

The complaint

Mr E complains National Savings and Investments (NS&I) incorrectly allowed him to withdraw funds from his premium bonds account while he was unwell. The complainant here is Mr E, but Mr E is represented in this complaint by his sister Miss E, who has Lasting Power of Attorney (LPA) for him.

What happened

Mr E had an NS&I premium bonds account. In 2012, Miss E was granted LPA for Mr E, as his health meant he sometimes lost the mental capacity to manage his finances. Miss E wrote to NS&I in 2016 asking it to register the LPA. NS&I did this and sent a letter of acknowledgement to Miss E. Miss E says she also spoke to NS&I around this time and told it she didn't want Mr E to be able to make withdrawals without her permission.

Miss E says that in early November 2021 she thought Mr E had lost mental capacity, and arranged for him to be admitted to hospital, which took time. Miss E called NS&I on 8 November 2021 about this and told it not to let Mr E make withdrawals. NS&I said it couldn't discuss things in detail with Miss E as she wasn't registered for its online and telephone services. But it noted what she said, and told her it seemed like there was nothing wrong with the account so it didn't look like Mr E had tried to withdraw funds. Miss E left this call reassured. But soon after, she found Mr E had in fact withdrawn £100 and £6,900 on 5 November 2021 to his bank account.

On 10 November 2021, Miss E called NS&I to complain about this. In its final response, NS&I said Mr E had made the withdrawals online, and its processing time was between three and five working days. NS&I said the LPA didn't restrict Mr E, and suggested it could only restrict Mr E with the involvement of the Court of Protection. However, NS&I apologised for not telling Miss E she could register for online and telephone services at the time she registered the LPA, and it offered Miss E £50 compensation for this.

Miss E rejected this and came to our Service. She said NS&I could and should have stopped the withdrawals because she'd called it in time, regardless of the LPA not restricting Mr E. That NS&I never told her Mr E could access his account online and if she'd known this, she wouldn't have left money in it. That she'd safeguarded £4,000 of the withdrawn funds, but Mr E had paid a large sum to someone who refused to refund it. Miss E wanted NS&I to compensate her for the distress and inconvenience it had caused her and reimburse Mr E for his financial loss.

Our Investigator didn't uphold this complaint. He said the LPA didn't stop Mr E managing his finances. And Miss E had called NS&I three days after the withdrawals were made and hadn't asked about recent withdrawals. Our Investigator thought the £50 NS&I had offered Miss E was fair compensation for not telling her she could set up online access to Mr E's account.

Miss E disagreed. She said she'd called NS&I on 5 November 2021 - the same day Mr E made the withdrawals. And NS&I never told her she could manage the account online. But regardless, she'd called NS&I with her concerns and asked it to stop withdrawals, but it

didn't tell her about the recent withdrawals. Miss E said if NS&I had told her about these, it's processing times meant either it could have stopped them, or Miss E could have arranged for Mr E's receiving bank account to be frozen. She said the LPA allowed her to act for Mr E when he didn't have capacity, so NS&I should have fully informed her when she called. And she planned to take action through the courts against the person Mr E had paid the funds to in order to recover them.

As Miss E disagreed, this complaint came to me for a decision. I asked Miss E for documentary evidence she'd called NS&I on 5 November 2021, rather than 8 November 2021. But Miss E said she wasn't able to provide this.

I asked NS&I for some further information. NS&I said:

- Its records didn't show a call with Miss E in 2016.
- It couldn't discuss details with Miss E on 8 November 2021 because she wasn't registered for online and telephone services, but accepted it incorrectly implied everything was fine.
- At that point, it could have retrieved the £6,900 withdrawal, but Miss E had asked to stop future withdrawals, not ones that had already taken place. So, NS&I hadn't acted unfairly.
- When Miss E called NS&I on 10 November 2021, she said she'd safeguarded the funds in a holding account, which was at odds with what Miss E had told our Service.

