

The complaint

Mr L is unhappy that Nationwide Building Society allowed his grandfather to open a Junior ISA ("JISA") on his behalf.

Mr L, who is a child, is represented here by his mother, whom I'll refer to as Mrs R.

What happened

In January 2013, Mr L's grandfather visited a Nationwide branch and opened a JISA in the name of Mr L. In doing so, Mr L's grandfather met the criteria to be able to open a JISA for Mr L, including that he presented a copy of Mr L's birth certificate to Nationwide and self-declared that he held parental responsibility for Mr L.

In 2021, Mrs R noticed that the account Mr L's grandfather had opened for her son was a JISA, and not a standard savings account as should have been the case. Mrs R contacted Nationwide about this as she was concerned that the terms of the JISA meant that money couldn't be withdrawn from the account until Mr L reached the age of 18 and took possession of the account himself, whereas it was intended that the money saved in the account would be used for Mr L's benefit before he reached the age of 18.

Nationwide confirmed that Mrs R's concerns were accurate, and that no money could be withdrawn from the JISA before Mr L was 18. Mrs R wasn't happy about this, and she felt that Nationwide should never have allowed Mr L's grandfather to open the JISA as he'd never held the parental responsibility for Mr L needed to do so. So, she raised a complaint.

Nationwide looked at this complaint. But they felt that they'd opened the JISA in good faith and reiterated that Mr L's grandfather had self-declared to Nationwide that he did hold the parental responsibility required. Nationwide also confirmed that the terms of the JISA meant that no money could be withdrawn from the account until Mr L reached the age of 18, and they didn't uphold the complaint. Mrs R wasn't satisfied with Nationwide's response, so she referred this complaint to this service on Mr L's behalf.

One of our investigators looked at this complaint. But they didn't feel Nationwide had acted unfairly in how they'd managed this situation, and so they didn't uphold the complaint. Mrs R remained dissatisfied, so the matter was escalated to an ombudsman for 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.

I issued a provisional decision on this complaint on 6 January 2023 as follows:

I don't feel that Nationwide acted unfairly when opening the JISA at Mr L's grandfather's request. This is because I'm satisfied that Mr L presented himself to Nationwide as being eligible to open the JISA on Mr L's behalf, including that Mr L's

grandfather provided a copy of Mr L's birth certificate to Nationwide and also self-declared to Nationwide that he held the parental responsibility to allow him to open the JISA for Mr L as he was requesting.

But Mr L's grandfather didn't in fact hold the parental responsibility for Mr L that was required for him to be able to open the JISA. Instead, Mrs R held that requisite parental responsibility. This means that – while I'm satisfied that Nationwide acted in good faith and didn't do anything wrong by allowing the JISA to be opened, on the basis of the information they were presented with – in real terms, the JISA should never have been opened.

As such, my provisional decision here is that Nationwide should void this account as if it were never opened and return the sum of all deposits made into the account to Mr L. It's my understanding that three deposits were made into the JISA since it was opened in 2013, to a total of £9,124.59 – which is the amount I'm provisionally instructing Nationwide to send to Mr L after voiding the JISA.

I've considered whether Nationwide should also be instructed to send Mr L the interest that's accrued within the account since its inception, which presently totals £1,986.62. But because my instruction here is that Nationwide must void the account as if it had never been opened, I don't feel that Mr L should receive this interest amount. And this is because if the account had never been opened, the interest resultant from that account would never have accrued.

Mrs R feels that the JISA was only opened because of Nationwide's mistake in allowing Mr L's grandfather to open it. Consequently, Mrs R also feels that Mr L should receive either the interest that's accrued in the JISA or the amount of interest the deposits made to the JISA could have earned in a different savings account during the time that the JISA was open.

I'm not convinced by Mrs R's position here, and this is because, as explained, I don't feel that Nationwide did anything wrong in opening the JISA as they did – given the information and the declaration presented to them by Mr L's grandfather.

I also feel that it should be noted that the status of the account as a JISA has been visible and apparent to Mr L's grandfather since the account was opened in 2013, including when all three of the deposits into the account were made. And while Mrs R may argue that she didn't have visibility of the account, and so shouldn't herself be considered at fault for not recognising that the account was a JISA sooner, I'm satisfied that it's similarly the case that Nationwide shouldn't be considered as being at fault here for opening the JISA as they did.

As such, if it is the case that Mrs R would like the JISA to be voided, which would allow Mr L access to the money deposited into it, then I'm happy to instruct Nationwide to do this. But only on the proviso that it would be the sum of the deposit amounts only that would be sent to Mr L, and not the interest that's been earned within the JISA to date, as explained above.

If Mrs R understandably doesn't want Mr L to lose the interest amount that's accrued, then I feel the only fair option is for the JISA to remain in place, with the restrictions on withdrawals about which Mrs R now complains.

I don't feel it would be fair to instruct Nationwide to void the JISA and send money to Mr L inclusive of both the original deposits and the interest that's accrued over time.

