

The complaint

Mr H has complained that National Savings and Investments ('NS&I') won't accept his certified copy of Power of Attorney – in this case a Lasting Power of Attorney ('LPA') – which he holds for his mother. Mr H says NS&I's own internal policy was unnecessary, unjustified, and could cause additional expense and frustration to the end user.

What happened

Mr H's Power of Attorney for his mother was created by his solicitor in 2012 and registered with the Office of the Public Guardian.

After opening NS&I accounts on behalf of the donor, his mother, as LPA in January 2021 Mr H supplied it with the certified copy of the LPA, but it was rejected as it did not meet NS&I's requirements. Mr H complained to NS&I about this.

In its response to Mr H NS&I said:

- Any document that was sent to NS&I had to be either the original document or a certified copy of the LPA document. The certification must be made by an individual solicitor and not the name of the company or by a representative. The certified copy it had received was certified by the company name and not the name of the individual solicitor.
- The solicitor business who had certified the LPA had gone into administration and it suggested Mr H contact the Office of Public Guardian ('OPG') with reference to getting a new document.
- It recognised Mr H's frustrations that other organisations had accepted the document but it wasn't in the position to record the LPA and couldn't comment on the practices of other organisations.

Mr H wasn't happy with the response so brought his complaint to the Financial Ombudsman. Mr H says the certified copy was stamped as a true copy of the original document and signed by a solicitor (an authorised person) on behalf of his solicitors. Mr H was of the opinion that the document – in accordance with the Powers of Attorney Act 1971 – was a correctly certified copy of the original.

I issued my provisional decision explaining that I intended upholding the complaint and I asked both parties to give me anything further that they wanted me to consider before I issued my final decision. Here's what I said;

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

After doing so, I'm currently thinking of making an award for the distress and inconvenience caused to the eligible complainant, Mrs H as well as recommending action I think NS&I should take in order to resolve the issue.

I should explain at the outset that this service's role is to decide whether a firm acted fairly and reasonably in the individual circumstances of a complaint. Our role is not to decide whether a firm, or customer has interpreted the law correctly or not. That's for a court to decide. So, while I've taken into account what the relevant law says here, I've focused on what's fair and reasonable in all the circumstances, in line with our role as a quick and informal service.

After Mr H first made contact with NS&I to register his LPA and he had sent it a certified copy, the NS&I confirmed the LPA was acceptable, but the certification was not. It explained that the certification signature had to allow for the individual solicitor to be identifiable and not just the solicitor's business name.

I can appreciate how frustrated Mr H has been by the processes required by NS&I. He feels he has all of the necessary documentation and that documentation has been accepted by other financial organisations. And during this time, his mother's investments have been in limbo.

The Powers of Attorney Act 1971 is the appropriate legislation for me to consider in this case. The requirements for certifying powers of attorney are set out in Section three of that Act. It states that the copy;

“(b) contains the following certificate or certificates signed by the donor of the power or by a solicitor, authorised person or stockbroker...”.

The LPA provided by Mr H is not signed by a solicitor but on behalf of the partnership. So while the Act doesn't provide any guidance on the situation Mr H finds himself in, I think it's likely that NS&I is correct that the document has not been strictly certified in accordance with the Act as it has not been signed by a solicitor or authorised person.

My understanding is that in practice when certifying documents as a solicitor, it would be usual to sign and date the document and for the name of the signatory to be printed along with their occupation, address, and phone number. And while I appreciate the points made by Mr H, it seems unlikely that the person who has signed (which is only recognisable as a squiggle) was an authorised person but someone who was not following the correct procedure when certifying documents.

And an LPA is a special category document and one to be treated with extra caution due to the very nature of a power of attorney in removing the individual's ability – in this case Mrs H – with her own finances and property.

But, while I may currently agree with NS&I over its interpretation of the Act with regard to certification, I do think it could have done considerably more to help. Mrs H is 96 years of age and it doesn't seem reasonable for Mr H to have been made to go through this effort and time in trying to deal with his mother's financial affairs.

NS&I hasn't given me anything to think it has any cause for concern about Mr H acting for his mother as Attorney. So, I would question why it hasn't been trying to make reasonable suggestions in how to find a way forward. I don't think its blanket approach to this situation has been helpful. After all, Mrs H is a vulnerable consumer and businesses are expected to be able to identify this at the front end to ensure its processes are fit for purpose.

My understanding is that NS&I could have done a search of the Office of the Public Guardian's records if it wanted to check whether Mr H was still Attorney. Again, my

understanding is that this is a free service and only takes a few days. As I have said above, Mrs H is a vulnerable consumer and I think NS&I could have done more to try to resolve the problem.

