was an error and has now corrected its records.*

Because of this error it failed to follow Mrs V's instructions and wrongly issued cheque books in the sole names of the attorneys. Those cheque books were not used and as a result Mrs V hasn't suffered any loss.

Nationwide has subsequently offered Mrs V £250 compensation for the inconvenience this caused. Mrs V hasn't accepted that offer. I'll comment further about that below, under the heading "What needs to be done to put things right."

What needs to be done to put things right

Under the Rules which apply to our service (as set out in the Financial Conduct Authority (FCA) Handbook (available online), the eligible complainant here is Mrs V. The attorneys can bring a complaint on her behalf because of the terms of the LPA which authorises them to make decisions on her behalf. When considering the complaints that have been raised I need to consider whether Mrs V has suffered (or may suffer) any financial loss, material distress or material inconvenience as a result of the matters complained about.

The attorneys have told us that they've engaged solicitors and have incurred professional fees because of what happened here. They also say that they've had to ask their solicitor to make payments, which Mrs V is required to make, from the firm's client account – because they haven't been able to write cheques for various essential items.

When considering the expenses which the attorneys have incurred, I've firstly considered the fact that the eligible complainant in this case is Mrs V.

So, I can only consider the expenses that the attorneys have mentioned if those expenses should be reimbursed by Mrs V.

I've looked at the guidance published by the government on its website www.gov.uk. This states that an attorney can only claim expenses for things that must be done to carry out his or her role as an attorney. It gives an example of where a professional might need to be hired to act. The example given is filling in the donor's tax returns.

But, having thought about this. I don't think that registering the LPA with Nationwide or dealing with the administrative issues that the attorneys faced here around the operation of the current account fall into that category. And whilst the attorneys were entitled to engage solicitors to advise and assist them, I'm not persuaded that those expenses are of the type mentioned on the government website. So, I don't think Nationwide should be required to compensate Mrs V for the legal fees incurred by her attorneys.

I am of the view that Mrs V has experienced material inconvenience as a result of what happened here, and my current view is that Nationwide should be instructed to pay her compensation for that inconvenience.

I've currently decided not to uphold the part of the complaint that concerned the mailing address used to send correspondence to the attorneys. But I have provisionally decided to uphold the other parts of the complaint.

As I've said above, Nationwide delayed dealing with Mrs V's request to cancel certain direct debits and a standing order. As a result, payments to HMRC were delayed.

Nationwide also hasn't acted fairly and reasonably when it:

- didn't provide adequate information to alert Mrs V to the fact that it could not issue a joint cheque book to her attorneys;*
- didn't respond appropriately to the request to register the LPA;*
- didn't provide any information to the attorneys about how they could access the account; and*
- failed to register the LPA on its records as "joint."*

Nationwide's actions have meant that Mrs V's attorneys haven't been able to access her account to manage her finances in the way that she could reasonably have expected when she signed the LPA. She's been inconvenienced as a result and has had to make alternative arrangements to make payments. Nationwide has recently offered to pay her £250 by way of compensation because it didn't register the LPA on its records as 'joint'. I don't think that's enough.

So, I've provisionally decided that in order to resolve this complaint, Nationwide should pay Mrs V £750 by way of compensation for the inconvenience she's experienced at a time when she is no longer able to manage her own affairs. It should also provide a written statement to Mrs V's attorneys setting out all of the means that they can use to access her account and make payments from it.

My provisional decision

For the reasons given above my provisional decision is that I intend to uphold this complaint in part, about Nationwide Building Society. I intend to require Nationwide Building Society to take the following action:

- *Pay Mrs V £750 by way of compensation for the inconvenience she experienced as a result of what happened; and*
- *Provide Mrs V's attorneys with a written statement setting out all of the means that they can use to access Mrs V's account and make payments from it.*

Nationwide responded to my provisional decision. It said it accepted the provisional decision.

Mrs V, by her attorneys, also responded to my provisional decision. The attorneys said they were prepared to accept the provisional decision. They didn't make any further comments.

So, I now have to make 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 considered the responses to my provisional decision, and for the reasons set out in that provisional decision, I remain of the view that this complaint should be upheld in part. I also haven't changed my view about the actions Nationwide should take to resolve this complaint.

My final decision

For the reasons given above I uphold this complaint, in part, about Nationwide Building Society. I now require it to take the following actions:

- Pay Mrs V £750 by way of compensation for the inconvenience she experienced as a result of what happened; and
- Provide Mrs V's attorneys with a written statement setting out all of the means that they can use to access Mrs V's account and make payments from it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V, by her attorneys, to accept or reject my decision before 6 September 2021.

Irene Martin
Ombudsman