This is because I'm satisfied that Nationwide didn't act unfairly by opening the JISA, and because given that no withdrawals are permitted from the JISA until Mr L reaches the age of 18, the only way to allow Mr L access to the deposited money before he reaches the age of 18 is to void the account as if it had never been opened – which would mean there would never have been an account within which interest could have accrued.

I accept that Mr L would lose the interest that's accrued within the JISA to date if the account is voided as provisionally instructed here, but I don't feel that Nationwide should fairly or reasonably be held accountable for this, as previously explained.

In response to my provisional decision, Mrs R provided several comments for my consideration. I've read and considered in full the further submissions provided by Mrs R, and I hope she won't find it discourteous that I won't be responding to every point she's raised in those submissions. Instead, I'll only be responding here to the points that I feel have a material bearing on my decision, which I feel is in keeping with the remit of this service as an informal, impartial dispute resolution service.

I would also reiterate that this service isn't a regulatory body or a Court of Law, and so it isn't within my remit here to declare whether Nationwide have or haven't acted in a non-regulatory or unlawful way. Instead, as alluded to above, the remit of this service is focussed on fairness of outcome from an impartial perspective.

Mrs R began by agreeing with the position I reached in my provisional decision that the JISA should fairly be voided because the required conditions for its opening were not met, given that Mr L's grandfather didn't have the requisite parental responsibility to open the JISA on Mr L's behalf.

Mrs R then detailed the reasons why she continued to feel that Nationwide had acted negligently in allowing Mr L's grandfather to open the account. These included that Mr L's grandfather recalled being told by Nationwide branch staff at the point of opening the JISA that a JISA could be opened by a grandparent, as well as that Mr L's grandfather highlighted to Nationwide shortly after the JISA was opened that he didn't in fact hold the requisite parental responsibility to have opened the account in the first instance – but that Nationwide then allowed the JISA to remain open and in place.

In consideration of the first point described above – that Mr L's grandfather was told by Nationwide's staff when he opened the JISA that a grandparent could open that type of account – it's notable and understandable that, in part because of the length of time that's elapsed since the JISA was opened in 2013, Nationwide haven't been able to provide the recollections of their staff member who opened the JISA with Mr L's grandfather.

I've taken Mr L's grandfather's testimony into consideration. But I continue to feel that it is significant that the document signed by Mr L's grandfather when the JISA was opened included that parental responsibility was required to open the JISA. And I find it difficult to reasonably hypothesise that the staff member that conducted the JISA opening wouldn't, in all likelihood, have known of this documented requirement, or that they would have specifically advised Mr L's grandfather to the contrary.

It also remains the case that it was Mr L's grandfather's responsibility to have read and understood the documents that he signed when opening the JISA - which included the statement that parental responsibility was required. Mrs R has explained that Mr L's grandfather signed the account opening paperwork without reading and understanding it on the basis that he was incorrectly told by Nationwide that he was eligible to open the JISA. But if Mr L's grandfather did sign the documents in such circumstances – which, as

previously explained, is a hypothesis that I don't feel that I can reasonably and impartially agree with – I don't feel that this would have absolved Mr L's grandfather of his responsibility to have read and understood the documents before he signed them.

I'd like to reassure Mrs R that none of this is to say that I feel that the testimony provided by Mr L's grandfather is incorrect here. But it is to say that I don't feel that I can reasonably and impartially instruct against Nationwide in the way that Mrs R would like, on the basis of Mr L's grandfather's testimony, given the other points of consideration that I have to take into account here in my professional capacity as an ombudsman, as described above.

Mrs R has also explained how Mr L's grandfather received a letter from Nationwide shortly after opening the JISA which asked Mr L's grandfather to check the ISA declaration – which was repeated within the letter – at which time Mr L's grandfather recognised that he didn't hold the requisite parental responsibility needed to open the JISA and following which Mr L's grandfather went into Nationwide branch and informed Nationwide about this.

Mrs R has provided a photo of this letter, dated 15 January 2013, which shows a handwritten correction of the address that Nationwide should have held as residence for Mr L as well as an 'X' and a 'No' against the statement '*I have parental responsibility for the child*'.

From the impartial perspective as described previously, while I have no reason to doubt that Mr L's grandfather did take this letter into branch as Mrs R has explained, I also have no reason to doubt the opposite position – that Nationwide weren't appraised of the handwritten corrections on this letter – given that Nationwide didn't take the action that would be expected upon receipt of that letter and given that the presence of the handwritten comments on the letter at this time don't undisputedly confirm that these comments were provided to Nationwide in 2013.

However, I've considered how I would feel about this aspect of this complaint if I were to accept that Mr L's grandfather did make Nationwide aware that he didn't have the requisite parental responsibility to have opened the JISA during a visit to a Nationwide branch within the first few weeks of the account being opened.

In this scenario, Mr L's grandfather would have provided the information to Nationwide in branch, but for whatever reason Nationwide would then not have acted on this information so that the JISA remained open and so that Mr L's residence address as held with Nationwide wasn't updated.

I can appreciate how Mrs R might feel that the scenario described above should mean that Nationwide should be held responsible for the JISA remaining open on an invalid basis, and so should be asked to compensate Mr L accordingly for this.