I asked Miss E for more information about Mr E's financial loss, the court action she was taking regarding that, and about safeguarding Mr E's funds. I've summarised Miss E's relevant comments and evidence as follows:

- When Mr E becomes unwell, Miss E leaves about £1,000 in his bank account for him to use, as locking his accounts puts her in danger. So, she transferred most of what was in Mr E's current account out of his reach.
- On 10 November 2021, Miss E transferred the NS&I funds Mr E had withdrawn to a separate account, minus the funds Mr E had already paid to someone who now refused to refund it – Miss E provided a copy of Mr E's bank statement to show this financial loss was £2,990. Miss E said if NS&I had told her about the withdrawals, she could have asked Mr E's bank to transfer it out of Mr E's reach immediately.
- NSI's error caused Miss E a lot of stress and inconvenience, particularly having to travel and take time off work to deal with this matter since she didn't have online or telephone access to Mr E's NS&I account.
- Miss E has notified the person Mr E had paid £2,990 to that Mr E intended to take them to court if they didn't refund it, and provided evidence of this. Miss E said this was still the intention but doubts their ability to pay even if ordered to do so by a court.

On 15 July 2022, I issued a provisional decision in which I said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd firstly like to say I'm sorry to learn of Mr E's health difficulties, and the impact they have on both him and Miss E. I realise this must cause them both a great deal of difficulty and upset.

Miss E says NS&I reassured her in 2016 that Mr E couldn't make any withdrawals. Neither of the letters I've seen between Miss E and NS&I about registering the LPA make any mention of stopping withdrawals. And NS&I doesn't have a record of a call from Miss E in 2016. So

as things stand, I don't have enough evidence to fairly say NS&I told Miss E that Mr E wouldn't be able to make withdrawals.

But NS&I accepts it didn't tell Miss E she could manage Mr E's account through online and telephone services. It's offered Miss E herself £50 compensation for this, though Miss E didn't accept this. But I should be clear that Mr E is the eligible complainant here since this is his NS&I account - Miss E can represent Mr E, but she is not herself an eligible complainant. That means I can't award compensation to Miss E. That said, if Miss E would like to accept NS&I's offer of £50, then she can let our Service know and we will contact NS&I about this.

I acknowledge Miss E thought she called NS&I on 5 November 2021. But I'm satisfied she in fact called on 8 November 2021, as that's what NS&I's contact records show and Miss E isn't able to provide evidence otherwise. So Miss E called NS&I three days after Mr E made the withdrawals.

NS&I maintains it couldn't talk to Miss E in detail during that call. I've listened to the call and heard Miss E say she was concerned Mr E was mentally unwell and expected him to be hospitalised in the next few days, and she was concerned he was trying to access his NS&I funds. NS&I took Miss E through security and confirmed the LPA was registered, but explained it couldn't give her information about whether Mr E had withdrawn funds because Miss E wasn't registered for online or telephone services. But later in the call, NS&I said it seemed there was nothing wrong with the account so it didn't look like Mr E had tried to withdraw funds. NS&I agreed to stop Mr E making withdrawals from that point on.

I can see that the LPA in this case doesn't restrict what Mr E can do. However, it doesn't restrict when Miss E can act on Mr E's behalf either. So it's my understanding that Miss E could use this LPA as soon as it was registered. That means I think Miss E had the power to make decisions about Mr E's finances when she called NS&I on 8 November 2021. And it was clear from that call that she thought Mr E didn't at that time have the mental capacity to manage his finances, and that she was trying to protect him and stop him from withdrawing money.

Given the reason why Miss E was calling, and Mr E's extreme vulnerability, I think it would have been fair and reasonable for NS&I to look at Mr E's account properly in that call, to let Miss E know about the recent withdrawals, and to talk to her about them. Instead, it incorrectly reassured Miss E that Mr E hadn't tried to make any withdrawals. So I don't think NS&I acted as it reasonably should have in that call.

When a financial business like NS&I makes an error, our approach is to consider the impact of that error. In other words, the distress, inconvenience and financial loss that error caused.

As I say, Miss E isn't the eligible complainant here so I can't award her compensation for distress and inconvenience. Mr E is the eligible complainant, but I don't think he experienced any distress or inconvenience as a result of NS&I's error, since Miss E was acting on his behalf in this matter. So I'm not intending to make any award for distress and inconvenience.

However, I am intending to make an award for Mr E's financial loss. I'll explain why. As I say, I think that when Miss E called NS&I on 8 November 2021, NS&I should have looked at Mr E's account properly, let Miss E know about the recent withdrawals and talked to her about them. NS&I says it could have stopped the £6,900 withdrawal at that point. So had NS&I acted as I think it should have, these funds wouldn't have been available to Mr E.

Miss E wants NS&I to reimburse the £2,990 financial loss she says it caused Mr E, as he was incorrectly able to access his NS&I funds and pay this amount of them to someone who now refuses to refund it.

