

The complaint

Mr W1 complains Santander UK Plc (“Santander”) terminated access to his accounts following the registration of an Enduring Power of Attorney (“EPA”). Mr W1 is assisted in bringing this case by his Attorney, Mr W2.

What happened

Mr W1 made an EPA on 19 September 2007. It appointed Mr W2, his son, as sole attorney. The EPA had a restriction that it shall come into effect when the attorney had reason to believe the donor had become or was becoming mentally incapable. In October 2021 Mr W2 registered this EPA at the Office of the Public Guardian (“OPG”) as he believed Mr W1 was becoming mentally incapable.

On 17 October 2021 Mr W2 registered the EPA with Santander online. He received written confirmation of its completion on 27 October 2021. This confirmation also stated all Mr W1’s bank cards had been cancelled to prevent his use of the account. Mr W2 spoke to Santander that day - and on multiple occasions thereafter - to ask for reinstatement of his father’s access.

In their Final Response Letter Santander told Mr W2 they had to adhere to the EPA that had been registered and were unable to reinstate Mr W1’s access. They said once an EPA had been registered with the OPG this confirmed the donor is becoming or has become mentally incapable. And the OPG’s guidance notes EPA101 confirmed if the donor becomes mentally incapable the EPA must be registered with the OPG before it can be used.

Our investigator thought there was a discrepancy between what Santander said and both their own and the OPG’s guidance. He thought, due to that discrepancy, Santander ought to act in line with its own guidance and reinstate Mr W1’s access to the account.

Santander didn’t agree with the investigators view and asked for an ombudsman to review the matter. It told us they thought the confusion was as an EPA was registered rather than a Lasting Power of Attorney. And they highlighted extracts from EPA101 and gave details of Lasting Powers from the gov.uk website. They said it wasn’t possible to reinstate Mr W1’s access whilst the EPA was registered.

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’ve come to the same outcome as our investigator. I’ll explain my reasons for that.

Mr W1’s EPA specifically provided in the restrictions and conditions that the power shall come into effect when his attorney *“has reason to believe that I have become or am becoming mentally incapable”*. Mr W2 told us Mr W1 *was becoming* incapable of managing his affairs. I can’t see that’s ever been disputed by Santander.

Just because an EPA has to be registered with the OPG when a donor *is becoming* or has become mentally incapable doesn't exclude the possibility of the donor and the attorney agreeing that donor will manage some aspects of their affairs. The notes EPA101 provide guidance on this under the heading "*Can the Donor still manage their own affairs?*". Santander are familiar with this guidance and refer to it in when responding to the view.

It's correct that on registration of the EPA Mr W2 takes over full responsibility from his father for managing his property and affairs and Mr W1 as donor *is considered* unable to manage them. But it seems to me, Santander haven't considered the actual situation here, namely they're told – and don't dispute - Mr W1 *is becoming* incapable but *is not yet* incapable. So, Mr W1 remains capable of managing some elements of his affairs as agreed with his attorney Mr W2.

In addition to the OPG's EPA101 note Santander's own guidance to customers supports retaining access where capacity remains. In the customer advice sheet titled "Registering a Power of Attorney or a Court of Protection, Guardianship or Controllorship Order with Santander" it states "*Account holder access If the account holder has mental capacity, they will still be able to operate their account(s). The account holder's access to their account(s) (including cards and online access) will be cancelled when a court appointed deputy is registered or we're made aware that the account holder lacks the mental capacity to manage their own finances*". Santander were told Mr W1 *is becoming* incapable and later sent the OPG guidance by Mr W2. There is no deputyship here or notification Mr W1 lacked the mental capacity to manage his account at that point. So, it seems to me, Santander disregarded Mr W1 requests and instructions on the EPA and how it should work, in line with his wishes.

If Mr W2 and Mr W1 - as a donor who *is becoming* mentally incapable - are of the view Mr W1 should continue to have access, I think it's unreasonable for Santander to remove this and to refuse to reinstate it. So, I think it should be reinstated with new debit cards issued to Mr W1, as appropriate, to ensure he has access whilst he retains some capacity.

Mr W2 recently told us this complaint was brought more on of principle as Santander were the only financial institution, on notification of the registered EPA, to completely remove Mr W1's access. In terms of compensation, for the same reason explained by the investigator, I can only look at Mr W1.

It's my role to put Mr W1 back in the position he was before the mistake was made. But it's not to punish the business. So punitive damages aren't something I can consider. Reinstatement of Mr W1's access to the account for will put him back in the position he was before the mistake was made. I'm told Mr W1 had accounts with other banks so he's been able to visit local branches to withdraw cash. Also, direct debit payments were unaffected and Mr W2's been able to act as attorney on the account throughout, so, Mr W1 has suffered little impact. And where that's the case I wouldn't consider an award of compensation appropriate.

Putting things right

Santander should reinstate Mr W1's access to this account and reissue any debit cards withdrawn when this attorney was registered

My final decision

My final decision is that I uphold this complaint. Santander should reinstate Mr W1's access to this account and reissue any debit cards withdrawn when this attorney was registered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W1 to accept or reject my decision before 3 February 2023.

Annabel O'Sullivan
Ombudsman