But I feel that if Mr L's grandfather had recognised that he wasn't eligible to open the account, and if he had made Nationwide aware of this and hadn't had a response from Nationwide having done so, then I feel it's reasonable to have expected Mr L's grandfather to have followed up his initial recognition of this point and to have reconnected with Nationwide about it – especially given that the JISA then remained open and visible as a JISA for close to a decade before the present complaint about it was raised.

This isn't to excuse the potential mistake that Nationwide may have made here. But it is to say that I feel that the non-correction of that mistake by Nationwide should reasonably have been recognised by Mr L's grandfather in the many years that followed, and that therefore the responsibility for the continuing existence of the JISA should fairly be shared between Nationwide and Mr L's grandfather – given that I feel that both parties may not have met responsibilities they should reasonably have been expected to meet in this scenario.

Mrs R has also explained that Mr L's grandfather had previously opened two other (non-JISA) savings accounts for two other grandchildren. Given that these other accounts weren't JISAs, the opening process and requirements for those other savings accounts would have been different, which I feel should have further confirmed to Mr L's grandfather that this specific account may have been different to the other two accounts that he'd previously opened, and so may have been subject to different account rules.

All of which means that I continue to feel that Nationwide shouldn't fairly or reasonably be held solely accountable for allowing Mr L's grandfather to open the JISA or for it to have remained open. This is because, accepting the version of events put forwards by Mrs R, it remains the case that I feel that Mr L's grandfather should have read and understood the nature of the account he was opening, and because if Nationwide then didn't act on Mr L's grandfather telling them that he wasn't eligible to open the JISA that Mr L's grandfather should bear some responsibility for the continuing existence of the JISA, given that he didn't follow up this point with Nationwide and given that the account subsequently remained open and visible to Mr L's grandfather as a JISA for several years.

Ultimately, it also remains my position that this JISA should never have been opened, and so should fairly be voided as though it had never been opened – although as explained I don't feel that Nationwide should fairly be considered as being solely responsible for this.

As such, I feel that the sum of the deposits made into the JISA should be sent to Mr L, but without any of the interest that had accrued within the JISA during the time it has been open. As previously explained, this is because interest can't accrue on an account that doesn't exist, as would be the case if the JISA were to be voided as if it had never been opened.

Mrs R has expressed her strong dissatisfaction at this point and is unhappy that Nationwide will potentially be allowed to keep the interest that has accrued within the JISA. I'd like to confirm to Mrs R that in this scenario it wouldn't be the case that Nationwide would 'keep' the interest as she believes, but rather that the interest will be voided out of existence at the time that the JISA itself is voided such that it was never opened.

Mrs R is also unhappy with how Nationwide have handled this complaint and in how it's taken so long to resolve. I can appreciate Mrs R's frustration regarding this point. But it's not within the remit of this service to consider a complaint point which is about how a business has handled a complaint – as this aspect of this complaint is – even where the overriding complaint is about a regulated financial matter.

Mrs R also feels that, in my provisional decision letter, my references to Mr L's grandfather having 'self-declared' that he had the requisite parental responsibility to open the JISA implied some deception on Mr L's grandfather's part. I apologise if Mrs R felt this way and I can confirm that it wasn't my intent to make any such implication. Rather, I was simply referring to the fact that Mr L's grandfather signed a declaration which included the statement that he did have the parental responsibility needed to open the JISA he was applying for on Mr L's behalf.

Finally, Mrs R has highlighted that it's unusual for a person of Mr L's grandfather's age to hold parental responsibility for a young child as Mr L was at that time. I can appreciate Mrs R's position here. But while such a scenario may be unusual, it isn't impossible, and I'm satisfied that Nationwide were presented with the documents and declarations required to allow Mr L's grandfather to have opened the account. And I also feel that considerations of potential age discrimination may have arisen had Nationwide acted differently.

All of which means that my final decision here will be that I will be upholding this complaint on the limited basis explained above, whereby my instruction to Nationwide will be that they must void the JISA as if it had never been opened and send the sum-total of all deposits made into the account to Mr L, but that all interest accrued during the term of the JISA must be voided along with the JISA. This feels fair to me, for the reasons explained above.

If Mrs R, as Mr L's representative, is unhappy with this outcome, Nationwide have indicated that they may be happy to allow the JISA to remain in place with parental responsibility being transferred to Mrs R. This would mean that the interest accrued on the JISA to date would be retained, but that the account would remain subject to the limitations about which Mrs R is presently unhappy.

If Mrs R would prefer the JISA to remain in place moving forwards, she should formally not accept my final decision here – because if she does formally accept this decision then Nationwide will be formally bound by the instructions as stated below.

I realise this may not be the outcome that Mrs R was wanting, but I hope that she'll understand, given all that I've explained above, why I've made the final decision that I have.

Putting things right

Nationwide must void the JISA as if it had never been opened and send the sum-total of all deposits made into the account to Mr L.

All interest accrued during the term of the JISA must be voided along with the JISA.

My final decision

My final decision is that I uphold this complaint against Nationwide Building Society on the basis described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 7 March 2023.

Paul Cooper
Ombudsman