Miss E says that when Mr E is unwell, she leaves about £1,000 for him to access and spend as he wishes, and that she transferred most of what was in Mr E's current account out of his reach – in other words, she left an amount of money in Mr E's account for him to access. So this is separate to the NS&I funds Mr E withdrew and which Miss E says she was later able to mostly transfer out of Mr E's reach, except for the £2,990 of it that Mr E paid to someone who has so far not refunded it.

Miss E says she intends to pursue this £2,990 financial loss in court. I don't know what Miss E's prospects of success are and I can't advise her or Mr E about that. However, there will be costs involved in going to court. And if not for NS&I's error here, I don't think Miss E and Mr E would need to consider going to court. So in the particular circumstances of this complaint, I think a fair and reasonable outcome is for NS&I to reimburse Mr E £2,990 for his financial loss.'

Miss E received my provisional decision, and suggested Mr E would be willing to repay NS&I if he was able to recover his financial loss through the courts.

In its response to my provisional decision, NS&I raised further points, and I've summarised its relevant comments:

- What would happen if Mr E or Miss E also managed to recover all or part of the £2,990 from the person Mr E paid it to?
- Should the 'float' of £1,000 that Miss E leaves in Mr E's account when he is unwell be deducted from the £2,990 I'd provisionally said NS&I should pay Mr E?
- In 2016, NS&I only offered limited services for attorneys who were registered for its telephone and online services. So NS&I was highly unlikely to have mentioned stopping withdrawals at that time.
- If, in the future, Mr E held any more funds with NS&I, would Miss E want NS&I to prevent Mr E carrying out any transactions at all?

On 12 August 2022, I issued a second provisional decision in which I said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

For the reasons I set out in my previous provisional decision dated 15 July 2015, I still think NS&I made an error here. When Miss E called on 8 November 2021, NS&I should have looked at Mr E's account properly, let Miss E know about the recent withdrawals and talked to her about them.

But in light of NS&I's response to my previous provisional decision, I'm now intending to put things right in a different way. I'll explain why.

NS&I asked what would happen if Mr E or Miss E were able to recover all or part of the financial loss, which I intend to ask NS&I to compensate Mr E for, from the person Mr E paid it to. As I said in my previous provisional decision, I don't know what Miss E and Mr E's prospects of success at court are and I can't advise them about that. But there will be costs involved in going to court. And, if not for NS&I's error here, I don't think Miss E and Mr E would need to consider going to court.

However, I accept it's possible Mr E might be able to recover part or all of this financial loss through litigation against the person he paid it to. And I don't think it would be fair for Mr E to be doubly compensated here – through our Service and also through litigation. So I think it's fair and reasonable to say that before NS&I pays any compensation for financial loss to Mr

E, NS&I can ask Mr E for an undertaking that in the event Mr E is able to recover part or all of this financial loss through litigation, he will repay the recovered amount to NS&I up to a maximum of what I award.

NS&I also suggested the 'float' of £1,000 Miss E leaves in Mr E's account when he's unwell should be deducted from the amount I provisionally said NS&I should pay Mr E for his financial loss. I've reconsidered the copies of Mr E's bank statements provided to me, and I note Mr E had already spent £1,000 on other things before his withdrawn funds from NS&I reached his account. So, I don't think the financial loss compensation should be reduced for this reason.

However, I also note that it was on 6 November 2021 that Mr E made the first of the two 'financial loss' payments which Miss E says the payee won't give back and which NS&I should be responsible for – this first payment was in the amount of £990. It wasn't until a few days later that the withdrawn NS&I funds then reached Mr E's account - £100 on 9 November 2021 followed by £6,900 on 10 November 2021. And it was later on 10 November 2021 that Mr E then paid the second 'financial loss' payment of £2,000 to the payee Miss E says won't give it back.

Given Mr E paid £990 to the payee days before the NS&I funds reached his account, it wouldn't be fair or reasonable of me to say NS&I should compensate Mr E for this £990. However, I think it's fair and reasonable to say NS&I should still compensate Mr E for his financial loss of £2,000, because this is the amount Mr E was able to pay to the payee after the withdrawn NS&I funds reached his account on 10 November 2021. As I explained in my previous provisional decision, if NS&I had acted as I think it should have, these funds wouldn't have been available to Mr E to spend. Therefore, I now intend to say that a fair and reasonable outcome in the particular circumstances of this complaint is for NS&I to compensate Mr E £2,000 for his financial loss.

