

The complaint

Ms W complains Lloyds Bank PLC (“Lloyds”) refused to accept her attorney’s authority to act on her account until an Enduring Power of Attorney (“EPA”) was registered with the Office of the Public Guardian (“OPG”). Ms W is assisted in bringing this case by her Attorney, Mr W.

What happened

Ms W made an EPA on 26 September 2007. It appointed Mr W, her son, as one of three attorneys on a joint and several basis. It was registered with OPG on 7 April 2022 with Mr W as sole acting attorney. Ms W included a restriction in the EPA that the attorneys “shall not act on my behalf under this power until they had reason to believe that I have become or am becoming mentally incapable”.

Mr W told us he approached Lloyds with the EPA to access the account, as attorney, to pay Ms W’s bills, most importantly the fees for her care. He did this first in spring 2021 whilst preparing the application to the OPG, then in August 2021 when the application was with the OPG with an estimated timescale of four to five months to process due to staff shortages. He says on both occasions Lloyds refused to talk to him. And it was only in January 2022, after he was told by the OPG he was legally entitled to access the account once the application for registration had been received by the OPG to process, that Lloyds agreed to submit an application to their POA department. Mr W said Lloyds told him they couldn’t register it and add Mr W to the account due to the restriction in the EPA.

When Mr W pushed back the application was resubmitted. Lloyds refused again, stating their final decision was that they wouldn’t allow Mr W to act until the EPA was registered with the OPG and returned to him. He complained and Lloyds Final Response, on 30 March 2022 was that it was unable to accept the EPA which hadn’t been signed or stamped by the OPG. Lloyds told him this was a requirement for it to be able to allow him to manage Ms W’s account.

Lloyds told us it didn’t think it had done anything wrong. It has referred the matter to their specialist POA team who had confirmed that for the bank to accept the EPA had to be signed or stamped by the OPG before Mr W could be allowed to manage Ms W’s accounts.

Our investigator didn’t uphold the complaint. He thought Lloyds hadn’t been unreasonable in refusing to allow Mr W to access Ms W’s account as they maintained that could only be done once the EPA had been registered and stamped by the OPG. And as the request from Mr W was made when the EPA hadn’t been registered, Lloyds response wasn’t unfair or unreasonable. So, he didn’t think Lloyds need to do anything further.

Mr W didn’t agree. He was concerned about the short amount of time the investigator had given to considering his case when coming to the decision. And, that the investigators approach to any breach of legislation as he thought looking at the legislation was fundamental. I asked Lloyds and Mr W for more information and they both responded.

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 have sympathy with the position Ms W and her attorney found themselves in. At a time of concern for Ms W, Mr W's been unable to act under the EPA as he understood he ought to. Although I can understand Mr W's frustration with this situation, from everything I've seen, this isn't a complaint I can uphold.

Firstly, I should make it clear that the role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses. And it's not my role to ask a business to alter its procedures; this is something their regulator the Financial Conduct Authority ("FCA") can look into if they felt it was necessary.

It's my role to look at individual complaints and in doing so I consider a number of things. Not only the testimony and records from both parties but also the relevant law, industry practice and guidelines. But, as the investigator has said, it's the domain of the courts to make findings on any *breaches* of the law.

The central issue for Ms W is whether it was right for the bank to insist on waiting for the EPA to be registered with the OPG before allowing Mr W, as attorney, to transact on the account. It's clear those acting for Ms W feel Lloyds current procedural position is flawed and its interpretation of the effects of the statute is wrong.

The relevant law is set out in the Mental Capacity Act 2005. The Act sets out the main elements of an EPA and the scope of an attorney's authority. But, as far as I can see, it doesn't state as plainly as Mr W puts it, or at all, that a third party is obliged to accept the EPA as it is when the donor is becoming or has become mentally incapable.

It's not my function to make findings on any *breaches* of the law. What I've got to look at here is whether the bank have done anything wrong in response to that request.

This service has previously acknowledged that every bank has its own process for registering a power of attorney and it's up to them how they do this. And for the reasons I've already given, we wouldn't normally interfere with internal policies. From everything I've seen, it seems to me Lloyd's consideration of this EPA and refusal to act on it until registered is in line with their policies.

I've looked at industry guidance. The British Bankers' Association (now UK Finance) in March 2013 published a guide on powers of attorney. It said "*An enduring power of attorney (EPA) is when a person makes a decision, before they become incapacitated, to appoint somebody they trust ... to look after their finances or property.... If the donor has mental capacity, you can use the EPA without it having to be registered. However, if you believe the donor has lost or is losing their mental capacity, you can only operate the EPA once it has been registered with the OPG*"

More recently The UK Regulators Network and OPG published guidance for business covering powers of attorney called "Supporting customers who do not make their own decisions". Along with checks to see the EPA is valid it suggests a business then "*contact the donor to confirm whether they want the attorney to act for them*" and "*check whether the donor has included any restrictions or conditions in Part B of the form*". It goes on to say "*If a donor loses mental capacity, their attorneys must register the EPA with OPG to continue using it. This is because the donor must consent to attorneys using an unregistered EPA. Once the donor can no longer consent, attorneys need legal permission to manage the donor's finances.*". I don't think Lloyds approach to Ms W's situation contradicts either of these.

There's no doubt when trying to act for Ms W, Mr W was placed in a difficult position. And its

temping to take the view Lloyds could've handled his enquires about Ms W's account with more sensitivity and understanding when it first received them. But I'm afraid, as I don't think Lloyds have done anything wrong in refusing Mr W access until the EPA was registered, I can't ask them to do anything further.

My final decision

My final decision is that I do not uphold his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W and Mr W to accept or reject my decision before 22 August 2023.

Annabel O'Sullivan
Ombudsman