In conclusion I currently don't think that NS&I has done anything wrong in not accepting the certified copy of the LPA for the reasons given above. But my recommendation now, in order to assist Mrs H, is that NS&I search the Office of Public Guardian's records to check Mr H's validity as Attorney.

And I am of the opinion that NS&I could have done considerably more to help resolve the issue sooner. Usually in this situation I would require a business to pay a complainant an award for the trouble and upset it had caused.

I'm unable to make an award to Mr H because these provisions do not extend to complaints brought by a Power of Attorney. But I can make an award for Mrs H if I consider these are circumstances where the impact on Mr H has in turn impacted on the eligible complainant – in this case Mrs H. Mr H has told us that he hasn't been able to operate Mrs H's NS&I account and he needs to withdraw funds under the LPA and those funds are urgently needed for utility bills. So, I do consider an award for the distress and inconvenience that has been caused is warranted and I propose to make an award of £300 for Mrs H.

I concluded that while I didn't think NS&I had done anything wrong in not accepting the certified copy of the LPA, I thought it should have done more to assist its customer who was vulnerable. I intended on asking it to take steps to assist Mrs H and pay her £300 for not doing more.

Mr H accepted my provisional decision.

In response NS&I didn't agree with my provisional decision and said the following;

- In its reply to Mr H's complaint it had said he could contact the Office of Public Guardian to get a new document. It said this could have been better worded as he could only get an 'office copy'. If he had done this, he would have been advised he could get an office copy which it believed cost £35.
- The LPA was unacceptable, and NS&I couldn't use the online process to check with OPG as the LPA was made prior to 1 January 2016 and so it was correct to reject the POA. It listed the reasons as quoted in section 3 of the POA Act 1971.
- It couldn't know whether the form had been signed by a solicitor or authorised person. The copy LPA was not certified correctly.
- It didn't agree with my comment that the document should be treated with caution as it removed an individual's ability to deal with their own affairs. It said as long as the Donor retains mental capacity, they could continue to deal with their own affairs even after appointing an Attorney. In this case it didn't know Mrs H's capacity.
- It accepted that Mrs H as the Donor could be regarded as vulnerable, but her Attorney was acting for her, and unless he was vulnerable, it wouldn't be a factor in a POA case.
- It said it couldn't register the POA provided and the original was lost. It had advised Mr H to contact OPG which he hadn't done, and it couldn't validate the POA electronically.
- It had never been mentioned that Mrs H needed the funds urgently. If Mr H was to

make contact about this it would consider making a care and benefit payment.

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.

NS&I has said that for an LPA made prior to 1 January 2016 the online process for checking with the OPG could not be used. And on the link it attached to its response that is certainly the case.

But it has misunderstood. In order to check the register to see if an individual has an Attorney or Deputy registered with the OPG the process is simple and free. To be clear, the form NS&I should complete – OPG100 – is available online on the below link;

<https://www.gov.uk/government/publications/search-public-guardian-registers>

The OPG sends back the confirmation within a few days. And I would think that confirmation from the OPG from the register would be sufficient for NS&I and so an office copy would not be required at the expense of Mr H or his mother. I don't think this is unreasonable in order to resolve a problem for a vulnerable person.

NS&I made further arguments about the interpretation of the relevant legislation but I'm not going to comment on that as in my provisional decision I didn't disagree with its interpretation.

However, it did make the suggestion that an LPA is not a special category document as it didn't know whether Mrs H had lost her mental capacity. I don't think whether Mrs H has lost her mental capacity or otherwise would invalidate the importance of this legal document. And if NS&I did consider that Mrs H's mental capacity was something that it wanted to be aware of and to take into account, then I would have expected its review of Mrs H's account to have included a review of the present position in relation to her capacity, which I can't see has been undertaken with Mrs H in any event.

Regarding its comment that it wasn't aware Mrs H had need of funds for fuel bills, Mr H tried to register the LPA in January 2021 so I don't find it surprising the Mrs H's circumstances may have changed in the intervening period of nearly two years and I don't find it was a surprise that Mr H brought it to our attention. The award is made for the distress and inconvenience caused by NS&I not doing enough in this case, and the impact that has had on her is that she hasn't been able to access her funds for bills that need paying.

Putting things right

Overall, NS&I's response hasn't altered my findings in my provisional decision, and I confirm those findings. I uphold Mr H's complaint and NS&I should put the matter right by taking the steps I have outlined in order to assist Mrs H and also pay her £300 for the trouble and upset caused by it not doing enough to assist.

My final decision

For the reasons I have given, I uphold Mr H's complaint and National Savings and investments should put the matter right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 December 2022.

Catherine Langley
Ombudsman