In its response to my provisional decision, NS&I also said it was unlikely to have mentioned stopping withdrawals to Miss E in 2016. But I don't think this changes the outcome of this complaint, because my previous provisional decision had already explained why I don't have enough evidence to fairly say NS&I told Miss E in 2016 that Mr E wouldn't be able to make withdrawals.

NS&I also asked whether Miss E would want NS&I to prevent Mr E carrying out any transactions at all, if he again held funds with NS&I in future. I've seen nothing to make me think either Miss E or Mr E intend to hold funds with NS&I again. But if they did, it would be for Miss E and NS&I to discuss how those accounts would operate. And they will need to be aware of the limitations of the account which have come to light in the course of this incident. They should consider carefully whether this account is one that is right for Mr E.'

Miss E accepted my second provisional decision. She reiterated that in 2016 NS&I said Mr E couldn't access his funds without her authority. She said she wouldn't want Mr E to have an NS&I account in future. And she accepted the £50 compensation NS&I had itself previously offered her.

In its response to my second provisional decision, NS&I raised the following points:

- It didn't dispute Miss E could use the LPA once it was registered with NS&I. But she hadn't registered for its online and telephone banking, so she didn't have the necessary authority to receive account information when she called NS&I on 8 November 2021.*
- Did Miss E freeze Mr E's bank account before the withdrawn NS&I funds reached it? Because Miss E said she'd alerted Mr E's mental health team in early November 2021*

and received a message from Mr E on 8 November 2021 about accessing his NS&I funds.

- It didn't know the balance of Mr E's bank account before and after the withdrawn NS&I funds reached it, but the information it had seen didn't support Miss E's testimony that she left Mr E with a £1,000 'float' in these circumstances.

I'm now in a position to make my 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.

The points NS&I raised in response to my second provisional decision don't change the conclusions I reached in that provisional decision. I'll explain why by addressing each of those points.

NS&I says Miss E hadn't registered for its online and telephone banking so wasn't authorised to receive account information when she called on 8 November 2021. As I said in my provisional decisions, in that call NS&I took Miss E through security and confirmed the LPA was registered, but explained it couldn't give her information about whether Mr E had withdrawn funds because she wasn't registered for online or telephone services. But despite this, NS&I did give Miss E information about the account – later in the call it told her it seemed there was nothing wrong with the account so it didn't look like Mr E had tried to withdraw funds. And that wasn't correct.

NS&I asks if Miss E froze Mr E's bank account before the withdrawn NS&I funds reached it, because by 8 November 2021 she knew Mr E was unwell and trying to access his NS&I funds. But Miss E called NS&I about exactly that on 8 November 2021, and NS&I told her it didn't look like Mr E had tried to withdraw funds. Miss E has explained that simply freezing Mr E's account leaves her in danger. And the bank statements Miss E has provided show that on both 6 and 10 November 2021, Miss E transferred out all, or very almost all, the remaining balance of Mr E's bank account, with the reference as 'safeguarding'. So I don't agree Miss E didn't take reasonable steps to mitigate Mr E's financial loss here, as NS&I seems to suggest.

NS&I says it doesn't know the balance of Mr E's bank account before and after the withdrawn NS&I funds reached it, and perhaps has doubts that Miss E left Mr E with a £1,000 'float'. But the bank statements provided by Miss E show Mr E's bank account balance was almost nothing when the NS&I withdrawals reached it. And I don't think the account balance at that point changes the outcome here, because Mr E had by then already spent more than the £1,000 Miss E says she leaves him in these circumstances, though I acknowledge NS&I may doubt she does this.

Therefore, I'm not persuaded to change the conclusions I reached in my second provisional decision dated 12 August 2022.

Putting things right

NS&I should pay Mr E £2,000 for his financial loss. However, before it pays this, it can ask Mr E for an undertaking that in the event Mr E is able to recover part or all of this financial loss through litigation, he will repay the recovered amount to NS&I, up to a maximum of what I award.

My final decision

For the reasons set out above, National Savings and Investments should pay Mr E £2,000 for his financial loss. However, before it pays this, National Savings and Investments can ask Mr E for an undertaking that in the event Mr E is able to recover part or all of this financial loss through litigation, he will repay the recovered amount to National Savings and Investments, up to a maximum of what I award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 6 October 2022.

Ailsa Wiltshire
Ombudsman